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## Senate

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

The PRESIDENT pro tempore. Once again, we are privileged to have our guest Chaplain, Rev. Charles V. Antonicelli, of St. Joseph's Catholic Church on Capitol Hill, lead us in prayer.

### PRAYER

The guest Chaplain offered the following prayer:

Heavenly Father, we give You thanks this day. With the Psalmist we proclaim:

Praise the Lord, all you nations; glorify him all you peoples! For steadfast is his kindness toward us, and the fidelity of the Lord endures forever.

We ask Your continued blessing on us as we seek to do Your will. Protect those who risk their lives to keep us free, Lord, and keep us always grateful for their sacrifice.

Bless the women and men of this Senate. Enkindle in them Your Spirit of justice and compassion; of service and sacrifice; of love and understanding, so that they may be Your instruments of peace in our world.

We ask this in Your holy name. Amen.

### PLEDGE OF ALLEGIANCE

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

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

### RESERVATION OF LEADER TIME

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

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. Under the previous order, the majority leader

is recognized to speak as in morning business.

### SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of the energy bill. When we return to the energy bill, I will be offering the first amendment. That amendment will be the ethanol amendment that a number of Senators referred to during yesterday's session. This amendment will be offered on behalf of myself and Senator DASCHLE as a leadership amendment.

Today, Members are welcome to speak on that amendment or the energy bill in general. However, as I announced, there will be no rollcall votes during today's session.

On Monday, the Senate will begin consideration of the jobs/growth bill. The order allows for up to 2 hours of consideration during Monday's session, but there will be no rollcall votes on Monday as well.

I will have more to say on next week's schedule later today, but looking over that schedule this morning, at this juncture I do want to tell my colleagues it is going to be a very busy week that likely will go late Friday. Although I am not planning to go into Saturday, in looking at what we need to accomplish next week in terms of the jobs and growth package, in addressing, on Thursday, HIV/AIDS, and then during the week, on Friday or sometime during the week addressing the issue surrounding the debt limit—all three of those issues we need to complete next week. I do want to notify my colleagues, it is going to be a long week that will likely extend late into Friday.

At this time I have a statement on another subject. The subject is being introduced and talked about in terms of the backdrop of what we have seen occur in the last 5 months on the floor of the Senate in terms of the use of a

filibuster being used in an unprecedented way with regard to the nominations for judicial vacancies.

### AMENDING SENATE RULES

Mr. FRIST. Mr. President, with some regret but determination, and along with 11 Senators, I submit today—let me read the list of Senators at this juncture who are cosponsors of this resolution, a resolution to amend the Senate rules. The cosponsors are: Senators MILLER, MCCONNELL, STEVENS, SANTORUM, KYL, HUTCHISON, ALLEN, LOTT, HATCH, CORNYN, and CHAMBLISS.

I submit a resolution to amend the Senate rules. At this point I will send the resolution to the desk. I ask it be referred to the appropriate committee.

The PRESIDENT pro tempore. The resolution will be received and appropriately referred.

Mr. FRIST. Mr. President, this amendment will change the way the Senate concludes debate on Presidential nominees. No longer will it be necessary to overcome a 60-vote barrier before Senators can exercise their power to consent to a nomination.

Five months into the 108th Congress, we confront multiple filibusters of highly qualified and intellectually superior judicial nominees, filibusters that are unfair to the nominees, unfair to the President, and unfair to the majority of Senators—Senators who are ready to confirm them.

Of course, we all fully respect and honor the views of any Senator who differs from our own assessment on the quality of any particular nomination, and I think if he or she finds a particular nominee unfit for any reason, they should vote to reject. But by denying the right of an up-or-down vote on a nominee and choosing, rather, to filibuster, they deny the Senate and each Senator the right to vote at all.

The remedy is filibuster reform. Over time, many Democrats as well as many Republicans have proposed changes to

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



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introduce greater fairness in the Senate rules. It is to these proposals that I have looked in crafting this resolution.

My proposal is similar to S. Res. 85, proposed in March by my distinguished Democratic colleague from Georgia, Senator ZELL MILLER. It also tracks a recommendation offered in 1995 by the distinguished Democratic Senators from Iowa and Connecticut, TOM HARKIN and JOE LIEBERMAN. Both the Harkin-Lieberman and the Miller resolutions provide for declining cloture requirements of 60, 57, 54, and 51 on successive cloture motions. They represent a wholesale reform of the cloture rule, applying to every debatable proposition.

My resolution is different. My resolution, by contrast, is more narrowly tailored, tailored to respond to the problem at hand. My resolution applies only to nominations. It leaves the rest of rule XXII unamended. It addresses the very specific defect that needs repair.

There are other differences, however minor, from these other cloture reform efforts. Unlike these earlier proposals, mine would not allow a cloture motion to be filed until a nomination had been pending before the Senate for at least 12 hours. This provision tracks language that the distinguished Democratic leader inserted into S. Res. 8, the power-sharing resolution he introduced in the last Congress.

I share his purpose to ensure that there exists an adequate foundation of debate before cloture is sought.

My resolution also provides for a step below constitutional majority of 51 votes on the fourth cloture attempt. Under my proposal, further cloture motions will require a majority of all Senators present and voting. This provision is included in response to colleagues who believe that supermajority voting requirements on nominations are unconstitutional. If 95 Senators are present, a 51-vote threshold is still a supermajority. Cloture by a majority of Senators present and voting has deep historical roots among Senate Democrats.

In past years, such a change was offered by eminent and distinguished Senators such as Hubert Humphrey of Minnesota, Paul Douglas of Illinois, and Wayne Morse of Oregon. These Senators proposed to reach all Senate debate, not just nominations.

Under the proposed new procedures, cloture cannot be precipitously invoked. Not only is there a 12-hour waiting period, but in addition, the resolution tracks the provision from the Harkin-Lieberman and Miller initiatives that one cloture motion cannot be filed until disposition of the prior cloture vote. This is contrary to the present operation of rule XXII which permits multiple cloture motions to be advanced without waiting for the outcome of the cloture motion previously filed. Between the time a nomination is brought to the floor and the moment

that it can be confirmed by a simple majority vote, the elapsed time would be 13 session days.

I stated that I regret having to introduce this resolution. The right to debate is not unlimited but, indeed, it is precious and important. My first vote as a U.S. Senator was in 1995 to table the Harkin-Lieberman resolution even though I was a freshman in a newly elected majority, and the cloture amendment they proposed would have advanced our party. By contrast, in the Senate today are nine Democratic Senators who voted in favor of the sweeping Harkin-Lieberman reform. I ask: Will they now support my more narrow remedy?

I was presiding when the distinguished Democratic Senator from West Virginia, ROBERT BYRD, took to the floor to contend that Harkin-Lieberman was unnecessary because it was primarily aimed at controlling filibusters on motions to proceed. "No need to change the rules," said the Senator, "because a leader could avoid such filibuster by offering nondebateable motions in the morning hour." The Senator did not argue the absence of a problem but, rather, the presence of an alternative solution, a safety valve so further limiting of debate was not required.

I was persuaded by his logic. I opposed then, and would oppose now, comprehensive change in rules governing Senate debate.

However, in the case of nominations, the safety valve of an alternative solution is not as readily at hand. Under existing cloture rules, the filibuster of a nomination is the last word and it is fatal.

Filibustering nominations is a relatively new phenomenon, even as to the nominees for the executive branch, and it has emerged in this Congress as a particular problem relative to Federal judges. Prior to this year, the record number of cloture votes on any nominee was three, and on a judicial nominee the record was two. Already, we have had six cloture votes on the nomination of Miguel Estrada to the District of Columbia Circuit Court of Appeals, two cloture votes on the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals, and indeed threats from the minority for additional filibusters on other nominees. Clearly, we have entered upon a new era, damaging to the Senate as an institution, where a majority will be denied its right to consent to a nomination because a minority will filibuster to hold that nomination hostage.

The need to reform the filibuster on nominations is obvious, and it is now urgent. Many will contend that the Senate should not rubberstamp Presidential appointments. I fully concur. The Senate's responsibility under article II to advise and consent is critical to maintaining the checks and balances of our constitutional system. For reasons sufficient unto itself, the Senate may reject any nominee. Brought

forward to a vote, the Supreme Court nominations of Clement Haynsworth, G. Harrold Carswell, and Robert Bork all failed on the Senate floor, and not by filibuster. Scholars may argue whether these nominees should have been turned aside, but no one can dispute the Senate's right to reject them. The Senate's constitutional role must never be diminished.

In the case of Miguel Estrada and Priscilla Owen, it is plain that the votes to confirm are present. They have the support of a majority of Senators. But the votes to confirm cannot be taken because these debates have been tainted by filibuster. Without filibuster reform, a disciplined minority can cast an ever-lengthening shadow over the confirmation process. Through reform, we will respect the right of all Senators to act upon a nomination brought to the floor. In so doing, we will strengthen the Senate as an institution and enhance its constitutional purpose.

It is unfortunate that we have come to this point. I would have far preferred that nominations be given a floor vote after full and free debate. As the filibuster strategy emerged, I tried many times without success to secure agreements to vote at a time certain. Wanting to respect minority rights and, indeed, the right of all Senators, I withheld filing for cloture on the Estrada nomination until it had been pending for 13 days.

But just as I act with regret, I act with determination. For almost all our Nation's history, filibustering nominations was unheard of and unknown. It was unknown when the cloture rule was adopted in 1917. It was unknown when the rule was extended to nominations in 1949. The renowned filibusters of the 1950s and 1960s never involved filibustering a judge. Senator Richard Russell of Georgia led both filibusters, but even in the face of glowing judicial activism neither he nor his allies ever filibustered a judge.

Obviously, some respected traditions have changed. Senate rules are not immutable. Senate norms have altered over time, and our rules have changed in response. The initial cloture rule of 1917 was a reaction to cumulative and growing consternation over years of uncontrolled filibusters. The 1949 expansion reflected frustration that the original rule was too narrow and applied only to pending measures. In 1959 and 1975, the rule was amended because the hurdle for cloture was thought to be too high. In 1979, Senator BYRD successfully amended the rule to eliminate the abuse of postcloture filibuster. Before the practice of filibustering nominations takes deeper root and damages the Senate even more, it is time to amend our rules again. I act now as a first step to ensure we have a confirmation process that is fair to the nominees, that is fair to the President, and that is fair to all Senators. If we achieve that, we will also be fair to the American people.

## THE ENERGY POLICY ACT OF 2003

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 14, which the clerk will report.

The assistant legislative clerk read as follows:

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

The PRESIDENT pro tempore. The majority leader.

AMENDMENT NO. 539

(Purpose: To eliminate methyl tertiary butyl ether from the United States fuel supply, to increase production and use of renewable fuel, and to increase the Nation's energy independence)

Mr. FRIST. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] for himself and Mr. DASCHLE, Mr. INHOFE, Mr. DORGAN, Mr. LUGAR, Mr. JOHNSON, Mr. GRASSLEY, Mr. HARKIN, Mr. HAGEL, Mr. DURBIN, Mr. VOINOVICH, Mr. NELSON of Nebraska, Mr. TALENT, Mr. DAYTON, Mr. COLEMAN, Mr. EDWARDS, Mr. CRAPO, Mr. CONRAD, Mr. DEWINE, and Mr. BAUCUS, proposes an amendment numbered 539.

Mr. FRIST. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

Mr. FRIST. Mr. President, I am pleased to offer this renewable fuels amendment on behalf of myself and Senator DASCHLE, as well as a number of other Senators on both sides of the aisle who have worked on this important issue for a number of years.

I think the fact that the Democratic leader and I have joined together to offer this amendment demonstrates the significance of this particular issue as well as the broad bipartisan support that this compromise package enjoys.

I do want to take this opportunity to commend all of the cosponsors of the amendment, many of whom came to the floor yesterday morning to speak, for their hard work, their dedication over the years in forging this agreement. I also note that the President has made passage of this amendment a priority, and I commend him for his commitment to getting this done.

This particular amendment will enhance America's energy independence and energy security by increasing the use of domestically produced, clean, renewable fuels. As the chairman of the Energy Committee has pointed out many, many times, America is dangerously dependent on foreign oil. We currently import 60 percent of the oil we consume, and that number is increasing. One of the major goals of this energy bill we are debating on the floor of the Senate is to reduce our dependence on foreign oil. This amendment is a critical component of that effort.

The Frist-Daschle amendment establishes a national renewable fuels standard of 5 billion gallons per year by the year 2012, nearly tripling the use of ethanol and biodiesel over the next decade. It phases out the use of MTBE over a 4-year period and authorizes funding to prevent and clean up MTBE contamination from leaking underground tanks. And it repeals the Federal oxygen content requirement for reformulated gasoline, with strong antibacksliding language to ensure that air quality is not compromised.

Mr. President, as I said, this amendment is the product of a great deal of work by many Members of the Senate over the last several years. It is a compromise that has broad, bipartisan support. It will reduce our dependence on foreign oil. It will protect the environment. It will create jobs. It will increase farm incomes. It will stimulate investment in rural communities.

I look forward to working with Senator DASCHLE and all of the other supporters of this package to get it adopted as expeditiously as possible.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The minority whip.

## JUDICIAL NOMINATIONS

Mr. REID. Mr. President, I know the schedule of the majority leader is burdensome. I do wish to say a few words while he is here regarding the proposed rule change.

First of all, I have said, on a number of occasions in recent weeks, that I understand the intensity of the feeling of members of the majority—some members, not all—on the Miguel Estrada nomination and that of Priscilla Owen. But I do say, that for people to lament that the process is broken regarding judges is simply without foundation or fact. Mr. President, 124 judges have been approved for President Bush—124. Two have been held up.

The number of cloture motions that have been filed, for those of us who have served in the Senate for some time, is somewhat meaningless. The reason you continually file new cloture motions is if there is a change in the vote. And for Priscilla Owen and Miguel Estrada, there has not been a single vote change—not one. They are all the same. So filing those cloture motions is just for show; it has no basis in substance.

Now, I do say to the leader that I think this is being approached in a proper fashion. I think that to go to seek a rules change is the way it should be done. If you don't like what is going on here, try to change a rule.

I have been personally—and I am sure it has not gone without the notice of others—concerned about some of the statements made by Members of the majority saying they are going to have this rule changed regardless of what the Rules Committee does; that if it does not work out in the Rules Committee, they are going to come here

and have the Presiding Officer just say what we have been doing is unconstitutional.

Now, one of the newspapers announced that this would be nuclear. I think, legislatively, nuclear is the proper term.

I have no problem—I say this to the majority leader—seeking to change the rules. If the rules are changed by a procedure we have always used here in the Senate, I will go along with that. But to have something done, that is to say suddenly that you cannot have a filibuster because it is unconstitutional, creates many different problems. Does that mean if 11 members of the Judiciary—a majority—holds up a judicial nominee, that that is unconstitutional and it can come immediately to the floor? I think not.

So I recognize—I have been as frustrated as anyone trying to get cloture motions filed and cloture determined on a vote. I can remember when I was a relatively new Member of the Senate—I was not too new then—during the Clinton administration and we were trying get grazing changed in the western part of the United States. We had four or five cloture motions filed. We got up to 57 or 58 Senators on that occasion. And we were moving, filing the cloture motions that seemed to be gaining status.

Then suddenly GEORGE MILLER from the House and HARRY REID from the Senate were called to the White House, and the President of the United States, Bill Clinton, said: We are not going to support you on this anymore. It is over with. He had made some arrangements with House Members, and our trying to get cloture invoked on something we believed was very important was, in effect, pulled out from under us. I can still remember that.

But in those, I say to the majority leader, when cloture motions were filed by Senator BYRD, we kept gaining votes. In relation to Miguel Estrada and Priscilla Owen, that is not the case.

So again, I say, that the majority leader is approaching this in the Senate way, the right way. I do say—and I know he has had conversations with the Democratic leader, and I have spoken to other Members on the other side—I hope it will be done in that fashion and not by some jury-rigged fashion to change the rules by some "constitutional" matter.

I even understand one of the Republican Senators is filing a lawsuit. Fine. More power to them. Let them file a lawsuit. I think that is the way it should be determined. But don't change the Senate rules in some other fashion because it would really damage our ability to move forward on legislation.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, just in closing, on my behalf, the whole purpose of submitting this resolution today is to further elevate the debate in recognition that things change in

the Senate over time. As we look back over the cherished history we all share—and it is our heritage—things today are different, and there are times for the rules to change. When you even contemplate changing the rules, you have to give a great deal of thought and debate and discussion, and that is what is underway today in submitting this resolution. I believe it is a reasonable, commonsense way of addressing an approach to addressing the issue.

I look forward to the continued debate, in referring it to the appropriate committee, where that debate can begin. And we can be commenting on the floor itself.

Again, this proposal is a bit different from the others that have been submitted in the past. It is similar in many ways in drawing upon previous legislation. It is different in the fact that it is narrow and applies to nominations; that there is this 12-hour period to give adequate time to have the debate and discussion; to start off with a threshold that is 60 votes, but over a period of 4 steps comes down to ultimately what is a majority vote of those present. The only other difference is the cloture votes would be filed sequentially. You have to dispose of one cloture vote before you go to the next, again to make sure we do not cut off adequate time to have a debate, but also to assure, at the end of the day, that the right of every Senator to express themselves in an up-or-down vote will be present.

So I am very excited about the resolution itself. Again, we are trying to do it in a very deliberate, a very focused, a very disciplined way. That is the purpose of the submission of the resolution today. I do hope it provokes discussion and debate on this floor and in committee so we can bring this, what is unprecedented in terms of partisan filibusters, to an end as it applies to judicial nominees.

With that, Mr. President, I yield the floor.

THE PRESIDING OFFICER (Mr. CHAFEE). The Democratic leader is recognized.

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

THE PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, I was not in the Chamber until just a few moments ago. I didn't have the luxury of hearing the distinguished majority leader. His comments have been reported to me, and I have now had the opportunity to see the text of his remarks.

I welcome the introduction of his resolution. A Senator is within his rights and certainly a majority leader is within his rights to suggest changing the

rules. If we are to change rules, there is a procedure. And I respect the majority leader's interest and determination to suggest ways that the rules could be changed with regard to filibusters or, for that matter, any rule involving Senate procedure.

He joined me in opposing this proposal when it was offered by Senators HARKIN and LIEBERMAN about 10 years ago. But obviously, over the course of 10 years, we all have a right and an expectation that we will change our points of view from time to time. He has on this matter.

As in most parts of this country, slogans and phrases sometimes have more wisdom than one might see on the surface. There is an old slogan or saying in South Dakota that I am sure is repeated in other States: "If it ain't broke, don't fix it." It ain't broke.

Anytime you can confirm 124 judicial nominees in the course of 2½ years, I don't see much broken. That is a 98.4-percent confirmation rate. Any baseball player standing at home plate would settle for 500 percent, 400 percent, 300 percent. Any quarterback would love to have a 98-percent rate of completion on passes. I don't know of another administration that has enjoyed the success in confirmations of its judges that this administration has: 124 to 2; that is the score; 124 circuit judges, district judges; 124 nominees who have worked their way through hearings, through a committee vote in the Judiciary Committee, and on to the floor in 2½ years; 124 to 2.

Those two, Miguel Estrada and Priscilla Owen, have unique circumstances. In the case of Mr. Estrada, it is a matter of asking him with all deference to fill out the application form for the job.

I have many employees. I am fortunate to have such good ones. But nobody would work in our office if they refused to fill out pages 3 and 4 and 5 of a 5-page application. If they said: I will fill out the first two pages but not the last three, I would say: Find another job. You are not going to work here.

That is really what Mr. Estrada is saying to us. In spite of the fact that Mr. Bork, Mr. Rehnquist, Mr. Civiletti, and so many other nominees who have had similar circumstances have provided the very information we are asking of Mr. Estrada, Mr. Estrada and his supporters in the administration are saying: No, we will not comply. We will not fill out the job application.

Our response is: Fill out the job application and you will get a vote. It is that simple. In the case of Ms. Owen, we have a record that is very disconcerting, a record of putting her own views ahead of the law. We cannot accept that either. If she would comply with the law and interpret the law, it would be one thing; but to ignore the law and to use her own views as she applies her decisionmaking authority is not something that is acceptable as well. So you have those two nominees.

I know some of my colleagues have lamented this notion that filibusters

could be employed, but we had a filibuster in the 106th Congress of a man of incredible stature and standing, Richard Paez. He was a nominee to be U.S. Circuit Judge in the Ninth Circuit during the 106th Congress. This was a filibuster. I find it interesting that the majority leader was one of those who voted against cloture. He apparently felt at the time that cloture was inappropriate, or he would not have voted against it. In other words, he voted to extend the filibuster during that debate on Mr. Paez.

But Senator FRIST certainly is not alone. There were 14 people who voted to continue debate on Mr. Paez. Senator HATCH, as recently as 1994, said the filibuster is—using his words—"one of the few tools that the minority has to protect itself and those the minority represents." Senator HATCH made the statement during a filibuster to a Clinton nominee to the Third Circuit. In 1997, 3 years later, Senator HATCH stated:

Determining which of President Clinton's nominees will become activists is complicated and it will require the Senate to be more diligent and extensive in its questioning. . . .

Senator Smith of New Hampshire—no longer with us in the Senate—also came to the floor to argue forcefully in support of filibustering judicial nominees. His quote:

So I do not want to hear that I am going down some trail the Senate has not gone down before by talking about these judges and delaying. It is simply not true. Don't pontificate on the floor and tell me somehow I am violating the Constitution . . . by blocking a judge or filibustering a judge that I don't think deserves to be on the court. That is my responsibility. That is my advise and consent role, and I intend to exercise it.

So, first, on the basis of the record, 124 to 2, and second, on the basis of past precedent, both with regard to Republican positions relating to these judges, as well as to the advocacy of the filibuster in prior years, makes me question: Why now, with that record, would anybody be concerned about the rights of the minority, the rules of the Senate, or the longstanding practice every Senator has been the beneficiary of with regard to using the rules of the Senate to advance his or her arguments?

Mr. President, I guess I will simply reiterate the admonition many South Dakotans oftentimes use: If it ain't broke, don't fix it. Mr. President, it ain't broke.

The Federalist Papers are those papers we turn to with some frequency as we attempt to interpret the intentions of our Founding Fathers as they considered the institutions of the Senate and the House, our democracy. Federalist 63 says:

The people can never willfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

Well, the key word in Federalist 63 is the word "dissimilar." We are not the House of Representatives. We are the body where deliberative, extensive, unlimited debate is protected. That is the essence of the Senate. I sometimes don't know that we live up to the moniker "the greatest deliberative body in the world." Sometimes I don't think we are particularly deliberative. But we are rooted in the traditions of unlimited debate. That has been the essence of this body for well over 200 years.

I hope we never minimize the importance of our distinctions, our dissimilarities with the House, the intentions of the Founding Fathers when it comes to the protections, traditions, and the usefulness of the rules of the Senate, just as they applied over 200 years ago. That, in essence, is what is at stake.

As I said at the beginning, the majority leader is certainly within his right to propose rules changes. That has happened by leaders and Senators on both sides of the aisle for hundreds of years. We will always examine ways with which to make the Senate work more functionally and perhaps more efficiently. I don't want to give up the tradition of the very essence and meaning of the body for the sake of efficiency, for the sake of moving things along because, indeed, that was not the intent or the expectation of our Founding Fathers.

Let me finish by restating the score: 124 to 2. It ain't broke.

#### THE ENERGY POLICY ACT OF 2003—Continued

Mr. DASCHLE. Mr. President, I know the majority leader also came before the Senate this morning to do what I expected he would do yesterday. He has laid down the first amendment in the energy debate. I want to again commend him for his leadership and involvement with regard to the ethanol amendment. The ethanol amendment enjoys broad bipartisan support. That was evidenced, of course, yesterday as people on both sides of the aisle came to the floor and spoke eloquently and with conviction about the importance of this legislation. It is important, in part, because of our dependency upon foreign sources of oil.

We use too much imported oil. The more we can become self-sufficient and independent, the more we can truly not only help our own economy, but create environments within which questions pertaining to our dependence will not become key issues as we resolve whatever diplomatic or international challenges our country may face.

Energy independence is a laudable goal and it is within our grasp. But the only way it can be achieved is with the creation of renewable fuels, the creation of fuels that can be discovered, utilized, and created in this country. There is no better example of that than ethanol. Ethanol reliance means energy independence.

Secondly, the environmental issues are clearly at stake as we consider the consequences of ethanol. Clean air benefits cannot be understated. In 2002 alone—just last year—ethanol use in the United States reduced greenhouse gas emissions by 4.3 million tons, which is the equivalent of removing more than 636,000 vehicles from the road. That is a remarkable achievement. That was in 1 year. If you can imagine taking 636,000 vehicles off the road in 1 year, and the effect it would have on greenhouse gases if we could do that, that is in essence what we were able to create with this increased reliance on ethanol—not to mention our opportunity to phase out methyl tertiary butyl ether, MTBE, contamination.

MTBE contamination was also used as an oxygenate to improve environmental circumstances when the oxygen standard was passed in the early 1990s. We only found later how contaminating and toxic it can be. So phasing out MTBE is also a part of our legislative approach, and that, too, will have dramatic positive environmental consequences.

We talk about the economic consequences of ethanol and that, too, can hardly be overstated. One in three rows of corn in South Dakota today is being used to produce ethanol. The ethanol industry is creating \$1 billion in additional economic impact in my State alone. It means higher corn prices. It means prices will increase, according to USDA estimates, 50 cents a bushel, about \$1.3 billion in additional farm income annually once this legislation is enacted.

The University of South Dakota has stated this proposal has the potential to create 10,000 new jobs in our State, bringing in more than \$600 million annually to the State economy and over 214,000 jobs nationally once the RFS is implemented.

From an economic point of view, in addition to the environmental and energy independence advantages, we also have, of course, an agricultural advantage: more income for farmers with less reliance on farm programs.

There is a lot to be said for this legislation. I am very pleased, after all these years, as lonely as it was when we started, to see this kind of broad-based support. I would estimate now more than two-thirds, maybe three-fourths, of the Senate would support this legislation. We are well on our way to establishing what I view to be an appreciation of the importance, the contribution, the impact that ethanol can have in energy, in the economy, in agriculture, and in foreign policy.

That is why I feel as strongly as I do about the amendment, and that is why I am pleased to be a cosponsor with Senator FRIST and many of our colleagues, including the distinguished Senator from South Dakota, Mr. JOHNSON, on this amendment.

I hope the Senate will act quickly. Let us adopt this amendment. Let us

ensure, whether it is part of the energy bill or a freestanding bill that was reported out of the Environment and Public Works Committee, that we will have the opportunity to enact this legislation into law sometime this year. We should not wait any longer. It should happen this year. It can happen this year. With the broad bipartisan support, it will happen this year.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I ask unanimous consent to be added as a cosponsor to the renewable fuels standard amendment just offered by Senator DASCHLE and Senator FRIST.

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

Mr. JOHNSON. Mr. President, I rise today in very strong support of the bipartisan renewable fuels standard amendment and to encourage my colleagues to support this critically important provision when it comes to a vote.

Last year, Senator HAGEL, my Republican colleague from Nebraska, and I worked on a renewable fuels standard for ethanol and biodiesel during consideration of the Senate energy bill. We were successful in securing inclusion of a renewable fuels standard in the Senate energy bill. We were successful on the Senate floor, but as we got to conference with the House of Representatives, the entire energy bill wound up not being passed and the whole collection of provisions collapsed in the end. But we were successful in the Senate Energy Committee last year, we were successful on the Senate floor, and I am very optimistic this year that we not only will pass a renewable fuels standard in the Senate once again but that with newfound interest in the RFS in the House of Representatives, I am confident this will ultimately make it to the President's desk and become law this year.

Regrettably, time ran out on us last year during the 107th Congress, and yet two-thirds of the Senate voted in favor of a renewable fuels standard and against amendments that would have weakened or eliminated it.

Today, ethanol and biodiesel comprise less than 1 percent of all transportation fuel consumed in the United States. Out of 134 billion gallons of fuel consumed in the U.S., renewable ethanol and biodiesel made from soybeans comprise less than 3 billion gallons—3 billion out of 134 billion gallons consumed.

Our amendment, identical to language passed in the Environment and Public Works Committee, would require that 5 billion gallons of transportation fuel be comprised of renewable fuel by the year 2012.

The consensus was agreed to last year after productive negotiations between the renewable fuels industry, agriculture groups, the oil industry, and environmentalists.

Rural States such as South Dakota can make enormous contributions to

energy independence throughout our Nation with a renewable fuels standard. Thanks to the establishment of six new farmer-owned co-ops in South Dakota since 1999, ethanol has enjoyed significant growth in our State. We are currently ranked fifth in U.S. production.

Remarkably, one out of every three rows of corn in South Dakota is market bound for ethanol production already. More than 1 million bushels of corn are sold annually to produce nearly 400 million gallons of ethanol in my home State of South Dakota.

Around 8,000 farm families are involved in value-added ethanol production at one of the eight facilities currently in operation, and two more facilities are under construction. Ethanol helps these South Dakota families increase their income in three ways.

First, ethanol plants help spur competition for corn and boost corn prices locally. Corn prices include between 8 and 15 cents per bushel when an ethanol plant is based in a local market. Second, membership in a value-added ethanol co-op yields profits, or dividends, from ethanol production which supplements farm income. And third, it creates farm jobs in rural communities throughout our State.

However, most farmers involved with ethanol indicate to me that a significant share of their investment thus far in ethanol facilities has been, for all practical matters, a faith-based investment. They simply have faith that ethanol is right for their investment and right for America, but there has been no adoption of ethanol or biodiesel as a part of a national energy strategy.

Adoption of our bipartisan RFS amendment today will give them and other producers more than just faith when considering whether to invest in an ethanol plant. Our amendment will give producers a rock solid commitment that the United States will, in fact, increase the demand and the market for ethanol and biodiesel.

The U.S. energy situation, as we all know, is uncertain, considering how volatility in gas and diesel prices, the growing tension in the world from terrorist attacks, and how the war in Iraq affected us. The more we depend on oil from the Middle East, the more our stability is inevitably tied to governments and factions in that region. The use of domestic clean renewable energy sources can increase our energy security and increase our Nation's security. It must be a critical part of our Nation's energy strategy.

Simply put, adoption of the RFS amendment will help lower our dependence on foreign oil, strengthen energy security, increase farm income, provide for clean air, and create jobs throughout the United States, particularly in the rural communities.

An important, but underemphasized fuel is biodiesel, which is chiefly produced from excess soybean oil. In South Dakota, soybean production has increased by a dramatic 200 percent in

the last 10 years. Recently, biodiesel has emerged as a promising new energy source. RFS would greatly increase the prospects for biodiesel production benefiting soybean farmers from South Dakota and throughout the Nation.

I want to ensure the RECORD reflects the influence and the extraordinary leadership that my colleague, Senator DASCHLE, has lent to the support of ethanol and a renewable fuels standard.

For over 20 years, Senator DASCHLE has been fighting for ethanol. When we began this debate, there were times in South Dakota that the discussion was about gasohol. There are times when Senator DASCHLE has been jokingly referred to in our State as "Senator Gasohol." His leadership was instrumental in creating incentives which led to a surge in the demand for ethanol in the early to mid-1990s.

In the year 2000, it was Senator DASCHLE again who first introduced the concept of a RFS as the next building block for expansion of the renewable fuel industry. Today, I am pleased and I am proud to join Senator DASCHLE and many other Senators on a bipartisan basis to demonstrate strong support for an RFS.

In the 20 years or more Congress and States have provided incentives to produce ethanol, we have learned a lot of lessons. Tax incentives at the State and Federal level provided lifeblood for the ethanol industry and helped make the production of ethanol a competitive alternative to other fuels. The most aggressive growth spurt for ethanol occurred as a result of the Clean Air Act.

Ethanol production doubled in the 1990s, with 10-percent annual growth. In 1990, the year we passed the Clean Air Act, the United States produced about 800 million gallons of ethanol. By 2000, we produced 1.6 billion gallons of ethanol. Coincidentally, the most recent explosion in ethanol development took place as a result of the anticipation that Congress would establish an RFS. The renewable fuels standard was first introduced in 2000 and production since that time has dramatically expanded from 1.6 billion gallons to approximately 3 billion gallons this year. Once again, ethanol production has doubled. At this stage, enactment of an RFS is the single most important market driver for ethanol that we can contemplate.

What lessons have we learned? If 8,000 farm families in South Dakota invested their hard-earned money in the development of eight ethanol plants without an RFS, we could just imagine how many more producers South Dakota and across the entire Nation will be willing to invest in renewable ethanol or biodiesel production if we adopt an RFS.

Ethanol plants are being constructed in record time with larger capacity and more farmer investor financing than ever before. The most impressive expansion in capacity has been right in my home State of South Dakota. Pas-

sage of an RFS will ensure greater capacity expansion, a dramatic stimulus to the economic growth of rural America. It will create jobs and it will increase our energy security.

I strongly encourage my colleagues to adopt the bipartisan RFS amendment being offered by Senator DASCHLE and Senator FRIST today. I urge support for this amendment.

I yield the floor.

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

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

#### JUDICIAL NOMINATIONS

Mr. DASCHLE. Mr. President, I came to the floor earlier today to respond to the distinguished majority leader. I just had the opportunity to hear the President's remarks with regard to judicial nominations. I felt it was important to come back to the floor for just a couple of minutes to respond and to make sure the American people are clear and the record is clear with regard to judicial nominations and what I would view to be the rest of the story.

The rest of the story can be found on three charts. We have heard a lot this morning about the intransigence of the Senate, about how much the Senate is in crisis because we haven't confirmed nominations; about how the system is broken. In South Dakota, we like to say, If it ain't broke, don't fix it.

I have three charts to prove that it "ain't broke." One-hundred and twenty-four is the first chart. One-hundred and twenty-four judicial nominees have been confirmed in this administration. That is a record. There is no administration we can find that has had a better record than this. One-hundred and twenty-four circuit and district court nominees have been confirmed since this President has taken office. Here is the number that have not: That is right—2; 124 to 2.

We have done a little math. Here is the third chart. That is a 98.4-percent approval rate. I don't know of a business, or a sports figure, or a politician who gets 98.4 percent of what they ask. But that is the record. That is exactly the success level of this administration when it comes to judicial nominees—98.4 percent.

"If it ain't broke, don't fix it."

I find it particularly interesting that over the course of the 8 years of the Clinton administration, we had 50 judicial nominations that didn't get a hearing.

You talk about a filibuster. What about the fact that a person can't even get a hearing in the committee? Ten judicial nominees got a hearing but no vote. Sixty-five nominees never got to

the Senate floor over the course of 8 years during the 1990s. I will tell you that there was no 98.4-percent approval rate then. But that is the record.

To reiterate—just to be sure everybody understands, I will do this one more time—one-hundred and twenty-four nominees were confirmed in 2½ years, circuit and district court nominees approved in the Senate—a record. Two nominees have not: Mr. Estrada because he has refused to fill out his job application, and Ms. Owen in large measure because she puts her own views ahead of the law. Those are the two.

One-hundred and twenty-four to two, that comes out to 98.4 percent of all Bush nominees confirmed to date.

I will end where I began. "If it ain't broke, don't fix it".

I yield the floor. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. Mr. President, we are dealing with the energy bill on the floor of the Senate, and specifically we are considering an amendment that has been offered dealing with renewable fuels, or ethanol. I want to talk a bit about that subject, but I think it is important that perhaps I first comment on the discussion just preceding when Senator DASCHLE came to the floor to talk about judgeships.

Let me reiterate for a moment something that I think is very important for people to understand. I know the majority leader and the President today have talked about some collapse in the system and some great concern about the fact that judges aren't getting confirmed.

Let's understand something. We have the lowest number of vacancies on the Federal bench we have in a decade and a half. Why is that the case? It is because we have been approving nominations sent to this Senate by the President day after day—124 of them. I voted for all but 3 of them—124.

The reason the majority leader and others say the system has collapsed is that there are two nominees who haven't gotten through the Senate. They are upset about that. Well, there is nothing in the U.S. Constitution that says there is a requirement for the Senate to be a rubberstamp for any President, Republican or Democrat. The fact is that most of President Bush's nominees are going to be approved by the Senate—and have been, 98.4 percent. If the President sends us a nominee who aspires to be put on the Federal circuit court for an entire lifetime and that nominee says, You have no right to the information you requested from me, then I say you have no right to expect that the Senate will

approve you for a lifetime appointment on the Federal bench.

Mr. Estrada has been told that he is to provide information to the Senate in order that we may evaluate it.

He has been unwilling to do that. So has the Bush administration. In fact, until Mr. Estrada provides that information to the Senate, he is not going to get a final vote on his nomination. If he decides never to provide that information to the Senate, in my judgment, he is not going to be a circuit court judge; the Senate is not going to approve his nomination.

Let's understand the facts. There is a lot of hyperbole used here in politics. The facts are these: This Senate has done a masterful job, in my judgment, of moving through the nominations sent to us by President Bush. Day after day and time after time, we have done that. In my State, we had two judgeships open. Both Federal judgeships were filled by Republicans nominated by President Bush—one in Fargo and one in Bismarck. I am a Democrat, but I was proud to support both of the nominees. I came to the floor and spoke in support of both Republican nominees, who I think will make outstanding Federal judges. They are now both on the bench.

That is the way the system should work, and it is the way it has worked in almost every circumstance—except for two. Because of those two, we have the majority leader and the President of the United States say the sky is falling. Nonsense, what sheer, utter nonsense. The sky is not falling.

What has happened is, we have a couple of nominees with whom this Senate has decided it does not want to proceed—until we get certain information from Mr. Estrada; and the other nomination, Judge Owen, was turned down last year by the Senate Judiciary Committee.

I wish to make this point: I know these days, with the 24/7 news cycle, there are some who believe if you say something and it gets repeated often enough—over and over and over again—that it will become fact. Well, it is not a fact for the President, and it is not a fact for the majority leader, to be able to say to the American people that we are somehow obstructing the nominations of Federal judges. That is simply not the case. It is demonstrably not the case, and there isn't any way they can make that case because the record is clear and the facts are in: 124 Federal judges have been confirmed, 125 if you consider the other judge which is a special judgeship for a 15-year appointment, but out of those 124, 125, all but 2 have moved here in the Senate.

I do not know of another time when the minority has been as cooperative and done as much to make sure we have filled these judgeships. In fact, when President Bush took office, and going back a year and a half ago, when my colleague, Senator LEAHY, inherited the chairmanship of the Judiciary

Committee, we had a substantial number of openings on the Federal bench that had not been resolved and that had not been filled, and we have now moved very quickly, with the President, to resolve that, and we have the lowest number of vacancies on the Federal bench for the past decade and a half.

Let me be clear that there is not a circumstance here where there has been obstruction in the Senate. We have approved most of this President's nominees, and likely will continue to do so; and I will likely continue to vote for nearly all of them. But there will be circumstances in which a specific nominee will not get through this Senate for a number of reasons, and when that is the case, it is not appropriate and not factual for someone to get on a microphone and tell us: The sky is falling. That is total, sheer nonsense.

#### THE ENERGY POLICY ACT OF 2003—Continued

Mr. DORGAN. Well, Mr. President, now that I have that off my chest, let me go on to talk about energy.

I am proud to be on the floor of the Senate in support of the ethanol amendment, which is bipartisan. It is interesting to me that this legislation dealing with ethanol is an amendment that comes to the floor by virtue of Senator FRIST, Senator DASCHLE, myself, Senator TALENT, Senator JOHNSON, and so many others, with strong bipartisan support. It is saying: At least one part of this country's energy strategy that makes sense is to take the starch and sugars from a kernel of corn, ferment that, and get a drop of alcohol and extend America's energy supply. You do a couple things with that: You expand the opportunity for markets for agricultural products and help family farmers, and you actually grow your energy supply in America's farm fields by producing corn that can be then used to produce ethanol. What a remarkable thing to do. It makes good sense to extend our energy supply by producing ethanol.

Now, let me talk a bit about what sets us up to do this. First, we have to have a serious discussion about America's energy future. I have spoken of this before, but I wish to do it very briefly again.

We need to use fossil fuels in this country's future. There is no question about that: coal, oil, natural gas. We use them, and we will use them. But if our energy strategy is only that—if America's future energy strategy is only a dig and drill strategy—then it is a "yesterday forever" strategy. Every 25 years we can come to the floor of the Senate, we can have another debate about how much we are going to dig, how much we are going to drill, and probably satisfy our urge to speak. But we will not have satisfied this country's need for a different kind of energy strategy.

So an energy bill that makes sense for this country's future is one that



does dig and drill, with environmental safeguards, but it must do more than that. It should, first, include incentivized production, but, second, it should provide conservation measures, because a barrel of oil saved is a barrel of oil produced in our economy. Then, in addition to production and conservation, an energy bill that makes sense is an energy bill that has a title that deals with the efficiency of all of the appliances that we use in our daily lives. And, fourth, it should include a provision that deals with limitless and renewable sources of energy. That is what this amendment is about.

So production, conservation, efficiency, and limitless and renewable sources of energy—that is what an energy bill is about, if it is balanced. Add in the limitless and renewable sources of energy, for my money, it means we should pole vault over all of these 25-year debates and say, we want to move to a new energy future.

One hundred years ago, when you wanted to gas up an old Ford, a Model T Ford, you pulled up to the gas pumps, you stuck that hose in the gas tank and began pumping. One hundred years later, we do exactly the same thing. If you happened to have driven a Ford this morning, and stopped at a gas pump, you did exactly the same thing they did a century ago: You run gas through the car's carburetor. And God bless us, we have great cars, and we have fuel at every gas pump, and no waiting lines. That is the way we fuel our automobile, our transportation fleet.

Let me describe what is happening with respect to energy in this country. If you look at the total demand for oil, and then look at transportation, you will see that the fastest rising demand for energy in this country, for oil particularly, is in transportation; it is in our vehicle fleet. That is where our demand for energy is rising.

What I believe we should do is heed the words of President Bush, who said: Let's move to a hydrogen fuel cell future. When President Bush called for that in the State of the Union Address, I said: This makes great sense. I had previously introduced a piece of legislation suggesting the same. I suppose that is why I thought it made great sense.

But the fact is, for this President to put his administration on the line in support of a hydrogen future with fuel cells is a very important step. To be sure, his plan is not very bold. I suggest that his plan is rather timid: in fact, it is \$1.2 billion, half of which is new money, and part of which comes out of other important energy initiatives, particularly in renewables. But I don't want that to diminish the fact it is very important that this President—a Republican President, who comes from an oil State—says: Let's move to a different kind of energy future, especially with respect to transportation and the vehicle fleet.

Let's see if your children, and our grandchildren, might not be able to

turn the key on an automobile that uses hydrogen in fuel cells. Hydrogen is ubiquitous. It is everywhere. Hydrogen is in water. You can put up a windmill, with more efficient turbines, and take energy from the wind, produce electricity, and use that electricity—through the process of electrolysis—to separate hydrogen and oxygen from water, and then store the hydrogen, and use that to power our vehicle fleet. That is one application: using wind energy to produce electricity to produce hydrogen. But there are so many ways to produce hydrogen, and it is everywhere.

So what we have to do is begin to solve this problem of moving to a hydrogen future—the problem of production, the problem of transportation, storage, and infrastructure. But the fact is, although these are problems, they are not insurmountable.

I drove a hydrogen car yesterday that was here on Capitol Hill. It is the second one I have driven. This was a General Motors car. One was United Technologies. Hydrogen vehicles are twice as efficient in getting power to the wheel as the internal combustion engine. Do you know what they put out of the tailpipe? Water vapor. What a wonderful thing: You find an engine that is twice as efficient, using a fuel cell, and you clean up the environment by putting water vapor out of the tailpipe of a vehicle. What a wonderful thing to do.

Now, I can't tell you how important it is to have the President's support on this. I nearly tripled what the President wanted by pushing, along with Senator DOMENICI, and others in the Energy Committee, to say: Let's substantially increase the amount of resources we are going to put towards moving in this direction of a hydrogen future. This requires bold, big initiatives. So the bill on the floor is slightly over \$3 billion. I would like it to be \$6.5 billion. I would like targets and timetables. I would like to see 100,000 vehicles using fuel cells on America's roads by 2010.

I would like to see 2.5 million vehicles on America's roads by 2020. Targets and timetables is the way we drive this issue. With research and development in a whole range of areas, and development of infrastructure, we can do this. We won't do it if we just revert back to what we have always done.

When I was a little boy growing up in a town of 350–400 people, they decided to try to dig an oil well 5 miles from my little town. It was the biggest thing in the world. We were so excited when somebody said they would try to dig an oil well on Bon Woodruff's farm. We thought it was the biggest thing. I remember driving out there. We used to drive out there all the time, the whole town. We would all drive out to see where the oil well was. We would watch the rig being put up. When it got up, it had lights all over it. They were drilling day and night. People were driving out and parking, watching. There was

nothing going on, just lights and a rig. In my town that was a big deal. It was a dry hole. They never got oil. But it was a pretty interesting several months.

As a little boy, I thought about the drilling for oil, where we find oil abroad, and how we use oil to power our vehicle fleet. Fifty-five percent of that which we use comes from outside of our country. That doesn't make sense. Much of it comes from troubled parts of the world, a third from the Middle East. We could wake up some day and discover the supply of oil is cut off because of terrorists. Then America's economy would be flat on its back. The 55 percent foreign oil we are now dependent on is going to rise to 68 percent if we don't do something.

What is the greatest demand? Transportation. We have to do something big and bold. We have to have an energy policy that says to the people: We will get out of this. We may never be completely independent, but we will sure be a whole lot less dependent on foreign sources of energy.

That brings me to the amendment. The amendment dealing with ethanol. I am a big fan of growing part of our fuel in the farm fields. You grow that corn, take that ear of corn, take the kernels off, and with those kernels of corn you produce alcohol. It is important to farmers. It is a new market for their crop. It is important to our country's energy needs because it extends America's energy supply.

MTBE, a fuel additive, will be phased out in this legislation. We are discovering when MTBE shows up in America's groundwater, it is harmful to health. We will get rid of it. When we do, it will dramatically increase the demand for ethanol across America. That demand will increase to nearly 5 billion gallons. That means we will see more and more plants built around the country that will use the agriculture feedstock, take the alcohol from it. You still have the protein feedstock left to feed to the cattle, and you have grown some energy in America's fields. It is, therefore, renewable. We are not using it up. It is renewable year after year.

I am pleased that now for the first time we see a robust bipartisan group. It is not that it has not always been bipartisan; it has always been a bipartisan debate. But when you have the majority leader and minority leader leading an amendment, that is a big deal. Those of us who care about ethanol understand this is a moment in time in which we register strong support for moving in a different direction, for being bold. I talked about hydrogen and fuel cells. That is one part of being bold. The other part of renewable and limitless sources of energy is ethanol. There is more, including biodiesel, among others. So there is much to do.

The legislation we have brought to the floor from the Energy Committee



is imperfect. But it has some good features. We will add some additional features. Senator DOMENICI should be commended. He is a pleasure to work with. Senator BINGAMAN on our side of the aisle, ranking Democrat, is the same, a terrific Senator who has done a great job. The energy bill needs some strengthening. We need a Renewable Portfolio Standard to improve the future for renewable energy for electricity. We need a Renewable Fuels Standard, which includes the ethanol amendment.

We need protections on the electricity title that do not now exist. I chaired hearings in the last year and a half with respect to what Enron Corporation did in the State of California and on the West Coast. When I said during that time that it looked to me like it was massive manipulation of electricity markets, and grand theft going on to the tune of billions of dollars for consumers in California and the West Coast, that was poo-hooped by everybody. All the conservative columnists and others, Mr. Krauthammer and others, would write: Who are you kidding? There is no manipulation. Every time something like this goes on, the Democrats claim there is manipulation.

We now know there was grand theft going on. Massive criminal investigations are occurring. The Federal Energy Regulatory Commission, which for a long while did its best imitation of a potted plant and decided it would not do anything while the people were victimized, has now said it was not just Enron, but there were a number of companies on the West Coast that decided to take the opportunity to shut down the electricity plants, short the load, drive up prices, and profiteer as a result of it.

Strategies like Death Star, Get Shorty, Fat Boy. You don't know what Fat Boy is? Fat Boy was a strategy by which energy traders working for the Enron Corporation colluded to try to see if they could steal from consumers. Death Star, same thing; Get Shorty, there were a dozen of them and more. Even more than the strategies, which were written in memos that we now have, we also have the transcripts of telephone conversations in which they talk about how they will shut down the plant in order to short the load and drive up price. They moved electricity in and out of a couple of States in order to increase the price, in some cases tenfold in 24 hours. What is that called, except stealing?

There are going to be people who go to jail for it. The electricity title in this bill must address these issues, wash trades, and others. It addresses a couple of them, but not nearly enough. We need to put consumer protections in here so what happened to the people in California does not ever happen again. We have a lot of people running around the country saying: We need to restructure the electricity title. We need to restructure electricity issues so there is massive competition.

We have a bit of experience with that which tells us that when you have very big players who have the ability to control and monopolize markets, and you also have a consumer, if you don't have a referee in between making sure the big interests are not cheating, the little interests get trampled. That is what happened on the West Coast. It is not just petty theft. It is billions of dollars.

My colleague who will speak following me, Senator NELSON of Florida, was a member of the subcommittee where we investigated these issues. Frankly, it made you sick to see what was going on.

Finally FERC stepped in and imposed a price cap. Finally an investigation was undertaken. The Justice Department is involved. The fact is, we should not and will not pass an energy bill through the Congress without an electricity title that provides protections to make sure this never happens again.

There will be other amendments. I am proud today to support this amendment, a bipartisan strong amendment on ethanol. We will also need to include a Renewable Portfolio Standard in the bill. We need to put in provisions that deal with consumer protections with respect to electricity. There is much yet to do. It is a pretty good start. This bill will advance America's energy interests, if we can add the amendments and add some protections.

Following the war in Iraq, what we know exists in the Middle East, as well as all of the uncertainties around the world, if anybody still wonders whether we need an energy policy, they have been asleep. This country needs to make sure its economy, its way of life, the future for the American people is not held hostage by the whims, confrontations, tragedies and conflicts in other parts of the world. That is what a good energy strategy, a balanced energy strategy, will do for our future.

I yield the floor.

Mr. NELSON of Florida. Mr. President, will the Senator yield for a question?

Mr. DORGAN. I am happy to yield for a question.

Mr. NELSON of Florida. The Senator from North Dakota and I are joined at the hip on so many of these issues he has just raised regarding energy. This Senator was particularly intrigued by the compelling argument the Senator from North Dakota made about a hydrogen engine being developed.

Does the Senator know, will there be an attempt to increase the amount of funding for research and development for a new hydrogen engine that will be in this particular bill?

Mr. DORGAN. The Senator from Florida should know that I offered an amendment in the Energy Committee that failed, I believe, by one or two votes. I intend to offer it again on the floor. It is similar to legislation introduced in the Senate that creates an Apollo-like program on hydrogen and fuel cells. My belief is we ought to do

for this as we did with respect to going to the moon. President Kennedy said let's put a person on the moon by the end of the decade. Sure enough, Neil Armstrong stepped off that ladder running and planted his foot on the surface of the moon by the end of the decade.

It seems to me if this country really wants to effect substantial change, then you have to set goals and timetables. My proposal, which I introduced with a number of colleagues in the Senate—actually prior to the State of the Union Address in which the President announced his support for this initiative—is a \$6.5 billion authorization over 10 years that sets targets and timetables and puts this country squarely behind an aggressive Apollo-type program, saying let's get there and, as a nation, let's aspire to reach a goal. Yes, I intend to offer it as an amendment to the energy bill.

Mr. NELSON of Florida. This Senator will be one of the Senator's cosponsors on the amendment. It is interesting that you have described it in terms of an Apollo-type program, which is exactly what this Nation needs. If we put our minds to something, as we did in the 1960s—announced by the President that we were going to the Moon by the end of the decade, and then return safely, and the Nation marshals its will and resources to do a technological feed as we did in going to the Moon, if we apply that same kind of will to addressing the energy crisis by the development of a hydrogen cell, a hydrogen engine that can propel most of our vehicles in this transportation sector—and the Senator's chart shows that transportation is the largest consumer of energy in the United States—if we did that, then clearly, as the Senator from North Dakota says—and I second it—we are going to wean ourselves from the foreign oil that we find ourselves so dependent upon today.

I will just offer as support for the Senator's statements that onboard the space shuttle we produced electricity from a hydrogen fuel cell. It is the mixture of hydrogen and oxygen that then produces electricity. What does it have as a byproduct? Water. As a matter of fact, onboard a mission of the space shuttle, so much excess water is produced that it needs to be released into space; a water dump is done, usually after each flight day.

It is there, it is technology we understand, and we are using it today in space aboard spacecraft. There is no reason we cannot bring down the per unit cost of a hydrogen engine if we put our minds and our technology and resources into it. What it would do for us is lessen our dependence upon foreign oil, which would lessen some of the kinds of things that we have to do in that region of the world that gets us inextricably involved in our military and foreign affairs.

Mr. DORGAN. Mr. President, I know the Senator wants to take the floor in

his own right. I think it is important for people to know he is the only Member of the Senate who has actually flown on the space shuttle. Many people know that. Many years ago, he was part of the crew of a space shuttle. He knows of what he speaks.

I was originally going to call the bill I introduced—trying to move us in a bold, aggressive way toward a hydrogen future and fuel cell—the Manhattan Project, which was another successful project that dealt with something different. The Manhattan and Apollo Projects were both projects that had this country saying let's do this with targets and timetables. I think that is what we should do with respect to the President's call for a hydrogen economy and fuel cell, especially having this President's administration behind this initiative.

It is no small thing to have a President from an oil State say to the country: Let's see if we can move toward a future with hydrogen and fuel cells.

Good for him. That support is going to be very important. I will indeed offer my amendment to the energy bill at some point in the coming days, and I am happy to have the support of the Senator from Florida.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, this week we began debate on the energy bill, a vast and complex piece of legislation, arguably an important piece of legislation, that deals with an issue that touches every American in some way, shape, or form. Access to stable, reliable sources of energy is central to the strength of our economy.

I have real concern, as we take up this bill, that it not simply be a piece of legislation where we look to include every element, every fragment, every idea ever considered that might, in fact, alter energy markets around the country or around the world. I am concerned that in our effort to craft an energy policy, we simply look for ways to aid or to assist particular businesses, industries, or areas of research.

This bill currently includes very substantial loan guarantees to successful private corporations around the country; it includes research subsidies for investment in fossil fuel research, oil and gas development; and it includes a very complex and sizable tax package, some of which I think is questionable as to whether it will achieve the kind of fairness, equity, and efficiency in the energy markets we would like to see.

This morning, however, I wish to speak about one particular provision that is before us in the form of an amendment, an amendment that has been offered to dramatically increase the size and the scope of the Federal ethanol program. It not only expands the size of the ethanol program in America, but it effectively makes it mandatory, taking us from a 2-billion-gallon-a-year ethanol program to some

5 billion gallons a year over the next 8 years.

I can understand there are a lot of supporters of the ethanol program in this Chamber. A lot of the Members of the Senate have farm economies back home and see income or productivity that comes from this Federal program. But I do not think it is right to provide a subsidy at the taxpayers' expense for a program that cannot stand on its own feet.

Among the concerns I have with the current program, first and foremost is the supposed environmental benefits of ethanol. It is true, as an oxygenate, ethanol reduces the volatile compounds that are emitted into the atmosphere from fuel, from gasoline, but it does not do anything substantively to reduce the level of NOx in the atmosphere that contributes to the ozone problem, to the smog problems. I think as this debate goes forward, we will hear a lot of discussions from some of those Senators who represent urban parts of the country that have tough, real problems with ozone and smog. They have grave concerns about this program that provides a huge taxpayer subsidy without dealing with those important environmental issues.

From an energy perspective, we will hear a lot of discussion about the amount of energy that will be produced from this renewable resource because it is corn based, but from most proponents we will not hear a lot of discussion about the energy it takes to produce this ethanol in the first place. It takes nearly a gallon of fuel to produce a gallon of fuel. So at the end of the day, you may have ethanol that you can blend in gasoline and put in your car, but you have used quite a bit of energy to get there in the process.

From an energy perspective, energy efficiency, energy independence, even then, in the best case, the benefits are marginal, if they exist at all.

Finally, of real concern is the subsidy itself. There is an enormous taxpayer subsidy that is used to provide viability to this industry. As everyone goes to the pump, they pay 18.3 cents in tax for every gallon of gas they put in their car. If that gallon is blended with 10-percent ethanol, it is exempt from 5.3 cents of that gas tax. That represents a 53-cent-a-gallon subsidy for the ethanol itself—53 cents. At the end of the day, that means a billion dollars less going into our highway trust fund.

We are going to deal with the highway reauthorization bill later this year, and there are a lot of supporters of highways who are pushing for more money. I think we need to take a long, hard look at what the right amount to spend on infrastructure is in this country. But we certainly do not need to be subsidizing a questionable effort such as this ethanol program in a way that takes money out of our highway trust fund, a billion dollars a year today, and with this expansion that will go to \$2 billion a year by 2012. That means \$2 billion a year lost from the highway trust fund.

Now, for years the argument that was made by House Members, Senators or legislators all across the country to support this subsidy, was that we need the subsidy in order to encourage people to use the ethanol fuel. That is why we have the subsidy. We need it if we are going to get people to use this fuel.

That subsidy has not been very successful in getting people to use that much of the fuel. So now they are going to go to a mandate.

Well, I can understand why one would want to force a mandate on the American people if they are determined to force them to purchase the fuel. But if it is going to be mandated, why is the subsidy still needed?

That is one of the central issues we are going to have to deal with in this debate, and we need to at least put people on the record as to why they think we still need to subsidize this industry, in many ways a very concentrated industry.

There are about half a dozen very large, successful businesses, that are responsible for about 70 percent of the ethanol produced in this country. Why do we ask taxpayers to continue to subsidize this industry when we have a mandate in place that forces them to buy the product? That makes no sense. I do not think it is fair in the first place to force them to buy the product, but I certainly do not think it is fair to force them to subsidize the product at the same time. It has got to be one or the other. If a subsidy is to be provided because it is the only way to get people to purchase the product, at least that is a rational argument—not one I support but it is a rational argument. If the only way to get them to buy the product is to mandate it, to force them to buy it, that is also a rational argument, although not one that I support. But it cannot be both ways. A subsidy cannot be forced on the American people, the money cannot be diverted from the trust fund and have the mandate at the same time.

If the mandate is going to be that 5 billion gallons of this fuel has to be purchased every year, the least we can do is then treat it the same way we treat any other fuel in this country with an appropriate, fair, and well-thought-out excise tax. The American people deserve consistency and fairness in this matter.

I think it is a shame that we have a program such as this ethanol program that really has not proven its worth, that unfortunately channels huge taxpayer subsidy to a small number of very successful, profitable companies around the country. I would rather see a bill that did not have this taxpayer subsidy in it in the first place, but if we are going to take up this issue, let us at least be fair and equitable in the way we deal with it.

We need a good, thoughtful energy policy in the United States. This kind of subsidy ought not to be part of that program and that policy.

I have a number of other concerns with the legislation before us, but I

hope when the time comes we can work to craft an amendment that would right this wrong, that would ensure that ethanol is treated the same as any other fuel that we have in the country, and that would improve the quality of this legislation before it passes the Senate, if it is able to do so.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. DOLE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### MORNING BUSINESS

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

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

#### HAIL TO THE CHIEF

Mr. STEVENS. Mr. President, the other morning, as I read the clips from the Anchorage Daily News, I was taken by a report of an event that took place when President Bush landed on the aircraft carrier off of San Diego.

I ask unanimous consent that this Anchorage Daily News article be printed in the RECORD following my remarks on this subject.

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

(See exhibit 1.)

Mr. STEVENS. This article referred to Petty Officer 3rd Class Francis Cushingham IV, who met and shook hands with the President three times while he was on the aircraft carrier. It describes how this 21-year-old Alaskan from Eagle River and his 5,000 shipmates played host to President Bush and what they did.

President Bush was on board all day getting to shake hands with almost every member of the crew. As the article says:

Trust an Alaskan to make the most of opportunity. Despite an uncertain start, Cushingham managed to shake Bush's hand three separate times, get his picture taken with the President, and appear in a background shot on the Today show.

The article goes on to say that Cushingham considers it to be proof of his few moments of glory and has a quote from him:

It's something I'm going to keep to show to my children and my grandchildren. I can say, "Hey, I met the President."

There are people who criticized the President for having landed on that aircraft carrier. As a pilot, I envy the opportunity he had to land on that aircraft carrier and I certainly do not criticize the President for his visit.

Our battle carrier groups are tremendous examples of the ability of the United States to project force to all

corners of the globe. What better way to show the world that force than to have the President of the United States land on this aircraft carrier as it returned to its home base?

In fact, before the President landed on that carrier, the basic air combat groups on board the carrier had left. They fly ahead of the vessel as it goes into home port so they can go have their reunions with their families at the air bases, which reflect their duties. The sailors' families meet them as they come in to port. In this instance, it was San Diego. I have witnessed some of those real amazing events when a major ship comes back into port.

This visit of the Commander-in-Chief was accomplished within normal allocation of training flight hours to the pilots who flew him there. He was a passenger. He, as well as I, would like to experience landing a plane on an aircraft carrier but we know we cannot do that.

Very clearly, the President was carrying out the tradition of every President since John Tyler in 1844. President Eisenhower visited aircraft carriers after World War II. In 1980, Jimmy Carter visited the Nimitz, and in 1994, President Bill Clinton, on the George Washington, went from England to France for the 50th anniversary of the Battle of Normandy. I do not remember any criticism of that. In fact, to the contrary. I think Americans are proud of the fact their President goes out to greet the troops as they are coming back and spends time with them.

As this article points out, this Alaskan greeted the President as he came out of the gym. He had gone to work out with some of the guys and gals on board. I cannot think of a better way for a Commander-in-Chief to demonstrate the great confidence we have in the young men and women who performed their duty in Iraq.

I ask unanimous consent that another article which I have be printed in the RECORD following my remarks.

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

(See exhibit 2.)

Mr. STEVENS. This is an article from the Copley News Service entitled "Bush Continues Seagoing Tradition." It points out the number of times that Presidents have gone on board aircraft carriers.

Long before I came to the Senate, I remember when Adlai Stevenson came to Alaska. He was just a Presidential candidate. We traveled miles and miles to see him, although I was a Republican candidate for office at the time. I think every American wants to see the President and is totally honored to ever be in the presence of the President. That person represents the honor of our country, and I cannot think of a better way for a President to do it than to go out and land on an aircraft carrier and honor those who have served our country so well in Iraq.

I do congratulate the President and I hope he keeps it up. I hope he visits every naval vessel he can visit and every military base he can visit.

This generation has done a tremendous job for us in Afghanistan and Iraq. My generation was referred to as "the greatest generation." I think these young people far surpass what we did in terms of their ability to follow orders, to achieve the goals that are set for them, and to do it in a very humane and humanitarian way.

Again, I think the President did the right thing by thanking the soldiers and sailors and marines on that aircraft carrier in person. I again repeat, I hope he will do it again.

#### EXHIBIT 1

#### AFTER SHAKY START, ALASKAN GREETS BUSH THREE TIMES

(By Sheila Toomey)

Petty Officer 3rd Class Francis Cushingham IV was so nervous about meeting the president that he almost blew his first opportunity.

"I'm all freaking out. I was basically scared to meet him. I mean, he's like basically the most powerful person on the planet," Cushingham said by phone Friday from San Diego, where the aircraft carrier USS Abraham Lincoln is docked.

The 21-year-old from Eagle River and his 5,000 shipmates played host Thursday to President Bush, who declared victory in Iraq in a speech broadcast from the carrier as it approached the California coast. The ship, which left the United States in July, was returning from duty in the Persian Gulf.

Bush was on board all day, and getting to shake his hand became a ship-wide obsession.

Trust an Alaskan to make the most of opportunity. Despite an uncertain start, Cushingham managed to shake Bush's hand three separate times, get his picture taken with the president and appear in a background shot on the "Today" show.

"I'm basking in it," Cushingham said. "Everybody was honored and excited. There's a lot of people who didn't get the chance to shake his hand, and they're all bummed out."

The first occasion was outside Cushingham's work station, a room of computers used in navigating the massive ship that's located along a corridor leading to the captain's cabin. When a bunch of Secret Service agents appeared, signaling the president's approach, Cushingham said he got nervous and turned to leave. A colleague stopped him, and the first shake took place.

"I said, 'How are you, sir? It's a pleasure to meet you, sir.' He said, 'Thank you for your service to your country.' I swore my face was the brightest hue of red you could possibly muster, but my friend said I didn't look nervous."

An hour later, Bush was returning from the ship gym, wearing workout clothes, needing a shower, friendly and shorter than he looks on television, the 6-foot-3-inch Alaskan said.

"He stood in the doorway, saw all of us with our cameras, and pretty much offered a photo op right there. . . . He said, 'Who has a camera? Who am I standing with first?'"

"I shook his hand about 4:20 in the afternoon," Cushingham said. "Pacific time."

The third shake was up on deck, after Bush's speech. Now a pro, no longer nervous, Cushingham maneuvered to be among the group Bush was scheduled to shake hands with in the afterglow of the international media event.

Pressing presidential flesh was good, Cushingham said, but the photo is best. It's proof of his few moments of glory.

"It's something I'm going to keep to show to my children and my grandchildren. I can say, 'Hey, I met the president.'"

#### EXHIBIT 2

##### BUSH CONTINUES SEAGOING TRADITION

(By Otto Kreisher)

WASHINGTON.—President Bush's stay aboard the Abraham Lincoln off San Diego today will continue an unbroken record of presidential visits to U.S. Navy aircraft carriers that goes back to Dwight D. Eisenhower in 1957.

Nearly half of those carrier visits have occurred in the same Southern California waters that Bush will sail through during his overnight cruise aboard the Lincoln as it nears the end of a war-extended deployment to the Persian Gulf.

The Lincoln will be the first U.S. warship Bush has gone aboard as president, an apt recognition of the major role that carriers have played in the conflicts that he ordered in Afghanistan and Iraq.

Because the Lincoln will be too far off San Diego for a helicopter, Bush will fly to the carrier in a tactical aircraft, a historic first for a president.

After arriving at North Island Naval Air Station aboard Air Force One this morning, Bush will board a twin-jet S-3B Viking from Sea Control Squadron 35. The plane will make a cable-assisted landing on the Lincoln.

Though he served in the Texas Air National Guard, Bush will be merely a passenger strapped in next to the pilot, according to White House spokesman Ari Fleischer. "For the sake of the landing," Fleischer said. "I'm sure he will be doing no piloting."

Closer to land tomorrow, Bush will return by helicopter and leave North Island before the Everett, Wash.-based carrier arrives in San Diego Bay.

The Navy will not discuss where Bush will stay during his night on the nuclear-powered carrier, citing security concerns. But the president could use either the spacious suite provided for the carrier battle group commander, Rear Adm. John M. Kelly, or the large cabin available to the Lincoln's commanding officer, Capt. Kendall Card.

Both provide a comfortable bedroom with adjoining "head"—Navy for bathroom—and large conference or dining room located several levels above the flight deck.

Presidential staff likely will be put into some of the officer staterooms vacated by about half of the air wing's squadrons, which will have flown off to their home stations before Bush arrives.

Eisenhower started the trend of commanders-in-chief touring carriers with his overnight stay on the Saratoga in June 1957. But every U.S. president has spent time on a Navy vessel since John Tyler in 1844, although for several the only nautical exposure was on the presidential yachts.

Other presidents have spent a lot of time on warships, with the two Roosevelts—both one-time assistant Navy secretaries—leading the pack in visits.

Theodore Roosevelt, who had served as acting Navy secretary, visited at least six warships as president, including a primitive submarine in 1905.

Franklin D. Roosevelt, who had been assistant Navy secretary, spent months aboard 12 different warships, including many wartime voyages for overseas conferences with allied leaders.

Although neither Roosevelt ever visited a carrier, both have had flattops named for them.

George H.W. Bush followed FDR's example of using warships for security overseas. He stayed aboard the cruiser Belknap during a 1989 summit with Soviet President Mikhail Gorbachev in Malta and on the amphibious assault ship Tripoli during a New Year's 1992 visit to troops in Somalia.

The elder Bush, a World War II Navy carrier pilot, also visited the carrier Forrestal during his Malta stay.

John F. Kennedy, a PT boat captain in World War II, became the first president to visit a carrier off San Diego when he toured the Oriskany on June 6, 1963. He then spent that night aboard the Kitty Hawk, watching flight operations.

Lyndon B. Johnson spent a night aboard the nuclear-powered Enterprise off San Diego on Nov. 10-11, 1967.

Richard Nixon used two carriers to broadcast Armed Forces Day message to the troops: The Hornet on May 17, 1969, off the Virginia coast and the Independence on May 19, 1973, docked at Norfolk.

Jimmy Carter's visits aboard the carrier named for Eisenhower in 1978 and the Nimitz in 1980 occurred in the Atlantic. The former nuclear-qualified submariner toured the Eisenhower's nuclear reactor spaces—probably the only president ever to visit that highly restricted area.

Ronald Reagan spend part of Aug. 20, 1981, on the San Diego-based Constellation, off the California coast.

Bill Clinton visited three carriers and spent a night aboard the George Washington on June 5-6, 1994, sailing from England to Normandy for the 50th anniversary of the D-day invasion.

#### SMITHSONIAN BROUHAHA

Mr. STEVENS. Mr. President, turning to another subject, I have been concerned about the newspaper reports and stories about the Smithsonian's exhibit that was moved within the museum by its managers. Many of those newspaper stories and other news stories have indicated that I pressured the Smithsonian Museum to move that exhibit. That is absolutely not true. No member of my office nor I contacted the Smithsonian. I checked with the other two members of the Alaska delegation. None has commented on that exhibit or interfered in any way.

When I looked into it, I concluded the Smithsonian was right. It was not just an exhibit of beautiful pictures of Alaska—and I love beautiful pictures of my State. It was an attempt to use the Smithsonian as a place to carry forward the position of the Wilderness Society on the question of whether or not oil and gas development should take place on the Arctic coast.

That is a public issue. Suppose I had taken all the photos and all the exhibits I have displayed on the floor and took them to the Smithsonian and said I wanted them positioned so the people coming in can understand why we should go forward in drilling ANWR. I believe the Senate would come apart at the seams.

This action that has been taken is contrary to the basic concept of the Smithsonian. It should not be a place for advocacy on a public issue. Clearly, that is what happened. It was an exhibit based on a book with contributors

William Meadows of the Wilderness Society; Debbie Miller, of the Alaska Wilderness Society; Fran Mauer, former refuge manager; and former President Jimmy Carter, of the Alaska Wilderness League.

Let me describe the cover of the book. The book talks about seasons of life and land and a photographic journey through Alaska. That is wonderful. They are great photographs. What is the purpose of the book? The purpose of the book is to make people think the land depicted in this book is endangered. There is a picture of a red sign with caribou, labeled "endangered." "Why is this land connected to us all?"

Of the 19 million acres of the Arctic Wildlife Refuge, all but 1.5 million is protected. The Arctic Wildlife Refuge is already protected. It is not endangered. The other 1.5 million acres is an area set aside by an amendment offered by Senator Tsongas of Massachusetts, a Democrat, and Senator Jackson of Washington, a Democrat. It was passed by the Senate, passed by the House, and the bill was signed by President Jimmy Carter in 1980 after the election.

President Carter has a foreword in this book. It says:

In 1960, President Dwight D. Eisenhower established the original 8.9 million-acre Arctic National Wildlife Range to preserve its unique wildlife, wilderness, and recreational values.

I know that; I helped draft that order. I was at the Interior Department as a solicitor of the Department of the Interior.

President Carter continues:

Twenty years later, I signed the Alaska National Interest Lands Conservation Act, monumental legislation safeguarded more than 100 million acres of national parks, refuges, and forest lands in Alaska.

That is true.

This loss specifically created the Arctic National Wildlife Refuge, doubled the size of the former range, and restricted development in areas that are clearly incompatible with oil exploration.

Since I left office, there have been repeated proposals to open the Arctic Refuge coastal plain to oil drilling. Those attempts have failed because of tremendous opposition by the American people. . . .

This is a propaganda book. President Carter signed that law that had the Tsongas-Jackson amendment that authorized us to go forward with oil and gas development as long as an environmental impact statement demonstrated there would be no irreparable harm to the Arctic Plain.

President Carter has now developed opposition after signing the law that authorized oil and gas development. And the law would never have passed if it had not permitted it.

The basic thing today is what to do about these people both in the Senate and elsewhere who are trying to persecute the Smithsonian officials who saw what they were trying to do. They were trying to use the Smithsonian to further their cause in opposition to the discussions going on in the Congress on

ANWR. The House had just passed a bill containing the approval to proceed with oil and gas leasing. They knew that. They wanted to put it up in the Smithsonian and have all the visitors to the beautiful Smithsonian look at this exhibit and come to the conclusion that those who propose proceeding with the authority under the 1980 act that President Carter signed, are somehow wrong.

That is advocacy on an issue that is pending before the U.S. Congress, and it is wrong to use the Smithsonian for that purpose. I do not believe we should let it go unnoticed. People are criticizing the management of the Smithsonian for having recognized that. I will defend them. They were right.

As a matter of fact, I would defend them if someone from my point of view went to the Smithsonian and demanded space to use the Smithsonian to advocate my point of view. That is not right. They have every right in the world to produce this book, every right in the world to publish it, to distribute it, to sell it, and to advocate a position against what I believe in. The constitutional right of free speech in this country gives them the absolute right to do what they want to do, but they do not have the right to use federally supported facilities like the Smithsonian and demand the right to use it and castigate those who manage the institution, who caught them in the act and said: You cannot do that.

I applaud the Smithsonian managers and I tell them unquestionably, I want them to notify me if there is any further attempt to bully them. We are going to get to the bottom of this one because it is absolutely wrong to challenge and castigate people who are doing their job correctly. The Smithsonian did the proper thing, and their opponents should admit it and stop this.

Every article I have seen, every radio account that I have seen, anything that has been said about this, indicates I am the one who put pressure on the Smithsonian to move it. It is not true. We did not do that. But I do applaud the people who made the decision that this is wrong.

I think the Congress should insist that the Smithsonian and other Federal facilities not be used for advocacy, pro or con, on legislation pending in the U.S. Congress.

#### AIR CARGO SECURITY IMPROVEMENT ACT

Mr. NELSON of Florida. Mr. President, I rise to give my comments on an act that we passed yesterday. It is the Air Cargo Security Improvement Act. I think it is worth noting some of the particulars of this legislation which passed the Senate last night because it is another important step toward fully protecting the United States and all Americans from terrorists who intend to use our aviation system to commit future attacks.

While there are a bunch of provisions in this bill, it includes the creation of a security program to protect our air cargo from terrorist attacks. This bill mandates crucial studies on blast-resistant cargo containers. It also provides for TSA, the Transportation Security Administration, passenger screening. That is known as CAPPS II. It also provides how to defend our airliners from shoulder-fired missile attacks. That is a shoulder-mounted, heat-seeking missile, similar to that used in the attack of last December on an Israeli charter jet in the skies over Kenya.

This legislation is clearly in the interest of the United States and in the interest of freedom-loving people around the world. It also addresses a deep concern of mine regarding foreign citizens coming to the United States to receive pilot training on all sizes of aircraft. Does that have a resonance? Does that call to mind something that had disastrous consequences to this country?

Well, indeed, because what we have seen is what can happen when people come to our country with the specific intent to do us great harm. Many of the September 11 hijackers had learned to fly airplanes right here in the United States. They used those airplanes, then, as deadly weapons against the interests of Americans and the people who were in those buildings. They learned to fly in flight schools right here in the United States.

Now, section 113 of the Aviation and Transportation Security Act, which was enacted in the last Congress, requires background checks of all foreign flight school applicants seeking training to operate aircraft that are 12,500 pounds or more. I had attached that particular provision in the Commerce Committee, and that was part of the package that ultimately became law.

Clearly, that was a step in the right direction because, had that been in effect, it would have screened out those who did harm to us by learning to fly airliners in our own flight training schools here. But that provision—with a cutoff of only learning to fly 12,500-pound aircraft or more—doesn't help us from preventing different types of potential attacks against our domestic security.

To rectify that problem, we attached another amendment to the bill that passed last night which addresses the issue of background checks for all foreign flight students who come to flight schools to learn to fly in the United States.

Why? Besides the obvious—the events on September 11—the FBI has issued terrorism warnings indicating that small planes might be used to carry out suicide attacks. Small aircraft can be used by terrorists to attack nuclear facilities, carry explosives, or to deliver biological or chemical agents. We remember what they found on the computer of one of the suspected hijackers: information about learning to fly a crop duster.

For example, if a crop duster is filled with a combination of fertilizers and explosives and were it to be taken into an area of high concentration of people, such as a sports stadium, that could do some serious damage and some serious injury, not even to speak of the possibility of distributing biological or chemical agents from something like a crop duster. It is in the interest of this country to ensure we are not training terrorists to perform those acts.

The bill that passed last night will close an important loophole and answer the critical warnings issued recently by the FBI by extending the background check requirement to all foreign applicants to U.S. flight schools regardless of the size of aircraft they seek to learn to fly.

The flight schools naturally have been concerned: Is this going to be more redtape for them? The fact is, when we passed this provision over a year ago, it was assigned to the Department of Justice. The Department of Justice never implemented the bill, to the great frustration of the owners and the operators of flight schools, so that they could never get the foreign flight students in because the Department of Justice had not implemented the rules to allow those background checks, which is a simple little fingerprint test that can be done in our embassies and consulates abroad before the foreign flight student ever comes to America. Naturally, the flight schools were frustrated.

We are rectifying that situation for the flight schools because this is not going to be in the Department of Justice, where the holdup occurred; it is going to be in the new Department of Homeland Security, specifically designated to the TSA, the Transportation Security Administration, and it is my expectation that the TSA, which provided excellent advice in the fine-tuning of this legislation, will apply an appropriate level of background screening to all foreign nationals who seek flight training in the United States, and then the frustrations of the flight schools will be taken care of. The flight schools will be able to know that the background check has already been done abroad before the flight student from a foreign land arrives.

That procedure is not going to allow anyone to slip through the cracks. We cannot aid anyone who intends to do harm to Americans and to our Nation.

I thank all the Senators who helped me with this legislation. It has been a couple of years in the making to finally get it to this point. The chairman and ranking members, Senators MCCAIN and HOLLINGS, and their staff have worked with us to ensure the inclusion of this provision in the bill. Finally, we are on the way to solving this problem.

## NOMINATION OF DEBORAH COOK

Mr. BAUCUS. Mr. President, I would like to explain why I opposed the nomination of Deborah Cook to the U.S. Circuit Court of Appeals for the Sixth Circuit earlier this week.

As I have stated, before, appointees to the Federal bench must be able to set aside their personal philosophies and beliefs. They must be able to administer and enforce the law in a fair and impartial manner. Because the U.S. Supreme Court hears fewer and fewer cases each year, the circuit courts are the court of last resort for many ordinary citizens and businesses. The circuit courts often have the last word on important cases dealing with civil rights, environmental protection, consumer protections, and labor issues, among many others. Circuit court judges must demonstrate a record of integrity, honesty, fairness, and a willingness to uphold the law. It doesn't matter if that person is nominated by a Democrat or a Republican—the standard remains the same.

In reviewing Ms. Cook's record, I noted several instances in which she clearly ignored her own State's Constitution or her own court's prior precedent in issuing her opinion or dissent. This was particularly striking in cases involving worker and consumer rights and protections. Her record indicates she lacks the sensitivity and legal integrity so vital to any person worthy of a lifetime appointment as a U.S. circuit court judge. Her record indicates she cannot set aside her own personal philosophies and beliefs in deciding the cases before her.

In short, I could not in good conscience, exercising my duty under the Constitution, vote to confirm Deborah Cook to a lifetime appointment on the Sixth Circuit Court of Appeals.

## BUSINESS PRACTICES IN THE GUN INDUSTRY

Mr. LEVIN. Mr. President, a declaration recently filed in a California lawsuit by Mr. Robert A. Ricker, former assistant general counsel for the National Rifle Association and former executive director of the American Shooting Sports Council, revealed that many in the gun industry have long known that their business practices make it easier for criminals to gain access to guns yet often fail to do anything about it.

In his declaration, Mr. Ricker cites an example of irresponsible business practices in the gun industry known as straw purchasing. Straw purchases are a primary avenue by which a relatively small number of federally licensed firearm dealers supply the criminal market. A straw purchase involves a buyer with a clean record purchasing a gun for someone who is prohibited by law from doing so. Mr. Ricker asserts that it has long been known in the gun industry that many straw purchases and other questionable sales can be stopped

if dealers are trained in preventing illegal activity. However, in the absence of such training and a commitment to responsible business practices, many straw sales continue to take place undetected. Instead of requiring their dealers to act responsibly, Mr. Ricker says that it has been a common practice among some gun manufacturers to adopt a "see-no-evil, hear-no-evil, speak-no-evil" approach. This approach does nothing to discourage the evasion of firearms laws and regulations.

Mr. Ricker's accounts confirm what has long been suspected. Some gun manufacturers and dealers know their practices facilitate criminal access to firearms but they do nothing about it. The Lawful Commerce in Arms Act that recently passed the House and that has been referred to the Senate Judiciary Committee would shield those negligent and reckless gun dealers and manufacturers from many legitimate civil lawsuits. Certainly, those in the industry who conduct their business negligently or recklessly should not be shielded from the consequences of their actions. Mr. Ricker's declaration contributes further evidence that this bill would assist some in the gun industry in avoiding responsibility for their business practices.

## ADDITIONAL STATEMENTS

## NATIONAL NURSES WEEK

• Mr. JOHNSON. Mr. President, I acknowledge the importance of this week and pay tribute to a very important sector of our health care workforce. This week marks "National Nurse Week," which highlights the critical role that nurses play in our Nation's health care system. Nurses are the backbone of our health care system and their continued dedication and commitment to both patients and doctors deserves our praise during this special week. I am thankful for all the hard work that the men and women of this profession provide to the people of South Dakota and our Nation.

South Dakota is fortunate to have several successful nursing programs throughout the State dedicated to providing outstanding service to the people of South Dakota. It is important that these institutions continue to grow and work to bring bright young professionals to the nursing field. This job has become more difficult in recent years as the profession faces increased workforce shortages. The average practicing nurse is in her midforties and will soon leave the workforce for retirement. At the same time, we have less and less young nurses entering the field. This is especially a problem for rural States, such as South Dakota, which have chronic health care worker recruitment and retention problems. The nursing shortage also puts great strain on those currently working in the profession. Initiatives need to be

taken on both fronts, professional and educational, to address these challenges and bolster the nursing workforce in preparation for an aging baby boom generation.

Last year, I was pleased to be a co-sponsor of the Nurse Reinvestment Act, which was signed into law. This critically important legislation has established five standards that will help alleviate many of the problems facing the nursing profession, including a specific focus on implementing these programs in rural areas. First, it creates a National Nurse Service Corps Scholarship Program, which provides scholarships in exchange for at least 2 years of service in a critical nursing shortage area or facility. Second, it will recruit nurses by establishing Nurse Recruitment Grants and by creating both national and State public awareness campaigns. Third, it creates "career ladder" programs that will encourage individuals to pursue additional education, training, and advancement within the profession. Fourth, it includes a loan, scholarship, and stipend program for graduate level education in the nursing profession in exchange for teaching at an accredited school of nursing. Finally, it establishes a National Commission on the Recruitment and Retention of Nurses to conduct studies and make recommendations on the vital issues facing the nursing profession.

The fiscal year 2003 Omnibus Appropriations bill designated \$20 million in funding for the Nurse Reinvestment Act. While this marks a step in the right direction, I would like to see this funding increased to accurately reflect what is really needed to curb the workforce shortage crisis. I joined several of my colleagues in fighting for \$250 million in new money for this program last year, and as a member of the Senate Appropriations Committee, I will continue to fight for additional resources towards that goal.

As I have noted, the nursing workforce is the foundation of our health care system. The continued dedication and commitment of our country's nurses is truly inspirational and has made patients' lives better and doctors' jobs easier. I look forward to seeing this workforce grow as a result of the wonderful programs authorized by the Nurse Reinvestment Act. I will do what I can to help foster the expansion of these programs and I celebrate Nurses Week by thanking the nurses of this country for all that they do. •

## MESSAGE FROM THE HOUSE

At 11:44 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 874. An act to establish a program, coordinated by the National Transportation Safety Board, of assistance to families of passengers involved in rail passenger accidents.



H.R. 1261. An act to enhance the workforce investment system of the Nation by strengthening one-stop career centers, providing for more effective governance arrangements, promoting access to a more comprehensive array of employment, training, and related services, establishing a targeted approach to serving youth, and improving performance accountability, and for other purposes.

The message also announced that pursuant to section 101(f)(3) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 1320b-19), and the order of the House of January 8, 2003, the Speaker appoints the following member on the part of the House of Representatives to the Ticket to Work and Work Incentives Advisory Panel: Mrs. Berthy De La Rosa-Aponte of Cooper City, FL, to a 4-year term.

### MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 874. An act to establish a program, coordinated by the National Transportation Safety Board, of assistance to families of passengers involved in rail passenger accidents; to the Committee on Commerce, Science, and Transportation.

H.R. 1261. An act to enhance the workforce investment system of the Nation by strengthening one-stop career centers, providing for more effective governance arrangements, promoting access to a more comprehensive array of employment, training, and related services, establishing a targeted approach to serving youth, and improving performance accountability, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-2272. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Use of Debit cards for Flexible Spending Arrangements (Rev. Rul. 2003-43)" received on May 7, 2003; to the Committee on Finance.

EC-2273. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Weighted Average Interest Rate Update Notice (Notice 2003-32)" received on May 7, 2003; to the Committee on Finance.

EC-2274. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Continuing Employment Exception to Medicare Tax Not Available If State or Local Government Employee Not a Member of a State Retirement System (Rev. Rule 2003-46)" received on May 7, 2003; to the Committee on Finance.

EC-2275. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "April-June 2003 Bond Factor Amounts (Rev. Rul. 2003-44)" received on May 7, 2003; to the Committee on Finance.

EC-2276. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Bank Demutualization (Rev. Rul. 2003-48)" received on May 7, 2003; to the Committee on Finance.

EC-2277. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Earnings Calculation for Returned or Recharacterized IRA Contribution (RIN 1545-BA82)" received on May 7, 2003; to the Committee on Finance.

EC-2278. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Length of Service Award Program (Rev. Rul. 2003-47)" received on May 7, 2003; to the Committee on Finance.

EC-2279. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Section 403(b) distribution reporting and withholding (Notice 2003-20)" received on May 7, 2003; to the Committee on Finance.

EC-2280. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Revenue Procedure 2003-35 Gaming Industry Tip Compliance Agreement" received on May 7, 2003; to the Committee on Finance.

EC-2281. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Constructive Transfers and Transfers of Property to a Third Party on Behalf of a Spouse (1545-AX99)" received on May 7, 2003; to the Committee on Finance.

EC-2282. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Amendment of Waiver of Loss Carryovers from Separate Return Limitation Years (1545-BB39)" received on May 7, 2003; to the Committee on Finance.

EC-2283. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Guidance Under Section 817A Regarding Modified Guaranteed Contracts (1545-AY48)" received on May 7, 2003; to the Committee on Finance.

EC-2284. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "National Median Gross Income for 2003 Revenue Procedure (Rev. Proc. 2003-29)" received on May 7, 2003; to the Committee on Finance.

### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GRASSLEY, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

S. 2. A bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives to encourage economic growth.

By Mr. SHELBY, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 709. A bill to award a congressional gold medal to Prime Minister Tony Blair.

### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CORZINE (for himself, Mr. LEAHY, Mr. COCHRAN, and Mrs. LINCOLN):

S. 1035. A bill to amend title 10, United States Code, to reduce the age for receipt of military retired pay for nonregular service from 60 to 55; to the Committee on Armed Services.

By Mr. ALLARD (for himself, Mr. FEINGOLD, Mr. KOHL, Mr. ROBERTS, Mr. CAMPBELL, Mr. BURNS, and Mr. CRAIG):

S. 1036. A bill to provide for a multi-agency cooperative effort to encourage further research regarding the causes of chronic wasting disease and methods to control the further spread of the disease in deer and elk herds, to monitor the incidence of the disease, to support State efforts to control the disease, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. SNOWE (for herself, Mr. ROCKEFELLER, Mr. WARNER, Mr. HOLLINGS, Mr. KERRY, Ms. COLLINS, Mr. CARPER, Mr. ALLEN, Ms. LANDRIEU, Mrs. LINCOLN, Mr. FITZGERALD, Mr. DORGAN, Mr. CORZINE, Mr. CAMPBELL, Mr. SCHUMER, Mr. CHAFEE, Mr. SMITH, Mr. HARKIN, Ms. MIKULSKI, Ms. CANTWELL, Mr. NELSON of Nebraska, Mr. CRAIG, Mrs. FEINSTEIN, and Mr. LAUTENBERG):

S. 1037. A bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of all oral anticancer drugs; to the Committee on Finance.

By Mr. THOMAS (for himself, Mr. ENZI, Mr. CRAIG, Mr. STEVENS, and Mr. BURNS):

S. 1038. A bill to limit the acquisition by the United States of land located in a State in which 25 percent or more of the land in that State is owned by the United States; to the Committee on Energy and Natural Resources.

### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. FRIST (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. STEVENS, Mr. SANTORUM, Mr. KYL, Mrs. HUTCHISON, Mr. ALLEN, Mr. LOTT, Mr. HATCH, Mr. CORNYN, and Mr. CHAMBLISS):

S. Res. 138. A resolution to amend rule XXII of the Standing Rules of the Senate relating to the consideration of nominations requiring the advice and consent of the Senate; to the Committee on Rules and Administration.

By Mr. SUNUNU:

S. Res. 139. A resolution expressing the thanks of the Senate to the people of Qatar for their cooperation in supporting United States Armed Forces and the armed forces of coalition countries during the recent military action in Iraq, and welcoming His Highness Sheikh Hamad bin Khalifah Al-Thani, Emir of the State of Qatar, to the United States; considered and agreed to.

By Mr. CAMPBELL (for himself, Mr. DURBIN, Mr. BOND, Mr. HOLLINGS, Mr. KERRY, Mrs. MURRAY, Mr. BIDEN,



Mrs. LINCOLN, Mr. JOHNSON, Mr. INHOFE, Mr. TALENT, Mr. BUNNING, Mr. ALLEN, Mr. ENZI, Mr. SMITH, Ms. LANDRIEU, Mr. DOMENICI, and Mr. CRAPO).

S. Res. 140. A resolution designating the week of August 10, 2003, as "National Health Center Week"; to the Committee on the Judiciary.

#### ADDITIONAL COSPONSORS

S. 215

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 215, a bill to authorize funding assistance for the States for the discharge of homeland security activities by the National Guard.

S. 269

At the request of Mr. JEFFORDS, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 269, a bill to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species.

S. 528

At the request of Mr. BINGAMAN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 528, a bill to reauthorize funding for maintenance of public roads used by school buses serving certain Indian reservations.

S. 910

At the request of Mr. AKAKA, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 910, a bill to ensure the continuation of non-homeland security functions of Federal agencies transferred to the Department of Homeland Security.

S. 982

At the request of Mrs. BOXER, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 983

At the request of Mr. CHAFEE, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 983, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 1000

At the request of Mr. GRAHAM of South Carolina, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1000, a bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive re-

tired pay for non-regular service; to provide TRICARE eligibility for members of the Selected Reserve of the Ready Reserve and their families; to amend the Internal Revenue Code of 1986 to allow employers a credit against income tax with respect to employees who participate in the military reserve components and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CORZINE (for himself, Mr. LEAHY, Mr. COCHRAN, and Mrs. LINCOLN):

S. 1035. A bill to amend title 10, United States Code, to reduce the age for receipt of military retired pay for nonregular service from 60 to 55; to the Committee on Armed Services.

Mr. CORZINE. Mr. President, I rise today to introduce a bill that would reduce the retirement age for members of the National Guard and Reserve from 60 to 55. This change would allow 93,000 reservists currently aged 55 to 59 to retire with full benefits and would restore parity between the retirement systems for Federal civilian employees and reservists.

In the interests of fairness, the United States must act quickly to restore parity between the retirement age for civilian Federal employees and their reserve counterparts. When the reserve retirement system was created in 1947, the retirement age for reservists was identical to the age for civilian employees. At age 60, reservists and government employees could hang up their uniforms and retire with full benefits. However, since 1947, the retirement age for civilian retirees has been lowered by 5 years, while the reserve retirement age has not changed.

The disparate treatment of Federal employees and reservists would have been serious enough had the nature of the work performed by the reserves not changed substantially over the past five decades. But America has never placed greater demands on its ready reserve than it does now. More than 200,000 reservists are serving their country in the war against terrorism at home, abroad, and in the conflict with Iraq. America's dependence on our ready reserve has never been more obvious, as reservists are now providing security at our Nation's airports and air patrols over our major cities. As Charles Cragin, the Deputy Assistant Secretary of Defense, recently noted, "The nature and purpose of reserve service has changed since the end of the cold war. They are no longer weekend warriors. They represent almost 50 percent of the total force."

With call-ups that last several months and take reservists far from home, serving the Nation as a reservist has taken on more of the trappings of active duty service than ever before. The recent conflict has only further

underscored the demands placed on the National Guard and Reserve. Before the war on terrorism began, reservists were performing about 13 million man-days each year, more than a 10-fold increase over the one million man-days per year the reserves averaged just 10 years ago. These statistics, the latest numbers available, do not even reflect the thousands of reservists who have been deployed since September 11 nor do they take into account the number of reservists who have been deployed in the current military action against Iraq. There is little doubt there will be a dramatic increase in the number of man-days for 2002 and 2003. In my view, with additional responsibility should come additional benefits.

The Department of Defense typically has not supported initiatives like this. The Department has expressed concern over the proposal's cost, which is estimated to be approximately \$20 billion over 10 years, although CBO figures are not yet available. However, I am concerned that the Department's position may be shortsighted.

At a time when there is a patriotic fervor and a renewed enthusiasm for national service, it is easy to forget that not long ago, the U.S. military was struggling to meet its recruitment and retention goals. In the aftermath of September 11, defense-wide recruitment and retention rates have improved. However, there is no guarantee that this trend will continue. Unless the overall package of incentives is enhanced, there is little reason to believe that we will be able to attract and retain highly-trained personnel.

Active duty military personnel have often looked to the reserves as a way of continuing to serve their country while being closer to family. With thousands of dollars invested in training active duty officers and enlisted soldiers, the United States benefits tremendously when personnel decide to continue with the reserves. But with reserve deployments increasing in frequency and duration—pulling reservists away from their families and civilian life for longer periods—the benefit of joining the reserves instead of active duty has been severely reduced. The more we depend on the reserves, the greater chance we have of losing highly trained former active duty servicemen and women. The added incentive of full retirement at 55 might provide an important inducement for some of them to stay on despite the surge in deployments.

Enacting this legislation will send the clear message that the United States values the increased sacrifice of our reservists during these trying times. The legislation has been endorsed by key members of the Military Coalition, including the Veterans of Foreign Wars, the Air Force Sergeants Association, the Air Force Association, the Retired Enlisted Association, the Fleet Reserve Association, the Naval Reserve Association, and the National

Guard Association. The bill would restore parity between the reserve retirement system and the civilian retirement system, acknowledge the increased workload of reserve service, and provide essential personnel with an inducement to join and stay in the reserves until retirement.

I hope my colleagues will join me in supporting this important legislation, and I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1035

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

**SECTION 1. REDUCTION IN AGE FOR RECEIPT OF MILITARY RETIRED PAY FOR NON-REGULAR SERVICE.**

(a) **REDUCTION IN AGE.**—Section 12731(a)(1) of title 10, United States Code, is amended by striking “at least 60 years of age” and inserting “at least 55 years of age”.

(b) **APPLICATION TO EXISTING PROVISIONS OF LAW OR POLICY.**—With respect to any provision of law, or of any policy, regulation, or directive of the executive branch, that refers to a member or former member of the uniformed services as being eligible for, or entitled to, retired pay under chapter 1223 of title 10, United States Code, but for the fact that the member or former member is under 60 years of age, such provision shall be carried out with respect to that member or former member by substituting for the reference to being 60 years of age a reference to the age in effect for qualification for such retired pay under section 12731(a) of title 10, United States Code, as amended by subsection (a).

(c) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act and shall apply to retired pay payable for that month and subsequent months.

By Mr. ALLARD (for himself, Mr. FEINGOLD, Mr. KOHL, Mr. ROBERTS, Mr. CAMPBELL, Mr. BURNS, and Mr. CRAIG):

S. 1036. A bill to provide for a multi-agency cooperative effort to encourage further research regarding the causes of chronic wasting disease and methods to control the further spread of the disease in deer and elk herds, to monitor the incidence of the disease, to support State efforts to control the disease, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. ALLARD. Mr. President, last year, I joined eleven colleagues in an effort to pass legislation that dealt with the eradication, monitoring, and surveillance of chronic wasting disease. Today, I am offering similar legislation, the “Chronic Wasting Disease Support Act of 2003.” Before I discuss the legislation further, I first want to thank Senator FEINGOLD for his leadership on this matter and for working diligently to eradicate the disease. I also want to congratulate the State of Colorado, especially those Departments and Divisions that have been on the leading edge of disease manage-

ment and eradication. They faced a horrendous task—processing tens of thousands of tests on a tight time frame. While more work lies ahead, they are to be commended for their effort.

What was first a serious problem in the western United States, chronic wasting disease now poses a serious threat to every State of the union. As a United States Senator, chronic wasting disease presents not only a great animal health challenge, but a scientific quandary as well. As a veterinarian, chronic wasting disease presents an even greater challenge to the scientific communities of both the States and the Federal Government because we know so little about the disease. This legislation, cosponsored by Senators FEINGOLD, KOHL, ROBERTS, CAMPBELL, BURNS and CRAIG, is a bipartisan effort to defeat the disease and to send a message that CWD must remain a priority for the Federal Government.

The importance of this bill to both the State and Federal Government cannot be emphasized enough. It authorizes \$34.5 million in the battle against chronic wasting disease. Although the bill authorizes a substantial amount Federal funding to fight and eradicate the disease, the States will retain their undisputed primacy and policy-making authority with regard to wildlife management. Nothing in this act interferes with or otherwise affects the primacy of the States in managing wildlife generally, or managing, surveying and monitoring the incidence of chronic wasting disease. It is important that all members of our delegation and in both the House and the Senate, coordinate our efforts as we fight the disease.

Chronic wasting disease, or CWD, may be a new threat to some. Others may not be familiar with it at all. However, it is not new to those of us in Colorado and Wyoming, who have been dealing with it for over twenty years, and if the disease continues to spread, those unfamiliar with the fatal disease will, unfortunately, become experts in CWD policy. The scientific community has gone to great lengths to deal with the disease on limited budgets. These experts, through scientific publication and Congressional hearings, have told us that, although we have learned a tremendous amount about chronic wasting disease, there is much that we do not know and much that we must do to eradicate it.

One thing we do know is that sound science is the answer, and that the Chronic Wasting Disease Support Act of 2003 is intended to greatly increase research, monitoring, surveillance, and management of the disease on all levels. It bolsters testing capacity, diagnostics capabilities, and funding authorization.

Increased research and research funding is necessary because the disease is quite simply a mystery—the origin and transmission of CWD remains unknown. Unfortunately, the only way to treat an animal with CWD or to con-

tain the disease is to destroy the animal and cull the herd. Together, we must embark on an ambitious and sound scientific commitment for research and investigation to end chronic wasting disease. That is what this bill calls for—cooperation and collaboration, working together at both the State and Federal level to achieve a common objective. We must end chronic wasting disease, and we must begin our eradication efforts now.

The impact CWD will have on wildlife and agriculture is undeniable, and the economic and emotional toll of the disease cannot be overstated. Communities that are economically reliant upon deer and elk related enterprises will feel the impact of CWD as concern about the disease grows. But we can stop this, and we must stop this. We have an opportunity to restore cervid health, to contain the disease, and, most importantly, to eradicate the disease. This is the challenge that I urge my colleagues to accept, and to take decisive action; adequate research funding that is directed toward the complete eradication of chronic wasting disease starts with this authorizing legislation.

In those States that are already dealing with CWD, the fiscal demands required to manage the disease is quite apparent. State budgets are stretched thin as they cull wild and captive herds and research for workable solutions to stop the disease. With State budgets already strained, an infusion of Federal resources and technical assistance is required to help the States keep CWD from spreading, to treat infected or exposed populations, and to greatly expand research for testing and possible cures. This bill does just that by providing assistance in the form of grants, Federal research programs and incidence reporting, as well as scientific assistance. State and Federal cooperation will protect animal welfare, safeguard our valued livestock industry, provide relief to family elk ranchers, help guarantee America's food safety, and protect the public health.

The Chronic Wasting Disease Support Act of 2003 provides the foundation for a nationwide increase in diagnostic capabilities. Undoubtedly, the spread of CWD and the increased awareness of the disease, will cause the demand for testing to grow exponentially—this bill helps us prepare to handle a large volume of cases efficiently and reliably. The legislation calls for the development of new testing methods to help us understand the disease, as well as developing a live test.

Chronic wasting disease presents a common problem to the States and the Federal Government. The Federal conduit role that is provided in the bill will allow animal health experts to unravel the CWD mystery. The challenge we face is to achieve what we all recognize as a common objective—to understand CWD and to eradicate it. But, we must act quickly or this disease will redefine the wildlife characteristics of our States.

Thank you, Senator FEINGOLD. 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. 1036

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Chronic Wasting Disease Support Act of 2003".

#### SEC. 2. DEFINITION OF CHRONIC WASTING DISEASE.

In this Act, the term "chronic wasting disease" means the animal disease afflicting deer and elk that—

(1) is a transmissible disease of the nervous system resulting in distinctive lesions in the brain; and

(2) belongs to the group of diseases known as transmissible spongiform encephalopathies, which group includes scrapie, bovine spongiform encephalopathy, and Cruetzfeldt-Jakob disease.

#### SEC. 3. FINDINGS.

Congress finds the following:

(1) Pursuant to State and Federal law, the States retain undisputed primacy and policy-making authority with regard to wildlife management, and nothing in this Act interferes with or otherwise affects the primacy of the States in managing wildlife generally, or managing, surveying, and monitoring the incidence of chronic wasting disease.

(2) Chronic wasting disease, the fatal neurological disease found in cervids, is a fundamental threat to the health and vibrancy of deer and elk populations, and the increased occurrence of chronic wasting disease in regionally diverse locations in recent months necessitates an escalation in research, surveillance, monitoring, and management activities focused on containing, managing, and eradicating this lethal disease.

(3) As the States move to manage existing incidence of chronic wasting disease and insulate non-infected wild and captive cervid populations from the disease, the Federal Government should endeavor to provide integrated and holistic financial and technical support to these States.

(4) In its statutory role as supporting agent, relevant Federal agencies should provide consistent, coherent, and integrated support structures and programs for the benefit of State wildlife and agricultural administrators, as chronic wasting disease can move freely between captive and wild cervids across the broad array of Federal, State, and local land management jurisdictions.

(5) The Secretary of the Interior, the Secretary of Agriculture, and other affected Federal authorities can provide consistent, coherent, and integrated support systems under existing legal authorities.

#### TITLE I—DEPARTMENT OF THE INTERIOR ACTIVITIES

##### SEC. 101. GRANTS FOR STATE AND TRIBAL EFFORTS TO MANAGE CHRONIC WASTING DISEASE IN WILDLIFE.

(a) AVAILABILITY OF ASSISTANCE.—The Secretary of the Interior shall develop a grant program to allocate funds appropriated to carry out this section directly to the State agency responsible for wildlife management in each State that petitions the Secretary for a portion of such fund to develop and implement long term management strategies to address chronic wasting disease in wildlife.

(b) FUNDING PRIORITIES.—In determining the amounts to be allocated to grantees under subsection (a), priority shall be given based on the following criteria:

(1) Relative scope of incidence of chronic wasting disease in the State, with priority given to those jurisdictions with the highest incidence of the disease.

(2) Expenditures on chronic wasting disease management, monitoring, surveillance, and research, with priority given to those States and tribal governments that have shown the greatest financial commitment to managing, monitoring, surveying, and researching chronic wasting disease.

(3) Comprehensive and integrated policies and programs focused on chronic wasting disease management between involved State wildlife and agricultural agencies and tribal governments, with priority given to grantees that have integrated the programs and policies of all involved agencies related to chronic wasting disease management.

(4) Rapid response to new outbreaks of chronic wasting disease, whether occurring in States in which chronic wasting disease is already found or States with first infections, with the intent of containing the disease in any new area of infection.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$10,000,000 to carry out this subsection.

##### SEC. 102. COMPUTER MODELING OF DISEASE SPREAD IN WILD CERVID POPULATIONS.

(a) MODELING PROGRAM REQUIRED.—The Secretary of the Interior shall establish a modeling program to predict the spread of chronic wasting disease in wild deer and elk in the United States.

(b) ROLE.—Computer modeling shall be used to identify areas of potential disease concentration and future outbreak and shall be made available for the purposes of targeting public and private chronic wasting disease control efforts.

(c) DATA INTEGRATION.—Information shall be displayed in a GIS format to support management use of modeling results, and shall be displayed integrated with the following:

(1) Land use data.

(2) Soils data.

(3) Elevation data.

(4) Environmental conditions data.

(5) Wildlife data; and

(6) Other data as appropriate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Interior \$1,000,000 under this section.

##### SEC. 103. SURVEILLANCE AND MONITORING PROGRAM REGARDING PRESENCE OF CHRONIC WASTING DISEASE IN WILD HERDS OF DEER AND ELK.

(a) PROGRAM DEVELOPMENT.—Using existing authorities, the Secretary of the Interior, acting through the United States Geological Survey, shall conduct a surveillance and monitoring program on Federal lands managed by the Secretary to identify—

(1) the incidence of chronic wasting disease infection in wild herds of deer and

(2) the cause and extent of the spread of the disease; and

(3) potential reservoirs of infection and vectors promoting the spread of the disease.

(b) TRIBAL ASSISTANCE.—In developing the surveillance and monitoring program for wild herds on Federal lands, the Secretary of the Interior shall provide assistance to tribal governments or tribal government entities responsible for managing and controlling chronic wasting disease in wildlife on tribal lands.

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Interior \$3,000,000 to establish and support the surveillance and monitoring program.

##### SEC. 104. NATIONAL REPOSITORY OF INFORMATION REGARDING CHRONIC WASTING DISEASE.

(a) INFORMATION REPOSITORY.—The United States Department of the Interior, using existing authorities, shall develop and maintain an interactive, Internet based web site that displays—

(1) surveillance and monitoring program data regarding chronic wasting disease in both wild and captive cervid populations and

other wildlife that are collected by the Department of the Interior, the Department of Agriculture, other Federal agencies, State agencies, and tribal governments assisted under this Act; and

(2) modeling information regarding the spread of chronic wasting disease in the United States; and

(3) other relevant information regarding chronic wasting disease received from other sources.

(b) INFORMATION SHARING POLICY.—The national repository shall be available as a resource for Federal and State agencies responsible for managing and controlling chronic wasting disease and for institutions of higher education and other public or private research entities conducting research regarding chronic wasting disease. Data from the repository shall be made available to other Federal agencies, State agencies and the general public upon request.

#### TITLE II—DEPARTMENT OF AGRICULTURE ACTIVITIES

##### SEC. 201. SAMPLING AND TESTING PROTOCOLS

(a) SAMPLING PROTOCOL.—Within 30 days of enactment of this Act, the Secretary of Agriculture shall release guidelines for the use by Federal, State, tribal and local agencies for the collection of animal tissue to be tested for chronic wasting disease. Guidelines shall include, at a minimum, procedures for the collection and stabilization of tissue samples for transport for laboratory assessment. Such guidelines shall be updated as necessary.

(b) TESTING PROTOCOL.—Within 30 days of enactment of this Act, the Secretary of Agriculture shall release a protocol to be used in the laboratory assessment of samples of animal tissue that may be contaminated with chronic wasting disease.

(c) LABORATORY CERTIFICATION AND INSPECTION PROGRAM.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary shall establish a program for the certification and inspection of Federal and non-Federal laboratories (including private laboratories) under which the Secretary shall authorize laboratories certified under the program to conduct tests for chronic wasting disease.

(2) VERIFICATION.—In carrying out the program established under paragraph (1), the Secretary may require that the results of any tests conducted by private laboratories shall be verified by Federal laboratories.

(d) DEVELOPMENT OF NEW TESTS.—Not later than 45 days after the date of enactment of this Act, the Secretary shall accelerate research into—

(1) the development of animal tests for chronic wasting disease, including—

(A) tests for live animals; and

(B) field diagnostic tests; and

(2) the development of testing protocols that reduce laboratory test processing time.

##### SEC. 202. ERADICATION OF CHRONIC WASTING DISEASE IN HERDS OF DEER AND ELK.

(a) CAPTIVE HERD PROGRAM DEVELOPMENT.—The Secretary of Agriculture, acting through the Animal and Plant Health Inspection Service, shall develop a program to identify the rate of chronic wasting disease infection in captive herds of deer and elk, the cause and extent of the spread of the disease, and potential reservoirs of infection and vectors promoting the spread of the disease.

(1) IMPLEMENTATION.—The Secretary of Agriculture shall provide financial and technical assistance to States and tribal governments to implement surveillance and monitoring program for captive herds.

(2) COOPERATION.—In developing the surveillance and monitoring program for captive herds, the Secretary of Agriculture shall cooperate with State agencies responsible for managing and controlling chronic wasting disease in captive wildlife. Grantees under this section shall submit to the Secretary of Agriculture a plan for monitoring chronic wasting disease in captive wildlife and reducing the risk of disease spread through captive wildlife transport. As a condition of awarding aid under this section, the Secretary of Agriculture may prohibit or restrict the—

(A) movement in interstate commerce of any animal, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of chronic wasting disease; and

(B) use of any means of conveyance or facility in connection with the movement in interstate commerce of any animal or article if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of chronic wasting disease.

(3) COORDINATION.—The Secretary of Agriculture, in cooperation with the Secretary of the Interior, shall establish uniform standards for the collection and assessment of samples and data derived from the surveillance and monitoring program.

(b) CAPTIVE HERD PROGRAM.—The Secretary of Agriculture, acting through the Animal and Plant Health Inspection Service, shall, consistent with existing authority, provide grants to assist states in reducing the incidence of chronic wasting disease infection in captive herds of deer and elk.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Agriculture \$8,000,000 to conduct activities under this section, of which no less than \$6 million is to be awarded to State and tribal governments.

#### SEC. 203. EXPANSION OF DIAGNOSTIC TESTING CAPACITY.

(a) PURPOSE.—Diagnostic testing will continue to be conducted on samples collected under the surveillance and monitoring programs regarding chronic wasting disease conducted by the States and the Federal Government and Indian Tribes, including the programs required by this Act, but current laboratory capacity is inadequate to process the anticipated sample load.

(b) UPGRADING OF FEDERAL FACILITIES.—The Secretary of Agriculture shall provide for the upgrading of Federal laboratories to facilitate the timely processing of samples from the surveillance and monitoring programs required by this Act and related epidemiological investigation in response to the results of such processing.

(c) UPGRADING OF CERTIFIED LABORATORIES.—Using the grant authority provided under section 2(d) of the Competitive, Special and Facilities Research Grant Act (7 U.S.C. 450i(d)), the Secretary of Agriculture shall make grants to provide for the upgrading of laboratories certified by the Secretary to facilitate the timely processing of samples from surveillance and monitoring programs and related epidemiological investigation in response to the results of such processing.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Agriculture \$7,500,000 to carry out this section.

#### SEC. 204. EXPANSION OF AGRICULTURAL RESEARCH SERVICE RESEARCH.

(a) EXPANSION.—The Secretary of Agriculture, acting through the Agricultural Research Service, shall expand and accelerate basic research on chronic wasting disease,

including research regarding detection of chronic wasting disease, genetic resistance, tissue studies, and environmental studies.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Agriculture \$1,000,000 to carry out this section.

#### SEC. 205. EXPANSION OF COOPERATIVE STATE RESEARCH, EDUCATION AND EXTENSION SERVICE SUPPORTED RESEARCH AND EDUCATION.

(a) RESEARCH EFFORTS.—The Secretary of Agriculture, acting through the Cooperative State Research, Education and Extension Service, shall expand the grant program regarding research on chronic wasting disease.

(b) EDUCATIONAL EFFORTS.—The Secretary of Agriculture shall provide educational outreach regarding chronic wasting disease to the general public, industry and conservation organizations, hunters, and interested scientific and regulatory communities.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Agriculture—

(1) \$3,000,000 to carry out subsection (a); and

(2) \$1,000,000 to carry out subsection (b).

#### TITLE III—GENERAL PROVISIONS

##### SEC. 301. INTERAGENCY COORDINATION.

(a) IN GENERAL.—Within 60 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall enter into a cooperative agreement for the purpose of coordinating actions and disbursing funds authorized under this Act to prevent the spread of chronic wasting disease and related diseases in the United States.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretaries shall submit to Congress a report that—

(1) describes actions that are being taken, and will be taken, to prevent the further outbreak of chronic wasting disease and related diseases in the United States; and

(2) contains any additional recommendations for additional legislative and regulatory actions that should be taken to prevent the spread of chronic wasting disease in the United States.

##### SEC. 303. RULEMAKING.

(a) JOINT RULEMAKING.—To ensure that the surveillance and monitoring programs and research programs required by this Act are compatible and that information collection is carried out in a manner suitable for inclusion in the national database required by section 102, the Secretary of the Interior and the Secretary of Agriculture shall jointly promulgate rules to implement this Act.

(b) PROCEDURE.—The promulgation of the rules shall be made without regard to—

(1) chapter 5 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”);

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) the notice and comment provisions of section 553 of title 5, United States Code.

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary of the Interior and the Secretary of Agriculture shall use the authority provided under section 808 of title 5, United States Code.

(d) RELATION TO OTHER RULEMAKING AND LAW.—The requirement for joint rulemaking shall not be construed to require any delay in the promulgation by the Secretary of Agriculture of rules regarding the interstate transportation of captive deer or elk or to effect any other rule or public law imple-

mented by the Secretary of Agriculture or the Secretary of the Interior regarding chronic wasting disease before the date of the enactment of this Act.

Mr. FEINGOLD. Mr. President, today, I am pleased to join the Senator from Colorado (Mr. ALLARD) in introducing comprehensive legislation to address the problem of chronic wasting disease. This legislation is similar to legislation we introduced last year, updated to reflect current status of this issue. I am delighted to be continuing my efforts with him on this bill and to again also be working with my senior Senator from Wisconsin (Mr. KOHL) and commend them and their staff for all their tireless efforts.

This disease is a serious problem affecting both wild and captive deer in my home State of Wisconsin. It has spread from Wisconsin to the neighboring states of Minnesota and Illinois. This legislation is acutely needed, as Wisconsin's experience in getting Federal assistance to address this problem, though eventually forthcoming, has been extremely slow and frustrating. The Federal Government must make chronic wasting disease a higher priority, and Congress must provide the relevant federal agencies with the additional funds and authority so that they can do so.

Congress delayed action on this bill in the last Congress, under promises that the Department of the Interior, DOI, and the Department of Agriculture, USDA, would be acting quickly to put together and implement a comprehensive CWD management plan. It has now been nearly a year, and no such plan has emerged. I was successful in getting a provision included in the 2003 Omnibus Appropriations bill calling for the plan to be released no later than May 20, 2003. That deadline is rapidly approaching, and the legislation we introduce today will provide a clear message—CWD must be a priority for the Federal Government and for this administration.

A coordinated approach is needed, due to the severity of this disease, its ability to spread, and our urgent need for information to address it. Chronic wasting disease belongs to the family of transmissible spongiform encephalopathies, TSEs, diseases. TSEs are a group of transmissible, slowly progressive, degenerative diseases of the central nervous systems of several species of animals. Animal TSEs include, in addition to chronic wasting disease, CWD, in deer and elk, bovine spongiform encephalopathy in cattle, scrapie in sheep and goats, feline spongiform encephalopathy in cats, and mink spongiform encephalopathy in mink.

The State of Wisconsin has just completed an historic effort to test the deer in our State. Results from more than 41,000 whitetail deer tested in our State have turned up 207 CWD positive animals. Almost all of the infected deer, 201 of the total, came from a 411 square mile eradication zone of Dane,

Iowa and Sauk counties. My State began intensive testing of deer after CWD was discovered on February 28, 2002. Over 1,200 people in my State have been involved, conducting thousands of hours of work at millions of dollars of expense. CWD has also been found in several captive herds in my State as well.

In that vein, the legislation we are introducing is comprehensive, addressing both captive and wild animals and short term and long term needs. It authorizes a \$34.5 million Federal chronic wasting disease program that will be administered by the United States Departments of Interior and Agriculture, USDA. It is similar to legislation being introduced today in the House of Representatives by the Representatives from Colorado (Mr. MCINNIS), and from Wisconsin (Mr. GREEN), and was cosponsored on a bipartisan basis by Wisconsin delegation members in the House Of Representatives in the last Congress. I think it is extremely appropriate that legislators from Colorado, the state that has the longest history in chronic wasting disease, have made a concerted effort to work with Wisconsin members who are struggling with a new outbreak. I deeply appreciate the commitment of the Representative from Colorado (Mr. MCINNIS), toward finding a solution that works for both our States. I think these are good comprehensive efforts, and I would like to highlight a few provisions in detail.

The bill I am introducing with the Senator from Colorado (Mr. ALLARD), authorizes \$16 million for grants to States and tribal governments battling CWD. The Interior Department to give up to \$10 million in grants to States to help them plan and implement management strategies to address chronic wasting disease in both wild herds of deer and elk. The Interior Department is directed, in addition, to develop a national chronic wasting disease incident database, building on the existing USDA reporting program. The USDA is authorized to award up to \$6 million in grants to those same entities for the management of CWD in captive deer and elk. These amounts are nearly triple \$5.6 million that USDA made available to States for use to address CWD in both captive and wild cervids.

I am particularly pleased that the Senator from Colorado (Mr. ALLARD), has incorporated provisions that I authored to address Wisconsin's ongoing need for enhanced testing capacity to move toward a system of widely available testing for hunters. Under the bill, USDA is required to release, within 30 days, protocols both for labs to use in performing tests for chronic wasting disease and for the proper collection of animal tissue to be tested. USDA is further required to develop a certification program for Federal and non-Federal labs, including private labs, conducting chronic wasting disease tests within 30 days of enactment. I hope all these measures will enhance

Wisconsin's capacity to continue its deer testing program. To address longer term needs, the USDA is directed to accelerate research into the development of live animal tests for chronic wasting disease, including field diagnostic tests, and the development of testing protocols that reduce laboratory test processing time.

This bill is needed, because State wildlife and agriculture departments do not have the fiscal or scientific capacity to adequately confront the problem. Their resources are spread too thin as they attempt to prevent the disease from spreading. Federal help in the form of management funding, research grants, and scientific expertise is urgently needed. Federal and state cooperation will protect animal welfare, safeguard our valued livestock industry, help guarantee America's food safety, and protect the public health.

I look forward to working with my colleague from Colorado (Mr. ALLARD), to seek passage of this measure. This is a good bill and it deserves the Senate's support.

By Ms. SNOWE (for herself, Mr. ROCKFELLER, Mr. WARNER, Mr. HOLLINGS, Mr. KERRY, Ms. COLLINS, Mr. CARPER, Mr. ALLEN, Ms. LANDRIEU, Mrs. LINCOLN, Mr. FITZGERALD, Mr. DORGAN, Mr. CORZINE, Mr. CAMPBELL, Mr. SCHUMER, Mr. CHAFEE, Mr. SMITH, Mr. HARKIN, Ms. MIKULSKI, Ms. CANTWELL, Mr. NELSON of Nebraska, Mr. CRAIG, Mrs. FEINSTEIN, and Mr. LAUTENBERG):

S. 1037. A bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of all oral anticancer drugs; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce, the Access to Cancer Therapies Act, which will extend Medicare coverage for all oral anticancer drugs. This legislation will help ensure that Medicare beneficiaries with cancer have access to the most advanced and effective drug therapies. I am pleased to be joined today by 19 of my colleagues in introducing this legislation. The strong bipartisan support the bill has received, even before introduction, indicates its importance to members of the Senate.

As we know, presently Medicare does not include an outpatient prescription drug benefit. While this is a tremendous hardship for all beneficiaries, it is especially difficult for seniors who have cancer, which prevents them from receiving the most appropriate drug treatments as recommended by their physicians.

Enacting a comprehensive Medicare drug benefit is certainly one of my top priorities. However, even if we are successful and enact a bill into law this year, the comprehensive benefit is not expected to be available until 2006 at the earliest. This bill, on the other hand, would allow Medicare to begin

coverage of oral anticancer drugs within 90 days of enactment. These patients are facing life and death choices, I believe it is our responsibility to provide access to the most effective and appropriate drug therapies.

Congress recognizes the importance of expanding coverage to vital cancer treatments and in 1993 created a unique Medicare drug benefit for oral anticancer drugs. Unfortunately, coverage under this law only is provided if the drug is equivalent to drugs provided "incident" to a physician visit; for example, drugs that must be injected. At present, upwards of 95 percent of cancer drug therapy is covered by Medicare either in a physician office or as an oral form, which qualifies under the 1993 legislation. However, in the very near future as much as 25 percent of cancer drug therapies will be oral drugs not covered. By enacting this legislation into law, we can ensure these new outpatient cancer treatment therapies will be available to Medicare beneficiaries.

This is a developing trend. Today, there are about 40 oral anti-cancer drugs, but less than 10 are reimbursed by Medicare. In fact, one of the most common and effective drugs used in the treatment of breast cancer, tamoxifen, is among those drugs that currently are not reimbursed by Medicare.

As cancer therapy becomes more reliant on oral drugs, Medicare coverage policy must be updated to cover the new therapies. Otherwise the intent of the very limited 1993 policy will become meaningless and Medicare beneficiaries will increasingly lose access to the best cancer therapies.

Let me provide some very encouraging examples of oral anti-cancer drugs that illustrates the urgency of both this policy change and of enacting Medicare prescription drug legislation. Over the past two years, the FDA has approved a number of remarkable oral anticancer drugs that are producing outstanding results. Two such examples include Gleevec, which was approved in 2001 and IRESSA, which was approved on May 5.

Gleevec is used to treat one type of leukemia and may also be effective against a rare but lethal stomach cancer. It is the first, let me repeat, first, cancer drug to specifically address a molecular target, which not only is in the cancer, but actually is the cause of the cancer, according to the National Cancer Institute. More precisely, Gleevec eliminates a specific enzyme needed for the cancer to thrive. By contrast, most current cancer therapies act like a shotgun, killing both cancer and normal cells.

IRESSA, another revolutionary oral anticancer drug that the FDA recently approved, treats advanced non-small-cell lung cancer, NSCLC. Considering lung cancer is the leading cause of cancer deaths in the United States, estimated to account for approximately 157,000 deaths in 2003, and NSCLC is the

most common form of lung cancer, accounting for 80 percent of all lung cancer cases, it is imperative that Medicare beneficiaries have access to this new drug. For many who do not respond to chemotherapy treatments, IRESSA is the last line of defense.

However, both of these cancer treatments are expensive. For instance, while Gleevec is a revolutionary and highly effective treatment, it is not a cure. It simply arrests the cancer and returns most lab tests to normal, requiring many patients to take the drug for life. Considering the extraordinary costs of these treatments—a month's supply of Gleevec costs upwards of \$2,400 and IRESSA, the last treatment option for many NSCLC patients, costs approximately \$1,900 per month of treatment, with the average treatment lasting seven months—Medicare coverage is a necessity.

It is imperative that Medicare provide reliable access to these advanced medications to help beneficiaries with cancer. Biomedical research is providing new, more targeted, and less toxic methods of treatment through new oral anti-cancer drugs that patients can safely take in the comfort of their own homes, which will help improve outcomes and enhance patient quality of life.

We must act now to ensure all oral anti-cancer drugs are available to our seniors. The Access to Cancer Therapies Act will build on current Medicare policy by ensuring coverage of all anti-cancer drugs, whether oral or injectable, are available to Medicare beneficiaries. The Act will provide beneficiaries with access to innovative new therapies that are less toxic and more convenient, more clinically effective and more cost-effective than many currently covered treatment options. I urge my colleagues to support this bill.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce a small bill, but one with important consequences. My measure, the "Access to Cancer Therapies Act," would provide coverage of all oral anti-cancer drugs under the Medicare program. I am pleased to join Senator SNOWE in introducing this measure.

As my colleagues know, there is no Medicare outpatient prescription drug benefit today. If there was, we would not need this legislation. There should be and there must be a meaningful and fair Medicare prescription drug benefit this year. Seniors are reeling from the burden of their prescription drug expenses, and they can't defer their illnesses or their costs.

This legislation also reminds us of how crucial prescription drug coverage will be in the future. In 1993, Congress created a unique Medicare drug benefit for oral anti-cancer drugs—but only if the drug is equivalent to drugs provided "incident" to a physician visit; for example, drugs that must be injected. At present, upwards of 90 percent of cancer drug therapy is covered by Medicare either in a physician office

or in a reimbursed oral form. But by 2010 as much as 25 percent of cancer drug therapy will be in the form of oral drugs that are not currently covered.

As cancer therapy moves more toward reliance on oral drugs, Medicare coverage policy must be updated to cover the new therapies, or else even the intent of this very limited policy will be meaningless and Medicare beneficiaries will increasingly lose access to the best cancer therapies. And without this legislative change, beneficiaries will increasingly bear the burden of buying these drugs from their own pockets, which most seniors can ill-afford.

While biomedical research is providing new, more targeted, and less toxic methods of treatment through new oral anti-cancer drugs that patients can safely take in the comfort of their own homes, Medicare policy is currently unable to provide reliable access to these medications for beneficiaries with cancer.

This legislation is important not only to seniors surviving cancer, but to all Americans. A recent poll conducted for the National Coalition of Cancer Survivorship found that 9 out of 10 Americans believe that Medicare should pay for all medically approved cancer therapies.

Even if we do not succeed in enacting a comprehensive Medicare drug benefit this year, it is time to do what Americans want for cancer survivors by passing the Access to Cancer Therapies Act in the 108th Congress. This legislation gives people with cancer immediate access to life-saving drugs. This is a stop-gap provision that would be phased out when a comprehensive Medicare drug benefit is put into place that would cover oral anti-cancer drugs consistently with all other drugs.

At the very least, we must ensure all oral anti-cancer drugs are available to our seniors. The Access to Cancer Therapies Act will build on current Medicare policy by ensuring coverage of all anti-cancer drugs, whether oral or injectable, are available to Medicare beneficiaries. The act will provide beneficiaries with access to innovative new therapies that are less toxic and more convenient, more clinically effective and more cost-effective than many currently covered treatment options. In the last Congress, 57 Senators co-sponsored this bill. This is an opportunity to improve our Medicare program immediately. I urge my colleagues to support this bill.

By Mr. THOMAS (for himself, Mr. ENZI, Mr. CRAIG, Mr. STEVENS, and Mr. BURNS):

S. 1038. A bill to limit the acquisition by the United States of land located in a State in which 25 percent or more of the land in that State is owned by the United States; to the Committee on Energy and Natural Resources.

Mr. THOMAS. Mr. President, I rise to introduce the "No-Net-Loss of Private Lands Act." This legislation is a com-

mon sense proposal which will limit additional Federal land acquisition in the public land States.

Throughout our country, the Federal Government continues to acquire greater amounts of land. It is time to stop the growth of the Federal Government and begin to protect private property.

This is especially true for those of us living in the West. Roughly 50 percent of the land in my home State of Wyoming is owned by the Federal Government. Many other western States have an even higher percentage of Federal ownership, including Nevada and Alaska that have over 80 percent of their surface land owned by the Federal Government.

Unfortunately, the Federal Government has not always been a good neighbor to the people of the West. The Federal land management agencies continue to acquire vast amounts of land and restrict access to these areas for multiple use purposes. This creates great hardship for local communities, destroying jobs and depressing the economy in many areas around the West.

The time has come to curb the Federal Government's insatiable appetite for additional land in the United States. The "No-Net-Loss of Private Lands Act" is a reasonable approach to stopping the ever-increasing growth of Federal land ownership. This measure requires the Federal Government to release an equal value of land when it acquires property in States which are at least 25 percent federally-owned. Property would be released at the time of the new acquisition, and land disposal would not necessarily have to come from the same agency making the acquisition. In addition, the legislation includes a provision waving the disposal requirement in time of war or national emergency.

During my time in Congress, I have worked extensively to protect unique public lands such as national parks and other special areas. This legislation would do nothing to limit our ability to acquire more of these pristine and special areas in the future. Unfortunately, the Federal Government's quest for more land has included too many areas that do not contribute to our natural resource heritage. Rather, acquisitions often simply lock-up areas that should remain private and productive.

It is time for Congress to protect the rights of private property owners and instill some restraint in Federal land acquisitions. The "No-Net-Loss of Private Lands Act" is a reasonable proposal that will provide this much needed discipline.

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. 1038

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "No Net Loss of Private Land Act".

**SEC. 2. LIMITATION ON ACQUISITION OF LAND.**

(a) IN GENERAL.—Notwithstanding any other law, the United States may acquire an interest in 100 or more acres of land within a State described in subsection (c) only if, before any such acquisition, the United States disposes of the surface estate to land in that State in accordance with subsection (b).

(b) DISPOSITION OF SURFACE ESTATE.—The disposition of the surface estate in land by the United States qualifies for the purposes of this section if—

(1) the value of the surface estate of the land disposed of by the United States is approximately equal to the value of the interest in land subject to this section that is to be acquired by the United States, as determined by the head of the department, agency, or independent establishment concerned; and

(2) the head of the department, agency, or independent establishment concerned certifies that the United States has disposed of land for the purpose of this section.

(c) AFFECTED STATES.—A State is described in this section if—

(1) it is 1 of the States of the United States; and

(2) 25 percent or more of the land within that State is owned by the United States.

(d) ACQUISITION.—For the purpose of this section, the term "acquire" includes acquisition by donation, purchase with donated or appropriated funds, exchange, devise, and condemnation.

(e) APPLICABILITY.—This section does not apply to—

(1) any land held in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation;

(2) real property acquired pursuant to a foreclosure under title 18, United States Code;

(3) real property acquired by any department, agency, or independent establishment in its capacity as a receiver, conservator, or liquidating agent which is held by that department, agency, or independent establishment in its capacity as a receiver, conservator, or liquidating agent pending disposal;

(4) real property that is subject to seizure, levy, or lien under the Internal Revenue Code of 1986; or

(5) real property that is securing a debt owed to the United States.

(e) WAIVER.—The head of a department, agency, or instrumentality of the United States may waive the requirements of this section with respect to the acquisition of land by that department, agency, or instrumentality during any period in which there is in effect a declaration of war or a national emergency declared by the President.

**SUBMITTED RESOLUTIONS**

**SENATE RESOLUTION 138—TO AMEND RULE XXII OF THE STANDING RULES OF THE SENATE RELATING TO THE CONSIDERATION OF NOMINATIONS REQUIRING THE ADVICE AND CONSENT OF THE SENATE**

Mr. FRIST (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. STEVENS, Mr.

SANTORUM, Mr. KYL, Mrs. HUTCHISON, Mr. ALLEN, Mr. LOTT, Mr. HATCH, Mr. CORNYN, and Mr. CHAMBLISS) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 138

*Resolved*, That rule XXII of the Standing Rules of the Senate is amended—

(1) in paragraph (2), by striking "Notwithstanding" and inserting "Except as provided by paragraph 3 and notwithstanding"; and

(2) by adding at the end the following:

"3. (a) The provisions of this paragraph shall apply to the considerations of nominations requiring the advice and consent of the Senate.

"(b)(1) Notwithstanding the provisions of rule II or rule IV or any other rule of the Senate and after a nomination requiring the advice and consent of the Senate has been pending before the Senate for at least 12 hours, a motion signed by 16 Senators to bring to a close the debate on that nomination may be presented to the Senate and the Presiding Officer, or clerk at the direction of the Presiding Officer, shall at once state the motion to the Senate, and 1 hour after the Senate meets on the following calendar day but 1, he shall lay the motion before the Senate and direct that the clerk call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yeas-and-nays vote the question: 'Is it the sense of the Senate that the debate shall be brought to a close?'

"(2) If the question in clause (1) is agreed to by three-fifths of the Senators duly chosen and sworn then the nomination pending before the Senate shall be the unfinished business to the exclusion of all other business until disposed of.

"(3) After cloture is invoked, no Senator shall be entitled to speak in all more than 1 hour on the nomination pending before the Senate and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. No dilatory motion shall be in order. Points of order and appeals from the decision of the Presiding Officer shall be decided without debate.

"(4) After no more than 30 hours of consideration of the nomination on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins. The 30 hours may be increased by the adoption of a motion, decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn, and any such time thus agreed upon shall be equally divided between and controlled by the Majority and Minority Leaders or their designees. However, only one motion to extend time, specified above, may be made in any 1 calendar day.

"(5) Notwithstanding other provisions of this rule, a Senator may yield all or part of his 1 hour to the majority or minority floor managers of the nomination or to the Majority or Minority Leader, but each Senator specified shall not have more than 2 hours so yielded to him and may in turn yield such time to other Senators.

"(6) Notwithstanding any other provision of this rule, any Senator who has not used or yielded at least 10 minutes, is, if he seeks recognition, guaranteed up to 10 minutes, inclusive, to speak only.

"(c)(1) If, upon a vote taken on a motion presented pursuant to subparagraph (b), the

Senate fails to invoke cloture with respect to a nomination pending before the Senate, subsequent motions to bring debate to a close may be made with respect to the same nomination. It shall not be in order to file subsequent cloture motions on any nomination, except by unanimous consent, until the previous motion has been disposed of.

"(2) Such subsequent motions shall be made in the manner provided by, and subject to the provisions of, subparagraph (b), except that the affirmative vote required to bring to a close debate upon that nomination shall be reduced by 3 votes on the second such motion, and by 3 additional votes on each succeeding motion, until the affirmative vote is reduced to a number equal to or less than an affirmative vote of a majority of the Senators duly chosen and sworn. The required vote shall then be a simple majority."

Mr. HATCH. Mr. President, I rise today to offer my support for the introduction of this resolution which offers a more than reasonable proposal to fix a confirmation process that Members on both sides of the aisle agree is broken.

Simultaneous filibusters of two circuit court nominees who would clearly be confirmed in up-or-down votes are unprecedented. From what I understand, the minority has plans for even more filibusters of judicial nominees. The resulting politicization of the confirmation process threatens the untarnished respect in which we hold our third branch of Government—the one branch of Government intended to be above political influence.

There is also a significant constitutional consideration at stake here. In its enumeration of Presidential powers, the Constitution specifies that the confirmation process begins and ends with the President. The Senate has the intermediary role of providing advice and consent. Here is the precise language of article II, section 2:

The President . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law[.]

There is no question that the Constitution squarely places the appointment power in the hands of the President. As Alexander Hamilton explained in *The Federalist* No. 66:

It will be the Office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice he may have made.

It is significant that the Constitution outlines the Senate's role in the appointments process in the enumeration of Presidential powers in article II, rather than in the enumeration of congressional powers in article I. This choice suggests that the Senate was intended to play a more limited role in the confirmation of Federal judges.

Hamilton's discussion of the appointments clause in *The Federalist* No. 76



supports this reading. Hamilton believed that the President, acting alone, would be the better choice for making nominations, as he would be less vulnerable to personal considerations and political negotiations than the Senate and more inclined, as the sole decision maker, to select nominees who would reflect well on the presidency. The Senate's role, by comparison, would be to act as a powerful check on "unfit" nominees by the President. As he put it, "[Senate confirmation] would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity." This is a far cry from efforts we have seen over the past couple of years to inject ideology into the nominations process, and to force nominees to disclose their personal opinions on hot-button and divisive policy issues like abortion, gun control, and affirmation action.

Historically, deliberation by the Senate could be quite short, especially when compared to today's practice. Take, for example the 1862 nomination and confirmation of Samuel F. Miller to the U.S. Supreme Court. He was nominated, confirmed, and commissioned all on the same day! The Senate formally deliberated on his nomination for only 30 minutes before confirming him. His experience was not the exception. Confirmations on the same day, or within a few days, of the nomination were the norm well into the 20th century.

Contrast the nominations of Miguel Estrada and Priscilla Owen. They were appointed 2 years ago and have yet to be afforded an up-or-down vote by the Senate. Mr. Estrada has now endured six cloture votes more than 3 months after debate on his nomination began. Justice Owen's nomination has been subjected to two cloture votes. Clearly, this is a far cry from the role for the Senate that the Framers contemplated. What was enumerated in the Constitution as advice and consent has in practice evolved to negotiation and cooperation in the best cases, and delay and obstruction in the worst cases—like that of Mr. Estrada and Justice Owen.

The Estrada and Owen nominations illustrate what is wrong with our current system of confirming nominees. Despite a bipartisan majority of Senators who stand ready to vote on these nominations, a vocal minority of Senators is precluding the Senate from exercising its advice and consent duty. This is tyranny of the minority, and it is unfair.

It is unfair to the nominee, who must put life on hold while hanging in endless limbo. It is unfair to the judiciary, our co-equal branch of Government, which needs its vacancies filled. It is unfair to our President, who has a justified expectation that the Senate will give his nominees an up-or-down vote.

And it is unfair to the majority of Senators who are prepared to vote on this nomination.

Many of my colleagues, both Republicans and Democrats, agree that the confirmation process is broken. Senator FEINSTEIN stated in a recent letter to the White House that the judicial confirmation process is "going in the wrong direction" and is potentially "spiral[ing] out of control." Senator SCHUMER has also indicated that his goal is to repair the "broken" judicial confirmation process and the "vicious cycle" of "delayed" Senate nominees.

The resolution submitted today sets forth a proposal that strikes a balanced solution by allowing for ample, yet not endless, debate on nominations. It provides that cloture may be filed only after a nomination has been pending before the Senate for a minimum of 12 hours. Sixty votes are required to invoke cloture on the first motion. After that, the number of required votes on successive cloture motions would decrease to 57, then to 54, then finally to a simple majority of Senators present and voting. A successive cloture motion cannot be filed until disposition of the prior cloture motion, thereby ensuring that a nomination cannot be confirmed by a simple majority vote until a minimum of 13 session days have elapsed.

This proposal has its roots in S. Res. 85, which was submitted by Senator MILLER on March 13 of this year. In addition, it is similar to a 1995 proposal of Senator HARKIN and Senator LIEBERMAN, which also provided for graduated vote requirements to invoke cloture. In support of their proposal, Senator HARKIN stated, "I may not agree with everything that Republicans are proposing, but they are in the majority and they ought to have the right to have us vote on the merits of what they propose." With regard to judicial nominations, I could not agree more.

Senator HARKIN also cited the research of a bipartisan group named "Action Not Gridlock," which commissioned a poll in the summer of 1994 showing that "80-percent of independents, 74-percent of Democrats, and 79-percent of Republicans said that when enough time was consumed in debate, that after debate a majority ought to be able to get the bill to the floor. That a majority ought to be able, at some point, to end the debate." I would be surprised if a similar poll today would yield substantially different results. I think that the American people understand the fundamental injustice of a minority's ability to block an up-or-down vote on nominations.

In support of their 1995 proposal, Senator LIEBERMAN stated, "Some say there is a danger of a tyranny of the majority. I say that there is a danger inherent in the current procedure of a tyranny of the minority over the majority, inconsistent with the intention of the Framers of the Constitution." Today, the "tyranny of the minority" to which Senator LIEBERMAN referred

over 8 years ago is in effect and wielding the filibuster in a most unjust manner against President Bush's exceptional nominees who have bipartisan support. I support today's resolution because it will dilute the tyrannical power of the filibusters against these nominees.

I have alluded to my frustrations with the current filibusters of President Bush's nominations. But the bottom line is this: many of us agree that we must try to repair the broken confirmation process. A bipartisan majority of Senators stands ready to vote on the two nominees who are currently being filibustered. This resolution is a reasonable accommodation that preserves the opportunity for extended debate, yet allows Senators to, eventually, do their duty and vote. I hope that my colleagues will support this resolution.

#### SENATE RESOLUTION 139—EXPRESSING THE THANKS OF THE SENATE TO THE PEOPLE OF QATAR FOR THEIR COOPERATION IN SUPPORTING UNITED STATES ARMED FORCES AND THE ARMED FORCES OF COALITION COUNTRIES DURING THE RECENT MILITARY ACTION IN IRAQ, AND WELCOMING HIS HIGHNESS SHEIKH HAMAD BIN KHALIFAH AL-THANI, EMIR OF THE STATE OF QATAR, TO THE UNITED STATES

Mr. SUNUNU submitted the following resolution; which was considered and agreed to:

##### S. RES. 139

Whereas Qatar is a longstanding ally of the United States in the Middle East region;

Whereas the people of Qatar graciously hosted United States Armed Forces and the armed forces of coalition countries during the recent military action in Iraq;

Whereas the United States and Qatar will continue to build upon this military cooperation;

Whereas Qatar continues to grow in its economic and strategic defense cooperation with the United States and its allies;

Whereas the people of Qatar voted on April 29, 2003, on a referendum approving the establishment of their first Parliamentary Constitution;

Whereas years of democratic reform, including the establishment of a parliament based on universal suffrage, development of greater freedom of the press, and evolution of a free market have greatly strengthened the bonds between our two nations;

Whereas an unwavering commitment to the development of the education of its citizens reinforces Qatar's path toward democracy; and

Whereas Doha, the capital of Qatar, hosted in November of 2001 the Fourth World Trade Organization Ministerial Conference, where a number of agreements expanding our defense, commercial, and cultural ties were signed: Now, therefore, be it

*Resolved*, That the Senate—

(1) expresses thanks to the people of Qatar for their support of United States Armed Forces and the armed forces of coalition countries during the recent military action in Iraq;

(2) warmly welcomes His Highness Sheikh Hamad bin Khalifah Al-Thani, Emir of the State of Qatar, to the United States; and

(3) looks forward to broadening and deepening the friendship and cooperation between the United States and Qatar.

# SENATE RESOLUTION 140—DESIGNATING THE WEEK OF AUGUST 10, 2003, AS “NATIONAL HEALTH CENTER WEEK”

Mr. CAMPBELL (for himself, Mr. DURBIN, Mr. BOND, Mr. HOLLINGS, Mr. KERRY, Mrs. MURRAY, Mr. BIDEN, Mrs. LINCOLN, Mr. JOHNSON, Mr. INHOFE, Mr. TALENT, Mr. BUNNING, Mr. ALLEN, Mr. ENZI, Mr. SMITH, Ms. LANDRIEU, Mr. DOMENICI, and Mr. CRAPO) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 140

Whereas community, migrant, public housing, and homeless health centers are non-profit, community owned and operated health providers and are vital to the Nation's communities;

Whereas there are more than 1,000 such health centers serving 13,000,000 people at more than 4,000 health delivery sites, in urban and rural communities in all 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands;

Whereas such health centers have provided cost-effective, high-quality health care to the Nation's poor and medically underserved (including the working poor, the uninsured, and many high-risk and vulnerable populations), acting as a vital safety net in the Nation's health delivery system by meeting escalating health needs and reducing health disparities;

Whereas these health centers provide care to 1 of every 5 low-income babies born in America, 1 of every 8 uninsured individuals, 1 of every 9 Medicaid beneficiaries, 1 of every 9 people of color, and 1 of every 10 rural Americans, and these Americans would otherwise lack access to health care;

Whereas these health centers and other innovative programs in primary and preventive care reach out to almost 750,000 homeless persons and nearly 850,000 farmworkers;

Whereas these health centers make health care responsive and cost-effective by integrating the delivery of primary care with aggressive outreach, patient education, translation, and enabling support services;

Whereas these health centers have increased the use of preventive health services such as immunizations, Pap smears, mammograms, and glaucoma screenings;

Whereas in communities served by these health centers, infant mortality rates have been reduced between 10 and 40 percent;

Whereas these health centers are built by community initiative;

Whereas Federal grants provide seed money that empowers communities to find partners and resources, and to recruit doctors and needed health professionals;

Whereas Federal grants on average contribute 25 percent of a health center's budget, with the remainder provided by State and local governments, Medicare, Medicaid, private contributions, private insurance, and patient fees;

Whereas these health centers are community oriented and patient focused;

Whereas these health centers tailor their services to fit the special needs and priorities of communities, and work together with schools, businesses, churches, community organizations, foundations, and State and local governments;

Whereas these health centers contribute to the health and well-being of their communities by keeping children healthy and in school, and helping adults remain productive and on the job;

Whereas these health centers engage citizen participation and provide jobs for 60,000 community residents; and

Whereas the designation of the week of August 10, 2003, as “National Health Center Week” would raise awareness of the health services provided by health centers: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates the week of August 10, 2003, as “National Health Center Week”; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

Mr. CAMPBELL. Mr. President, today I am introducing a resolution declaring the week of August 10, 2003, as a National Health Center Week dedicated to raising awareness of health services provided by community, migrant, public housing, and homeless health centers. I am pleased to be joined in this effort by 17 of my colleagues.

The resolution expresses the sense of Congress that these health centers contribute to the health and well-being of their communities by keeping children healthy and in school and helping adults remain productive and on the job.

The resolution also recognizes health centers for providing cost-effective, high-quality health care to the Nation's poor and medically underserved and by acting as a vital safety net in the Nation's health delivery system. These non-profit, community based centers are performing a vital service to our country's more vulnerable populations and they are to be commended for their efforts.

Health centers throughout the country have a 30-year history of success. Studies continue to show that the centers effectively and efficiently improve our Nation's health.

Over the past 2 years, the number of patients seen by community health centers in my state of Colorado has increased 20.8 percent and the number of visits provided has increased by 26 percent over the same period. Of the patients seen in Colorado in 2002, 48 percent had no health insurance, 26 percent were Medicaid recipients and 94 percent had family incomes less than \$36,200 a year for a family of four. Community health centers are truly America's healthcare safety net.

I believe it is important that we support and honor this nation-wide network of community based providers. That is why I urge my colleagues to act quickly on this legislation. Let's show our community health center network that we value its significant contribution to the health of our citizens by declaring the week of August 10, 2003, a National Health Center Week.

## AMENDMENTS SUBMITTED & PROPOSED

SA 539. Mr. FRIST (for himself, Mr. DASCHLE, Mr. INHOFE, Mr. DORGAN, Mr. LUGAR, Mr. JOHNSON, Mr. GRASSLEY, Mr. HARKIN, Mr. HAGEL, Mr. DURBIN, Mr. VOINOVICH, Mr. NELSON of Nebraska, Mr. TALENT, Mr. DAYTON, Mr. COLEMAN, Mr. EDWARDS, Mr. CRAPO, Mr. CONRAD, Mr. DEWINE, and Mr. BAUCUS) proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes.

## TEXT OF AMENDMENTS

SA 539. Mr. FRIST (for himself, Mr. DASCHLE, Mr. INHOFE, Mr. DORGAN, Mr. LUGAR, Mr. JOHNSON, Mr. GRASSLEY, Mr. HARKIN, Mr. HAGEL, Mr. DURBIN, Mr. VOINOVICH, Mr. NELSON of Nebraska, Mr. TALENT, Mr. DAYTON, Mr. COLEMAN, Mr. EDWARDS, Mr. CRAPO, Mr. CONRAD, Mr. DEWINE, and Mr. BAUCUS) proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

At the end of title V, add the following:

### Subtitle —General Provisions Relating to Renewable Fuels

#### SEC. 5.1. RENEWABLE CONTENT OF GASOLINE.

(a) IN GENERAL.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended—

(1) by redesignating subsection (o) as subsection (r); and

(2) by inserting after subsection (n) the following:

“(o) RENEWABLE FUEL PROGRAM.—

“(1) DEFINITIONS.—In this section:

“(A) CELLULOSIC BIOMASS ETHANOL.—The term ‘cellulosic biomass ethanol’ means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

“(i) dedicated energy crops and trees;

“(ii) wood and wood residues;

“(iii) plants;

“(iv) grasses;

“(v) agricultural residues;

“(vi) fibers;

“(vii) animal wastes and other waste materials; and

“(viii) municipal solid waste.

“(B) RENEWABLE FUEL.—

“(i) IN GENERAL.—The term ‘renewable fuel’ means motor vehicle fuel that—

“(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

“(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

“(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

“(ii) INCLUSION.—The term ‘renewable fuel’ includes—

“(I) cellulosic biomass ethanol; and

“(II) biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f))).

“(C) SMALL REFINERY.—The term ‘small refinery’ means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

“(2) RENEWABLE FUEL PROGRAM.—

“(A) REGULATIONS.—

“(i) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Administrator shall promulgate

regulations to ensure that gasoline sold or introduced into commerce in the United States (except in Alaska and Hawaii), on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B).

“(ii) PROVISIONS OF REGULATIONS.—Regardless of the date of promulgation, the regulations promulgated under clause (i)—

“(I) shall contain compliance provisions applicable to refiners, blenders, distributors, and importers, as appropriate, to ensure that the requirements of this paragraph are met; but

“(II) shall not—

“(aa) restrict cases in geographic areas in which renewable fuel may be used; or

“(bb) impose any per-gallon obligation for the use of renewable fuel.

“(iii) REQUIREMENT IN CASE OF FAILURE TO PROMULGATE REGULATIONS.—If the Administrator does not promulgate regulations under clause (i), the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States, on a volume basis, shall be 1.8 percent for calendar year 2005.

“(B) APPLICABLE VOLUME.—

“(i) CALENDAR YEARS 2005 THROUGH 2012.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005 through 2012 shall be determined in accordance with the following table:

| Calendar year: | Applicable volume of renewable fuel (in billions of gallons): |
|----------------|---|
| 2005 .....     | 2.6   |
| 2006 .....     | 2.9   |
| 2007 .....     | 3.2   |
| 2008 .....     | 3.5   |
| 2009 .....     | 3.9   |
| 2010 .....     | 4.3   |
| 2011 .....     | 4.7   |
| 2012 .....     | 5.0   |

“(ii) CALENDAR YEAR 2013 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be equal to the product obtained by multiplying—

“(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce in the calendar year; and

“(II) the ratio that—

“(aa) 5,000,000,000 gallons of renewable fuel; bears to

“(bb) the number of gallons of gasoline sold or introduced into commerce in calendar year 2012.

“(3) APPLICABLE PERCENTAGES.—

“(A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE SALES.—Not later than October 31 of each of calendar years 2004 through 2011, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate of the volumes of gasoline sold or introduced into commerce in the United States during the following calendar year.

“(B) DETERMINATION OF APPLICABLE PERCENTAGES.—

“(i) IN GENERAL.—Not later than November 30 of each of calendar years 2005 through 2012, based on the estimate provided under subparagraph (A), the Administrator of the Environmental Protection Agency shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

“(ii) REQUIRED ELEMENTS.—The renewable fuel obligation determined for a calendar year under clause (i) shall—

“(I) be applicable to refiners, blenders, and importers, as appropriate;

“(II) be expressed in terms of a volume percentage of gasoline sold or introduced into commerce; and

“(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

“(C) ADJUSTMENTS.—In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

“(i) to prevent the imposition of redundant obligations on any person specified in subparagraph (B)(ii)(I); and

“(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (9).

“(4) CELLULOSIC BIOMASS ETHANOL.—For the purpose of paragraph (2), 1 gallon of cellulosic biomass ethanol shall be considered to be the equivalent of 1.5 gallons of renewable fuel.

“(5) CREDIT PROGRAM.—

“(A) IN GENERAL.—The regulations promulgated under paragraph (2)(A) shall provide—

“(i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2);

“(ii) for the generation of an appropriate amount of credits for biodiesel; and

“(iii) for the generation of credits by small refineries in accordance with paragraph (9)(C).

“(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

“(C) DURATION OF CREDITS.—A credit generated under this paragraph shall be valid to show compliance—

“(i) subject to clause (ii), for the calendar year in which the credit was generated or the following calendar year; or

“(ii) if the Administrator promulgates regulations under paragraph (6), for the calendar year in which the credit was generated or any of the following 2 calendar years.

“(D) INABILITY TO GENERATE OR PURCHASE SUFFICIENT CREDITS.—The regulations promulgated under paragraph (2)(A) shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements of paragraph (2) to carry forward a renewable fuel deficit on condition that the person, in the calendar year following the year in which the renewable fuel deficit is created—

“(i) achieves compliance with the renewable fuel requirement under paragraph (2); and

“(ii) generates or purchases additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

“(6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

“(A) STUDY.—For each of calendar years 2005 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuel blending to determine whether there are excessive seasonal variations in the use of renewable fuel.

“(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator of the Environmental Protection Agency shall promulgate regulations to ensure that 35 percent or more of the quantity of renewable fuel necessary to meet the re-

quirements of paragraph (2) is used during each of the 2 periods specified in subparagraph (D) of each subsequent calendar year.

“(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

“(i) less than 35 percent of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) has been used during 1 of the 2 periods specified in subparagraph (D) of the calendar year; and

“(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years.

“(D) PERIODS.—The 2 periods referred to in this paragraph are—

“(i) April through September; and

“(ii) January through March and October through December.

“(E) EXCLUSION.—Renewable fuel blended or consumed in calendar year 2005 in a State that has received a waiver under section 209(b) shall not be included in the study under subparagraph (A).

“(7) WAIVERS.—

“(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part on petition by 1 or more States by reducing the national quantity of renewable fuel required under paragraph (2)—

“(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

“(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply or distribution capacity to meet the requirement.

“(B) PETITIONS FOR WAIVERS.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirements of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

“(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

“(8) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Secretary of Energy shall conduct for the Administrator a study assessing whether the renewable fuel requirement under paragraph (2) will likely result in significant adverse impacts on consumers in 2005, on a national, regional, or State basis.

“(B) REQUIRED EVALUATIONS.—The study shall evaluate renewable fuel—

“(i) supplies and prices;

“(ii) blendstock supplies; and

“(iii) supply and distribution system capabilities.

“(C) RECOMMENDATIONS BY THE SECRETARY.—Based on the results of the study, the Secretary of Energy shall make specific recommendations to the Administrator concerning waiver of the requirements of paragraph (2), in whole or in part, to prevent any adverse impacts described in subparagraph (A).

“(D) WAIVER.—

“(i) IN GENERAL.—Not later than 270 days after the date of enactment of this paragraph, the Administrator shall, if and to the extent recommended by the Secretary of Energy under subparagraph (C), waive, in whole

or in part, the renewable fuel requirement under paragraph (2) by reducing the national quantity of renewable fuel required under paragraph (2) in calendar 2005.

“(i) NO EFFECT ON WAIVER AUTHORITY.—Clause (i) does not limit the authority of the Administrator to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7).

“(9) SMALL REFINERIES.—

“(A) TEMPORARY EXEMPTION.—

“(i) IN GENERAL.—The requirements of paragraph (2) shall not apply to small refineries until calendar year 2011.

“(ii) EXTENSION OF EXEMPTION.—

“(I) STUDY BY SECRETARY OF ENERGY.—Not later than December 31, 2007, the Secretary of Energy shall conduct for the Administrator a study to determine whether compliance with the requirements of paragraph (2) would impose a disproportionate economic hardship on small refineries.

“(II) EXTENSION OF EXEMPTION.—In the case of a small refinery that the Secretary of Energy determines under subclause (I) would be subject to a disproportionate economic hardship if required to comply with paragraph (2), the Administrator shall extend the exemption under clause (i) for the small refinery for a period of not less than 2 additional years.

“(B) PETITIONS BASED ON DISPROPORTIONATE ECONOMIC HARDSHIP.—

“(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.

“(ii) EVALUATION OF PETITIONS.—In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.

“(iii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

“(C) CREDIT PROGRAM.—If a small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A), the regulations promulgated under paragraph (2)(A) shall provide for the generation of credits by the small refinery under paragraph (5) beginning in the calendar year following the date of notification.

“(D) OPT-IN FOR SMALL REFINERIES.—A small refinery shall be subject to the requirements of paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A).

“(10) ETHANOL MARKET CONCENTRATION ANALYSIS.—

“(A) ANALYSIS.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price-setting and other anticompetitive behavior.

“(ii) SCORING.—For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

“(B) REPORT.—Not later than December 1, 2004, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).

“(p) RENEWABLE FUEL SAFE HARBOR.—

“(1) IN GENERAL.—

“(A) SAFE HARBOR.—Notwithstanding any other provision of Federal or State law, no renewable fuel (as defined in subsection (o)(1)) used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing renewable fuel, shall be deemed to be defective in design or manufacture by reason of the fact that the fuel is, or contains, renewable fuel, if—

“(i) the fuel does not violate a control or prohibition imposed by the Administrator under this section; and

“(ii) the manufacturer of the fuel is in compliance with all requests for information under subsection (b).

“(B) SAFE HARBOR NOT APPLICABLE.—In any case in which subparagraph (A) does not apply to a quantity of fuel, the existence of a design defect or manufacturing defect with respect to the fuel shall be determined under otherwise applicable law.

“(2) EXCEPTION.—This subsection does not apply to ethers.

“(3) APPLICABILITY.—This subsection applies with respect to all claims filed on or after the date of enactment of this subsection.”.

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking “or (n)” each place it appears and inserting “(n), or (o)”; and

(B) in the second sentence, by striking “or (m)” and inserting “(m), or (o)”; and

(2) in the first sentence of paragraph (2), by striking “and (n)” each place it appears and inserting “(n), and (o)”.

(c) EXCLUSION FROM ETHANOL WAIVER.—Section 211(h) of the Clean Air Act (42 U.S.C. 7545(h)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

“(5) EXCLUSION FROM ETHANOL WAIVER.—

“(A) PROMULGATION OF REGULATIONS.—Upon notification, accompanied by supporting documentation, from the Governor of a State that the Reid vapor pressure limitation established by paragraph (4) will increase emissions that contribute to air pollution in any area in the State, the Administrator shall, by regulation, apply, in lieu of the Reid vapor pressure limitation established by paragraph (4), the Reid vapor pressure limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in the area during the high ozone season.

“(B) DEADLINE FOR PROMULGATION.—The Administrator shall promulgate regulations under subparagraph (A) not later than 90 days after the date of receipt of a notification from a Governor under that subparagraph.

“(C) EFFECTIVE DATE.—

“(i) IN GENERAL.—With respect to an area in a State for which the Governor submits a notification under subparagraph (A), the regulations under that subparagraph shall take effect on the later of—

“(I) the first day of the first high ozone season for the area that begins after the date of receipt of the notification; or

“(II) 1 year after the date of receipt of the notification.

“(ii) EXTENSION OF EFFECTIVE DATE BASED ON DETERMINATION OF INSUFFICIENT SUPPLY.—

“(I) IN GENERAL.—If, after receipt of a notification with respect to an area from a Governor of a State under subparagraph (A), the Administrator determines, on the Adminis-

trator's own motion or on petition of any person and after consultation with the Secretary of Energy, that the promulgation of regulations described in subparagraph (A) would result in an insufficient supply of gasoline in the State, the Administrator, by regulation—

“(aa) shall extend the effective date of the regulations under clause (i) with respect to the area for not more than 1 year; and

“(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

“(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.”.

## SEC. 5 2. RENEWABLE FUEL.

(a) IN GENERAL.—The Clean Air Act is amended by inserting after section 211 (42 U.S.C. 7411) the following:

### “SEC. 212. RENEWABLE FUEL.

“(a) DEFINITIONS.—In this section:

“(1) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ has the meaning given the term ‘solid waste’ in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

“(2) RFG STATE.—The term ‘RFG State’ means a State in which is located 1 or more covered areas (as defined in section 211(k)(10)(D)).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Energy.

“(b) SURVEY OF RENEWABLE FUEL MARKET.—

“(1) SURVEY AND REPORT.—Not later than December 1, 2006, and annually thereafter, the Administrator shall—

“(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

“(i) conventional gasoline containing ethanol;

“(ii) reformulated gasoline containing ethanol;

“(iii) conventional gasoline containing renewable fuel; and

“(iv) reformulated gasoline containing renewable fuel; and

“(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

“(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—

“(A) IN GENERAL.—The Administrator may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate.

“(B) RELIANCE ON EXISTING REQUIREMENTS.—To avoid duplicative requirements, in carrying out subparagraph (A), the Administrator shall rely, to the maximum extent practicable, on reporting and recordkeeping requirements in effect on the date of enactment of this section.

“(3) CONFIDENTIALITY.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.

“(c) COMMERCIAL BYPRODUCTS FROM MUNICIPAL SOLID WASTE LOAN GUARANTEE PROGRAM.—

“(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste into fuel ethanol and other commercial byproducts.

“(2) REQUIREMENTS.—The Secretary may provide a loan guarantee under paragraph (1) to an applicant if—

“(A) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance

the construction of a facility described in paragraph (1);

“(B) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

“(C) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

“(4) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

“(A) meet all applicable Federal and State permitting requirements;

“(B) are most likely to be successful; and

“(C) are located in local markets that have the greatest need for the facility because of—

“(i) the limited availability of land for waste disposal; or

“(ii) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

“(5) MATURITY.—A loan guaranteed under paragraph (1) shall have a maturity of not more than 20 years.

“(6) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under paragraph (1) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

“(7) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under paragraph (1) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

“(8) GUARANTEE FEE.—The recipient of a loan guarantee under paragraph (1) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

“(9) FULL FAITH AND CREDIT.—

“(A) IN GENERAL.—The full faith and credit the United States is pledged to the payment of all guarantees made under this subsection.

“(B) CONCLUSIVE EVIDENCE.—Any guarantee made by the Secretary under this subsection shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest.

“(C) VALIDITY.—The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

“(10) REPORTS.—Until each guaranteed loan under this subsection has been repaid in full, the Secretary shall annually submit to Congress a report on the activities of the Secretary under this subsection.

“(11) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.

“(12) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a new loan guarantee under paragraph (1) terminates on the date that is 10 years after the date of enactment of this section.

“(d) AUTHORIZATION OF APPROPRIATIONS FOR RESOURCE CENTER.—There is authorized to be appropriated, for a resource center to further develop bioconversion technology using low-cost biomass for the production of ethanol at the Center for Biomass-Based Energy at the University of Mississippi and the University of Oklahoma, \$4,000,000 for each of fiscal years 2004 through 2006.

“(e) RENEWABLE FUEL PRODUCTION RESEARCH AND DEVELOPMENT GRANTS.—

“(1) IN GENERAL.—The Administrator shall provide grants for the research into, and development and implementation of, renewable fuel production technologies in RFG States with low rates of ethanol production, including low rates of production of cellulosic biomass ethanol.

“(2) ELIGIBILITY.—

“(A) IN GENERAL.—The entities eligible to receive a grant under this subsection are academic institutions in RFG States, and consortia made up of combinations of academic institutions, industry, State government agencies, or local government agencies in RFG States, that have proven experience and capabilities with relevant technologies.

“(B) APPLICATION.—To be eligible to receive a grant under this subsection, an eligible entity shall submit to the Administrator an application in such manner and form, and accompanied by such information, as the Administrator may specify.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$25,000,000 for each of fiscal years 2004 through 2008.

“(f) CELLULOSIC BIOMASS ETHANOL CONVERSION ASSISTANCE.—

“(1) IN GENERAL.—The Secretary may provide grants to merchant producers of cellulosic biomass ethanol in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of cellulosic biomass ethanol.

“(2) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this subsection if the production facility—

“(A) is located in the United States; and

“(B) uses cellulosic biomass feedstocks derived from agricultural residues or municipal solid waste.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection—

“(A) \$100,000,000 for fiscal year 2004;

“(B) \$250,000,000 for fiscal year 2005; and

“(C) \$400,000,000 for fiscal year 2006.”.

(b) CONFORMING AMENDMENT.—The table of contents for the Clean Air Act (42 U.S.C. 7401 prec.) is amended by inserting after the item relating to section 211 the following:

“212. Renewable fuels.”.

### SEC. 5 3. SURVEY OF RENEWABLE FUELS CONSUMPTION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following:

“(m) SURVEY OF RENEWABLE FUELS CONSUMPTION.—

“(1) IN GENERAL.—In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels consumption in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses.

“(2) ELEMENTS OF SURVEY.—In conducting the survey, the Administrator shall collect information retrospectively to 1998, on a national basis and a regional basis, including—

“(A) the quantity of renewable fuels produced;

“(B) the cost of production;

“(C) the cost of blending and marketing;

“(D) the quantity of renewable fuels blended;

“(E) the quantity of renewable fuels imported; and

“(F) market price data.”.

### Subtitle —Federal Reformulated Fuels

#### SEC. 5 1. SHORT TITLE.

This subtitle may be cited as the “Federal Reformulated Fuels Act of 2003”.

#### SEC. 5 2. LEAKING UNDERGROUND STORAGE TANKS.

(a) USE OF LUST FUNDS FOR REMEDIATION OF CONTAMINATION FROM ETHER FUEL ADDITIVES.—Section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)) is amended—

(1) in paragraph (7)(A)—

(A) by striking “paragraphs (1) and (2) of this subsection” and inserting “paragraphs (1), (2), and (12)”;

(B) by inserting “and section 9010” before “if”; and

(2) by adding at the end the following:

“(12) REMEDIATION OF CONTAMINATION FROM ETHER FUEL ADDITIVES.—

“(A) IN GENERAL.—The Administrator and the States may use funds made available under section 9013(1) to carry out corrective actions with respect to a release of methyl tertiary butyl ether or other ether fuel additive that presents a threat to human health, welfare, or the environment.

“(B) APPLICABLE AUTHORITY.—Subparagraph (A) shall be carried out—

“(i) in accordance with paragraph (2), except that a release with respect to which a corrective action is carried out under subparagraph (A) shall not be required to be from an underground storage tank; and

“(ii) in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).”.

(b) RELEASE PREVENTION AND COMPLIANCE.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by striking section 9010 and inserting the following:

#### “SEC. 9010. RELEASE PREVENTION AND COMPLIANCE.

“Funds made available under section 9013(2) from the Leaking Underground Storage Tank Trust Fund may be used for conducting inspections, or for issuing orders or bringing actions under this subtitle—

“(1) by a State (pursuant to section 9003(h)(7)) acting under—

“(A) a program approved under section 9004; or

“(B) State requirements regulating underground storage tanks that are similar or identical to this subtitle, as determined by the Administrator; and

“(2) by the Administrator, acting under this subtitle or a State program approved under section 9004.

#### “SEC. 9011. AUTHORIZATION OF APPROPRIATIONS.

“In addition to amounts made available under section 2007(f), there are authorized to be appropriated from the Leaking Underground Storage Tank Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986—

“(1) to carry out section 9003(h)(12), \$200,000,000 for fiscal year 2003, to remain available until expended; and

“(2) to carry out section 9010—

“(A) \$50,000,000 for fiscal year 2003; and

“(B) \$30,000,000 for each of fiscal years 2004 through 2008.”.

(c) TECHNICAL AMENDMENTS.—(1) Section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by striking the item relating to section 9010 and inserting the following:

“Sec. 9010. Release prevention and compliance.

“Sec. 9011. Authorization of appropriations.”.

(2) Section 9001(3)(A) of the Solid Waste Disposal Act (42 U.S.C. 6991(3)(A)) is amended

by striking "sustances" and inserting "substances".

(3) Section 9003(f)(1) of the Solid Waste Disposal Act (42 U.S.C. 6991b(f)(1)) is amended by striking "subsection (c) and (d) of this section" and inserting "subsections (c) and (d)".

(4) Section 9004(a) of the Solid Waste Disposal Act (42 U.S.C. 6991c(a)) is amended in the second sentence by striking "referred to" and all that follows and inserting "referred to in subparagraph (A) or (B), or both, of section 9001(2)".

(5) Section 9005 of the Solid Waste Disposal Act (42 U.S.C. 6991d) is amended—

(A) in subsection (a), by striking "study taking" and inserting "study, taking";

(B) in subsection (b)(1), by striking "relevant" and inserting "relevant"; and

(C) in subsection (b)(4), by striking "Environmental" and inserting "Environmental".

#### SEC. 5 3. RESTRICTIONS ON THE USE OF MTBE.

(a) FINDINGS.—Congress finds that—

(1) since 1979, methyl tertiary butyl ether (referred to in this section as "MTBE") has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

(2) Public Law 101-549 (commonly known as the "Clean Air Act Amendments of 1990") (42 U.S.C. 7401 et seq.) established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight;

(3) at the time of the adoption of the fuel oxygenate standard, Congress was aware that—

(A) significant use of MTBE could result from the adoption of that standard; and

(B) the use of MTBE would likely be important to the cost-effective implementation of that standard;

(4) Congress is aware that gasoline and its component additives have leaked from storage tanks, with consequences for water quality;

(5) the fuel industry responded to the fuel oxygenate standard established by Public Law 101-549 by making substantial investments in—

(A) MTBE production capacity; and

(B) systems to deliver MTBE-containing gasoline to the marketplace;

(6) when leaked or spilled into the environment, MTBE may cause serious problems of drinking water quality;

(7) in recent years, MTBE has been detected in water sources throughout the United States;

(8) MTBE can be detected by smell and taste at low concentrations;

(9) while small quantities of MTBE can render water supplies unpalatable, the precise human health effects of MTBE consumption at low levels are yet unknown as of the date of enactment of this Act;

(10) in the report entitled "Achieving Clean Air and Clean Water: The Report of the Blue Ribbon Panel on Oxygenates in Gasoline" and dated September 1999, Congress was urged—

(A) to eliminate the fuel oxygenate standard;

(B) to greatly reduce use of MTBE; and

(C) to maintain the environmental performance of reformulated gasoline;

(1) Congress has—

(A) reconsidered the relative value of MTBE in gasoline; and

(B) decided to eliminate use of MTBE as a fuel additive;

(12) the timeline for elimination of use of MTBE as a fuel additive must be established in a manner that achieves an appropriate balance among the goals of—

(A) environmental protection;

(B) adequate energy supply; and

(C) reasonable fuel prices; and

(13) it is appropriate for Congress to provide some limited transition assistance—

(A) to merchant producers of MTBE who produced MTBE in response to a market created by the oxygenate requirement contained in the Clean Air Act (42 U.S.C. 7401 et seq.); and

(B) for the purpose of mitigating any fuel supply problems that may result from elimination of a widely-used fuel additive.

(b) PURPOSES.—The purposes of this section are—

(1) to eliminate use of MTBE as a fuel oxygenate; and

(2) to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.

(c) AUTHORITY FOR WATER QUALITY PROTECTION FROM FUELS.—Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended—

(1) in paragraph (1)(A)—

(A) by inserting "fuel or fuel additive or" after "Administrator any"; and

(B) by striking "air pollution which" and inserting "air pollution, or water pollution, that";

(2) in paragraph (4)(B), by inserting "or water quality protection," after "emission control,"; and

(3) by adding at the end the following:

"(5) RESTRICTIONS ON USE OF MTBE.—

"(A) IN GENERAL.—Subject to subparagraph (B), not later than 4 years after the date of enactment of this paragraph, the use of methyl tertiary butyl ether in motor vehicle fuel in any State other than a State described in subparagraph (C) is prohibited.

"(B) REGULATIONS.—The Administrator shall promulgate regulations to effect the prohibition in subparagraph (A).

"(C) STATES THAT AUTHORIZE USE.—A State described in this subparagraph is a State that submits to the Administrator a notice that the State authorizes use of methyl tertiary butyl ether in motor vehicle fuel sold or used in the State.

"(D) PUBLICATION OF NOTICE.—The Administrator shall publish in the Federal Register each notice submitted by a State under subparagraph (C).

"(E) TRACE QUANTITIES.—In carrying out subparagraph (A), the Administrator may allow trace quantities of methyl tertiary butyl ether, not to exceed 0.5 percent by volume, to be present in motor vehicle fuel in cases that the Administrator determines to be appropriate.

"(6) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

"(A) IN GENERAL.—

"(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of—

"(i) iso-octane or alkylates, unless the Administrator, in consultation with the Secretary of Energy, determines that transition assistance for the production of iso-octane or alkylates is inconsistent with the criteria specified in subparagraph (B); and

"(ii) any other fuel additive that meets the criteria specified in subparagraph (B).

"(B) CRITERIA.—The criteria referred to in subparagraph (A) are that—

"(i) use of the fuel additive is consistent with this subsection;

"(ii) the Administrator has not determined that the fuel additive may reasonably be anticipated to endanger public health or the environment;

"(iii) the fuel additive has been registered and tested, or is being tested, in accordance with the requirements of this section; and

"(iv) the fuel additive will contribute to replacing quantities of motor vehicle fuel rendered unavailable as a result of paragraph (5).

"(C) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this paragraph if the production facility—

"(i) is located in the United States; and

"(ii) produced methyl tertiary butyl ether for consumption in nonattainment areas during the period—

"(I) beginning on the date of enactment of this paragraph; and

"(II) ending on the effective date of the prohibition on the use of methyl tertiary butyl ether under paragraph (5).

"(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph \$250,000,000 for each of fiscal years 2004 through 2007."

(d) NO EFFECT ON LAW CONCERNING STATE AUTHORITY.—The amendments made by subsection (c) have no effect on the law in effect on the day before the date of enactment of this Act concerning the authority of States to limit the use of methyl tertiary butyl ether in motor vehicle fuel.

#### SEC. 5 4. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

(a) ELIMINATION.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended—

(A) in paragraph (2)—

(i) in the second sentence of subparagraph (A), by striking "(including the oxygen content requirement contained in subparagraph (B))";

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(B) in paragraph (3)(A), by striking clause (v); and

(C) in paragraph (7)—

(i) in subparagraph (A)—

(I) by striking clause (i); and

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(ii) in subparagraph (C)—

(I) by striking clause (ii); and

(II) by redesignating clause (iii) as clause (ii).

(2) APPLICABILITY.—The amendments made by paragraph (1) apply—

(A) in the case of a State that has received a waiver under section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)), beginning on the date of enactment of this Act; and

(B) in the case of any other State, beginning 270 days after the date of enactment of this Act.

(b) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended—

(1) by striking "Within 1 year after the enactment of the Clean Air Act Amendments of 1990," and inserting the following:

"(A) IN GENERAL.—Not later than November 15, 1991,"; and

(2) by adding at the end the following:

"(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

"(i) DEFINITION OF PADD.—In this subparagraph the term 'PADD' means a Petroleum Administration for Defense District.

"(ii) REGULATIONS CONCERNING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph, the Administrator shall establish by regulation, for each refinery or importer (other than a refiner or importer in a State that has received a waiver under section 209(b) with respect to gasoline produced for



use in that State), standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refiner or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refiner or importer during calendar years 1999 and 2000 (as determined on the basis of data collected by the Administrator with respect to the refiner or importer).

“(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

“(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refiner or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refiner or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refiner or importer during calendar years 1999 and 2000.

“(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refiner or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for emissions of toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

“(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

“(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

“(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

“(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 1999 and 2000; and

“(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

“(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 1999 and 2000, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

“(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

“(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refiner or importer shall meet the standards applicable under clause (iii)(I) beginning not later than April 1 of the calendar year following publication of the report under subclause (I) and in each calendar year thereafter.

“(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2004, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor

vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).’.

(c) COMMINGLING.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended by adding at the end the following:

“(11) COMMINGLING.—The regulations under paragraph (1) shall permit the commingling at a retail station of reformulated gasoline containing ethanol and reformulated gasoline that does not contain ethanol if, each time such commingling occurs—

“(A) the retailer notifies the Administrator before the commingling, identifying the exact location of the retail station and the specific tank in which the commingling will take place; and

“(B) the retailer certifies that the reformulated gasoline resulting from the commingling will meet all applicable requirements for reformulated gasoline, including content and emission performance standards.

(d) CONSOLIDATION IN REFORMULATED GASOLINE REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall revise the reformulated gasoline regulations under subpart D of part 80 of title 40, Code of Federal Regulations, to consolidate the regulations applicable to VOC-Control Regions 1 and 2 under section 80.41 of that title by eliminating the less stringent requirements applicable to gasoline designated for VOC-Control Region 2 and instead applying the more stringent requirements applicable to gasoline designated for VOC-Control Region 1.

(e) SAVINGS CLAUSE.—

(1) IN GENERAL.—Nothing in this section or any amendment made by this section affects or prejudices any legal claim or action with respect to regulations promulgated by the Administrator before the date of enactment of this Act regarding—

(A) emissions of toxic air pollutants from motor vehicles; or

(B) the adjustment of standards applicable to a specific refinery or importer made under those regulations.

(2) ADJUSTMENT OF STANDARDS.—

(A) APPLICABILITY.—The Administrator may apply any adjustments to the standards applicable to a refinery or importer under subparagraph (B)(iii)(I) of section 211(k)(1) of the Clean Air Act (as added by subsection (b)(2)), except that—

(i) the Administrator shall revise the adjustments to be based only on calendar years 1999 and 2000;

(ii) any such adjustment shall not be made at a level below the average percentage of reductions of emissions of toxic air pollutants for reformulated gasoline supplied to PADD I during calendar years 1999 and 2000; and

(iii) in the case of an adjustment based on toxic air pollutant emissions from reformulated gasoline significantly below the national annual average emissions of toxic air pollutants from all reformulated gasoline—

(I) the Administrator may revise the adjustment to take account of the scope of the prohibition on methyl tertiary butyl ether imposed by paragraph (5) of section 211(c) of the Clean Air Act (as added by section 203(c)); and

(II) any such adjustment shall require the refiner or importer, to the maximum extent practicable, to maintain the reduction achieved during calendar years 1999 and 2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refiner or importer.

SEC. 5. PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS OF FUELS AND FUEL ADDITIVES.

Section 211(b) of the Clean Air Act (42 U.S.C. 7545(b)) is amended—

(1) in paragraph (2)—

(A) by striking “may also” and inserting “shall, on a regular basis,”; and

(B) by striking subparagraph (A) and inserting the following:

“(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and”;

(2) by adding at the end the following:

“(4) STUDY ON CERTAIN FUEL ADDITIVES AND BLENDSTOCKS.—

“(A) IN GENERAL.—Not later than 2 years after the date of enactment of this paragraph, the Administrator shall—

“(i) conduct a study on the effects on public health (including the effects on children, pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of increased use of, and the feasibility of using as substitutes for methyl tertiary butyl ether in gasoline—

“(I) ethyl tertiary butyl ether;

“(II) tertiary amyl methyl ether;

“(III) di-isopropyl ether;

“(IV) tertiary butyl alcohol;

“(V) other ethers and heavy alcohols, as determined by then Administrator;

“(VI) ethanol;

“(VII) iso-octane; and

“(VIII) alkylates; and

“(ii) conduct a study on the effects on public health (including the effects on children, pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of the adjustment for ethanol-blended reformulated gasoline to the volatile organic compounds performance requirements that are applicable under paragraphs (1) and (3) of section 211(k); and

“(iii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing the results of the studies under clauses (i) and (ii).

“(B) CONTRACTS FOR STUDY.—In carrying out this paragraph, the Administrator may enter into 1 or more contracts with non-governmental entities such as—

“(i) the national energy laboratories; and

“(ii) institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).”.

SEC. 5. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) (as amended by section 5 1(a)) is amended by inserting after subsection (p) the following:

“(q) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

“(1) ANTI-BACKSLIDING ANALYSIS.—

“(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this paragraph, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by the Reliable Fuels Act.

“(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

“(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall



develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2006.”.

#### SEC. 5\_7. ADDITIONAL OPT-IN AREAS UNDER REFORMULATED GASOLINE PROGRAM.

Section 211(k)(6) of the Clean Air Act (42 U.S.C. 7545(k)(6)) is amended—

(1) by striking “(6) OPT-IN AREAS.—(A) Upon” and inserting the following:

“(6) OPT-IN AREAS.—

“(A) CLASSIFIED AREAS.—

“(i) IN GENERAL.—Upon”;

(2) in subparagraph (B), by striking “(B) If” and inserting the following:

“(ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO PRODUCE REFORMULATED GASOLINE.—If”;

(3) in subparagraph (A)(ii) (as redesignated by paragraph (2))—

(A) in the first sentence, by striking “subparagraph (A)” and inserting “clause (i)”;

and

(B) in the second sentence, by striking “this paragraph” and inserting “this subparagraph”;

(4) by adding at the end the following:

“(B) OZONE TRANSPORT REGION.—

“(i) APPLICATION OF PROHIBITION.—

“(I) IN GENERAL.—On application of the Governor of a State in the ozone transport region established by section 184(a), the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibition specified in paragraph (5) to any area in the State (other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of title I) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

“(II) PUBLICATION OF APPLICATION.—As soon as practicable after the date of receipt of an application under subclause (I), the Administrator shall publish the application in the Federal Register.

“(ii) PERIOD OF APPLICABILITY.—Under clause (i), the prohibition specified in paragraph (5) shall apply in a State—

“(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

“(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

“(iii) EXTENSION OF COMMENCEMENT DATE BASED ON INSUFFICIENT CAPACITY.—

“(I) IN GENERAL.—If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator’s own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

“(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

“(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

“(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.”.

#### SEC. 5\_8. FEDERAL ENFORCEMENT OF STATE FUELS REQUIREMENTS.

Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended—

(1) by striking “(C) A State” and inserting the following:

“(C) AUTHORITY OF STATE TO CONTROL FUELS AND FUEL ADDITIVES FOR REASONS OF NECESSITY.—

“(i) IN GENERAL.—A State”; and

(2) by adding at the end the following:

“(ii) ENFORCEMENT BY THE ADMINISTRATOR.—In any case in which a State prescribes and enforces a control or prohibition under clause (i), the Administrator, at the request of the State, shall enforce the control or prohibition as if the control or prohibition had been adopted under the other provisions of this section.”.

#### SEC. 5\_9. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall jointly conduct a study of Federal, State, and local requirements concerning motor vehicle fuels, including—

(A) requirements relating to reformulated gasoline, volatility (measured in Reid vapor pressure), oxygenated fuel, and diesel fuel; and

(B) other requirements that vary from State to State, region to region, or locality to locality.

(2) REQUIRED ELEMENTS.—The study shall assess—

(A) the effect of the variety of requirements described in paragraph (1) on the supply, quality, and price of motor vehicle fuels available to the consumer;

(B) the effect of the requirements described in paragraph (1) on achievement of—

(i) national, regional, and local air quality standards and goals; and

(ii) related environmental and public health protection standards and goals (including the protection of children, pregnant women, minority or low-income communities, and other sensitive populations);

(C) the effect of Federal, State, and local motor vehicle fuel regulations, including multiple motor vehicle fuel requirements, on—

(i) domestic refiners;

(ii) the fuel distribution system; and

(iii) industry investment in new capacity;

(D) the effect of the requirements described in paragraph (1) on emissions from vehicles, refiners, and fuel handling facilities;

(E) the feasibility of developing national or regional motor vehicle fuel slates for the 48 contiguous States that, while protecting and improving air quality at the national, regional, and local levels, could—

(i) enhance flexibility in the fuel distribution infrastructure and improve fuel fungibility;

(ii) reduce price volatility and costs to consumers and producers;

(iii) provide increased liquidity to the gasoline market; and

(iv) enhance fuel quality, consistency, and supply; and

(F) the feasibility of providing incentives, and the need for the development of national standards necessary, to promote cleaner burning motor vehicle fuel.

(b) REPORT.—

(1) IN GENERAL.—Not later than June 1, 2007, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The report shall contain recommendations for legislative and administrative actions that may be taken—

(i) to improve air quality;

(ii) to reduce costs to consumers and producers; and

(iii) to increase supply liquidity.

(B) REQUIRED CONSIDERATIONS.—The recommendations under subparagraph (A) shall take into account the need to provide ad-

vance notice of required modifications to refinery and fuel distribution systems in order to ensure an adequate supply of motor vehicle fuel in all States.

(3) CONSULTATION.—In developing the report, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall consult with—

(A) the Governors of the States;

(B) automobile manufacturers;

(C) State and local air pollution control regulators;

(D) public health experts;

(E) motor vehicle fuel producers and distributors; and

(F) the public.

### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. FRIST. Madam President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today’s Executive Calendar: Calendar Nos. 167, 168, 173, and 174. I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate’s action, and the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

#### DEPARTMENT OF JUSTICE

Adam Noel Torres, of California, to be United States Marshal for the Central District of California.

#### COAST GUARD

The following named officer for appointment to the grade indicated in the United States Coast Guard under title 14, U.S.C., section 276:

#### To be captain

Lewis J. Buckley, 0000

#### DEPARTMENT OF JUSTICE

William Emil Moschella, of Virginia, to be an Assistant Attorney General.

Leonardo M. Rapadas, of Guam, to be United States Attorney for the District of Guam and concurrently United States Attorney for the District of the Northern Mariana Islands.

### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

#### EXPRESSING THANKS TO THE PEOPLE OF QATAR

Mr. FRIST. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 139 submitted earlier today by Senator SUNUNU.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 139) expressing the thanks of the Senate to the people of Qatar

for their cooperation in supporting United States armed forces and the armed forces of coalition countries during the recent military action in Iraq, and welcoming His Highness Sheikh Hamad bin Khalifah Al-Thani, Emir of the State of Qatar, to the United States.

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

Mr. FRIST. Madam President, I ask unanimous consent that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements regarding this matter be printed in the RECORD.

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

The resolution (S. Res. 139) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 139

Whereas Qatar is a longstanding ally of the United States in the Middle East region;

Whereas the people of Qatar graciously hosted United States Armed Forces and the armed forces of coalition countries during the recent military action in Iraq;

Whereas the United States and Qatar will continue to build upon this military cooperation;

Whereas Qatar continues to grow in its economic and strategic defense cooperation with the United States and its allies;

Whereas the people of Qatar voted on April 29, 2003, on a referendum approving the establishment of their first Parliamentary Constitution;

Whereas years of democratic reform, including the establishment of a parliament based on universal suffrage, development of greater freedom of the press, and evolution of a free market have greatly strengthened the bonds between our two nations;

Whereas an unwavering commitment to the development of the education of its citizens reinforces Qatar's path toward democracy; and

Whereas Doha, the capital of Qatar, hosted in November of 2001 the Fourth World Trade Organization Ministerial Conference, where a number of agreements expanding our defense, commercial, and cultural ties were signed: Now, therefore, be it

*Resolved*, That the Senate—

(1) expresses thanks to the people of Qatar for their support of United States Armed Forces and the armed forces of coalition countries during the recent military action in Iraq;

(2) warmly welcomes His Highness Sheikh Hamad bin Khalifah Al-Thani, Emir of the State of Qatar, to the United States; and

(3) looks forward to broadening and deepening the friendship and cooperation between the United States and Qatar.

#### ORDERS FOR MONDAY, MAY 12, 2003

Mr. FRIST. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 2 p.m., Monday, May 12. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate immediately proceed to the consideration of Calendar No. 90, S. 2, the reconciliation bill, as provided under the previous order.

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

#### PROGRAM

Mr. FRIST. Madam President, for the information of all Senators, on Monday the Senate will begin consideration of the reconciliation bill. The bill was passed out of the Finance Committee last evening. The Senate will debate the jobs and economic growth package for up to 2 hours on Monday. However, we will not be considering amendments on that day. Therefore, as announced earlier, there will be no rollcall votes on Monday.

On Tuesday, the Senate will begin consideration of amendments, and therefore Senators may expect rollcall votes. I anticipate that the first vote on Tuesday will occur at approximately 12 noon. That vote may be in relation to an amendment to the reconciliation bill, or perhaps any executive matter that can be cleared.

Throughout next week, as I said in the opening this morning, we will have busy sessions. I will share with my colleagues the importance of addressing three major issues, all of which have to be addressed next week.

We have the jobs and economic growth bill, which we will begin Monday; and at that point we have certain time limits we will be dealing with on Monday and Tuesday and, likely, into Wednesday.

Next week, we will also be considering the bipartisan global HIV/AIDS

bill, a bill that is very important to this country, and internationally, as we look at the ravages of this virus, as well as the debt limit legislation—legislation about which we have had discussions on both sides of the aisle, and we have agreed that it needs to be dealt with soon and in a timely manner.

In order for the Senate to complete action on these measures, late nights next week are likely. Rollcall votes should be expected throughout the week, including throughout Friday. Again, I mentioned this morning that if we work efficiently during the week, I think we can finish Friday afternoon. If not, there is a chance we will have to go into the weekend. I mention that because I know, as the week goes forward, I will be hearing about scheduling conflicts. I want my colleagues to know upfront that we need to address these important issues. If we cannot do it in a timely way, we may have to go into Saturday.

I have no further announcements to make at this time. I will be making further announcements next week regarding specifics of the schedule as we progress on the items I have mentioned.

#### ADJOURNMENT UNTIL 2 P.M. MONDAY, MAY 12, 2003

Mr. FRIST. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 12:54 p.m., adjourned until Monday, May 12, 2003, at 2 p.m.

#### CONFIRMATIONS

Executive nominations confirmed by the Senate May 9, 2003:

##### DEPARTMENT OF JUSTICE

ADAM NOEL TORRES, OF CALIFORNIA, TO BE UNITED STATES MARSHAL FOR THE CENTRAL DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS.

WILLIAM EMIL MOSCHELLA, OF VIRGINIA, TO BE AN ASSISTANT ATTORNEY GENERAL.

LEONARDO M. RAPADAS, OF GUAM, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF GUAM AND CONCURRENTLY UNITED STATES ATTORNEY FOR THE DISTRICT OF THE NORTHERN MARIANA ISLANDS FOR THE TERM OF FOUR YEARS.

COAST GUARD NOMINATION OF LEWIS J. BUCKLEY.