United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, THURSDAY, MAY 18, 2006 No. 62

Senate

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

PRAYER

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

Let us pray.

Sovereign Lord, the way, the truth, and the life, give us the courage to follow You. Help us to follow You in our quest for ethical fitness. Help us to follow You in service to the lost, the lonely, and the least. Help us to follow You in going the second mile in our labors. Help us to follow You in loving our enemies, in blessing those who curse us, and in praying for those who misuse us.

Today, guide our Senators with Your might. Empower them with wisdom and courage.

We pray 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.

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2611, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2611) to provide for comprehensive immigration reform and for other purposes.

Pending:

Inhofe amendment No. 4064, to amend title 4, United States Code, to declare English as the national language of the United States and to promote the patriotic integration of prospective U.S. citizens.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. SPECTER. Mr. President, we are on the immigration bill. We have a lineup of amendments which we are anxious to take up. We have a considerable number of amendments pending on both sides of the aisle. Our lead amendment is the one to be offered by Senator KENNEDY. The amendment has now been reviewed, and I think it may be necessary to have a little extra time, which ought not to pose a problem since the vote will not occur until 10 o'clock. But Senator CORNYN would like 10 minutes of time, and Senator KYL may want a little time, so my suggestion would be that, if the Senator from Massachusetts wants to start the debate, that would be agreeable. It is his amendment, obviously. We would then turn to Senator CORNYN for 10 minutes.

I would like to put other Senators on notice that we want to proceed with the other amendments. Senator INHOFE is next in line, then Senator AKAKA, Senator ENSIGN, Senator NELSON, Senator VITTER, Senator DURBIN, Senator KYL, and Senator CHAMBLISS. It would be appreciated if those Senators would come here at least 15 minutes ahead of the anticipated time their amendment will come up so that we could move right along and not lose floor time.

I yield to my distinguished colleague from Massachusetts.

Mr. KENNEDY. Mr. President, we look forward to this. What was, then, the time allocation requested? Is it 25, 10, 10, 5? Is that what the Senator suggested?

Mr. SPECTER. Ten for Senator CORNYN, ten for Senator KYL, and I would like five.

Mr. KENNEDY. So that is 25.

Mr. SPECTER. Yes.

Mr. KENNEDY. Then I think we would get 15.

Mr. REID. Mr. President, we just received word that Senator DORGAN wants 10 or 15 minutes.

Mr. KENNEDY. Have we added all that up?

Mr. SPECTER. Suppose we divide the time equally.

The PRESIDENT pro tempore. Under the agreement, it is 20 minutes, equally divided.

Mr. REID. Mr. President, it is my understanding the two managers want that modified. Rather than 20 minutes on this amendment, it will be 55 minutes, the time evenly divided between now and 10. I ask unanimous consent for that modification.

The PRESIDENT pro tempore. Is there objection?

Mr. SPECTER. That is acceptable.

Mr. REID. No second-degree amendments would be in order?

Mr. SPECTER. Agreed.

The PRESIDENT pro tempore. Without objection, it is so ordered. Time is equally divided between now and 10 a.m, and there will be no second-degree amendments.

Who yields time?

Mr. SPECTER. Mr. President, if Senator CORNYN would like to begin the debate, I yield 10 minutes to him.

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

Mr. CORNYN. Mr. President, less than 24 hours after the Senate voted to protect American workers and to put them first when it comes to competition for jobs in this country, the Senator from Massachusetts has now offered an amendment that would literally gut the amendment that was adopted yesterday and put American workers in the back seat and foreign workers who wanted to come here and participate in a guest worker program in the front seat.

President Bush has spoken time and time again about a guest worker program that matches willing workers with willing employers. But Senator KENNEDY's amendment would do nothing of the kind. It would allow people

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

to come to the United States and to self-petition without having an employer sponsor their petition, and it would not require proof that an American citizen is unavailable to perform that type of job.

Yesterday, the Senate—wisely, in my view—changed the underlying bill to require that American workers be put first before a guest worker could be provided a job and that, under the provisions of this bill, No. 1, they had to identify a job so they would not be here unemployed; and No. 2, that job first be offered to qualified American workers. Then, in that event no American workers were found available to perform that job, of course the guest worker provisions of the bill would kick in.

To make matters worse, the Kennedy amendment would allow an alien who has worked a total of less than 40 days in the United States—yes, that is about 6 days a year—to obtain a green card. That employment, 1 day out of every 60, could be self-employment. For some, that track record of employment should be sufficient evidence that the worker is invaluable to the American economy. What that means is that up to 200,000 unskilled workers a year would be eligible for a green card, irrespective of economic conditions, irrespective of whether that worker has actually been employed for the preceding 4 years and, most importantly, irrespective of whether there are unemployed U.S. workers available to fill those jobs.

Senator KENNEDY had suggested that, by requiring an employer to determine that a qualified worker is not available, that would somehow subject foreign workers to exploitation. But let me be clear: Worker exploitation and abuse will not be tolerated under our laws and should not be tolerated under any circumstances. This amendment has nothing to do with protecting foreign workers against exploitation. What it has everything to do with is whether we are protecting American workers first.

With that, I will reserve the remainder of my time and yield the floor.

The PRESIDENT pro tempore. Who yields time? The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I yield myself 3 minutes.

Mr. President, I opposed the amendment from the distinguished Senator from Texas yesterday because I believe there ought to be an opportunity for the immigrant himself or herself to file the petition. The amendment now pending by Senator KENNEDY would leave it optional, leave the alternative: to be filed by the employer or to be filed by the immigrant. The vote yesterday was 50 to 48, and I was tempted to move to reconsider—I would have to change my vote to do that—but decided in the alternative that we would discuss the subject today with a different amendment.

The issue of not having the immigrant subject to the control of the employer is an important one, to see to it that the immigrant is treated fairly. When the Senator from Texas seeks to be sure the immigrant has a job so that the employer has to make the application and the job will not be taken from some other American, I can understand his point. But I think there is a higher value in not having the immigrant subject to the control of the employer, where there may be coercion and pressure as to the amount of compensation or as to working conditions, notwithstanding any other provision of law. There is ample protection that citizenship will not be granted, or the process will not move forward, because the Kennedy amendment simply gives the immigrant the right to file a petition. After the petition and the efforts are made to get into the citizenship line, it will be evaluated by the appropriate authorities. I think the concerns Senator CORNYN has in mind will be met.

I notice Senator DORGAN has come to the floor, and time has been reserved for Senator DORGAN—10 minutes. I yield to him at this time.

The PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, the discussion this morning is once again on a subject called guest workers. I don't happen to think we ought to have a guest worker provision in this legislation. The discussion now is, if it exists in the legislation, what are the conditions under which guest workers can petition for citizenship, and so on and so forth. I hope we are not done with the question of whether there should be so-called guest workers or, as some call it, future flow, the soft-sounding words. They could call it tourism for all that matters.

What this is about is grafting onto this bill to deal with the question of illegal immigrants coming into this country—because we have quotas, and those who come in illegally are a pretty serious problem, the 11 million or 12 million people we think are here illegally—this is grafting onto this bill that deals with illegal immigration a proposal that people who live outside this country and have not come to this country before now are to come into this country as so-called guest workers or future flow. What are those people going to do? They are going to come into this country and they are going to work. It is as if the 11 million or 12 million are not enough, we need more.

The original proposition by the President was an unlimited number. The original proposition in the bill brought to the floor of the Senate was 400,000 a year, plus a 20-percent escalator. I tried to knock that out, and my amendment got clobbered, so I was unsuccessful. My colleague from New Mexico took the 400,000 down to 200,000. Actually, the substitute bill took it down to 325,000, then down to 200,000. However you calculate it, we are talking about millions of people who do not live in this country, who live outside of this country, who will come into this country for the purpose of taking jobs.

Here is the strategy. The strategy in the country these days, and it is a strategy embraced on the floor of this Chamber, is to export good jobs and import cheap labor. I don't hear any discussion on the floor of this Senate about American workers—none. You can go to the newspapers and see a discussion. You can see the headlines about American workers who are losing their jobs because their employers are moving the jobs to China or Bangladesh or Indonesia or Sri Lanka; and yes, some of those Americans are finding other jobs, and the headlines also tell us those jobs pay less than the jobs we used to have. We lost 3 million to 4 million jobs in just the last 4 or 5 years.

Alan Blinder, a very respectable mainstream economist, former Vice Chairman of the Federal Reserve Board, has just written a piece and said this: This issue of exporting American jobs even as there is this urge to import cheap labor—he said this about exporting American jobs—he said there are 42 to 54 million American jobs subject to offshoring.

He said 41 to 54 million American jobs are subject to being moved out of this country in search of cheaper labor—at 33 cents an hour in China, perhaps Indonesia, Sri Lanka, wherever they would move to. He said that not all of the 40 million to 50 million jobs will leave this country by employers, not all will be moved out of this country by employers, but even those who stay are subject to the competition of lower wages abroad. Therefore, there will be lower wages, less health care, less benefits, and less retirement benefits.

That future for the American worker on one side, and on the other side we have this urge to import cheap labor.

Where does that urge come from? My understanding is the price the Chamber of Commerce requires to support this bill is that there be additional guest workers attached to it.

What is the purpose of that? That is the purpose of bringing in the back door folks who are willing to assume the bottom-end jobs.

The President and others say these are jobs the American people will not take. I don't think that is the case at all. They may not want to take them at current wages, at the bottom of the economic scale. We haven't changed the minimum wage for nearly 9 years. This Congress will not change the minimum wage. The President doesn't support it. If we change the minimum wage and perhaps pay what the jobs are worth at the lower economic level, at the bottom of the economic ladder, perhaps then we wouldn't need to import cheap labor. This is about importing cheap labor on the back side. That is what guest workers is all about. I know they call it ''future flow'' and guest workers. It is not about making 11 million to 12 million people legal

who are already here illegally. But more needs to be done. Allowing people who would normally be illegal and stamping them as ''legal'' is kind of a ''let's pretend'' approach.

I understand the Senate has already voted on my amendment, and I lost pretty handily, as a matter of fact. But I think there is more to do on this. The bill is still open for amendment. For example, we have a so-called guest worker provision which says let's pretend that illegal immigration is legal immigration. Should we have that provision that lasts forever and is permanent, or should we sunset it after a few years and have a real honest study by people who might evaluate how many Americans are losing their jobs as a result of this back door, cheap labor coming as replacement workers?

How many Americans are losing their jobs? I see very little discussion on the floor of this Senate in this debate about immigration which, after all, is all about jobs, among other things. I see very little discussion and Members standing up on the floor of the Senate saying: Let us wonder what this means to American workers. What does it mean to the steel worker? What does it mean to the punch press operator, to the fabricator or how about the farmer? What does it mean to manufacturing? Very few people are talking about American workers. It is all about immigration and how many additional guest workers we can bring into this country under this piece of legislation.

My understanding is that we will be on this bill for another week. That will give us time to revisit this so-called guest worker provision and see if we can write a piece of legislation—yes—which deals sensitively, without diminishing the dignity and worth of others who have been here some long while. Some have been here for 25 years. Some immigrants came here many years ago. They have children and grandchildren here. I don't want to, in any way, diminish their worth or their dignity or their value. We should deal with them in a way that is sensitive.

I don't think this Senate should jump on the notion advanced by business interests and the Chamber and others that we don't have enough cheap labor in this country, and we need to bring more through the back door as we are exporting good jobs abroad.

You talk about a recipe for economic trouble ahead, probably not for the people who wear blue suits in the morning and wear neckties all day and have jobs such as Senators and Congressmen. I do not know of anybody in this Chamber who has lost a job because their job was outsourced. Nobody here has lost their job because their job has been outsourced. It is other folks—folks working on the manufacturing line someplace, and they are called up one day and are told: You know what, our entire company is leaving. We are going to China because you can produce an Etch A Sketch in China for much less money. But the jobs have gone to China. Etch A Sketch is one example of hundreds of examples of jobs that go to China.

Those are the folks who pay the price. Those are the folks who have the burden of this sort of new economy. The ''world is flat'' economy—move American jobs to China. The other folks who stay here, the folks who work at the bottom rung of the economic ladder, struggling to advance and pay their bills and take care of their families, they are now told: By the way, we also need to not just export jobs, but we need to import cheap labor.

I think is a recipe for disaster for this country. I don't think it works.

Our country became a great country and a world economic power because we built a burgeoning middle class, and that middle class had good jobs that paid well. There is no social program in this country as important as the good job that pays well, which allows people to work and take care of their families. There is no social program as important as that. These good jobs are shrinking away. You can go through the entire list, industry after industry, telling workers: We are going to move your job elsewhere, and we are going to shrink the jobs that remain here to $8 or $10 an hour. And by the way, what we would like to do is bring people through the back door whom we might be able to employ for $6 or $7 an hour.

That is the construct which is occurring throughout the country today, and I think it is fundamentally wrong.

My hope is we continue these discussions about guest workers. We will have other opportunities to offer amendments. I will have some, and perhaps we can get back to where we should be and that is dealing with the central question of our country's border; protect us first against terrorism; and, second, to enforce the quotas we have that allow people to come into this country legally. We have quotas with which we accomplish that. Seal this country's border so we have border protection and an orderly flow of people in and out of this country; and, second, enforce standards against employers that routinely and knowingly hire illegal workers.

I was here when we passed Simpson-Mazzoli. In fact, I went back and reread some of the debate on the floor of the Senate and House.

What was said was we are fixing immigration. Back then, there really was amnesty. Amnesty was given to a good number of millions of illegal immigrants. We said to employers: Don't you dare hire illegal workers. If people come into this country illegally to take Americans' jobs, don't you dare hire them. If you do, you will be subject to fines and penalties that are significant.

Guess what. There has been no enforcement at all. Last year, one company was subject to enforcement action in the entire United States of America; the year before, three companies in the entire United States. The message implies Katy bar the door; hire illegals if you like; pay substandard wages because they are illegal; don't worry, nobody is going to look; nobody is going to fine you; and nobody is going to enforce the law.

That is why this entire thing has failed. Twenty years later, we have the same language. You can change the names and it is the same language—going to get tough, going to fix this issue.

The fact is, if we don't decide, first, to secure our borders and, second, to have real sanctions against those who want to hire illegal immigrants for substandard wages, this will not work. All we are doing is playing let's pretend. We play that often around here. It is not going to work.

What we ought to do is stare truth in the eye on this issue and decide that we are going to do what is necessary to evaluate what the immigration issue is, how to fix it and go about the business of doing it. Instead, there is all this energy to see not only how we deal with the immigration issue but how we add a new guest worker program to bring people into this country who otherwise would be illegal and how do we bring new people into this country to take the jobs that American workers need. That doesn't make much sense to me, and it is not a proposition that I can support.

I yield the floor.

The PRESIDENT pro tempore. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. INHOFE. Mr. President, I inquire as to the regular order and the time agreement reached on the next few amendments.

The PRESIDENT pro tempore. The time agreement on the next two amendments? The Senator is informed there is no time agreement on the next amendments. The time agreement is on the current amendment, but no further amendments are subject to a time agreement.

Mr. INHOFE. And the vote will take place at 10 o'clock?

The PRESIDENT pro tempore. This vote will take place at 10 o'clock.

Mr. INHOFE. Mr. President, the next amendment coming up will be the amendment we refer to as the English national language amendment. Since there is some time right now, unless someone else wants the floor, I can discuss what it is all about.

The PRESIDENT pro tempore. The time is equally divided on the current amendment.

Mr. INHOFE. I inquire, is someone requesting time?

Mr. KENNEDY. We have until 10 o'clock, and that time is divided.

Mr. INHOFE. I thank the Senator.

The PRESIDENT pro tempore. There is 12 minutes left for the majority and 17 minutes remaining for the majority.

Mr. KENNEDY. If the Senator wants to speak for a few minutes, we can arrange that. I will withhold.

Mr. INHOFE. As I understand it, on our side there is 17 minutes remaining, is that correct, and I can use a few minutes?

The PRESIDENT pro tempore. That is correct.

Mr. CORNYN. Mr. President, we split the time between 9 and 10 o'clock, but it was on the pending amendment. The Senator from Massachusetts has yet to call up the amendment. The only speakers who have been heard have been in opposition to the amendment, but the amendment has not yet itself been called up.

I want to make sure the balance of the time reserved is still preserved so we do not lose an opportunity to respond to the debate by the Senator from Massachusetts.

The PRESIDENT pro tempore. The current order is the vote will take place at 10 o'clock, but the time between then and now is roughly 16 minutes for the majority and 12 minutes for the minority.

Mr. KENNEDY. Can I ask unanimous consent we defer the vote at 10 clock until 10:05?

Mr. INHOFE. I thank the Senator for that generous offer. I will not make any comments at this time and will wait until our amendment is up. We will discuss it then.

Mr. KENNEDY. Fine.

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

AMENDMENT NO. 4066

Mr. KENNEDY. Mr. President, we send an amendment to the desk on behalf of myself, Senator MCCAIN, and Senator GRAHAM.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts, [Mr. KENNEDY], for himself, and Mr. MCCAIN, and Mr. GRAHAM, proposes an amendment numbered 4066.

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

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

The amendment is as follows:

(Purpose: To modify the conditions under which an H–2C nonimmigrant may apply for adjustment of status)

On page 295, after line 16 insert the following:

or

''(iv) the Secretary of Labor determines and certifies that there are not sufficient United States workers who are able, willing, qualified, and available to fill the position in which the alien is, or will be, employed; and

''(v) the alien submits at least 2 documents to establish current employment, as follows:

''(I) Records maintained by the Social Security Administration.

''(II) Records maintained by the alien's employer, such as pay stubs, time sheets, or employment work verification.

''(III) Records maintained by the Internal Revenue Service.

''(IV) Records maintained by any other government agency, such as worker compensation records, disability records, or business licensing records.

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. The minority controls 11 minutes 45 seconds, and the majority controls 15 minutes 45 seconds.

Mr. KENNEDY. We have 11 minutes?

The PRESIDING OFFICER. Eleven and a half minutes.

Mr. KENNEDY. I yield myself 4 minutes.

Mr. President, as we all know, yesterday the Senate voted to eliminate the H–2C immigrant's ability to self-petition for green cards after 4 years. I believe that vote was a mistake because it will have a devastating effect not just for temporary workers but for all workers and, basically, for all Americans.

The amendment we offer today would correct the mistake and take the good language from the Cornyn amendment to improve the underlying bill. This amendment will require that the Labor Department certify that no U.S. worker will be displaced by H–2C workers when they adjust to permanent status, as the Cornyn amendment requires. This amendment also restores the ability of H–2C workers to obtain a green card without being dependent on the generosity of the employers.

The self-petition feature of our temporary worker program is innovative and essential to workers' rights. All Americans lose if it is eliminated from the bill.

The reason temporary worker programs failed in the past, going back to the time of the Bracero Program, is because they did not protect workers' rights. For this new program to work without harming U.S. workers, H–2C workers must have the full set of rights. That is why our bill includes extensive labor protections for temporary workers.

Effectively, then, at the time after the 4 years, the individual will be able to make the petition for the green card, and they will also have to have a certification by the Department of Labor that there is no American able and willing to perform that job. There will have to be that kind of a finding. The self-petition gives that worker some rights and respect as an employee instead of being subject to the dangers we have seen in the past of exploitation by an employer that knows that worker can never get a chance to have a petition and can never get on the path for a green card without the employer giving the thumbs-up signal.

When that power relationship between the employer and the employee exists, we have seen exploitation in terms of wages, working conditions, and other unfortunate problems with regard to women.

This seems to be a solid compromise. It takes the framework of the Cornyn amendment, but it will also ensure that these petitioners are going to have to demonstrate there is that gap in terms of the labor market that they are able to fill and that there is not someone out there in the American labor market prepared to take that job. It seems to me to be a very important principle, a very concrete proposal, one I hope we can have accepted this morning.

I withhold the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CORNYN. Mr. President, the amendment Senator KENNEDY is proposing guts the worker protection amendment agreed to by the Senate yesterday. It would do so by allowing workers to self-petition for legal permanent residency if they produce some documents which might indicate they are currently employed, but they will be necessarily retrospective in nature. In other words, you do not have a document necessarily that shows you are employed today or will be employed tomorrow. You may have a pay stub from the last week or the last month. So there is no way to determine whether the individuals who are self-petitioning, under this proposal by the Senator from Massachusetts, are actually going to be working.

No. 2, if they are working, there is no protection for American workers—first, that the Secretary of Labor certify that there were no sufficient U.S. workers willing, able, and qualified to perform those jobs.

If the proponents of this bill are serious when they say that certain provisions are needed because immigrants will do work that Americans won't do, then they should support the amendment agreed to yesterday and vote against the amendment that has been proposed this morning.

President Bush, again, has said the concept of a temporary worker program is to provide additional legal workforce for jobs that there are not enough Americans to perform. Yet this proposed amendment simply sidesteps that requirement entirely.

It further represents a shell game insofar as it would only require those workers in this country during an initial 4-year period to work about 6 days a year in order to obtain a green card.

This is about truth in advertising. If, in fact, the bill is going to represent something even close to what we have been told the purpose of it is, as represented, we need to make sure the actual language of the bill conforms to that and not pull a fast one on the American people by taking away the

very protection for American workers that the proponents of this bill have said are an important part of their legislation.

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

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mr. KENNEDY. I will take 3 minutes for the membership, if they have a chance to review the amendment.

On page 1, second paragraph:

> The Secretary of Labor determines and certifies that there are not sufficient United States workers who are able, willing, qualified, and available to fill the position in which the alien is, or will be employed. . . .

So the Secretary of Labor has to make the certification that they will not be replacing an American worker.

Then, how are they going to be able to give the assurance they have had the 4 years that are included in the first paragraph, that ''the alien has maintained such nonimmigrant status in the United States for a cumulative period of not less than 4 years of employment''?

These are listed and include: records maintained by Social Security, records maintained by the employer, employment work verification, records maintained by the Internal Revenue Service, records maintained by other government agencies.

What we are saying, in the four different categories, those categories are government-held records or the employer-held records, not the employee-held records.

I don't know how it could be much clearer exactly what this amendment does. It is very clear. It is the certification that there is no American that is able, willing, and qualified. And to be able to prove it, there are government-held records or employer-held records, not the petitioner's records, not his stubs, but government-held records.

We have tried to craft this in a way which is going to be fair. We are not interested in people trying to ''jimmy'' the system. We have had too much of that in the past.

I get back to the final theme. This legislation tries to learn from past experience. In 1986, we had amnesty but there was supposed to be tough employer sanctions if they hired unemployed. We had vast industries that produced fake identification cards. The system never functioned. It never worked.

What we have tried to do is avoid that. We have a tamper-proof card. We will have vigorous employment. But, also, to learn the lessons of the Bracero Program, we are not going to have the exploitation of these workers by their employers. That is what we do when we deny the opportunity of an employee ever to be able to make a petition. We say you have to be in there for 4 years, with solid record of employment, solid record of achievement, solid record of commitment to work. Then you can make your petition. You have to meet that requirement.

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. KENNEDY. What time is left?

The PRESIDING OFFICER. The opposition has 13 minutes remaining, and the Senator from Massachusetts has 4 minutes 45 seconds.

Mr. KENNEDY. I yield that time to the Senator from Arizona.

Mr. MCCAIN. I rise in support of this amendment. It is an important amendment.

I point out that I appreciate very much the efforts of Senator CORNYN and Senator KYL to have a respectful debate on this issue. We have honestly held views, and I am very appreciative of the level of this debate and our discussion not only in the Senate but in the cloakroom as we have worked out a number of differences we have had in a mutual effort to come up with legislation which is appropriate to the future of America.

The language in the amendment is identical to what we passed last night, only this amendment adds an additional paragraph giving the alien more of an opportunity to prove their current work status. If we allow people to gain permanent residency, we want them to be hard-working, upstanding individuals. The amendment allows illegal immigrants to prove, through the use of valid government documents—we would be more than happy to define ''valid government documents'' more carefully in report language or in additional amendments—they should have, we believe, an opportunity with secure, government-issued documents that they can prove they are eligible.

This is an important right they should be given. It releases them from the possibility of the bondage of an employer who would like to keep them in the status of which they are. That would only apply to a few, but this is a necessary addition.

The original Cornyn-Kyl amendment does not mandate that the employer attest they will employ this individual in the future, only that they employ them currently. This is an important amendment. I urge my colleagues to support this amendment.

I reserve the remainder of my time for the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, may I inquire how much time I have remaining?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. CORNYN. Mr. President, I appreciate the clarification that the Senator from Massachusetts and the Senator from Arizona have made. This language has been somewhat fluid, and now I have it in front of me. I think I understand it, and I think I understand what the differences are between our two arguments.

Basically, it does retain a certification requirement by the Department of Labor. But the one who decides what the job requirements are and whether the foreign worker actually meets those job requirements is the worker him or herself and not an employer. This is, I believe, insufficient to protect American workers because, essentially, the foreign worker is the judge of his own abilities and also the judge of the job requirement for which the Department of Labor is supposed to certify there are not sufficient Americans available to perform. I think it bears, if not the same, I would say similar defects to the original underlying bill that was amended yesterday to reinsert American worker protections.

Let me speak a minute or two about the nature of what this position is. We are now talking, as Senator DORGAN said, about the so-called future flow, people who are not here yet. This has been described as a guest worker program. Senator KYL and I will be offering an alternative to this so-called guest worker program which we describe as a temporary worker program because I believe this guest worker program is misnamed, mischaracterized, and is in no sense a guest worker program. That is because when you invite guests into your home, you expect at some point they might actually leave.

Under this guest worker program, as designed, that never happens. It invites as many as 200,000 individuals a year, under the Bingaman amendment, who can then come into the United States and work for a period of 4 years, and then, under the approach by the Senator from Massachusetts, self-petition for legal permanent residency and then get in line for American citizenship without regard to whether the American economy is in a boom or a bust. In times when the economy is very flat or when we are in recession, it is much more likely that American workers are going to be competing with foreign workers admitted under this so-called guest worker program.

I do believe calling this a guest worker program, when in fact it is a path to a legal permanent residency and citizenship, is a misnomer. In addition to damaging the prospects of American workers during times when our economy is not doing well and when there are not a lot of jobs available, it also hurts countries such as Mexico and Central American countries that have seen a massive exodus of their hard-working citizens to the United States, never to return.

What we need to do, for the benefit of America as well as the benefit of countries such as Mexico and those in Central America, is to reinstate this historical notion of circular migration; in other words, create a framework where people can come to the United States, qualify to work for a period of time, and then return home with the savings and skills they have acquired working in the United States.

A person who works at even modest pay in the United States under a temporary worker program can, in many

instances, go back home and live like a king in some of these countries, where their money goes a lot further and where their investment in a home or a small business will thereby create opportunity not just for them but also other citizens in those other countries.

I believe if we are ever going to narrow the gap between opportunities available in countries such as Mexico and those in Central America and South America and other countries—which is the basic reason why people leave to come to the United States, to find jobs and work, and we all understand why—we need to find some way of reinstating this pattern of circular migration so people do maintain their contacts and ties with their country and their culture and their family because otherwise we will never be able to satisfactorily address this phenomenon of illegal immigration, no matter what kind of caps we put on it, no matter how many folks we put on the border, no matter whether we build an actual wall or a virtual wall.

Unless we find some way of reducing the development gap between countries that are the net exporters of human labor and a country such as America, which is the importer of human labor from all over the world, we are never going to get to the bottom of this problem.

So that is another reason why I believe this amendment should be defeated. We will have further discussion later on transforming, I hope, the so-called guest worker program to a true temporary worker program and reinstating circular migration in a way that both benefits America and benefits those countries from which those workers come.

Mr. President, I reserve the remainder of our time and yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have tried to point out this will be a judgment decision that will be made by the Secretary of Labor as to whether there is an American fit, willing, and able. And if there is, they cannot petition.

Now, the Senator says: Well, it is all then up to the employee. But the idea of the whole guest worker is the employer. Why is it good for the employer, who is going to go out and petition and say: Look, I need someone to come work for me. They advertise for 45 days. Then they find out they have someone from overseas who will do that. So the employer is the one who is petitioning there. Didn't have any problem with that.

Now, when we get into the situation after 4 years, they can make the petition on this, if there is a vacancy, according to this proposal, but if there is not a green card available, they do not get it. They might have to wait a year. They might have to indicate 2 years. This is not automatic. There are only a certain number of green cards that are available under this category. They may wait 1 year. They may have to wait 2 years. So it is much more difficult. This is still weighted far against the worker than the employer.

What we were always trying to do in the development of the legislation is to have balance and fairness in terms of the authority and responsibility and the legality on this. I think what we have offered addresses what I understood to be the Senator's concern; that is, that there are going to be American workers out there when this person is getting a green card. Therefore, it is going to be adverse to the American workers. We say, if there is one, they don't get it. That is decided by the Secretary of Labor. And they have to be able to prove their work history through documents and records that are either held by the Government or by the employer. It seems to me that is about as lock safe and secure as you can have in this business. I would hope we would accept this amendment.

Mr. President, I think my time has expired.

The PRESIDING OFFICER. The time of the Senator from Massachusetts has expired.

There is 7 minutes remaining in opposition to the amendment.

Who yields time?

Mr. CORNYN. Mr. President, I yield to the Senator from Arizona 5 minutes.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 5 minutes.

Mr. KYL. Mr. President, the amendment that was adopted yesterday is a good amendment. I would hate to see us undo what we did yesterday with the Kennedy amendment. Therefore, I rise in opposition to it.

What we are talking about is self-petitioning by an illegal immigrant for permanent legal status in the United States—a green card—to be here for the rest of their life. The circumstances in the past for that had always been that either a family member petitioned you in under the law or an employer petitioned you in because he had a job for you.

The concept of self-petitioning is a new one in the law in this context. One of the reasons why that is critical is we are trying to assure that while a job may have existed for somebody in the past or even exists today, that job may not be available forever. The concept of temporary workers is just that, that when there is a job available for that worker, then the worker has a temporary visa to fulfill that job. When that jobs goes away, and there is no longer work in that particular area, then the individual's visa would expire, and it would not be reissued until, once again, the work is available. That is the whole concept of ''temporary.''

That concept is eliminated or destroyed with a part of the Kennedy amendment. The first part of the Kennedy amendment does provide for the Department of Labor to make a determination about employment conditions and whether jobs are available in a particular area. But then there is the word ''or'' written in at the end of section III(i). The second way the alien can petition is by simply submitting documents for current employment; in other words, the alien shows that he currently has a job. That is fine for a temporary permit. It is not fine for permanent legal status.

What you are allowing the individual to do is to say: I have a job today temporarily, and with that I am going to petition for the right—and the law would then allow the individual to acquire permanent status in the United States, which then can lead to citizenship. The whole point of temporary permits, as I said, is they reflect the economic conditions for the length of the permit or the visa.

Under the bill Senator CORNYN and I have, we have 2-year visas. What the President has proposed is a 3-year visa. The bottom line is, it should be no longer than necessary to ensure that if economic conditions change and the jobs are no longer available, that the visa would expire, the individual would return home and would not get another visa to come here for temporary work until the job has opened up again.

So the fact that an individual can prove he has a job today or that he had a job yesterday has nothing whatsoever to do with the availability of employment in the future. That is the fatal flaw of this amendment.

There needs to be an assurance that when we are talking about permanent legal residence, there will be a job available for that person in the future, not just that the individual has a job today. So that is a fatal flaw in the Kennedy amendment. I do not know whether it is deliberately intended. I suspect the point is to undercut the effect of the amendment we adopted yesterday, which is a worker protection amendment.

The bottom line that Senator CORNYN is trying to assure is that if an American has a job, that job is not undercut by somebody coming here today who would be able to stay here forever and, therefore, compete with the American for the job.

So I think we should stick with the worker protection amendment we adopted yesterday and not agree to the Kennedy amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, is it correct we have 3 minutes remaining?

The PRESIDING OFFICER. The Senator is correct.

Mr. CORNYN. Mr. President, where we have come from since yesterday afternoon is, we had a basic bill that provided no protection for American workers because it allowed foreign workers to self-petition without a job, without any type of certification there were no Americans available to fill the job, and we then adopted an amendment that would install some worker protections by requiring both of those things: that, No. 1, there is a job available; and, No. 2, there are not sufficient Americans to fill that type of job.

Now, under the amendment of the Senator from Massachusetts, we have gone from no worker protection to what I would call illusory worker protection—illusory worker protection—because this puts the decision to define the job requirements in the hands of the foreign worker. It also puts in the hands of the foreign worker—the self-interested individual, by the way, who is going to be staying or leaving depending on whether they meet these requirements—it puts in that foreign worker's hands the total and unilateral determination of what the job requirements are and, No. 2, whether that same foreign worker meets those job requirements; whereas, for everyone else in America, it is the employer who determines whether the prospective employee meets the job requirements.

The last thing I would say is, for every other category of visa, worker visa in America, under our naturalization and immigration system, there has to be some form of employer sponsorship. And this deviates from that pattern which I believe is important, and this represents an unprecedented break with that in a way that I think damages the prospects of American workers.

So I urge my colleagues to vote against the amendment.

I yield the floor and yield the remainder of our time.

The PRESIDING OFFICER. All time has expired on the amendment.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, following this vote, the next scheduled amendment is by the Senator from Oklahoma, Mr. INHOFE. There are negotiations in trying to work it out. They are supposedly very close. So we are not sure whether we will have Senator INHOFE's amendment and a side-by-side laid down. We will try to determine that while the vote is on.

If they are table to work it out—or immediately following that, we will go to the amendment by Senator AKAKA. We are going to try to work out time agreements so we can move the bill along on all of them.

Let me remind my colleagues, we are going to enforce the rules strictly to 15 minutes and 5 so we can move the bill along.

Let me also remind my colleagues on the Judiciary Committee that we are going to have our executive meeting in the President's Room. We had planned to have an executive meeting at 9 o'clock this morning, but then when the hearing on General Hayden was moved by the Intelligence Committee from 10 to 9:30, we could not have that meeting, so we are going to have it in the President's Room immediately following this vote.

I thank the Chair and yield the floor.

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

The PRESIDING OFFICER. The yeas and nays are requested.

Is there a sufficient second?

There appears to be a sufficient second.

All time having expired on debate, the question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

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

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 129 Leg.]

YEAS—56

Akaka	Feinstein	Menendez
Baucus	Graham	Mikulski
Bayh	Hagel	Murkowski
Biden	Harkin	Murray
Bingaman	Inouye	Nelson (FL)
Boxer	Jeffords	Obama
Brownback	Johnson	Pryor
Cantwell	Kennedy	Reed
Carper	Kerry	Reid
Chafee	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Conrad	Lautenberg	Schumer
Craig	Leahy	Specter
Dayton	Levin	Stabenow
DeWine	Lieberman	Stevens
Dodd	Lincoln	Voinovich
Dorgan	Lugar	Warner
Durbin	Martinez	Wyden
Feingold	McCain	

NAYS—43

Alexander	Crapo	McConnell
Allard	DeMint	Nelson (NE)
Allen	Dole	Roberts
Bennett	Domenici	Santorum
Bond	Ensign	Sessions
Bunning	Enzi	Shelby
Burns	Frist	Smith
Burr	Grassley	Snowe
Byrd	Gregg	Sununu
Chambliss	Hatch	Talent
Coburn	Hutchison	Thomas
Cochran	Inhofe	Thune
Coleman	Isakson	Vitter
Collins	Kyl	
Cornyn	Lott	

NOT VOTING—1

Rockefeller

The amendment (No. 4066) was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote, and I move to lay that motion on the table.

The PRESIDING OFFICER. The Senator from West Virginia is to be recognized.

Mr. KENNEDY. Madam President, we are trying to move along. I see my colleague and friend behind me, the Senator from West Virginia, Mr. BYRD, who has been here patiently waiting to address the Senate on this issue generally. That might work, as we are just trying to reaffirm the language on this Inhofe amendment.

Mr. SPECTER. Madam President, may I ask the Senator from West Virginia how long he would like?

Mr. BYRD. Probably 20 minutes.

Mr. SPECTER. Madam President, that is entirely acceptable. I announce that following Senator BYRD we will be going to the Inhofe amendment. I understand they are very close on an agreement. If that agreement is reached, then I would like to move—although I am not asking consent for that now—to a 20-minute time agreement, if an agreement is reached, equally divided. If it is not reached, we will have side-by-side amendments. I alert Members as to what the schedule will be.

Following that, Senator AKAKA is next in line, and we are considering a time agreement there, also.

I have been asked when the next vote will occur. I think we can move the bill most expeditiously if we continue to take up the amendments one at a time, but after the first votes bring all the Senators in to stack the votes. We will have a better idea as to when we will stack the votes when we have a better idea as to how many votes we will have.

Meanwhile, the Judiciary Committee is meeting in executive session in the President's Room, so I ask Judiciary Committee members to go to that meeting.

I thank the Chair and yield the floor to Senator BYRD.

Mr. KENNEDY. Madam President, the Inhofe amendment is enormously important. It is complicated. Members on both sides, including the author of the amendment, are working in good faith to try to work this out. To my knowledge, it has not been worked out. Hopefully, after 25 minutes we will be able to tell the Senate whether it is worked out, whether we will have to have side-by-side amendments. But at this time, we will not enter into a short time agreement.

Hopefully, as we have been making progress in other areas, we will have a chance to do that in this area as well.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD. Madam President, today the Senate finds itself considering yet another amnesty for illegal aliens. After the defeat of a similar amnesty proposal last month, I had hoped that the Senate had seen the last of these efforts. I had hoped that the Senate, when given the time to consider the overwhelming opposition of the American people to amnesty, would pass a clean border security bill like the House did without amnesty, without a guest worker program, and without an increase in the annual allotment of permanent immigrant visas.

Sadly, the Senate is embarking on a path that contradicts everything we know—everything we know—about the position of the American people on this issue. It is an unpopular approach. It is the wrong approach.

The other night in his address to the Nation, the President endorsed the Senate amnesty plan to award U.S. citizenship to illegal aliens, and he announced the deployment of up to 6,000 guardsmen to the U.S. border with Mexico. The deployment of U.S. troops is intended to suggest an urgency about gaining control of the border that has been missing for many years, even since the September 11 attacks. Nevertheless, I have my doubts and concerns.

Guardsmen have been sent overseas two times, even three times—no, even

four times—and have come home fatigued and stressed out. They have been forced to sell businesses and to endure financial hardships because of their long absences.

Just a few months ago, the White House proposed to cut the National Guard by nearly 18,000 soldiers. The adjutants general of many States are reporting that they were not involved in discussions about the deployment of the Guard to our borders. So what assurances are there that sending troops to the border won't hamper our ability to respond to the floods in New England, another Hurricane Katrina, or another natural disaster?

The National Guard might be able to lend support to our border security, but that role must not be at the expense of the thousands of communities around the country that also depend on our Guard should disasters strike those towns or counties.

Press reports indicate that the Guard men and women will not be empowered to arrest aliens who attempt to cross our borders. I cannot help but wonder if this move to detail guardsmen to our borders is a political stunt to look tough at the expense of the brave citizen-soldiers who serve in the Guard.

The President would not have to call out the National Guard to secure the borders if he had supported even some—even some—of the nine—nine, nine—separate amendments that I have offered since September 11 to hire and train more Border Patrol agents. If these amendments had been adopted—I say, if they had been adopted—the law enforcement agents would be in place right now helping to secure the borders.

Instead, the administration has consistently opposed these efforts as unnecessary and extraneous spending, saying that those funds would expand the size of Government. When I included $400 million in the fiscal year 2002 Supplemental Appropriations Act for border security, the President refused to spend it saying:

I made my opposition clear . . . We'll spend none of it.

That is what he said. That is what the President said. He said:

I made my opposition clear . . . We'll spend none of it.

As recently as last September, on a party-line vote, the majority defeated an Obey-Byrd-Sabo motion in conference on the fiscal year 2006 Homeland Security appropriations bill to add $100 million for border security. The administration opposed—yes, you heard me correctly—the administration opposed the Byrd-Craig amendment to the fiscal year 2005 supplemental appropriations bill to add $389 million for, what? For border security—border security. Fortunately, the amendment was approved and subsequently, despite administration opposition, the conferees approved $274 million. And as a result, there are now 500 more Border Patrol agents, 218 more immigration agents and investigators, and 1,950 more detention beds in place helping to secure our borders.

I will support any realistic effort to secure our borders, but I have to question the sincerity behind sham attempts that accomplish a token presence which only impose further hardship on our National Guard and may put communities at risk from natural disasters.

The sense of urgency that comes with deploying the National Guard is belied by the administration's consistent opposition to providing the necessary resources that our border security agencies need to do their job. Last month, I joined Senator GREGG in offering an amendment to the supplemental appropriations bill for Iraq to provide $1.9 billion for the Border Patrol to hire the agents and secure the equipment that they need to better secure the border. The President has threatened to veto the supplemental bill. It is difficult to believe that the President would oppose funding our border agencies sufficiently to do the job they were created to do, but that is the situation.

Immigration enforcement in our country remains a decidedly half-hearted effort. The administration claims to strengthen border security in one area, and then completely undermines it in another with amnesty proposals. That dangerous inconsistency is at the root of my opposition to the misguided amnesty proposal before the Senate.

I oppose this amnesty bill. I oppose it absolutely. I oppose it unequivocally. I oppose this effort to waive the rules for lawbreakers and to legalize the unlawful actions of undocumented workers and the businesses that illegally employ them.

Amnesties are the dark underbelly of our immigration process. They tarnish the magnanimous promise enshrined on the base of the Statue of Liberty. Amnesties undermine that great egalitarian and American principle that the law should apply equally and should apply fairly to everyone. Amnesties perniciously decree that the law shall apply to some but not to all.

This bill would create a separate set of immigration laws for those who choose not to follow the regular process that everybody else had to go through. It is a slap in the face to every immigrant who had to wait abroad to come to American shores, and to every immigrant who had to struggle and work to become a U.S. citizen.

It is a false promise to the many tens of millions of immigrants who would be authorized to settle in the United States under this bill with the infrastructure of our Nation—our schools, our health care system, our transportation and energy networks—increasingly unable to absorb this untenable surge in the population. Many employers are more than willing to take advantage of the cheap labor that this bill would provide, but the responsibility would fall on the Nation as a whole to make the public investments necessary to ensure that these workers do not fall into a state of poverty once they have arrived. We have our own problems to address without having to assume this additional burden to help American businesses find cheaper labor.

Amnesties beget more illegal immigration—hurtful, destructive illegal immigration. They encourage other undocumented aliens to circumvent our immigration process in the hope that they, too, can achieve temporary worker status. Amnesties sanction the exploitation of illegal foreign labor by U.S. businesses and encourage other businesses to hire cheap and illegal labor in order to compete.

President Reagan signed his amnesty proposal into law in 1986. At the time, I supported amnesty based on the same promises that we hear today; namely, that legalizing undocumented workers and increasing enforcement would stem the flow of illegal immigration. It didn't work then; it won't work today. The 1986 amnesty failed miserably. After 1986, the illegal immigrant population more than quadrupled from 2.7 million aliens to 4 million aliens in 1996, to 8 million aliens in 2000, to an estimated 12 million illegal aliens today.

In that time, the Congress continued to enact amnesty after amnesty, waiving the Immigration Act for lawbreakers. The result is always the same: For every group of illegal aliens granted amnesty, a bigger group enters the country hoping to be similarly rewarded. This bill encourages individuals on both sides of the border to flout the law. It is a congressional pardon for lawbreakers—both for illegal aliens and the unscrupulous employers who hire them.

What is backward about the pending bill is that it would actually expand benefits to illegal aliens rather than curtail them. It authorizes illegal aliens to work in the country. It grants illegal aliens a path to citizenship. It pardons employers who illegally employ unauthorized workers. It even repeals provisions in current law designed to deny cheaper, in-State tuition rates to illegal aliens.

The pending bill is an invitation to immigrants and employers alike to violate our immigration laws and to get away with it. Amnesties are dangerous proposals. Amnesties open routes to legal status for aliens hoping to circumvent the regular security checks. By allowing illegal aliens to adjust their status in the country, we allow them to bypass State Department checks normally done overseas through the visa and consular process. One need only look to the 1993 World Trade Center bombing, where one of the terrorist leaders had legalized his status through an amnesty, to know the dangers of these kinds of proposals.

Our immigration system is already plagued with funding and staffing problems. It is overwhelmed on the borders,

in the interior, and in its processing of immigration applications. It only took 19 temporary visa holders to slip through the system to unleash the horror of the September 11 attacks, and the pending proposal would shove many tens of millions of legal and illegal aliens—many of whom have never gone through a background check—through our border security system over the next decade, in effect, flooding a bureaucracy that is already drowning.

It is a recipe for disaster, and 6,000 National Guardsmen without the power to enforce our immigration laws and arrest illegal aliens are not going to make the difference between success and failure. Our Nation's experience shows that amnesties do not—do not—work. They encourage illegal immigration. They open our borders to terrorists. Our experience shows that we cannot play games with our border security or American lives could be lost.

I will oppose this amnesty bill, and I urge my colleagues to do likewise.

Madam President, I yield the floor, and 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. INHOFE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. INHOFE. I ask for the regular order.

The PRESIDING OFFICER. The Senator's amendment is pending.

AMENDMENT NO. 4064, AS MODIFIED

Mr. INHOFE. I ask unanimous consent that the amendment be modified with the changes that are at the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 4064), as modified, is as follows:

On page 295, line 22, strike ''the alien—'' and all that follows through page 296, line 5, and insert ''the alien meets the requirements of section 312.''.

On page 352, line 3, strike ''either—'' and all that follows through line 15, and insert ''meets the requirements of section 312(a) (relating to English proficiency and understanding of United States history and Government).''.

On page 614, after line 5, insert the following:

SEC. 766. ENGLISH AS NATIONAL LANGUAGE

(a) IN GENERAL.—Title 4, United States Code, is amended by adding at the end the following:

''CHAPTER 6—LANGUAGE OF THE GOVERNMENT

''Sec.
''161. Declaration of national language
''162. Preserving and enhancing the role of the national language

''§ 161. Declaration of official language

''English is the national language of the United States.

''§ 162. Preserving and enhancing the role of the national language

''The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America. Unless otherwise authorized or provided by law, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English. If exceptions are made, that does not create a legal entitlement to additional services in that language or any language other than English. If any forms are issued by the Federal Government in a language other than English (or such forms are completed in a language other than English), the English language version of the form is the sole authority for all legal purposes.''.

''(b) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the end the following: ''6. Language of the Government ..... 161''.

SEC. 767. REQUIREMENTS FOR NATURALIZATION.

(a) FINDINGS.—The Senate makes the following findings:

a. Under United States law (8 U.S.C. 1423(a)), lawful permanent residents of the United States who have immigrated from foreign countries must, among other requirements, demonstrate an understanding of the English language, United States history and Government, to become citizens of the United States.

b. The Department of Homeland Security is currently conducting a review of the testing process used to ensure prospective United States citizens demonstrate said knowledge of the English language and United States history and government for the purpose of redesigning said test.

(b) DEFINITIONS.—For purposes of this section only, the following words are defined:

(1) KEY DOCUMENTS.—The term ''key documents'' means the documents that established or explained the foundational principles of democracy in the United States, including the United States Constitution and the amendments to the Constitution (particularly the Bill of Rights), the Declaration of Independence, the Federalist Papers, and the Emancipation Proclamation.

(2) KEY EVENTS.—The term ''key events'' means the critical turning points in the history of the United States (including the American Revolution, the Civil War, the world wars of the twentieth century, the civil rights movement, and the major court decisions and legislation) that contributed to extending the promise of democracy in American life.

(3) KEY IDEAS.—The term ''key ideas'' means the ideas that shaped the democratic institutions and heritage of the United States, including the notion of equal justice under the law, freedom, individualism, human rights, and a belief in progress.

(4) KEY PERSONS.—The term ''key persons'' means the men and women who led the United States as founding fathers, elected officials, scientists, inventors, pioneers, advocates of equal rights, entrepreneurs, and artists.

(c) GOALS FOR CITIZENSHIP TEST REDESIGN.—The Department of Homeland Security shall establish as goals of the testing process designed to comply with provisions of [8 U.S.C. 1423(a)] that prospective citizens:

a. demonstrate a sufficient understanding of the English language for usage in everyday life;

b. demonstrate an understanding of American common values and traditions, including the principles of the Constitution of the United States, the Pledge of Allegiance, respect for the flag of the United States, the National Anthem, and voting in public elections;

c. demonstrate an understanding of the history of the United States, including the key events, key persons, key ideas, and key documents that shaped the institutions and democratic heritage of the United States;

d. demonstrate an attachment to the principles of the Constitution of the United States and the well being and happiness of the people of the United States; and

e. demonstrate an understanding of the rights and responsibilities of citizenship in the United States.

(d) IMPLEMENTATION.—The Secretary of Homeland Security shall implement changes to the testing process designed to ensure compliance with [8 U.S.C. 1423(a)] not later than January 1, 2008.

Mr. INHOFE. Madam President, I ask unanimous consent to add as cosponsors several Senators, including the distinguished senior Senator from West Virginia, Senator BYRD, and Senators ALEXANDER and KYL.

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

Mr. INHOFE. Madam President, this is, I believe, a very significant amendment. We have had an opportunity to talk to people who had problems. In addition to making English the national language, we also unify some of the applications in terms of legalized immigrants.

I have had the honor of speaking at naturalization ceremonies. It is a very warm thing to know that these people come in and do it the legal way, the right way; wherein they have to, and they do, learn the language. We have some language in here that Senator ALEXANDER had suggested that I think makes this a better bill, and I think Senator KYL and Senator SESSIONS also have this language. So it goes beyond that.

Basically, what it does is it recognizes the practical reality of the role of English as our national language. It states explicitly that English is our national language, providing English a status in law that it has not had before. It clarifies that there is no entitlement to receive Federal documents and services in languages other than English. It declares that any rights of a person and services or materials in languages other than English must be authorized or provided by law. It recognizes the decades of unbroken court opinions that civil rights laws protecting against national origin and discrimination do not create rights to Government services and materials in languages other than English, and establishes enhanced goals of the DHS as redesigned. This is what I talked about in trying to make those more uniform.

I think Senator ALEXANDER wants to make a few comments. I would only say that this is something that is more significant probably to the American people than it is inside this Chamber. I know there is opposition to this. There are some people who don't believe that English should be our national language. If you look at some of the recent polling data, such as the Zogby poll in 2006, it found 84 percent of Americans, including 77 percent of Hispanics, believed that English should be the national language of Government

operations. A poll of 91 percent of foreign-born Latino immigrants agreed that learning English is essential to succeeding in accordance with the United States, according to the 2002 Kaiser Family Foundation poll.

Also, we heard the other day, when President Bush made his very eloquent statement, he said:

> An ability to speak and write the English language, English allows newcomers to go from picking crops to opening grocery stores, from cleaning offices to running offices, from a life of low-paying jobs to a diploma, a career, and a home of their own.

So I believe this is something very significant that we are doing today that people have talked about now for four decades that I know of, and I believe it should be popular.

I yield to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Madam President, I wish to compliment the Senator from Oklahoma for his work, for bringing it to the Senate floor, and for doing something I think is very important and that I think unifies us.

What are some of the things that do unify us? Well, our language unifies us. Senator ALEXANDER, who will speak in a moment, was responsible also for working with Senator INHOFE to include provisions in this amendment that help us to recognize the importance of English in our country and the importance—not just for our new immigrants but for all Americans—of speaking this language that is our national language. So an amendment that recognizes that it is our national language is very positive for both immigrants and nonimmigrants alike.

I would also like to make a point about what this amendment is not. This is not an English-only amendment. That is an important point. We do speak a lot of different languages in this country, but English is our national language, and I think we can all agree on those great principles.

So this expression by the Senate is an important one, and I compliment all of those who helped to work on it, and for bringing it to the Senate floor I thank Senator INHOFE.

Mr. INHOFE. I appreciate the comments of the Senator from Arizona, who was very instrumental in coming up with some good language that made this a better piece of legislation.

Madam President, I ask unanimous consent that Senator FRIST be added as a cosponsor.

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

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I thank the Senator from Oklahoma for his good work because we are now a Nation of people of different faiths, different skill sets, different backgrounds, different colors of skin, and different nationalities. Where we once were apart, now we have become Americans. The thing that makes this country effective is being able to communicate with one another in a common language. I think that is an ideal of America that is important. I think any Nation, historically, that has divisions based on language, begins to have a lot of complications and problems. So I am pleased that Senator ALEXANDER and Senator INHOFE have worked hard on this, that they have come up with language that also includes more extensive training and learning on behalf of new citizens about what it means to be an American. No one has been more articulate over the years on this than Senator ALEXANDER.

I offered an amendment on it and worked with Senator INHOFE and Senator ALEXANDER and others, and we have reached a common accord with an amendment I think everyone can support that will help unify us as a Nation and make sure we are one people, all Americans, adhering to the highest ideals of this great country.

Senator INHOFE, thank you for your work and, Senator ALEXANDER, I appreciate your leadership also.

Mr. INHOFE. I thank Senator SESSIONS for the contributions he has made. You and Senator ALEXANDER have both made contributions, and I think it would be appropriate for me to yield some time to Senator ALEXANDER because he can articulate some of the other areas that we are addressing here, other than English as the national language.

Mr. ALEXANDER. Madam President, I see the manager of the bill. I wonder if it would be appropriate for me to go ahead for about 10 minutes on the Inhofe amendment.

Mr. SPECTER. Madam President, the distinguished Senator from Tennessee has been a leader in this field going back to his days as the Secretary of Education and Governor. Ten minutes would be fine. I think that is acceptable to Senator ALEXANDER.

I would like to remind Senators we are trying to move the bill along. The next Senator in line is Senator AKAKA, and I think we are likely to be ready for Senator AKAKA very briefly. If he could come to the floor, we could move ahead with his amendment. I thank the Chair, and I yield to Senator ALEXANDER.

Mr. ALEXANDER. Madam President, could I be notified when I have 60 seconds left?

The PRESIDING OFFICER. The Senator will be notified.

Mr. ALEXANDER. I think Senator INHOFE, the Senator from Oklahoma, has been looking at the original motto of the United States which is above the Presiding Officer's chair: e pluribus unum, ''one out of many,'' in our antecedent language of Latin because he has done a very good job, I think, of helping to say what the body as a whole would like to say, and I hope this is something all Senators can agree on.

Here is what the Inhofe amendment, of which I am proud to be a cosponsor, does. No. 1, it states the obvious: that English is the national language of the United States. But in so stating, it does not prevent those who are today receiving Government services in other languages from continuing to do so. We can have those discussions at another time.

The second thing it does is it adopts an idea that has been suggested by Senator GRASSLEY, the Senator from Iowa, on another occasion during the debate on this bill; that for those immigrants who are currently in the country illegally but who may be able to adjust to a legal status under the way this bill is finally written, it establishes a clear English language requirement for them to become lawful permanent residents.

The third thing it does is it establishes clear goals for the tests that immigrants take to become new American citizens, so that they know English, our common language, and so that they know American history. That test is currently being redesigned by the Department of Homeland Security. In doing so, this part of the Inhofe amendment picks up language that had been offered before by Senator REID and by me, and by Senator KENNEDY and Senator DODD, as we worked to create summer academies for outstanding students and teachers of American history.

It should surprise no one that the Senate would pass a resolution stating that our national language is English. I can remember being at an education meeting in Rochester in the late 1990s, when someone asked: What is the rationale for common schools? And Albert Shanker, the late president of the American Federation of Teachers, said the public schools, the common schools of America were created to help largely immigrant children learn reading and writing and English and mathematics with the hope they would go home and teach their parents.

So for a long time, we have tried to help new citizens learn our common language so we can speak to one another, and that has been English. Since 1906, our naturalization laws have required new citizens to know English and be able to pass tests in English.

The Senate, at the beginning of the immigration debate, put a value on the English language by approving an amendment that said that the federal government would offer $500 grants paid for out of visa fees by those who are legally here, who are seeking to become prospective citizens. In other words, we want to help people learn English.

That same amendment said that if you become fluent in English, we will cut a year off the time you have to wait to become a lawful, new citizen from 5 years to 4 years.

I remember when I was Education Secretary for this country 15 years ago, when I went to the Southwest United States and someone told me: Well, you will probably find a lot of people who

object to learning English. But I found just the reverse. I found a lot of men and women in the Southwest United States who were upset with me because they didn't have enough help to learn English. They wanted to learn the national language, the common language of the United States.

The Inhofe amendment is in that spirit. I have always believed that the luckiest children in our country are those who speak more than one language, whether it is Spanish or Chinese—which, after Spanish, is the next most widely spoken language in our country—but that one of those languages must be English, and children should learn it as quickly as is practical.

The second part of the Inhofe amendment should not surprise anyone because it incorporates language Senator SESSIONS had offered to try to make certain that the U.S. history test that new immigrants take if they wish to become citizens is a good test and includes the key documents and key events and key ideas of our founding documents. As I mentioned, that has broad support on both sides of the aisle here, with the Democratic leader, as well as the Republican leader, Senator SESSIONS, Senator KYL, and others, having been involved in that.

Finally, it should be no surprise that the Senate, in the middle of a debate on a very important subject, finds talking about our common language, our national language, English, an important matter, and talking about U.S. history an important matter. In many ways, there is nothing more important to discuss if we are talking about immigration because the greatest accomplishment of our country is not our diversity, even though that is a magnificent part of our country. It is that we have taken all that diversity and molded it into one nation on something other than race and ancestry.

We have this enormous advantage in the world today, an advantage France and Germany don't have. People have a hard time thinking of how to become German, how to become French, how to become Italian, how to become Chinese, how to become Japanese. But if you come to this country and you want to become a citizen, you must become an American and you must learn our common language. That is a part of it, and it has been for 200 years.

The greatest, most practical limit on the number of new immigrants who can come to our country is our ability to assimilate them into our culture to help them become Americans.

The Inhofe amendment is a very carefully constructed amendment to try to make sure that we are heard properly in this country. We value every language. We value every ancestry. We value every background that is here. It is what makes our country so special. I, for one, hope our children grow up speaking more than one language. But we need to be able to speak with one another, and we need to understand those principles which we debate here in the Senate. Just look at this debate on immigration. We are debating four great principles with which we all agree, but we apply them in different ways. They are the rule of law; they are laissez faire, about our free market system; they are equal opportunity, giving everybody a fair chance at the starting line; and e pluribus unum, the idea that we are one nation from many.

This amendment is as important as any amendment which is being offered because it helps take our magnificent diversity and make it something even more magnificent. It recognizes that only a few things unite us: our principles, found in our founding documents, and our common language. We are proud of where we have come from, where our ancestors have come from, but to make this land of immigrants truly one country, we must have and honor our national language, our common language, and that language is English.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Oklahoma.

Mr. INHOFE. First of all, I do appreciate as always the very eloquent Senator from Tennessee giving the historic perspective. I think it is important to understand that virtually every President throughout the history of America has made statements to that effect. Teddy Roosevelt said in a speech:

> We must also learn one language and that language is English.

President Clinton said in his speech in 1999, in talking about immigrants:

> New immigrants have a responsibility to enter the mainstream of American life. That means learning English and learning about our democratic system of government.

We heard just the other day in a speech given by our President that it is necessary in order to unify us and to leave all the obstacles that are out there.

I thank not just the obvious ones who have been speaking already, but Senator MCCAIN and Senator GRAHAM have been a very important part in making changes, along with Senator ALEXANDER and the occupant of the chair, the junior Senator from Florida.

At this time, I would like to hear from Senator GRAHAM. I yield to him whatever time he desires.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, just to put this debate in perspective for myself and myself alone, I wish I could speak an additional language. It would make me a better person. I think I would enjoy that experience. I know enough German just to be dangerous. I lived 4½ years in Germany, and I picked up a little of the language, but I was always somewhat embarrassed that all my German friends probably spoke better English than I, and several other languages. It would be great for our country if our young people could learn additional languages because we live in a global economy and a global world, and it would make America a better place.

However, what makes America a special place and what is the key to success in America, from an economic and social perspective, is to master or be competent in the English language. While I personally would like to be able to speak another language—I think it would make me a better person, it would change my life for the better—when it comes to our Nation, it is important that we focus as a nation on those things which unify us, and our common language is English. We need to understand that and promote that because if you are coming to America or you are here now, your life will be tremendously enhanced if you are fluent in the English language. Opportunities will exist for you that will not exist otherwise.

I know there are many people in this body from different places in the world, and some have parents or grandparents who came here not speaking a word of English. Some may have died not speaking a word of English, and their lives were just as valuable as anybody else's life, but we are trying, as a Government to make a policy statement here—it is a policy statement—but not change the law at the same time.

The goal of this amendment is to say English is the national language of the United States. That is true. I would encourage every American to learn another language, get your kids enrolled in taking Spanish or some other language because they will be more successful in a global economy. From an individual level, we would be better off if every American could master additional languages other than English. But from a national perspective, to make sure we maintain our national unity and our common sense of being one nation, it is important that we emphasize the need to assimilate into America by mastering the English language. Senator INHOFE is making a statement that needs to be made. I congratulate him.

What does this amendment do, and what is it intended to do? This amendment says:

> The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America.

That is a good policy statement. From an individual perspective, we should learn as many languages as possible, but from a national perspective, we need to promote assimilation in our society. The best way to assimilate into our society is not to abandon your native tongue but to also learn English.

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

Mr. GRAHAM. I certainly will.

Mr. DURBIN. Mr. President, I would like to first commend the Senator from South Carolina. He and I have spoken in the well here on the floor about this issue. I am trying, as he is, to understand this issue from another's point of

view because I am a lucky person. My mother was an immigrant to this country. When her parents came to this country from Lithuania, they did not speak English. My mother spoke both Lithuanian and English, and as a young girl was an interpreter in court so immigrant families could have justice even if they didn't understand English very well. My mother spoke both languages, but I speak only English.

The Spanish language has become an important symbol for so many people in this country. It reflects on their heritage. It is a source of pride. They are proud to be Americans, but they are equally proud to have a heritage they can point to.

I look at the amendment offered by the Senator from Oklahoma. I can't quarrel with his beginning sentence where he says:

The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America.

That strikes me as a statement of fact. English is our language. Success in America depends on a command of English. If you speak only Spanish, your horizons are very limited.

But what troubles me, and I am still wrestling with it, and I think the Senator from South Carolina is as well, is the rest of the amendment. What happens in the situation where a person is here legally in the United States but has limited English language skills—what happens when that person, legally here, goes into a courtroom, goes in to vote, goes before law enforcement agencies? What kind of guarantee can we give that the person will be treated fairly? Because just as English is at the root of who we are as Americans, so is the concept of fairness.

I am trying to find the balance. I think the Senator from South Carolina is looking for that same balance. I would like to ask the Senator to reflect on whether we are being careful in the language of this amendment. Are we going too far? Are we going to find people who are poor, people with limited language skills, who will not receive the kind of treatment and fairness we really take pride in as Americans?

Mr. GRAHAM. I will be glad to answer. That is a great question. Here is the way I view what we are trying to do. Please, others, speak up.

Even though we are trying, in this amendment, to promote the idea that English is the national language and the Government of the United States shall preserve and enhance the role of English as the national language of the United States of America, there is something else we are trying to avoid doing. The truth is that a variety of Government services are authorized and provided by law in languages other than English. That decision has been made in the Voting Rights Act. There are a bunch of incidences in our law through court decisions, statutory schemes, maybe regulatory schemes, that would authorize a service to be provided by the U.S. Government in a language other than English. My goal is to make sure, in trying to bring us together, focusing on English as an essential part of who we are, not to disturb that legal setting.

So if in the example of the Senator of someone who is needing translation in court because they are not competent in the language, the English language, and they can't understand the proceedings—if a judge determines that or there is a statute which requires that person be provided translation, interpreting services, nothing in this amendment would override that.

Mr. DURBIN. May I ask the Senator to yield for a question?

Mr. GRAHAM. Yes.

Mr. DURBIN. Can the Senator point to me in a current situation where a Government service is being offered and explained in a language in addition to English—and that is usually the case.

Mr. GRAHAM. Right.

Mr. DURBIN. There will be English and then another language. And in my home State of Illinois, that language might be Polish, incidentally, or the Filipino dialect of Tagalog, for example, that might be the case.

Mr. GRAHAM. Right.

Mr. DURBIN. Can the Senator point to a single circumstance where he thinks there is an injustice in providing that alternative language instruction, an injustice that requires us to change the law of the United States of America?

Mr. INHOFE. Will the Senator yield so I can answer this question?

Mr. GRAHAM. Go ahead.

Mr. INHOFE. First of all, if you look at the second page of the bill, it provides:

Unless otherwise authorized or provided by law. . . .

So we have that set up for exceptions that are already in law.

Now, the Court Interpreters Act was passed in 1978. They did not, prior to that time—there was a problem that corrected. That act, the Court Interpreters Act, protects already existing constitutional rights such as the 6th amendment, the right to confront witnesses speaking against you, and the 5th amendment and 14th amendment and due process. The United States—I think it was in Negron v. New York. That is a Federal case which is often cited to support the right to an interpreter in Federal and State proceedings. So it is Federal and State proceedings. I believe that exception takes care of the problem you have.

Mr. DURBIN. I don't know whether to direct my question to the Senator from South Carolina, who I believe has the floor at this time, or to the Senator from Oklahoma. What is happening on the floor of the Senate is getting dangerously close to a debate, which hardly ever happens. And I ask those on C–SPAN to turn up the volume. This may turn out to be a debate.

Mr. GRAHAM. Let's go back to the original question and incorporate it into the answer. The Senator asked me if I know of a case where the American Government provides a service in some language other than English that I find unjustified? The answer is overwhelmingly no. We do provide, at the Federal level, bilingual ballots and other services outside of English for a reason, and I think those reasons are good.

The Senator from Oklahoma gave an example. I believe it is a Federal statute that makes sure that due process rights of people not sufficiently trained in understanding English are preserved. At some point in time—in 1978 or whenever it was—Congress came along and said: There will be services provided in a language other than English in a court setting. Not only do I think that is just, but I want to preserve it.

Here is the ultimate answer to the Senator's question. If there is an example of an injustice in the Senator's mind as an individual Senator, where the Government of our country is providing a service not in English, this will not remedy that injustice.

That is what I am trying to say. Passing this amendment, voting for this amendment will not remedy that injustice. If you find one, you would have to come to the floor of the Senate and introduce a bill—a regulation—because this does not do that.

What Senator INHOFE said is absolutely right. The reason I am going to vote for this is because I think it tries to unite us without taking off the table exceptions to English or services provided other than English. It doesn't disturb the legal situation in this country by a statute, regulation, court decree or an Executive order conferring rights of people to receive services other than English. If I thought it did, I wouldn't vote for it.

Mr. DURBIN. Mr. President, if I may ask the Senator to yield for a question, I wish there were a way to engage the Senator from Oklahoma because it is his amendment, and I would like to hear his response. I hold in my hand a publication from the Department of Justice which you can find on the Web site. I invite my colleagues to go to the Web site. They can read this official publication from the Department of Justice, and this is what they will learn. It is entitled, ''Know Your Rights.''

Do you have trouble with English? Are you unable to speak, read, write, or understand English well? If so, you are limited in English proficiency. Federal agencies and organizations which get money from the Federal Government have to take reasonable steps to help people who have trouble with English. Sometimes when a government agency or organization does not help you because you are limited in English proficiency, they violate the law. This is called ''national origin discrimination.''

They go on to say:

There is a Federal law that protects your civil rights. The law is called ''Title VI of the Civil Rights Act of 1964.''

It goes on with examples of possible discrimination. If you come to a hospital and you have limited English proficiency, they are supposed to be able to try to help you understand what your rights are and treat you.

Are we changing that? Will the Inhofe amendment change that? If it doesn't, why are we enacting this? If this is law which we are comfortable with and will live with—and it is currently law in the United States—why are we trying to change it? If we are eliminating this protection which is currently in the law, recognized by the Department of Justice, why are we eliminating it?

That is my question.

Mr. GRAHAM. Mr. President, I will give the Senator my answer and then yield to anyone. I know we need to wrap this up.

In my opinion, the phrase, ''unless otherwise authorized or provided by law,'' we would preserve that service. Simply stated, that language to me is intended to make sure that whatever service is provided in a language other than English, our Federal Government is not disturbed. If you want to disturb it, you would have to come back and do something else.

Mr. DURBIN. If that is not the case, what does this add? What does it change? What does it bring to the law that isn't currently in the law?

Mr. GRAHAM. May I suggest why I think we need to do this and why I support Senator INHOFE. We have gone through a great debate in this country, which is long overdue. What does it mean to be an American? And what role unites us and what divides us? I think it is time for this body to say two things: We will continue to provide services other than English out of a sense of justice and fairness, and we are not going to disturb that because I think there is a goal for that in our society.

But as we debate how to assimilate 11 million people, we need to make it clear that it is the policy of our Government not to change the law but is the goal of our Government to enhance our common language, English. To me, that is a good thing to say because when the demonstrations are in the streets with Mexican flags, they have the right to fly any flag, but some of us have to respond to that. I am supporting the bill, but I am not going to sit on the sidelines and watch demonstrations that destroy national unity. I am trying to bring us all together, and I want the individuals who are here and undocumented to be documented by taking civics classes and taking an English proficiency exam.

Why do we ask them to do that? Why is that part of the pathway to citizenship? We all know if they don't become proficient in English, they will never achieve their own individual value and will be hurting our country. And we are trying to reinforce that without doing it in a way that would deny services already provided in languages other than English. That is why it is important to me. That is why I will vote for it.

Mr. SPECTER. Mr. President, will the Senator yield?

Mr. GRAHAM. I yield the floor.

Mr. SPECTER. Mr. President, on scheduling, we have not been able to work out an agreement on the Inhofe amendment.

The Ensign amendment is about to go. We are trying to juggle schedules with one Senator going to a graduation and another Senator going to Florida. And if we can structure our schedules to have 12:30 votes, we can have two votes at 12:30, if the Senator from Nevada would be agreeable to a time limit between now and 12:30 equally divided. We will then be in position to vote on the Kennedy amendment. We will be in a position to vote on the Ensign amendment at 12:30. If we have the consent of Senator INHOFE—I have already discussed it with him informally—to set aside his amendment, the plan is to have a vote on the Inhofe amendment this afternoon. That will give time for others to have a side-by-side. That is how I would like to proceed.

Mr. KENNEDY. Mr. President, I want to cooperate and have cooperated with the Senator. I think it is premature to establish a time on the Ensign amendment. I don't think it will be an undue period of time. But it would be difficult now to agree to a specific time. I hope we would be able to agree after a while. I welcome the chance to continue this. I think this discussion has been enormously valuable and helpful. We can proceed in whatever way the leader wants to proceed. Right now, we would not be in a position to agree to a 1-hour time limitation on the Ensign amendment, half an hour on each side. But we will well work to try to get a reasonable time, if that is the decision.

Mr. SPECTER. Mr. President, I suggest we proceed with the Ensign amendment. I agree. The discussion with Senator GRAHAM, Senator INHOFE, and Senator DURBIN was very productive. Perhaps we could continue the discussion on an informal basis as we try to come to an agreement on language but meanwhile proceed to the Ensign amendment with the prospect of a vote around 12:30.

I yield the floor.

The PRESIDING OFFICER (Mr. ISAKSON). The Senator from Nevada.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENT NO. 3985

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN], for himself, Mr. SANTORUM, and Mr. INHOFE, proposes an amendment numbered 3985.

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

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

The amendment is as follows:

(Purpose: To reduce document fraud, prevent identity theft, and preserve the integrity of the Social Security system, by ensuring that persons who receive an adjustment of status under this bill are not able to receive Social Security benefits as a result of unlawful activity)

Insert in the appropriate place:

SEC. . PRECLUSION OF SOCIAL SECURITY CREDITS PRIOR TO ENUMERATION.

(a) INSURED STATUS.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by adding at the end, the following new subsection:

''(d)(1) Except as provided in paragraph (2), no quarter of coverage shall be credited for purposes of this section if, with respect to any individual who is assigned a social security account number on or after the date of enactment of the Comprehensive Immigration Reform Act of 2006, such quarter of coverage is earned prior to the year in which such social security account number is assigned.

(2) Paragraph (1) shall not apply with respect to any quarter of coverage earned by an individual who, at such time such quarter of coverage is earned, satisfies the criterion specified in subsection (c)(2).''.

(b) BENEFIT COMPUTATION.—Section 215(e) of such Act (42 U.S.C. 415(e)) is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

(3) by adding at the end a new paragraph as follows:

''(3) in computing the average indexed monthly earnings of an individual who is assigned a social security account number on or after the date of enactment of the Comprehensive Immigration Reform Act of 2006, there shall not be counted any wages or self-employment income for which no quarter of coverage may be credited to such individual as a result of the application of section 214(d).''.

Mr. ENSIGN. Mr. President, this bill we are debating today, the immigration bill, will place a significant cost on the American taxpayers. I am particularly concerned that the provisions of this bill will impose a heavy strain on our social security system. That concern is why I am offering amendment number 3985.

The American public needs to understands what this bill would do. If enacted, it would allow the immigrants who receive amnesty to qualify for social security based on work performed prior to their amnesty. It allows people to qualify for social security based on work they did while they were illegally present in the United States and illegally working in the United States. Let me repeat that.

People who broke the law to come here and broke the law to work here can benefit from their conduct to collect social security. This bill is the pathway that allows that.

In some cases, illegal immigrants may have stolen an American citizen's identity. They may have stolen an American's social security number to fraudulently work. But it is that illegal conduct and fraudulent work that they will be allowed to use to qualify for social security.

Does this bill punish the people who stole an American citizen's identity? No, it does not. It rewards them. Does this bill consider the impact that the crime of identify theft had on the victim whose social security number was stolen? No, it does not. This bill gives them the full benefit of citizenship, with respect to social security benefits and rewards criminal conduct without any consideration for the victim.

There have been many media reports recently about illegal immigrants stealing Americans' social security numbers. To understand the potential scope of this problem, you have to unlerstand that every year employers are advised that nearly 800,000 employees do not have valid, I matching social security numbers. In too many cases, the number used belongs to someone else. And so, for a moment, I want the Senate to stop. I want my colleagues to think. And to consider the impact this theft and fraud has on the victims.

Rarely, does the Senate ever really consider the impact that crime has on the victim. Today Should be different. And so I am going to take a few moments to share with my colleagues a few of the stories of the victims of identity theft. In order to protect their privacy, I will only use the victim's first name.

Identify theft by illegal aliens has created many problems for Americans. Sometimes those problems involve the Internal Revenue Service. For example, Audra has been a stay-at-home mom since 2000. Over the last 3 years, the IRS has accused her of owing $1 million in back taxes. This is a picture of the first letter she received from the IRS saying she owed back taxes. Since that first letter, she has received many more.

Her story is clear. She has not worked in 6 years. Yet the IRS says she owes taxes for working the last three years. What she first thought was a mistake, later became clear. It was a case of identity theft. Her social security number was being used by at least 218 illegal immigrants, mostly in Texas, to obtain jobs.

Audra has obtained copies of the 218 W–2s that were used in 2004 by illegal immigrants using her Social Security number. This is a picture of the stack of those W–2s. In Audra's own words, she said, ''It was so overwhelming I couldn't be frustrated—I was just completely beyond that.'' She filed a complaint with the Federal Trade Commission. Her file at the Federal Trade Commission is very thick. Here is a picture of many of the documents in her file on this chart.

Identity theft by illegal immigrants has made it hard for some Americans to find a job of their own. When my staff spoke to Audra, she explained to them that she was not able to find a job of her own because of the theft of her Social Security number. This is a photo of the letter Audra received denying her employment because she is actually already employed by that same employer. Obviously, she is not, but someone else with her Social Security number is employed at that place of employment.

Audra is not the only American affected in this way. A few years ago, a woman named Linda applied for a job at a chain retailer, but her job application was turned down. Why? Because her potential employer told her that she was already working for that very same retailer. She, of course, knew better. She could not get a job because someone else had stolen her identity. Without knowing it, the thief also stole the job she could have been hired to do.

That is not what America should be about. People who want to work should be able to work. Identity theft by illegal immigrants has damaged many Americans' credit, making it hard for them to buy the basic necessities. In some cases, the victims of identity theft are denied social service benefits such as unemployment because records show they already have a job even though they are not working. In some cases, government records show they have many jobs all across the country.

I want to tell my colleagues about Caleb, who works in northern Nevada. He lives there with his wife and two children. Caleb is actually one of my constituents. This is a picture of Caleb and his daughter at the kitchen table. Caleb works hard as a construction worker to take care of his family. In December of 2003, Caleb was unable to find work because of the seasonal difficulties northern Nevada's construction industry faces. So Caleb applied for unemployment benefits. He was denied unemployment benefits. Why? Because he was told he was already working as a landscaper in Las Vegas. Many of my colleagues are probably not aware of the geography of Nevada. I am pretty confident that Caleb was not living in Reno and working in Las Vegas because that would mean he would have over a 1,000-mile commute every single day. Caleb and his wife contacted the employer of the identity thief. They learned that the person who used his Social Security number had previously given the employer at least 10 different Social Security numbers, and that person's resident alien card had expired.

In this picture, Caleb has many of the documents, including a copy of the expired resident alien card used by the person who stole his identity.

Not only does identity theft by illegal immigrants create problems for adults, it is also creates problems for young children, children who will likely have to deal with the consequences of someone stealing their Social Security number well into adulthood.

For example, Kelly's daughter is quite ambitious. Based on where she lives, and on where she works, she drives 80 miles each day to work at a steakhouse. I am sure her parents were surprised to learn about her commute since she does not even have a driver's license yet. In fact, Kelly's daughter has gotten off to quite an early start in life in the work world—considering she is only 5 years of age. Her Social Security number was being used by an illegal immigrant to work.

Stories like this are all too common. Many Southwest States such as Utah and Arizona, and even my home State of Nevada, have experienced a crime spree involving illegal immigrants using stolen identities of children. In one case in Utah, a child apparently owns a cleaning company and works as a prep cook at two restaurants in Salt Lake City. That is a lot of responsibility, especially for an 8-year-old boy. Another boy from Salt Lake City supposedly works for an express air freight company, quite an important job for an 11-year-old.

These stories are shocking. It is clear that illegal immigrants are purchasing false papers and using stolen Social Security numbers to obtain jobs. They are victimizing hard-working Americans, Americans who want to work. They are also victimizing these young children. The current Social Security policy and this bill will only make matters worse by granting benefits to those who are working here illegally.

I am offering an amendment to correct this problem. My amendment will help reduce this kind of document fraud. My amendment will also preserve the integrity of the Social Security system by ensuring that people are not able to receive Social Security benefits based on their prior unlawful activity.

I will explain my amendment to the American people and to the Senate. Under current law, individuals who work in the United States illegally and later obtain legal employment status can use their illegal work history to qualify for benefits. For example, if an illegal immigrant works in the United States for 9 years, and then receives legal status under this bill, the immigrant would qualify for full Social Security benefits after just 1 year of legal work. Essentially, the illegal immigrants can go back to the Social Security Administration and ask them for credit for his or her illegal work.

What is important to understand is that in order to go back to the Social Security system, the illegal immigrant must get legal status in some way. This bill is an avenue that gives them that legal status. This bill opens the door for illegal immigrants to get Social Security based on their illegal work history. My amendment closes that door.

I know some of my colleagues may argue that the illegal immigrants paid into the system, and as a result they should be able to collect benefits based on paying into the system. To those colleagues who feel that way, I say this: First, the crime of identity theft and Social Security fraud are not victimless crimes. The victims of these crimes are American citizens and legal immigrants. My staff has spoken to

some of these victims. Some victims' Social Security records are such a mess that the Social Security Administration has wiped out all of the work history from the victim's account. That is the only way they believed they could get a handle on the fraud associated with these folks' accounts. By wiping out all work history, the victim's own legal work history is also deleted. Basically, the victims is forced to start over to qualify for future Social Security benefits.

The Social Security Administration advised the victim that the victim's records are so bad that their only option was to erase the victim's work history. The victims can rebuild their accounts if they can produce their old W–2s. How many people in America can produce them? Some, maybe. If you are like me, and keep records forever, you will not have a problem. But for most Americans, who do not keep their past W–2s and old records, it will be impossible to prove their work history. As a result, some victims end up losing their ability to collect their Social Security based on their own legal work history.

At the same time, this bill would open the door to give Social Security benefits based on illegal work history. If Members oppose this amendment, Members are saying they want to reward illegal conduct with Social Security benefits while American citizens cannot collect their rightly earned benefits. This is simply unfair. That is not what America is about.

Second, Social Security is a system based on expectancy. For the illegal immigrants who paid into the system using a stolen Social Security card, they never did so thinking they would earn a retirement benefit. They did so, and I don't blame them, simply to get a job. They could not have possibly ever envisioned we would pass this bill in the Senate. They could not ever have thought that the Senate would let them go back and petition for Social Security benefits. They never had a reasonable expectation we would do this and, as a result, that they would be able to receive those benefits in the first place.

Third, for the vast majority of perpetrators who engaged in this kind of identity theft, the only way they would ever be able to petition the Social Security Administration is if we pass this bill. It is reasonable to oppose, as a condition to amnesty, a requirement that the people receiving amnesty give up or surrender their rights to petition for Social Security benefits for their previous illegal work.

I ask my colleagues to consider the message the Senate is sending to the victims if we do not agree to my amendment. The victim has already paid a heavy price. If the Senate does not agree to my amendment, the government will be saying: We reward the criminal and want to continue to punish the victim.

We will also be inviting future fraud. How, you might ask? If my amendment is not agreed to, there will be no way, none, for the Social Security Administration to determine who actually did the work associated with a particular Social Security number. If my amendment is not agreed to, this bill will create an incentive for people to engage in a second kind of fraud, one that is based on fraudulent use of W–2s to petition for illegal work credit. There would be no way for the Social Security Administration to give proper credit for that work if more than one person petitions for that credit.

I ask my colleagues to consider the burden this will place on the Social Security Administration itself. As of 2003, there were 255 million records in the Earnings Suspense File. That file is where Social Security places records when the name and social security number that is used do not match. How can the Social Security Administration process tens of millions of petitions to receive credit for illegally performed work? Without my amendment, the Social Security Administration will be inundated with petitions with no way to know how to handle them.

The promise of Social Security is for citizens and legal residents of the United States. Social Security was not intended for individuals who enter our country illegally, purchase fraudulent green cards and documentation on the black market, and use them to get jobs. It is wrong to allow people who have broken our laws to receive such a reward, especially when such activity places such a heavy toll on victims.

We should not now reward individuals who have knowingly engaged in illegal activity. We should not adopt a policy that will reward this illegal behavior while at the same time continuing to subject the innocent to further victimization. Rewarding illegal behavior is insulting to those immigrants who have played by the rules to qualify for benefits. It is also insulting to hard-working Americans who are paying into the Social Security system.

My amendment allows immigrants to begin accumulating credit to qualify for Social Security only after they have been assigned a valid Social Security number. It does not allow illegal immigrants to receive credit for their past illegal work. This approach is responsible and it is common sense. Especially when it comes to how the Social Security Administration will function.

I hope one of the principles we can reach consensus on is that illegal behavior should not be rewarded at the expense of victimizing American citizens. I cannot go home to Nevada and tell the people we allowed Social Security benefits to go to people who have worked in the United States illegally, especially when Nevadans are too often the victims of this kind of crime.

Mr. President, I will close now by making one additional observation. Under current law, it is a felony to steal and use somebody's Social Security number. Under this bill, we are waiving that felony. That, in and of itself, is amnesty for the crime of identity theft. I do not think that the Senate should go beyond granting amnesty for criminal identity theft. It is one thing to say that the perpetrator of the crime cannot be prosecuted for that felony, but it is quite another to allow the perpetrator to collect Social Security benefits. It is fundamentally unfair to do both when there are victims, like the ones I have talked about today.

So I hope people will see the common sense of this amendment and will, in a bipartisan fashion, overwhelmingly adopt this amendment. I urge my colleagues to adopt this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, identity fraud is a major problem, a major issue in this country, and it ought to be dealt with. We ought to do whatever is necessary to make sure we are going to deal with this issue. I think most of us have seen the various national publications and magazines talking about identity fraud. It is there with the use of credit cards. We have it on telephone calling. We have it for purchasing over the Internet, obtaining access of financial records, and with individuals making illegal withdrawals.

All of that is bad and wrong and violates the law, and we ought to deal with that. But we are talking about individuals who are not involved in identity fraud and have paid into the Social Security fund. Should they have that payment they have made into the fund denied to them? So I am with the Senator from Nevada in trying to deal with identity fraud, but I separate myself from him when he says all illegal immigrants are involved in the identity fraud and, therefore, they should not get credit for what they have paid in in terms of Social Security.

Now, who are we talking about? Basically, we are talking about individuals who have the opportunity to try to earn their position, the opportunity to be an American citizen, who have to pay a fine, have to go to the end of the line for those who are coming into the United States currently, who have to demonstrate they have paid all of their taxes, who have to demonstrate they have been free from violating the law. There are all of those conditions that are set up. But once they have achieved all of those conditions, then they have the possibility of citizenship 11 years from now.

So the issue is, should they be denied the credits they have paid into Social Security? The Senator from Nevada thinks they should.

Well, first of all, who are these people? First of all, his proposal would deprive, for example, widows and surviving children of needed Social Security benefits, even if the widows and children are U.S. born. We will have circumstances where the children are American citizens. The widows might be American citizens.

Now, let's say this individual regularizes their position and has paid into Social Security. If that person dies, their survivors would be eligible for survivor benefits, but not under the Ensign amendment. It is interesting, some 85 percent of immigrant-headed households include at least one U.S. citizen. Under the Ensign proposal, citizen children may not be eligible for survivor benefits if their parents had gained legal status or even citizenship but die before they gained the 40 hours of coverage.

The Ensign amendment effectively would deprive the immigrants who have become legal residents of the right to receive Social Security credits for the payroll tax payments they made on the work they performed when they were undocumented. Some do now.

The 1986 act permitted 3 million people—they received the amnesty. That was amnesty. We did not move ahead in terms of the enforcement against the undocumented afterwards. But that was amnesty. Now they are able to receive the benefits today. We are going to say to them, we are evidently going to cut you off from being able to get any credit because I don't see in the Ensign amendment where they are going to respect their position.

It is important to focus on who would be hurt by this highly punitive proposal. Only immigrants who have attained legal status are eligible to receive Social Security. So everyone this amendment would affect will be legal residents under the terms of the bill. Many of them will even be citizens by the time they apply for Social Security. Those are the hard-working men and women this amendment seeks to penalize.

Those are the individuals who really want to be Americans, be part of the American family. They are going to have to pay the penalty, pay their back taxes, abide by all of the laws, continue to believe in their faith. And then they will have the opportunity to go to the end of the line. And then, in 11 years, they will be able to achieve citizenship. They will be working during this period of time.

They are paying into Social Security. And, finally, when they become citizens—11 years from now—the Ensign amendment is going to say: Well, all right, you paid. You have waited your turn. You paid the penalties all the way along. But you are not going to be able to benefit from paying into Social Security because of identity fraud. Well, I have difficulty assuming that all of those who have paid into Social Security have been a part of identity fraud.

Before this bill passed, these workers were undocumented. But once in the country, they complied with the rules of the workplace and paid Social Security taxes on their earnings. Their payroll tax payments and the matching contributions of their employers were paid to the Social Security Administration on a timely basis. Those dollars are sitting in an account at the Social Security Administration today. Social Security has a record of receiving these payments. There is no dispute about that.

The issue raised by this amendment is whether these workers should be given credit in Social Security for the hard-earned dollars they paid into the system. Shouldn't the payroll tax payments they made count toward determining the level of retirement benefits and disability benefits they have earned when they reach retirement age or become disabled?

Now, the amount of benefits a worker receives depends on how many years the individual worked and how much payroll tax he or she paid in. I believe it would be terribly wrong to arbitrarily deny these hard-working men and women credit for all the payroll tax dollars they paid into Social Security on the wages they earned. But that is exactly what the Ensign amendment would do.

Most undocumented workers do pay Social Security taxes. Stephen Goss, Social Security's chief actuary, estimates that ''about three-quarters of other-than-legal immigrants pay payroll taxes''—three-quarters of them.

The amounts paid in by them are substantial. Payments into the Social Security system by undocumented workers total $7 billion a year. Unfortunately, most of these workers do not have genuine Social Security numbers, so the money goes into what they call the Social Security Administration's earnings suspense file. This money is identified by the employer who submitted it but not by the individual worker it belongs to.

Each year, Social Security identifies approximately 130,000 employers who submitted W–2s that cannot be matched to a worker. So the undocumented immigrants account for the vast majority of the funds in the suspense file. The unidentified W–2s closely track their geographic distribution and types of employment to that which undocumented workers typically hold. According to an analysis by the GAO, three of the categories of business with the largest numbers of inaccurate W–2s were restaurants, construction companies, and farm operations.

In order to get credit for the payroll taxes he paid in when he was undocumented, a worker would have to prove how much he paid in while working for a particular employer and when it was paid. The burden of proof would be on the worker, and the worker would only receive credit for payments that the Social Security Administration could verify.

Whatever rules and regulations Social Security established, we are for. They ought to be accurate. They ought to be tough. They ought to be fair. But we are not prepared to say that every individual who paid in, who is now in the process, over this 11 years—here, they are paying in. I want to be a citizen. I am paying my fine. I paid my back taxes. My sons have joined the military serving in Afghanistan. We are going to church every single week. And I am paying into Social Security. I wait 11 years, and I finally become a citizen. Under the Ensign amendment, no, no, you are not going to receive any of that. You are not going to receive a cent of that.

So we are all for Social Security establishing whatever requirements are necessary to ensure the integrity of the fund and the accuracy of the work effort by individuals. But I think the only reason for the Ensign amendment is to deny the legal residents the Social Security benefits they have earned and paid for. Their money sits in the Social Security Administration waiting to be matched with an eligible beneficiary. Once those workers establish eligibility, how, in all fairness, can we deny them credit for their past contributions?

This legislation before the Senate sets out a difficult process for undocumented workers seeking to become legal residents. Most of them have very little money. Yet the legislation will require them to pay thousands in fines and fees. It would be wrong to deny them credit for the Social Security tax dollars they have paid from their often meager wages.

Once these workers are legal residents, if they become disabled, shouldn't they be entitled to receive disability benefits based on the payroll taxes they contributed to Social Security? And if they die prematurely, leaving minor children, shouldn't those children—who in many instances are American children—shouldn't those American children be eligible to receive survivor benefits based on the payroll taxes they contributed to Social Security? And when, after a lifetime of hard work, they reach retirement age, shouldn't they be able to receive a retirement benefit based on all the years of payroll tax payments they contributed to Social Security?

This is not a handout. This is not welfare. Social Security is an earned benefit. If these immigrant workers earned it, they should receive it like everyone else. The Ensign amendment would take their hard-earned money and give them nothing in return. That is not the way America operates.

Allowing these workers to receive the Social Security benefits they have earned not only helps them, it serves the interests of the larger American community. They are living amongst us. As I say, many of the children were born here. If they cannot rely on the Social Security benefits they have earned when they become elderly or disabled, on what source of support will they rely? Certainly, the people of this great Nation would not leave them destitute. We all benefit when the earned benefits of Social Security are there for those in need.

So I urge my colleagues to reject this amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I inquire as to whether we might be set now to enter into a time agreement on this amendment?

Mr. KENNEDY. Mr. President, I have been here on the floor since the Senator started, and in response, I would be glad to inquire of those who are interested. I think there are some members of the Finance Committee who are interested in this amendment and want to be heard since it deals with the Finance Committee jurisdiction. So I will inquire and report back to the floor manager.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, Senator LUGAR has come to the floor and would, jointly with me, request a few minutes as in morning business to introduce legislation.

Would the Senator from Nevada be willing to yield for—how long do you require, I ask Senator LUGAR?

Mr. LUGAR. About 5 minutes.

Mr. ENSIGN. Mr. President, I say to the Senator, could I spend 5 minutes responding to a couple things, and then I would be willing to yield to the Senator for 5 minutes in morning business.

Mr. SPECTER. By all means. I will yield to Senator ENSIGN. And I ask unanimous consent that then Senator LUGAR and I be recognized for 5 minutes each to introduce a bill.

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

The Senator from Nevada is recognized.

Mr. ENSIGN. Just to respond to a couple of things the Senator from Massachusetts talked about, that section 614 and a provision in section 601 in this legislation on page 395 would ensure that aliens who received legal status, amnesty, whatever you want to call it, cannot be prosecuted for document fraud. He said they weren't receiving amnesty. If there was a felony they were committing, and now they can't be prosecuted, that sounds like amnesty to me.

A couple other points he brought up: Legal aliens who were here and who overstayed their visas have a legal Social Security number. They are paying into the system with a legal Social Security number. Even though they are here illegally, they would still be able to collect benefits.

Another point I want to address that the Senator from Massachusetts brought up concerned the Social Security Administration. These illegal workers would come to them and petition for the benefits, and they would have to prove that they actually worked where they worked, they paid in the taxes, and things like that. Let's try to think about the burden that this would place on the Social Security Administration itself.

Currently, there are 255 million earning suspense files. Those are the ones where the Social Security number and the work don't match, 255 million. Try to imagine how many of these are going to come forward with the Social Security Administration where people are trying to prove something to gain benefits. They are going to be overwhelmed. What is that going to do to the normal processing for people who have problems with their Social Security benefits? All of us have case workers back in our States who deal with seniors who have legitimate Social Security problems. Sometimes there are mistakes made. We have had people who have actually received a letter where the Social Security Administration told them that they had died. It was kind of a surprise to them. But they called us, and we were able to bring them back to life. We jokingly refer to these cases as Lazarus cases. It is a situation where they need speedy help. If the Social Security Administration is burdened with all of these millions of potential cases, it just boggles the mind how people could be against this amendment.

The next point I want to make is that the Senator from Massachusetts said that this illegal immigrant who is now legalized or regularized, whatever term you want to put on it, cannot go to the Social Security Administration, and they have to prove with documents. We have seen the kind of fraudulent documents used in the country today. These documents are not that difficult to produce, to defraud. There is a great incentive for them to do that. Once again, it will be an extra burden on the Social Security Administration trying to prove or disprove whether these documents are real.

The last point I want to make, the Senator said the people they are regularizing in this bill have to pay a fine. They have to pay back taxes. We have heard that over and over again: They have to pay back income taxes. They don't have to pay back Social Security taxes, the FICA taxes they didn't pay, only the income taxes. So let's be completely open and honest about what this bill does and about what my amendment seeks to correct.

When we are considering this amendment, we absolutely must consider what it is going to do to the Social Security Administration, what it is going to do to the trust fund and, mostly, what it is going to do to the victims. Rewarding illegal behavior while we are not taking care of the victims in the United States fundamentally is unfair.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I ask unanimous consent that 5 minutes be allotted to Senator DODD after Senator LUGAR and I speak.

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

The Senator from Indiana is recognized.

(The remarks of Mr. LUGAR, Mr. SPECTER, Mr. DODD, Mr. SHUMER and Mr. SESSIONS pertaining to the introduction of S. 2831 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. SPECTER. Mr. President, we have tried to move along this position of the Ensign amendment, looking for a time agreement. Senator SESSIONS has asked for 5 minutes. If other Senators want to debate this amendment, I ask them to come to the floor. If there is no time agreement and there are no people to debate, I will move to table the amendment so we can get the bill moving.

I now yield to Senator SESSIONS.

Mr. SESSIONS. Mr. President, regarding the Ensign amendment, I will say a few things. No. 1, Social Security is a benefit this country provides to American citizens and people lawfully in this country. That is what it is about, the benefit. For the most part, people get more out of it than they put into it. That is one reason it is going bankrupt.

The people covered by Senator ENSIGN's amendment have done a number of things that are illegal. They have come into the country illegally or they would not be here, or they would be legal and would be not covered by his amendment. They have worked in the country without authorization, and you are not allowed to work in this country if you are not here legally. So they have committed a second illegal act. In the course of working in this country, they may have submitted forged, false, stolen, or bogus Social Security numbers—a separate crime, if you examine the U.S. Code. Maybe they have even broken other laws.

As Senator ENSIGN pointed out, so many of these numbers are other people's numbers, seizing their identity and causing all kinds of confusion and disruption in their lives.

Under the language of the bill, not only do they get protection from prosecution for violation of these laws, they would be given the benefits of Social Security. Although he clearly makes—properly so—an exemption for those who came into the country legally under a visa, got a legal Social Security number but overstayed, at least they had a legitimate Social Security number.

Mr. President, I had an opportunity, for strange reasons, in my career as a prosecutor and as a private lawyer to deal with contracts based on illegality. I had a situation in which a client—a young man—was sued by a home builder on the note that he signed to the home builder. The reason he signed that note was the home builder loaned him the downpayment to buy a house. The mortgage and the Federal act required that the deposit or downpayment be your own money or you could not fund it by a mortgage. The builder was in on the deal. He was there at the closing of the loan. He got the big check, so when it came to suing on

that note, I defended the client and said the court had no jurisdiction over the case. There is a principle of law—in our English American tradition—founded on fraud, stating that a contract founded on illegality cannot be enforced in court.

So that person who comes into our country illegally and submits a false Social Security number has no legal right to expect to ever collect on that amount. Also, in addition to legally not having a right to that, they have no moral right to that. To have a moral right to come to court, you ought to have clean hands. You should be a person that is legitimately here and then you can make a legitimate claim. I see no reason these persons who come here in order to work and, as a cost of doing business, accept and sign up for Social Security without any expectation whatsoever that they would ever draw those Social Security benefits, should now be awarded by this legislation that would allow them to get it. They would say they paid into it, so they are entitled to it. Not so, in my opinion.

I see how you can make this remark, but I think we are too far down the road of an entitlement mentality. This whole bill contemplates people having an entitlement to come to America, to bring in their parents and children, and they are entitled to have them ultimately be on Medicare and go to hospitals and be treated, even though they are not properly here.

We need to clarify our thinking. We are a great nation, a nation of laws. Let's think this through. That is all I am saying. I submit to my colleagues that the process by which an immigrant who comes here illegally, works illegally, and illegally submits a false, bogus, fraudulent Social Security number as a price to get the job and be paid, that is no entitlement to claim that money—not legally because it is founded on a false claim and a false premise, and not morally because they knew they weren't entitled to it when they came. They knew they were here illegally and they never expected to receive it.

I think the Senator from Nevada has proposed an amendment that is important. It asks us to think, for a change, in this body about what it is going to do, and what it will do to our Nation's bottom line and with regard to the message we send regarding whether we are serious that people should follow the law.

We need to quit rewarding unlawful conduct. Unlawful conduct should have penalties and should result in detriments, not benefits. That is what we are saying. If we don't get that straight in this debate, whatever new laws we pass about immigration, whatever new policies we set, how much of a joke will they be? Will they be the same joke, the same mockery of law that we have had for 20 years since the last amnesty we issued? That is what the American people are asking us to do. Let's create a system that actually works.

Sometimes you have to make decisions. Somebody who came here illegally and worked illegally and submitted an illegal Social Security number is not entitled to draw on the Treasury of the United States. I thank the chairman and I yield the floor.

Mr. SPECTER. Mr. President, Senator MCCAIN is asking for some time. It is my hope that we can move ahead with either a time agreement or a vote on the Ensign amendment, but now I yield to Senator MCCAIN.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I rise in strong opposition to the Ensign amendment. Under current law, undocumented immigrants are ineligible for Social Security benefits which I think is entirely appropriate. But we all know that millions of undocumented immigrants pay Social Security and Medicare taxes for years and sometimes decades while they work to contribute to our economy.

According to Stephen Goss, the Social Security Administration's chief actuary, three-quarters of illegal immigrants pay payroll taxes. These payments generate approximately $8.5 billion in Social Security and Medicare taxes each year. In fact, according to a 2005 New York Times article, the Social Security Administration records these payments in a so-called earnings suspense file, which grew by $189 billion in the 1990s and continues to grow by over $50 billion each year, generating up to $7 billion in Social Security tax revenue and about $1.5 billion in Medicare taxes. According to the article, most of these payments come from illegal immigrants.

The Ensign amendment would undermine the work of these people by preventing lawfully present immigrant workers from claiming Social Security benefits that they earned before they were authorized to work in our country. If this amendment is enacted, the nest egg that these immigrants have worked hard for would be taken from them and their families.

It pains me to disagree with my good friend from Nevada on this matter, but I believe the amendment is wrong. It is fundamentally unfair to collect taxes from these workers and then disqualify the taxes paid once the workers achieve legal taxes. I believe instead of supporting the amendment, we should stand for the principle that people who worked and paid into the Social Security system for years should be able to depend on their retirement income to which they contributed.

The amendment compounds the unfairness by ignoring the underlying legislation that already calls for payment of all back taxes and a $2,000 fine. So what we are asking the immigrants to do is pay all back taxes and, at the same time, forgo the taxes they already paid into the Social Security trust fund. It is fundamentally unfair.

Mr. ENSIGN. Mr. President, will the Senator yield?

Mr. MCCAIN. As soon as I finish my statement, I will be glad to yield to my friend from Nevada.

I point out to my colleagues a recent Los Angeles Times article that indicates tens of thousands of undocumented immigrants are already lining up to pay current and back taxes. They want to do that because they want to play by the rules. So we are going to tell them there is one set of rules for them to pay their back taxes, but the taxes they have already paid they will receive no benefits for.

What about the fiscal consequences of the amendment? I submit that if Social Security is not available in the future for immigrants, that when they retire or become disabled, then State and local governments and potentially the Federal Government will be forced to absorb significant costs as the Federal Government has refused to provide services and supports paid for by tax dollars of millions of legal immigrants. This amendment would simply continue this trend.

The Senator from Nevada has argued that his amendment is about combating identity theft and that the bill before us says identity theft is OK. That is inaccurate. I don't know one Member of the Senate who would say: I support identity theft. Not one. In fact, the Senate Commerce Committee has been working to approve legislation, which I have cosponsored, to combat this egregious crime.

Identity theft is a serious issue. In fact, the highest rate of identity theft occurs in the State of Arizona. It happened to me and my wife. But this immigration bill isn't drafted to comprehensively address identity theft, and the amendment before us isn't going to do a thing to fix this problem. Maybe we should add the Commerce Committee legislation to the bill. I assume other Members may not be agreeable to doing that, but I stand ready to work with the Senator from Nevada, and I suspect the Senator from Massachusetts would be willing to join us in pushing legislation to combat identity theft in a meaningful, comprehensive way.

Now I will be glad to respond to any question the Senator from Nevada might have. I understand the patience of our manager is somewhat limited. Please go ahead.

Mr. SPECTER. Mr. President, we will hear from Senator ENSIGN in a moment on his amendment. If there are no other speakers desiring recognition to speak on this amendment, at the conclusion of Senator ENSIGN's comments, I intend to move to table.

Mr. DODD. Mr. President, I ask my colleague for a couple minutes, if I may.

Mr. SPECTER. To speak on the amendment?

Mr. DODD. In relation to matters before us on this bill.

Mr. SPECTER. How much time does the Senator desire?

Mr. DODD. Four minutes.

Mr. SPECTER. I agree. I yield to Senator ENSIGN for some comments and then to Senator DODD, and if no other speakers appear, I am going to move to table.

Mr. ENSIGN. Mr. President, I wish to ask my friend from Arizona a couple of questions about the bill and about my amendment in particular. The bill does not require that the people whose status is adjusted pay all back taxes. The bill only requires that people pay any back income taxes. There is no mention of FICA taxes in the bill. Is the Senator aware of that distinction?

Mr. MCCAIN. The Senator is aware of that. When their employer pays them, the taxes are withheld.

Mr. ENSIGN. First, if the alien is self-employed, that is not correct. Remember, the employer pays half and sends in those funds.

Mr. MCCAIN. As is true of anyone else who works in the United States.

Mr. ENSIGN. That is correct. But the bottom line is if they owe back FICA taxes under this bill, they do not have to pay those back taxes.

Mr. MCCAIN. The intent of the amendment is that they must pay and the legislation—I will be glad to state—must pay all backs taxes, a-l-l.

Mr. ENSIGN. I have another question for my friend from Arizona. Is he aware that it is a felony to use someone's Social Security number?

Mr. MCCAIN. I am aware of that.

Mr. ENSIGN. Under this legislation, we forgive that felony. We grant amnesty for that felony.

Mr. MCCAIN. Under this legislation, we allow the illegal immigrants a path to citizenship which, if they are convicted of felonies or misdemeanors, according to an amendment, then they would be ineligible to embark on that path to earn citizenship.

Mr. ENSIGN. Right. But, Mr. President, in Sections 601 and 614 of the legislation, it actually ensures that aliens who receive legal status cannot be prosecuted for document fraud, including the false use of Social Security numbers. Is the Senator aware of that?

Mr. MCCAIN. The Senator is aware that when people come here illegally, obviously, they do not have citizenship, so, therefore, any Social Security number they use, whether it belongs to someone else or is entirely invented, is not valid. But I also know, if I can complete my answer to my friend, their taxes, part of their earnings are going into the Social Security fund, and that is a fact that it is theirs and their employers.

Mr. ENSIGN. Mr. President, I agree with the Senator from Arizona that many people are paying into the system. They paid into the system with no expectation of getting social security's benefit because they didn't know we would be enacting a bill like this. They paid into the system simply because that was the price to pay to get a job in the United States. The immigrant knew they were using an illegal Social Security number but without regards of the impact of the victim. I have reviewed case after case related to identity theft and Social Security fraud. These cases are occurring all over the United States. In every case, in every State, where someone's Social Security number was stolen by an illegal immigrant to use to find work, the victim's credit history is destroyed. Sometimes their work history is too. Earlier I talked about Caleb, a gentleman in Nevada. The illegal immigrant who used Caleb's Social Security number was not trying to harm that person but he did. Caleb applied for unemployment but couldn't get it because the agency said he was working when, in fact, he wasn't. He lives in Reno. They said he was working in Las Vegas. It was an illegal immigrant using his Social Security number in Las Vegas.

I never said this amendment is going to prevent identity theft. What I have said is that it is not right for somebody to steal somebody else's identity—granted for the noble purpose of getting a job—and reward the theft by giving work credit that counts towards Social Security. We should consider the victims who are forced to deal with the terrible consequences of the crime.

I will make two other points. The chairman of the Finance Committee supports this amendment. One of the reasons the chairman of the Finance Committee supports this amendment is because the Social Security Administration will not be able to make determinations with respect to the earnings suspense files that the Senator from Arizona referenced. As of 2003, there were 255 million instances where the social security number did not match the name given the employer. This bill will legalize those who are in the workforce today—the 7 million or so in the workforce out of the 12 million who are in the country. The effect of this amnesty over the next 10 years, will require the Social Security Administration to hire nearly an additional 2,000 employees to handle the cases of people who worked illegally, received amnesty under this bill, and are now applying for this benefit. A benefit they earned illegally.

Point No. 2 is, it is going to cost $1.7 billion in administrative costs—$1.7 billion in administrative costs. It does not include any future costs in benefits that the United States will have to pay. Some may say that the immigrants will have earned the benefit. But the Senate does not even know what amnesty will cost. The cost estimates for these policies are not known. My amendment is absolutely the right thing to do. Illegal immigrants did not expect to ever receive this benefit. They were using somebody's Social Security number or a made up one. They did so to get a job. I can appreciate that. I appreciate somebody trying to come to this country to better themselves. I don't believe we should reward the conduct of identity theft by giving people the right to claim the work history for purposes of Social Security.

Our Social Security trust fund is already in trouble. We all know that. This will further put the Social Security trust fund in trouble. The costs could be potentially huge. We don't even know that in this bill. That is why I think we should adopt this amendment.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, very briefly, of course, they didn't expect to receive benefits they had to pay into the system because they were here illegally. The whole thrust of this legislation is to give them not only Social Security benefits but, as importantly, the protections under the law, as they now live in the shadows and are exploited and mistreated in many cases. Of course, they didn't expect to. That is why we are going through this process of letting them earn citizenship.

The amendment of the Senator from Nevada will let you earn citizenship, but what you have paid into a system, you will not only not receive the benefits but on top of that is a $2,000 fine.

This is not about administrative costs. The fact is that each year the Social Security trust fund continues to grow by $50 billion, generating up to $7 billion in Social Security tax revenue and about $1.5 billion in Medicare taxes. So as to the Senator's argument that this could cost money administratively—yes. But the fact is that when these people came here, of course, they accepted—because they came here illegally and broke our laws—of course, they accepted the fact that they probably wouldn't get Social Security or Medicare or protection of our laws against exploitation and mistreatment and all of the protections that citizens have. We are trying to give them a path to earn that. Yet under the Senator's amendment, they would be ineligible for the same benefit of citizenship which we, under this legislation, are trying to make them earn.

I apologize to the Senator from Pennsylvania for taking additional time, and I understand the pressing time issue.

I yield the floor.

Mr. SPECTER. Mr. President, Senator DODD is next in line to speak for 4 minutes, as agreed.

Mr. DODD. Mr. President, I thank the chairman very much. I just want to make some brief comments, if I may, not about the matter of this amendment right before us, but about a vote that occurred yesterday regarding the construction of the fence along the southern border. I was 1 of 16 people who voted against that amendment, and I wanted to take a minute or so to explain my concerns.

Primarily, my concern is because the decision to place this fence down here without any other additional consultation with local communities in the United States or with our neighbors to the south is something that worries me. There are implications of that. I firmly believe that any discussion

about immigration policy must begin with border security. If there is a failure to do that, I don't think you have much of an audience.

My concern is if we unilaterally do this without seeking the cooperation of the communities involved and the Nation next to us that we are dealing with primarily on this issue, we may have absolutely the opposite effect. In fact, there are implications of this decision. So at some point, in consultation with the managers of this bill, I may offer an amendment that would require some consultation with the U.S. communities involved, as well as with the Mexican Government, so that we are not unilaterally placing a fence here.

Believe me when I tell you this. I have spent a lot of time in this region, as my colleagues know. There will be political implications. There is a national election in Mexico in about 6 weeks, and I will guarantee this issue will be a major issue in that debate. And who wins those elections will have a huge implication in terms of how much cooperation we get on dealing with immigration policy. My colleague from Texas, Senator CORNYN, and I spent a weekend with our colleagues from Mexico about 4 months ago. To their credit, the Mexican Congress, along with all five Presidential candidates, adopted unanimously in their legislation provisions regarding immigration policies. At the very top of those lists were border security issues.

That had never happened before, Mr. President. It was a major change in how Mexico is looking at immigration policy.

My hope is, as we talk about matters we think are important for securing our borders, we will do so in consultation with our neighbors. I am not suggesting we give them veto power, but if you are going to put up a fence of some 3 to 1,000 miles long, first of all, there is a question of whether that will work, but I guarantee you it will not work if we don't have the cooperation of the very government we are seeking cooperation from, if we impose this fence without dealing with them, talking with them, asking their advice, working with them. That is true among neighbors in communities as well as nations that are neighbors.

So my hope is we can draft some language that would be endorsed and supported unanimously. It would certainly then cause me to have a very different attitude about the vote yesterday. But I caution my colleagues. I know the frustration levels. I understand the frustration of the communities along these border areas, but we are not going to succeed with this policy if we don't have a neighbor to the south that is going to work with us.

So while it is frustrating, and certainly Mexico has not been as cooperative as they should have been over the years, I think that has changed and we ought to encourage that change rather than take a step backwards. So again, at an appropriate time, we could try to craft some language that would at least encourage the kind of cooperation we are going to have to have if we are going to succeed with the kind of border security issues that are included in the bill.

I thank the chairman of the committee for giving me a few minutes to explain my concerns.

Mr. SPECTER. Mr. President, I believe there are no other speakers on the other side. I heard there would be no objection to a motion to table, not that I need permission to move to table. We have the Inhofe amendment pending. I very much want to get a vote on the Inhofe amendment this afternoon. So we can either come to a time agreement to finish debate or if there are side-by-sides that have been prepared so that we could move ahead there.

Mr. LEAHY. Mr. President, would the Senator withhold?

Mr. SPECTER. I would.

Mr. LEAHY. Mr. President, the President said: Every human being has dignity and value, no matter what their citizenship papers say. I believe this amendment is antithetical to that sentiment.

Senator ENSIGN has proposed an amendment antithetical to the sentiments that the President expressed, and which most Americans share. Americans understand that for years there are undocumented workers who have tried to follow our laws and be good neighbors and good citizens, and have paid into the Social Security Trust Fund. Many do not yet have Social Security numbers but they and their American employers have paid in their contributions. Once that person regularizes his or her status, and as they proceed down the path to earned citizenship, they should have the benefit after having followed the law and made those contributions. Americans understand fairness. That is fairness. We should not steal their funds or empty their Social Security accounts. That is not fair. It does not reward their hard work or their financial contributions. It violates the trust that underlies the Social Security Trust Fund.

Senator ENSIGN proposes to change existing law to prohibit an individual from gaining the benefit of any contributions made while the individual was in an undocumented status. I oppose this amendment and believe it is wrong.

Under current law, immigrants who have paid Social Security while in an undocumented status may gain the benefit of all of their contributions once they gain legal status and become eligible to collect Social Security benefits. They paid in and they should be entitled to the benefits they have earned. The whole purpose of the path to citizenship program in the bill is to encourage people to become lawful, productive citizens. Penalizing these people is unfair, especially since under the law they are not only working hard and contributing to the Social Security Trust Fund, but also working hard to achieve legal status and earned citizenship. Hard work is rewarded in the country, not penalized. Following the law and advancing on the path toward earned citizenship should be encouraged, not punished.

For example, the children of an undocumented worker who has worked for 20 years and who has paid into the system would be denied all Social Security benefits if their parent dies before becoming a legal resident or citizen. Even though the children are citizens, they would be denied the benefit their parent worked many years and contributed to earn. Not only is this unfair, but it risks encouraging others in similar situations to stay in the shadows and not to pay into the Social Security Trust Fund. This will also have the effect of shifting burdens to the States and local communities and away from the Social Security safety net. I am confident that Vermonters and all Americans understand fairness. They understand respecting other people and respecting their contributions in terms of work and Social Security payments. They will not want to steal those contributions and benefits and deny fairness to lawful immigrants and their families.

They also understand that if the Republican-controlled Senate is prepared to take these Social Security funds today, the risk increases that their Social Security funds could be targeted tomorrow. After all, the Social Security Trust Fund is already being used to mask the deficit. As it becomes harder and harder to pay for tax breaks for millionaires and rising gas prices and lucrative Government contracts, some will be tempted to use money diverted from the Social Security Trust Fund. The President has already proposed draining the Crime Victims Trust Fund. We should maintain these trust funds for the purposes for which Congress created them and keep them safe. We should respect the contributions that people make to these trust funds and not look for excuses to start denying legal residents and citizens the benefits they have been promised.

Let us not take a giant misstep that we will surely regret. If we are going to encourage and support a path to citizenship for many people under this bill, we must do so in a way that ensures independence and security once that journey is completed.

Mr. SPECTER. Mr. President, I move to table the Ensign amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

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

The result was announced—yeas 50, nays 49, as follows:

[Rollcall Vote No. 130 Leg.]

YEAS—50

Akaka	Graham	McCain
Baucus	Hagel	Menendez
Bayh	Harkin	Mikulski
Biden	Inouye	Murray
Bingaman	Jeffords	Obama
Boxer	Johnson	Pryor
Brownback	Kennedy	Reed
Cantwell	Kerry	Reid
Carper	Kohl	Salazar
Chafee	Landrieu	Sarbanes
Clinton	Lautenberg	Schumer
DeWine	Leahy	Specter
Dodd	Levin	Stabenow
Dorgan	Lieberman	Stevens
Durbin	Lincoln	Voinovich
Feingold	Lugar	Wyden
Feinstein	Martinez	

NAYS—49

Alexander	Crapo	Murkowski
Allard	Dayton	Nelson (FL)
Allen	DeMint	Nelson (NE)
Bennett	Dole	Roberts
Bond	Domenici	Santorum
Bunning	Ensign	Sessions
Burns	Enzi	Shelby
Burr	Frist	Smith
Byrd	Grassley	Snowe
Chambliss	Gregg	Sununu
Coburn	Hatch	Talent
Cochran	Hutchison	Thomas
Coleman	Inhofe	Thune
Collins	Isakson	Vitter
Conrad	Kyl	Warner
Cornyn	Lott	
Craig	McConnell	

NOT VOTING—1

Rockefeller

The motion was agreed to.

Mrs. BOXER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. Mr. President, we have come to an agreement on sequence.

I ask unanimous consent we proceed next to Senator AKAKA; thereafter, we proceed to Senator VITTER under a time agreement for 45 minutes; and the time from 2:40 to 4 o'clock be set aside for the Inhofe amendment, where the expectation is there will be side-by-side amendments, side-by-side for the Inhofe amendment, until 4 o'clock.

Mr. KENNEDY. Mr. President, if the Senator will yield, if there is offered side-by-side, that would be voted on after the Inhofe amendment at 4 o'clock. So there is an hour and a half allocated time for debate on the Inhofe amendment, and as I understand, there would be approximately 45 minutes evenly divided.

I thought Senator AKAKA's amendment was agreeable or acceptable.

Mr. SPECTER. That is correct.

Mr. KENNEDY. Senator AKAKA would like 25 minutes.

Mr. SPECTER. Mr. President, we will take half an hour for Senator AKAKA's amendment. We will give him 25 minutes of that time. Senator KENNEDY and I will take the remaining 5 minutes to accept it.

Mr. INHOFE. Reserving the right to object.

The PRESIDING OFFICER. The Chair notes that under all the time allocated, as outlined, the time goes beyond 2:40 before proceeding to the Inhofe amendment. The time would go to approximately 2:45.

Mr. KENNEDY. If I could suggest, why don't we vote at 4:15. That gives 45 minutes to Vitter.

The PRESIDING OFFICER. The chair will clarify or summarize the unanimous consent: The proposed unanimous consent agreement would move the Senate to the Akaka amendment first, with half an hour total, 25 minutes to Senator AKAKA, and 5 minutes to split between the floor managers of the debate. Next is the Vitter amendment, with a total of 45 minutes equally divided. Then we proceed from 2:45 to 4:15 to the Inhofe amendment, with a possibility of a Democratic side-by-side amendment.

Is that the summary of the unanimous consent proposal?

Mr. SPECTER. I ask consent for that.

Mr. INHOFE. I object.

Mr. SPECTER. Without any second degrees to Vitter and Akaka.

The PRESIDING OFFICER. The proposal would exclude second-degree amendments.

Mr. INHOFE. And for clarification, there would be a vote on the Inhofe amendment at 4:15; is that correct?

Mr. SPECTER. That is correct.

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

Mr. SPECTER. Mr. President, I further ask consent that following the sequencing already discussed, we take up an amendment from the Senator from New York, Mrs. CLINTON.

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

Under the unanimous consent agreement, the Senator from Hawaii is recognized for 25 minutes.

AMENDMENT NO. 4029

Mr. AKAKA. Mr. President, I call up amendment 4029 to S. 2611 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Hawaii [Mr. AKAKA], for himself and Mr. INOUYE, proposes an amendment numbered 4029.

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

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

The amendment is as follows:

(Purpose: To grant the children of Filipino World War II veterans special immigrant status for purposes of family reunification)

On page 345, between lines 5 and 6, insert the following:

SEC. 509. CHILDREN OF FILIPINO WORLD WAR II VETERANS.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by sections 505 and 508, is further amended by adding at the end the following:

''(J) Aliens who are eligible for a visa under paragraph (1) or (3) of section 203(a) and are the children of a citizen of the United States who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).''.

Mr. AKAKA. Mr. President, I ask that Senators MURRAY and CANTWELL be added as cosponsors to my amendment.

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

Mr. AKAKA. Mr. President, it has long been evident that our immigration system needs reform. The debate on immigration has been a long time in coming, and I am pleased that this body is moving forward on this important topic in such a comprehensive fashion. For our work on immigration to be truly comprehensive, however, we must address those issues that have received less attention in the debate as well as the front page issues.

My amendment is regarding one of those issues that has not received widespread attention but is of great importance. As a World War II veteran, this amendment is important to me personally, to Filipino-Americans, and to veterans. My amendment would grant the children of Filipino World War II veterans special immigrant status for the purpose of family reunification. Making this small change to our nation's immigration policy would go a long way toward making our immigration laws more just, and I am hopeful that my colleagues on both sides of the aisle will join me in supporting this amendment.

Before I begin a discussion on the specifics of my amendment, I would first like to thank my dear friend and colleague, the senior Senator from Hawaii, DANIEL INOUYE, for cosponsoring this amendment. In the 101st Congress, Senator INOUYE authored section 405 of the Immigration Act of 1990, which provided for the naturalization of Filipino World War II veterans. Senator INOUYE has a long history of being involved in this important effort and it is an honor to have his support on my amendment today. In addition, Representative ED CASE has introduced a similar bill, H.R. 901, in the House of Representatives.

To understand the significance of this amendment, it is important to first provide some background about the historical circumstances that got us where we are today.

On the basis of 1934 legislation enacted prior to Philippine independence, President Franklin Delano Roosevelt issued a 1941 executive order. Through this order, President Roosevelt invoked his authority to ''call and order into the service of the Armed Forces of the

United States, . . . all of the organized military forces of the Government of the Commonwealth of the Philippines.'' This order drafted over 200,000 Filipino citizens into the United States military. Under the command of General Douglas MacArthur, Filipino soldiers fought alongside American soldiers in the defense of our country.

Throughout the course of World War II, these Filipino soldiers proved themselves to be courageous and honorable as they helped the United States fulfill its mission. There was no question when they were fighting that they would be treated the same as American troops. For example, Filipino soldiers fought side-by-side with American soldiers in the Battle of Bataan and the Battle of Corregidor. When Bataan fell and the Bataan Death March began, Filipino soldiers were forced to march more than a hundred kilometers from Bataan to Tarlac along with their American comrades. Filipino soldiers faced hardships in concentration camps, and they endured 4 years of occupation by the Japanese. In every sense, Filipino soldiers proved their allegiance to our country through thick and thin.

These Filipino soldiers are war heroes, and they deserve to be honored as such. They served active duty service on behalf of the U.S. military, which should qualify them for the same benefits as other veterans of active duty. Congress betrayed these veterans by enacting the First Supplemental Surplus Appropriation Rescission Act in 1946, which included a rider that conditioned an appropriation of $200 million, for the benefit of the postwar Philippine Army, on the basis that service in the Commonwealth Army should not be deemed to have been service in the Armed Forces of the United States.

Commonwealth Army members were those called into the service of the U.S. Armed Forces for the Far East. These members served between July 26, 1941, and June 30, 1946. Similarly, Congress enacted the Second Supplemental Surplus Appropriation Rescission Act, which provided that service in the New Philippine Scouts was not deemed service in the U.S. military.

New Philippine Scouts were Filipino citizens who served with the U.S. Armed Forces with the consent of the Philippine Government. They served between October 6, 1945, and June 30, 1947.

This generation of veterans is predominantly in their eighties. Of the 200,000 Filipino veterans that served in WWII, there are close to 49,000 left. Some of these veterans receive U.S. benefits, some do not. By 2010, it is estimated that the population will have dwindled to 20,000.

With the passage of the Immigration Act of 1990, the courage of the many Filipino soldiers who fought alongside our troops during World War II was finally recognized by our Government, and Filipino veterans were offered the opportunity to obtain U.S. citizenship. According to the former Immigration and Naturalization Service, about 15,000 Filipino veterans live in the U.S. and became citizens between 1991 and 1995 under the authority of the Immigration Act of 1990. Between that time, about 11,000 veterans who live in the Philippines were successfully naturalized. These thousands of Filipino veterans clearly wished to spend their golden years in the United States, and I am pleased that the 1990 Immigration reform efforts offered them the opportunity to do so.

Unfortunately, the offer did not extend to the adult sons and daughters of these veterans. As a result, the brave Filipino veterans who fought on behalf of America, and who now live in America and continue to contribute to America, must do so alone. Due to a backlog in the issuing of visas, many of the children of these veterans have waited more than 20 years before they were able to obtain an immigrant visa. Unfortunately, many more are still waiting.

It is no secret that U.S. Citizenship and Immigration Services in the Department of Homeland Security is facing significant backlogs. However, it is not as widely known that prospective family-sponsored immigrants from the Philippines have the most substantial waiting times in the world before a visa is scheduled to become available to them. What this means, is that these honorable Filipino veterans who faced numerous dangers to defend this Nation now face the prospect of spending the last years of their lives without the comfort and care of their families.

It is a shameful disgrace that the sons and daughters of these brave soldiers are now last in line to become citizens of our country. This is no way to honor Filipino soldiers who bravely fought on the front lines with American soldiers during World War II.

As a World War II veteran myself, I am proud to have answered my nation's call to active duty. During my time of active service, I was driven by a love for my country, and I was comforted by the love of my family. The support that a soldier's family offers during military service is an invaluable buoy to a soldier's spirit.

A family's role in caring and supporting for a soldier becomes even more important after active military service is completed. I was lucky to be surrounded by my family after my service. My heart goes out to those who were separated from their family for years and years due to bureaucratic backlogs.

As the ranking member on the U.S. Senate Committee on Veterans' Affairs, I have seen firsthand the difficulties that veterans can face when readjusting to civilian life after serving in a war. For many veterans, the difficulty of returning to a home that has changed while at war is eased by being surrounded by the familiar faces of loved ones. While that window of opportunity has unfortunately passed for our World War II Filipino veterans, there are still many important ways that families enrich the lives of veterans after the initial readjustment phase. Being surrounded by the love and care of family, especially for World War II veterans facing their twilight years, offers a special source of support.

Action on this issue is long overdue, and it would be very meaningful for the Senate to pass my amendment during debate on the immigration bill. As you may know, Filipino Americans are celebrating their centennial this year. Late last year, the Senate accepted by UC S. Res. 333, a resolution to recognize the centennial of sustained immigration from the Philippines to the United States, and acknowledge the contributions of the Filipino-American community to our country over the last century.

The Filipino-American community has grown and thrived over the last hundred years. Today, Filipino-Americans are the third largest ethnic group in the State of Hawaii and represent one of the fastest growing immigration groups in the country. Filipinos have made contributions to every segment of our community, ranging from politics and sports, to medicine, the military and business. One of the foremost issues for Filipino Americans is our Nation's commitment to Filipino veterans, and passing my amendment would be a significant way to honor Filipino veterans during a historic year for the Filipino American community.

Over the years, I have listened to the stories of countless Filipino World War II veterans who have been separated from their families and who are patiently waiting in line. Every veteran has a unique story to tell, but those Filipino World War II veterans who have not yet been reunited with their family members share a universal bond of heartache.

Another important commonality among Filipino World War II veterans is hope. Those Filipino World War II veterans still separated from their families are hopeful that we will use this opportunity to rectify the unjust oversight in current law. The poignant truth behind this matter is that if we don't act now, we may not have another opportunity.

This weekend I am participating in the first annual ''A Time of Remembrance'' event, which honors the families of the American fallen. Family members from all 50 States will come to the National Mall at noon this Sunday, May 21, 2006, to recognize the important contributions our fallen heroes have made on behalf of America. I am proud to take part in this event, which points out the very real ways that families are impacted when soldiers courageously leave their family and fight to defend freedom. For those World War II veterans who are still with us, this event points to the importance of honoring them now, before it is too late.

Let us prove those wrong who say that we are waiting until enough veterans die before we right this injustice. These veterans have been waiting for 60 years to have their benefits reinstated. Unfortunately, our efforts to provide them with the benefits they were promised, the benefits they fought for, have been unsuccessful because opponents have cited the payment of such benefits as too costly.

The Filipino Veterans from World War II have already made extreme sacrifices. They should not be forced to endure the further sacrifice of life without their loved ones. It is time that the United States fulfill its responsibility to these veterans. The least we could do is help to unite these aging veterans with their families. We are a nation that keeps its word . . . not a nation that uses people for our own purposes and then casts them aside.

Ensuring that our World War II Filipino Veterans can enjoy and be supported by their family members in their twilight years is a simple yet profound way of honoring these war heroes.

My amendment has received strong support from Filipino veterans, the Filipino-American community, and the Asian-American community. The Japanese American Citizens League, the Organization of Chinese Americans, and the Asian Pacific American Legal Center have all endorsed my amendment. In addition, the American Coalition for Filipino Veterans, which represents over 4,000 Filipino Veterans across the country, has wholeheartedly endorsed my amendment with a letter of support that states:

S. Amdt. 2049 will be a timely benefit to address the veterans' loneliness and will provide them with a partial measure of U.S. veterans recognition that they were unjustly denied in 1946.

Mr. President, I ask unanimous consent that the full text of the letter of support be printed in the RECORD.

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

AMERICAN COALITION FOR
FILIPINO VETERANS, INC.,
Arlington, VA, May 18, 2006.

DEAR SENATOR AKAKA: On behalf of 4,000 members of our national advocacy organization, we highly commend your leadership in introducing S. Amdt 4029 to grant special immigrant status to children of Filipino WWII veterans for the purpose of family reunification.

It is high time for our elderly Filipino American heroes to have their children join them in their twilight years in the U.S.A. These Filipino veterans served the U.S. Army. They as U.S. citizens now deserve to be treated as full Americans.

Sadly, their children with Approved immigration petitions have been patiently waiting for more than dozen years.

S. Amdt 4029 will be a timely benefit to address the veterans' loneliness and will provide them with a partial measure of U.S. veterans recognition that they were unjustly denied in 1946.

Please count on our leaders and members. They will gladly assist you and your colleagues to win priority issuance of immigrant visas to sons and daughters of Filipino American WWII veterans.

We hope and pray your legislation will be passed into law.

Very sincerely yours,

ERIC LACHICA,
Executive Director,

Mr. AKAKA. My amendment has received a letter of support from the Asian American Justice Center. I ask unanimous consent that the full text of the letter from the Asian American Justice Center to be printed in the RECORD.

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

ASIAN AMERICAN JUSTICE CENTER,
Washington, DC, May 18, 2006.

DEAR SENATOR: The Asian American Justice Center writes in strong support of S. Amdt. 4029 to S. 2611, the Comprehensive Immigration Reform Act of 2006. This important amendment, introduced by Senators Akaka and Inouye, would allow the sons and daughters of the naturalized Filipino veterans who fought for the United States during World War II to finally reunite with their aging parents in the United States.

Approximately 200,000 Filipino soldiers fought for the U.S. during World War II. They were promised U.S. citizenship as a condition of their service to our country, but that promise was retroactively withdrawn in 1946. To address this injustice, Congress belated granted U.S. citizenship to these veterans as a part of the Immigration Act of 1990.

However, it did not grant citizenship to the children of these veterans, thereby causing many of these families to be separated. A long immigration backlog developed hence these veterans petitioned for their sons and daughters to immigrate to the U.S. This has not only negatively impacted the veterans and their families, but also other Filipinos who are caught in the same backlog. The Philippines have the worst immigration backlogs in the world. A U.S. citizen parent who is petitioning for his or her unmarried son or daughter must wait approximately 14 years before they can immigrate to the U.S. If the son or daughter is married, they must wait roughly 18 years. The Akaka-Inouye amendment would address this problem by allowing the sons and daughters of the U.S. citizen veterans to immigrate to the U.S. without being subject to numerical limitations.

Of the 200,000 Filipino soldiers who fought for the U.S., only approximately 49,000 remain alive, and they are predominantly in their 80's. They have served our country well. They deserve to be reunited with their sons and daughters after years, sometimes even decades, of waiting. Please support the Akaka-Inouye amendment.

Sincerely,

KAREN K. NARASAKI,
President and Executive Director.

Mr. AKAKA. Mr. President, I urge my colleagues to honor their valiant contributions to our Nation by supporting my amendment.

Mr. INOUYE. Mr. President, I rise to join Senator AKAKA in support of his amendment that grants immigrant visas for alien children of Filipino veterans of World War II, who were naturalized pursuant to section 405 of the Immigration Act of 1990, a measure which I authored in the 101st Congress.

In recognition of Filipino veterans' contributions during World War II, the Congress, in March of 1942, amended the Nationality Act of 1940, and granted Filipino veterans the privilege of becoming United States citizens. The law expired on December 31, 1946. However, many Filipino veterans were denied the opportunity to apply for naturalization under this act because of an executive decision to remove the naturalization examiner from the Philippines for a 9-month period. The 9-month absence of a naturalization examiner was the basis of numerous lawsuits filed by Filipino World War II veterans. On July 17, 1988, the U.S. Supreme Court ruled that Filipino World War II veterans had no statutory rights to citizenship under the expired provisions of the Nationality Act of 1940. Section 405 of the Immigration Act of 1990 was enacted to make naturalization available to those Filipino World War II veterans whose military service during the liberation of the Philippines rendered them deserving of United States citizenship. Approximately 25,000 veterans took advantage of the naturalization provision which expired in February 1995.

Unfortunately, the 1990 Act did not confer naturalization to the children of Filipino World War II veterans. Accordingly, they are enduring decades of family separation due to the long waiting periods under the numerical limit on immigrant visas for alien children of citizens of the United States. Many of these veterans are in their twilight years, and declining in health. They long to see their sons and daughters.

Heroes should never be forgotten or ignored, let us not turn our back on those who sacrificed so much. Let us show our appreciation to these gallant Filipino men and women who stood in harm's way with our American soldiers, and who fought the common enemy during World War II by granting their children a special immigrant status to immigrate and reunify with their aging parents who have made sacrifices for this county.

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

The PRESIDING OFFICER. Is there a sufficient second?

Mr. KENNEDY. Mr. President, will the Senator withhold for a moment.

The PRESIDING OFFICER. At the moment, there is not a sufficient second.

Mr. AKAKA. Mr. President, I would like to ask for a voice vote.

Mr. KENNEDY. Fine.

The PRESIDING OFFICER. The Chair would note that under the unanimous consent agreement, there is 5 minutes to be split between the Senator from Massachusetts and the Senator from Pennsylvania.

Does the Senator wish to yield that time?

Mr. KENNEDY. Mr. President, I will take 2 minutes. Then I will yield back the time. And then I think we will be prepared to vote.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, I commend the Senator for raising this issue. He has been a constant

advocate for the families he has spoken about today. And he has communicated with us in the Immigration Committee on so many different occasions about the fairness and the importance of the family unifications and the uniqueness of service that so many of these parents were involved in at a very difficult and challenging time during World War II.

So the Senator from Hawaii deserves great credit for bringing this to the attention of us in the Senate. I speak for the Senator from Pennsylvania, who urges the acceptance of this amendment. This will help provide some very important family reunification. It is entirely warranted and entirely justified.

We thank the Senator for bringing this issue again to our attention and for his continued advocacy on this issue. We will do everything we possibly can to make sure this is carried at the conference as well.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 4029) was agreed to.

Mr. KENNEDY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I thank the Senator.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, under our unanimous consent agreement, it is now time for the amendment by the distinguished Senator from Louisiana under a time agreement of 45 minutes equally divided.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 3964

Mr. VITTER. Mr. President, I call up amendment No. 3964.

The PRESIDING OFFICER. The clerk will report.

The Senator from Louisiana [Mr. VITTER], for himself and Mr. GRASSLEY, proposes an amendment numbered 3964.

Mr. VITTER. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the burden of proof requirements for purposes of adjustment of status)

Beginning on page 350, strike line 1 and all that follows through ''inference.'' on page 351, line 1, and insert the following:

''(II) OTHER DOCUMENTS.—An alien who is unable to submit a document described in subclause (I) may satisfy the requirement in clause (i) by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment for each required period of employment, including—

''(aa) bank records;

''(bb) business records;

''(cc) sworn affidavits from non-relatives who have direct knowledge of the alien's work, including the name, address, and phone number of the affiant, the nature and duration of the relationship between the affiant and the alien, and other verification information; or

''(dd) remittance records.

''(v) BURDEN OF PROOF.—An alien applying for adjustment of status under this subsection has the burden of proving by a preponderance of the evidence that the alien has satisfied the employment requirements in clause (i).

On page 374, line 22, insert after ''work'' the following: '', including the name, address, and phone number of the affiant, the nature and duration of the relationship between the affiant and the alien, and other verification information''

Mr. VITTER. Mr. President, yesterday on the Senate floor I briefly began to explain the purpose of this amendment. As was clear from yesterday's debate, I have grave and serious hesitations with many parts of this bill. One of those hesitations is about the huge loopholes and encouragements for fraud that exist in the bill in many different sections.

We are very good on the Senate floor in debating, tossing around ideas, general concepts, broad principles, but I fear we are often very bad at really looking at the details of a proposal and walking through how it is going to work in the real world and in practice or, perhaps it is more appropriate to say, how it is not going to work. Again, this bill is a glaring example of that.

Amendment No. 3964 does not correct all of those deficiencies. It does not close all of the loopholes to which I generally refer. It does not end all of that invitation to fraud. But it does do it in two significant respects which may be among the most significant examples of that in the bill. Let me explain what those are.

Both of the issues my amendment addresses come under section 601. The first has to do with how an illegal immigrant proves that he has been in the country for over 5 years. Why is this important? The underlying bill deals with illegal immigrants in the country now by putting them in one of three categories: if you have been in the country over 5 years, if you have been in the country between 2 and 5 years, and if you have been in the country less than 2 years. The consequence of being put in one of these categories versus the others is significant; you are treated differently. Over 5 years is the best category to be in from the viewpoint of the illegal immigrant by far because that is the most guaranteed and automatic and clear path to citizenship. Between 2 and 5 years is the next best scenario. That also has a path to citizenship. Less than 2 years is by far the least attractive category. That is all fine and good, to make these distinctions and to have different consequences for people who fall into these different categories. Maybe that makes sense. But it is important to understand what proof an illegal immigrant needs to offer to be put in one category versus another.

One might assume—and certainly the American public watching the debate might assume—with the significance of these three categories, how they color the entire picture of the pathway for that illegal immigrant—clear, objective documentary evidence is going to be required to go into the best category versus the second best versus the worst. That would be a pretty good assumption because these categories are important and lead to different consequences.

Unfortunately, that is not the case. In the underlying bill, the illegal immigrant can present all sorts of things to be put in the best category. And one of the things he can present, if he says he doesn't have any of the others, is a simple statement that he himself signs.

So at the end of the day, we are making all of these very important distinctions between has the person been in the country over 5 years or between 2 and 5 years or under 2 years, but when it comes down to the actual workings of how this will operate in the real world, all that person has to do is write out a fairly simple statement—''I have been here for over 5 years''—sign his name to it, and under the details of the bill that is good enough. To me, that makes a mockery of the entire system that is being proposed. That makes an open invitation for fraud. Why would a person who is in an admittedly difficult and strenuous, stressful, even desperate situation, why would a person put himself in category B or category C when all he has to do is sign a piece of paper to get in the best category, the clearest route to citizenship, category A? It makes no sense. Of course, a lot of folks in that desperate situation will do exactly that. This is a loophole, an invitation to fraud which we need to close.

Under a similar provision of the bill, also in section 601, there is a similar glaring loophole and open invitation to fraud in terms of the type of evidence that a person may present to get in the second category, being in the country between 2 and 5 years. I don't know why this is so much an issue because if I were the person, I would immediately rush to the best category, sign a simple piece of paper, and have the clearest route to citizenship. But still, in the evidence accepted in category B, between 2 and 5 years, a person can supply a simple statement, a piece of paper signed by a nonrelative third party. Again, the requirements for that are so loose, it is a glaring loophole and an open invitation to fraud.

If this system is to have any meaning, if these distinctions in terms of

how long a person has been in the country are to have any significance, if this plan is to have any hope of working in practice, rather than just being something pretty to talk about on the floor of the Senate, we need to close these loopholes. We need to end these outright invitations for fraud. That is what my amendment would do in important respects.

To summarize, my amendment would do five specific things that would close these loopholes, shut down these very wide open invitations to fraud.

No. 1, it would strike the language allowing an alien to prove employment history by providing a self-signed, sworn declaration; in other words, nothing more than a piece of paper that he himself signs.

No. 2, it would require that sworn affidavits from nonrelatives who have direct knowledge of the alien's work—and that is a phrase in the underlying bill—can be corroborated by the Secretary of Department of Homeland Security and should include contact information of the affiant, the name, the address, the phone number, the nature and duration of the relationship, so that the Department has some hope, some ability of looking into this declaration, cross-examining the affiant to determine if this is trustworthy and if this declaration is truthful.

No. 3, the amendment would make the types of ''other documents'' provided to prove work history the same for those illegal aliens who have been living in the United States over 5 years and for between 2 and 5 years. So there would be uniformity, and we would be talking about objective documentary evidence.

No. 4, the amendment would strike the provision stating that Congress believes the Department of Homeland Security should ''recognize and take into account the difficulties encountered by aliens in obtaining evidence of employment'' because of their illegal status. That quote is in the underlying bill, that the Department must ''recognize and take into account the difficulties encountered by aliens in obtaining evidence of employment.'' In other words, the bill itself is telling the Department: Let it slide. Anything that is stated, you virtually have to accept. That is ridiculous, and we would remove that directive from the bill.

And No. 5, the amendment would clarify that the alien has the burden of proving his or her employment history by ''a preponderance of the evidence.'' It is very reasonable, and, in fact, there is no other workable way to do it, to put the burden of proof on the illegal alien to prove the amount of time he has been in the country. Any lesser burden of proof, any other way of going about it will be a glaring loophole and an open invitation for fraud.

Let me underscore the general thrust of my amendment. It goes to some of my broad concerns about the bill. We are very good, all of us, both parties in the Senate, in making arguments, talking about broad values, outlining generalities, and talking about how a new system of laws should work. In my opinion, we are very bad, almost always, at actually designing a concrete system and paying attention in excruciating detail to the words we pass into law to make sure that system can actually work in the real world and not simply be unworkable beyond being able to be administered full of glaring loopholes, full of invitations to fraud. I believe this bill, unfortunately, is an example of that. I believe in many aspects, including many that are not covered by our amendment, this is going to prove very unworkable in the real world and be wide open with loopholes you can drive a truck through, with open invitations for fraud. My amendment simply highlights perhaps the two most obvious or egregious examples of that and tries to close those loopholes, close down those open invitations for fraud.

With that, I am happy to hear from Members who would like to debate the amendment pro or con.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand the amendment, on page 350, you strike lines 8 through the rest of the page; am I correct?

Mr. VITTER. I don't have that in front of me. If you could read me the lines.

Mr. KENNEDY. Well, this is on the intent of Congress, the basic kind of understanding, the intent of Congress be interpreted in a manner that recognizes the difficulties encountered by the alien in obtaining evidence. As I understand, you strike that. And then you strike the burden of proof provisions through the top of 351, once the burden is met, the burden shall shift to the Secretary of Homeland Security. So those provisions are dropped. The essence of your amendment is to tighten up verification in terms of the applicant.

Mr. VITTER. The Senator is correct.

Mr. KENNEDY. And that is effectively the purpose of the amendment. In your description and in the language, you talk about bank records, business records, sworn affidavits from nonrelatives who have direct knowledge of the alien's work, including name, address, phone number of the affiant, the nature and duration of relationship. You also talk about remittance records and that the burden is on the alien applying for the adjustment, the burden of proving by a preponderance of evidence that he has satisfied the employment requirements.

Mr. VITTER. The Senator is correct on all of that.

Mr. KENNEDY. I am going to urge that we accept that amendment. We want to make sure, those of us who support this proposal, that we are going to reach those people who are defined in the legislation. And we want to make sure that it is accurate.

We are not interested in people gaming the system or in the identity theft problems and other kinds of challenges and false documents. We have made a very strong effort because if we have that and we lack the verification of information and lack the verification in terms of the individual and we are going to have continued forgery of documents, this is going to be a disaster. But we have given strong emphasis in terms of legality and veracity, and we are going to have the biometric identification cards. We are going to try to do this correctly and by the book, so to speak.

The Senator has redrafted provisions we had in the legislation to ensure the applicant is going to provide the best information and that the best information has to be reliable and dependable in order to be able to participate in the system. I think it is useful and valuable. At the appropriate time, I will urge our colleagues to accept the amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, there is no doubt that we have to have appropriate evidence in order to establish the criteria for moving ahead on the path to citizenship. I believe the Senator from Louisiana has structured a realistic amendment and made improvements to the bill. We are prepared to accept it on this side.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I thank the Senator from Pennsylvania and the Senator from Massachusetts for their encouraging and supportive words. Obviously, I welcome that. Obviously, I welcome this amendment being adopted.

Without taking away anything from that statement, I simply add that, unfortunately, while these are very important cases we have identified in the bill that highlight these problems, these are not the only cases. Unfortunately, I think they are an example of the general nature in which many aspects of the bill were drafted.

In a spirit of working toward the end all of us have said we fully support, I encourage all of the Members intimately involved in continuing to draft the bill, including if a bill should go to conference—and I will certainly include the Senators from Pennsylvania and Massachusetts—to continue to identify those problem areas in the bill language. I hope this amendment will be adopted and we will have addressed two of them. I will continue identifying more. I am encouraged by the comments that they will join us in that endeavor as this work product moves on.

With that, I am prepared to yield back my time if we can proceed to voice vote.

Mr. SPECTER. Mr. President, I think we are ready for a voice vote on the Vitter amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. SPECTER. It is.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (no. 3964) was agreed to.

Mr. SPECTER. Mr. President, we have concluded the Vitter amendment a little earlier than expected. It would be appropriate now to proceed with the debate on the Inhofe amendment, with the prospect of later having a side-by-side. I urge my colleagues who wish to be heard on that subject to come to the floor so we can proceed.

Mr. President, while we are awaiting speakers to arrive on the Inhofe amendment and since we have concluded the Vitter amendment early, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. 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. INHOFE. Mr. President, we are now going to the Inhofe amendment No. 4064. It is my understanding that we have between now and 4:15, with the time equally divided on my amendment and an alternative amendment that is proposed by Senator SALAZAR, and I would ask if that is correct.

The PRESIDING OFFICER. An amendment has not yet been proposed by the Senator from Colorado. However, the time between now and 4:15 is allocated to the Inhofe amendment and any Democratic amendment which might be proposed as an alternative.

Mr. INHOFE. I thank the Chair for that clarification. It could very well be, and it is my understanding that some others do have an alternative that they want to have considered.

Mr. President, this is an issue that has been with us for a long time. Due to the great history that is very often presented to this Chamber by the occupier of the chair, we went back into history and saw that for hundreds of years we have been trying, many of us, as our forefathers tried, to make English the national language. The last time we had a vote was 1983. In 1983, there was a—I don't remember who the author was at the time, but it was before I even came to the House. But that was 23 years ago. So 23 years it has taken now to get a vote on this issue.

Ours is a very simple amendment. It is very straightforward. We have perfected it by adding things that the Senator from Tennessee and the Senator from Arizona and the Senator from Alabama have asked for, and we think as a result of that, we have a bill that is actually better than ours was when it first started.

Mr. DURBIN. Mr. President, would the Senator yield for a question?

Mr. INHOFE. I yield.

Mr. DURBIN. First, I thank the Senator for his cooperation. I think we have had a very valuable dialogue, and the Senator from Oklahoma has made some important concessions. But I would like to make sure that, for the RECORD, I understand the intent and language of the amendment which he currently offers.

Has the Senator changed the version which referenced section 161: ''Declaration of official language,'' which shows on page 2 of the amendment?

Mr. INHOFE. Yes, that was changed. It was actually written up—they wrote the word ''national'' in the wrong place. It is, ''Declaration of national language.''

Mr. DURBIN. Thank you. May I ask the Senator if he would tell me whether it is his intention to in any way diminish any rights that currently exist under the laws of the United States of America which would provide individuals with materials or services in a language other than English?

Mr. INHOFE. Mr. President, I think it is very appropriate the Senator asks that question. We have had a chance to discuss that at some length with a large number of people, and I have stood pretty fast to my belief. Now, keep in mind I am one of the few people around here who is not a lawyer, and therefore sometimes that puts me in a better position to understand the law than some of my lawyer friends. But I would say that when we write down, ''unless otherwise authorized or provided by law, no person has a right, entitlement, claim,'' et cetera, in the bill, which is the form of the bill that you have seen and that we have all been working on, so my feeling is that language takes care of any problem within the existing law that is on the books.

Mr. DURBIN. If the Senator would yield, then——

Mr. INHOFE. Mr. President, let me ask if it would be all right, if you have a number of questions—I don't mind yielding, but I would just as soon yield on your time.

Mr. DURBIN. Fine. Mr. President, I would like to have the time for the questions and answers count against me.

So would the Senator say for the RECORD, is it your intention by this amendment to diminish any existing rights under the law of the United States relative to services or materials provided by the Government of the United States in any language other than English?

Mr. INHOFE. Mr. President, I would respond by saying I think the statement stands by itself, speaks for itself. It says, ''unless otherwise authorized or provided by law.'' We are a country of laws, and if there is anything that is inconsistent, that is an exception under section 162.

Mr. DURBIN. Reclaiming my time, Mr. President, that is the problem. This is what it comes down to. This is an easy question to answer: Yes, it is not my intention to diminish any rights under the law given to any person for services or materials provided by the Government of the United States in any language other than English. If the Senator said yes to that question, it would put a lot of people at ease.

But let me tell you what I am afraid is at stake. In the language which the legal staff has prepared, I am afraid there is more to it. It is apparent that at least some believe you are going further than what you have indicated; that you are trying to diminish existing rights of the law. That is troubling because the rights under law that we are talking about are rights that are over 40 years old, dating back to the 1964 Civil Rights Act. And if the Senator from Oklahoma wants to make a statement of policy that English is the language of the United States and it is a common and unifying language, then he will have 100 votes in the Senate. It will be an important statement. But when he goes on and adds this other language, this amendment raises questions.

I just gave the Senator a chance to clarify the rest of his language, and he didn't want to do it. I am afraid that is where we are going to have a parting of the ways.

I think it is valuable for us to establish that the English language is common and unifying in America and that success depends on it, and I believe that. As I have said many times on the Senate floor, I am the son of an immigrant. My mother came to this country; her parents struggled to learn English. She spoke both English and Lithuanian. I speak only English today. My life experience is not much different than most.

We had a recent survey that found an interesting statistic. The Pew Hispanic Center documents that about 80 percent of third generation Latinos in the United States speak English as their dominant language. Exactly zero percent speak Spanish as their dominant language. It suggests that what happened in my family is happening with most immigrant families.

So they know the obvious: Success in this country depends on mastering and speaking English. So if the Senator wanted to make that statement, that English is our common and unifying language in this country, we would join him.

Mr. INHOFE. Mr. President, let me respond.

Mr. DURBIN. I still have my time, and I would like to say this: When I asked him straightforwardly a question as to whether he wanted to diminish the rights of anyone in this country currently under law, which would include Presidential Executive Orders, I might say to the Senator and his legal staff, if he wants to diminish those, he would not give me an affirmative answer which I think would satisfy many on this side of the aisle.

I reserve the remainder of my time, and I yield back to the Senator from Oklahoma.

Mr. INHOFE. Mr. President, let me first of all say no, it is not my intent, nor is it the intent of this amendment, to do that. This amendment is pretty straightforward. It does say ''unless otherwise authorized or provided by law.'' What that says to me is if there are some of these privileges out there that you believe are not in the law, then I would not be addressing those. I think what you are talking about is a matter of law, but I don't know that. I would rather say if it is a matter of law, we are providing an exception. And I guess I would ask you the question, since I now have the floor, do you believe that some of these rights are entitlements?

Mr. DURBIN. Mr. President, I don't know whose time this counts against.

Mr. INHOFE. It is mine.

The PRESIDING OFFICER. The Senator from Oklahoma has the floor.

Mr. DURBIN. Mr. President, as I said earlier, this is dangerously close to debate in the Senate, and I am glad we are doing it. My feeling is this: When you say: What are you entitled to? Well, we are entitled to be protected from discrimination. That is an entitlement to every American. We are entitled to be protected from discrimination. And the 1964 Civil Rights Act says one of the things you cannot be discriminated against is your national origin, where you were born. We say in America, no, you cannot be discriminated against based on national origin. And based on that provision in the Civil Rights Act, we will provide, when it comes to essential services, appropriate language assistance to help those who are availing themselves of the services.

As I said earlier, in Chicago, that may be Polish or a Filipino dialect. But basically what we have said is, yes, you are entitled not to be discriminated against.

Now, if the Senator wants to wipe away that entitlement, he should make it clear. But I am not sure that he wants to. If he does, I hope he will say so.

Mr. INHOFE. No, no. Mr. President, reclaiming my time, it is certainly not our intention. And I think what the Senator is saying is that language and national origin are the same when, in fact, I am not saying that language and national origin are the same.

Let me go ahead and try to respond, even though I am speaking to lawyers and I am not one, with some court cases that I think might clarify things for all of us.

Mr. SALAZAR. Mr. President, would my friend from Oklahoma yield for a question?

Mr. INHOFE. Mr. President, let me hold off yielding until I get through with what I am about to say. I was going to mention these this morning, but I would like to go ahead and say where I believe we are today in responding to the question that has already been asked. I think it speaks for itself, but let me see after reading these cases whether you agree with that or not.

Mr. SALAZAR. Mr. President, again, if I may ask a question of my friend from Oklahoma.

Mr. INHOFE. All right. I would rather wait until I am through, but go ahead.

Mr. SALAZAR. This is not on the substance——

The PRESIDING OFFICER. The Senator from Colorado is recognized to ask a question.

Mr. SALAZAR. Mr. President, what I would like to do as we move forward in this discussion is also lay down the amendment that I have which I believe accomplishes the objectives which have been articulated by the Senator from Oklahoma and, hopefully, after the Inhofe statement, I can lay down my proposed amendment which I think addresses some of the questions we are talking about on the floor.

Mr. INHOFE. Mr. President, it is my understanding—we talked about this before the Senator came in—that we will have two amendments that we will be talking about: the Salazar amendment and the Inhofe amendment. They will be side by side. There will be a vote at 4:15. That vote will take place on my amendment first and then on the Salazar amendment, is my understanding.

Mr. SALAZAR. I thank the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, first of all, I would like to get into some of the legal background. For the legal analysis, let me start by mentioning Wesley Newcomb Hohfeld who was the author of the seminal Fundamental Legal Conceptions, a powerful and enduring analysis of the nature of rights and the implications of liberty. Hohfeld noted that rights correlate to duties. A has a duty to B if B has a right against A. If A has no duty, that means B has no right and A has liberty, are the terms that he used. Such Hohfeldian analysis applies here.

My amendment makes clear that nobody has a right or entitlement to sue the Federal workers or the Federal Government for services or materials in languages other than English. In Hohfeldian terms, the Federal Government has no duty to provide services or materials in languages other than English, but the Federal Government is free to do so. In other words, they are not compelled to do it, but they may do it, they have the authority to do that.

The question has been asked: How does this amendment affect the X program? Will the Federal Government be free to offer X service or material in Y language? The answer is, yes, the Federal Government is at liberty to offer, can offer, X services or whatever the program is, in whatever language seems to be appropriate, but the Federal Government only has the duty to offer X services and Y language if a statute creates that right.

In other words, we are talking about English as the national language. We are talking about certain exceptions that are written into law, and we have said on page 2 that I have read several times, ''unless otherwise authorized or provided by law.''

That means there are many cases where that would be the case. Again, such examples exist, such as the Voting Rights Act, which provides for bilingual ballots, and the Court Interpreters Act of 1978, which provides for translation services in the Federal courts.

Prior to 1978, there was no such act, and that was not the case. This does not change the decision in the change in law that took place in 1978.

For over 30 years, the courts have ruled uniformly and consistently on these matters, of providing services and materials in languages other than English. Federal courts have rejected attempts to equate a person's language with their national origin in dozens of court cases. This is what I referred to. It seems to me perhaps the other side is trying to say they are one and the same.

But the Federal courts have rejected the attempts to equate a person's language with their national origin in dozens of court cases and court decisions going back more than 30 years. Therefore, any expansion of the concept of national origin to encompass a theory repeatedly rejected by the Federal courts must come explicitly from Congress. It must be a law. It must be something that Congress proposes and passes and not be imposed by a flawed or arbitrary interpretation of the law. Today the Senate is stating that there is no right, entitlement or claim to services and materials in any language other than English. That is assuming we pass our amendment.

I will mention just three of the long, unbroken line of court cases spanning over 30 years.

In 1983 the Second Circuit Court of Appeals determined in Soberal-Perez v. Heckler, which the Supreme Court let stand, that there is no right to government forms in languages other than English.

In 1994 the Second Circuit Court of Appeals determined in Toure v. U.S. that there is no right to government deportation notices in languages other than English.

The most recent United States Supreme Court case in this area is Sandoval v. Alexander, the Alabama driver's license case. Justice Scalia wrote the decision in Sandoval in 2001.

The Supreme Court in Sandoval rejected the equation of language and national origin.

Indeed, the Federal courts have repeatedly considered and rejected just this equation of the failure to provide foreign language services and materials with a violation of the prohibition against national origin discrimination.

There is no support in the legislative history or judicial interpretations of title VI for the right or entitlement to Federal Government services or materials in languages other than English. Executive Order 13166 purported to interpret title VI, but it was written before the United States Supreme Court's decision in Sandoval.

This amendment now clarifies in Federal statute the line of cases culminating in the United States Supreme Court decision in the Sandoval case. Here we are making clear that there is no legal basis for Executive Order 13166 that purported to direct services and materials in languages other than English. I state it again clearly: There shall be no right or entitlement to services or materials in languages other than English.

I ask unanimous consent additional material be printed in the RECORD.

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

LEGISLATIVE HISTORY

The legislative history does not support a language-based definition of national origin. The Supreme Court has noted that the legislative history concerning the meaning of national origin, even under statutory law, is ''quite meager.'' *Espinoz* v. *Farah Mfg. Co.*, 414 U.S. 86, 88 (1973). Nevertheless, ''[t]he terms 'national origin' and 'ancestry' were considered synonymous.'' 414 U.S. at 89. During debate on the 1964 Civil Rights Act, Representative Roosevelt stated: ''May I just make very clear that 'national origin' means national. It means the country from which you or your forebears came from. You may come from Poland, Czechoslovakia, England, France, or any other country.'' 110 Cong. Rec. 2,549 (1964).

The Supreme Court supports that assessment: ''[t]he term 'national origin' on its face refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came.'' *Esoinoza*, 414 U.S. at 88; see also, *Pejic* v. *Hughes Helicopters*, 840 F.2d 667, 672–73 (9th Cir. 1988) (persons of Serbian national origin are members of a protected class under Title VII).

CASE HISTORY

Federal courts have rejected attempts to equate a person's language with their national origin in dozens of court decisions going back thirty years. Therefore any expansion of the concept of national origin to encompass a theory repeatedly rejected by federal courts must come explicitly from Congress, and not be imposed by a flawed and arbitrary interpretation of the law.

The Supreme Court has never held that the language a person chooses to speak can be equated to the person's national origin. Though this issue was briefed and discussed in *Hernandez* v. *New York*, 500 U.S. 352 (1991), the Court did not make a holding on this question. ''Petitioner argues that Spanish-language ability bears a close relation to ethnicity, and that, as a result, it violates the Equal Protection Clause. . . . We need not address that argument here.'' 500 U.S. at 360. The Circuits, on the other hand, have rejected such an equation. See, e.g., *Soberal-Perez* v. *Heckler*, 717 F.2d at 41: ''A classification is implicitly made, but it is on the basis of language, i.e., English-speaking versus non-English speaking individuals, and not on the basis of race, religion or national origin. Language, by itself, does not identify members of a suspect class.''

See, also, *Toure* v. *United States*, 24 F.3d at 446 (affirming Soberal-Perez and rejecting request for multilingual forfeiture notices). ''A policy involving an English requirement, without more, does not establish discrimination based on race or national origin.'' ''*An* v. *General Am. Life Ins. Co.*, 872 F.2d 426 (9th Cir. 1989) (table).

The oldest administrative interpretation linking language and national origin is the EEOC's arbitrary presumption against English language workplace rules. 29 C.F.R. §1606.7. The Supreme Court has never reviewed those purely administrative interpretations. But many other courts have reviewed the EEOC guidelines and have rejected them and their underlying equation of language and national origin. See, e.g., *Garcia* v. *Spun-Steak*, 998 F.2d 1480, 1489–90 (9th Cir. 1993), cert. den. 512 U.S. 1228 (1994) (EEOC Guidelines equating language and national origin were ultra vires); *Vasquez* v. *McAllen Bag & Supply Co.*, 660 F.2d 686 (5th Cir. 1981)(upholding English-on-the-job rule for non-English-speaking truck drivers); *Garcia* v. *Rush-Presbyterian St. Luke's Medical Center*, 660 F.2d 1217, 1222 (7th Cir. 1981)(upholding hiring practices requiring English proficiency); *Long* v. *First Union Corp.*, 894 F. Supp. 933, 941 (E.D. Virginia, 1995)(''there is nothing in Title VII which protects or provides that an employee has a right to speak his or her native tongue while on the job.''), affirmed, 86 F.3d 1151 (4th Cir. 1996).

A few cases indicate that if the language policy is a pretext for intentional discrimination, a language-related rule might violate national origin rules. In addition, two recent lower court decisions have adopted the EEOC's interpretation equating language and national origin. See, e.g., *EEOC* v. *Synchro-Start Products*, 29 F.Supp.2d 911, 915 n. 10 (N.D. Illinois, 1999)(on advice of law clerk, Judge Shadur was ''staking out a legal position that has not been espoused by any appellate court.''); *EEOC* v. *Premier Operator Services*, 113 F.Supp.2d 1066 (N.D. Texas, 2000) (Magistrate Judge Stickney, rejecting appellate cases against EEOC Guidelines and relying on Synchro-Start Products and Judge Reinhardt's dissent from denial of rehearing en bane in Spun Steak, found disparate treatment of Hispanic employees in the promulgation of an English-workplace rule; the defendant company was bankrupt and did not present a defense).

But almost all cases, including all Circuit decisions, have rejected the equation of language and national origin. See, e.g., *Gloor*, 618 F.2d at 270 (''The EEO Act does not support an interpretation that equates the language an employee prefers to use with his national origin.''); *Nazarova* v. *INS*, 171 F.3d 478, 483 (7th Cir. 1999)(permitting deportation notices in English); *Carmona* v. *Sheffield*, 475 F.2d 738 (9th Cir. 1973)(permitting English benefit termination notices); *Frontera* v. *Sindell*, 522 F.2d 1215 (6th Cir. 1975) (civil service exam for carpenters can be in English); *Garcia* v. *Spun Steak*, 998 F.2d 4 1480, 1489–90 (9th Cir. 1993), cert. den., 512 U.S. 1228 (1994) (rejecting EEOC guidelines); *Gonzalez* v. *Salvation Army*, 985 F.2d 578 (11th Cir.)(table), cert. den., 508 U.S. 910 (1993)(rejecting employment discrimination claim); *Jurado* v. *Eleven-Fifty Corp*, 813 F.2d 1406 (9th Cir. 1987) (permitting radio station to choose language an announcer would use); *Vasquez* v. *McAllen Bag & Supply Co.*, 660 F.2d 686 (5th Cir. 1981) (upholding English-on-the-job rule for non-English-speaking truck drivers); *Garcia* v. *Rush-Presbyterian St. Luke's Medical Center*, 660 F.2d 1217 (7th Cir. 1981) (upholding hiring practices requiring English proficiency); *Long* v. *First Union Corp.*, 894 F.Supp. 933, 941 (E.D. Virginia, 1995) (''there is nothing in Title VII which protects or provides that an employee has a right to speak his or her native tongue while on the job''), affirmed, 86 F.3d 1151 (4th Cir. 1996); *Gotfryd* v. *Book Covers, Inc.*, 1999 WL 20925, *8 (N.D. Ill. 1999) (rejecting attempt to use EEOC guidelines to establish hostile workplace); *Magana* v. *Tarrant/Dallas Printing, Inc.*, 1998 WL 548686, *5 (N.D. Texas, 1998) (''English-only policies are not of themselves indicative of national origin discrimination in violation of Title VII''); *Tran* v. *Standard Motor Products, Inc.*, 10 F.Supp.2d 1199, 1210 (D. Kansas, 1998) (''the purported English-only policy does not constitute a hostile work environment''); *Mejia* v. *New York Sheraton Hotel*, 459 F.Supp. 375, 377 (S.D.N.Y. 1978) (chambermaid properly denied a promotion because of her ''inability to articulate clearly or coherently and to make herself adequately understood in . . . English''); *Prado* v. *L. Luria & Son, Inc.*, 975 F.Supp. 1349 (S.D. Fla 1997) (rejecting challenge to English workplace policy); *Kania* v. *Archdiocese of Philadelphia*, 14 F.Supp. 2d 730, 733 (E.D. Penn. 1998) (surveying cases: ''all of these courts have agreed that—particularly as applied to multi-lingual employees—an English-only rule does not have a disparate impact on the basis of national origin, and does not violate Title VII'').

There is, therefore, no basis in the terms, history or interpretation of ''national origin'' which supports a per se rule equating a person's language and that person's national origin.

The Executive Order 13166 is based on the equation of a person's language and that person's national origin. Again, here we are making clear that there is no legal basis for Executive Order 13166. Neither is there any legal basis for federal regulations based on Executive Order 13166, including, but not limited to those federal regulations in the following list:

INDEX OF FEDERAL REGULATIONS ON EXECUTIVE ORDER 13166

CABINET-LEVEL DEPARTMENTS

Commerce

Department of Commerce: ''Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons'' (March, 2003). (reaffirmed on July 29, 2003).

Energy

Department of Energy: Ensuring Access to Federally Conducted Programs and Activities by Individuals with Limited English Proficiency (LEP) Plan DRAFT.

EPA

EPA Factsheet.

HHS

REVISED Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (August 8, 2003).

Strategic Plan to Improve Access to HHS Programs and Activities by Limited English Proficient (LEP) Persons (December 14, 2000).

''Policy Guidance: Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency,'' U.S. Department of Health and Human Services, Office for Civil Rights (September 1, 2000).

Guidance Memorandum, Title VI Prohibition Against National Origin Discrimination—Persons with Limited-English Proficiency, U.S. Department of Health and Human Services, Office of Civil Rights (January 29, 1998).

Proposed HHS Regulations as published in the Federal Register (August 30, 2000).

Fact sheet ''Language Assistance to Persons with Limited English Proficiency (LEP)'' U.S. Department of Health and

Human Services, Office for Civil Rights (September 26, 2000).

Appendix A: ''Questions and Answers'' (August 29, 2000).

Appendix B: ''Selected Federal and State Laws and Regulations Reauiring Language Assistance,'' U.S. Department of Health and Human Services Office for Civil Rights (August 29, 2000).

Justice

Bush Justice Department issues reaffirmation of E.O. 13166 and a new set of Questions and Answers (October 26, 2001).

Justice Department Policy Guidance Document: ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency'' (LEP Guidance) (August 16, 2000).

Commonly Asked Questions And Answers Regarding Executive Order 13166, Department of Justice (November 13, 2000).

Civil Rights Forum (Summer-Fall, 2000).

EO 13166 Implementation Plan (January, 2001).

Labor

REVISED Department of Labor Policy Guidance (May 29, 2003).

Department of Labor Policy Guidance.

Transportation

DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries (document undated —appeared in January, 2001).

Treasury

Treasury Department issues EO 13166 regulations (March 7, 2001).

Department of Veterans Affairs

Guidance to Federal Financial Assistance Recipients: Providing Meaningful Access to Individuals Who Have Limited English Proficiency in Compliance With Title VI of the Civil Rights Act of 1964

Subcabinet agencies

Corporation for National and Community Service Plan.

Consumer Product Safety Commission's Plan for Agency Compliance With Executive Order 13166.

REVISED General Services Administration (2003).

General Services Administration.

FINAL Institue of Museum and Library Services (August 7, 2003).

REVISED Institute of Museum and Library Services (April, 2003).

Institute of Museum and Library Services.

Legal Services Corporation (January, 2003).

National Aeronautics and Space Administration Language Assistance Plan for Accommodating Persons with Limited English Proficiency in NASA-Conducted Programs and Activities.

National Council on Disability Implementation Plan for Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency (Dec 12, 2000).

National Credit Union Federation (undated).

National Science Foundation plan.

Office of Special Counsel's Plan for Agency Compliance With Executive Order 13166.

Pension Benefit Guaranty Corporation's Plan for Agency Compliance With Executive Order 13166.

Mr. INHOFE. Mr. President, I know we can get bogged down. I suspect the reason this particular amendment that has been proposed numerous times in the past but not in the last 23 years, and that it is going to get bogged down on a lot of technical questions, is that perhaps some people do not want this amendment, so they come up with all kinds of technical reasons to oppose it. But what we are doing is declaring—we are making a declaration—that English is the national language for the United States of America.

We are taking the exceptions, for example, the Court Interpreters Act. Before the Court Interpreters Act passed in 1978, defendants did not have a right to an interpreter. It was up to the Court's discretion. The Court Interpreters Act protects already existing constitutional rights such as in the sixth amendment, the fifth amendment, the 14th amendment, amendments on due process. It is very important to know that is one of the many exceptions that is written into law. It is a very important exception.

You also have some exceptions found in the Voting Rights Act. Somebody mentioned this morning some disaster could take place in California, a tsunami or something such as that, and when the eviction notices come, obviously, if you are addressing Chinatown, it would be in Chinese. We know that. That protection is there.

I believe we have covered the legitimate concerns that are out there. I know there are some people who do not want this to happen who are going to vote against this. I understand that. That is what this is all about. It has been 23 years since we had an opportunity to vote for it or against it. Those of you who want to vote against it, you are going to have your opportunity at 4:15 today. In the meantime I agree with the Presidents—almost every President of the United States going back long before Teddy Roosevelt. One of the things he said is, ''We must also learn one language and that language is English.'' As we remember, President Bill Clinton in his State of the Union Message in 1999 got a standing ovation when he said that our new immigrants have a responsibility to enter the mainstream of American life. That means learning English and learning about our Democratic system of government.

I agree with that. I didn't agree with everything that President Clinton said, but I certainly was one who stood and applauded during that State of the Union Message in 1999.

I think other Presidents have done the same thing as recently as a few days ago, when our President said that an ability to speak and write the English language, English allows newcomers to go from picking crops to opening a grocery, from cleaning offices to renting offices, from a life of low-paying jobs to a diplomat career and a home of their own.

This is an opportunity. We look at people who come to this country and, oddly enough, those individuals that I have spent many hours with—I say to my good friend from Colorado that when I was mayor of Tulsa, we had never had any kind of recognition of our Latin population. Yet I knew it was a very large population. I would say to you, at that time I used to be a commercial pilot in Mexico and I actually spoke the language fairly well at that time. It has been many years, 25, 30 years, I guess. But when I became a mayor I said: I know around here we are very rich in history and have a talented bunch of people who have come here and are good citizens of our city of Tulsa. So I formed the Hispanic Commission of the city of Tulsa. This may or may not surprise you. Some of them were kind of in hiding, not even recognizing that they were Hispanics, and they came out. We had the Cinco de Mayo and all the celebrations there. It is probably the most popular thing that has ever been done in the city of Tulsa.

I went back and talked to these people. I said: Do you agree with the polling data that shows very clearly that Hispanics want to have English as the national language? And they said yes. This is a group I have been dealing with since 1978.

I think it may be someone's impression that certain extremist groups—and I am sure there are some extremist groups that have a large number of Latinos in them. They may be offended. They may not want to have this. That is fine. Let them exercise their influence on every voter, each of the 100 Members of this body. That is the way the system works.

But I will say this. Jumping from the ones I know and the ones I have had experience with back in my city of Tulsa, the Hispanic population is very proud of the fact that they are going to learn English, and it should be our national language. As recently as 2 months ago, a Zogby poll, in March of 2006, found that 84 percent of Americans, including 77 percent of the Hispanics, believe English should be the official language of Government operations. In 2002, the Kaiser Family Foundation poll—which I don't think anyone is going to question—found 91 percent of the foreign-born Latino immigrants agreed that learning English is essential to succeeding in the United States. In 2002, there is also a Carnegie/Public Agenda poll that found by a more than 2-to-1 margin, immigrants themselves say that the United States should expect new immigrants to learn English.

My favorite poll is this one. In 2004, the National Council of LaRaza found that 97 percent—strongly 86.4 percent or somewhat 10.9 percent—agreed that the ability to speak English is important to succeed in this country. That is a no-brainer. We all know that. There is not a country you go to where that is not true.

I would say this. There are 50 other countries around the world today that have English as their national language. In these countries, they expect you, when you come to their country, to learn English. But if you go to another country, if it is Italy or France or any other country, you are expected to be able to communicate in their language.

In 1988, G. Lawrence Research showed 87 percent favored English as an official language with only 8 percent opposed and 5 percent not sure. That was 1988. Very consistent; about the same numbers. A 1996, national survey by Luntz Research asked, ''Do you think English should be made the official language of the United States?'' and 86 percent of Americans supported making English the official language and only 12 percent opposed and only 2 unsure. That was 1996.

In 2000, Public Opinion Strategies, showed 84 percent favored English as the official language, with only 12 percent opposed and 4 percent not sure.

In 2004 another Zogby poll, that was a different one than the one I quoted, but 92 percent of Republicans, 76 percent of Democrats, and 76 percent of Independents favored making English the national language. Again, that was a March poll of Zogby. It is consistent throughout.

You have some things working here. You have everybody wanting it, including the Latin community. You have more than half the States, 27 of the 50 States—27 States have accepted English as an official language, including Colorado, I might add, I say to my good friend from Colorado. Let's see where Illinois is. Yes, Illinois. You don't have a problem in Illinois. You already have it as a State concept that has been accepted.

So if you have 27 States, you have 51 other nations accepting English as the national language, you have all the polling data showing this is what people want, you have an exception made so no one is going to lose anything by doing it this way, then I can only come to the conclusion that you don't want it as the national language.

That is fine. That is good. If that is the case, we are going to have a vote at 4:15 and make that determination.

Before I yield, let me ask how our time is coming along.

The PRESIDING OFFICER. The Senator from Oklahoma has 30 minutes remaining.

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

Mr. INHOFE. I yield the floor at this point.

Mr. DURBIN. I'll take it on my time. The Senator made it clear. He has two parts of this amendment. The first part is, frankly, an easy part. Is English the common, unifying language of our Nation? The answer is yes. His conclusion is that you can't succeed in America without being English proficient. If that's his amendment, that vote would be 100 to nothing.

It is the second part, the part you called the technical arguments, that we find troublesome. You said, in the course of explaining the amendment, that you didn't want to take away any existing rights of people in law, in courtrooms, for example, or going to vote, and I'm glad to hear that. But I want to ask you directly: Do you want to diminish any of the rights currently available to those living in our country under title VI of the Civil Rights Act of 1964, which prohibits discrimination based on national origin?

Mr. INHOFE. Do I personally want that? No, I don't. This amendment doesn't do that because it makes those exceptions because what you are referring to is the law.

Mr. DURBIN. Let me ask you expressly and specifically, because you did refer to this. This was Executive Order 13166, issued by President Clinton, which implemented the same title of the Civil Rights Act that I referred to. The Executive Order said that agencies of our Government had to make efforts to provide their services and materials to people with limited English proficiency.

Is it your intention with your amendment to, in any way, diminish the responsibilities and rights created by Executive Order 13166?

Mr. INHOFE. It is my understanding, I say to the Senator from Illinois, that the courts already have had some interpretations of that which perhaps are not the same as you are stating right now. What the courts have interpreted I stand behind because that means it is law. That is according to my amendment.

Mr. DURBIN. So will the Senator accept an amendment to his amendment which says that:

> Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the Government of the United States in any language other than English?

Mr. INHOFE. You will have an opportunity to have that in your side-by-side amendment that will be voted on after mine. My answer is no because we have already massaged this language. A lot of people are supporting this. If I start changing things now, as you well know, they are going to start peeling off, and I won't have the support I have right now. We will have an opportunity to vote on my amendment. Then we will have an opportunity to vote on whatever language you decide to put in, in your amendment.

Mr. DURBIN. I thank the Senator.

Mr. AKAKA. I agree that English is the common language of our Nation. Everyone should learn it, just as I believe everyone should learn other languages and more about the world around them. But I must oppose the Inhofe amendment because it does not merely encourage learning the English language. I am concerned that this amendment will have far-reaching consequences and eliminate the rights of many Americans.

First of all, the Inhofe amendment is unnecessary. English is the de facto official language of the United States. In fact, according to the 2000 census, only 9.3 percent of Americans speak both their native language and another language fluently.

Second, the Inhofe amendment is divisive. The sponsors of the amendment claim that this is needed to promote national unity. However, our common language is not what unifies this country. It is our common belief in freedom and justice. The first amendment to the Constitution ensures that we have the freedom of speech. We are free to speak in all languages—not just English. For those individuals who do not speak English, this amendment would deny U.S. citizens with limited English proficiency basic rights. For example, our country was founded on the belief that the people of this country hold the power—they are the check on our Government. However, limiting services to the English language could deny people the right to exercise this power and receive essential Government services.

Moreover, children growing up in homes that speak languages other than English will feel stigmatized. As a young child, I was discouraged from speaking Hawaiian because I was told that it would not allow me to succeed in the Western world. My parents lived through the overthrow of the Kingdom of Hawaii and endured the aftermath as a time when all things Hawaiian, including language, which they both spoke fluently, hula, customs, and traditions, were viewed as negative. I, therefore, was discouraged from speaking the language and practicing Hawaiian customs and traditions. I remember as a young child sneaking to listen to my parents so that I could maintain my ability to understand the Hawaiian language. My experience mirrors that of my generation of Hawaiians.

This is the same problem facing bilingual education. There is a push to stop the learning of other languages when individuals are young, when it is much easier to learn another language, but then we tell those same people that it is essential that they learn another language to preserve our national security. This is contradictory.

Third, the amendment sends the wrong message to our heritage communities. After the terrorist attacks of 9/11, we sought out these individuals to help with our translation efforts; however, now we are telling them that we do not value their language enough to provide them with essential services in their languages. The ability to speak a foreign language is critical to our national security, and we should not discourage that in any way.

Fourth, the Inhofe amendment could prohibit the Government from providing emergency services in other languages or providing critical health and safety materials to non-English speakers since such programs may not be required by law. People's lives might be endangered by this amendment.

Finally, I worry that the very strength of our democracy is threatened by this amendment. I am proud to be an original cosponsor of S. 2703, a bill to amend the Voting Rights Act of 1965. Importantly, S. 2703 will continue to require bilingual voting assistance. Unless every citizen has access to the

polls and can understand the language on their voting ballot, our democracy is not as strong as it could be.

We want immigrants and individuals from all over the world to learn about the United States and what defines us. I think our basic freedoms are what define us. To limit the ability of non-English speakers to know about the United States and experience and observe the freedoms on which this country was founded, would be a disservice to the United States. Actions speak louder than words, no matter the language. I urge my colleagues to act to oppose the Inhofe amendment.

Mr. ENZI. Mr. President, I rise in support of an amendment introduced by my colleague from Oklahoma, Senator INHOFE.

I firmly believe a common language promotes unity among citizens and fosters greater communication. Establishing a national language would save the Government the expensive and time-consuming task of preparing documents in many languages.

A recent Zogby poll showed 84 percent of our population believes that English should be the official language of our Government. Twenty-seven U.S. States have already made English the official language, including Louisiana which agreed to it as a condition of statehood. My home State of Wyoming made English the official language of the State in 1996. Fifty-one nations also have English as their official language, but the United States does not. It is time that we have a clear statement on our national language.

This amendment also addresses the important issue of English proficiency for new citizens. On May 15, 2006, President Bush addressed the Nation about the needed reform of our current immigration situation. He stressed the positive role that the English language has for new citizens. Many improvements need to be made to the current process that our new citizens go through. I am pleased that this amendment creates a set of goals for updates to the new citizen exam. Some of the goals are demonstration of sufficient understanding of English usage in everyday life and an understanding of American common values. These common values include the principles of our U.S. Constitution, the Pledge of Allegiance, the National Anthem, and the significance of our American flag. The goals will help new citizens better understand our Nation and become productive members of our society.

Senator INHOFE's amendment is a good strong statement in support of English as our national language and the importance of sharing this common value with new citizens. I have worked on legislation that would establish English as the official language of the U.S. Government during my service in the Senate and in the Wyoming State Legislature, and I encourage all Senators to support this important amendment to the immigration reform bill.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 4073

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

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. SALAZAR], for himself and Mr. DURBIN, Mr. KENNEDY, Mr. BINGAMAN, and Mr. REID, proposes an amendment numbered 4073.

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

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

The amendment is as follows:

At the appropriate place insert the following:

Notwithstanding any other provision:

SEC. 161. DECLARATION OF ENGLISH.

English is the common and unifying language of the United States that helps provide unity for the people of the United States.

SEC. 162. PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE.

The Government of the United States shall preserve and enhance the role of English as the common and unifying language of America. Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the government of the United States in any language other than English.

For the purposes of this section, law is defined as including provisions of the U.S. Code, the U.S. Constitution, controlling judicial decisions, regulations, and Presidential Executive Orders.

(b) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the Language of Government of the United States.

Mr. KENNEDY. Mr. President, I yield 15 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. SALAZAR. Thank you, Mr. President.

Let me first say that the amendment I send to the desk is sponsored as well by Senators REID, DURBIN, BINGAMAN, and KENNEDY.

I would first like to start by reading the amendment in its basic entirety. I think that it reflects what it is we are talking about in the Chamber this afternoon. My amendment reads as follows:

English is the common and unifying language of the United States that helps provide unity for the people of the United States.

The government of the United States shall preserve and enhance the role of English as a common and unifying language of America. Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the Government of the United States in any language other than English.

That is the essential and substantive part of the amendment which we are sponsoring today.

As I start to speak about this amendment, I want to say this amendment is a unifying amendment because it speaks to the common language of America. It unifies us from whatever particular language or background we come from.

It is my hope that when we complete this debate today we could have 100 Senators standing up in support of this amendment.

Let me say, for me—as we have approached this debate over immigration and as we approach this debate over official English and other aspects of amendments that have been offered by my friend from Oklahoma—it has been also a time for me to reflect back to the history of America and to the history of my own family in this country. My family came in and founded the city of Santa Fe in 1598, 408 years ago. And the language that is still the language of my home—the language still spoken on our ranch 110 miles north of Santa Fe—is still the spoken language from the 12th and 13th centuries. It is a very old language.

I remember during those days when I was a young man going to school in the 1960s in Conejos County, in the southern part of Colorado, those who spoke Spanish in our school were punished because of the fact they spoke Spanish. I remember seeing the incident where young people would have their mouths washed out with soap because of the fact they happened to be speaking a language other than English in the public school. I have seen these kinds of incidents through a lifetime of personal experience.

I think those kinds of incidents and those kinds of experiences run counter to what America is all about. America becomes richer and stronger because of our diversity. We have learned through the hard times of history that America is stronger when it stands together, when we find those issues that unite us as opposed to those issues that divide us.

We found those issues that divided us in the Civil War and over half a million Americans died in that war. We found those issues that divided us in the era of segregation that led to Brown v. Board of Education and led to the Civil Rights Act of the 1960s. Those acts were intended to bring us together as a country.

My fear is that the proposal which has been presented by my good friend from Oklahoma will serve to divide this country and not unite the country.

That is why the amendment I have offered, along with my colleagues, is intended to be an amendment that says we believe the English language is the common language of the United States and that it is a unifying language of the United States and we stand behind that language as the common language of America.

Let me also make a couple of observations regarding Senator INHOFE's amendment.

First, when you read the language itself and read the technical language of it, you have to ask yourself the question: Why is that language there?

You can read in the second part of the second page of his amendment essentially the language that says ''no official will communicate, provide services, or provide materials in any language other than English.''

I know there have been exceptions written into the language to try to accommodate times and places where the language other than English might have to be spoken.

We have to ask the question: Why is the language written the way it is which says it is in these narrow, tailored exceptions where we will make the exception that a language other than English can be spoken?

It causes me concern because I am not exactly sure what that means. If I am a public official working in law enforcement for one of our Federal agencies, if I work for the U.S. Postal Service, or wherever I might work in any agency of the Federal Government, I might read the language that says officials cannot communicate or provide materials in a language other than English. As someone who might not be a lawyer but a public servant serving within the Federal Government, it might give me a signal—and I think it would—and lots of our Federal employees the signal that perhaps providing services to the citizens of the United States in a language other than English is wrong and violative of the rule of law.

They will not have the opportunity that we have had today to go through the fine review of this legislation in the way that we have, and even after having gone through that fine review of this language there are still many of us who have questions as to how this proposed amendment will take away rights from the people of America.

As I was listening to my friend from Oklahoma speak about the importance of this amendment, one of the things he said is that he thought it was important that we stand together in opposing national origin discrimination. For sure, we can all agree in this Chamber that we are not to discriminate against someone because they happen to be Irish or French or if they happen to be of Mexican descent, whatever it is; we stand united in this country's belief in the proposition that we oppose any kind of discrimination based on national origin. Yet, it seems to me, from what I was hearing from my friend from Oklahoma, that the same thing does not apply with respect to language discrimination; if you happen to speak a language other than English, or if you happen, perhaps, to have an accent that indicates you may be of a native tongue that is other than English, that perhaps discrimination on the basis of language then would be sanctioned under our law in America. That is not the American way. The American way is to say that we are a stronger country when we recognize the differences among us, when we tolerate those who are different among us, and that we create a much stronger country when we stand together.

I believe the amendment which Senator INHOFE has proposed will create division within the country. I think it is putting a finger on a problem that does not exist today.

The statistics which Senator INHOFE cited, which are also cited by the National Council for Larussa, indicates that most Americans, including most Hispanics, speak English. The National Council for Larussa cites a GAO study in which it was consistently found that U.S. Government documents are printed in English only. In fact, less than 1 percent of U.S. Government documents are published in any language other than English.

They also found that the English language is not under attack in our country. In the U.S. census findings, they found that 92 percent of Americans had no difficulty speaking English. We also found in poll after poll that immigrants in America come because they want to learn English. They want to learn English. They want to assimilate into our society because they know that English is, in fact, a keystone to opportunity.

The Inhofe amendment does nothing in terms of including or encouraging people to move forward and learn the English language. We are already a country that speaks English. Senator INHOFE's amendment does not do anything with respect to moving the English language acquisition forward.

Let me finally say that it is true there are many States that have made English their official language. I believe that English being made the official language is also a matter of States rights. It is true that in my State of Colorado, as well as in other States, English has been adopted as the official language of those particular States. I believe we ought to leave it to the States; let the States decide we are a Federal system. I think States ought to decide the way we ought to go with respect to dealing with this issue.

Let me conclude by saying the amendment which I have proposed, along with my colleagues, Senators REID, DURBIN and BINGAMAN, is an amendment that would unify America and not divide our country.

I hope my colleagues will join me in supporting the amendment which we have offered and oppose the Inhofe amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. INHOFE. Mr. President, I yield as much time as the Senator from Tennessee requires.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, first, let me say to my friend from Colorado that if we were to take all 100 of us who are in the Senate, some of whose families have been here for a while, none of us, I would judge, have families who have been in the United States for longer than Senator SALAZAR's family—for 11, 12, or 13 generations. It is a source of great pride to serve with him.

He and I discussed this amendment. I understand his passion and feeling about it. But what I would like to do in a few minutes is take exactly the opposite view from the distinguished Senator from Colorado because I do not see how the United States of America can be unified unless we have a national language. That is all this is about. The Inhofe amendment is not an official English amendment. It is not an amendment to declare English the official language of the United States, which 27 States have done. It does not require that all government documents even be printed in English. It could have done that, but it doesn't.

It simply says English is the national language of the United States, period. That is the first thing it says. Then it has a provision that talks about the importance of encouraging the learning and understanding of English.

Then it has a provision which, the way I read it, says that nothing prevents the government from rendering services in languages other than English.

That would mean that in a whole variety of areas where the Congress last made a decision—whether it is the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Bilingual Education Act of 1967, the provision that Senator Robert Kennedy put into the law recognizing the unusual circumstances of Puerto Ricans who moved from Puerto Rico to one of the 50 States—or an Executive order by any President, this amendment wouldn't change any of that. That is the whole point of the amendment. It is just to say this is our national language.

Then it says that someone does not have the right to sue to get services in another language unless it is provided by law. It doesn't diminish a right already established by law.

It does one other important thing. It draws on the beginnings of an amendment by Senator SESSIONS about the citizenship requirements that have been in our citizenship process. It seeks to make those stronger.

Senator SESSIONS is not the only one in this Senate interested in that. There is probably no one in this Senate more interested in that than the distinguished senior Senator from Massachusetts, who is not only interested in American history, but his family has a place in it.

We have worked together in a variety of ways to try to get a clearer understanding of U.S. history among our children, among our citizens—not because we want to punish them, but because we have such a unique and diverse country that it is critical that we all understand these common unifying principles which come from our history, including what we are debating today: rule of law, equal opportunity, laissez-faire, E pluribus unum. We are not pro-immigrant or anti-immigrant;

we just have four principles on which we all agree, and we are trying to put them together into a bill. Those are the things which unite us as a country, along with one other thing, and that is our common national language.

The second part of the Inhofe amendment has in it language to help improve the citizenship exam that legal immigrants take to become citizens, of which 514,000 did last year. It is good language, language which was in the legislation Senator KENNEDY, Senator REID, and I worked on with many others a couple of years ago to help create summer academies for outstanding teachers and students of American history. We tried to define the history we were talking about in the sense of key ideas, key documents such as the Declaration of Independence, the place from which come our unified principles.

Here are the differences between the amendment from the Senator from Colorado and the Senator from Oklahoma. There are four differences. It is important for colleagues to understand.

Senator INHOFE's amendment declares that English shall be the national language. The Senator from Colorado has taken out the word ''national.'' He does not want it to say that. He says ''common and unifying'' language. I prefer the wording of the Inhofe amendment because while English is our common language, it is more than that. It is the common language of a number of countries, but English is also part of our national identity. It is part of our blood. It is part of our spirit. It is part of what we are. It is our national language. That is one difference.

No. 2, the Salazar amendment does not include the provision that is in the Inhofe amendment that says that for all those people here illegally who may become lawful and put on a path to citizenship, which is the goal of the sponsors, it says those persons must learn English. The Inhofe amendment strengthens that requirement. Currently, in the underlying bill, it simply says they must be enrolled in school to learn English, and the Inhofe amendment strikes that, so those persons have to learn English in order to be here lawfully. That is very important.

This large number of 10 million or so people who are here illegally is the source of most of the problems in this debate. If we are not going to send them all home, which almost no one thinks will happen, then we either have to put them on a path to citizenship or lock in 10 million people in the United States who pledge allegiance permanently to another flag, which is something we have never done before. The Inhofe amendment is preferable because it helps make it easier for those 10 million to learn our national language. Those are two differences.

The third difference is the Salazar amendment completely takes out the excellent work Senator INHOFE and Senator SESSIONS did, much of the language having been borrowed from work that Senator KENNEDY, Senator REID, I and others worked on, which tried to improve the citizenship test. This may not be an intention of the Salazar amendment, but it does it. It takes out the language that says the test should mention the key documents, such as the Constitution, the Bill of Rights, the Emancipation Proclamation, and key events such as the American Revolution, the Civil War, the world wars, the civil rights movement, and the key ideas and key persons.

Why is that important? Because we are not a nation based on race, we are not a nation based on ancestors; we are a fragile idea based upon a few principles and our national common language. So I prefer an amendment that has those provisions in there. That is the third reason.

The fourth, as I read it, suggests that Executive orders issued by the President are just like statutes. Constitutional lawyers would have a problem with that.

A vote for the Inhofe amendment is a vote to say English is our national language. It is a vote to say that those who may not be here legally, but who eventually may be determined legal by this legislation under some process, should learn English on their way to citizenship. And finally, the amendment includes a very good section that helps to define the key ideas and events of our history for citizenship.

Mr. SALAZAR. Would my friend from Tennessee yield for a question?

Mr. ALEXANDER. I would be happy to if we can do that on your time.

Mr. SALAZAR. I would be happy to do so on my time. Through the Chair, I ask the manager.

Mr. KENNEDY. He is asking the question, and he wants to answer the question on our time. I yield 5 minutes.

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

Mr. SALAZAR. Mr. President, through the Chair, I say to my friend from Tennessee, there was an Executive order issued on limited English proficiency and the importance of reaching out to people who are limited English proficient so they could recognize and understand the language of the Government, an Executive order dated August 11, 2000.

Is the Senator's reading of the Inhofe amendment that it would essentially eviscerate the Executive order issued by then-President Clinton concerning limited English proficiency?

Mr. ALEXANDER. The answer to my friend from Colorado is no. The election of a new President might change an Executive order if the new President modified or changed the Executive order. My understanding of Senator INHOFE's amendment, and he can speak for himself, is he does not seek to change any right now granted to anyone.

We can have a good debate about whether there ought to be bilingual ballots. In my opinion, I don't think there should be because you have to be a citizen to vote and you have to demonstrate an eight grade understanding of English to be a citizen. But that is in the law and is not affected by this and neither would an Executive order.

Mr. SALAZAR. I say to my friend from Tennessee, not too long ago in the Senate, we entered into a debate concerning the nomination of Attorney General Gonzales to be Attorney General of the United States. There were Members of this Senate who came to the Senate and spoke eloquently in Spanish about why he should be confirmed, including Senator MARTINEZ. Would the Inhofe amendment make it illegal for that kind of activity to occur in the Senate?

Mr. ALEXANDER. Mr. President, I say to my friend from Colorado, that is a preposterous question for what we are talking about and not really a suitable question for a serious proposal.

This is a simple proposal which declares that English is the national language of the United States and that the Government of the United States should do whatever it can to encourage that. It does not change any right that anyone has today. It also includes a strengthening of the citizenship test. Anyone who understands the founding documents knows that liberty is at the front of our unifying principles. Any citizen has a right to speak in Spanish. A Senator, of course, does as well. This has nothing to do with inhibiting anyone's rights. It just declares that, unlike Switzerland, unlike Canada, unlike Belgium, we have a common national language that is part of our identity. We do not want to be based on race. We do not want to be based on ancestry. We want to be unified by a few things—the unifying principles and our national common language.

So the answer is, of course not.

Mr. SALAZAR. Mr. President, in response to the colloquy I am having with my friend from Tennessee, it seems to me this language could be read that Senator INHOFE has proposed to say that because we are a Government Chamber, since we do not have a law that proactively says—or a rule of the Senate—that you can speak a language other than English here, perhaps when we were speaking about Attorney General Gonzales, we would have been in violation of this exact provision if it stays in the same language.

To continue my question to the Senator, my friend from Tennessee, it was not at all our intention in the drafting of the amendment to take away any of the requirements we have for people who come here under this immigration proposal to learn English or to go through the civics courses which are required now for the legislation that has been included in here. So it is my view that the Senator has misread the amendment we have supported.

Mr. ALEXANDER. Mr. President, if I could have 4 more minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ALEXANDER. The differences I see in the two amendments are, No. 1, the Salazar amendment says no to making English our national language. It uses another description. No. 2, it says no to the requirement that immigrants who are illegally here and who may be put on a path to citizenship should learn English before they go on that path to citizenship. And it says no to the provisions in the Inhofe amendment which improve the citizenship test, requiring those who become citizens to learn the key events, key documents, key ideas of our history.

The Inhofe amendment is well within the mainstream of 90 to 95 percent of the thinking of the American people. It is a valuable contribution. It is a restrained proposal. It does not seek to change any existing right that someone might have to receive services from the Government in some other language.

Mr. INHOFE. Mr. President, I know the minority leader has several speakers who want to speak. I also know that virtually everyone on our side is wanting to stay with the 4:15 vote.

What I would like to do, of course, is encourage the minority leader to use his leader time if necessary but go ahead and allow anyone on the other side to use time at this time.

I yield the floor.

Mr. KENNEDY. I yield 10 minutes to the Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I thank my colleague, Senator KENNEDY.

I have been trying to figure out what is, in my mind, objectionable to the Inhofe amendment. I think it comes down to a very basic point; that is, the Inhofe amendment, the language, the operative language of the Inhofe amendment, is:

> . . . no person has a right, entitlement or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English.

That is the operative provision. And then it says there are ''exceptions.'' The exceptions are where we have specifically written laws which allow that or which provide for the providing of information or communication in a language other than English.

Why is that objectionable? It is objectionable to me because it is directly contrary to the constitution of my State, the thrust of the constitution of my State.

When New Mexico came into the Union in 1912, we had many more people in my State speaking Spanish than we had speaking English. People were very concerned that the right of individuals in the State to speak either language would be preserved and that no one be discriminated against by virtue of their inability to speak English.

We wrote a provision in our constitution which says that the right of any citizen of the State to vote, to hold office, or to sit upon juries shall never be restricted, abridged, or impaired on account of religion, race, language, color, inability to speak, read, or write the English or the Spanish language except as may otherwise be provided in the constitution. So the presumption is directly opposite to the Inhofe amendment.

The general rule in my State and in my State's constitution is that people shall not in any way be discriminated against in their dealings with the Government by virtue of their inability to speak English. And the Inhofe amendment says that the general rule is people have no right to speak any language or communicate with their Government in any language other than English unless we write a law saying they can. I think that is an unfortunate change in emphasis and change in the law, which I cannot support.

Obviously, we have many court cases. And, I gather, under one of the exceptions to the general rule that the Inhofe amendment contains, this might be covered. But it has been well recognized, I believe, in our courts for a very long time that it is a denial of due process to non-English-speaking persons if they are denied services and communication and interpretation in their own language when they are in criminal proceedings.

We have a provision, again, in my own State constitution which I think is pretty close on this issue. It says: In all criminal prosecutions the accused shall have the right to appear and defend himself in person, and by counsel, to demand the nature and cause of the accusation, to be confronted with the witnesses against him, to have the charges and testimony interpreted to him, and in a language that he understands.

Now, I know there is a Federal law that says the same kind of thing today. So it falls under one of the exceptions that is provided for in the Inhofe amendment.

Mr. INHOFE. Mr. President, will the Senator yield?

Mr. BINGAMAN. Mr. President, I am glad to yield.

Mr. INHOFE. You mentioned several things. I believe the last one you mentioned was covered in the Court Interpreters Act of 1978. It does allow you to have that, and it is actually written into law.

I would also suggest that these are already in law. This is not something that has to be done.

Mr. BINGAMAN. Right.

Mr. INHOFE. Those protections are specifically exempted on page 2.

Mr. BINGAMAN. Mr. President, let me reclaim my time and indicate I said that very thing. I am not disagreeing with the Senator from Oklahoma. He has pointed out there are legal provisions that make an exception to his general rule, and the exception in this case is that you are entitled to have the Government provide interpretation when you are accused of a crime and you are trying to defend yourself in court.

All I am saying is, why are we writing into law a general rule that you are not entitled to communicate with your Government or have your Government communicate with you in any language other than English, except where we provide for it? I think that is a mistake. It is directly contrary to what my own State constitution does. It is directly contrary to the sentiment behind my State constitution.

We have the Native American Languages Act where Congress specifically found that there is convincing evidence that student achievement and performance and community and school pride and educational opportunity are tied to respect for the first language of the child or the student. And we talk there about that Native American languages shall not be restricted in any public proceeding.

Well, you can say: OK, now, we have already written a law that protects the rights of Native American languages to be used in public proceedings. So that is not a problem.

I do not know that I want to have to have this Congress write a law to cover every circumstance that might arise where an American wants to communicate with his or her Government in some language other than English. I think it is a bad precedent for us. I think it is contrary to the history of my State. It is certainly contrary to that.

I hope very much we will resist this amendment. I think this is a nonproblem. I do not know why we are spending most of the day debating an issue of this type, except to say to people who do not speak English: You are not going to be entitled to the full rights that other citizens are entitled to.

Clearly, that is true economically. We all know that. We all know you cannot succeed economically in this country in a full way unless you can speak English, and probably speak English with adequate proficiency. But I do not think as a legal matter we need to be writing statutes into the Federal law that say if you are not speaking English, you are entitled to fewer rights, you are entitled to fewer legal rights than other citizens are, and we want to remind you of it.

In fact, as to this amendment, it is very interesting, because it says: Look, even if you fall under one of these exceptions—this interpreter's exception or the Native American exception; the language where we have written a specific law—it says, if exceptions are made, that does not create a legal entitlement to additional services in that language or any language other than English.

So we are saying: Look, the general rule is, you have to speak to your Government and communicate with your Government in English. We acknowledge there are exceptions where we will allow you to use other languages, or the Government will agree to communicate with you in other languages, but

we are going to be specific about what those are. But let's also remind you—this last sentence says—by making an exception and allowing you to have an interpretation into a language you can understand, we are not giving you a legal entitlement. We are not, in any way, committing ourselves to do anything more.

I do not know that is a very welcoming message to all these immigrants we are welcoming into our country as part of this legislation. I think my State is a State that has a great tradition of cooperation between the Native American community, the Hispanic community, and the Anglo community. And we have been able to maintain that sense of cooperation by respecting each other's languages, by respecting the right of each person, each group, to use his or her language in whatever way they feel is appropriate. I believe this amendment by Senator INHOFE would change that dynamic substantially. So I hope my colleagues will agree with me, will oppose this amendment, will support the Salazar amendment, and then I hope we can get on with more substantive matters.

There are a great many substantive matters involved with this immigration bill. This is an enormous, complex piece of legislation which we ought to be trying to understand and deal with separate from this discussion about English as the national language.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, in consultation with the floor manager—this has been a good, important, and constructive debate—we need a few more minutes. And we asked the floor manager——

Mr. INHOFE. Mr. President, let me go ahead and respond.

Mr. KENNEDY. Could I ask consent to get the time?

Mr. INHOFE. Mr. President, it is my understanding the manager has agreed to allow 45 more minutes for the other side; is that correct?

Mr. SPECTER. Mr. President, that is correct.

Mr. INHOFE. That is acceptable.

Mr. KENNEDY. Mr. President, I ask unanimous consent for 45 additional minutes.

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

Mr. INHOFE. Mr. President, one request I would have, if the Senator would yield for a moment.

Mr. KENNEDY. Sure. Yes.

Mr. INHOFE. Mr. President, when Senator SALAZAR wants to make a correction, I have a correction to make at the same time. We could do that right now, if you want to do it.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 4073, AS MODIFIED

Mr. SALAZAR. Mr. President, I ask unanimous consent that my amendment be modified with the change that is at the desk.

The PRESIDING OFFICER. Is there objection to the modification?

Without objection, it is so ordered.

The amendment (No. 4073), as modified, is as follows:

At the appropriate place insert the following:

Notwithstanding any other provision:

SEC. 161. DECLARATION OF ENGLISH.

English is the common and unifying language of the United States that helps provide unity for the people of the United States.

SEC. 162. PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE.

The Government of the United States shall preserve and enhance the role of English as the common and unifying language of America. Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the Government of the United States in any language other than English.

For the purposes of this section, law is defined as including provisions of the U.S. Code, the U.S. Constitution, controlling judicial decisions, regulations, and controlling Presidential Executive Orders.

(b) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the Language of Government of the United States.

AMENDMENT NO. 4064, AS FURTHER MODIFIED

Mr. INHOFE. Mr. President, I ask unanimous consent to modify the amendment on page 2, to change the word ''official'' to the word ''national.''

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 4064), as further modified, is as follows:

On page 295, line 22, strike ''the alien—'' and all that follows through page 296, line 5, and insert ''the alien meets the requirements of section 312.''.

On page 352, line 3, strike ''either—'' and all that follows through line 15, and insert ''meets the requirements of section 312(a) (relating to English proficiency and understanding of United States history and Government).''.

On page 614, after line 5, insert the following:

SEC. 766. ENGLISH AS NATIONAL LANGUAGE

(a) IN GENERAL.—Title 4, United States Code, is amended by adding at the end the following:

''CHAPTER 6—LANGUAGE OF THE GOVERNMENT

''Sec.

''161. Declaration of national language

''162. Preserving and enhancing the role of the national language

''§ 161. Declaration of national language

''English is the national language of the United States

§ 162. Preserving and enhancing the role of the national language

''The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America. Unless otherwise authorized or provided by law, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English. If exceptions are made, that does not create a legal entitlement to additional services in that language or any language other than English. If any forms are issued by the Federal Government in a language other than English (or such forms are completed in a language other than English), the English language version of the form is the sole authority for all legal purposes.''.

(b) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the end the following:

''6. Language of the Government ..... 161''.

SEC. 767. REQUIREMENTS FOR NATURALIZATION.

(a) FINDINGS.—The Senate makes the following findings:

(1). Under United States law (8 USC 1423 (a)), lawful permanent residents of the United States who have immigrated from foreign countries must, among other requirements, demonstrate an understanding of the English language, United States history and Government, to become citizens of the United States.

(2). The Department of Homeland Security is currently conducting a review of the testing process used to ensure prospective United States citizens demonstrate said knowledge of the English language and United States history and government for the purpose of redesigning said test.

(b) DEFINITIONS.—For purposes of this section only, the following words are defined:

(1) KEY DOCUMENTS.—The term ''key documents'' means the documents that established or explained the foundational principles of democracy in the United States, including the United States Constitution and the amendments to the Constitution (particularly the Bill of Rights) the Declaration of Independence, the Federalist Papers, and the Emancipation Proclamation.

(2) KEY EVENTS.—The term ''key events'' means the critical turning points in the history of the United States (including the American Revolution, the Civil War, the world wars of the twentieth century, the civil rights movement, and the major court decisions and legislation) that contributed to extending the promise of democracy in American life.

(3) KEY IDEAS.—The term ''key ideas'' means the ideas that shaped the democratic institutions and heritage of the United States, including the notion of equal justice under the law, freedom, individualism, human rights, and a belief in progress.

(4) KEY PERSONS.—The term ''key persons'' means the men and women who led the United States as founding fathers, elected officials, scientists, inventors, pioneers, advocates of equal rights, entrepreneurs, and artists.

(c) GOALS FOR CITIZENSHIP TEST REDESIGN.—The Department of Homeland Security shall establish as goals of the testing process designed to comply with provisions of [8 U.S.C. 1423 (a)] that prospective citizens:

(1) Demonstrate a sufficient understanding of the English language for usage in everyday life;

(2) Demonstrate an understanding of American common values and traditions, including the principles of the Constitution of the United States, the Pledge of Allegiance, respect for the flag of the United States, the National Anthem, and voting in public elections;

(3) Demonstrate an understanding of the history of the United States including the key events, key persons, key ideas, and key documents that shaped the institutions and democratic heritage of the United States;

(4) Demonstrate an attachment to the principles of the Constitution of the United States and the well being and happiness of the people of the United States; and

(5) Demonstrate an understanding of the rights and responsibilities of citizenship in the United States.

(d) IMPLEMENTATION.—The Secretary of Homeland Security shall implement changes to the testing process designed to ensure compliance with [8 U.S.C. 1423 (a)] not later than January 1, 2008.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Vermont.

Mr. LEAHY. Mr. President, I have spoken several times in the course of this debate about my belief that immigrants should learn the English language. In my experience, most new Americans want to learn our language and make efforts to do so as quickly as possible. The bill that we are debating calls for immigrants to learn English as one of the several steps they must take before they can earn citizenship.

We can all agree that English should be the common language of the United States, but by making English the ''national'' language, the Inhofe amendment goes too far. The amendment was modified to remove a ban on publishing official documents in any language but English. That was a good correction. In many local communities and States it may well be useful and helpful for the government to reach out to language minorities. Greater participation and information are good and appropriate steps communities should be striving for. We should not be mandating artificial and shortsighted restrictions on State and local government.

I regret, however, that the amendment continues to include language that strongly discourages the use of other languages to inform residents and continues to treat those who speak another language as second-class citizens. We would do better to recognize our diversity and provide greater opportunities to those for whom English is a second language to become more fluent.

My mother spoke Italian as a child and learned English when she went to school. My wife grew up in a family that spoke French. She began speaking English when she started going to school. Both were helped throughout their lives by being completely and totally bilingual as a result.

Mr. KENNEDY. Mr. President, if the Senator will yield, we are trying to find out how much time the Senator wants.

Ten minutes, does that work?

Mr. LEAHY. Mr. President, I tell the distinguished Senator from Massachusetts, I will have a total amount of 10 minutes.

Mr. KENNEDY. I thank the Senator.

Mr. LEAHY. Mr. President, information is vital and sometimes lives depend on it. Is it not in the interests of all Americans to have every member of our society as well-informed on matters of health, safety and our democracy as possible? Do we really want to restrict government publications and communications, such as those on disaster preparedness, public health concerns, if there is an avian flu pandemic, to English only? We have recently seen the extensive and effective reach of Spanish radio in this country. Would we not want to employ that resource in a crisis? Do we really want to tie our hands and require Congress to pass a special statute every time health and safety materials, for example, would be useful?

We already have statutes that call for bilingual election materials to assist language minorities in accordance with our commitment to making participation in voting fair and meaningful. We know that there are many circumstances in which effective access to information requires communications in many ways and many languages.

Would it not have been useful for the President to try to sell and explain the Medicare drug benefit plan with all its complications and permutations in many languages in order to reach the most possible beneficiaries? Do we really intend to require such obviously beneficial actions to need a special statutory authorization? Should we review agency requirements to take warnings in languages other than English off our airlines and automobiles and dangerous equipment? Are we going to stop providing court translators and require all court proceedings, which are themselves official government proceedings, to occur in English, only to the detriment of fairness and justice?

Are we going to go back into the CONGRESSIONAL RECORD and scrub the statements of Senators MARTINEZ and others who have used Spanish here on the floor? If I recall correctly, the Senator from Oklahoma has spoken on this floor in Spanish. Would this amendment make his use of Spanish illegal—or does the Constitution's ''speech and debate'' clause mean that the rule that he is asking us to adopt applies to everyone else but not to Senators?

Now, the distinguished Senator from Tennessee is on the Senate floor. It was only a few weeks ago that we worked together to adopt the Alexander amendment to S. 2454, the immigration bill we debated in April. The text of Senator ALEXANDER's amendment is included in S. 2611, the bill before us now. The Alexander amendment created a grant program to promote the integration of immigrants into our democracy by teaching civics, history and the English language.

That is the right approach for America to take. The Inhofe amendment takes the opposite approach, the wrong approach and has the effect of stigmatizing those who grew up where Spanish or Chinese or other great languages were spoken. It risks driving a wedge between communities. This is contrary to our values and what we should be seeking to accomplish with this important legislation.

I recognize that not every State is like my home State of Vermont, where the majority of residents speak English. Even in my State, however, there are many families who first came to America speaking only French. My parents-in-law became proud American citizens. They spoke French at home, and that was the first language of my wife. My grandparents emigrated from Italy speaking Italian. That was the first language of my mother until she went to school. We are proud of that.

In prior generations, we welcomed large groups of Irish, Italians, Eastern Europeans, and in recent years, immigrants and refugees from Africa, Asia and many other parts of the world. I wish my French was better. I wish my Latin was more polished. I wish I knew more than a few words and phrases in Chinese and Spanish.

On Monday night, the President spoke eloquently about the need to help newcomers assimilate and embrace our common identity. He spoke of civility and respect for others and said that Americans are bound together by our shared ideals. These are the messages we must send to the American people, not the divisive message of the Inhofe amendment.

I look around this Senate Chamber and engraved in the wall behind the elevated desk and chair of the President of the Senate are the words ''E Pluribus Unum.'' Every school child is taught that expression, ''out of many, one'' and what it means to our shared value of being the United States of America. It points to an important value from our history and today. It points to our struggle to become a nation of many people, of many States, and of many faiths. What is wrong with our using Latin, as we traditionally have and expressing our unity?

Latin expressions mark our official currency and the reverse of the Great Seal of the United States. The phrases ''annuit coeptis'' and ''novus ordo seclorum'' are part of the official symbols of the United States. These expressions are traced back to Virgil and a line from his instruction for farmers, which seeks the favor of God or Providence for our great endeavor to create a nation unlike any that had come before. The second Latin phrase is another allusion to Virgil and notes our seeking a new order.

Our incorporation of languages other than English does not stop there. Take a look at the flag of Connecticut with the phrase ''Qui transtulit sustinet''; the flag for Idaho that includes the phrase ''Esto perpetua''; the Kansas flag that includes the phrase ''ad astra per aspera''; the Maine flag that includes ''Dirigo''; the Massachusetts flag that includes the phrase ''Ense petit placidam sub libertate quietem''; the Michigan flag includes not only ''e pluribus unum'' but also ''Circumspice,'' ''Si quaeris peninsulam amoenam'' and ''Tuebor''; the Missouri flag includes the phrase ''Salus populi suprema lex esto''; the flag of New York includes the expression ''Excelsior''; the Virginia flag includes the

phrase ''Sic semper tyrannis''; the flag of West Virginia includes the phrase ''Montani semper liberi''; and the Wisconsin flag also includes the phrase ''e pluribus unum.''

I see the distinguished Presiding Officer, the Senator from Minnesota, and I thought I would include the flag from his own State. The flag of Minnesota includes a French language phrase befitting its history, ''L'etoile du Nord.''

Do we in this Senate mean to demand that the States change their State flags and State mottos to eliminate Latin and French? Do we really mean to frown on their use? Or is it only Spanish, a language derived from Latin that we wish to denigrate? In that case, I remind the Senate that the State of Montana includes on its flag the phrase ''oro y plata,'' a Spanish phrase that serves as the State motto ''gold and silver.''

I remember how silly we looked a couple of years ago when some in the House demanded that French fries be renamed ''freedom fries.'' Does this prohibition apply to Roman numerals, such as those included on the flag of Missouri? Does this body intend to embark down that road? I hope not, I pray not.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

I think those who have been listening to this debate understand what this discussion is all about. On the one hand, we have the amendment of the Senator from Colorado, which is effectively a way to unite all of us, and on the other hand, we have the Inhofe amendment that is a way that is going to divide us. The language couldn't be clearer. From the Salazar amendment:

English is the common and unifying language that helps provide unity for the people of the United States.

It is clear.

Preserving and enhancing the role of the English language. The Government of the United States shall preserve and enhance the role of English as the common and unifying language of America.

On the other hand, we have the Inhofe amendment that has the statement:

Unless otherwise offered or provided by law, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English.

We have had a debate about how that applies or whether it doesn't apply, and we have had a rather mixed debate.

I would be impressed if the Inhofe amendment had provided some resources to help those who are limited English speaking to be able to learn English. In the immigration legislation before the Senate, we have the requirement that no person, except otherwise provided in this title, can be naturalized upon their application without understanding the English language, including the ability to read, write or speak the English language. That is what we have said. That is underlined. That is what we are committed to.

Now we have this amendment which is effectively a limiting one.

In Albuquerque, NM, Catholic Charities reports 1,000 people on their waiting list and a waiting time of 12 months to learn English. Is there anything in the Inhofe amendment that will help those people? No, there is not. In my hometown of Boston, there are 16,000 adults on the ESL list waiting to learn English. It is 2 to 3 years. Anything in the Inhofe amendment to help those people who want to learn English? No. There is nothing. In Phoenix, AZ, in the Rio Solado community, over 1,000 are waiting 18 months. The list goes on. In New York, 12,000 are waiting. All of these individuals are waiting to study English. But does their amendment do anything about that? No. We can't help people to get to the point where English is their language.

What did the 9/11 Commission say. It said we lacked sufficient translators. It also had a provision in the 9/11 Commission report that we ought to give emphasis to other languages and that that was in our national security interest. It is on page 415, developing a stronger language program with high standards. Do you think that is consistent with the Inhofe amendment? Of course, it is not consistent with the Inhofe amendment.

We have outlined the requirements in this legislation that have to be met. It is very clear that an understanding of the English language, the ability to read and write and to speak, that is the requirement, a restatement of the importance of developing and keeping consistent with a common and unifying language, which is English. I don't understand those who say that English is a part of our national identity. Is that more a part of our national identity than our common commitment to liberty or fairness or decency or opportunity? Are we going to say we are the only ones who own those? Other countries don't own those values; it just belongs to the United States?

The Salazar amendment states effectively and well what we as a nation are committed to. It deserves to be supported. It defines English as the common and unifying language, guarantees that nothing shall diminish existing rights relative to services and materials in a language other than English. I urge my colleagues to reject the Inhofe amendment and support the Salazar amendment.

I yield 2 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. If the Senator from California could hold off for a minute, I think we have heard some very eloquent statements in opposition to an amendment that doesn't exist. We could stand up and talk about the flags of the different States. This has nothing to do with that. Yes, I have made probably five speeches on the floor in Spanish. Every time we did, I had to go up and put it down in English for the RECORD. I don't mind that. This has nothing to do with that. As far as there being nothing in here encouraging people, if you look at section 767, this is encouraging people and helping people to learn the English language, a concept that 90 percent of Hispanics in America want. I just hope that anyone listening realizes that these are excellent arguments, but they have nothing to do with this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 3 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, Senator INHOFE and I have spoken about this amendment. As I said to him when he first decided to offer it, is there any question in anybody's mind that in America we speak English, that that is the language of the country? If you ask any person in this country, they will say English. If you ask any foreigner, they will say English. So the question is: Why do we have to say that English is the language that we speak in America? Are we that insecure about ourselves? Of course, it is. We are a nation of many who proudly keep their own culture. But, of course, English is our language.

If we have to say that it is your language, fine with me. Fine, I have no problem with it. In other words, if there are those who believe we have to now tell people what they already know, fine. But I want to do it in a way that unites us, not in a way that sets up some unintended consequences. Even though my friend from Oklahoma would not agree that there are unintended consequences, I think there are. For example, he said he made five speeches on the floor of the Senate in Spanish. And he went and he translated them so they appeared in English. Did he go over and did he dub in the videotapes? Because the videotapes will show the speech in Spanish. Is he breaking the rule then by not going up and hiring someone to dub in his words? What if there is an outbreak of a pandemic and it is moving quickly and there is no Federal law saying that you have to let people know in a series of different languages to protect our people and we didn't have time?

What if there is a terrorist attack, God forbid, and we are not even here, and we need to spread the word and there is no law, and we can't come in to pass a law. What is going to happen then? And as my friend from Vermont said: Are we going to have to take the State flags out from an exhibit in the basement because many of them have slogans in Latin? There are unintended consequences.

I know my friend tried hard to get us all to unify, but I have to say, if that

was what he wanted to do, Senator SALAZAR has put together an excellent amendment. English is the common and unifying language of the United States that helps provide unity for the people of the United States. That is a beautiful statement. It says that English is our common language. But he doesn't set up an issue in his amendment, which I have read very carefully, that can have the unintended consequence of coming back to bite us. His particular amendment unifies us. I thank the Senator for that very much, coming from a State that has great diversity, the great State of California. I thank him for his hard work.

I yield the remainder of my time to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, again, it is a beautiful statement in opposition to an amendment that doesn't exist. When the Senator from California talks about emergencies and an emergency evacuation, I previously used the example of California because I suspected she might be coming down. That is, if there is an evacuation or some emergency, it can be done in Chinese so Chinatown can all evacuate. That is not a problem.

Yet when I spoke on the floor in Spanish, the only reason I had to translate it is because that is one of the rules of the Senate. It has nothing to do with this bill. That would not be affected in any way.

I yield to the Senator from South Carolina 8 minutes.

Mr. GRAHAM. Mr. President, this is a debate which you wonder why you are having it the more we talk about it. How did we get here from where we started?

Let me suggest that what Senator INHOFE was trying to do here is important. Senator BINGAMAN, my good friend from New Mexico—I disagree with him that this is not that big a deal in terms of its importance to the bill or the debate. I think it is a very important part of the debate. I appreciate Senator INHOFE putting it on the floor of the Senate. We will talk about what I think the amendment does and does not do. Let's talk about why it is important to the debate.

One thing we have to remember is that the underlying bill that came out of Judiciary, the McCain-Kennedy concept as changed by Hagel-Martinez, which I support and I think is a good solution for a real problem for America, has as one of the provisions that if you will come out of the shadows and you raise your hand and say: Here I am, I am undocumented, the bill allows you a path to citizenship with several requirements before you can ever apply for citizenship. One of those requirements is that you come out of the shadows, and for a 6-year period you can work here, and you have to pay a $2,000 fine. I think that is fair. I don't think that is being oppressive. That is making people pay for violating the law. It is a punishment that is consistent with a nonviolent offense.

Another condition is that you must learn English. Why did we make that a condition of coming out of the shadows? I think Senator KENNEDY and every other person on that side of the aisle—the Democratic side of the aisle—understands that to require an illegal immigrant to learn English is not unfair. If we thought it was unfair, we should not have put it in the bill. Why did we put it in the bill? We realize as a body the best you can do for people coming out of the shadows is challenge them and help them learn English so they can be value added to our country and they can survive in our economy.

It is true that the Inhofe amendment doesn't provide any resources, nor does the Salazar amendment. The reason neither one provides resources to learn English is that we have already done that with my good friend, Senator ALEXANDER from Tennessee. We put a requirement on the undocumented illegal immigrant to learn English but in a true American fashion. We have put some resources—a $500 grant—on the table which will help meet that obligation.

Here is the important point. If you fail to pass the English proficiency exam, you will be deported. Under the bill, if you fail to pass the English proficiency exam—and I am probably the worst advocate in the country for the English language—you can be deported. That is not unfair. That is not too hard. That is just. So if you are willing to make everybody come forward and learn English, and if they fail you are going to deport them, why can we not say as a body that the Government of the United States shall preserve and enhance the role of English as the national language of the United States of America? If we are willing to deport people for failing to learn English, surely we should stand behind the concept as a nation that it is in our best interest for people to learn English.

Now, as to the unintended consequences, I have looked at this all day, and I am of the belief that this amendment, as written, preserves every legal opportunity avenue available for the Federal Government to interact with the people of the United States by issuing forms and documents in languages other than English. The purpose is to say publicly that English is our national language and that the Government shall preserve and enhance the role of English without having the legal consequence of rolling back laws that are already on the books that allow the Government to interact with its people, provide services in other languages. That is why the term ''unless otherwise authorized or provided by law'' is there. That means, simply put, if there is a law on the books—a case decision, a regulation, an Executive order, you name the source of law—or a constitutional provision that would allow the Federal Government to interact with its people in a language other than English, it is not affected by this amendment, nor does it prevent in the future the Government expanding those services in a language other than English. It says, also, there is no entitlement to a service from the Federal Government in a language other than English, unless authorized by law. That is just a simple, commonsense concept.

We do business in this country at the Federal level. We have programs at the Federal level that allow languages other than English to be utilized, including the Voting Rights Act, which allows bilingual ballots, and the Court Interpreters Act of 1978, which provides for translations or interpretations of other languages in Federal court. There are a lot of laws that allow the Federal Government to provide services in languages other than English, and this amendment protects those laws; it doesn't change their status at all.

Now, to read this amendment to say that some State flag has to be changed—I will be honest with you, that is not even an honest, fair interpretation of the words as printed on the paper. It is not the intent of anyone. It is something being said that is not rationally related to the words or the intent of the author or the way the bill works. We are trying to preserve whatever legal rights there are to do business in languages other than English that are in existence today, and maybe tomorrow, and we are trying to reinforce the role that English is our national language. If we don't do that, if we back off of that concept, what signal are we sending to the people we are willing to deport if they fail to learn English?

We cannot have it both ways. We need to take a strong stand for a couple of principles. If you want to assimilate into American society, it is important that you learn English. How have we stood for that principle? If you come out of the shadows and you fail the English exam, you are going to get deported. We are giving people money to help them pass that exam, but we are not going to waive the requirement that you learn English to be assimilated for the 11 million undocumented workers. I think it would help everybody in this country if the Senate went on record and said that the policy of this Government will be to preserve and enhance the role of English in our society, and do it in such a way that understands that speaking other languages, having a different culture, is not a bad thing but a good thing. There is nothing in this amendment, in my opinion, that does away with any laws that already exist or might exist in the future for a language other than English.

The PRESIDING OFFICER. Who yields time?

The assistant Democratic leader is recognized.

Mr. DURBIN. Mr. President, the Inhofe language in this amendment

contains two basic parts. In the first part, we can talk about changing a word or two, but we all basically agree on it. We basically agree that to be successful in America, you must speak English. I imagine there are people on the margins of our society who survive without a command of English, but that is where they will remain. It is rare that a person in America reaches a level of success without a mastery of English. As I go about the State of Illinois and the city of Chicago, where so many people speak many different languages, it is well understood that learning English is the first step toward becoming an American and becoming successful in America. We don't argue about that.

There are different ways to characterize English as our language. I like the characterization of my colleague, Senator SALAZAR, who characterizes English as ''our common and unifying language.'' It is that; it is our common and unifying language. Senator INHOFE uses the words ''our national language.'' But when you get down to it, there is no argument here about the basic premise. We agree on the basic premise. It is not as if it is just in America. We know that the language of aviation around the world is English. We know that the common universal language in most places on the Internet is English. That is a fact. So when it comes to the first part of Senator INHOFE's amendment and that first part of Senator SALAZAR's amendment, there is no dispute. If the debate ended there, we would have voted a long time ago. But that is not where the debate ends. Senator INHOFE added several sentences beyond that, which now take us into a legal thicket.

He argues that these are technical issues. They are not technical issues. They are issues about a person's basic rights in America. They are issues that really emanate from landmark legislation, such as the Civil Rights Act of 1964. This is not a technicality; it is the Civil Rights Act of 1964. People literally fought and bled and died for the passage of civil rights legislation. Before we casually cast aside some part of the protection of that law, we should think about it long and hard.

I look at the language Senator INHOFE brings to the floor and, on its face, it appears to be easy to accept:

> Unless otherwise authorized or provided by law, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform, or provide services or provide materials in any language other than English.

You would think if it is not authorized by law, that means the Government cannot communicate or provide materials in any language other than English. How could that possibly come up? Well, let's take one illustration. I happened to be on the floor the day that Senator INHOFE of Oklahoma came to the floor in the midst of a debate on a judicial nominee, Miguel Estrada. The date was November 12, 2003. Senator INHOFE came to the floor and gave his remarks to the Senate in Spanish. I was impressed. He is proficient in Spanish, and I respect his skills in that language, which I do not share. I didn't understand what he said, but I respected him for being confident enough to come to the floor and express himself in the Spanish language. And then what happened was that the CONGRESSIONAL RECORD, which is printed every day from our proceedings, included Senator INHOFE's speech in Spanish and his translation in English. They are both part of the RECORD.

But wait. Had Senator INHOFE's amendment been in effect then—the one he wants us to vote for today—it would have been illegal for our government to print the CONGRESSIONAL RECORD with Senator INHOFE's speech in Spanish. There is no statute which creates the right of any Member to come to the floor and speak in any language. Oh, it happens. Nobody objects to it. They do their best to print those speeches, but there is no law authorizing it. So, if Senator INHOFE's amendment had passed at that time, the speech which he delivered on the floor in Spanish, would not have been allowed to be printed and published by the Government in the CONGRESSIONAL RECORD. Is that what we want to achieve? Is that our goal?

Let me give you another practical example. Near this U.S. Capitol is the famous Potomac River. The Washington Post ran a story 6 months ago. It said that drowning deaths on the Potomac River were down dramatically. Last year, for the first time in 15 years, no one drowned in the Potomac in the Washington area. Park Rangers believe they know why: their new signs that warn swimmers and fishermen about the river's strong current and undertow. The new signs are printed in English and in Spanish, the native languages of many new immigrants who use the river to relax with their families or to fish. The Park Service posted the bilingual signs after they noticed that many recent drowning victims were also recent immigrants. So, is making this political statement in the Inhofe amendment so important that we wouldn't want to provide safety for those who are using the Potomac River? It was considered to be a sensible, rational thing to do: print the sign in both languages so people will be warned of the danger.

You have heard the arguments here about the potential of avian flu. Wouldn't we want any dangers relative to avian flu or some other epidemic to be shared in enough languages so that we all would be protected? Yet what Senator INHOFE has done is to create an obstacle for those who are trying to achieve public safety and public health.

Why do we need to do this? Why do we need to change the laws of America? I don't think we do. I think instead we have an option which is much better.

Mr. INHOFE. Mr. President, would the Senator yield?

Mr. DURBIN. I would like to yield on your time if you have a question.

Mr. INHOFE. I don't have time. We were very generous in giving you time, I would remind you.

Mr. DURBIN. Mr. President, I will yield for a colloquy for 1 minute, and then I see that the minority leader is here.

Mr. INHOFE. Mr. President, where in this bill does it say you can't put those signs up, or where does it say in this bill that my speech that I made in Spanish would not be able to be included in the CONGRESSIONAL RECORD?

Mr. DURBIN. Mr. President, I am glad the Senator asked that question because that is exactly the point of what I am saying. It is because of your language in the amendment that states, ''Unless authorized or provided by law,'' bilingual printing cannot be done, and it would be illegal.

We have done some quick research but there is no statute we have found which says that when Members give speeches on the floor in foreign languages, the government shall print that speech in the foreign language in the CONGRESSIONAL RECORD. It isn't there. There is no authorization in law for the printing of your remarks in Spanish. And you tell us in the language of your amendment that if not authorized by law, it cannot be done; it is illegal.

The point I am making is that the Senator started with a very positive and important premise, that English is our common and unifying language and that it should be preserved and enhanced by our Government. But the amendment then went too far. I think I know why. I believe what he is really aiming for is an Executive Order by President Clinton. Some on his side want to get rid of that. They don't like that Executive Order because that Executive Order, which is now being followed by our Government as law, says that when it comes to basic Federal services, we will help people who have limited proficiency in English understand their rights and understand their responsibilities. I think that is reasonable. I believe perhaps the Senator from Oklahoma sees it the other way.

I see my leader is here on the floor.

Mr. INHOFE. If the gentleman will yield, colloquy goes two ways. Let me just respond.

Mr. DURBIN. I am sorry, I say to the Senator from Oklahoma, but it is my time. I will conclude by saying that in this situation, I urge my colleagues to take a close look at these amendments. I hope they will consider that the Salazar amendment is really the more positive statement that protects the rights of all Americans. It respects our cultures, but it also makes it clear that we have one common and unifying language in this country, and that is English.

Mr. INHOFE. Mr. President, just one comment.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. First of all, I request that the minority leader not use leadership time since he now has 45 more minutes than we have, but that is just a request.

I would say this: We have a very short period of time to wind up. I would have to say that all of these ridiculous examples, such as the one the Senator from Illinois just came up with and the flag examples, have nothing to do with this amendment. It might be some other amendment that was referred to. This merely recognizes and declares English to be our national language. We have exceptions for anything that is in there in law or would refer to anything else that is accepted.

Mr. President, I would like to ask, how much time do we have remaining?

The PRESIDING OFFICER. There is 8 minutes 9 seconds remaining.

The Democratic leader is recognized.

Mr. REID. Mr. President, English is today, as I speak, the language of America. In spite of the fact that in Nevada, we have the beautiful Sierra Nevada mountains; in Las Vegas, the meadows. In one of our counties, White Pine County, 200 miles from Las Vegas, Ely, a longtime mining community, I can remember going there to the Slav festival and being taken to the graveyard because in the days of early Kennecott, they had a section in that graveyard for Greeks, for Slavs, for Italians.

Today, as I speak, the language of America is English. Things have changed around the world. If a person wanted to join the Foreign Service, whether they were in England, the United States, or any country in South America, to be in the diplomatic corps of their country, they had to learn French. That was the language of diplomacy. Not anymore. It is English. The language used in diplomatic relations around the world is English.

If I am a pilot and I am flying into National Airport, the air traffic controller is speaking English. If I am a pilot and am flying into Lima, Peru, the air traffic controller speaks English. If I am a pilot flying into Moscow, the air traffic controller in Moscow speaks English. The language of flying is English. It applies to every country in the world where they have an airport and they have air traffic controllers. English is the language, and my distinguished friend, the Senator from Oklahoma, knows that. He himself has flown around the world as a pilot.

I have affection for my friend from Oklahoma, but I have the greatest disagreement with him on this amendment. While the intent may not be there, I really believe this amendment is racist. I think it is directed basically to people who speak Spanish.

I have three sons who speak Spanish—fluent Spanish. One of them lived in Argentina for a couple of years, one lived in Ecuador, one lived in Spain. They speak fluent Spanish. I am very proud of these young men. They have acted as interpreters for me when I do radio programs that are in Spanish. I can remember once being so frustrated. I was a guest in a hotel. I had locked myself out of my room. There was a lady pushing the cart, and I told her I would like to get back in my room. She did not know what I was saying. She could not converse with me in Spanish. So as luck would have it, here comes one of my sons. The minute he spoke to her in Spanish, her whole demeanor changed. She became a different person because, through my son, we could communicate.

I have a young man who works for me, an American citizen, of course, Frederico. Frederico comes from Puerto Rico. We were talking today after this amendment had been laid down, and Frederico said it wasn't long ago—and these were his words—that a cleaning lady, a janitor, was buying a home here in Washington, DC. She had been an American citizen for 10 years, doing her best to become part of society. She was very concerned, though. She was buying a home. Maybe by some standards the home wasn't much, but to her, it was her first home. She was so frightened. She had papers; she couldn't understand them. She asked Frederico if he would help her, and he did that. She was able to buy the home.

He also told me that he became ill—very sick. He didn't know what was wrong with him. He speaks Spanish, and I don't think I would embarrass Frederico in saying that even today—he is well educated, a longtime citizen—he still speaks with an accent, a Hispanic accent, for want of a better description. He speaks good English with a slight accent. He was so sick. He didn't know what was wrong with him, and he was afraid, when he went to the hospital, the emergency room, he was afraid that he couldn't communicate to the health care workers what was wrong with him, and he asked: Is there anybody here who speaks Spanish? And there was—one of the nurses—and he was able to communicate. He felt better and the emergency room personnel felt better because he could explain to them what was wrong.

I believe this amendment cuts the heart out of public health and public safety. I gave you the example of the emergency room. I don't know all of the reasons that the Executive order was issued by the President. I think one reason is because of public health. It is so important for us, English speakers only, that when someone goes to get help and they are sick, that they are able to tell the health care personnel everything they need to know because it is important to me if, for example, it is a communicable disease.

So I believe we have to understand that this amendment would hurt public health badly. We need people to be able to take their children, when they are sick, to a facility, whether it is for mumps that is going around now or whether, Heaven forbid, it is avian flu at some later time.

I have served in the Congress of the United States with JIM INHOFE for many years, and we disagree on issues on occasion. But even though I believe this amendment is unfair, I don't in any way suggest that JIM INHOFE is a racist. I don't believe that at all. I just believe that this amendment has, with some people, that connotation—not that he is a racist but that the amendment is. So I want to make sure the record is spread with the fact that I have only the strongest, as I indicated early on, affection for JIM INHOFE, the senior Senator from Oklahoma.

Public safety. Mr. President, one of the earmarks I got a number of years ago in our appropriations bill was for the Las Vegas Metropolitan Police Department because they needed police officers who were fluent in Spanish. Why? Because we have a large influx of Spanish speakers coming to southern Nevada, and the sheriff of Clark County believed he could do a better job with law enforcement if he had people who could communicate. And that is true. That worked out very well. I believe funding for police could be affected by this amendment if it passes.

Domestic violence is a perfect example. There is a lot of domestic violence, and we need people who can speak the language that people understand.

Reporting crimes—it is so important that law enforcement has the ability to understand when people report crimes. In Nevada, 6 percent of the population is Asian American. We have now in Las Vegas a very large, burgeoning Chinese-American community. One of my former employees went from here to the district attorney's office and is now working for a private individual and/or company, building a big hotel in what we call Las Vegas Chinatown.

I have been there. A lot of people there are not real good at speaking English. We have to do everything we can, whether people speak Chinese or whether they speak Spanish, to have them assimilated into our society. It is good for all of us. One of my concerns is that this will turn us back in the wrong direction.

I have said before, my wife is Jewish. Her father was born in Russia. He learned to speak English as a little boy. He spoke good English. His parents didn't. We know what happened in years past. I have heard Senator LEAHY, the ranking member of the Judiciary Committee, state on many occasions that there were signs in his State of Vermont: No Catholics or Italians need apply for jobs. We know that applied to people who emigrated from Germany.

I think this turns us in the wrong direction. I think we should make sure that people who are 911 operators can immediately switch to somebody who can speak Spanish. I think what I did, to get a little extra money there for the metropolitan police department so we could have people who were fluent

in Spanish, I think that is the right way to go. I am not too sure this amendment wouldn't stop that, or certainly slow it down.

Today, as I speak, the language of America is English. We want people to integrate, to learn English, but they need tools to do this no matter what their native language. This amendment takes some of those tools away, and we need all of those tools.

The fastest growing component of adult education in America today is English as a second language. This will slow that down. This amendment impacts English speakers, reporting of crimes, reporting of diseases, involvement in commerce. Next, is it going to impact upon the right to vote?

This amendment is divisive. We should be here to unify our country, not divide it by ethnicity or language differences. I rise in strong opposition to this amendment. Everyone who speaks with an accent knows that they need to learn English as fast as they can. Success in America means the ability to speak English. That is the way it is now. We don't need this amendment. Speaking English is critical to the functioning of anyone in our country. It is the language of our Government, of our Nation, and as I have indicated before, air traffic controllers and diplomacy. This amendment, I believe, is unconstitutional. It raises serious concerns that American citizens could lose some of their rights.

This amendment directly conflicts with several provisions of Federal law, I believe, that guarantee the right of non-English-speaking students to learn English in our public schools. Does this amendment apply to a Presidential order, an Executive order? Does it apply to a city ordinance? A county ordinance? A State statute? What does it apply to? Federal law.

This amendment conflicts with provisions of Federal law that require language materials or assistance to be provided to voters in some areas of non-English languages, where there is evidence of educational discrimination resulting in high illiteracy and low registration turnout.

One of the problems we are having all over America is children dropping out of school. This amendment will not help that. Do we benefit by children dropping out of school? Of course not. Don't we want high voter turnout? Don't we want people to vote? This is going to slow that down, people asking to register to vote.

There has been substantial evidence of harassment, intimidation, even violence against language minority voters. This provision makes a blatant violation of the 14th and 15th amendments and criminal provisions of the Voting Rights Act more likely to occur. Look at history. In Nevada, Chinese who came over to build the railroads, the transcontinental railroad, were treated like animals. There were laws passed, State laws, county ordinances, local ordinances promulgated against the Chinese. Those laws which were discriminatory did not help our country. They hurt our country. This amendment is not going to help our country, it is going to hurt our country.

By the very terms of this amendment, persons accused of crimes would be denied the ability, I believe, to receive information material in their native language to assist in their own defense. This clearly violates the due process clause of the fifth amendment of our Constitution.

I have talked about public health. This amendment will stand in the way of efforts made to facilitate the transmission of vital information necessary for the receipt of health care and public safety, including informed consent by non-English-speaking patients.

Doctors need this. Health care workers need this. This undermines our Nation's public health and safety.

The foregoing things I have talked about are not exclusive. There are many more areas, public service and public safety, that will be negatively impacted by this amendment, hurting all Americans in the process. I hope we all support civic integration, but this amendment is not the way to do it.

Why don't we spend more money so we can educate more people who want to learn English? We are short of money. We have programs that are cut every day. That is the way it is in Nevada and around the country. That is where we should be directing our efforts. That brings people together. That is good for all of us. This does not bring people together. It makes it far more likely that we will end up with civic exclusion, including the denial of rights they should have to millions of U.S. citizens.

I hope we reject this amendment. It is bad policy. It is un-American. It turns back the clock on the substantial gains that language minority citizens have made. I hope that there will be a resounding vote against this.

I have no problem going home today and telling the people of the State of Nevada: English is the language of America. We are not going to change that with this amendment. This is divisive, it is mean spirited. I think it is the wrong way to go.

Mr. President, I also want to express my appreciation to the manager of the bill and Senator INHOFE for giving me extra time. We had not enough time over here, and it was gracious of him to allow us the extra time.

The PRESIDING OFFICER. Who yields time? The Senator from Colorado.

Mr. SALAZAR. Mr. President may I inquire as to how much time is left?

The PRESIDING OFFICER. There remains 12 minutes 45 seconds.

Mr. SALAZAR. How much is left on the other side?

The PRESIDING OFFICER. They have 8 minutes 7 seconds.

Mr. SALAZAR. Mr. President, I thank Senator REID and state his eloquence today, in terms of pointing out issues and concerns with respect to the Inhofe amendment, is very much appreciated.

I want to reiterate to my colleagues on the floor of the Senate today that I am asking for your support for an amendment that will unify America, that will say that English is in fact the language of the land and that we will work to make sure English is the common language of America. I am also here to ask my colleagues to vote against the amendment of Senator INHOFE because I am concerned about the unintended consequences that will flow from the proposal which Senator INHOFE has offered.

Let me say there can be no doubt at all that English is, in fact, the unifying language of America. In my own State of Colorado, as I look at some of the statistics on the number of people who are waiting in long lines to learn English, it is an incredibly long line. In the five-county Denver-Metro area, adult ESL programs working with the Department of Education have 5,000 people enrolled in those programs. They have a waiting list that is up to 2 months, because there are so many people in the Denver metropolitan area who want to learn English.

This debate is not about the endangerment of English in America today. People in America understand that we conduct our business in English, that we are conducting our business in the Senate today in English. The people of America understand that the keystone to opportunity is learning the English language, and you need not look any further than the number of people who are enrolled in educational classes, trying to learn English to know they understand that very fact.

The concern with the amendment of Senator INHOFE is that you are going to have unintended consequences that will flow from the language of the amendment. Many of my colleagues have spoken about those unintended consequences. I want to focus on one particular aspect of that which I find to be very un-American and that is the fact that when you allow for discrimination to occur on the basis of national origin, on the basis of race, on the basis of gender, on the basis of language, that we are taking a step backward in the progress that America has made. None of us wants to revisit what has happened in the history of America as we have moved forward as a nation to become a much more inclusive nation and a nation that celebrates the diversity that makes us a strong nation. None of us wants to revisit the latter half of the last century, when segregation was sanctioned under the law until 1954, and until the Civil Rights Act. None of us want to move back into those dark days of American history.

Yet the fact remains today we still have some of that discrimination that exists in our society. We have example

after example, personal examples we can cite about people who have been the victims of language discrimination. When we elevate one language, in the manner that Senator INHOFE has attempted to do in his amendment, above every other language, what will happen as an unintended consequence of his amendment is that you will usher in, in my judgment, a new era of language discrimination in America. I do not believe that ushering in a new era of language discrimination in America is something that will be helpful to us as we struggle in this 21st century to make sure that we maintain the strongest America, the strongest Nation possible in our world.

I ask people, those of you who are concerned about language discrimination in America, to vote against the amendment of Senator INHOFE on that point.

Let me conclude by saying that the amendment we have proposed today talks about the importance of English and the importance of unifying America through the English language. I believe we can work together. I believe that will require the immigrants to whom we are trying to address the immigration reform package to learn English. It is important that they learn English.

As I conclude my portion of this discussion, I think back to a mother and a father who in the 1940s were part of that greatest of generations fighting for the freedom of America—a father in World War II as a soldier, and a mother at the age of 20 speaking Spanish but coming to Washington to work in the Pentagon. They were victims of language discrimination. That generation was a victim of language discrimination. They would have had maybe the same opportunities I have had if they had been part of an America that fully understood they would be treated the same as those who speak languages other than English. But I do not want us to go back in the history of our country to a place where we are darkened again by that discrimination which existed in the 1940s or the 1950s.

My fear is that the amendment that my good friend from Oklahoma is offering today will open the door once again to that history of discrimination, which I find very pernicious.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. INHOFE. Mr. President, I yield 5 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 minutes.

Mr. ALEXANDER. I thank the Senator. I thank the Presiding Officer.

Mr. President, I have been listening to the Democratic leader and colleagues struggle to come up with some reason we shouldn't declare that English is our national language. They are having a very difficult time doing that. In fact, what they have been doing is arguing all sorts of unusual ways against an amendment that no one has proposed.

Let me say what Senator INHOFE's amendment does. It declares English as the national language of the United States. We are free to say whatever we want, speak whatever we want, but it is our national language. Specifically, the Inhofe amendment says it doesn't prevent those receiving Government services in another language from doing so, whether authorized by law or by Executive order or by regulation. That is No. 1. The Salazar amendment, in contrast, does not say English is our national language. That is the first point.

The second thing is the Inhofe amendment would say that those who are illegally here, who might become legal under this law and get on a path to citizenship, would have to actually learn English rather than just enroll in school. Anyone can sign up and not learn anything. Senator SALAZAR's amendment doesn't do that.

A third reason Senator INHOFE's amendment is better, in my opinion, is it has some excellent language that would improve the citizenship test that new citizens take, including the key ideas, key documents, and key events of our history that we all agree on, and which we voted unanimously on a couple of years ago in another piece of legislation.

If you believe English is our national language and don't want to interfere with any existing law or right, if you want new citizens who might be illegally here today to learn English as a part of that path to citizenship, and if you want a better American history test for new citizens, the Inhofe amendment is preferable.

I think a lot of this debate is about unity versus diversity. That is the struggle. It is a real struggle in this country.

Some on the other side of the aisle said this is unimportant. It might be to them, but it is not to me, nor is it to most Americans. I think it is at the center of this whole discussion about what we are doing with immigration. If the American people got any whiff that we thought having a national motto or a national anthem or a national pledge of allegiance or a national language was unimportant to us, I think they would throw us all out because most people know that our diversity is a magnificent strength—we are a land of immigrants—but our greater strength is that we have turned that all into one country.

Iraq is diverse, and Bosnia is diverse. Are they better places for that? They haven't been able to unite themselves into one country. How did we do that? Partly because of these unifying principles which we debate here with respect for one another, and through our national language.

No matter what they say, the opponents of this amendment are reluctant to say that English is our national language. If they were not, they would vote for the Inhofe amendment. First, it declares that if you have any rights now, you will still have them after the Inhofe amendment passes. It requires those who are here illegally but want to become citizens to learn English rather than just enroll in school. And it beefs up the U.S. history requirement in a way the Senate has previously approved.

The Democratic leader talked about how nice it would be for someone to call 9–1-1 and get a Spanish-speaking voice. It wouldn't have been so nice to the 200,000 new citizens from Asia who came in last year because they do not speak Spanish. That is why we have a common language.

My goal is that every child in America be bilingual or even multilingual. But one of those must be to learn English, and every child should learn it as soon as possible. We have a common language because we are a land of immigrants. It is our national language.

A vote for the Inhofe amendment is a vote for our national language. It is a vote to leave everyone's rights to receive services in other languages exactly where they are today. It is a vote to say that those who might be here illegally today but who seek to become citizens must learn English, and it is a vote to beef up our U.S. history tests which are required of those coming into this country and applying for citizenship.

For generations, we have helped people in this country learn English. We do so even further in the underlying bill with new $500 grants. It should be a simple statement to say that English is our national language, that we have a national motto, a national pledge, a national oath.

Then why struggle to come up with reasons not to make English our national language?

I yield the floor.

Mr. INHOFE. Mr. President, I think it is very obvious what is going on here. It has been 23 years since we have had a chance to vote on it. It probably will be the last time most Members—maybe all of the Members in this Chamber—will have a chance to vote to make English the national language.

Those who are offering this amendment today don't want English to be the national language. They use the word ''common,'' the common language.

Those opposing this amendment want an entitlement to have the Federal Government provide for language, services, and materials. They can do it now. If you pass this bill, they can still do it. It is just not mandatory. It is not something that can't be done; it doesn't have to be done. They say that national origin equates to language. Their claims are consistently refuted by the Federal Government, the most recent one being in 2001, the Sandoval case.

The opponents of this don't want people learning English but instead being served in foreign languages.

I think it is interesting that the word ''racist'' was used. I just wish the people here knew what has happened in the past and what I have been involved in in my State of Oklahoma. This is not the time to repeat what I said earlier. But the bottom line is I received the highest award given by the Hispanic community in the city of Tulsa. I started the first Hispanic community commission, and it is now a model for the Nation.

Mr. LEAHY. Mr. President, I thank the Senator from Colorado for his amendment. He is a Senator who continues to demonstrate his interest and ability in bringing us together rather than seeking to drive wedges between us. We can all agree that English should be the common language of the United States. His is a good suggestion for an alternative that I will support. In many local communities and States, it may well be useful and helpful for the Government to reach out to language minorities. Greater participation and information are good things. We should not be mandating artificial and shortsighted restrictions on State and local government.

I have spoken in the course of this debate about my belief that immigrants should learn the English language. In my experience, most new Americans want to learn our language and make efforts to do so as quickly as possible. The bill that we are debating calls for immigrants to learn English as one the several steps they must take before they can earn citizenship.

I certainly understand why the Mexican American Legal Defense and Education Fund, the Asian American Justice Center, the Lawyer's Committee for Civil Rights, the National Council of La Raza, the National Association of Latino Elected and Appointed Officials Educational Fund and others have been concerned about the Inhofe amendment. I share their concerns. I strongly support the efforts of the Senator from Colorado to find a common ground to unite us rather than divide us and strongly support his alternative amendment.

Ms. MIKULSKI. Mr. President, I rise today in support of Senator SALAZAR's amendment. English is one of the common bonds that bring Americans together. Just as a new immigrant must learn the monetary currency of a country, new immigrants must learn the social currency the English language. Immigrants need to learn English so they can be successful and contribute to their new country. That is why current law already states that anyone becoming a U.S. citizen is required to learn English.

Yet as immigrants are learning English, we need to be able to provide them with critical information in a language they can understand. What if there was an avian flu outbreak? What if there was another terrorist attack? Or a hurricane? Our first priority is to make sure they are safe in any language.

English can bring us together it shouldn't pull us apart. We must remember that our country was founded by immigrants from around the world. Their contributions to this Nation have made it great. My own great-grandparents were immigrants from Poland. Their desire to seek a better life for them and their children is the part of the American dream.

It is ridiculous. I don't think people are going to buy into it.

I agree with my friend from Tennessee. If they are looking, searching for things to object to, they are not going to find it in this bill.

The racist thing, it is interesting. If you will look at polling data in 2002, the Kaiser Family Foundation poll says 91 percent of foreign-born Latino immigrants agree that learning English is essential to succeed in the United States.

Just 2 months ago, the Zogby poll found that 84 percent of Americans, including—this is significant—77 percent of Hispanics, believe that English should be the national language. That is only 2 months ago—77 percent of the Hispanics.

I think it is an insult to the Spanish to say we are not going to have English as a national language because they are not capable of operating and succeeding in a country like this. They are dead wrong.

In terms of people criticizing us for wanting to make this the national language, 51 countries have done it. Isn't that interesting? Fifty-one countries have made English their national language, except for us. Twenty-seven States out of fifty States already have it on a State basis.

When you go to your townhall meetings, it is not even a close call. This comes up every time I go to a townhall meeting in Oklahoma: Why don't we have English as a national language? Now I hope they understand why, if they have seen this debate today, and the dialogue that is going on, pulling out of the air very eloquent statements that might be referring to some bill someone may want to introduce someday, or some amendment. It is certainly not this amendment.

I look at this and wonder, and I shake my head. What have you been reading? It has nothing to do with this. Our amendment does not prohibit using language other than services, or any other Government services in languages other than English. It doesn't prohibit it at all; it allows it. It doesn't prescribe and say you have to do it. There is no prohibition of giving Medicare services or any other Government services in a language other than English. This amendment simply says there is no right unless Congress has explicitly provided that right.

If you read page 2 of the bill, it very specifically says ''unless otherwise authorized or provided by law.'' That is the exception. In every one of these examples that have come up—from the Senator from California, the Senator from New Mexico, the Senator from Illinois, they fall into that category.

This is going to answer the question for a lot of people out there saying: Why can't we have this as our national language?

It has been 23 years since we had our last vote. You can't have it both ways. I wouldn't want anyone here to be under the misconception that they could vote for my amendment and then turn around and vote for the Salazar amendment because that would completely negate our amendment.

This is your last chance to vote to make English the national language. When we listen to the National Anthem: O, say can you see, by the dawn's early light . . . bombs bursting in air . . . gave proof through the night that the flag was still there . . . the land of the free, and the home of the brave—that is not an official anthem, that is not a common anthem, that is the national anthem.

This is our last chance to have English as the national language for America.

Mr. KENNEDY. Mr. President, I will take 1 minute.

Patriotism doesn't belong to a political party or any individual. The Salazar language is very clear. English is the common unifying language of the United States. It helps provide unity for the American people, preserving and enhancing the role of the English language. It couldn't be clearer.

Let us not distort and misrepresent the amendment that is before us.

I ask unanimous consent that it be in order to ask for the yeas and nays on the Salazar amendment and the Inhofe amendment.

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

Mr. KENNEDY. I ask for the yeas and nays on the Inhofe amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the amendment. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kentucky (Mr. BUNNING) and the Senator from Florida (Mr. MARTINEZ).

Further, if present and voting the Senator from Kentucky (Mr. BUNNING) and the Senator from Florida (Mr. MARTINEZ) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

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

The result was announced—yeas 63, nays 34, as follows:

[Rollcall Vote No. 131 Leg.]

YEAS—63

Alexander	Baucus	Brownback
Allard	Bennett	Burns
Allen	Bond	Burr

Byrd	Frist	Nelson (FL)
Carper	Graham	Nelson (NE)
Chafee	Grassley	Pryor
Chambliss	Gregg	Roberts
Coburn	Hagel	Santorum
Cochran	Hatch	Sessions
Coleman	Hutchison	Shelby
Collins	Inhofe	Smith
Conrad	Isakson	Snowe
Cornyn	Johnson	Specter
Craig	Kyl	Stevens
Crapo	Landrieu	Sununu
DeMint	Lincoln	Talent
DeWine	Lott	Thomas
Dole	Lugar	Thune
Dorgan	McCain	Vitter
Ensign	McConnell	Voinovich
Enzi	Murkowski	Warner

NAYS—34

Akaka	Feinstein	Mikulski
Bayh	Harkin	Murray
Biden	Inouye	Obama
Bingaman	Jeffords	Reed
Boxer	Kennedy	Reid
Cantwell	Kerry	Salazar
Clinton	Kohl	Sarbanes
Dayton	Lautenberg	Schumer
Dodd	Leahy	Stabenow
Domenici	Levin	Wyden
Durbin	Lieberman	
Feingold	Menendez	

NOT VOTING—3

Bunning	Martinez	Rockefeller

The amendment (No. 4063), as further modified, was agreed to.

Mr. KENNEDY. Mr. President, what is now before the Senate?

The PRESIDING OFFICER (Mr. CORNYN). The question is on agreeing to amendment No. 4073, offered by the Senator from Colorado, Mr. SALAZAR.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kentucky (Mr. BUNNING) and the senator from Florida (Mr. MARTINEZ).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''nay'' and the Senator from Florida (Mr. MARTINEZ) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

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

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 132 Leg.]

YEAS—58

Akaka	Durbin	Mikulski
Baucus	Feingold	Murkowski
Bayh	Feinstein	Murray
Biden	Graham	Nelson (FL)
Bingaman	Hagel	Nelson (NE)
Boxer	Harkin	Obama
Brownback	Inouye	Pryor
Byrd	Jeffords	Reed
Cantwell	Johnson	Reid
Carper	Kennedy	Salazar
Chafee	Kerry	Sarbanes
Clinton	Kohl	Schumer
Coleman	Landrieu	Snowe
Collins	Lautenberg	Specter
Conrad	Leahy	Stabenow
Dayton	Levin	Voinovich
DeWine	Lieberman	Warner
Dodd	Lincoln	Wyden
Domenici	McCain	
Dorgan	Menendez	

NAYS—39

Alexander	DeMint	Lugar
Allard	Dole	McConnell
Allen	Ensign	Roberts
Bennett	Enzi	Santorum
Bond	Frist	Sessions
Burns	Grassley	Shelby
Burr	Gregg	Smith
Chambliss	Hatch	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Talent
Cornyn	Isakson	Thomas
Craig	Kyl	Thune
Crapo	Lott	Vitter

NOT VOTING—3

Bunning	Martinez	Rockefeller

The amendment (No. 4073), as modified, was agreed to.

Mr. DURBIN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. SPECTER. Mr. President, we are now ready to proceed with an amendment by Senator CLINTON and a side-by-side by Senator CORNYN, with a half hour equally divided. At the conclusion of those 2 votes, we will discuss the business for the remainder of the evening.

Mr. KENNEDY. Mr. President, we intend to support that as soon as we get a chance to see the Cornyn amendment. May we see that before the Senator makes that request? Is that possible?

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, while they are looking at that amendment, the plans will be that in about 30 to 45 minutes we will have 2 rollcall votes, and then we will keep amendments going, and we will be voting tonight. We will do at least several other amendments. I will let the chairman speak to that. We plan on having two votes tomorrow morning. We don't know exactly what time. I expect us to be able to debate those. I ask that whatever amendments they be, we debate them tonight so we can vote as early as possible tomorrow morning.

Mr. SPECTER. Mr. President, I think we are now prepared to go to Senator CLINTON and then Senator CORNYN, with 30 minutes equally divided.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from New York is recognized.

AMENDMENT NO. 4072

Mrs. CLINTON. Mr. President, I call up amendment No. 4072, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mrs. CLINTON], for herself, Mr. OBAMA, Mrs. BOXER, Mr. SALAZAR, and Mr. SCHUMER, proposes an amendment numbered 4072.

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

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

The amendment is as follows:

(Purpose: To establish a grant program to provide financial assistance to States and local governments for the costs of providing health care and educational services to noncitizens, and to provide additional funding for the State Criminal Alien Assistance Program)

On page 259, line 23, strike ''section 286(c)'' and insert ''section 286(x)''.

On page 264, strike line 13, and insert the following:

''(x) STATE IMPACT ASSISTANCE ACCOUNT.—

''(1) ESTABLISHMENT.—There

On page 264, strike line 20, and insert the following:

''218A and 218B.

''(2) STATE CRIMINAL ALIEN ASSISTANCE PROGRAM ACCOUNT; STATE HEALTH AND EDUCATION ASSISTANCE ACCOUNT.—

''(A) STATE CRIMINAL ALIEN ASSISTANCE PROGRAM ACCOUNT.—

''(i) ESTABLISHMENT.—There is established within the State Impact Aid Account a State Criminal Alien Assistance Program Account.

''(ii) DEPOSITS.—Notwithstanding any other provision under this Act, there shall be deposited in the State Criminal Alien Assistance Program Account 25 percent of all amounts deposited in the State Impact Aid Account, which shall be available to the Attorney General to disburse in accordance with section 241(i).

''(B) STATE HEALTH AND EDUCATION ASSISTANCE ACCOUNT.—

''(i) ESTABLISHMENT.—There is established within the State Impact Assistance Account a State Health and Education Assistance Account.

''(ii) DEPOSITS.—Notwithstanding any other provision under this Act, there shall be deposited in the State Health and Education Assistance Account 75 percent of all amounts deposited in the State Impact Aid Account.

''(3) STATE IMPACT ASSISTANCE GRANT PROGRAM.—

''(A) ESTABLISHMENT.—Not later than January 1 of each year beginning after the date of enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary of Homeland Security, in cooperation with the Secretary of Health and Human Services (referred to in this paragraph as the 'Secretary'), shall establish a State Impact Assistance Grant Program, under which the Secretary shall award grants to States for use in accordance with subparagraph (D).

''(B) AVAILABLE FUNDS.—For each fiscal year beginning after the date of enactment of this subsection, the Secretary shall use ½ of the amounts deposited into the State Health and Education Assistance Account under paragraph 2(B)(ii) during the preceding year .

''(C) ALLOCATION.—The Secretary shall allocate grants under this paragraph as follows:

''(i) NONCITIZEN POPULATION.—

''(I) IN GENERAL.—Subject to subclause (II), 80 percent shall be allocated to States on a pro-rata basis according to the ratio that, based on the most recent year for which data of the Bureau of the Census exists—

''(aa) the noncitizen population of the State; bears to

''(bb) the noncitizen population of all States.

''(II) MINIMUM AMOUNT.—Notwithstanding the formula under subclause (I), no State shall receive less than $5,000,000 under this clause.

''(ii) HIGH GROWTH RATES.—Twenty percent shall be allocated on a pro-rata basis among the 20 States with the largest growth rate in noncitizen population, as determined by the Secretary, according to the ratio that, based on the most recent year for which data of the Bureau of the Census exists—

''(I) the growth rate in the noncitizen population of the State during the most recent 3-year period for which data is available; bears to

''(II) the combined growth rate in noncitizen population of the 20 States during the 3-year period described in subclause (I).

''(iii) FUNDING FOR LOCAL ENTITIES.—The Secretary shall require recipients of the State Impact Assistance Grants to provide units of local governments with not less than 70 percent of the grant funds not later than 180 days after the State receives grant funding. States shall distribute funds to units of local government based on demonstrated need and function.

''(D) USE OF FUNDS.—A State shall use a grant received under this paragraph to return funds to State and local governments, organizations, and entities for the costs of providing health services and educational services to noncitizens.

''(E) ADMINISTRATION.—A unit of local government, organization, or entity may provide services described in subparagraph (D) directly or pursuant to contracts with the State or another entity, including—

''(i) a unit of local government;

''(ii) a public health provider, such as a hospital, community health center, or other appropriate entity;

''(iii) a local education agency; and

''(iv) a charitable organization.

''(F) REFUSAL.—

''(i) IN GENERAL.—A State may elect to refuse any grant under this paragraph.

''(ii) ACTION BY SECRETARY.—On receipt of notice of a State of an election under clause (i), the Secretary shall deposit the amount of the grant that would have been provided to the State into the State Impact Assistance Account.

''(G) REPORTS.—

''(i) IN GENERAL.—Not later than March 1 of each year, each State that received a grant under this paragraph during the preceding fiscal year shall submit to the Secretary a report in such manner and containing such information as the Secretary may require, in accordance with clause (ii).

''(ii) CONTENTS.—A report under clause (i) shall include a description of—

''(I) the services provided in the State using the grant;

''(II) the amount of grant funds used to provide each service and the total amount available during the applicable fiscal year from all sources to provide each service; and

''(III) the method by which the services provided using the grant addressed the needs of communities with significant and growing noncitizen populations in the State.

''(H) COLLABORATION.—In promulgating regulations and issuing guidelines to carry out this paragraph, the Secretary shall collaborate with representatives of State and local governments.

''(I) STATE APPROPRIATIONS.—Funds received by a State under this paragraph shall be subject to appropriation by the legislature of the State, in accordance with the terms and conditions described in this paragraph.

''(J) EXEMPTION.—Notwithstanding any other provision of law, section 6503(a) of title 31, United States Code, shall not apply to funds transferred to States under this paragraph.

''(K) DEFINITION OF STATE.—In this paragraph, the term 'State' means each of—

''(i) the several States of the United States;

''(ii) the District of Columbia;

''(iii) the Commonwealth of Puerto Rico;

''(iv) the Virgin Islands;

''(v) American Samoa; and

''(vi) the Commonwealth of the Northern Mariana Islands.''.

On page 371, line 4, strike ''(B) 10 percent'' and insert the following:

''(B) 10 percent of such funds shall be deposited in the State Impact Aid Account in the Treasury in accordance with section 286(x);

''(C) 5 percent

On page 371, line 8, strike ''(C) 10 percent'' and insert ''(D) 5 percent''.

Mrs. CLINTON. Mr. President, I ask unanimous consent that Senators SALAZAR and SCHUMER be added, along with Senators OBAMA and BOXER, as cosponsors of this amendment.

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

Mrs. CLINTON. Mr. President, as has become abundantly clear from the debate on the floor, immigration is a Federal responsibility. As this debate has shown, for too long the Federal Government has neglected its duty.

My amendment addresses one of the clearest examples of this neglect because our failed national immigration policy has left our State and local governments to bear the brunt of the cost of immigration. Our schools, our hospitals, our other State and local services are being strained.

Obviously, this is a problem in many communities and not just in border communities. Throughout our country and in my State, there are counties and municipalities that are covering the costs of dealing with education, health care, and law enforcement without adequate or any Federal reimbursement. So we have left our local and State governments to fend for themselves. They should not be left to bear these costs alone because it is not they who are making Federal immigration policy.

This amendment does several things. It helps finally provide adequate support for State and local governments. How? Well, it not only appropriates the State Criminal Alien Assistance Program funding to our States, but it establishes a program that provides financial assistance to State and local governments for the cost of health and educational services related to immigration.

Money is allocated to our States in accordance with a funding formula based on the size and recent growth of the State's noncitizen population. The State must then pass the funds on to local governments and other entities that need the money for reimbursement. Here is how this program would be funded, because the amendment does not appropriate any new funds or impose any new fees on immigrants. Funding is drawn solely from existing fees already in the underlying bill.

The underlying bill creates a State impact assistance account at the Treasury, but it does not direct any money into that account. It is an empty account with no State purpose. My amendment would direct certain fees that already exist in the underlying bill into the account and then provide for the disbursement of the collected funds to State and local government.

To which fees are we referring? Well, there is a $500 fee for immigrants who participate in the guest worker program. Right now, that fee is not marked for any purpose, and the funds simply go to the Treasury. My amendment directs this $500 fee into the State impact assistance account. Additionally, the underlying bill imposes a $2,000 fee for the undocumented immigrants to participate in the path to legalization program spelled out in title VI of the bill, plus imposes an additional fine that is left to the Department of Homeland Security to determine later. Eighty percent of these funds go to border security; 20 percent go to processing and administrative costs related to the undocumented.

My amendment does not touch the 80 percent going to border security. Instead, it takes half of the processing fees—in other words, 10 percent of the $2,000 fee and the yet-to-be, unspecified fine by DHS—and redirects that money away from Federal Government administration to this fund which will help State and local governments get reimbursed.

This still leaves about $1 billion for processing and administrative costs at the Federal level. What happens with this money? Pursuant to my amendment, 25 percent goes to the State Criminal Alien Assistance Program, known as SCAAP, to pay for the cost of detention which our State and local governments incur.

Each year, the SCAAP program is underfunded. A 2005 GAO study documents that State and local governments get only 25 percent of their costs reimbursed through this program. A report indicates that my State of New York received even less—21 percent of their costs were compensated in 2002 and 24 percent in 2003. The remaining 75 percent of the money collected from the fees deposited in the State Impact Assistance Account would go to States and localities to pay for the cost of providing health and education services to noncitizens. This money is allocated among the States in accordance with a funding formula based on the size and recent growth of the States' noncitizen population.

Now, to ensure that the funds actually get to the counties and cities and don't sit in State governments, my amendment also requires that at least 70 percent of those funds be passed on to localities within 180 days of the States receiving the money. States can retain the remaining 30 percent to help offset their own costs related to immigration.

I think this amendment helps us fix a problem I care a lot about as I travel around my State. Our local communities have a tradition in New York of being very welcoming. We are a State that is not only built on immigrants but very proud of that, as the Statue of Liberty in New York Harbor so eloquently says. But the costs of immigration have steadily increased, and the Federal Government's neglect has

strained local and State government budgets. I think if we pass any kind of immigration reform and we don't take into account the strains on the budget on State and local governments, we will not have done our job.

This amendment also helps State and local governments not only recoup some of their expenditures, but it underlines a message to communities that they are working together, they welcome people who work hard and who make a contribution and will be on the path to earned legalization.

So I hope this amendment will be supported. It has support from the National Immigration Law Center, the National League of Cities, the National Association of Counties, and the National Conference of State Legislatures.

I think our laws can be both fair and strict. I think we can have laws which don't shut the doors of America to people who want to make a contribution and at the same time don't really provide disincentives to communities to be part of that welcoming tradition. Balancing all of the interests in this debate is not easy, but I appreciate the efforts that are being made on this floor to wrestle with this difficult problem. I hope we will also send a message to local communities that we are here to help them because they don't set immigration policy, they don't enforce immigration laws, but they are often left holding the bag for the costs that flow because we haven't done our job.

So I hope that this amendment finds favor in this body and we send a message to our local executives and legislatures around our country that we are going to send them some help to be part of a comprehensive immigration solution.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I congratulate the Senator from New York on her amendment. One of the greatest scams the Federal Government has ever imposed upon taxpayers across the country is unfunded Federal mandates, and education costs and health care costs imposed by the Federal Government on local taxpayers without reimbursement is not only unfair, it is a scandal.

The estimated annual costs to hospitals and other emergency providers of health care nationwide for undocumented immigrants or illegal aliens, which is mandated but not reimbursed by the Federal Emergency Medical Treatment and Labor Act, is $1.45 billion a year. According to congressionally commissioned research, the annual cost to just 24 border counties in my State and in New Mexico and California exceeds $200 million a year. Texans spend more than $4 billion annually on education for the children of illegal immigrants and their U.S.-born siblings. About 12 percent of Texas schoolchildren in K through 12 are children of undocumented immigrants. Texas health care expenditures for illegal aliens are more than $520 million a year.

All States—New York, Texas, and all 48 other States—bear the burden of unfunded mandates providing for the health and education of undocumented aliens because we have failed to enforce our immigration laws. Again, the Federal Government is twice culpable. No. 1, it imposes these costs on local taxpayers and local government; and No. 2, the very reason why they are incurred is because of the Federal Government's failure to secure our borders and enforce our immigration laws.

The Federal Government requires, under the IMTALA act, that hospitals treat every person, irrespective of their immigration status. But then Congress fails to secure the border and our local hospitals have become overrun. So while the Government requires hospitals to treat everyone, the Government then fails in its own responsibility to secure the borders or reimburse those health care providers for carrying out their federally mandated obligations.

The bill before the Senate fails to reimburse States for the costly burden placed upon their health care system and education system by undocumented immigrants. For example, recent reports are that 70 percent of the children born at Parkland Hospital in Dallas, TX, are born to undocumented immigrants.

What will my amendment do? The current Senate bill does not reimburse State and local governments for health care and education costs related to the millions of undocumented immigrants. While the underlying bill creates a State impact assistance account for future temporary workers, it is an unfunded account. The Cornyn amendment would impose a surcharge on any illegal alien who applies for legal status under this bill.

AMENDMENT NO. 4038

Mr. President, at this time I ask unanimous consent to set aside the current amendment and to call up amendment No. 4038 and ask for its immediate consideration.

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

The legislative clerk read as follows:

The Senator from Texas [Mr. CORNYN] proposes an amendment numbered 4038.

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

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

The amendment is as follows:

(Purpose: To require aliens seeking adjustment of status under section 245B of the Immigration and Nationality Act or Deferred Mandatory Departure status under section 245C of such Act to pay a supplemental application fee, which shall be used to provide financial assistance to States for health and educational services for noncitizens)

On page 264, strike lines 13 through 20.

On page 370, line 21, strike ''this subsection'' and insert ''paragraphs (2) and (3)''.

On page 371, between lines 14 and 15, insert the following:

''(5) STATE IMPACT ASSISTANCE FEE.—

''(A) IN GENERAL.—In addition to any other amounts required to be paid under this subsection, an alien shall submit, at the time the alien files an application under this section, a State impact assistance fee equal to—

''(i) $750 for the principal alien; and

''(ii) $100 for the spouse and each child described in subsection (a)(2).

''(B) USE OF FEE.—The fees collected under subparagraph (A) shall be deposited in the State Impact Assistance Account established under section 286(x).

On page 389, between lines 6 and 7, insert the following:

''(3) STATE IMPACT ASSISTANCE FEE.—

''(A) IN GENERAL.—In addition to any other amounts required to be paid under this subsection, an alien seeking Deferred Mandatory Departure status shall submit, at the time the alien files an application under this section, a State impact assistance fee equal to $750.

''(B) USE OF FEE.—The fees collected under subparagraph (A) shall be deposited in the State Impact Assistance Account established under section 286(x).

On page 389, between lines 21 and 22, insert the following:

''(3) STATE IMPACT ASSISTANCE FEE.—

''(A) IN GENERAL.—In addition to any other amounts required to be paid under this subsection, the spouse and each child of an alien seeking Deferred Mandatory Departure status shall submit a State impact assistance fee equal to $100.

''(B) USE OF FEE.—The fees collected under subparagraph (A) shall be deposited in the State Impact Assistance Account established under section 286(x).

On page 395, after line 23, add the following:

(e) STATE IMPACT ASSISTANCE ACCOUNT.—Section 286 (8 U.S.C. 1356) is amended by inserting after subsection (w) the following:

''(x) STATE IMPACT ASSISTANCE ACCOUNT.—

''(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'State Impact Assistance Account'.

''(2) SOURCE OF FUNDS.—Notwithstanding any other provision under this Act, there shall be deposited as offsetting receipts into the State Impact Assistance Account all State impact assistance fees collected under section 245B(m)(5) and subsections (j)(3) and (k)(3) of section 245C.

''(3) USE OF FUNDS.—Amounts deposited into the State Impact Assistance Account may only be used to carry out the State Impact Assistance Grant Program established under paragraph (4).

''(4) STATE IMPACT ASSISTANCE GRANT PROGRAM.—

''(A) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Secretary of Education, shall establish the State Impact Assistance Grant Program (referred to in this section as the 'Program'), under which the Secretary may award grants to States to provide health and education services to noncitizens in accordance with this paragraph.

''(B) STATE ALLOCATIONS.—The Secretary of Health and Human Services shall annually allocate the amounts available in the State Impact Assistance Account among the States as follows:

''(i) NONCITIZEN POPULATION.—Eighty percent of such amounts shall be allocated so that each State receives the greater of—

''(I) $5,000,000; or

''(II) after adjusting for allocations under subclause (I), the percentage of the amount

to be distributed under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resident population of all States, based on the most recent data available from the Bureau of the Census.

''(ii) HIGH GROWTH RATES.—Twenty percent of such amounts shall be allocated among the 20 States with the largest growth rates in noncitizen resident population, as determined by the Secretary of Health and Human Services, so that each such State receives the percentage of the amount distributed under this clause that is equal to—

''(I) the growth rate in the noncitizen resident population of the State during the most recent 3-year period for which data is available from the Bureau of the Census; divided by

''(II) the average growth rate in noncitizen resident population for the 20 States during such 3-year period.

''(iii) LEGISLATIVE APPROPRIATIONS.—The use of grant funds allocated to States under this paragraph shall be subject to appropriation by the legislature of each State in accordance with the terms and conditions under this paragraph.

''(C) FUNDING FOR LOCAL GOVERNMENT.—

''(i) DISTRIBUTION CRITERIA.—Grant funds received by States under this paragraph shall be distributed to units of local government based on need and function.

''(ii) MINIMUM DISTRIBUTION.—Except as provided in clause (iii), a State shall distribute not less than 30 percent of the grant funds received under this paragraph to units of local government not later than 180 days after receiving such funds.

''(iii) EXCEPTION.—If an eligible unit of local government that is available to carry out the activities described in subparagraph (D) cannot be found in a State, the State does not need to comply with clause (ii).

''(iv) UNEXPENDED FUNDS.—Any grant funds distributed by a State to a unit of local government that remain unexpended as of the end of the grant period shall revert to the State for redistribution to another unit of local government.

''(D) USE OF FUNDS.—States and units of local government shall use grant funds received under this paragraph to provide health services, educational services, and related services to noncitizens within their jurisdiction directly, or through contracts with eligible services providers, including—

''(i) health care providers;

''(ii) local educational agencies; and

''(iii) charitable and religious organizations.

''(E) STATE DEFINED.—In this paragraph, the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''(F) CERTIFICATION.—In order to receive a payment under this section, the State shall provide the Secretary of Health and Human Services with a certification that the State's proposed uses of the fund are consistent with (D).

''(G) ANNUAL REPORT.—The Secretary of Health and Human Services shall inform the States annually of the amount of funds available to each State under the Program.''.

Mr. CORNYN. The problem is this, Mr. President: Under the current bill, about 80 percent of the $2,000 paid by undocumented immigrants at the time they apply for a green card or legal permanent residency, 80 percent of that $2,000 fee goes for border security. Ten percent of it goes to administering the process provided for under the underlying bill and another 10 percent for other uncovered administrative costs. In other words, there is an 80–20 split of the $2,000 that are paid by undocumented immigrants at the time they regularize their status, in contrast with the Clinton amendment—the Senator from New York provides essentially an 80, 10, and 10 split, with 80 percent of the money going for border security, 10 percent going to a State impact fund, and 5 percent each for the administrative costs. In other words, rather than an 80–20 distribution, the Senator from New York sets aside 10 percent for the State impact fund, and then retains an additional 10 percent to pay for the administrative costs.

The difference between the Cornyn amendment and the Clinton amendment is this: The Clinton amendment takes money away from the program that administers this immigration reform bill in order to pay the State and local taxpayers under the impact fund.

I don't think most of our colleagues are familiar with this, but actually the $2,000 that is required to be paid under this bill is not paid at the time that illegal aliens get a H–2C card and remain in the country for approximately 6 years, pending their application for a green card or legal permanent residency. It is only at the time they apply for their green card or legal permanent residency that money is due. So for 6 years, they are able to stay in the country with an H–2C card without paying a penny, while continuing to impose financial burdens on local taxpayers for health and educational costs that are unreimbursed. Under my proposal, they will get money right away as the money and costs are being incurred and not some 6 to 8 years later.

Finally, under my proposed fee, which is a surcharge paid, $750, at the very time that a person enters in the system, not waiting 6 years when they apply for their green card. By paying $750 a person and an additional $100 for each family member, this will generate about $7.5 billion in money for this State Impact Fund as opposed to approximately $1.3 to $1.5 billion under the Clinton amendment.

Just by way of comparison, in 1986 when the U.S. Congress granted amnesty to 3 million undocumented immigrants, it set aside $4 billion in taxpayer money to help reimburse the States for these uncompensated costs. In other words, $4 billion for 3 million undocumented immigrants to regularize their status. Yet under this bill, if passed, the bill would regularize four times the number of people. Yet under the Clinton amendment it would only provide $1.3 to $1.5 billion for State impact funds. Under my proposal, which would impose a $750 surcharge at the very time an individual registers for the H2–C program, it would generate $7.5 billion, obviously necessary to pay for the unfunded mandates I mentioned a moment ago.

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that we proceed to rollcall votes on the Clinton amendment at 6:20, to be followed by a rollcall vote on the Cornyn amendment, with the Cornyn amendment being a 10-minute vote.

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

The Senator from New York.

Mr. SCHUMER. I was just going to speak for 5 minutes on the amendment that Senator CLINTON and I and others have introduced.

Mr. KENNEDY. Can I get 30 seconds at the very end?

Mr. SCHUMER. I would ask for 5 minutes. I ask unanimous consent I speak for 5 minutes, and Senator KENNEDY proceed for 1 minute immediately thereafter.

Mr. SPECTER. Reserving the right to object, how much time does Senator CORNYN have left?

The PRESIDING OFFICER. There is no division of time.

Mr. SCHUMER. I will take 3½ minutes. I don't mind.

Mr. CORNYN. I was under the impression there was 15 minutes allotted to Senator CLINTON and 15 minutes to me, a total of 30 minutes.

The PRESIDING OFFICER. That agreement was not entered.

Mr. SPECTER. We are talking about how much Senator CORNYN needs and how much Senator SCHUMER needs. We could delay the votes a bit. How much time does Senator CORNYN need?

Mr. CORNYN. I would be happy with 5 more minutes total.

Mr. SPECTER. I amend the unanimous consent request to give 5 more minutes to Senator CORNYN, 5 minutes to Senator SCHUMER, and that would bring us to 6:25, at which point I ask unanimous consent that we have rollcall votes on Senator CLINTON, then a rollcall vote on Senator CORNYN, with the second vote to be 10 minutes.

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

The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I rise in support of the amendment sponsored by my colleague, Senator CLINTON, cosponsored by a number of us on this side. I commend her efforts to address a very important component of the immigration debate.

This amendment is going to provide some much needed and overdue relief to States and localities that have had to bear a disproportionate share of the burden when they have been host to a large number of undocumented immigrants. Too many of our State and local governments are overwhelmed and underfinanced. As the number of undocumented immigrants goes up in a community, so do the costs of services that the local governments provide to them—including increased costs for law enforcement, health care, and education.

These localities are not to blame for the Federal Government's failure to adequately secure our borders or to enforce the immigration laws against employers who do not play by the rules. But more and more, they had to devote already scarce resources to deal with the rising numbers of undocumented immigrants.

They have done the right thing. They have provided medical care, education, other public services. But it has all come at the expense of local taxpayers who are already stretched too thin, and that is not fair.

As we work toward comprehensive reform, we in the Federal Government owe them our help. We need to make sure the flood of new immigrants does not drown out our local governments. We need to make sure that while we embrace our new immigrants we don't give the local communities the cold shoulder.

This is not just a problem on the southern border. In Suffolk County on Long Island there are about 40,000 undocumented immigrants. Total estimates for all of Long Island are about 100,000. In Suffolk, the annual cost of meeting the needs of undocumented immigrants is estimated to be $24 million. Of course, property taxes are too high. The counties are strapped for cash. This amendment will offer some much needed relief to localities such as Suffolk County that have had to go it alone for too long. And it will not require finding new sources of revenue. It will take some of the fees already in the bill and give the bulk of that money for reimbursement of health care and educational costs paid out by the States and localities, and the rest goes to SCAAP, to pay for the costs of detaining noncitizens, a program I have been much involved with in the past.

These funds will be targeted toward States that have seen the sharpest rise in their noncitizen populations, and we are going to get the money from the States to their localities fast because they are feeling the strain now. States will have to get most of the money to the localities within 180 days once the money is allocated.

Taxpayers in our country are already being pushed to the limit. They didn't cause the problems, but they far too often have to bear the financial consequences, and they should not be left holding the bag.

This financial assistance will not solve every problem associated with undocumented immigration, but it will go a long way toward lifting the financial strain in our States and localities all over the country.

I yield. If my colleague from Massachusetts wants, I yield my remaining time to my colleague from Massachusetts.

The PRESIDING OFFICER. The Senator has 1 minute 40 seconds.

Mr. KENNEDY. Mr. President, Senator CLINTON has a very sensible and responsible amendment. The way the funds are allocated, there will be approximately more than $1 billion that would be available under her amendment that will be allocated to these needs which she has outlined. It seems to me that is the way to go.

On the other side, Senator CORNYN is going to raise, for these workers, immigrant workers who are working hard, playing by the rules—he is just going to jack up the amounts they are going to have to pay by another $750.

The sky is the limit. Why not $2,000, $3,000, $4,000? I mean, the fact is, they are already going to be paying the $2,000. This is going to add at least $750; $100 per child additional. So you are giving additional kinds of burdens on the worker, those who are in line to become citizens. I think the Clinton proposal is far superior and more fair.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I fail to understand why it poses an unreasonable burden upon the 10 million or 11 million or 12 million undocumented immigrants who currently live in the United States in violation of our immigration laws to pay a modest fee as part of the quid pro quo for their regularization when, in fact, they have been imposing unfunded burdens on local taxpayers and local hospital districts and counties and cities for the entire time they have been present in the United States. No one is talking about being punitive or being unnecessarily harsh. But fair is fair. To suggest that it is not fair for them to pay a fee really stands in stark contrast to the fact that these same individuals, when they apply for legal permanent residency or a green card, will be required to pay $2,000.

The truth is, most individuals who come across at least the southern border in violation of our immigration laws, turn their lives over to human smugglers and pay on average about $1,500 each for each trip they make into the United States. Certainly, these individuals, in return, for the benefits that are conferred upon them under this bill, should be expected, and I think they would expect, to pay some modest cost to help defray the expenses to local and State taxpayers. In fact, these individuals are being given an opportunity for a second chance, and I believe there should be some cost associated with that. In fact, we have been told during the course of this debate that this underlying bill creates a situation where people earn their right to legal status.

As we found out, during the first 6 years of their presence in the United States, after this bill passes, if it passes in its current status, they will be able to live and work and travel and have all the benefits of living in this country and have paid nothing—zero, zip, nada. Only after about 6 years, when they apply for a green card or legal permanent residency, will they then be required to pay the $2,000.

I think it is only just that these individuals be required to pay a surcharge of $750, a reasonable amount for reimbursement to State and local governments and taxpayers for the costs of health care and education that have been imposed by their very presence on local taxpayers. Again, this is not punishing anybody. This is not about making it unusually difficult for them to comply. This is a matter of simple justice.

Indeed, if the only source of that money is the funds that are paid some 6 years after they began to transition into legal permanent residency, under the Clinton amendment—and I applaud the goals of the Senator, to pay some money into a State impact fund, but it will amount to about $1.3 billion as opposed to $7.5 billion under my amendment. We will not see any of that money for at least 6 years and, in fact, it is taking money away from the program necessary to administer this underlying legislation which is necessary to make it a success.

Certainly, we are not going to build failure into this model by underfunding the very administrative process by which it is supposed to work.

I suggest it is the Federal Government's responsibility to step up. This is not taking any tax dollars in order to fund this unfunded mandate. This is coming from the beneficiaries of the program that is supposed to be enacted by this underlying legislation. If, in fact, it made sense to appropriate from tax dollars $4 billion for the 3 million individuals who were given amnesty in 1986, it makes sense to me, today, that it is going to cost quite a bit more than the $1.3 billion under the amendment of Senator CLINTON. But it also makes sense that burden should not be borne again by the taxpayers of the United States but, rather, should be borne by the individuals who are going to receive a benefit under this bill.

I ask my colleagues to support this amendment. I think it only makes sense, it is only fair and just to the local taxpayers around this country, and it is a matter of funding what is currently an unfunded Federal mandate on those tax credits.

The PRESIDING OFFICER. All time has expired.

The question is on the Clinton amendment.

Mr. SPECTER. Mr. President, for the information of our colleagues, we are now trying to work through another amendment following the votes, the Chambliss amendment. We are checking to see how much time would be needed. But it appears that we have a good likelihood of proceeding with that amendment and a later vote tonight, after enough time for debate.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. We are not prepared. We thought we were moving ahead with the Kyl amendment. Now we are on the Chambliss amendment. It involves a number of individuals here

who feel very strongly. We are just trying to find out the amount of time they would need. Hopefully, we are going to be having two votes now, and by the end of those votes we will have more information.

The PRESIDING OFFICER. The question is on agreeing to the Clinton amendment.

Mr. SPECTER. I ask for the yeas and nays.

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

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from Florida (Mr. MARTINEZ), and the Senator from Wyoming (Mr. THOMAS).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) and the Senator from Florida (Mr. MARTINEZ) would have voted ''nay.''

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. DORGAN) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

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

The result was announced—yeas 43, nays 52, as follows:

[Rollcall Vote No. 133 Leg.]

YEAS—43

Akaka	Feinstein	Mikulski
Baucus	Harkin	Murray
Bayh	Inouye	Nelson (FL)
Biden	Jeffords	Obama
Bingaman	Johnson	Pryor
Boxer	Kennedy	Reed
Cantwell	Kerry	Reid
Carper	Kohl	Salazar
Chafee	Landrieu	Sarbanes
Clinton	Lautenberg	Schumer
Conrad	Leahy	Specter
Dayton	Levin	Stabenow
Dodd	Lieberman	Wyden
Durbin	Lincoln	
Feingold	Menendez	

NAYS—52

Alexander	DeWine	McConnell
Allard	Dole	Murkowski
Allen	Domenici	Nelson (NE)
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Burns	Graham	Shelby
Burr	Grassley	Smith
Byrd	Gregg	Snowe
Chambliss	Hagel	Stevens
Coburn	Hatch	Sununu
Cochran	Hutchison	Talent
Coleman	Inhofe	Thune
Collins	Isakson	Vitter
Cornyn	Kyl	Voinovich
Craig	Lott	Warner
Crapo	Lugar	
DeMint	McCain	

NOT VOTING—5

Bunning	Martinez	Thomas
Dorgan	Rockefeller	

The amendment (No. 4072) was rejected.

Mr. BURNS. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 4038

The PRESIDING OFFICER. The order calls for the Cornyn amendment.

Mr. KENNEDY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the Cornyn amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kentucky (Mr. BUNNING) and the Senator from Florida (Mr. MARTINEZ).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) and the Senator from Florida (Mr. MARTINEZ) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. DORGAN) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

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

The result was announced—yeas 64, nays 32, as follows:

[Rollcall Vote No. 134 Leg.]

YEAS—64

Alexander	Craig	Murray
Allard	Crapo	Nelson (FL)
Allen	DeMint	Nelson (NE)
Baucus	Dole	Pryor
Bennett	Domenici	Roberts
Biden	Ensign	Santorum
Bond	Enzi	Schumer
Boxer	Feinstein	Sessions
Brownback	Frist	Shelby
Burns	Grassley	Smith
Burr	Hatch	Snowe
Byrd	Hutchison	Stabenow
Cantwell	Inhofe	Sununu
Carper	Isakson	Talent
Chambliss	Kerry	Thomas
Clinton	Kyl	Thune
Coburn	Lieberman	Vitter
Cochran	Lincoln	Voinovich
Coleman	Lott	Warner
Collins	Lugar	Wyden
Conrad	McConnell	
Cornyn	Murkowski	

NAYS—32

Akaka	Hagel	McCain
Bayh	Harkin	Menendez
Bingaman	Inouye	Mikulski
Chafee	Jeffords	Obama
Dayton	Johnson	Reed
DeWine	Kennedy	Reid
Dodd	Kohl	Salazar
Durbin	Landrieu	Sarbanes
Feingold	Lautenberg	Specter
Graham	Leahy	Stevens
Gregg	Levin	

NOT VOTING—4

Bunning	Martinez
Dorgan	Rockefeller

The amendment (No. 4038) was agreed to.

Mr. CORNYN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, we are now prepared to take the amendment of the Senator from Nevada, Mr. ENSIGN, and have a brief debate, 10 minutes. It will be accepted.

Mr. KENNEDY. Would the Senator from Pennsylvania outline what the rest of the evening is going to be?

Mr. SPECTER. That is what I am in the process of doing. I commented about the Ensign amendment. I was about to say we are going to have the amendment of the Senator from Florida, Mr. NELSON, which I anticipate will be accepted as well. Then we are going to take the Kyl amendment under an arrangement where there will be a tabling motion. And it is now anticipated that we will have an hour-and-a-half time limit there. I would like to do it in an hour time limit, if that would be acceptable to that side. Senator KYL is prepared to take a half an hour.

Mr. KENNEDY. That is fine, an hour evenly divided.

Mr. REID. Will the Senator from Pennsylvania yield?

Mr. SPECTER. I do.

Mr. REID. We just received a call from one of our Senators who objects to the Ensign amendment. So let's do the hour and a half on Kyl, and maybe we can work that out while we are doing that.

Mr. ENSIGN. Mr. President, through the Chair, I ask the Senator from Pennsylvania if it would be possible at least to make my statement, lay down the amendment, and then we can consider it at the appropriate time based on the two managers of the bill.

Mr. REID. That certainly is appropriate. Mr. President, as you know, we don't run this place. I don't know why we need to wait an hour and 45 minutes to vote. We are going to have votes in the morning anyway. I talked to Senator KENNEDY. It is all right to go ahead for 90 minutes prior to a motion to table tonight on Kyl; we have no objection. Following that, we can decide what we will do for tomorrow.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I ask unanimous consent that we have a time agreement of an hour and a half. We have just been informed that Senator KYL wants an hour. I hope we can get some of that yielded back.

Mr. REID. We will take 30 minutes prior to a motion to table.

Mr. SPECTER. And a motion to table with no second-degree amendments being in order.

The PRESIDING OFFICER. The Senator from Nevada, Mr. ENSIGN.

Mr. ENSIGN. Mr. President, did I understand that prior to the debate, I would have 10 minutes?

Mr. SPECTER. I was about to come to that. Let me include in the unanimous consent request that we lay down the Ensign amendment and give him 10 minutes, and then we will move to the Nelson amendment. There would be 5 minutes for Senator NELSON. I anticipate it will be accepted.

Mr. REID. Mr. President, that is not fair to our folks over here. If we are going to have a vote tonight, let's vote and let people go home. Those people

who want to still stand around and talk—that is NELSON and ENSIGN and LANDRIEU or anybody else—let them do it.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Reserving the right to object, may I just ask that at any time tonight or any time in the morning, I be allowed to offer the two amendments that have been pending all week. We can vote whenever the leadership would like, in the morning or later tonight.

Mr. SPECTER. Mr. President, we will take a look at the amendments. I will give the Senator from Louisiana an answer as soon as we can take a look at the amendments.

The PRESIDING OFFICER. The Senator from Nevada, Mr. ENSIGN.

Mr. ENSIGN. Mr. President, I suggest we modify the unanimous consent to accommodate the minority and those who want to vote. I would be first recognized for 10 minutes right after the vote on Kyl to lay down my amendment, debate for 10 minutes, followed by Senator NELSON, followed by Senator LANDRIEU.

Ms. LANDRIEU. I want to modify the unanimous consent request that after Senator NELSON from Florida, Senator LANDRIEU would then be allowed to offer two amendments.

Mr. SPECTER. Mr. President, I am advised that we have not seen the amendments of the Senator from Louisiana. I repeat, we are going to be in here next week. We will take a look at them. We will accommodate her tomorrow, if we can, but we have to see the amendments before we can say anything.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. It is my understanding we are going to have 90 minutes of debate on Kyl—60 for the majority, 30 for the minority—prior to a motion to table the Kyl amendment, no second-degree amendments would be in order, and following that there would be 10 minutes for Senator ENSIGN and then Senator BILL NELSON 10 minutes after that.

The PRESIDING OFFICER. Would the Senator from Pennsylvania wish to restate or state the request?

Mr. SPECTER. Senator REID has accurately stated the unanimous consent request. I adopt his statement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, another aspect of our evening business is, at the conclusion of the sequencing stated in the unanimous consent agreement, to then lay down the Chambliss amendment. I am advised there are quite a number of Senators who want to speak on that. They can speak as long as they like. A vote will occur tomorrow on a tabling motion.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Reserving the right to object, I most certainly don't mind showing the amendments. They have been on file for a week. But I would like it to be in order this week for 10 minutes, either tonight or tomorrow morning.

Mr. SPECTER. Mr. President, we would be glad to respond after we see the amendments. We may need more time. We haven't seen the amendments. That has been a problem continuously, not having seen the amendments. I repeat to the Senator from Louisiana, if we can see the amendments, we can answer the question.

Ms. LANDRIEU. I appreciate that. I cannot agree to any unanimous consent until we get this.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair would say to the Senator from Louisiana, there is no request pending. The unanimous consent request was agreed to without objection previously. The Senator from Pennsylvania has subsequently spoken about the amendment of the Senator from Georgia, Mr. CHAMBLISS. There is no request pending.

Ms. LANDRIEU. Then I will wait to object to that next request.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. Mr. President, may we start on the Kyl amendment?

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3969

Mr. CORNYN. Mr. President, on behalf of Senator KYL and myself, I call up amendment 3969.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. CORNYN], for Mr. KYL, for himself and Mr. CORNYN, proposes an amendment numbered 3969.

The amendment is as follows:

(Purpose: To prohibit H–2C nonimmigrants from adjusting to lawful permanent resident status)

Beginning on page 295, strike line 8 and all that follows through page 297, line 2, and insert the following:

''(n) Notwithstanding any other provision of this Act, an alien having nonimmigrant status described in section 101(a)(15)(H)(ii)(c) is ineligible for and may not apply for adjustment of status under this section on the basis of such status.''.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, the bill that is on the floor purports to create two different paths to American citizenship for those, first of all, who are in the country living outside of the law in an undocumented status, and secondly, for those who are not yet present in the country but who want to come here at some future date to work. We have given the somewhat misleading name of ''guest worker'' to the so-called future flow, the people who are not yet here.

As I pointed out earlier, a guest is not ordinarily defined as someone who moves in with you and never leaves. Rather, a guest is someone who comes into your home or wherever it may be temporarily and then leaves. The title ''guest worker'' to describe the future flow of people coming into the country to work is simply inaccurate. It does not describe what this bill does.

First let me talk about the future flow. Under the Bingaman amendment, the Government would authorize the entry of 200,000 people a year who would qualify for an H–2C visa. These so-called guest workers could work here up to 6 years, live, travel, enjoy the benefits of this country short of citizenship, after which they then apply for a green card, whereby they become a legal permanent resident. They then get on the path to American citizenship 5 years later. Rather than a temporary worker, these are individuals who, under this bill, will become first legal permanent residents and then American citizens. Because of that, the title of ''guest worker'' is a misnomer. It is a mischaracterization of what this bill does. I submit it is simply misleading.

It is important for us to debate this issue honestly. This is a complicated bill, over 600 pages long. Obviously, the Congress has not debated the issue of comprehensive immigration reform for the past 20 years, since the last time Congress dealt with this in a comprehensive fashion. But at the very least, we ought to require of each of ourselves that we have an honest debate, that we call things what they are and we don't call things what they are not.

The Kyl amendment, one I am proud to cosponsor, simply makes the point that a guest worker ought to be temporary. It doesn't sound like a profound amendment but, in fact, it will change the fundamental structure of this underlying bill to make the representation that everyone, from the President of the United States on down to those of us here, believes that a guest worker program is part of a comprehensive solution to the crisis that now confronts our country with our broken immigration system, that, in fact, we are talking about a temporary worker program.

That is important for many reasons. Let me mention two beyond the initial reason that we ought to be honest and accurate and clear about what it is we are doing.

First, in terms of the future flow of individuals who come into the country to work, it is important that we have a temporary worker program in order to protect American workers. In fact, if we have an influx of 200,000, or whatever the number is, permanent residents and then new citizens in this country, without regard to the fact that our economy is in a boom time when we need those workers or in a bust when we find that those new workers will end up competing with Americans and potentially displacing them from their jobs, it is important that we keep faith with the American

people and we protect American workers by being able to dial up or dial down the provisions of this guest worker program in order to meet the demands of our economy.

Secondly, Mexico, as an example, which has a 1,600 mile common border with my State of Texas, has seen the mass exodus of some of its best and brightest and hardest working people permanently out of their country to live forever, the rest of their natural lives, in the United States.

Now, I believe we ought to have a legal system of immigration and that ought to serve our national interests. But the reason why there is so much pressure put on our borders and on illegal immigration is because when a country's young workers leave permanently and never return, how in the world can that country, whatever the country is—Mexico, United States, Guatemala, Honduras, or Brazil—how can any country ever hope to create economic opportunity and jobs within that country if its young, hard-working workers leave permanently and never come back?

Well, a temporary worker program would allow people to come to the United States and work for a while and then return to their country of origin with the savings and skills they have acquired working in the United States. That would benefit not only the employers who need the workforce—a legal workforce that cannot be satisfied with sufficient numbers of Americans—but it would also satisfy the demands and the needs of their country of origin by providing circular migration—in other words, people coming for a while to work and then going home with the savings and skills they have acquired in the United States. What are they going to do with the money they have earned? Some may decide to buy a home or start a small business in their country of origin.

I think that has at least the promise of developing economic opportunity and jobs in those countries that are now a net exporter of people to the United States. It would give them a realistic opportunity of creating jobs for those who, in fact, would prefer not to sever their ties with their home and their family and their culture. It would reinstate this circular migration that would benefit both the United States and their country of origin.

I remember some time ago—maybe 2 years ago—I was visiting Guatemala and had lunch with our American Ambassador to Guatemala at his residence. We were talking about American trade policy, and specifically the Central American Free Trade Agreement, which had not yet come to Congress for a ratification vote. What a gentleman from Guatemala told me at that time very concisely—I will never forget—was that they want to export goods and services, not people. I think he said it perfectly. We ought to provide countries such as Guatemala, Mexico, and others an opportunity to do business with the United States in a way that will help them develop their economy, so their people can stay home and enjoy their culture and their country and their family and not feel compelled to leave permanently to come to the United States and never return home.

Some have said that, well, what attracts countries such as Mexico to massive illegal immigration of its own citizens is the fact that this last year they received $20 billion in remittances; that is, savings that workers from Mexico earned in the United States while working in the shadows, in the cash economy, in the black market, so to speak. They sent that money home to their family to help support them. Recently, though, a high official in the Mexican Government pointed out to me that it is not a benefit to countries such as Mexico to see their people leave just to send maybe 10 percent or 15 percent of their money or savings back home because if you look at the economic activity that occurs in the United States, they would much rather have that economic activity occur in their country of origin.

Let's say, for example, that $20 billion represents a 10-percent savings rate. That means that for the $20 billion that is sent from Mexican workers back to Mexico, there is $180 billion in economic activity occurring in the United States that could occur in Mexico if they had opportunities and jobs there. Obviously, that kind of economic activity feeds on itself and provides greater opportunity for those people and benefits to those people living at home. It takes a lot of pressure of illegal immigration off our borders.

Ultimately, I believe in comprehensive immigration reform because I believe that whatever we do has to be built upon a foundation of security. In 2006, national security is about border security. In a post-9/11 world, we simply must know who is coming into our country and the reasons they are coming here. We cannot assume that people are coming here only for benign reasons. We all understand that when people have no hope and no opportunity where they live, they are going to do whatever it takes. Any one of us, assuming we had the courage, would take whatever risk was necessary, including a risk to life itself, to provide for our loved ones. So at a very human level, we understand why people want to come to the United States.

But we also know, in a post-9/11 world, that the same porous borders that allow people to come across our borders to work are also available to be exploited by violent gangs such as MS–13, by drug traffickers, by all sorts of people that we don't want in the United States because we have a duty to protect the American people and their security.

We also know that in a post-9/11 world, international terrorists can use these same avenues of entry into the United States and potentially create another 9/11, or some similarly catastrophic incident. So we have to have that border security. We also have to have interior enforcement working with local and State law enforcement officials. We also have to have worksite verification, along with secure identification cards that can be swiped through a reader to confirm that the person presenting themselves for work is, in fact, legally authorized to work in the United States.

Indeed, the one thing that people point to, when they point to the mistakes of the 1986 amnesty that was granted, is the failure to create a reliable means of verifying eligibility to work in the United States, and along with that sanctions for employers who cheat. It is absolutely critical that we secure our borders, that we work with our local and State law enforcement officials to enforce the law beyond the borders and the interior, and that we provide security at the worksite by providing secure documents and ways for employers to confirm legal authority to work in the United States; then we punish those employers who cheat. If we do that, I believe we can get this problem under control. If we fail to do any part of that, I worry that we will have been engaged in a futile act, and we will have been laboring and debating in vain on this bill.

Finally, I believe there are sectors of our economy that create jobs that are not being satisfied adequately by Americans and by legal citizens, legal immigrants in the United States. So I believe that to supply a legal workforce for those sectors that cannot find an adequate workforce among native-born and legal immigrants, we ought to create a temporary worker program, as I have described it a moment ago. This would also have the additional benefit of allowing law enforcement to direct their attention at the real problems and to eliminate from their concerns those who simply want to come here and work in a temporary worker program.

Mr. President, I also say that the other part of this amendment deals with those who are already here and who, under the underlying bill, would be able to stay in place and then participate in the H–2C program or those who would have to go to a port of entry and then who could come back in, participate, and get on a path to legal permanent residency and citizenship. This would say that ''notwithstanding any other provision of this act, an alien having non-immigrant status is ineligible for and may not apply for adjustment of status under this section on the basis of such status.'' In other words, temporary means temporary, and that a guest is welcome, assuming they qualify, to come for a time and participate in the benefits of this program but not necessarily be put on a path to a green card or legal permanent residency and citizenship.

Now, there are those who say that this kind of plan will not work and

that we have no option but to legalize those who are here in place and those who want to come in the future. There are those who say there is no such thing as a temporary worker because America has not shown itself capable of enforcing its own immigration laws and making sure that people whose visas expire, in fact, leave the country at the expiration of their legal authorization.

I believe that we can, assuming we have the political will, enforce our laws. We can create humane and realistic laws that provide for our Nation's needs and that serve our Nation's interests and which, incidentally, serve the interests of countries who have young workers who want to come for a while and then return to their country of origin.

I don't believe that we are incapable of enforcing our laws. I don't believe we have to throw our hands up and say the only way we can deal with this is to create an opportunity for people to basically stay in place and become legal permanent residents and citizens. It is not that I think that we should not provide that opportunity. In fact, I believe we should do it for those who meet our Nation's capacity to deal with this and who create a realistic cap based on our ability to assimilate those people and for them to become Americans.

So I think we can create a category of temporary workers, people who have no desire to stay, and then those who do want to come to our country, assuming that we can establish realistic caps and can then assimilate that population and they could become American citizens, and that we ought to create a reasonable opportunity to do that.

But our interests ought to be, first and foremost, what is in America's best interest? What is in America's best interest?

I guess I wish that America could open its arms and accept the flood of humanity that might want to come from the four corners of the world, from every oppressed and downtrodden part of the planet. But the fact is that we cannot. We cannot do that without jeopardizing what America is. That is not to say that we would discontinue being the melting pot, where people who want to come legally from any part of the world and become Americans can do so. We ought to provide an opportunity for them to do so, to the extent that it serves America's interests and serves America's needs.

Mr. President, I reserve the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. Is this from the time in opposition?

Mr. MCCAIN. Yes.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I rise in strong opposition to the amendment. It undermines both the intention and the spirit of this bill. The amendment would not only treat future workers as less than American workers, it would treat them as less than all other immigrant workers.

The real issue is—I will get right to it—after many long months and weeks and hours of negotiation, we had a proposal that passed through the Judiciary Committee and then a compromise, thanks to Senators HAGEL and MARTINEZ, basically establishing the framework for a compromise in the Senate. If this amendment should pass, that whole compromise is destroyed because a fundamental part of that compromise was that those who have been here for 2 to 5 years, after having gone back to a port of embarkation, would then be eligible for temporary work under the temporary worker program, and then over time be eligible for green card status and citizenship. This amendment would destroy that compromise. I understand very well why the Senator from Texas and the Senator from Alabama on the floor of the Senate, and others, have been opposed to this bill from the beginning. I understand that and I appreciate it and I respect it. But let's have no doubt about what this amendment would do. It would destroy the entire carefully crafted compromise.

Now, the Senator from Texas has an interesting theory about people who would want to come here and only work and then go back, or maybe not go back, but not have any opportunity for citizenship. We have examples today in Europe of the situation that the Senator from Texas and my colleague from Arizona would want to create, which is having people living in your country with no hope to ever be a part of that society.

I would remind my colleagues of what happened not long ago in France. There were thousands of young Muslims who were burning cars everywhere and rioting and demonstrating because they had no hope and no opportunity. Why is it that all over Europe you find these enclaves of foreign workers who are totally and completely separate from society? Because they are in the situation which this amendment would dictate: No hope, no job, no opportunity, no future, but we will let you work.

This is not what we do with highly skilled workers. That is not what we do under various other programs, and especially for those who have already been here between 2 and 5 years under this very carefully crafted compromise, the Hagel-Martinez compromise, as it is called, embodied. I understand why the Senator from Texas or the Senator from Arizona would oppose that. They oppose the very principles upon which the legislation was based and the Hagel-Martinez compromise was shaped.

The Senator from Alabama is on this floor constantly against virtually every aspect of the bill. I understand that.

But I want my colleagues who are voting to understand that if this amendment would pass, this whole compromise and this whole legislation collapses because it removes a fundamental principle of this legislation, which is that we give people an opportunity to earn citizenship, which is exactly what the 2- to 5-year part of the compromise under the Hagel-Martinez proposal represents. If you are here between 2 to 5 years, you have to go to a port of embarkation, you come back, you take part in a temporary worker program, and then over time you obtain eligibility for a green card, and ultimately citizenship. That is what America has been all about: people coming here and having the opportunity to obtain citizenship.

So we have a fundamental disagreement. I hope all of my colleagues will recognize that passage of this amendment would cause the entire bill to collapse, which we have been working on now for a week with excellent debate and good votes, and I think the way the Senate should function. So I hope that everybody understands exactly the implication of this amendment, and I understand and respect the view that is held by my colleagues who support this amendment. But I want all of my colleagues to understand the impact of passage of this amendment. It undermines not only the principles of the bill but, in my view, the principles of what this Nation should be and is all about today.

We have talked many times about people who live in the shadows, the people who don't have the benefits of our citizenship, or an opportunity to become citizens, these 11 million people who are living in the shadows. If this amendment would pass, I can assure you we would keep several million in the shadows because they would never come out of the shadows because they would never want to return to their country and never be able to be on a path to citizenship. So from a principled viewpoint and, frankly, from a practical viewpoint, this amendment is unacceptable.

I know the hour is late. I know a lot of my colleagues are not paying as much attention, perhaps, as they would at other hours of the day, but I hope we make it very clear that the passage of this amendment would cause the entire legislation to implode, and we would then be obviously in a position where we could probably not pass meaningful legislation that would entail comprehensive immigration reform, which is what the President has espoused and what I believe the overwhelming majority of the Senate has proved in numerous votes this week that we support.

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

Mr. CORNYN. Mr. President, I yield 10 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Texas for his hard work on this amendment and his thoughtfulness.

The Senator from Arizona just tells us that he and a few masters of the universe have met somewhere in some room to which I wasn't invited—I am not sure many other Senators were invited—and they have decided that this bill as written is the compromise and if any of it is changed, well, the compromise collapses and the bill fails. So, if I am hearing the Senator from Arizona correctly, he thinks we should all just give it up and quit offering amendments. But I don't think that is the way the Senate does business. I know the Senator from Arizona is a smart man and so are some of the others who have worked on this bill and worked out all of these compromises with Senator KENNEDY.

When they were working out these compromises did they consult the American people? I submit they haven't consulted the American people. The American people, when they find out what all is in this bill, they are going to be more upset with it than they are today.

More is wrong with this piece of legislation than can be explained. I took an hour or so Friday, not condemning the philosophy of comprehensive immigration reform, not condemning steps to make the legal system work properly in a way that we can be proud of, I talked about why the legislation is insufficient and flawed and is unable to do what the sponsors say.

Senator MCCAIN doesn't back down from a challenge, and I don't intend to back down either. I am not going to just hide under my desk because he and Senator KENNEDY have worked out a compromise. They think we shouldn't even make an argument against it, I suppose.

Let me just show you what the bill says. In big print up here: ''Title IV—Nonimmigrant And Immigrant Visa Reform.'' All this rubric at the top in big letters: ''subtitle A, Temporary Guest Workers.'' It says, ''Temporary Guest Workers'' in big print—not even the normal print. It says ''temporary'' and ''guest'' I don't know how many times in this provision.

The President told me—and he has said publicly a half dozen times—he believes in a temporary worker bill. I suppose his lawyers, maybe they thought it must be temporary, right? Well, it is not so. Let's take the people who will be allowed to enter our country in the future under this bill. This bill say that they can come in as a guest worker, temporary, and they can come for 3 years and then they can extend and stay another 3 years.

So that means it is temporary, right? Wrong. All you have to do is read the language of the bill, and as Senator KYL and Senator CORNYN have pointed out, and you discover that the first day the temporary workers are here they can apply for a green card through their employer. And what is a green card? It makes them a legal, permanent resident. Permanent resident, not a temporary guest workers.

Five years after that green card is issued, they are entitled to apply for citizenship, every single one of them that enter under this so-called temporary provision. That is the truth, but it is not the message we are being told.

Earlier today I thought about offering an amendment or a resolution to bar anyone in the Senate from using the phrase ''temporary guest worker'' when they talk about this bill because it is so bogus. It is an utter and total misrepresentation. As I just explained, and as the Senators have just explained, everyone coming in under this provision for the indefinite future get to become permanent workers. I challenge anybody to dispute that. They have the ability to become a legal permanent resident, and after that, they get to go and become a citizen. So it is just not a temporary worker program, it is permanent immigration. That is the deal.

Now, President Bush, as much as he believes in immigration and has been supportive of it, he has made clear that this is not what he wants. He supports the principles behind the Kyl-Cornyn amendment. We need to listen to him. This is a big amendment. And I do not think the Members of this body should feel in any way that they are not able to reject this bill and improve it by legislation because some group says they have reached a compromise and nobody can fix it, when they have made mistakes, and there are a lot of mistakes. This is just one of them. But I don't believe this Senate has ever seen—since I have been here, a piece of legislation of such monumental consequence have a misrepresentation as great as the allegation that the bill deals with temporary guest workers when it absolutely creates an automatic path to citizenship.

So why don't we do it right? Why don't we do what Senator KYL and what Senator CORNYN say and fix it, make it actually do what we the bill claims it does, make it temporary?

A green card is valuable. It entitles people to great benefits of the United States alone, even short of citizenship. So we have benefits that accrue like the earned income tax credit, like the food stamps and benefits of that kind as you come to be on the path of legal permanent residence. A legal permanent resident can bring their family into the country, their wife, and their children. When they become a citizen, which they will have a right to do in 5 years, they will then be able to bring in their parents who would probably soon, as a matter of demographics, be eligible and in need of substantial health care as they age, which the American taxpayers would provide them in one form or another. They can bring in their brothers and sisters. They all are eligible to come under the chain migration provisions of existing law.

This is a huge provision of the bill, is all I am saying. It is a major increase in the amount of people who will come into the country lawfully. It is a program that allows permanence and citizenship for every single person who comes in under this provision. It is not a temporary guest worker program. It is contrary to the whole message the American people have been told repeatedly that they are somehow dealing with, which is a guest worker program, when it is a permanent citizenship track. It is against what the President of the United States believes in. In fact, he has now endorsed the Kyl-Cornyn amendment because he has been saying all along he thought we ought to have temporary workers in not such a large number that would be coming in permanently under this provision.

There will be other provisions by which people can come and get on the citizenship track. But the temporary guest worker provisions of the bill should be simply that. I think that will meet the needs of workers; I think it will meet the needs of businesses. I think it will be the right way to handle this matter. I think it is what the American people have in their minds and think we are talking about. Unfortunately, if they heard that message and think that is what we are doing, it is not. Unless the Kyl-Cornyn amendment passes, we will not have a temporary guest worker provision in the bill.

The choice is clear. If Senators actually believe what they have been saying about what they are trying to pass, that they want a temporary guest worker program, then they should support Kyl-Cornyn. If not, they ought to come out of the shadows and stand before the American people and say that the temporary guest worker words printed right here in this bill—well, they don't mean what they say. They ought to tell us plainly and simply that they know that this is a provision that takes people straight to permanent resident status and straight to citizenship, so when we vote, Americans will know where we stand.

I thank the Senators from Texas and Arizona for offering the amendment and yield the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Texas.

Mr. CORNYN. Mr. President, I will yield myself 3 minutes. Also, I yield to the Senator from Arizona, Senator KYL, 20 minutes.

One of the hardest things about this whole subject I think is there are so many assumptions that people make based upon their own experience. How in the world can we put ourselves in the place of some of the individuals that this bill impacts and know what their desires are, know what their aspirations are, know what their relationships are to their country and their family and their culture?

I think there are some people who assume if America was to offer individuals from other countries an opportunity to come and qualify and work legally in the United States for a period of time, that they would not want to do that because they would want to stay permanently and they wouldn't want to go back home. I think common sense tells us these individuals love their country, they love their culture, and they love their family as much as we love ours. There is a deep and abiding connection that is not easily severed. The reason why people do sever it is necessity, when they don't have any opportunities where they live so they are willing to do whatever it takes, including leave their country and come to work in the United States. But what they would like—there is at least some segment of these individuals who like to come and work for awhile and then go back home and then maybe come back again and work for another couple of years and maintain their ties to their culture and their country and their family.

I would like to point out to our colleagues there is one piece of what I would call objective evidence out there that is not a supposition or an opinion or a guess as to what people's motivations might be. Not too long ago the Pew Hispanic Center took a survey of 5,000 applicants for the Matricula Consular card in the United States. That is basically a Mexican identification card that citizens of Mexico can apply for and receive while living in the United States. Five thousand Mexican citizens applied for the Matricula Consular card and they were asked this question: If you were provided an opportunity to work legally in a temporary worker program in the United States, would you participate, even though it meant that at the end of that temporary period you would be required to go home?

Seventy-one percent of the applicants said yes. Yes. I think we are fooling ourselves by thinking that the only folks who want to come to the United States want to stay here permanently and that there are not at least a large segment of people who would participate in a temporary worker program.

I hope we don't get too confused about this. There are ways for people to come, immigrate to the United States, and to become legal permanent residents and American citizens. But there are caps on those. There are waiting lists on those. Those are designed with America's best interests involved because, frankly, we can't assimilate everybody who wants to come, as I mentioned a moment ago.

I agree with the Senator from Arizona, Senator MCCAIN. We don't want unassimilated populations living permanently in the United States who do not speak our language and do not share our values. That has been the great promise and the hope and realization of America that, no matter who you are, how you pronounce your last name, what country you come from, if you believe in our values, you believe in freedom, and you believe in opportunity, that you, too, can become an American if that is what you want. But I believe we ought to provide a reasonable opportunity, based on our national interest, for people who want to immigrate on a permanent basis, and we also ought to provide another category for people who don't want to sever their ties, don't want to come here permanently, they want a job and then they want to go home.

That is what this temporary worker provision would provide. It is, in fact, I believe, an honest representation of what the program is, as opposed to the problem that the Senator from Alabama noted and that I noted earlier. This bill, as written, is neither a guest worker program or temporary in any sense. This amendment, I believe, would correct that.

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

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator has 22 minutes and 42 seconds. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I will take 11 minutes and yield the remaining time to the Senator from Nebraska.

The hour is late. We have had a very good debate over the course of the day. Now we are faced with an amendment that, even though it comes at the late hours of the day, is very basic and fundamental to the success of the whole piece of legislation. Just as important or even more important is the spirit of this particular amendment and what it is meant to achieve and what it is not meant to achieve.

Under the current immigration law, if you have a H–1B, that means you have a visa and you are highly skilled. The concept behind the H–1B is you are highly skilled, and because you are able to have a particular niche, the result of your service means you are going to have 8 or 10 or 15 more Americans working. So there is a limited number of the H–1Bs.

Under our current law, if your employer wants to petition for you, you can get a green card. If you are highly skilled, your employer can get the green card for you. But under the Cornyn amendment, if you are low skilled, you are out the window. One set of treatment for the very highly educated, highly skilled, who are working on the computers. But if you are cleaning a building in America, if you are working in menial jobs, if you are looking after children, if you have one of the lower paid jobs, you are out of luck.

Really a nice, fair standard. The Statue of Liberty is turned around tonight, listening to the argument of our friends over here. It is turned around. One standard for high skilled, and, boy, if you are doing the more menial work, which we know other Americans are not prepared to do, you are out. You are finished. You are gone. No chance at all. Work for 6 years and then maybe they will go out and leave the country or maybe they will stay. If they stay, they will be part of a subclass. Do you hear me? A subclass in the United States of America. That is what we are trying to avoid in the basic immigration bill.

We emphasize legality: legality in coming in as guest workers, the legal system; legality in terms of employment; you can only employ those who come in where there is not an American for the job.

But there is also opportunity. We respect those individuals who do menial jobs because after the 4 years that they are here, if there is not going to be an American to do the job, they can petition, and if they meet all the other requirements—they learn English, they obey the laws—they can be part of the American dream. Boy, if the Cornyn amendment applied to our immigration laws 150 years ago, no Irish needed apply, no Polish needed apply, no Italians needed apply, no Jews needed apply. But tonight we are saying no Hispanics, primarily, need apply because those are the ones—sure, it is 85 percent, the rest 5 percent or 6 percent Asian, the rest from Central America. But that is what the Senate tonight is confronted with. This undermines the whole purpose of the bill. It brings in illegality again. It says your employer hires this person, they work for 6 years, the employer might have trained him, given him decent skills and, bang, you are either part of the subclass or you are reporting to deport.

Those were wonderful words—report to deport. We will know who those individuals are—Homeland Security. As soon as that time is up, six times, they will get picked up and either pushed over and pushed out of the country or they will be in a permanent underclass.

This is probably a very nice amendment that goes over in some circles. But I tell you, if we are talking about fairness in this country, if you are talking about fairness in the immigration bill, you are talking about fairness in the standards, you are talking about the history and the tradition of this country about welcoming the poor and the unwashed in our country, you are changing that with the Cornyn amendment. Make no mistake about it. You are changing that.

I was around during the Bracero period, and the exploitation of humanity was extraordinary. We are returning to it if we accept the Cornyn amendment. We are saying: Because you do more menial jobs, your life, your worth, your being is not worth as much as somebody who is a highly skilled person. That is a wonderful statement for the United States of America to make.

You know what is going to happen? Those individuals are going to be exploited. If they are women, they are going to be abused. You are going to

have sexual harassment and abuse for them. That is the record. Read the history of the Braceros. I went to the hearings. I attended the hearings all through the Southwest and into California; one of the most shameful periods in American history. We go back to it tonight with this amendment. That is what this amendment is all about. That is what this amendment is all about. It strikes a dagger at the heart of what this legislation is about: strict enforcement, strict accountability, strict legality if people are going to play by the rules and earn their way to be a part of the American dream.

I withhold the reminder of my time.

The PRESIDING OFFICER. The Senator from Nebraska. The chair would say to the Senator from Nebraska, there are 11 minutes for you.

Mr. MCCAIN. Mr. President, how much time on both sides?

The PRESIDING OFFICER. There is 25½ minutes on the Kyl side and 16½ on the opposition.

Mr. MCCAIN. I thank the Chair.

Mr. HAGEL. Mr. President, I would like to address the Kyl-Cornyn amendment tonight. I obviously have listened to some of this debate over the last hour. There is one thing I want to address before I get into what I think are the real critical issues here, not just on this amendment that we are going to be voting on but the bill, the purpose, underlying focus.

I heard the junior Senator from Alabama say that the White House, the President, was supporting the Kyl-Cornyn amendment.

That is not my understanding. As a matter of fact, the senior Senator from Arizona, Mr. MCCAIN, and the senior Senator from Florida, Mr. MARTINEZ, and I just got off the phone with the Chief of Staff of the President of the United States. He did not tell us what I just heard on the floor of the Senate as to the President's support of this amendment. There seems to be some confusion. I would welcome the junior Senator from Alabama or maybe the junior Senator from Texas clarifying that if they have some tangible evidence that the President is supporting this amendment. As I said, we just got off the phone with the Chief of Staff of the President of the United States.

I would even add further that maybe some of my colleagues didn't hear the President of the United States Monday night. I think most of America did. As a matter of fact, there seems to be some significant approval developing out there because the President of the United States articulated very clearly essentially the underlying bill that we are debating and have been debating this week on the Senate floor. Much of that is about the Hagel-Martinez bill. The President laid that out rather clearly.

I don't know if the President of the United States is withdrawing his position that he clearly articulated to the people of the United States, and why he felt the underlying bill was important. He laid out his principles. Those principles are the principles in this underlying bill.

I welcome clarification of where the President is on this. Maybe the White House would like to clarify that as well.

Let us talk about what this is about. This is a difficult issue. It is complicated. It is wide and deep. Yes. Why is that? Because we have essentially deferred this issue for years. We have provided no leadership for the American people. We have not had the courage to deal with it because it is political, because it is emotional, because it cuts across every sector and every line of our society. It is about national security. It is about autonomy, and our future. It is about our society, our schools, our hospitals. That is difficult. It is difficult.

But what the President of the United States did Monday night—and a number of my colleagues have been doing for a long time—was to try to find a resolution.

Mr. President, the American people have a very low opinion of you, of me, of the Congress, of the President—not because I say it. Read the latest polls. I do not know if the President takes any heart in the fact that his job approval numbers are higher than ours.

Why are the American people upset with us? Because we are not doing our job. We talk about: Let's run to the base. Let's run to the political lowest common denominator. That is not governing. That is cheap, transparent politics. That is why we are all down in the twenties and the low thirties. The people of this country have lost confidence in us, and no wonder. We run from every tough issue. We can get into the subsections on page 17 and 500 and 433 of the underlying bill—all imperfect, absolutely, because resolution on this issue will be imperfect, absolutely. But we are trying to do something. We are trying to come to some resolution. We are trying to find some answer for the American people.

What do we do with the 12 million illegal aliens in this country? Do the American people really believe we are going to ship them all out of here, go down to the bus depot? Is that really what they are going to do? Come on. That is not the answer.

Why are we so afraid of this issue? This issue brings out the best in our society and the worst in our society. Why are we afraid to deal with this issue? Do we really want, as Senator MCCAIN, Senator KENNEDY, and others have said, a second-class system in this country? Do we really want that? Do we know what the consequences of that are? I am not sure we do.

This Kyl-Cornyn amendment destroys every fiber of what many of us have worked for, including the President of the United States, to try to find some resolution, some common denominator center point, some consensus of purpose about how we do this. Sure, we can pick apart temporary worker visas. Does that really mean that somebody is going to stay longer or not going to stay longer? All imperfect, absolutely, but do you know what we were doing with a resolution like this, as imperfect as it is? What we are saying to our country, to the world? That we can deal with the tough issue. We, in fact, can put people onto a path of responsible behavior, of legal status, just like America has always stood for—hard work, opportunity, do your best, 12 million illegal immigrants. They are here illegally. Of course, they are. Yes.

This nonsense about amnesty. I said on the floor yesterday—Mr. President, you might remember 1978 when Jimmy Carter gave amnesty, unconditional, no questions asked: Come on back over the border, all of you who ran away from this country and didn't want to serve your country, didn't want to go to Vietnam, didn't want to be a part of our country. Jimmy Carter said in 1978, no questions asked, unconditional, come back. That is amnesty.

What we are talking about is not amnesty. The President said it very clearly Monday night.

We are talking about pathways to legality, responsible processes, opportunities for people to come out of the shadows.

Who are we helping with the current situation that we have today? How are we winning? People stay in the shadows, we don't collect the taxes we need, we don't have the complete involvement in communities that we have always had from our immigrants. There is a national security element to this. There is a law enforcement element to it. There is certainly an economic element to it.

Are we really winning? No, we are losing. We are losing everywhere.

What we are trying to do is find a way to move this forward so that we can start to resolve the issue. I will be the first to say, since I had a little bit to do with helping construct this and I have been at this for many years—I have not been at this as long as Senator KENNEDY has, but I tell you, not many Senators on the floor of this Senate have been at this as long as I have. It doesn't mean that I am right. But I do know a little something about it. I have been down on the border. I have talked to immigrants and have spent personally thousands of hours on this issue, as has my staff. It doesn't mean I am right or that I am smarter. But I know a little something about it. I know a little about this country. I know how this country was built, and I know about the people of this country.

The people of this country want us to resolve the problem. It isn't perfect. That is what we have been doing this week. We have been adding amendments. Some amendments I did not vote for, some I didn't like. But adding to this, crafting something for the future, for our history, for our children, and for our society, that is what it is about.

If this amendment passes tonight, if this goes down, the entire compromise will go down. What will stand in its place? What will stand in its place?

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Arizona, on the proponent's side, 25 minutes 28 seconds; on the opposition side, 7 minutes 22 seconds.

The Senator from Texas.

Mr. CORNYN. Mr. President, I yield myself 5 minutes and then the remaining period of our time to the Senator from Arizona, Mr. KYL.

Mr. President, I respect enormously the contributions that the Senator from Nebraska and the senior Senator from Arizona, Mr. MCCAIN, and Senator KENNEDY have made to try to address this problem that has festered for so long and which cries out for resolution.

I daresay, as chairman of the Immigration, Border Security, and Citizenship Subcommittee of the Senate Judiciary Committee, that I have been trying to make a contribution to that solution, as has Senator KYL. We have held numerous hearings of our subcommittee. He chairs the Terrorism Subcommittee of the Senate Judiciary Committee. Inasmuch as our border presents national security concerns, we have held many committee hearings to try to, first, find out what the problem is, and, second, try to couple with practical solutions. I appreciate the contributions of each and every Senator who has tried to find a solution to this problem.

I recognize this is what some have called a ''fragile compromise''—that if we tinker with it, all of a sudden it implodes and nothing is going to happen.

I personally don't believe that because we have seen a number of amendments offered and accepted during the course of this debate which I believe has done nothing but make this bill stronger and better. I am absolutely committed to seeing passage of a bill out of the Senate and then going to the conference with the members of the House of Representatives. They have some very different views from all of us.

If our colleagues from Nebraska and Massachusetts and the senior Senator from Arizona think that they have found some adversaries on some of these points among those of us here, just wait until they get to the conference with Members of the House. Then they will see that we really have a shared vision for comprehensive immigration reform, and we are going to have to work through all of that.

But I don't believe it is appropriate to say that this amendment which merely tries to bring accuracy and truth in advertising to this temporary worker program, that it, in fact, be made temporary and not permanent that a guest worker program does not mean permanent residence and American citizenship.

I differ with the interpretation of some of our colleagues who say we are trying to replace the normal immigration path with legal permanent residency and citizenship with a temporary worker program. That is not true at all. What we are trying to do is say there is an additional way that people who want to come here and don't want to stay here can come for a while and work in a legal system and then go home, and those who want to become American citizens we ought to provide a reasonable path for them to do so subject to cap, subject to our ability to determine what is in America's best interests.

I know the Senator from Massachusetts talked about distinguishing between immigrant populations based on skills, based on talents and their contribution. I say we have every right as a nation to determine what the attributes are of the immigrants we want to come here and contribute to our country, whether they are a net-plus in terms of their contribution. Let's say have engineer, math, or science skills as opposed to low-skilled workers. I think we have a right to make that distinction.

This is an important amendment. I do not believe it will gut the bill but will advance it.

I yield the remainder of our time to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, this is a simple amendment, a very important amendment. It is not inconsequential. It changes in a major way a specific feature of the underlying bill. But I believe that feature is wrong and needs to be changed. The underlying bill sets up a temporary worker program, but it is not temporary in the sense that the workers who come here and get a temporary worker permit can then apply for permanent legal residency and ultimately citizenship. There is no reason to deny them that under the bill.

As a result, you never have temporary workers. You always have permanent workers, people who are allowed to come here originally as temporary but who can in effect automatically convert their status to permanent legal residency and then citizenship.

The question is, Why is that necessary? The second point is it creates a problem when economic conditions change.

Why would it be necessary? There are many visas in our system today that are temporary. In fact, there are skilled labor visas that are temporary. They can be renewed. They are based upon an economic need. When there is a job here that is going unfulfilled by an American worker, we have the ability to issue visas to foreigners who can then come here and work for a temporary period of time. Then they return home. As long as there are jobs here, those visas ordinarily continue, but when the work is not here, the visas stop. That is a good thing.

I support a temporary worker program under this legislation. However, it should be temporary. That is to say, the program may be permanent, but the visas under it are temporary, for a limit period of time. They may be 8 or 10 months out of the year; they may be 1 or 2 or 3 years in duration. In my view, they should be renewable. There are a lot of different ways to construct it. The bottom line is, when you come in because there is a job available for you as a temporary worker, that same job or another job may not be available to you 5 years later. There may be no work for you 5 years later.

Let me give an illustration I have used before. In my home State of Arizona, we are in a construction boom period. We cannot get enough people to help build houses. There are jobs that go begging, and therefore we have to rely on a large supply of foreign labor to help. It is undoubtedly the case that many of the foreign laborers are illegal. They are not documented in the appropriate way. However, they are workers who are performing a valuable function in our economy today.

Here is the question. I have been in Arizona now for almost 50 years. We have seen lots of upturns and lots of downturns. What happens when the downturn comes, when we are not building as many houses or office buildings, there aren't many jobs available, and Americans begin to find that jobs are not available for them, they are unemployed, and there is just not the work for people? What happens if you have a temporary visa issued and say that visa is for a period of 2 years? That visa expires, and there is no more job available. In fact, there are Americans looking for work. That foreign worker goes home. When another job opens up, when the construction industry gets going again and there are opportunities for foreign labor because Americans can no longer provide all of the labor required, the visas would begin being issued again, and that individual could come back and begin working again. Perhaps there is some other industry in which the individual can work. In any event, the visa for that job would, after a year or after 2 years, expire, and if there is not a job available, you do not issue a new visa.

The problem in the underlying bill is that once you get your temporary visa, you can apply or your employer can apply for you to turn that automatically into a permanent legal residency status or a green card status. And we know from that you can apply for citizenship. When you have a green card, it does not matter whether there is a job here for you, it does not matter whether we are in the middle of a recession and Americans are looking for work; you have a legal right to be in the United States and no one can kick you out. That is what legal permanent residency means.

So there is no reason in a temporary worker program to be able to convert the temporary visa or permit into a

legal permanent residency. In fact, there can be great harm done if the economy changes, the economic situations change, jobs are no longer available, and instead of having those visas expire, you have converted the individuals into people who have a permanent right to stay in the United States.

This amendment does absolutely nothing to change the existing law with respect to how you can acquire a green card in the United States or convert other legal status into benefits under our immigration laws. You can still apply for a green card. You can still apply for other ways of remaining in the United States for differing periods of time. We do not change any of that. If you are somebody who wants a green card, there is still a way to get a green card. In fact, under different versions of the bill, the number of green cards is increased so that there are greater opportunities for green cards. The bottom line is, you do not have to convert the temporary worker program into a permanent worker program.

There are economic studies which back up what I am saying. For the sake of time, I will not get into the details of some of the studies. Among other things, in previous times, going back to the year 2000, for example, in the skilled visa era where we issued large numbers of visas, there were economic studies that suggested we could have a continuing need for those visas on into the future for some number of years, and we were issuing those visas at a very high rate at that time. Little did we know that the economic conditions were going to change very rapidly, and very quickly those high-skilled jobs fell off. Yet we had issued visas for people to come into the country at a time when, in fact, we were starting to go into a recession and, in fact, those jobs were not available for those people.

If they had been able to permanently reside in the United States after they got their temporary visas, it wouldn't matter whether there were jobs available for them; they would be here. It would be legal. There would be no way to remove them. And of course, with green cards, they would be entitled to benefits which would flow from that status. The United States is going to have to pay a lot of unemployment compensation if we now have two bodies of workers, neither one of which can get a job or both of which are competing with each other, American workers and foreign workers.

Whether you are talking about purely the future flow workers under the temporary worker program which many in this Senate want to create, although we differ somewhat on the details of it, I would like to create a temporary worker program because we think they may be needed in the future, or you are talking about the people in the underlying bill who have been here 5 years or less and are required to go into the temporary worker program—those are the two groups of people we are talking about—our view is they should be temporary workers, subject to the economic conditions of the United States, not replacing American workers but fulfilling a work requirement when there aren't enough Americans to do the job. It is basically the same thing the President said in his speech earlier this week when he said that the temporary workers should have an opportunity to be matched with a willing employer when there are not Americans who can do the job. When the job is finished, they can return home. I am paraphrasing, but I think those are the words of the President.

The concept the President has articulated is the same concept that we believe is appropriate. It is the basis of the temporary worker bill in the Kyl-Cornyn legislation. We believe it is appropriate for that same concept to be embodied in this legislation.

Might I inquire how much time remains on both sides?

The PRESIDING OFFICER. Twelve minutes to the Senator from Arizona and 7 minutes to the Senator from Massachusetts.

Mr. KYL. I will give someone on the other side an opportunity to speak.

Mr. KENNEDY. Mr. President, I yield the remaining time to the Senator from Idaho.

Mr. CRAIG. Mr. President, I approach this part of the debate on a critical piece of legislation with due caution. I say that because of my respect for my colleagues from Arizona and from the State of Texas and the work they have done as members of the Judiciary Committee and the due diligence they have always put into this critical issue.

I believe there is a component missing from this debate that speaks to the need for this country to be in a continual and progressive mode of training and shaping a permanent stable workforce.

Unlike all of the demographic studies of the last decade or two, there is something upon us as a nation that we have never experienced before. I am a 1945 baby. I am 60 years old. I am just 1 year ahead of a great class of people—77 million Americans—called baby boomers. They, similar to myself, because of their age, will soon be leaving the American workforce. There are demographic studies out there today which suggest that if we are to sustain a 3.5- to 4- percent growth economy, we have to have about 500,000 new, non-U.S. citizen workers in our workforce on an annual basis.

Yes, we will have ups and downs in the economy. We always have. But in the last downtrend we had, in the final days of the Clinton administration and the early days of the Bush administration, it was about 3.5 million in the downturn before it came back. In the 5.2 million jobs created since that time, one-third of them have been claimed by foreign nationals. It speaks to an economic growth pattern that now requires for the first time in our history a sustained, incoming, trainable, and permanent workforce of the kind that the American citizen, by birthrate, is not providing.

If we deny that as a country, if we create instability as a country, we deny ourselves the ability to continue to grow. And if we do not grow, this Senate is going to be faced with public policy decisions we are not yet brave enough to make: Social Security reform, Medicare reform, Medicaid reform—all of those things which, without a sustained economic growth cycle, become phenomenally expensive and maybe unaffordable.

That does not sound like part of the debate that would tie itself to the Kyl-Cornyn amendment, but I suggest it does. I suggest it behooves this country to create a legal transparent immigration system with a secured border that allows America's employers to train and sustain a permanent workforce, a constantly growing permanent workforce, because the American, by birth, is no longer going to do that. It is the nature of our country. It is the maturity of our country. It is, in fact, the wealth of our country. That is, in part, what all of this debate is about.

Americans said: Get your borders secured and get the illegal flow under control; identify them, control them. That is what we are trying to do.

I do not believe that a constant temporary environment is a stable environment. For those who work for long periods of time and get a green card, does it mean they will become a citizen? No, it does not. Does it mean they are eligible? In this bill, it says: Yes, if you go to the end of the line and apply, and that is 6 years, another 5 years, that is 11 years, and it goes on and on.

I don't believe this is an appropriate amendment to this bill. There is enough temporariness to the bill itself by the nature of H–2A's, H–2B's and H–2C's, and that is written in. There has to be some stability of permanency. That is critical to the American economic scene and to the stability of America's workforce. And even in that, we will have the down cycles that the Senator from Arizona talks about. I am not sure at that point, when trained workers are at hand and have supplied the American economy with its growth, that you say: The lights are out, leave the country.

Somehow, we have to balance that out. That is what we are attempting to do. That is why tonight I ask my colleagues to oppose the Kyl-Cornyn amendment.

Mr. LEAHY. Mr. President, this is yet another amendment designed to undermine the well-balanced programs in this bill. The Comprehensive Immigration Reform Act is the product of hard-fought compromise and it reflects a balance between the needs of American business and American workers. Strong coalitions representing both of those sectors of our society support

this bill and endorse the temporary worker program contained in it.

One critical provision in the bill creates an opportunity for temporary workers who have followed the rules and worked hard while in the U.S. to seek legal permanent status after a period of time. An employer who has come to rely upon an immigrant guest worker and wants to keep that immigrant on staff can file a petition after 1 year for the immigrant to get in line for a green card. The guest worker does not receive any preferential treatment in this program. He must get in the back of the line and meet all the other requirements to earn citizenship, a process that will likely take more than a decade to complete.

The Kyl amendment strips out this provision, taking away a valuable option for both the immigrants and their employers.

When a similar amendment was debated in the Judiciary Committee—and defeated, as I hope this one will be—the sponsor stated his belief that lower skilled immigrant temporary workers should have to leave the U.S. after a few years. High-skilled workers are not treated in this manner. H–1B visas holders have the opportunity to apply for green cards under current law. But some sponsors of this bill are willing to treat guest workers as second class.

This attitude is deeply disturbing. Lower skilled workers are essential to our economy and deserve to be treated with respect and dignity. Many of our great American leaders, scientists, artists, and teachers have immigrant roots of very modest means. Throughout this debate we have heard many Senators tell their personal stories. Almost all of these reflected early years of hardship and struggle while immigrant parents worked hard under very tough circumstances so that their children could have greater opportunities.

Not only is that attitude offensive to me, but it makes little business sense. Employers of immigrants in the sectors most likely to use these temporary workers, such as hotels and tourism, food service, health care, and meat packing, support the program in the bill. The National Restaurant Association has stated that the restaurant industry is expected to create almost 2 million new jobs by 2016. It expects this growth to outpace available labor. For reasons such as these, the business community, including the U.S. Chamber of Commerce and members of the Essential Worker Coalition support the bill, and strongly oppose this amendment.

Striking the path to citizenship measures in the guest worker program is also the wrong decision for national security reasons. One of the driving forces behind enacting a comprehensive reform program is to ensure that we know who is living and working within our borders. If there is no path available to those who seek it and can meet the tough requirements in the bill, then some guest workers will overstay their visas and continue to live and work in the U.S. out of status. That would put us back in the position we are in right now—the position that we all agree must be reformed.

In fact, the reason that guest worker programs have failed in the past is precisely because they did not contain an option for guest workers to apply to remain in the U.S. legally, if that is what they hope to do. Many guest workers will return home, but not all. We should ensure that the programs we define in law do not send immigrants back into the shadows.

Finally, I express my disappointment in hearing about the White House support of the Kyl amendment. I find it troubling that the White House would choose this amendment to fight so hard to pass. A tremendous amount of effort has been expended by many of us in the Senate, including a handful of determined Republicans, to preserve the core provisions of the bill. These committed supporters of the bill view the Kyl amendment as one that strikes to the core of the compromises contained in it. We would have benefited from the White House's involvement earlier in the process in a helpful way, but its choice to fight against comprehensive reform today is a grave disappointment.

I yield the floor.

The PRESIDING OFFICER. There is 2 minutes remaining on the opposition side and 12 minutes on the proponents'.

Mr. KENNEDY. We are prepared to yield back our time if the other side wants to yield back.

Mr. KYL. Mr. President, let me take a couple of minutes to respond to my friend, the Senator from the State of Idaho.

He projects that 500,000 workers are going to be needed every year. That sounds a bit high, but there is a way to resolve the question. If we have a temporary worker program that works well and brings in all of the temporary employment needed to fill your labor needs, then whatever that number is can be satisfied with the temporary worker program. But if the Senator is wrong and we do not need that many people but we have allowed that many people to come into this country and remain here permanently, then we have a big problem because we also have to consider the American worker and the job of the American worker.

The Senator said we need stability in our workforce. Indeed, that is a good thing. But I submit we need stability for the American worker. The American worker needs to know his job is secure. In all of the industries we are talking about, while there is a significant need for foreign labor, there are far more American workers working in those industries than foreign workers.

The bottom line is, there are American workers who will do these jobs. The only exception of any significance is in certain specters of agriculture. And agriculture, in many respects, is a very different animal.

The reality is, whether you are talking about the hospitality industry with people making beds and washing the dishes or talking about the construction industry or landscaping, there are millions of Americans doing those jobs. And we want to know that those jobs are there for those American citizens when the economy is not as strong as it is now.

So in periods of decreasing jobs and increasing unemployment, we want to be able to ensure that American workers can remain employed. With a temporary foreign worker program, we can ensure that because the foreign workers are brought in, to the extent they are needed, when they are needed, in each of these industries. But if they can convert to permanent status automatically, which is what this legislation would allow, they cannot be removed. They are here. They have legal permanent residency and eventually can acquire citizenship, if they desire.

So whether there is a job for them here or not, they are here. The studies show they compete with American workers very well in the low-skilled job categories by usually taking less money than Americans, with the result that many times Americans will be unemployed, for which we will be responsible for paying unemployment compensation and other benefits, and yet the foreign worker might have the job. So instead of a situation in which there is not an American to do the job, we will have a situation in which there is a job, but it is held by a foreign worker rather than an American worker.

Why do we need to take the chance, is my question. We all agree with the concept of a temporary worker program for skilled labor. In skilled labor, these visas expire. For student visas, they expire. For tourist visas, they expire. They can be renewed in certain situations. In the different categories of temporary workers that we have in the law today, they are all for a specific period of time, and then they expire.

What is the matter with that same principle being applied to low-skilled workers? In fact, the experts all agree—we had testimony before our committee—that with respect to low-skilled workers, you are more likely to have people who are undereducated or less well educated and likely to work in the lower skill occupations. No surprise there. So if you are going to end up in a situation in which you have extra workers who are here, would you rather have them be of the high-skilled variety or the low-skilled variety, unable to be as flexible in the job market as somebody with better education and skills?

Our immigration law has always been very leery of allowing large numbers of undereducated and low-skilled workers into the country because they represent a potential expense for this country in the event that the employment that was promised to them does not materialize or goes away.

So there is no need to take a chance on this. If, in fact, my colleague is correct that we will need more laborers, we can get them under a temporary program where permits can continue to be expanded. We can expand the number or they can be renewed.

In any event, there is always the opportunity for people to acquire green cards. In fact, under I think all of the bills that are pending, the number of green card slots is increased. So there is also an opportunity for that.

But in case they are wrong, and jobs evaporate over time, and even Americans cannot find work, why would we want to be granting these foreign residents who are here temporarily the right to be here permanently? It seems to me it is unnecessary. It is potentially devastating, devastating to American workers, and we ought to change it.

As a result, I hope my colleagues will support this amendment, which could go a long way toward improving this bill, creating a true temporary worker program rather than one which automatically converts to legal permanent residency.

The PRESIDING OFFICER. Who yields time?

There is 5½ minutes on the proponents' side and 2 minutes on the opponents' side.

Mr. KYL. Mr. President, the Senator from Massachusetts is willing to yield back his time. And if there is no one else on this side desiring to speak, I will be happy to yield back our time. I hope our colleagues will support the amendment. Thank you.

Mr. MCCAIN. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will please call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from South Carolina (Mr. GRAHAM), the Senator from Mississippi (Mr. LOTT), the Senator from Florida (Mr. MARTINEZ), and the Senator from Alabama (Mr. SHELBY).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''nay'' and the Senator from Florida (Mr. MARTINEZ) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

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

The result was announced—yeas 58, nays 35, as follows:

[Rollcall Vote No. 135 Leg.]

YEAS—58

Akaka	Feingold	Murkowski
Alexander	Feinstein	Murray
Baucus	Hagel	Nelson (FL)
Bayh	Harkin	Obama
Biden	Inouye	Pryor
Bingaman	Jeffords	Reed
Brownback	Johnson	Reid
Cantwell	Kennedy	Salazar
Carper	Kerry	Sarbanes
Chafee	Kohl	Schumer
Clinton	Landrieu	Smith
Cochran	Lautenberg	Snowe
Coleman	Leahy	Specter
Collins	Levin	Stabenow
Conrad	Lieberman	Stevens
Craig	Lincoln	Voinovich
Dayton	Lugar	Warner
DeWine	McCain	Wyden
Dodd	Menendez	
Durbin	Mikulski	

NAYS—35

Allard	Dole	Kyl
Allen	Domenici	McConnell
Bennett	Dorgan	Nelson (NE)
Bond	Ensign	Roberts
Burns	Enzi	Santorum
Burr	Frist	Sessions
Byrd	Grassley	Sununu
Chambliss	Gregg	Talent
Coburn	Hatch	Thomas
Cornyn	Hutchison	Thune
Crapo	Inhofe	Vitter
DeMint	Isakson	

NOT VOTING—7

Boxer	Lott	Shelby
Bunning	Martinez	
Graham	Rockefeller	

The motion was agreed to.

Mr. DURBIN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, we have made good progress on the bill but, candidly, not enough progress. We have about two-thirds of the Republican list included, and I think that much or perhaps even more of the Democrats' list. We are not sure there because we just got the list. We have been trying hard to schedule two votes for tomorrow to try to get the Senate back on a schedule where we work on Fridays. It would take about a half hour to go through the chronology of about eight different amendments that we have tried to structure but all of which have collapsed. Managing a bill has a lot of pitfalls, where we have absences for dinners on both sides, where we have adjournments for signing ceremonies, where we have recesses for social events at the White House and other places. In one situation, we had an arrangement for a half hour, equally divided, and to have a vote tomorrow and that was changed to we cannot do it tomorrow to we can do it tomorrow, but we want 2 hours, to we cannot do it ever.

I think there would be a 100-to-nothing vote on the point that we don't have enough discipline here to move ahead with our work. We have tried to get this bill complete. So after telling the majority leader what the situation was, it was decided that it would be fruitless to have two 99-to-0 votes which are meaningless when they could be accepted. It would be ludicrous, notwithstanding the fact that we all deserve to be voting tomorrow on ludicrous matters. But the majority leader decided we will not bring in people to have meaningless votes. It is our hope that this will spur us to some meaningful votes early on.

The Chambliss amendment will be laid down tonight, and there will be 30 minutes of debate on it before the vote at 5:30 on Monday. We will have a vote on Senator FEINSTEIN's amendment, where she will have substantial time on Monday afternoon. We will see if we can construct a vote for Senator ENSIGN on what he is trying to work out, which has quite a number of concerns. Senator BOND has an amendment that we may be able to take.

The remaining business tonight is to take the amendment of the Senator from Florida by a voice vote, which will, I believe, conclude business on this bill for the evening and the week.

Mr. FRIST. Mr. President, in the big picture, let me say at the outset that things are going very well. It is 9:30 on a Thursday night. We are making decisions about tomorrow and Monday. We have had a very good week. I thank the Democratic leader and both managers for making great progress over the course of the week.

It is very frustrating, from a leadership standpoint, for the Democratic leader and myself, where we have to truncate and essentially stop tonight when we could have had a productive day tomorrow morning. Two reasons. The managers have done such a good job addressing such a large number of amendments—more than I had anticipated—which is good, which means the amendments that remain, they want a lot of people around to be able to vote on those. In part, I am making an excuse because I told everybody we are going to vote tomorrow morning. Given where we are, it is in our best interest to complete debate tonight, and the votes we would have had tomorrow we will have Monday. There will be at least two votes starting at 5:30 on Monday.

We do have to recognize in this body that we cannot stop work on a Thursday afternoon or evening. We have to be able to use Fridays, especially over the remainder of the session. We don't have that many days. Even between now and next week, we have this bill—and that is why we are working as hard as we can—and we have the Kavanaugh nomination, which is out there and ready to bring to the floor. We have a supplemental spending bill which funds our troops overseas. I talked to three different generals today and the Secretary of Defense, all of whom say we have to act on that supplemental. So we have to have Senators here. We have to have them participating.

Again, this is not the fault of the managers. They have done a superb job. It means that tomorrow we will likely be in session, but we will not

have rollcall votes. We will be voting Monday afternoon at 5:30.

Mr. REID. Mr. President, I will make a brief comment.

Mr. President, we started out on this with the decision that we were going to try to do some legislation on this very difficult bill. This is from our perspective. We wanted to move through this an amendment at a time. I think it worked out well. We are at a point now, I think, as we have done earlier in the day, that we don't have to live by that. We have proven that we can legislate. We can always go back and do an amendment at a time if we have to. We are going to take an amendment at a time on a case-by-case basis, and we have no objection tonight—or very likely in the near future—to being able to set amendments aside and move on. I think we have been able to accomplish a great deal in this short week.

This bill is not finished yet, so there is no reason to give high fives and say work well done. There is still a lot of real hard work to do. I have submitted at the request of the manager, the distinguished chairman of the committee, a list of Democratic amendments that we have hotlined—a lot of them. I have indicated to the managers that I am confident that most of them will not have to be offered. You asked for that and you have gotten that.

I think that this coming week we all have to keep our heads down and push hard. There is a lot of work to do, and we have very significant amendments. I applaud and commend Senator SPECTER and Senator KENNEDY for the way I see the Senate working. I think we have done good work. We have had some very timely amendments and difficult amendments. We have had winners and losers. That is what legislating is all about. Some of the compromise takes place not in the back room but on the Senate floor when we vote.

Mr. KENNEDY. Mr. President, I wish to thank the leaders and my colleague, Senator SPECTER. I think this has been a very good week in terms of talking and debating. I think we have seen some real debates on the floor of the Senate, some which we have not seen for a long period of time. I think the Members know a great deal more about what is in this legislation. They may like it or not, but I think the debate will be even better next week. I think we have made good progress. Sometimes it is useful to take a little time to go over these amendments, as someone who has been here for 12 hours. Sometimes we can have a better debate and discussion if we can go over them and know where we are going to be on Monday and then what the priorities are. The Republicans have had, as I remember, 20 sort of key issues. We have gotten through a fair amount of them. There is still a good group of those. I think they have laid out the issues, and I think we can use this time and be better prepared and have a better debate and a better outcome next week. I thank the leaders for all they have done, and I thank the Members on both sides.

Mr. SPECTER. Mr. President, we will now go to the Nelson amendment.

The PRESIDING OFFICER. Under the previous order, the Senator from Florida is recognized.

Mr. DODD. Mr. President, if my colleague would yield, we have an amendment that I think has been agreed to, and I am prepared to take 5 or 10 minutes tonight and get through it. I will leave it up to the leaders how they want to handle it.

Mr. SPECTER. Mr. President, let's take the Nelson amendment. There is always manana.

Mr. ENSIGN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, my understanding of the earlier unanimous consent agreement was that I would be recognized followed by Senator NELSON.

The PRESIDING OFFICER. The Senator is correct. The unanimous consent agreement recognized the Senator from Nevada for 10 minutes prior to Senator NELSON. The Senator from Nevada is recognized.

AMENDMENT NO. 4076, AS MODIFIED

Mr. ENSIGN. Mr. President, we have spent a great deal of time talking about how to proceed with tonight's debate. We have been trying to work out whether we would have a vote on my amendment No. 4076.

I send a modified version of my amendment to the desk which has been seen by both Senator BYRD and Senator GREGG who had previously expressed problems with the text of the amendment. The modification strikes a particular paragraph which had dealt with the questions of which agency would fund the program if the cost exceeded a certain dollar amount. I would ask for immediate consideration of the modified amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN], for himself and Mr. GRAHAM, proposes an amendment numbered 4076, as modified.

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

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

The amendment (No. 4076), as modified, is as follows:

(To authorize the use of the National Guard to secure the southern border of the United States)

At the end of subtitle C of title I, add the following:

SEC. 133. TEMPORARY NATIONAL GUARD SUPPORT FOR SECURING THE SOUTHERN LAND BORDER OF THE UNITED STATES.

(a) AUTHORITY TO PROVIDE ASSISTANCE.—(1) With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform annual training duty under section 502(a) of title 32, United States Code, to carry out in any State along the southern land border of the United States the activities authorized in subsection (b), for the purpose of securing such border. Such duty shall not exceed 21 days in any year.

(2) With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform duty under section 502(f) of title 32, United States Code, to provide command, control, and continuity of support for units or personnel performing annual training duty under paragraph (1).

(b) AUTHORIZED ACTIVITIES.—The activities authorized by this subsection are any of the following:

(1) Ground reconnaissance activities;
(2) Airborne reconnaissance activities;
(3) Logistical support;
(4) Provision of translation services and training;
(5) Administrative support services;
(6) Technical training services;
(7) Emergency medical assistance and services;
(8) Communications services;
(9) Rescue of aliens in peril;
(10) Construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States; and
(11) Ground and air transportation.

(c) COOPERATIVE AGREEMENTS.—Units and personnel of the National Guard of a State may perform activities in another State under subsection (a) only pursuant to the terms of an emergency management assistance compact or other cooperative arrangement entered into between Governors of such States for purposes of this section, and only with the approval of the Secretary of Defense.

(d) COORDINATION OF ASSISTANCE.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the performance of activities under this section by units and personnel of the National Guard.

(e) ANNUAL TRAINING.—Annual training duty performed by members of the National Guard under subsection (a) shall be appropriate for the units and individual members concerned, taking into account the types of units and military occupational specialties of individual members performing such duty.

(f) DEFINITIONS.—In this section:

(1) The term 'Governor of a State' means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(2) The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam and the Virgin Islands.

(3) The term 'State along the southern border of the United States' means each of the following:

(A) The State of Arizona.
(B) The State of California.
(C) The State of New Mexico.
(D) The State of Texas.

(g) DURATION OF AUTHORITY.—The authority of this section shall expire on January 1, 2009.

(h) PROHIBITION ON DIRECT PARTICIPATION IN LAW ENFORCEMENT.—Activities carried out under the authority of this section shall not include the direct participation of a member of the National Guard in a search, seizure, arrest, or similar activity.

Mr. ENSIGN. Mr. President, I will speak just briefly, because it is late. I am not going to take up a lot of time, but this is a very important amendment. The substance of this amendment is something that I have been

working on for over a month. During the last Congressional recess, I went down to Yuma, AZ, where the President was today. I saw firsthand what an extraordinary job our Border Patrol is doing. I also observed firsthand how undermanned the agency is and how overwhelmed they are with the numbers that are coming across our southern border.

When I was at the border, I asked a question of the Border Patrol personnel. That question was: Could you use more National Guardsmen at the border, beyond those in the Counter Drug Program, to help you with your mission of protecting and securing our borders? The overwhelming answer was that they would absolutely welcome our National Guard in larger numbers down on the border.

The Border Patrol was very clear. It would create problems if the National Guard were to come down to the border to carry on law enforcement duties like arresting, detaining, and questioning detainees. Each of those things are part of the speciality role that the Border Patrol should do. They are, after all, highly trained law enforcement personnel while the National Guard is trained in other areas, areas for which the Border Patrol requires support.

In his Monday night address, the President proposed using up to 6,000 National Guardsmen on the border this year. Their presence would help multiply the force of the Border Patrol that is currently on the border. What do I mean by that? In many instances, the Border Patrol is taken away from their normal duties when they have to, for instance, perform a medical rescue of somebody who has gone into distress. This is actually a common occurrence in the southwest desert. Immigrants crossing the desert become dehydrated and nearly die. Some of the Border Patrol surveillance cameras might pick it up, or the alien pulls a distress beacon to signal they need help, and the Border Patrol actually goes to rescue them. This is something the National Guard is very well trained to do. When they are on the border, the National Guard can fulfill that mission which will free up the Border Patrol to perform some of the other functions of their duties, like arrest and detention.

When the National Guard trains today, when personnel are performing their 2 to 3 weeks of training, they are building roads, building fences, and building bridges. They do all of these things as part of their training. Except most of the time when they are training, after they build something they are required to tear it down. It is a training exercise. What this amendment envisions is that what they will build, fences, barriers, and roadways, will all be essential infrastructure needed to secure the border. The National Guard can use training time to build roads down on the border, except this time they won't have to tear them down. What they build will actually be permanent structures.

We had a hearing in the Senate Armed Services Committee yesterday. The National Guard told the committee that they are very excited about this mission, about what they will be accomplishing. Instead of building a road and tearing it up with a tractor, they will actually be building a road that is going to help secure the United States of America. I have received e-mails from National Guardsmen in my State that say they believe in the objective, they believe in the mission, and they are very excited about it.

I want to be clear. Some people have erroneously reported in the media that the National Guard would be on the border and would be arresting, they would be shooting at people, that they would be militarizing the border and performing law enforcement activities. That is not true. Let me tell you exactly what we have put in this amendment that states exactly what the National Guard will be authorized to do. They will be authorized to conduct ground reconnaissance activities, airborne reconnaissance activities, logistical support, provision of translation services in training, administrative support services, technical training services, emergency medical assistance and services, communications services, rescue of aliens in peril, and construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States. They will also cooperate with ground and air transportation.

We are very clear on what their mission is going to be down there. I appreciate the work of Senator CRAIG on this issue. I see him here on the Senate floor. He has been one of the biggest proponents of using the National Guard down on the border, and I appreciate the driving force that he has been in the United States Senate to bring everybody's attention to this issue.

Mr. CRAIG. Mr. President, will the Senator yield?

Mr. ENSIGN. I would be happy to yield.

Mr. CRAIG. Mr. President, I thank the Senator for bringing this issue before the Senate. Yesterday the Senator from Nevada and I were in attendance at a hearing of the Armed Services Committee chaired by Senator WARNER, with the Secretary of the Army, the Chief of the National Guard, the lieutenant general of the Army, and the Chief of the Border Patrol. What we saw was the coming together of a complete unit, a complete unit to secure our border and build an orderly process on the border.

What the Senator from Nevada speaks to tonight is a reality that is very doable, and it is done in the normal activity of the summer training of our Guard. The Senator knows that we are not putting Guardsmen out on the front lines. They will facilitate those of the Border Patrol who are the frontline officers in this defensive securing mechanism that we will call the southwestern border of our country.

So I thank the Senator for bringing this to the floor. It is critical and important. It fits well into what our President has proposed, responsibly so, for our country.

Mr. DURBIN. Would the Senator yield for a question?

Mr. ENSIGN. Mr. President, I would ask unanimous consent for an additional 2 minutes so that I will be able to yield for a question.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I would like to ask the Senator a question because perhaps he has thought this through and he could help me understand it. I support the President's effort to make the border stronger and safer. What I understood him to say was at least 6,000 National Guardsmen at any one time, rotated every 2 or 3 weeks to accommodate what was their normal training schedule. By my calculation, that means that in the first year over 100,000 National Guardsmen from around the United States will be sent to the border. And in the second year, when half as many are needed, another, say, 50,000. So out of the 400,000 National Guardsmen nationwide—I hope my figure is correct, although I don't know if it is—but is it your understanding that 100,000 to 150,000 will end up on border duty during that period?

Mr. ENSIGN. Mr. President, I thank the Senator for his question. I was going to address his very point. The way that the Border Patrol, the National Guard, and the administration have developed their plan envisions that about one-third of the 6,000 Guardsmen would actually be on the border for longer than the 21 day maximum. My amendment mirrors their plan. It sets forth that two-thirds of the overall personnel will perform their required 21 days of annual training down on the border. That time is time that the Guardsmen committed to when they signed up. The amendment also says that about a third of the force, consisting of command personnel and guardsmen who are necessary for integration purposes, will be down there full time. They will be there full time to ensure some continuity. The personnel who are rotating in will need to have leadership that can organize and who have some institutional memory. The full time personnel can say to the rotating personnel: you need to go here, this is what you will do, and we need you to work with this other group.

During our hearing yesterday—this very issue came up—according to the National Guard the numbers that the President has committed will work. They have said that this mission can be done, that there is absolutely no problem for them to operate in this fashion, considering they will be going through the training anyway. Personnel will have to go through the 2 to 3 weeks of training and this set up will

actually improve the training they are getting.

Mr. DURBIN. Will the Senator yield for another question?

Mr. ENSIGN. I am happy to.

Mr. DURBIN. I would like to address this question through the Chair. About 75 percent of the Illinois National Guard units have been activated to serve in Iraq or Afghanistan, and some have been on more than one tour of duty. During the course of that, they have left behind in Iraq and Afghanistan a lot of wornout equipment, damaged equipment. Currently our National Guard, in some areas of supplies, like certain trucks, is down to 7 percent of what they need, and nationwide we have been told the National Guard stock of supply and equipment has been depleted to the level of 34 percent of what they need.

Can the Senator from Nevada tell me whether our commitment of the National Guard to the border will also be a commitment to replenish the equipment they will need to serve effectively there and return home and do their job?

Mr. ENSIGN. Mr. President, to address that question, we actually talked about that in yesterday's hearing. It was one of the questions that was asked. What the National Guard is going to do, with the Department of Defense, is take the equipment down there, and it will stay down there. If the Illinois National Guard comes down, they won't come down with their own equipment; they will use the equipment that is there. So it will stay there for the 2 years, for the duration, what they need. So that is going to be paid for separately. It is part of the $1.9 billion the administration had requested, so it does not come out of the normal National Guard budget, it doesn't come out of what we are trying to replenish of the National Guard's that are coming back from Iraq and Afghanistan.

Those are excellent questions. We have addressed those. We have addressed those as to how the administration policy is going to happen.

This is the last point I will make. This is a critical stopgap, but it is only a stopgap because we can only train about 1,000 Border Patrol agents a year. It was my amendment actually to ramp us up to 10,000 more Border Patrol agents in the intelligence bill last year. We can't do even the 2,000 that bill envisioned, and we certainly can't get to the 10,000 right way. This bill before us needs this if you are going to have the temporary guest worker program. This National Guard is the temporary measure that we need to fill in so we actually secure the borders. 1I appreciate very much the indulgence of the manager of the bill. We look forward to further debate, if people have that. I really appreciate your taking the time to allow us to fit in tonight.

The PRESIDING OFFICER. Under the previous order, the Senator from Florida is recognized for 10 minutes.

AMENDMENT NO. 3998, AS MODIFIED

Mr. NELSON of Florida. Mr. President, since I seem to be the only thing in between now and the Senate adjourning, I will not take the 10 minutes and will make it very short at the request of the chairman.

I call up amendment No. 3998, with a modification which is at the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Florida [Mr. NELSON] proposes an amendment numbered 3998, as modified.

Mr. NELSON of Florida. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment (No. 3998), as modified, is as follows:

On page 178, line 24, before ''20 detention facilities'', insert ''at least''.

On page 179, line 1, strike ''10,000'' and insert ''20,000''.

On page 179, line 4, after ''United States'', insert ''subject to available appropriations.''

Beginning on page 179, strike lines 5 through 23 and insert the following:

(b) CONSTRUCTION OF OR ACQUISITION OF DETENTION FACILITIES.—

(1) REQUIREMENT TO CONSTRUCT OR ACQUIRE.—The Secretary shall construct or acquire additional detention facilities in the United States to accommodate the detention beds required by section 5204(a) of the Intelligence Reform and Terrorism Protection Act of 2004, as amended by subsection (a), subject to available appropriations.

(2) USE OF ALTERNATE DETENTION FACILITIES.—Subject to the availability of appropriations, the Secretary shall fully utilize all possible options to cost effectively increase available detention capacities, and shall utilize detention facilities that are owned and operated by the Federal Government if the use of such facilities is cost effective.

(3) USE OF INSTALLATIONS UNDER BASE CLOSURE LAWS.—In acquiring additional detention facilities under this subsection, the Secretary shall consider the transfer of appropriate portions of military installations approved for closure or realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) for use in accordance with subsection (a).

(4) DETERMINATION OF LOCATION.—The location of any detention facility constructed or acquired in accordance with this subsection shall be determined, with the concurrence of the Secretary, by the senior officer responsible for Detention and Removal Operations in the Department. The detention facilities shall be located so as to enable the officers and employees of the Department to increase to the maximum extent practicable the annual rate and level of removals of illegal aliens from the United States.

(c) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, in consultation with the heads of other appropriate Federal agencies, the Secretary shall submit to Congress an assessment of the additional detention facilities and bed space needed to detain unlawful aliens apprehended at the United States ports of entry or along the international land borders of the United States.

Mr. NELSON of Florida. Mr. President, this amendment addresses the problem that, when our Border Patrol apprehends illegal aliens, they have no place in which to process them, no detention beds, so 90 percent in some parts of this country are released. Guess what. They never appear for their formal appearance and they melt into the economy and add to the existing problem.

The chairman has addressed this already. Whereas the current law adds 8,000 of these detention beds per year, and that is on top of a base of only 20,000 detention beds nationwide—the chairman's bill adds a one-time additional 10,000 new beds over and above the 8,000 beds per year. This amendment will double that by adding a one-time 20,000 new beds above the 8,000 beds per year. It is very simple. That is it.

I thank the chairman of the committee for being willing to accept this amendment.

Mr. SPECTER. Mr. President, it is an excellent amendment which is accepted.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 3998), as modified, was agreed to.

Mr. NELSON of Florida. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 4009

Mr. CHAMBLISS. I call up amendment No. 4009.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Georgia [Mr. CHAMBLISS], for himself, Mr. ISAKSON, Mr. ALEXANDER, and Mr. BOND, proposes an amendment numbered 4009.

Mr. CHAMBLISS. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the wage requirements for employers seeking to hire H–2A and blue card agricultural workers)

On page 452, strike line 1 and all that follows through page 459, line 10, and insert the following:

''(A) IN GENERAL.—An employer applying to hire H–2A workers under section 218(a), or utilizing alien workers under blue card program established under section 613 of the Comprehensive Immigration Reform Act of 2006, shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for alien workers, not less than (and is not required to pay more than) the greater of—

''(i) the prevailing wage in the occupation in the area of intended employment; or

''(ii) the applicable State minimum wage.

''(B) PREVAILING WAGE DEFINED.—In this paragraph, the term 'prevailing wage' means the wage rate that includes the 51st percentile of employees with similar experience

and qualifications in the agricultural occupation in the area of intended employment, expressed in terms of the prevailing rate of pay for the occupation in the area of intended employment.''.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that Senators ALEXANDER and BOND be added as original cosponsors to the amendment.

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

Mr. CHAMBLISS. Mr. President, I have said it before and I say it again today that I think the approach taken in this legislation we are considering today is contrary to the best interests of agriculture. By ignoring proper enforcement of our immigration laws for many years, the Federal Government has been sending the wrong message to farmers and ranchers across the United States: that it pays to break the law. Quite literally, it has. For those who have flouted rule of law by refusing to utilize the temporary worker program for agriculture—the H–2A program—have gained a tremendous economic advantage over their counterparts who have adhered to the laws on the books today.

I will be the first to admit that some farmers have had little choice but to utilize an illegal workforce—for the H–2A program, as presently written has its limitations—for instance, farmers with jobs that are not seasonal are not able to utilize it. However, changes can be made to the H–2A program to make it more responsive to the needs of agriculture and more user-friendly for farmers.

That is what the focus of immigration reform should be. Instead, the bill we are considering today is putting in statute what has only been implied previously by the Federal Government's blind eye about illegal workers: it pays to break the law.

This statement is truest in the agricultural section of this bill than anywhere else. The amendment I have introduced is one of a series that I will file that will attempt to eliminate some of the hardships this bill levies on those agricultural employers who have been and will continue to utilize the legal program we have in place for temporary agricultural workers.

Currently, agricultural employers who utilize the H–2A program must pay all workers in the occupation in which they utilize H–2A workers the higher of the applicable minimum wage rate, the prevailing wage rate, or the adverse effect wage rate. In almost every instance, the adverse effect wage rate is the highest of these options.

Conversely, those agricultural employers who utilize an illegal workforce and, are often competitors of those using the H–2A program, are governed by no wage floor and generally end up paying around the Federal minimum wage rate, sometimes less. Obviously those who utilize an illegal workforce have a significant competitive advantage over their H–2A user counterparts based on overhead costs due to wage rates alone. And those illegal workers are subject to abusive payment practices by some employers.

Historically, approval of an employer's use of non-immigrant visa-holding foreign workers was predicated on two things: No. 1, No U.S. workers were available to fill the specific job, and No. 2, wages for that occupation would not be depressed by the hiring of foreign workers.

The obvious solution was the imposition of a prevailing wage requirement for specific occupations. The prevailing wage, determined by surveys conducted by States, insured that available U.S. workers would not be discouraged from applying for the job because it paid lower than usual wages. It also guaranteed that all workers, both foreign and domestic, would be paid a wage that was competitive in the local area, thus avoiding depressing wages for that occupation or making the use of foreign workers more attractive than hiring U.S. workers.

At the present time, prevailing wages are required for H–1B, H–2B, and permanent work-related visas. However, H–2A, the agricultural version of temporary, non-immigrant work visas, is required to pay a different wage rate—the adverse effect wage rate.

Unlike prevailing wages, which are established for a local area for specific jobs, and determined by the level of experience, skill, and education they require, the adverse effect wage rate is an average of all wages including incentive pay, bonuses, and seniority for all farm jobs in a multi-State region.

So an H–2A employer in Indiana must guarantee an H–2A worker with no experience who is working on a dairy farm the same minimum wage as a farm employee in Ohio with 5 years of experience operating a combine to harvest soybeans. Likewise, an inexperienced employee who is harvesting lettuce in Arizona must be guaranteed the same minimum wage as an experienced greenhouse worker in New Mexico. It just doesn't make sense.

Prevailing wages are determined by the U.S. Department of Labor through its State partners, using a methodology designed to capture a fair wage that reflects the local standards specific to a particular occupation. This is currently done for H–1B and H–2B visas.

I might add that the new H–2C program that has been approved as part of this particular underlying bill and was accepted as the prevailing wage for that work was accepted by unanimous consent yesterday.

Conversely, the adverse effect wage rate is determined by a survey conducted by the U.S. Department of Agriculture as part of its larger National Agricultural Statistics surveys. Officials in the Department of Agriculture's National Agricultural Statistics Service readily admit that the wage survey used for adverse effect wage rate was never designed to set specific wages—only to describe them in general. As such, the National Agricultural Statistics Service's survey creates an artificial, multi-state wage floor—one that significantly increases annually, regardless of the economy, the agricultural market, and competitive factors within a product line or local area.

Supporters of maintaining an adverse effect wage rate for H–2A workers will tell you that it is necessary to prevent the presence of foreign workers from adversely affecting the wage rates of U.S. farm workers. These are generally the same folks who advocate for greater protections for farm workers.

So you can imagine my surprise when reading this bill when I found that there is no mandated wage floor for those workers who are now illegal working in agriculture once they get on a blue card or once they adjust to permanent resident status—assuming they stay in agriculture.

So while a farmer who utilizes H–2A workers in an occupation will have to pay all workers in that occupation the adverse effect wage rate, those farmers who have been using an illegal workforce and are allowed to continue to use that same workforce, which is legalized through this bill, will only be bound by the applicable minimum wage.

This does not make the least bit of sense.

To give you some examples: a farmer who uses the H–2A program in Oklahoma will have to pay his workers $8.32 per hour, while a farmer in the same place who uses a newly legalized blue card worker will have to pay only $5.15 per hour to his employees.

In Louisiana, an H–2A employer will have to pay $7.58 an hour to his workers while a farmer who employs blue card workers will only have to pay $5.15 per hour.

In Maryland, an H–2A employer must pay $8.95 an hour while a blue card employer only has to pay $5.15 an hour.

In Nebraska, an H–2A employer must pay $9.23 an hour while an employer of legalized blue card workers must pay only $5.15 an hour.

In Arkansas, H–2A employers must pay $7.58 an hour to their workers, while those who continue to use the previously illegal workforce pay only $5.15 an hour.

In Arizona, H–2A employers must pay $8.00 an hour while blue card employers pay only $5.15 an hour for the same work.

In Kansas, H–2A employers will have to pay $9.23 an hour, while employers of blue card workers must pay only $5.15 an hour.

In Montana, H–2A employers must pay $8.47 an hour while blue card employers must pay $5.15 per hour.

You might be asking—well what about those states that have minimum wages higher than the federal minimum wage? The adverse effect wage rate is still higher—for example, an H–2A employer in New York will have to pay his workers $9.16 an hour while an

employer who uses blue card workers will only have to pay $6.75 an hour. And in Connecticut, an H–2A employer will be mandated to pay $9.16 an hour while the farmer who uses blue card workers will pay $7.40 an hour. This is not fair to the farmers and it is not fair to the workers.

This bill systematically rewards lawbreakers and punishes those who have, with some difficulty, been obeying the laws on the books today. This amendment is not just about parity, though I would argue strongly that it is needed—for not only will H–2A employers be mandated to pay higher wages than their counterparts who use the newly legalized workforce, H–2A employers will also continue to be responsible for providing to their employees free housing and utilities, reimbursement of transportation costs, and payment of visa, consular, and border crossing fees. This amendment is about what is right for agriculture, both for the farmer as well as the migrant worker.

We know from past experience that once farm workers are legalized through an amnesty, they leave farm work. This means that the farmers who use an illegal workforce today and plan to legalize their workers with the blue card program in this bill will be faced with the reality that the H–2A program will be the only avenue for legal workers when they cannot find others to do the jobs they need in the near future. The failure of the H–2A program in the past to meet the needs of agriculture across the nation has been based, in part, on provisions such as the adverse effect wage rate. H–2A employers simply can't compete with the illegal workforce and they won't be able to compete with employers of blue card workers.

This amendment will require that all workers in agriculture be paid the higher of the applicable minimum wage and the prevailing wage rate, as determined by the Department of Labor.

This will allow the mandated wages to reflect geographic location, occupation, and skill level, unlike under current law and in this bill. In addition, it will provide much-needed additional worker protections to those workers who adjust status under this bill by ensuring that they are guaranteed the same wage as an H–2A worker in the same occupation.

I ask my colleagues to support this amendment.

Let's put parity in agriculture in a temporary worker program that has been on the books for decades and will work—if we can streamline it, if we can make it fairer for the employer, more attractive to the employer to use, and at the same time fair to the employee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, the hour is late. I know those at the desk, including the Chair, would like to dim the lights and say good evening. I will do that in just a few moments.

We are going to have an opportunity to debate in detail what the Senator from Georgia has put before the Senate as it relates to a wage rate for agricultural workers that is embodied within the bill that is before us in comprehensive immigration reform.

I must tell you that after having worked on the agriculture portion of this bill for nearly 5 years, and as a farmer and rancher, I totally agree with the Senator from Georgia, that those who were under the H–2A program and those who weren't were very different, and those who weren't were placing the farmer-producer who had adhered to the H–2A program at a true competitive disadvantage because of the adverse effect wage rate that the Senator spoke to.

As we work to reform and change the character of the H–2A program, and for those Senators who aren't quite aware of that—that is the agricultural portion—we recognize that the adverse affect wage was out of step. It was skewed in large part by comparative and competitive disadvantaged margins that the Senator speaks to. The Senator has proposed moving to a prevailing wage, which, in my opinion, is in itself a minimum wage.

Let me make those points. What the Senator from Georgia has failed to suggest is after an examination of the adverse effect wage rate and recognizing the problems, we changed it dramatically. We said let's freeze it at the 2003 level, January 1, which is actually the 2002 level, and keep it flat for 3 years while we adjust the agricultural workplace into a true prevailing wage.

That is what the bill does. Let me show you what I believe the effects are. I will go into those in more detail on Monday because they are significant, and in many instances what the bill does for American agriculture is better than what the Senator from Georgia is proposing. It causes us to focus on what is appropriate and right in bringing about equity and balance in the agricultural workforce and in that wage rate.

In 2006, the adverse effect wage rate was $8.63 an hour. This bill drops it to $8.19. In 2010, $10.25 and drops it to $9.06, and many examples on a State-by-State basis drop it more than that. But more than dropping the wage rate down and bringing equity in it, we bring equity in a sense by going in and looking at it and making sure that we effectively change the indices, immediately upon the enactment of the agriculture portion known as AgJOBS of this bill.

In California, the wage rate will drop by 11 percent; in New Hampshire, 13 percent; South Carolina, 13 percent; Montana, 12 percent; Pennsylvania, 16 percent.

I wish the Senator would check his numbers. The numbers he talks about tonight are not prevailing wage. That is minimum wage. And minimum wage will not stand. That is something we are all going to have to look at as we focus on the Chambliss amendment to see if those numbers are truly accurate. I am not in any way suggesting the Senator is wrong, but I am suggesting those who did the research used the Nation's lowest indices possible. I challenge those numbers. It is appropriate to do so.

By 2016, the average farm wage is projected to be $12.81 but the projected adverse effect wage is $10 or down 17.5 percent below the average farm wage if we look at those kinds of indices. It is important we understand we are proposing significant changes in the wage rate and in the market.

The Senator is suggesting, and appropriately so, embodied within adverse effected wage were a variety of other things that agricultural producers had to supply, in some instances, housing, or housing certificates, and other types of amenities at the workplace. That will still happen, whether it is a transitional blue card employment force or an H2–A force because, clearly, once we have transitioned the modified and reformed H2–A program embodied within the bill before the Senate, will be the effective guest worker law portion of it dealing specifically with agriculture.

Agriculture is a different workforce. And it is a different wage scale. We know that.

Had the Senator embodied within it the advantage of piecework, the adverse effect wage rate does that. Do you know some workers who are getting $7 an hour, if they work piecework, get $12 an hour? It is their advantage to do is. There is a higher level of productivity when you bring them all to a common denominator that goes away. There are a variety of things that are critically important to look at.

I do not mean to suggest in any way that the numbers offered were offered in an untruthful way but the numbers that were provided to the offeror are the lowest common denominator at a minimum wage rate and not the 50th medium talked about by the Department of Labor in their analysis and in the establishment of an appropriate wage rate that would be a true prevailing wage rate.

I want a prevailing wage rate. That is what the bill proposes, a transitional pattern of time, a 3-year pattern of time with a frozen adverse effect wage rate, to move us to prevailing. The Farm Bureau asserts that the prevailing crop wage in Ohio ranges from $5.85 to $7.13 an hour. They compare this to the wage rate of $8.38 per hour which would apply during the AgJOBS wage freeze. Those are the kind of numbers that were being offered this evening. However, the medium hourly wage, which would be the prevailing wage under the amendment before the Senate, was $8.57 for crop workers in Ohio in the data sourced by the Farm Bureau.

I am still digging into the numbers because I cannot quite understand it.

There is a disparity that is troublesome if we are to arrive at a fair, responsible, and accurate measurement to establish an effective prevailing wage that is fair to the worker, but more importantly, and as importantly, fair to the producer so that we get out of this competitive disadvantage the Senator from Georgia has recognized and sees as critically important.

In other words, if this data source represented agriculture prevailing wage, which in my opinion it does not, the prevailing crop rates I mentioned for Ohio would be at least 19 cents an hour higher than the AgJOBS minimum wage even in 2006 before we tamp it down in the law. The projected Ohio prevailing crop wage in 2010, based on the data source, would be $10.33 per hour compared to the AgJOBS minimum wage of $9.29.

In all sincerity, I offer to the Senator from Georgia a time for us to look at numbers and do some comparisons. There is a disparity. I know what the bill does because the bill is accurately and effectively represented in these charts because we knew what the effected adverse wage was going to be, and there is a very clear projection line. What we do not know are the indices given and provided as it relates to the Chambliss amendment.

I will spend the weekend looking at it and looking at those numbers. They do concern me. It is important we get it right, not that we want to treat anyone in a disadvantaged way, but what we do has to be accurate, it has to create stability, it has to take away the competitive disadvantage the Senator from Georgia is talking about, that is real today in this disparity between those H–2A workers and, if you will, the undocumented workers out there in the American workforce that the provision of the bill that deals with agriculture attempts to get its arms around and legalize through the blue card transition period the Senator and I have spoken to.

It is a very important part of the bill. Both the Senator from Georgia and I have been concerned for some time and have compared numbers about an American agricultural work base built on a faulty employment base. You cannot be working 75 percent undocumented workers and be wholly dependent upon them to bring the perishable crop to the market and then have them swept out from under you.

Yet we also know that when there is 1.2 to 1.5 million people in the American agricultural workforce that are foreign nationals, yet annually, the H–2A as a program only effectively identifies 42,000 to 45,000, something was and is dramatically wrong. That is why the Senator is here with his amendment. That is why I am here with a major reform package within the bill. We both agree that the wage part of this is skewed. That is why we rolled it back dramatically and we are proposing establishing a prevailing wage. And he has proposed a prevailing wage.

We have to get the numbers right. I disagree with his numbers. It is important that in the effort to bring stability and equity we get them right.

I hope the Senate would get the Chambliss amendment, stay with the freeze that is actually the 2002 wage scale for 3 years, while we get the numbers right as it relates to the effective establishment of a prevailing wage.

In the end, I would argue that during that period of time we have substantially lessened the competitive disadvantage and improved the overall wage base for agricultural workers in a sense of equity and balance.

We will be back to this amendment, I understand, Monday afternoon to debate it before a vote on Monday evening at 5:30. It is a challenge for all of us. More than one Senator over the course of the last week has said this is a very complicated bill. And the area that Senator CHAMBLISS and I have ventured into is a very complicated portion of the bill.

I know what the bill does because I helped write it and spent a good number of years attempting to negotiate it. I am yet to clearly understand what I believe the Senator from Georgia is attempting to do as to the accuracy of his numbers and what they would mean on a State-by-State basis based on the indices he proposes to be used if this were to become law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I do not intend to take but a few seconds to not necessarily respond to my friend from Idaho, who correctly states we have been working together in trying to solve a very difficult problem relative to reform of the H–2A program. He has been at it for a long time. My first vote on this was 11 years ago as a Member of the House of Representatives. That is how long I have been working on this issue. And we have yet to get the H–2A program reformed.

I am very hopeful, as we go through this, we will have an opportunity to look at the numbers. I did not even mention prevailing wage numbers for Ohio or any other State. Obviously, I am happy to look at those. But the numbers are what they are. And the Senator from Idaho, I assume, agrees with me and is going to vote with me because he said he wants a prevailing wage, and I am seeking to amend this bill to get a prevailing wage in a bill that has an adverse effect wage rate in it.

But seriously, the numbers are what they are. I think we can agree that the prevailing wage rate is higher than the minimum wage, and it is less than the adverse effect wage rate today virtually in every State and in every location in the country. Our farmers are very much at a disadvantage today, and it is not like they are not willing to pay a fair wage.

You are right, most of our employees work on a piece rate. They cut a bucket of squash, they take it to the wagon, and they get a chip. And that chip may be worth $2 or it may be worth $5. That is the way most agricultural workers are paid: on a piece-rate basis. But there has to be a floor. They have to be paid a certain amount per hour under the law, and that is the way it should be. And that is what we are going to be talking about.

But the numbers are what they are. And the numbers speak for themselves. We look forward to debating in much more detail on Monday. Our purpose today on both ends was simply to get the amendment laid down. We will be back Monday to engage in more extensive debate.

Mr. President, I ask unanimous consent that at 5:30 on Monday, May 22, the Senate proceed to a vote in relation to the Chambliss amendment No. 4009; provided further that the time from 5 to 5:30 be equally divided between Senator CHAMBLISS and the Democratic manager or his designee. I further ask consent that following that vote, the Senate proceed immediately to a vote in relation to the Ensign amendment No. 4076, as modified. Finally, I ask consent that no second degrees be in order to either amendment prior to the votes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MORNING BUSINESS

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

COMMEMORATING THE 80TH ANNIVERSARY OF THE FOUNDING OF THE DESERT NATIONAL WILDLIFE REFUGE

Mr. REID. Mr. President, I rise today to bring recognition to one of the most majestic places in Nevada—the Desert National Wildlife Refuge. On Saturday, May 20 the refuge will have been in existence for 80 years. Established in 1936 during the Presidency of Franklin Delano Roosevelt, the Desert National Wildlife Refuge is a key part of the National Wildlife Refuge System that protects sensitive lands and species throughout our great Nation.

Covering 1.5 million acres of the Mojave Desert in southern Nevada, the Desert refuge is the largest National Wildlife Refuge in the continental United States. The Mojave Desert is known for its wide variety of geology, plant life, and animal life. The Desert National Wildlife Refuge epitomizes this diversity. It contains six different mountain ranges and four different habitat types. With an average rainfall between 4 and 15 inches, elevations ranging from 2,500 ft to 10,000 ft, and over 300 different animal species, the

Desert refuge offers a truly varied landscape.

The Desert National Wildlife Refuge was originally established for the preservation and management of Nevada's desert bighorn sheep population, which had begun to decline as early as the 1880s. The desert bighorn sheep is the State animal of Nevada and, thanks in large part to the refuge and the work of groups such as the Fraternity of the Desert Bighorn and Nevada Bighorns Unlimited, our bighorn sheep population has been steadily rising in recent years.

I would be remiss if I didn't also take a few moments to talk about the incredible sheep range that runs up the east side of refuge. Rising nearly 10,000 feet out of the desert floor and running over 50 miles in length, this mountain range has engaged the imaginations of Americans since well before southern Nevada was settled. This most memorable natural landmark is one of the key reasons that President Nixon proposed much of the refuge for wilderness designation in 1974.

On this occasion of the 80th anniversary of the founding of the Desert National Wildlife Refuge, I thank all those who have worked to protect these lands. I also salute those visionary individuals—some generations ago—that recognized the need to preserve this incredible habitat for desert bighorn sheep and the myriad of other species that still thrive on these lands.

CELEBRATING THE 10TH ANNIVERSARY OF TOYOTA MOTOR MANUFACTURING, WEST VIRGINIA

Mr. BYRD. Mr. President, West Virginians are both a prayerful and a prideful people. We cherish our State, honor its unique heritage, and revere its citizenry. Our respect for one another and for our joint accomplishments is apparent in every cornr and cranny of this wondrous State, filled with unparalleled scenic beauty, old-fashioned hospitality, and a sincere commitment to excellence. Our belief in ourselves and in our abilities is apparent when we welcome our troops home from service overseas; when we watch our sons and daughters receive their high school diplomas; when our communities band together to overcome tragedy; or when we gather together to celebrate shared and lofty achievement. It is always the same: Mountaineer pride runs strong and deep in West Virginia.

West Virginia pride is particularly on display today in Buffalo, WV, where Toyota Motor Manufacturing, West Virginia, TMMWV, is celebrating its 10th anniversary. I commend Toyota on its commitment to West Virginia, and I heartily congratulate the company on its celebration of 10 years in the Mountaineer State.

I have seen, over the past decade, how hundreds of West Virginians each day have committed themselves to their work at Toyota. The high standards that have been set by the men and women who work at Toyota's facility in Buffalo show that our State, though small in size, successfully plays host to one of the world's largest, most successful, and well-respected companies. Toyota's plant in Buffalo truly deserves its fine reputation, based on its gains in productivity, its high standards for fine quality, and its unfailing commitment to the future.

Toyota Motor Manufacturing established its operations in West Virginia in 1996, and currently produces four-cylinder engines for the Toyota Corolla, the Matrix, and the Pontiac Vibe. It also produces V6 engines for the Toyota Sienna and Solara. The plant also manufactures automatic transmissions for the U.S.-built Solara, Sienna and Avalon, the Canadian-built Lexus RX 350, and the Japan-built Highlander, providing quality jobs for over 1,000 West Virginians. And employment there is projected to grow to 1,150 workers when the existing transmission plant is expanded as promised.

In fact, last year Toyota announced that it would undertake a $120 million expansion of its engine and transmission plant in Buffalo. As a result, beginning in 2007, Toyota Motor Manufacturing in West Virginia will build 240,000 additional automatic transmissions per year. This will bring the plant's total automatic transmission capacity to 600,000 units, and this fifth expansion by Toyota in West Virginia will bring its total investment there to near the $1 billion mark.

Every day, in Buffalo, hundreds of West Virginians commit themselves to superior performance. Toyota has become a highly valued member of the West Virginia business community, and the company's commitment to its continued expansion in our State sends a clear message to the world not only that West Virginia's workforce is top of the line, but also that communities throughout West Virginia make our State a beacon for business, including international investment. The employment provided by Toyota at Buffalo constitutes exactly the type of well-paying jobs, with accompanying health and pension benefits, that West Virginia workers so richly deserve.

Mr. President, I would like to take this opportunity to once again congratulate Toyota on its 10th anniversary in West Virginia. I thank Dr. Toyoda for believing in West Virginia. I also congratulate Toyota Motor Manufacturing, West Virginia President Yutaka Mizuno and the men and women of this plant for its all of its truly spectacular achievements in its first decade in our fair State.

I would also like to thank my dear friend and colleague, Senator JAY ROCKEFELLER, who worked so tirelessly and in such good faith to bring Toyota to West Virginia. JAY and I, and all West Virginians, are pleased and proud to have Toyota in Buffalo, WV. May this be the first of many more decades of partnership and accomplishment for our State and for Toyota Motor Manufacturing.

Mr. BAYH. Mr. President, I rise today to congratulate Toyota Motor Manufacturing of Indiana, on celebrating the 10th anniversary of its truck assembly plant in Princeton. Since opening its doors 10 years ago, Toyota's Princeton plant has spurred economic growth in southwest Indiana and brought quality, good-paying jobs to the State, giving more workers the opportunity to provide for their families and live the American dream.

When I was Governor, I was proud to join with Toyota Motor Corporation, TMC, Chairman Hiroshi Okuda in bringing the Toyota truck assembly plant to Princeton as part of my economic development for a growing economy, EDGE, initiative. Over the past 10 years, Toyota's Princeton plant has experienced remarkable growth, which has had a substantial, positive economic impact on the State of Indiana as well as the local economy.

Toyota's initial investment of $700 million in the Princeton assembly plant led to the immediate creation of 1,300 family-wage jobs and resulted in the production of approximately 100,000 trucks per year. Today, Toyota's investment has grown to more than $2.6 billion, and its truck assembly plant now employs more than 4,700 men and women who produce more than 300,000 vehicles each year, including the Tundra full-size pickup truck, Sequoia sport utility vehicle, and Sienna minivan.

This exceptional growth and the recent announcement of Toyota's collaboration with Subaru in Lafayette have made it one of Indiana's largest auto manufacturers. Toyota's efforts demonstrate its continued commitment to the State and highlight the contributions Toyota has made to the United States and local communities in Indiana.

It is estimated that Toyota's annual economic impact on the State of Indiana is equal to about 31,385 jobs, nearly $503 million in employee compensation, and $5.5 billion in business sales. A study conducted by the University of Evansville and the University of Southern Indiana estimates that in Gibson County alone, Toyota is annually responsible for 8,865 jobs, approximately $119 million in employee compensation, and $519 million in business sales.

I am honored to have the opportunity to enter this tribute in the CONGRESSIONAL RECORD of the Senate and commend Toyota Motor Manufacturing of Indiana for all that it has done for Hoosier working men and women over the past 10 years.

DAY OF PRAYER FOR COLOMBIA

Mr. JOHNSON. This Sunday, members of Lutheran World Relief, in conjunction with churches and people of faith, will pray for a peaceful resolution to the conflict in Colombia. Lutheran World Relief advocates for those

around the world suffering from poverty, hunger, or injustice. It is a voice for the most vulnerable worldwide, and this weekend Lutheran World Relief will shine a bright light on the current situation in Colombia.

For over 40 years, Colombia has been engulfed in a civil conflict pitting guerrilla groups again the Colombian Government. As a result, innocent civilians have been kidnapped and ransomed; illicit coca production and drug trafficking continue to plague the country; and thousands have died or have been forced from their homes in order to flee violence.

The United States has provided assistance to Colombia, both military and economic, in order to stem the illegal trade in drugs and promote a peaceful resolution to the civil conflict. However, Colombia remains the leading supplier of the world's cocaine, and it is home to at least three illegally armed groups that have been designated foreign terrorist organizations by the U.S. Department of State. Without question, Congress must assist countries in eradicating drug crops and combating terrorism. However, we must also remember that societies are based on the rule of law, and human rights must be respected. We should not sacrifice one goal in order to achieve another.

Lutheran churches in South Dakota an around the Nation are in solidarity with peace communities in Colombia. I commend Lutheran parishioners and worshippers of other faiths, as they pray for peace and remember all those who have perished in the conflict. As a Lutheran myself, I believe protecting human rights in Colombia must remain a high priority.

RETIREMENT OF LEONIDAS RALPH MECHAM

Mr. HATCH. Mr. President, today I rise to pay tribute to Leonidas Ralph Mecham, who recently retired after more than 20 years as Director of the Administrative Office of the U.S. Courts. As that agency's longest-serving Director, Ralph ably guided the judiciary through some turbulent and challenging times, and for such he deserves the praise and commendation of this body.

Ralph Mecham was born on April 23, 1928, in Murray, UT. He earned a bachelor's degree with highest honors from the University of Utah, a law degree from George Washington University, and a master's degree in public administration from Harvard University. Ralph's first stint here in Washington began more than 50 years ago, when he served as a legislative assistant and administrative assistant to Senator Wallace Bennett of Utah, the father of our colleague Senator BOB BENNETT. Ralph returned to our State to serve as vice president of his alma mater, the University of Utah, where he also taught constitutional law and was responsible for creating the University of Utah Research Park.

Ralph could not stay away from Washington and returned to serve as Special Assistant to the Secretary of Commerce. In July 1985, Chief Justice Warren Burger appointed him Director of the Administrative Office of the U.S. Courts. The Administrative Office provides internal administrative support to the judicial branch and communicates on behalf of the judiciary with Congress, the executive branch, and the public.

Ralph served in this capacity during a particularly challenging time for the judiciary. Providing effective judicial administration in the face of budgetary constraints is difficult when the Federal judiciary's caseload continues its upward spiral. Cases filed in the U.S. Court of Appeals, for example, more than doubled during Ralph's time as Director. The number of bankruptcy cases skyrocketed from 365,000 to over 1,780,000 in that same period. In addition, national tragedies such as the terrorist attacks of September 11, as well as catastrophes such as Hurricane Katrina, created their own unique challenges to the continued functioning of the judiciary. Ralph met each challenge effectively. His extensive background in public administration and experience in both the legislative and executive branches served him well in equipping the judicial branch for its critical tasks even through these challenges and troubled times.

Ralph also helped guide the judicial branch through a period of increased public attention and even criticism regarding judicial decisions. Protecting judicial independence while also enhancing public understanding of the function of judges in our system of government is just the kind of balancing act Ralph was prepared to tackle. He did so effectively with a steady hand.

The Director of the Administrative Office serves as secretary of the Judicial Conference and as a member of its executive committee. The judges who chaired the executive committee during Ralph's tenure also have praised his work.

The current executive committee chairman, U.S. District Judge Thomas F. Hogan, says that ''[w]atching Ralph operate is like watching a master conductor guide the philharmonic orchestra through a complicated Bach symphony.'' If only this could be said of us Senators and our work on our committees or on this floor.

Judge Carolyn Dineen King, Chief Judge of the Fifth Circuit, chaired the executive committee from 2002 to 2005. In tackling a wide range of problems, she says, ''Director Mecham exhibited his usual inventiveness, intensity, tenacity, and judgment and his remarkable ability to inspire others . . . to do the very best they were capable of.''

Judge Wilfred Feinberg of the U.S. Court of Appeals for the Second Circuit chaired the executive committee from 1987 to 1989. He has said that ''Ralph handled this difficult job with confidence, competence and dedication. It is a testament to his hard work and dedication that today the federal courts to a large extent so successfully manage their own resources and operations.''

Judge Ralph K. Winter, also a former Chief Judge of the Second Circuit, chaired the executive committee a decade later, from 1999 to 2000. He believed that Ralph showed ''a remarkable capacity for keeping the long view in mind while putting out the short-term fires that would relentlessly pop up in various directions.''

Perhaps the best applause for Ralph Mecham's leadership comes from Sixth Circuit Judge Gilbert Merritt, who chaired the executive committee from 1994 to 1996. ''The judiciary is in much better shape administratively than it was 20 years ago.'' Whether in our families, our communities, or our work, we should each strive to leave those in our charge better off than we found them.

I was pleased to hear that Ralph recently received the 2006 National Public Service Award in recognition of his excellence in a half-century of public service. The award announcement noted his support for the Judicial Conference by providing high-quality services to judges and the courts, and by building relationships both inside and outside the judiciary.

Ralph Mecham has been married to the former Barbara Folsom for more than 55 years. With 5 children and 14 grandchildren, he is a devoted family man. Ralph has served in various positions in church and community, including time as a missionary in Great Britain, chairman of the Utah State Heart Association, chairman of the Salt Lake County Cancer Association, and chairman of the University of Utah National Advisory Council. His commitment to the community and to his church continues.

The judicial branch and the country are better because of Ralph's service. I want to commend him for his commitment and for setting a good example of public service. His record tells me that, even in supposed retirement, Ralph Mecham will continue helping and serving those around him.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT RELATIVE TO THE CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO BURMA—PM 48

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. I have sent the enclosed notice to the *Federal Register* for publication, which states that the Burma emergency is to continue beyond May 20, 2006, for publication. The most recent notice continuing this emergency was published in the *Federal Register* on May 18, 2005 (70 FR 28771).

The crisis between the United States and Burma arising from the actions and policies of the Government of Burma, including its policies of committing large-scale repression of the democratic opposition in Burma, that led to the declaration of a national emergency on May 20, 1997, has not been resolved. These actions and policies are hostile to U.S. interests and pose a continuing unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, I have determined that it is necessary to continue the national emergency with respect to Burma and maintain in force the sanctions against Burma to respond to this threat.

GEORGE W. BUSH.
THE WHITE HOUSE, *May 18, 2006*.

REPORT OF THE CONTINUATION OF THE NATIONAL EMERGENCY PROTECTING THE DEVELOPMENT FUND FOR IRAQ AND CERTAIN OTHER PROPERTY IN WHICH IRAQ HAS AN INTEREST—PM 49

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the *Federal Register* for publication. This notice states that the national emergency declared in Executive Order 13303 of May 22, 2003, as expanded in scope by Executive Order 13315 of August 28, 2003, and modified in Executive Order 13364 of November 29, 2004, is to continue in effect beyond May 22, 2006. The most recent notice continuing this emergency was published in the *Federal Register* on May 20, 2005 (70 FR 29435).

The threats of attachment or other judicial process against (i) the Development Fund for Iraq, (ii) Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, or (iii) any accounts, assets, investments, or any other property of any kind owned by, belonging to, or held by, on behalf of, or otherwise for the Central Bank of Iraq create obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq. Accordingly, these obstacles continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For these reasons, I have determined that it is necessary to continue the national emergency protecting the Development Fund for Iraq, certain other property in which Iraq has an interest, and the Central Bank of Iraq, and to maintain in force the sanctions to respond to this threat.

GEORGE W. BUSH.
THE WHITE HOUSE, *May 18, 2006*.

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 9:41 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1165. An act to provide for the expansion of the James Campbell National Wildlife Refuge, Honolulu County, Hawaii.

S. 1869. An act to reauthorize the Coastal Barrier Resources Act, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. STEVENS).

At 12 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4200. An act to improve the ability of the Secretary of Agriculture and the Secretary of the Interior to promptly implement recovery treatments in response to catastrophic events affecting Federal lands under their jurisdiction, including the removal of dead and damaged trees and the implementation of reforestation treatments, to support the recovery of non-Federal lands damaged by catastrophic events, to revitalize Forest Service experimental forests, and for other purposes.

MEASURES REFERRED

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

H.R. 4200. An act to improve the ability of the Secretary of Agriculture and the Secretary of the Interior to promptly implement recovery treatments in response to catastrophic events affecting Federal lands under their jurisdiction, including the removal of dead and damaged trees and the implementation of reforestation treatments, to support the recovery of non-Federal lands damaged by catastrophic events, to revitalize Forest Service experimental forests, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, May 18, 2006, she had presented to the President of the United States the following enrolled bills:

S. 1165. An act to provide for the expansion of the James Campbell National Wildlife Refuge, Honolulu County, Hawaii.

S. 1869. An act to reauthorize the Coastal Barrier Resources Act, and for other purposes.

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–6897. A communication from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, a report of the Commission's authorization request for fiscal years 2007 and 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–6898. A communication from the Secretary, Department of Housing and Urban Development, transmitting, the report of proposed legislation entitled ''Improving Lead-Based Paint Investigations Act of 2006''; to the Committee on Banking, Housing, and Urban Affairs.

EC–6899. A communication from the Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''31 CFR Parts 535, 536, 537, 538, 539, 540, 541, 542, 560, 588, 594, and 595; Iranian Assets Control Regulations, Narcotics Trafficking Sanctions Regulations, Burmese Sanctions Regulations, Sudanese Sanctions Regulations, Weapons of Mass Destruction Trade Control Regulations, Highly Enriched Uranium (HEU) Agreement Assets Control Regulations, Zimbabwe Sanctions Regulations, Syrian Sanctions Regulations, Iranian Transactions Regulations, Western Balkans Stabilization Regulations, Global Terrorism Sanctions Regulations, Terrorism Sanctions Regulations'' received on May 17, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–6900. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''12 CFR part 707—Truth in Savings'' (RIN3133–AC57) received on May 17, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–6901. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, the report of proposed legislation entitled ''Computer Security Enhancement Act of 2006''; to the Committee on the Judiciary.

EC–6902. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the Board's Inspector General Semiannual Report to Congress for the six-month period ending March 31, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–6903. A communication from the Acting Director, Office of Government Ethics, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the Executive Branch Confidential Financial Disclosure Reporting Regulation'' (RIN3209–AA00 and RIN3290–AA09) received on May 17, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–6904. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Milk in the Northeast and Other Marketing Areas; Order Amending Orders'' (DA–06–06; AO–14–A75, et al.) received on May 17, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6905. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, Oregon; Suspension of Handling Regulations, Establishment of Reporting Requirements, and Suspension of the Fresh Prune Import Regulation'' (FV06–924–1 IFR) received on May 17, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6906. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the Hass Avocado Promotion, Research, and Information Order: Adjust Representation on the Hass Avocado Board'' (FV–06–701–IFR) received on May 17, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6907. A communication from the Attorney, Office of Assistant General Counsel for Legislation and Regulatory Law, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Standby Support for Certain Nuclear Plant Delays'' (RIN1901–AB17) received on May 17, 2006; to the Committee on Energy and Natural Resources.

EC–6908. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Mexico; to the Committee on Foreign Relations.

EC–6909. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–6910. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report consistent with the Authorization for Use of Military Force Against Iraq Resolution of 1002 (P.L. 107–243) and the Authorization for the Use of Force Against Iraq Resolution (P.L. 102–1) for the December 15, 2005 through February 15, 2006 reporting period; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCAIN, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 1899. A bill to amend the Indian Child Protection and Family Violence Prevention Act to identify and remove barriers to reducing child abuse, to provide for examinations of certain children, and for other purposes (Rept. No. 109-255).

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

S. 2856. An original bill to provide regulatory relief and improve productivity for insured depository institutions, and for other purposes (Rept. No. 109-256).

By Mr. SPECTER, from the Committee on the Judiciary, without amendment:

S.J. Res. 1. A joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. WARNER for the Committee on Armed Services.

Air Force nomination of Maj. Gen. Craig R. McKinley to be Lieutenant General.

Air Force nomination of Lt. Gen. William M. Fraser III to be Lieutenant General.

Air Force nomination of Lt. Gen. Kevin P. Chilton to be General.

Air Force nomination of Maj. Gen. Norman R. Seip to be Lieutenant General.

Air Force nomination of Maj. Gen. James G. Roudebush to be Lieutenant General.

Air Force nomination of Brig. Gen. Dana T. Atkins to be Major General.

Air Force nomination of Col. Lawrence A. Stutzriem to be Brigadier General.

Air Force nomination of Col. Linda K. McTague to be Brigadier General.

Air Force nomination of Maj. Gen. Robert J. Elder, Jr. to be Lieutenant General.

Air Force nomination of Lt. Gen. David A. Deptula to be Lieutenant General.

Air Force nomination of Lt. Gen. Victor E. Renuart, Jr. to be Lieutenant General.

Army nomination of Brig. Gen. Elder Granger to be Major General.

Army nomination of Lt. Gen. David F. Melcher to be Lieutenant General.

Army nomination of Maj. Gen. Stephen M. Speakes to be Lieutenant General.

Army nomination of Brig. Gen. Ronald D. Silverman to be Major General.

Army nomination of Col. Michael A. Ryan to be Brigadier General.

Army nomination of Brig. Gen. Stephen V. Reeves to be Major General.

Army nomination of Maj. Gen. Jack C. Stultz, Jr. to be Lieutenant General.

Navy nomination of Capt. Alan T. Baker to be Rear Admiral (lower half).

Navy nomination of Rear Adm. (lh) Robert F. Burt to be Rear Admiral.

Navy nomination of Capt. Gregory J. Smith to be Rear Admiral (lower half).

Navy nominations beginning with Captain Townsend G. Alexander and ending with Captain Edward G. Winters III, which nominations were received by the Senate and appeared in the Congressional Record on May 9, 2006.

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning with Rosalind L. Abdulkhalik and ending with Jesse B. Zydallis, which nominations were received by the Senate and appeared in the Congressional Record on March 7, 2006.

Air Force nominations beginning with Steven L. Alger and ending with Rachelle Paulkagiri, which nominations were received by the Senate and appeared in the Congressional Record on April 24, 2006.

Army nomination of Chantel Newsome to be Colonel.

Army nomination of Kenneth A. Kraft to be Colonel.

Army nominations beginning with Mark A. Burdt and ending with Robert L. Porter, which nominations were received by the Senate and appeared in the Congressional Record on April 27, 2006.

Army nominations beginning with Betty J. Williams and ending with Henry R. Lemley, which nominations were received by the Senate and appeared in the Congressional Record on April 27, 2006.

Army nomination of Thomas F. Nugent to be Lieutenant Colonel.

Army nomination of Michael F. Lorich to be Major.

Army nomination of Brian O. Sargent to be Major.

Army nominations beginning with Brian K. Hill and ending with Charles W. Wallace, which nominations were received by the Senate and appeared in the Congressional Record on April 27, 2006.

Navy nominations beginning with Robert J. Tate and ending with Edward A. Sylvester, which nominations were received by the Senate and appeared in the Congressional Record on April 24, 2006.

Navy nominations beginning with William L. Yarde and ending with Bruce R. Deschere, which nominations were received by the Senate and appeared in the Congressional Record on April 24, 2006.

Navy nominations beginning with Gregory G. Allgaier and ending with Timothy J. Yanik, which nominations were received by the Senate and appeared in the Congressional Record on April 24, 2006.

By Mr. GRASSLEY for the Committee on Finance.

*W. Ralph Basham, of Virginia, to be Commissioner of Customs, Department of Homeland Security.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

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. LOTT (for himself and Mr. PRYOR):

S. 2830. A bill to amend the automobile fuel economy provisions of title 49, United States Code, to reform the setting and calculation of fuel economy standards for passenger automobiles, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LUGAR (for himself, Mr. SPECTER, Mr. DODD, Mr. GRAHAM, and Mr. SCHUMER):

S. 2831. A bill to guarantee the free flow of information to the public through a free and active press while protecting the right of the public to effective law enforcement and the fair administration of justice; to the Committee on the Judiciary.

By Mr. VOINOVICH (for himself, Mrs. CLINTON, Mr. WARNER, Mr. DEWINE, Mr. LOTT, Mr. ALLEN, Mr. BURR, and Mrs. DOLE):

S. 2832. A bill to reauthorize and improve the program authorized by the Appalachian Regional Development Act of 1965; to the Committee on Environment and Public Works.

By Mr. BROWNBACK:

S. 2833. A bill to suspend temporarily the duty on certain athletic footwear for men and boys; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2834. A bill to suspend temporarily the duty on certain athletic shoes; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2835. A bill to suspend temporarily the duty on certain leather footwear for persons other than men or women; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2836. A bill to suspend temporarily the duty on certain other work footwear; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2837. A bill to suspend temporarily the duty on certain leather and textile footwear; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2838. A bill to reduce temporarily the duty on certain rubber or plastic footwear; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2839. A bill to reduce temporarily the duty on certain footwear for men; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2840. A bill to reduce temporarily the duty on certain welt footwear; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2841. A bill to reduce temporarily the duty on certain turn or turned footwear; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2842. A bill to reduce temporarily the duty on certain work footwear with outer soles of leather; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2843. A bill to reduce temporarily the duty on certain footwear with outer soles of rubber or plastics and with open toes or heels; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2844. A bill to reduce temporarily the duty on certain athletic footwear; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2845. A bill to reduce temporarily the duty on certain women's footwear; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2846. A bill to reduce temporarily the duty on certain work footwear; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2847. A bill to reduce temporarily the duty on certain footwear with open toes or heels; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2848. A bill to reduce temporarily the duty on certain footwear; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2849. A bill to reduce temporarily the duty on certain sports shoes; to the Committee on Finance.

By Mr. BROWNBACK:

S. 2850. A bill to reduce temporarily the duty on certain house slippers; to the Committee on Finance.

By Mr. DEMINT:

S. 2851. A bill to extend the temporary suspension of duty on sodium methylate powder (NA methylate powder); to the Committee on Finance.

By Mr. DEMINT:

S. 2852. A bill to extend the temporary suspension of duty on allyl isosulfocyanate; to the Committee on Finance.

By Mr. DEMINT:

S. 2853. A bill to suspend temporarily the duty on 1,2 Hexanediol; to the Committee on Finance.

By Mr. KOHL (for himself and Mr. DEWINE):

S. 2854. A bill to prevent anti-competitive mergers and acquisitions in the oil and gas industry; to the Committee on the Judiciary.

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

S. 2855. A bill to amend the Safe Drinking Water Act to eliminate security risks by replacing the use of extremely hazardous gaseous chemicals with inherently safer technologies; to the Committee on Environment and Public Works.

By Mr. CRAPO:

S. 2856. An original bill to provide regulatory relief and improve productivity for insured depository institutions, and for other purposes; from the Committee on Banking, Housing, and Urban Affairs; placed on the calendar.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. COCHRAN:

S. Res. 483. A resolution expressing the sense of the Senate regarding the importance of oral health, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MCCONNELL (for himself, Mr. BROWNBACK, Mrs. FEINSTEIN, Mr. LEAHY, Mr. LAUTENBERG, Mr. FRIST, Mr. OBAMA, Mr. MCCAIN, Mr. LIEBERMAN, and Mr. REID):

S. Res. 484. A resolution expressing the sense of the Senate condemning the military junta in Burma for its recent campaign of terror against ethnic minorities and calling on the United Nations Security Council to adopt immediately a binding non-punitive resolution on Burma; considered and agreed to.

By Mr. FEINGOLD (for himself and Ms. SNOWE):

S. Con. Res. 95. A concurrent resolution expressing the sense of Congress with regard to the importance of Women's Health Week, which promotes awareness of diseases that affect women and which encourages women to take preventive measures to ensure good health; to the Committee on Health, Education, Labor, and Pensions .

ADDITIONAL COSPONSORS

S. 241

At the request of Ms. SNOWE, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 241, a bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act.

S. 409

At the request of Mr. COLEMAN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 409, a bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes.

S. 441

At the request of Mr. SANTORUM, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 441, a bill to amend the Internal Revenue Code of 1986 to make permanent the classification of a motorsports entertainment complex.

S. 619

At the request of Mrs. FEINSTEIN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 619, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 633

At the request of Mr. JOHNSON, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 633, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 760

At the request of Mr. INOUYE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 760, a bill to amend the Public Health Service Act to provide a means for continued improvement in emergency medical services for children.

S. 772

At the request of Mr. CORNYN, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 772, a bill to amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use.

S. 914

At the request of Mr. ALLARD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 914, a bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research.

S. 1023

At the request of Mr. DODD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1023, a bill to provide for the establishment of a Digital Opportunity Investment Trust.

S. 1035

At the request of Mr. INHOFE, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 1035, a bill to authorize the presentation of commemorative medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th century in recognition of the service of those Native Americans to the United States.

S. 1132

At the request of Mr. COLEMAN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1132, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease.

S. 1200

At the request of Mr. BUNNING, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 1200, a bill to amend the Internal Revenue Code of 1986 to reduce the depreciation recovery period for certain roof systems.

S. 1353

At the request of Mr. REID, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 1353, a bill to amend the Public Health Service Act to provide for the establishment of an Amyotrophic Lateral Sclerosis Registry.

S. 1725

At the request of Mr. LIEBERMAN, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1725, a bill to strengthen Federal leadership, provide grants, enhance outreach and guidance, and provide other support to State and local officials to enhance emergency communications capabilities, to achieve communications interoperability, to foster improved regional collaboration and coordination, to promote more efficient utilization of funding devoted to public safety communications, to promote research and development by both the public and private sectors for first responder communications, and for other purposes.

S. 1741

At the request of Mr. VOINOVICH, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 1741, a bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster area.

S. 1774

At the request of Mr. CORNYN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1774, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the National Heart, Lung, and Blood Institute with respect to research on pulmonary hypertension.

S. 1840

At the request of Mr. THUNE, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1840, a bill to amend section 340B of the Public Health Service Act to increase the affordability of inpatient drugs for Medicaid and safety net hospitals.

S. 2140

At the request of Mr. HATCH, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 2140, a bill to enhance protection of children from sexual exploitation by strengthening section 2257 of title 18, United States Code, requiring producers of sexually explicit material to keep and permit inspection of records regarding the age of performers, and for other purposes.

S. 2231

At the request of Mr. BYRD, the names of the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2231, a bill to direct the Secretary of Labor to prescribe additional coal mine safety standards, to require additional penalties for habitual violators, and for other purposes.

S. 2308

At the request of Mr. SPECTER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2308, a bill to amend the Federal Mine Safety and Health Act of 1977 to improve mine safety, and for other purposes.

S. 2321

At the request of Mr. SANTORUM, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 2321, a bill to require the Secretary of the Treasury to mint coins in commemoration of Louis Braille.

S. 2490

At the request of Mr. COLEMAN, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 2490, a bill to amend title 5, United States Code, to provide for a real estate stock index investment option under the Thrift Savings Plan.

S. 2563

At the request of Mr. COCHRAN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 2563, a bill to amend title XVIII of the Social Security Act to require prompt payment to pharmacies under part D, to restrict pharmacy co-branding on prescription drug cards issued under such part, and to provide guidelines for Medication Therapy Management Services programs offered by prescription drug plans and MA–PD plans under such part.

S. 2592

At the request of Mr. HARKIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 2592, a bill to amend the Child Nutrition Act of 1966 to improve the nutrition and health of schoolchildren by updating the definition of ''food of minimal nutritional value'' to conform to current nutrition science and to protect the Federal investment in the national school lunch and breakfast programs.

S. 2616

At the request of Mr. SANTORUM, the names of the Senator from West Virginia (Mr. BYRD) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 2616, a bill to amend the Surface Mining Control and Reclamation Act of 1977 and the Mineral Leasing Act to improve surface mining control and reclamation, and for other purposes.

S. 2645

At the request of Mr. ALLEN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 2645, a bill to establish the Journey Through Hallowed Ground National Heritage Area, and for other purposes.

S. 2658

At the request of Mr. LEAHY, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 2658, a bill to amend title 10, United States Code, to enhance the national defense through empowerment of the Chief of the National Guard Bureau and the enhancement of the functions of the National Guard Bureau, and for other purposes.

S. 2688

At the request of Mr. ISAKSON, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 2688, a bill to amend the Internal Revenue Code of 1986 to encourage private philanthropy.

S. 2703

At the request of Mr. LEAHY, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 2703, a bill to amend the Voting Rights Act of 1965.

S. 2770

At the request of Mr. MCCAIN, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 2770, a bill to impose

sanctions on certain officials of Uzbekistan responsible for the Andijan massacre.

S. 2810

At the request of Mr. GRASSLEY, the names of the Senator from West Virginia (Mr. BYRD), the Senator from Ohio (Mr. VOINOVICH), the Senator from New York (Mrs. CLINTON), the Senator from Maryland (Ms. MIKULSKI), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Alaska (Mr. STEVENS), the Senator from Rhode Island (Mr. REED), the Senator from Colorado (Mr. SALAZAR), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Minnesota (Mr. COLEMAN) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. 2810, a bill to amend title XVIII of the Social Security Act to eliminate months in 2006 from the calculation of any late enrollment penalty under the Medicare part D prescription drug program and to provide for additional funding for State health insurance counseling program and area agencies on aging, and for other purposes.

S. 2819

At the request of Mr. COLEMAN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 2819, a bill to amend part C of title XVIII of the Social Security Act to provide for a minimum payment rate by Medicare Advantage organizations for services furnished by a critical access hospital and a rural health clinic under the Medicare program.

S. 2824

At the request of Mr. DEMINT, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 2824, a bill to reduce the burdens of the implementation of section 404 of the Sarbanes-Oxley Act of 2002.

S. RES. 450

At the request of Mr. DEWINE, the names of the Senator from Georgia (Mr. CHAMBLISS), the Senator from Georgia (Mr. ISAKSON) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. Res. 450, a resolution designating June 2006 as National Safety Month.

S. RES. 469

At the request of Mr. MCCAIN, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. Res. 469, a resolution condemning the April 25, 2006, beating and intimidation of Cuban dissident Martha Beatriz Roque.

At the request of Mr. LIEBERMAN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. Res. 469, supra.

AMENDMENT NO. 4009

At the request of Mr. CHAMBLISS, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Missouri (Mr. BOND) were added as cosponsors of amendment No. 4009 proposed to S. 2611, a bill to provide for comprehensive immigration reform and for other purposes.

AMENDMENT NO. 4023

At the request of Mr. DOMENICI, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of amendment No. 4023 intended to be proposed to S. 2611, a bill to provide for comprehensive immigration reform and for other purposes.

AMENDMENT NO. 4025

At the request of Mr. DEMINT, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of amendment No. 4025 intended to be proposed to S. 2611, a bill to provide for comprehensive immigration reform and for other purposes.

AMENDMENT NO. 4029

At the request of Mr. AKAKA, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of amendment No. 4029 proposed to S. 2611, a bill to provide for comprehensive immigration reform and for other purposes.

AMENDMENT NO. 4057

At the request of Mr. THOMAS, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 4057 intended to be proposed to S. 2611, a bill to provide for comprehensive immigration reform and for other purposes.

AMENDMENT NO. 4064

At the request of Mr. INHOFE, the names of the Senator from Tennessee (Mr. ALEXANDER), the Senator from Arizona (Mr. KYL) and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of amendment No. 4064 proposed to S. 2611, a bill to provide for comprehensive immigration reform and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LOTT (for himself and Mr. PRYOR):

S. 2830. A bill to amend the automobile fuel economy provisions of title 49, United States Code, to reform the setting and calculation of fuel economy standards for passenger automobiles, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. LOTT. Mr. President, I rise today to introduce The Corporate Average Fuel Economy, CAFE, Program Reform Act of 2006. I am pleased to be joined in this effort by Senator PRYOR, who serves on the Commerce Committee with me.

Since being introduced in the 1970s, CAFE standards have been controversial. The effectiveness of these standards is often debated as is their effect on safety, consumer choice, and the automobile industry.

CAFE became so controversial that it essentially was frozen for many years.

The stand-off over CAFE finally eased a little bit when a Congressionally commissioned National Academy of Sciences review of the CAFE program was released in 2002. Although that study found that CAFE had in fact reduced energy consumption, the Academy was critical of how the program was structured and found that there was a negative impact on safety.

Just this spring, the Department of Transportation issued new reformed CAFE rules for pickup trucks, vans, and SUVs. This rule is a radical departure from prior CAFE rules in that it applies different standards to different sized vehicles rather than a uniform standard across the whole fleet. The Department's approach addresses many of the criticisms in the academy's study.

The recent rule did not, however, include new standards for cars. Those standards have been the same since 1984 and there is considerable legal ambiguity about the secretary's ability to increase the existing standards. It is clear, however, that the law does not allow the secretary to ''reform'' CAFE standards for cars, since that part of the statute is written differently than for light trucks.

As chairman of the Subcommittee on Surface Transportation and Merchant Marine, I held a hearing on reforming CAFE standards last week. We heard from Secretary Mineta, as well as the automobile industry, safety advocates, and fuel economy experts. After listening to what our witnesses had to say, I am convinced that ''reform'' is a necessary approach.

After that hearing, Secretary Mineta transmitted legislation to Congress asking for the authority to reform CAFE standards.

The bill we are introducing today is very straightforward. The main feature of the legislation is that it gives the Secretary of Transportation the authority to reform the CAFE program in a manner similar to the rule that he issued for light trucks. The bill puts the responsibility of setting CAFE standards where it belongs—and that is with the scientists and technical experts at the Department of Transportation.

The reformed CAFE program authorized by this legislation will address many of the past criticisms. For example, the legislation specifies that the Secretary must take motor vehicle safety into consideration when developing new CAFE standards. The legislation also allows the trading of CAFE credits between a manufacturer's passenger car and light truck fleets. This gives manufacturers the flexibility to increase CAFE where it is most cost effective to do so.

Let me briefly address one issue that is potentially controversial. That is the issue of what is being called ''backsliding.'' The concern is that under a reformed CAFE program, manufacturers could simply stop manufacturing some of their smaller cars since these cars are no longer needed to ''average out'' the larger, less fuel efficient models. The manufacturer's overall fuel economy average could then end up

being below where it is presently. Although this is very unlikely to happen and that isn't the intent of a ''reformed'' CAFE system, I understand the concern. Senator PRYOR and I have included a provision in our legislation to address that problem. I know that there are many opinions on how to deal with this backsliding issue, and some people may not feel that our approach is strong enough. On the other hand, if the provision is too strict then the benefits of reform are potentially wiped out.

In the past, many in Congress have played politics with CAFE—offering bills that try to set unrealistically high or arbitrary CAFE standards. On the other side are those that have simply opposed doing anything. This has resulted in a stalemate and lots of finger pointing. I hope this doesn't happen again, because we really do need to get tougher standards in place as soon as we can.

Senator PRYOR and I are committed to improving the fuel economy of our vehicles without reducing safety and reliability or losing jobs. I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2830

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 ''Corporate Average Fuel Economy Reform Act of 2006''.

SEC. 2. CAFE STANDARDS FOR PASSENGER AUTOMOBILES.

(a) AVERAGE FUEL ECONOMY STANDARDS FOR AUTOMOBILES.—Section 32902 of title 49, United States Code, is amended—

(1) by striking subsections (b) and (c) and inserting the following:

''(b) PASSENGER AUTOMOBILES.—

''(1) IN GENERAL.—At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for passenger automobiles manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year. The Secretary may prescribe separate standards for different classes of passenger automobiles.

''(2) MINIMUM STANDARD.—In prescribing a standard under paragraph (1), the Secretary shall ensure that no manufacturer's standard for a particular model year is less than the greater of—

''(A) the standard in effect on the date of enactment of the Corporate Average Fuel Economy Reform Act of 2006; or

''(B) a standard established in accordance with the requirement of section 5(c)(2) of that Act.

''(c) FLEXIBILITY OF AUTHORITY.—

''(1) IN GENERAL.—The authority of the Secretary to prescribe by regulation average fuel economy standards for automobiles under this section includes the authority to prescribe standards based on one or more vehicle attributes that relate to fuel economy, and to express the standards in the form of a mathematical function. The Secretary may issue a regulation prescribing standards for one or more model years.

''(2) REQUIRED LEAD-TIME.—When the Secretary prescribes an amendment to a standard under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment at least 18 months before the beginning of the model year to which the amendment applies.

''(3) NO ACROSS-THE-BOARD INCREASES.—When the Secretary prescribes a standard, or prescribes an amendment under this section that changes a standard, the standard may not be expressed as a uniform percentage increase from the fuel-economy performance of automobile classes or categories already achieved in a model year by a manufacturer.'';

(2) by inserting ''motor vehicle safety, emissions,'' in subsection (f) after ''economy,'';

(3) by striking ''energy.'' in subsection (f) and inserting ''energy and reduce its dependence on oil for transportation.'';

(4) by striking subsection (j) and inserting the following:

''(j) COMMENTS FROM DOE AND EPA.—

''(1) NOTICE OF PROPOSED RULEMAKING.—Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (a), (b), or (g), the Secretary of Transportation shall give the Secretary of Energy and the Administrator of the Environmental Protection Agency at least 10 days to comment on the proposed standard or amendment. If the Secretary of Energy or the Administrator concludes that the proposed standard or amendment would adversely affect the conservation goals of the Department of Energy or the environmental protection goals of the Environmental Protection Agency, respectively, the Secretary or the Administrator may provide written comments to the Secretary of Transportation about the impact of the proposed standard or amendment on those goals. To the extent that the Secretary of Transportation does not revise a proposed standard or amendment to take into account the comments, if any, the Secretary shall include the comments in the notice.

''(2) NOTICE OF FINAL RULE.—Before taking final action on a standard or an exemption from a standard under this section, the Secretary of Transportation shall notify the Secretary of Energy and the Administrator of the Environmental Protection Agency and provide them a reasonable time to comment on the standard or exemption.''; and

(5) by adding at the end thereof the following:

''(k) COSTS–BENEFITS.—The Secretary of Transportation may not prescribe an average fuel economy standard under this section that imposes marginal costs that exceed marginal benefits, as determined at the time any change in the standard is promulgated.''.

(b) EXEMPTION CRITERIA.—The first sentence of section 32904(b)(6)(B) of title 49, United States Code, is amended—

(1) by striking ''exemption would result in reduced'' and inserting ''manufacturer requesting the exemption will transfer'';

(2) by striking ''in the United States'' and inserting ''from the United States''; and

(3) by inserting ''because of the grant of the exemption'' after ''manufacturing''.

(c) CONFORMING AMENDMENTS.—

(1) Section 32902 of title 49, United States Code, is amended—

(A) by striking ''or (c)'' in subsection (d)(1);

(B) by striking ''(c),'' in subsection (e)(2);

(C) by striking ''subsection (a) or (d)'' each place it appears in subsection (g)(1) and inserting ''subsection (a), (b), or (d)'';

(D) by striking ''(1) The'' in subsection (g)(1) and inserting ''The'';

(E) by striking subsection (g)(2); and

(F) by striking ''(c),'' in subsection (h) and inserting ''(b),''.

(2) Section 32903 of such title is amended by striking ''section 32902(b)–(d)'' each place it appears and inserting ''subsection (b) or (d) of section 32902''.

(3) Section 32904(a)(1)(B) of such title is amended by striking ''section 32902(b)–(d)'' and inserting ''subsection (b) or (d) of section 32902''.

(4) The first sentence of section 32909(b) of such title is amended to read ''The petition must be filed not later than 59 days after the regulation is prescribed.''.

(5) Section 32917(b)(1)(B) of such title is amended by striking ''or (c)''.

SEC. 3. USE OF EARNED CREDITS.

Section 32903 of title 49, United States Code, is amended—

(1) by striking ''3 consecutive model years'' in subsection (a)(1) and subsection (a)(2) and inserting ''5 consecutive model years'';

(2) by striking ''3 model years'' in subsection (b)(2) and inserting ''5 model years'';

(3) by redesignating subsection (f) as subsection (g); and

(4) by inserting after subsection (e) the following:

''(f) CREDIT TRANSFERS.—The Secretary of Transportation may permit by regulation, on such terms and conditions as the Secretary may specify, a manufacturer of automobiles that earns credits to transfer such credits attributable to one of the following production segments in a model year to apply those credits in that model year to the other production segment:

''(1) Passenger-automobile production.

''(2) Non-passenger-automobile production.

In promulgating such a regulation, the Secretary shall take into consideration the potential effect of such transfers on creating incentives for manufacturers to produce more efficient vehicles and domestic automotive employment.''.

SEC. 4. USE OF CIVIL PENALTIES FOR RESEARCH AND DEVELOPMENT.

Section 32912 of title 49, United States Code, is amended by adding at the end thereof the following:

''(e) RESEARCH AND DEVELOPMENT AND USE OF CIVIL PENALTIES.—

''(1) All civil penalties assessed by the Secretary or by a Court shall be credited to an account at the Department of Transportation and shall be available to the Secretary to carry out the research program described in paragraph (2).

''(2) The Secretary shall carry out a program of research and development into fuel saving automotive technologies and to support rulemaking related to the corporate average fuel economy program.''.

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act, and the amendments made by this Act, take effect on the date of enactment of this Act.

(b) TRANSITION FOR PASSENGER AUTOMOBILE STANDARD.—Notwithstanding subsection (a), and except as provided in subsection (c)(2), until the effective date of a standard for passenger automobiles that is issued under the authority of section 32902(b) of title 49, United States Code, as amended by this Act, the standard or standards in place for passenger automobiles under the authority of section 32902 of that title, as that section was in effect on the day before the date of enactment of this Act, shall remain in effect.

(c) RULEMAKING.—

(1) INITIATION OF RULEMAKING UNDER AMENDED LAW.—Within 60 days after the date of enactment of this Act, the Secretary of Transportation shall initiate a rulemaking for passenger automobiles under section

32902(b) of title 49, United States Code, as amended by this Act.

(2) AMENDMENT OF EXISTING STANDARD.—Until the Secretary issues a final rule pursuant to the rulemaking initiated in accordance with paragraph (1), the Secretary shall amend the average fuel economy standard prescribed pursuant to section 32092(b) of title 49, United States Code, with respect to passenger automobiles in model years to which the standard adopted by such final rule does not apply.

Mr. PRYOR. Mr. President, I rise today with my good friend and colleague from Mississippi, Senator LOTT, to introduce legislation to reform and raise the corporate average fuel economy standard for the first time since its inception over 30 years ago.

In 1975 this body passed, as a part of the Energy Policy and Conservation Act, the very first fuel economy standards for our passenger car fleet, setting a standard that all manufacturers must achieve 27.5 miles per gallon. This was done in response to the first oil embargo and the energy crisis of the early 1970s. Americans realized for the first time that we as a nation must set and achieve attainable goals for energy conservation, not only for our economic security but also for our national security.

At that time, the fuel economy of passenger cars averaged around 14 miles per gallon. Ten years after CAFE was enacted, the fuel economy of passenger cars had almost doubled, saving an estimated 2.8 million barrels of oil a day. There can be no doubts as to the benefits of the original CAFE standard. Still 20 years after reaching this peak around 1985, the fuel economy of the Nation's passenger car fleet has stagnated. Some have even argued the fleet of vehicles entering the marketplace today gets less fuel economy than those models in 1985. While fuel efficient technology has improved over the years, the fuel economy of the Nation's passenger fleet has not. Also today, our dependence on oil is greater than ever before. This dependence has complicated decisions we make as a country, such as foreign policy decisions, and as individuals, such as whether or not to fill up your gas tank or buy groceries.

I believe we must do better for families in Arkansas and around the Nation. We must protect our national security by reducing our dependence on foreign oil and uncomplicating our foreign policy decision-making in oil-rich regions. We must protect the environment by reducing greenhouse gas emissions. We must reduce the cost of transportation for consumers. We must begin implementing more stringent CAFE standards now before these problems worsen. Gasoline is over 70 cents higher than this time last year, and the number of miles driven by every American over the age of 16 has risen over 60 percent since 1970—and is continuing to climb at a rapid pace.

This is why I have joined my colleague and worked in a bipartisan manner to introduce comprehensive CAFE reform. For over 30 years the original CAFE standard has remained in place while a rapidly advancing marketplace and rapidly advancing technology have left it behind. Each time fuel economy standards have been debated in this body, they have been mired in partisan politics resulting in nothing but stalemate.

Senator LOTT and I are choosing progress over politics with our common sense legislation, the Corporate Average Fuel Economy Reform Act of 2006. The bill will help accomplish our national security and energy conservation goals while preserving motor vehicle safety, American manufacturing jobs, and consumer choice for vehicles.

Specifically, it will clarify the authority of the Secretary of Transportation to raise and reform CAFE standards. It requires the Secretary to begin the reform process within 60 days in addition to requiring the Secretary to complete an expedited rulemaking to immediately amend the current CAFE standard before a reformed standard takes effect.

For the first time, it will require the Secretary to consider greenhouse gas emissions when promulgating a CAFE standard as well as require the Secretary to obtain comments from the Administrator of the Environmental Protection Agency on the impact of any new rule on the environment.

Our legislation also gives automobile manufacturers more flexibility in the way they can apply CAFE credits in order to help them preserve American jobs. It preserves the 18-month lead time required before the Secretary can issue more stringent CAFE standards. It also allows the Secretary to use the fines collected for violations of the CAFE standard for research and development of fuel saving technologies and to conduct CAFE rulemakings. Finally, our bill provides a backstop fuel economy average which no manufacturer can go below, regardless of their fleet mix.

There is no silver bullet in accomplishing our national security and energy goals, and we must seek short-term alternatives in addition to long-term solutions. CAFE reform is one part of a long-term solution to reduce our dependence on oil, but it is one that can have lasting impact. Still, I believe for the long-term security of our country, this is as good a place as any to start. We must start now.

I thank my colleague from the Commerce Committee, Senator LOTT, for his hard work on this bipartisan legislation. I look forward to working with him and the rest of my colleagues to ensure that this reform becomes law.

By Mr. LUGAR (for himself, Mr. SPECTER, Mr. DODD, Mr. GRAHAM, and Mr. SCHUMER):

S. 2831. A bill to guarantee the free flow of information to the public through a free and active press while protecting the right of the public to effective law enforcement and the fair administration of justice; to the Committee on the Judiciary.

Mr. LUGAR. Mr. President, the bill at the desk is introduced on behalf of myself, Senators SPECTER, DODD, GRAHAM, and SCHUMER. I am pleased to join my good friends and colleagues, Senators SPECTER and DODD, in introducing a revised version of the Free Flow of Information Act.

I believe that the free flow of information essential element of democracy. In order for the United States to foster the spread of freedom and democracy globally, it is incumbent that we first support an open and free press nationally. The role of the media as a conduit between government and the citizens it serves must not be devalued.

Unfortunately, the free flow of information to citizens of the United States is inhibited. Over 30 reporters were recently served or threatened with jail sentences in at least four different Federal jurisdictions for refusing to reveal confidential sources. I fear the end result of such actions is that many whistleblowers will refuse to come forward and reporters will be unable to provide our constituents with information they have a right to know.

In 1972, the Supreme Court held in Branzburg v. Hayes, that reporters did not have an absolute privilege as third party witnesses to protect their sources from prosecutors. Since Branzburg, every State and the District of Columbia, excluding Wyoming has created a privilege for reporters not to reveal their confidential sources. My own State of Indiana provides qualified reporters an absolute protection from having to reveal any such information in court.

The Federal courts of appeals, however, have an incongruent view of this matter. Each circuit has addressed the question of the privilege in a different manner. Some circuits allow the privilege in one category of cases, while others, have expressed skepticism about whether any privilege exists at all.

Congress should clarify the extraordinary differences of opinion in the Federal courts of appeals and the effect they have on undermining the general policy of protection already in place among the States. Likewise, the ambiguity between official Department of Justice rules and unofficial criteria used to secure media subpoenas is unacceptable.

There is an urgent need for Congress to state clear and concise policy guidance.

Senators SPECTER, DODD, and I have introduced legislation today that preserves the free flow of information to the public by providing the press the ability to obtain and protect confidential sources. It provides journalists with certain rights and abilities to sources and report appropriate information without fear of intimidation or imprisonment. This bill sets national standards, based on Department of Justice guidelines, for subpoenas issued to reporters by the Federal Government.

Our legislation promotes greater transparency of government, maintains the ability of the courts to operate effectively, and protects the whistleblowers that identify government or corporate misdeeds and protect national security.

It is also important to note what this legislation does not do. The legislation does not permit rule breaking, give reporters a license to break the law, or permit reporters to interfere with crimes prevention efforts. Furthermore, the Free Flow of Information Act does not weaken national security nor restrict law enforcement. Additional protections have been added to this bill to ensure that information will be disclosed in cases where the guilt or innocence of a criminal is in question, in cases where a reporter was an eye witness to a crime, and in cases where the information is critical to prevent death or bodily harm. The national security exception and continued strict standards relating to classified information will ensure that reporters are protected while maintaining an avenue for prosecution and disclosure when considering the defense of our country.

Reporters Without Borders has reported that more than 100 journalists are currently in jail around the world, with more than half in China, Cuba, and Burma. This is not good company for the United States of America. Global public opinion is always on the lookout to advertise perceived American double standards.

I believe that passage of this bill would have positive diplomatic consequences. This legislation not only confirms America's constitutional commitment to press freedom, it also advances President Bush's American foreign policy initiatives to promote and protect democracy. When we support the development of free and independent press organizations worldwide, it is important to maintain these ideals at home.

In conclusion, I thank, again, my colleagues, Senator SPECTER, the distinguished chairman of the Judiciary Committee, and Senator DODD for their tireless work on this issue. With their assistance, I look forward to working with each of my colleagues to ensure that the free flow of information is unimpeded.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am pleased to join with Senator LUGAR, the principal sponsor, and Senators DODD, GRAHAM, and SCHUMER on the introduction of legislation which will codify a reporter's privilege, something that is very necessary. The matter came into sharp focus recently with the contempt citation and the incarceration of New York Times reporter, Judith Miller, for some 85 days. The Judiciary Committee held two hearings on this subject. Senator LUGAR, with Congressman PENCE in the House, introduced legislation which has formed the nucleus of the bill we are introducing today.

The Branzburg v. Hayes case, 33 years ago, which was a 5-to-4 decision, with a concurring opinion by Justice Powell, has led to what is accurately called a ''crazy quilt'' situation in the circuits—five circuits going one way, four circuits going another way, and laws unsettled in some circuits. This bill, modeled significantly after the Department of Justice regulations, will codify this important issue.

There is an exception on reporter's privilege for national security cases. Keeping in mind the incarceration of Judith Miller, this bill makes a sharp distinction between national security and an inquiry in the grand jury for obstruction of justice or perjury. As a prosecutor in the past, I have great appreciation for the offenses of obstruction of justice and perjury. But in my judgment, they do not rise to the level of importance as a national security case. When a special prosecutor's investigation shifts from the disclosure of a CIA agent, to a question of obstruction of justice, it is a very different situation. This bill would not permit, would not compel the disclosure of a source for obstruction of justice or perjury, but would compel the disclosure of a source for a national security case.

This legislation has the endorsement of 39 of the major media organizations in the United States: The New York Times, the Washington Post, the Associated Press, Time, Hearst Corporation, Philadelphia Inquirer, Newspaper Association of America, ABC, NBC, and CBS. It goes a long way to protecting sources, but it also leaves latitude, in the form of a balancing test, for Federal prosecutors to gain information under limited circumstances for plaintiffs and defendants in civil cases to have access to sources. And, it does not have a shield if a reporter is a witness to some criminal incident.

In recent months, there has been a growing consensus that we need to establish a Federal journalists' privilege to protect the integrity of the newsgathering process—a process that depends on the free flow of information between journalists and whistleblowers, as well as other confidential sources. I do not reach this conclusion lightly. The Judiciary Committee held two separate hearings in which it heard from sixteen witnesses. Included in this number were seven journalists, six attorneys, including current or former prosecutors and some of the Nation's most distinguished experts on the first amendment.

These witnesses demonstrated that there are two vital, competing concerns at stake. On one hand, reporters cite the need to maintain confidentiality in order to ensure that sources will speak openly and freely with the news media. The renowned William Safire, former columnist for the New York Times, testified that ''the essence of news gathering is this: if you don't have sources you trust and who trust you, then you don't have a solid story—and the public suffers for it.'' Reporter Matthew Cooper of Time magazine said this to the Committee: ''As someone who relies on confidential sources all the time, I simply could not do my job reporting stories big and small without being able to speak with officials under varying degrees of anonymity.''

On the other hand, the public has a right to effective law enforcement and fair trials. Our judicial system needs access to information in order to prosecute crime and to guarantee fair administration of the law for plaintiffs and defendants alike. As a Justice Department representative told the committee, prosecutors need to ''maintain the ability, in certain vitally important circumstances, to obtain information identifying a source when a paramount interest is at stake. For example, obtaining source information may be the only available means of preventing a murder, locating a kidnapped child, or identifying a serial arsonist.''

As Federal courts considered such competing interests, they adopted rules that went in several different directions. Rather than a clear, uniform standard for deciding claims of journalist privilege, the Federal courts currently observe a ''crazy quilt'' of different judicial standards.

The current confusion began 33 years ago, when the Supreme Court decided Branzburg v. Hayes. The Court held that the press's first amendment right to publish information does not include a right to keep information secret from a grand jury investigating a criminal matter. The Supreme Court also held that the common law did not exempt reporters from the duty of every citizen to provide information to a grand jury.

The Court reasoned that just as newspapers and journalists are subject to the same laws and restrictions as other citizens, they are also subject to the same duty to provide information to a court as other citizens. However, Justice Powell, who joined the 5–4 majority, wrote a separate concurrence in which he explained that the Court's holding was not an invitation for the government to harass journalists. If a journalist could show that the grand jury investigation was being conducted in bad faith, the journalist could ask the court to quash the subpoena. Justice Powell indicated that courts might assess such claims on a case-by-case basis by balancing the freedom of the press against the obligation to give testimony relevant to criminal conduct.

In attempting to apply Justice Powell's concurring opinion, Federal courts have split on the question of when a journalist is required to testify. In the 33 years since Branzburg, the Federal courts are split in at least three ways in their approaches to Federal criminal and civil cases.

With respect to Federal criminal cases, five circuits—the first, fourth, fifth, sixth, and seventh circuits—have

applied Branzburg so as to not allow journalists to withhold information absent governmental bad faith. Four other circuits—the second, third, ninth, and eleventh circuits—recognize a qualified privilege, which requires courts to balance the freedom of the press against the obligation to provide testimony on a case-by-case basis. The law in the District of Columbia Circuit is unsettled.

With respect to Federal civil cases, nine of the twelve circuits apply a balancing test when deciding whether journalists must disclose confidential sources. One circuit affords journalists no privilege in any context. Two other circuits have yet to decide whether journalists have any privilege in civil cases. Meanwhile, 49 States plus the District of Columbia have recognized a privilege within their own jurisdictions. Thirty-one States plus the District of Columbia have passed some form of reporter's shield statute, and 18 States have recognized a privilege at common law.

There is little wonder that there is a growing consensus concerning the need for a uniform journalists' privilege in Federal courts. This system must be simplified.

Today, we are taking the first step to resolving this problem by introducing the Free Flow of Information Act. This bill draws upon 33 years of experience, as embodied in the Department of Justice's regulations, the law established by the Federal courts of appeals, State statutes, and existing national security provisions. The purpose of this bill is to guarantee the flow of information to the public through a free and active press, while protecting the public's right to effective law enforcement and individuals' rights to the fair administration of justice.

This bill provides ample protection for the Nation's journalists, as demonstrated by the fact that it has been endorsed by 39 news organizations identified in a list I will include at the end of my remarks.

This bill also provides ample protection to the public's interest in law enforcement and fair trials. In drafting this legislation, we started with what works. Both the Department of Justice and the vast majority of journalists with whom we have met—in individual meetings and over the course of two hearings—have generally voiced strong support for the regulations that the Department of Justice currently applies to all of its prosecutors. Moreover, time has proven that these regulations are workable. The Department of Justice has been effectively prosecuting cases under these regulations for 25 years and a majority of State prosecutors carry out their duties under similar statutes.

I have two concerns with the Department's regulations, however. First, under current law, these regulations do not apply to special prosecutors. Special prosecutors are often called upon in cases that are politically sensitive, may potentially be embarrassing to senior government officials, and are high profile—those cases that seem to carry the greatest risk of an overzealous prosecutor needlessly subpoenaing journalists.

Second, the Department regulations are presently enforced by the Attorney General, not a neutral court of law. This places the Attorney General in a difficult position; namely, the primary check on Federal prosecutors' ability to subpoena journalists is the nation's highest Federal prosecutor. Most Americans, I believe, would feel more comfortable having the competing interests weighed by a neutral judge instead of a political appointee who answers to the President. Accordingly, this bill, in large part, codifies the Department of Justice's regulations into law; applies them to all Federal prosecutors, including special prosecutors; and provides that the courts, not a political official, shall decide whether the public's need for information outweighs the interest in allowing a journalist to protect a confidential source.

The Free Flow of Information Act addresses two additional areas of considerable confusion and concern. First, it addresses the situation of a criminal defendant who subpoenas a journalist. To ensure that every criminal defendant has a fair trial, a criminal defendant has less of a burden than a prosecutor does, to show that the journalist's privilege should be waived. This is consistent with our long standing belief as a nation that a criminal defendant must be given ample opportunity to defend himself.

Second, it addresses private civil litigation. This bill provides that before a private party may subpoena a journalist in a civil suit, the court must find that the party is not trying to harass or punish the journalist, and that the public interest requires disclosure. Again, this should help clarify the existing law in federal courts.

Finally, the Free Flow of Information Act adds layers of safeguards for the public. Reporters are not allowed to withhold information if a federal court concludes that the information is important to the defense of our Nation's security or is needed to prevent or stop a crime that could lead to death or physical injury. Also, the bill ensures that both crime victims and criminal defendants will have a fair hearing in court. Under this bill, a journalist who is an eyewitness to a crime or takes part in a crime may not withhold that information. Journalists should not be permitted to hide from the law by writing a story and then claiming a reporter's privilege.

It is time to simplify the patchwork of court decisions and legislation that has grown over the last three decades. It is time for Congress to clear up the ambiguities journalists and the Federal judicial system face in balancing the protections journalists need in providing confidential information to the public with the ability of the courts to conduct fair and accurate trials. I urge my colleagues to support this legislation and help create a fair and efficient means to serve journalists and the news media, prosecutors and the courts, and most importantly the public interest on both ends of the spectrum.

I ask unanimous consent to print the list of organizations and companies that support the legislation in the RECORD.

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

ORGANIZATIONS/COMPANIES SUPPORTING ''FREE FLOW OF INFORMATION ACT OF 2006''

ABC Inc.; Advance Publications, Inc.; American Business Media; American Society of Newspaper Editors; Associated Press; Association of American Publishers, Inc.; Association of Capitol Reporters and Editors; Belo Corp.; CBS; CNN; Coalition of Journalists for Open Government; The Copley Press, Inc., Court TV; Cox Enterprises, Inc.; Freedom Communication, Inc.; Gannett Co., Inc.; The Hearst Corporation; Magazine Publishers of America; The McClatchy Company; The McGraw-Hill Companies.

Media Law Resources Center; National Newspaper Association; Nation Press Photographers Association; National Public Radio; NBC Universal; News Corporation; Newspaper Association of America; Newsweek; The New York Times Company; Radio-Television News Directors Association; Raycom Media, Inc.; The Reporters Committee for Freedom of the Press; E. W. Scripps; Society of Professional Journalists; Time Inc.; Time Warner; Tribune Company; The Washington Post; White House Correspondents' Association.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me express my gratitude to my colleague from Indiana, Senator LUGAR, and his colleague from Indiana, Congressman PENCE, and his colleague, Congressman BOUCHER of Virginia, who are drafting similar legislation and propose similar legislation in the other body and, of course, Senator SPECTER, the chairman of the Judiciary Committee, my colleague from New York, Senator SCHUMER, and the Presiding Officer for their work on pulling together this bill which is a very sound proposal. As the Senator from Pennsylvania has explained, it deals with an issue that many were concerned about, and that is the national security question.

The point I would like to make is that while this is about journalists and the collection of information and revealing stories that might otherwise not be told, the real winners of this proposal are not journalists or news media outlets, television stations, or the like. The real winners are the people we represent, our constituents, and the consumers of information. This is most important for them. It is really not that significant. If it were only about journalists, frankly, we might have second questions about it.

Jefferson, of course, said it better than anyone many years ago when he said if he had to choose between a free country and a free press, he would select the latter. Madison, on the same

subject, talking about freedom of information, freedom of the press, had this quote:

Popular government without popular information or the means of acquiring it is but a prologue to a farce, or tragedy, or perhaps both.

Today, that fundamental principle—that a well-informed citizenry is the cornerstone of self-government—is at risk in a manner in which it has not been at risk previously.

In the past year alone, some two dozen reporters have been subpoenaed or questioned about their confidential sources. Most of theme face fines or prison time. Seven have already been held in contempt. One has been jailed. Another was found guilty of criminal contempt for refusing to reveal a confidential source and served 6 months under house arrest. Why? Because they received information from confidential sources and pledged to protect the confidentiality of those sources. In other words, they have committed the ''offense'' of being journalists.

These actions by our Government against journalists are having a profound impact on news gathering. For example, in testimony last summer before the Senate Judiciary Committee, Norman Pearlstine, the editor in chief of Time, Inc., said this about the fallout from the Justice Department's efforts to obtain confidential information from a Time reporter:

Valuable sources have insisted that they no longer trusted the magazine and that they would no longer cooperate on stories. The chilling effect is obvious.

Confidential evidence may be just the tip of the iceberg. We have no way of knowing for certain the number of journalists who have been ordered or requested to reveal confidential sources. We can only speculate as to how many editors and publishers put the brakes on a story for fear that it could land one of their reporters in a spider web spun by the Federal prosecutors that could include prison. If citizens with knowledge of wrongdoing could not or would not come forward to share what they know in confidence with members of the press, serious journalism would cease to exist, in my view. Serious wrongs would remain unexposed. The scandals known as Watergate, the Enron failure, the Abu Ghraib prison photos—none of these would have been known to the public but for good journalists doing their work.

That scenario is no longer purely hypothetical. It is, in some respects, already a reality. When journalists are hauled into court by prosecutors and threatened with fines and imprisonment if they don't divulge the sources of their information, we are entering a dangerous territory for a democracy. That is when not only journalists, but ordinary citizens, will fear prosecution simply for exposing wrongdoing. When that happens, the information our citizens need to remain sovereign will be degraded, making it more and more difficult to hold accountable those in power. When the public's right to know is threatened, then I suggest to you that all of the liberties we hold dear are threatened, as well.

Again, I thank Senator SPECTER for working out this compromise, and I emphasize that the issue of national security, which was a very legitimate concern, has been handled by this proposal. The underlying issue is the right of citizens to have access to important information that might otherwise never become available were it not for the ability to have confidential sources share that information and the ability of these journalists to protect the confidentiality of those sources. Thirty-nine States have provisions dealing with the shield law. I think 10 States have regulations regarding the same matter.

I think it is long overdue that the Federal Government have a similar piece of legislation to protect the kind of information we seek. I commend my colleagues for their efforts in this regard. I am happy to join them.

Mr. SESSIONS. Mr. President, I say with regard to what has just taken place, these are complex areas, and we need to be careful about protecting our free speech rights. Nobody denies that. But you have to be careful, too. I was thinking that if a spy comes into our country and gets secure information and gives it to our enemy, we put him in jail, and they can be convicted, I guess, of treason. If a reporter gets information and publishes it to our enemies and to the whole world, they get the Pulitzer prize.

I think we have to be careful about how we word this. I am sure we will come up with a pretty good solution.

Mr. SPECTER. Mr. President, I ask unanimous consent that Senator SCHUMER be recognized for 4 minutes to speak on the Lugar-Specter-Dodd bill.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I join as a cosponsor of the bill just introduced because I think it really cuts the Gordian knot. There has been a deadlock on improving the shield law for the very reason that not all disclosures by Government officials to members of the press are equal. We certainly want to protect a whistleblower. We certainly want a person, if they work at the FDA and see that tests are being short-circuited and they go to higher-ups and get nowhere, to be able to go to the press and expose it. It is a far different matter when something is prohibited by statute from being made public, such as with grand jury minutes. Frankly, that dealt with the Plame case. In both cases making that information public was a violation of law. There was a public policy against disclosure, which there is not in the typical whistleblower case.

I believe the reason that the legislation my colleagues from Indiana and Connecticut put in didn't get as much support is that it failed to distinguish that difference. We need to protect the press, especially with a large Government that keeps things secret more and more. But we also have to have some respect for the fact that there are certain things that should not be made public by statute in open debate.

As I said, this legislation cuts the Gordian knot. It protects those matters that should not be made public and doesn't put them under the shield of law but strengthens the protections for whistleblowers and others who might want to expose Government wrongdoing when there is no other way to expose it.

This is a large step forward. It is legislation I am proud to cosponsor. I am very glad that the deadlock has been broken by this thoughtful legislation, which I now believe will garner enough support to become law. Whereas, the previous legislation, as sweeping as it was, would not.

I compliment my colleagues from Indiana, Connecticut, Pennsylvania, and South Carolina, with whom I join as lead cosponsors because it is going to make our country a better place.

By Mr. KOHL (for himself and Mr. DEWINE):

S. 2854. A bill to prevent anti-competitive mergers and acquisitions in the oil and gas industry; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Oil Industry Merger Antitrust Enforcement Act. This legislation will significantly strengthen the antitrust laws to prevent anticompetitive mergers and acquisitions in oil and gas industry.

We have all seen the suffering felt by consumers and our national economy resulting from rising energy prices. Gasoline prices have now shattered the once unthinkable $3.00 a gallon level, have doubled in the last 5 years, and increased more than 30 percent in the last year alone. And prices for other crucial energy products—such as natural gas and home heating oil—have undergone similar sharp increases.

Industry experts debate the causes of these extraordinarily high prices. Possible culprits are growing worldwide demand, supply disruptions, the actions of the OPEC oil cartel and limits on refinery capacity in the United States. But about one thing there can be no doubt—the substantial rise in concentration and consolidation in the oil industry. Since 1990, the Government Accountability Office has counted over 2,600 mergers, acquisitions and joint ventures in the oil industry. Led by gigantic mergers such as Exxon/Mobil, BP/Arco, Conoco/Phillips and Chevron/Texaco, by 2004, the five largest U.S. oil refining companies controlled over 56 percent of domestic refining capacity, a greater market share than that controlled by the top 10 companies a decade earlier.

This merger wave has led to substantially less competition in the oil industry. In 2004, the GAO concluded that these mergers have directly caused increases in the price of gasoline. A

study by the independent consumer watchdog Public Citizen found that in the 5 years between 1999 and 2004, U.S. oil refiners increased their average profits on every gallon of gasoline refined from 22.8 cents to 40.8 cents, a 79 percent jump. And the grossly inflated profit numbers of the major oil companies—led by Exxon Mobil's $8.4 billion profit in the first quarter of 2006, which followed its $36 billion profit in 2005, the highest corporate profits ever achieved in U.S. history, are conclusive evidence—if any more was needed—of the lack of competition in the U.S. oil industry. While it is true that the world price of crude oil has substantially increased, the fact that the oil companies can so easily pass along all of these price increases to consumers of gasoline and other refined products—and greatly compound their profits along the way—confirms that that there is a failure of competition in our oil and gas markets.

More than 90 years ago, one of our Nation's basic antitrust laws—the Clayton Act—was written to prevent just such industry concentration harming competition. It makes illegal any merger or acquisition the effect of which ''may be substantially to lessen competition.'' Despite the plain command of this law, the Federal Trade Commission—the Federal agency with responsibility for enforcing antitrust law in the oil and gas industry—has failed to take any effective action to prevent undue concentration in this industry. Instead, it permitted almost all of these 2,600 oil mergers and acquisitions to proceed without challenge. And where the FTC has ordered divestitures, they have been wholly ineffective to restore competition. Consumers have been at the mercy of an increasingly powerful oligopoly of a few giant oil companies, passing along price increases without remorse as the market becomes increasingly concentrated and competition diminishes. It is past time for us in Congress to take action to strengthen our antitrust law so that it will, as intended, stand as a bulwark to protect consumers and prevent any further loss of competition in this essential industry.

Our bill will strengthen merger enforcement under the antitrust law in two respects. First, it will direct that the FTC, in conjunction with the Justice Department, revise its Merger Guidelines to take into account the special conditions prevailing in the oil industry. In reviewing a pending merger or acquisition to determine whether to approve it or take legal action to block it, the FTC follows what are known as ''Merger Guidelines.'' The Merger Guidelines set forth the factors that the agency must examine to determine if a merger or acquisition lessens competition, and sets forth the legal tests the FTC is to follow in deciding whether to approve or challenge a merger. As presently written, the Merger Guidelines fail to direct the FTC, when reviewing an oil industry merger, to pay any heed at all to the special economic conditions prevailing in that industry.

Our bill will correct this deficiency. Many special conditions prevail in the oil and gas marketplace that warrant scrutiny, conditions that do not occur in other industries, and the Merger Guidelines should reflect these conditions. In most industries, when demand rises and existing producers earn ever-increasing profits, new producers enter the market and new supply expands, reducing the pressure on price. However, in the oil industry, there are severe limitations on supply and environmental and regulatory difficulty in opening new refineries, so this normal market mechanism cannot work. Additionally, in most industries, consumers shift to alternative products in the face of sharp price increases, leading to a reduction in demand and a corresponding reduction in the pressure to increase prices. But for such an essential commodity as gasoline, consumers have no such option—they must continue to consume gasoline to get to work, to go to school, and to shop. These factors all mean that antitrust enforcers should be especially cautious about permitting increases in concentration in the oil industry.

Accordingly, our bill directs the FTC and Justice Department to revise its Merger Guidelines to take into account the special conditions prevailing in the oil industry—including the high inelasticity of demand for oil and petroleum-related products; the ease of gaining market power; supply and refining capacity limits; difficulties of market entry; and unique regulatory requirements applying to the oil industry. This revision of the Merger Guidelines must be completed within 6 months of enactment of this legislation.

The second manner in which this legislation will strengthen antitrust enforcement will be to shift the burden of proof in Clayton Act challenges to oil industry mergers and acquisitions. In such cases, the burden will be placed on the merging parties to establish, by a preponderance of evidence, that their transaction does *not* substantially lessen competition. This provision would reverse the usual rule that the government or private plaintiff challenging the merger must prove that the transaction harms competition. As the parties seeking to effect a merger with a competitor in an already concentrated industry, and possessing all the relevant data regarding the transaction, it is entirely appropriate that the merging parties bear this burden. This provision does not forbid all mergers in the oil industry if the merging parties can establish that their merger does not substantially harm competition, it may proceed. However, shifting the burden of proof in this manner will undoubtedly make it more difficult for oil mergers and acquisition to survive court challenge, thereby enhancing the law's ability to block truly anticompetitive transactions and deterring companies from even attempting such transactions. In today's concentrated oil industry and with consumers suffering record high prices, mergers and acquisitions that even the merging parties cannot justify should not be tolerated.

As ranking member on the Senate Antitrust Subcommittee, I believe that this bill is a crucial step to ending this unprecedented move towards industry concentration and to begin to restore competitive balance to the oil and gas industry. Since the days of the breakup of the Standard Oil trust 100 years ago, antitrust enforcement has been essential to prevent undue concentration in this industry. This bill is an essential step to ensure that our antitrust laws are sufficiently strong to ensure a competitive oil industry in the 21st century. I urge my colleagues to support the Oil Industry Merger Antitrust Enforcement Act.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2854

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 ''Oil Industry Merger Antitrust Enforcement Act''.

SEC. 2. STATEMENT OF FINDINGS AND DECLARATIONS OF PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) American consumers are suffering from excessively high prices for gasoline, natural gas, heating oil, and other energy products.

(2) These excessively high energy prices have been caused, at least in substantial part, by undue concentration among companies involved in the production, refining, distribution, and retail sale of oil, gasoline, natural gas, heating oil, and other petroleum-related products.

(3) There has been a sharp consolidation caused by mergers and acquisitions among oil companies over the last decade, and the antitrust enforcement agencies (the Federal Trade Commission and the Department of Justice Antitrust Division) have failed to employ the antitrust laws to prevent this consolidation, to the detriment of consumers and competition. This consolidation has caused substantial injury to competition and has enabled the remaining oil companies to gain market power over the sale, refining, and distribution of petroleum-related products.

(4) The demand for oil, gasoline, and other petroleum-based products is highly inelastic so that oil companies can easily utilize market power to raise prices.

(5) Maintaining competitive markets for oil, gasoline, natural gas, and other petroleum-related products is in the highest national interest.

(b) PURPOSES.—The purposes of this Act are to—

(1) ensure vigorous enforcement of the antitrust laws in the oil industry;

(2) restore competition to the oil industry and to the production, refining, distribution, and marketing of gasoline and other petroleum-related products; and

(3) prevent the accumulation and exercise of market power by oil companies.

SEC. 3. BURDEN OF PROOF.

Section 7 of the Clayton Act (15 U.S.C. 18) is amended by adding at the end the following:

''In any civil action brought against any person for violating this section in which the plaintiff—

''(1) alleges that the effect of a merger, acquisition, or other transaction affecting commerce may be to substantially lessen competition, or to tend to create a monopoly, in the business of exploring for, producing, refining, or otherwise processing, storing, marketing, selling, or otherwise making available petroleum, oil, or natural gas, or products derived from petroleum, oil, or natural gas; and

''(2) establishes that a merger, acquisition, or transaction is between or involves persons competing in the business of exploring for, producing, refining, or otherwise processing, storing, marketing, selling, or otherwise making available petroleum, oil, or natural gas, or products derived from petroleum, oil, or natural gas;

the burden of proof shall be on the defendant or defendants to establish by a preponderance of the evidence that the merger, acquisition, or transaction at issue will not substantially lessen competition or tend to create a monopoly.''.

SEC. 4. ENSURING FULL AND FREE COMPETITION.

(a) REVIEW.—The Federal Trade Commission and the Antitrust Division of the Department of Justice shall jointly review and revise all enforcement guidelines and policies, including the Horizontal Merger Guidelines issued April 2, 1992 and revised April 8, 1997, and the Non-Horizontal Merger Guidelines issued June 14, 1984, and modify those guidelines in order to—

(1) specifically address mergers and acquisitions in oil companies and among companies involved in the production, refining, distribution, or marketing of oil, gasoline, natural gas, heating oil, or other petroleum-related products; and

(2) ensure that the application of these guidelines will prevent any merger and acquisition in the oil industry, when the effect of such a merger or acquisition may be to substantially lessen competition, or to tend to create a monopoly, and reflect the special conditions prevailing in the oil industry described in subsection (b).

(b) SPECIAL CONDITIONS.—The guidelines described in subsection (a) shall be revised to take into account the special conditions prevailing in the oil industry, including—

(1) the high inelasticity of demand for oil and petroleum-related products;

(2) the ease of gaining market power in the oil industry;

(3) supply and refining capacity limits in the oil industry;

(4) difficulties of market entry in the oil industry; and

(5) unique regulatory requirements applying to the oil industry.

(c) COMPETITION.—The review and revision of the enforcement guidelines required by this section shall be completed not later than 6 months after the date of enactment of this Act.

(d) REPORT.—Not later than 6 months after the date of enactment of this Act, the Federal Trade Commission and the Antitrust Division of the Department of Justice shall jointly report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives regarding the review and revision of the enforcement guidelines mandated by this section.

SEC. 5. DEFINITIONS.

In this Act:

(1) OIL INDUSTRY.—The term ''oil industry'' means companies and persons involved in the production, refining, distribution, or marketing of oil or petroleum-based products.

(2) PETROLEUM-BASED PRODUCT.—The term ''petroleum-based product'' means gasoline, diesel fuel, jet fuel, home heating oil, natural gas, or other products derived from the refining of oil or petroleum.

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

S. 2855. A bill to amend the Safe Drinking Water Act to eliminate security risks by replacing the use of extremely hazardous gaseous chemicals with inherently safer technologies; to the Committee on Environment and Public Works.

Mr. BIDEN. Mr. President, I rise today to introduce the Community Water Treatment Hazards Reduction Act of 2006. This legislation would completely eliminate a known security risk to millions of Americans across the United States by facilitating the transfer to safer technologies from deadly toxic chemicals at our Nation's water treatment facilities.

Across our Nation, there are thousands of water treatment facilities that utilize gaseous toxic chemicals to treat drinking and wastewater. Approximately 2,850 facilities are currently regulated under the Clean Air Act because they store large quantities of these dangerous chemicals. In fact, 98 of these facilities threaten over 100,000 citizens. For example, the Fiveash Water Treatment Plant in Fort Lauderdale, FL, threatens 1,526,000 citizens. The Bachman Water Treatment in Dallas, TX, threatens up to 2 million citizens. And there are similar examples in communities throughout the Nation. If these facilities—and the 95 other facilities that threaten over 100,000 citizens—switched from the use of toxic chemicals to safer technologies that are widely used within the industry we could completely eliminate a known threat to nearly 50 million Americans.

Many facilities have already made the prudent decision to switch without intervention by the government. The Middlesex County Utilities Authority in Sayreville, NJ, switched to safer technologies and eliminated the risk to 10.7 million people. The Nottingham Water Treatment Plant in Cleveland, OH, switched and eliminated the risk to 1.1 million citizens. The Blue Plains Wastewater Treatment Plant switched and eliminated the risk to 1.7 million people. In my hometown of Wilmington, DE, the Wilmington Water Pollution Control Facility switched from using chlorine gas to liquid bleach. This commendable decision has eliminated the risk to 560,000 citizens, including the entire city of Wilmington. In fact, this facility no longer has to submit risk management plans to the Environmental Protection Agency required by the Clean Air Act because the threat has been completely eliminated. There are many other examples of facilities that have done the right thing and eliminated the use of these dangerous, gaseous chemicals.

The bottom line is that if we can eliminate a known risk, we should. The legislation I am introducing today will do just that. It will require the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Homeland Security, to do a few simple things. First, water facilities will be prioritized based upon the risk that they pose to citizens and critical infrastructure. These facilities—beginning with the most dangerous ones—will be required to submit a report on the feasibility of utilizing safer technologies and the anticipated costs to transition. If grant funding is available, the Administrator will issue a grant and order the facility to transition to the safer technology chosen by the owner of the facility. I believe that this approach will allow us to use Federal funds responsibly while reducing risk to our citizens.

Once the transition is complete, the facility will be required to track all cost-savings related to the switch, such as decreased security costs, costs saving by eliminating administrative requirements under the EPA risk management plan, lower insurance premiums, and others. If savings are ultimately realized by the facility, it will be required to return one half of these savings, not to exceed the grant amount, back to the EPA. In turn, the EPA will utilize any returned savings to help facilitate the transition of more water facilities.

A 2005 report by the Government Accountability Office found that providing grants to assist water facilities to transition to safer technologies was an appropriate use of Federal funds. The costs for an individual facility to transition will vary, but the cost is very cheap when you consider the security benefits. For example, the Wilmington facility invested approximately $160,000 to transition and eliminated the risk to nearly 600,000 people. Similarly, the Blue Plains facility spent $500,000 to transition after 9–11 and eliminated the risk to 1.2 million citizens immediately. This, in my view, is a sound use of funds. And, this legislation will provide sufficient funding to transition all of our high-priority facilities throughout Nation.

Finally, I would like to point out that facilities making the decision to transition after 9–11, but before the enactment date of this legislation will be eligible to participate in the program authorized by this legislation. I have included this provision because I believe that the Federal Government should acknowledge—and promote—local decisions that enhance our homeland security. In addition, we don't want to create a situation where water facilities wait for Federal funding, before doing the right thing and eliminating those dangerous gaseous chemicals.

Last December the 9–11 Discourse Project released its report card for the

administration and Congress on efforts to implement the 9–11 Commission recommendations. It was replete with D's and F's demonstrating that we have been going in the wrong direction with respect to homeland security. One of the most troubling findings made by the 9–11 Commission is that with respect to our Nation's critical infrastructure that ''no risk and vulnerability assessments actually made; no national priorities established; no recommendations made on allocations of scarce resources. All key decisions are at least a year away. It is time that we stop talking about priorities and actually set some.'' While much remains to be done, the Community Water Treatment Hazards Reduction Act of 2006 sets an important priority for our homeland security and it affirmatively addresses it. I urge my colleagues to support this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2855

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 ''Community Water Treatment Hazards Reduction Act of 2006''.

SEC. 2. USE OF INHERENTLY SAFER TECHNOLOGIES AT WATER FACILITIES.

Part F of the Safe Drinking Water Act (42 U.S.C. 300j–21 et seq.) is amended by adding at the end the following:

''SEC. 1466. USE OF INHERENTLY SAFER TECHNOLOGIES AT WATER FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) HARMFUL INTENTIONAL ACT.—The term 'harmful intentional act' means a terrorist attack or other intentional act carried out upon a water facility that is intended—

''(A) to substantially disrupt the ability of the water facility to provide safe and reliable—

''(i) conveyance and treatment of wastewater or drinking water;

''(ii) disposal of effluent; or

''(iii) storage of a potentially hazardous chemical used to treat wastewater or drinking water;

''(B) to damage critical infrastructure;

''(C) to have an adverse effect on the environment; or

''(D) to otherwise pose a significant threat to public health or safety.

''(2) INHERENTLY SAFER TECHNOLOGY.—The term 'inherently safer technology' means a technology, product, raw material, or practice the use of which, as compared to the current use of technologies, products, raw materials, or practices, significantly reduces or eliminates—

''(A) the possibility of release of a substance of concern; and

''(B) the hazards to public health and safety and the environment associated with the release or potential release of a substance of concern.

''(3) SECRETARY.—The term 'Secretary' means the Secretary of Homeland Security (or a designee).

''(4) SUBSTANCE OF CONCERN.—

''(A) IN GENERAL.—The term 'substance of concern' means any chemical, toxin, or other substance that, if transported or stored in a sufficient quantity, would have a high likelihood of causing casualties and economic damage if released or otherwise successfully targeted by a harmful intentional act, as determined by the Administrator, in consultation with the Secretary.

''(B) INCLUSIONS.—The term 'substance of concern' includes—

''(i) any substance included in Table 1 or 2 contained in section 68.130 of title 40, Code of Federal Regulations (or a successor regulation), published in accordance with section 112(r)(3) of the Clean Air Act (42 U.S.C. 7412(r)(3)); and

''(ii) any other highly hazardous gaseous toxic material or substance that, if transported or stored in a sufficient quantity, could cause casualties or economic damage if released or otherwise successfully targeted by a harmful intentional act, as determined by the Administrator, in consultation with the Secretary.

''(5) TREATMENT WORKS.—The term 'treatment works' has the meaning given the term in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292).

''(6) VULNERABILITY ZONE.—The term 'vulnerability zone' means, with respect to a substance of concern, the geographic area that would be affected by a worst-case release of the substance of concern, as determined by the Administrator on the basis of—

''(A) an assessment that includes the information described in section 112(r)(7)(B)(ii)(I) of the Clean Air Act (42 U.S.C. 7412(r)(7)(B)(ii)(I)); or

''(B) such other assessment or criteria as the Administrator determines to be appropriate.

''(7) WATER FACILITY.—The term 'water facility' means a treatment works or public water system owned or operated by any person.

''(b) REGULATIONS.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Administrator, in consultation with the Secretary and other Federal, State, and local governmental entities, security experts, owners and operators of water facilities, and other interested persons shall—

''(A) compile a list of all high-consequence water facilities, as determined in accordance with paragraph (2); and

''(B) notify each owner and operator of a water facility that is included on the list.

''(2) IDENTIFICATION OF HIGH-CONSEQUENCE WATER FACILITIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), in determining whether a water facility is a high-consequence water facility, the Administrator shall consider—

''(i) the number of people located in the vulnerability zone of each substance of concern that could be released at the water facility;

''(ii) the critical infrastructure (such as health care, governmental, or industrial facilities or centers) served by the water facility;

''(iii) any use by the water facility of large quantities of 1 or more substances of concern; and

''(iv) the quantity and volume of annual shipments of substances of concern to or from the water facility.

''(B) TIERS OF FACILITIES.—

''(i) IN GENERAL.—Except as provided in clauses (ii) through (iv), the Administrator shall classify high-consequence water facilities designated under this paragraph into 3 tiers, and give priority to orders issued for, actions taken by, and other matters relating to the security of, high-consequence water facilities based on the tier classification of the high-consequence water facilities, as follows:

''(I) TIER 1 FACILITIES.—A Tier 1 high-consequence water facility shall have a vulnerability zone that covers more than 100,000 individuals and shall be given the highest priority by the Administrator.

''(II) TIER 2 FACILITIES.—A Tier 2 high-consequence water facility shall have a vulnerability zone that covers more than 25,000, but not more than 100,000, individuals and shall be given the second-highest priority by the Administrator.

''(III) TIER 3 FACILITIES.—A Tier 3 high-consequence water facility shall have a vulnerability zone that covers more than 10,000, but not more than 25,000, individuals and shall be given the third-highest priority by the Administrator.

''(ii) MANDATORY DESIGNATION.—If the vulnerability zone for a substance of concern at a water facility contains more than 10,000 individuals, the water facility shall be—

''(I) considered to be a high-consequence water facility; and

''(II) classified by the Administrator to an appropriate tier under clause (i).

''(iii) DISCRETIONARY CLASSIFICATION.—A water facility with a vulnerability zone that covers 10,000 or fewer individuals may be designated as a high consequence facility, on the request of the owner or operator of a water facility, and classified into a tier described in clause (i), at the discretion of the Administrator.

''(iv) RECLASSIFICATION.—The Administrator—

''(I) may reclassify a high-consequence water facility into a tier with higher priority, as described in clause (i), based on an increase of population covered by the vulnerability zone or any other appropriate factor, as determined by the Administrator; but

''(II) may not reclassify a high-consequence water facility into a tier with a lower priority, as described in clause (i), for any reason.

''(3) OPTIONS FEASIBILITY ASSESSMENT ON USE OF INHERENTLY SAFER TECHNOLOGY.—

''(A) IN GENERAL.—Not later than 90 days after the date on which the owner or operator of a high-consequence water facility receives notice under paragraph (1)(B), the owner or operator shall submit to the Administrator an options feasibility assessment that describes—

''(i) an estimate of the costs that would be directly incurred by the high-consequence water facility in transitioning from the use of the current technology used for 1 or more substances of concern to inherently safer technologies; and

''(ii) comparisons of the costs and benefits to transitioning between different inherently safer technologies, including the use of—

''(I) sodium hypochlorite;

''(II) ultraviolet light;

''(III) other inherently safer technologies that are in use within the applicable industry; or

''(IV) any combination of the technologies described in subclauses (I) through (III).

''(B) CONSIDERATIONS IN DETERMINING ESTIMATED COSTS.—In estimating the transition costs described in subparagraph (A)(i), an owner or operator of a high-consequence water facility shall consider—

''(i) the costs of capital upgrades to transition to the use of inherently safer technologies;

''(ii) anticipated increases in operating costs of the high-consequence water facility;

''(iii) offsets that may be available to reduce or eliminate the transition costs, such as the savings that may be achieved by—

''(I) eliminating security needs (such as personnel and fencing);

''(II) complying with safety regulations;

''(III) complying with environmental regulations and permits;

''(IV) complying with fire code requirements;

''(V) providing personal protective equipment;

''(VI) installing safety devices (such as alarms and scrubbers);

''(VII) purchasing and maintaining insurance coverage;

''(VIII) conducting appropriate emergency response and contingency planning;

''(IX) conducting employee background checks; and

''(X) potential liability for personal injury and damage to property; and

''(iv) the efficacy of each technology in treating or neutralizing biological or chemical agents that could be introduced into a drinking water supply by a terrorist or act of terrorism.

''(C) USE OF INHERENTLY SAFER TECHNOLOGIES.—

''(i) IN GENERAL.—Subject to clause (ii), not later than 90 days after the date of submission of the options feasibility assessment required under this paragraph, the owner or operator of a high-consequence water facility, in consultation with the Administrator, the Secretary, the United States Chemical Safety and Hazard Investigation Board, local officials, and other interested parties, shall determine which inherently safer technologies are to be used by the high-consequence water facility.

''(ii) CONSIDERATIONS.—In making the determination under clause (i), an owner or operator—

''(I) may consider transition costs estimated in the options feasibility assessment of the owner or operator (except that those transition costs shall not be the sole basis for the determination of the owner or operator);

''(II) shall consider long-term security enhancement of the high-consequence water facility;

''(III) shall consider comparable water facilities that have transitioned to inherently safer technologies; and

''(IV) shall consider the overall security impact of the determination, including on the production, processing, and transportation of substances of concern at other facilities.

''(c) ENFORCEMENT.—

''(1) IN GENERAL.—In accordance with the tiers and priority system established under subsection (b)(2)(B), subject to paragraph (2), the Administrator—

''(A) shall prioritize the use of inherently safer technologies at high-consequence facilities listed under subsection (b)(1);

''(B) subject to the availability of grant funds under this section, not later than 90 days after the date on which the Administrator receives an options feasibility assessment from an owner or operator of a high-consequence water facility under subsection (b)(3)(A), shall issue an order requiring the high-consequence water facility to eliminate the use of 1 or more substances of concern and adopt 1 or more inherently safer technologies; and

''(C) may seek enforcement of an order issued under paragraph (2) in the appropriate United States district court.

''(2) DE MINIMIS USE.—Nothing in this section prohibits the de minimis use of a substance of concern as a residual disinfectant.

''(d) GRANTS.—

''(1) IN GENERAL.—In accordance with the tiers and priority system established under subsection (b)(2)(B), the Administrator shall provide grants to high-consequence facilities (including high-consequence facilities subject to an order issued under subsection (c)(1)(C) and water facilities described in paragraph (6)) for use in paying capital expenditures directly required to complete the transition of the high-consequence water facility to the use of 1 or more inherently safer technologies.

''(2) APPLICATION.—A high-consequence water facility that seeks to receive a grant under this subsection shall submit to the Administrator an application by such date, in such form, and containing such information as the Administrator shall require, including information relating to the transfer to inherently safer technologies, and the proposed date of such a transfer, described in subsection (b)(3)(B).

''(3) DEADLINE FOR TRANSITION.—An owner or operator of a high-consequence water facility that is subject to an order under subsection (c)(1)(C) and that receives a grant under this subsection shall begin the transition to inherently safer technologies described in paragraph (1) not later than 90 days after the date of issuance of the order under subsection (c)(1)(C).

''(4) FACILITY UPGRADES.—An owner or operator of a high-consequence water facility—

''(A) may complete the transition to inherently safer technologies described in paragraph (1) within the scope of a greater facility upgrade; but

''(B) shall use amounts from a grant received under this subsection only for the capital expenditures directly relating to the transition to inherently safer technologies.

''(5) OPERATIONAL COSTS.—An owner or operator of a high-consequence water facility that receives a grant under this subsection may not use funds from the grant to pay or offset any ongoing operational cost of the high-consequence water facility.

''(6) OTHER REQUIREMENTS.—As a condition of receiving a grant under this subsection, the owner or operator of a high-consequence water facility shall—

''(A) upon receipt of a grant, track all cost savings resulting from the transition to inherently safer technologies, including those savings identified in subsection (b)(4)(B)(iii); and

''(B) for each fiscal year for which grant funds are received, return an amount to the Administrator equal to 50 percent of the savings achieved by the high-consequence water facility (but not to exceed the amount of grant funds received for the fiscal year) for use by the Administrator in facilitating the future transition of other high-consequence water facilities to the use of inherently safer technologies.

''(7) INTERIM TRANSITIONS.—A water facility that transitioned to the use of 1 or more inherently safer technologies after September 11, 2001, but before the date of enactment of this section, and that qualifies as a high-consequence facility under subsection (b)(2), in accordance with any previous report submitted by the water facility under section 112(r) of the Clean Air Act (42 U.S.C. 7412(r)) and as determined by the Administrator, shall be eligible to receive a grant under this subsection.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $125,000,000 for each of fiscal years 2007 through 2011.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 483—EXPRESSING THE SENSE OF THE SENATE REGARDING THE IMPORTANCE OF ORAL HEALTH, AND FOR OTHER PURPOSES

Mr. COCHRAN submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 483

Whereas the Surgeon General has determined that oral health is integral to general health;

Whereas the Surgeon General has identified numerous oral-systemic disease connections, including possible associations between chronic oral infections and diabetes, heart and lung diseases, stroke, low-birthweight, and premature births;

Whereas the burden of dental and oral health diseases restricts activities of an individual at school, at work, and at home, and often significantly diminishes the quality of life of an individual;

Whereas oral health diseases, including dental caries and periodontal disease, are largely preventable;

Whereas the effective treatment and prevention of those diseases are substantially aided by access to highly trained dental primary care professionals;

Whereas the Academy of General Dentistry was officially incorporated in 1952, with the mission to serve as the premier resource for general dentists who are committed to improving patient care through lifelong learning and continuing education;

Whereas the Academy of General Dentistry has grown to represent over 33,000 general dentists who provide primary care, oral health care services;

Whereas the Academy of General Dentistry encourages excellence in continuing education and professionalism through its earned professional designation programs known as ''Mastership'', ''Fellowship and Lifelong Learning'', and ''Service Recognition''; and

Whereas the Academy of General Dentistry has signed a memorandum of understanding with the Department of Health and Human Services to help improve the oral health status of the citizens of the United States and achieve the objectives of the Healthy People 2010 initiative of the Department: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) access to oral health care services and the prevention of oral health care disease is integral to achieving and maintaining good health; and

(2) the Academy of General Dentistry and the members of that organization are recognized for—

(A) promoting—

(i) excellence in continuing dental education; and

(ii) high standards of training and professionalism in the field of primary dental care; and

(B) helping to address the treatment and prevention of oral health disease.

SENATE RESOLUTION 484—EXPRESSING THE SENSE OF THE SENATE CONDEMNING THE MILITARY JUNTA IN BURMA FOR ITS RECENT CAMPAIGN OF TERROR AGAINST ETHNIC MINORITIES AND CALLING ON THE UNITED NATIONS SECURITY COUNCIL TO ADOPT IMMEDIATELY A BINDING NON-PUNITIVE RESOLUTION ON BURMA

Mr. MCCONNELL (for himself, Mr. BROWNBACK, Mrs. FEINSTEIN, Mr. LEAHY, Mr. LAUTENBERG, Mr. FRIST, Mr. OBAMA, Mr. MCCAIN, Mr. LIEBERMAN, and Mr. REID) submitted the following resolution, which was considered and agreed to:

S. RES. 484

Whereas the regime in Burma, the State Peace and Development Council (SPDC), reportedly threatened to abolish the pro-democracy National League for Democracy;

Whereas recent reports indicate that the SPDC escalated its brutal campaign against ethnic groups in November 2005;

Whereas reports indicate that the military operation has resulted in approximately 13,000 new internally displaced persons in Burma;

Whereas reports estimate that approximately 540,000 people are now internally displaced within Burma, the most serious internal displacement crisis in Asia;

Whereas the Thailand Burma Border Consortium reports that the military junta in Burma has destroyed, relocated, or forced the abandonment of approximately 2,800 villages in eastern Burma over the past 10 years;

Whereas refugees continue to pour across Burma's borders;

Whereas those forced to flee their homes in Burma are increasingly vulnerable, and the humanitarian situation grows more dire as the rainy season approaches;

Whereas the United Nations Security Council was briefed on the human rights situation in Burma for the first time ever in December 2005;

Whereas United Nations Secretary-General Kofi Annan and Under-Secretary-General for Political Affairs Ibrahim Gambari acknowledged the seriousness of the problems in Burma, and the Secretary-General's office suggested the first-ever course of action on Burma at the United Nations Security Council at the December 2005 briefing;

Whereas numerous efforts outside the United Nations Security Council to secure reform in Burma, including 28 consecutive non-binding resolutions of the United Nations General Assembly and United Nations Commission on Human Rights, have failed to bring about change;

Whereas there is ample precedent in the United Nations Security Council for action on Burma; and

Whereas Daw Aung San Suu Kyi remains the world's only incarcerated Nobel Peace Prize recipient:

Now, therefore, be it

Resolved, That it is the sense of the Senate—

(1) to condemn the military junta in Burma for its recent campaign of terror against ethnic minorities; and

(2) to call on the United States and other democracies to continue to work with the Association of South East Asian Nations to promote democracy, human rights and justice in Burma; and

(3) to call on the United States to lead an effort at the United Nations Security Council to pass immediately a binding, non-punitive resolution calling for the immediate and unconditional release of Daw Aung San Suu Kyi and all other prisoners of conscience in Burma, condemning these atrocities, and supporting democracy, human rights and justice in Burma.

SENATE CONCURRENT RESOLUTION 95—EXPRESSING THE SENSE OF CONGRESS WITH REGARD TO THE IMPORTANCE OF WOMEN'S HEALTH WEEK, WHICH PROMOTES AWARENESS OF DISEASES THAT AFFECT WOMEN AND WHICH ENCOURAGES WOMEN TO TAKE PREVENTIVE MEASURES TO ENSURE GOOD HEALTH

Mr. FEINGOLD (for himself and Ms. SNOWE) submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON. RES. 95

Whereas women of all backgrounds have the power to greatly reduce their risk of common diseases through preventive measures such as a healthy lifestyle and frequent medical screenings;

Whereas significant disparities exist in the prevalence of disease among women of different backgrounds, including women with disabilities, African American women, Asian/Pacific Islander women, Latinas, and American Indian/Alaska Native women;

Whereas since healthy habits should begin at a young age, and preventive care saves Federal dollars designated to health care, it is important to raise awareness among women and girls of key female health issues;

Whereas National Women's Health Week begins on Mother's Day annually and celebrates the efforts of national and community organizations working with partners and volunteers to improve awareness of key women's health issues; and

Whereas in 2006, the week of May 14 through May 20, is dedicated as the National Women's Health Week:

Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the importance of preventing diseases that commonly affect women;

(2) calls on the people of the United States to use Women's Health Week as an opportunity to learn about health issues that face women;

(3) calls on the women of the United States to observe National Women's Check-Up Day on Monday, May 15, 2006, by receiving preventive screenings from their health care providers; and

(4) recognizes the importance of federally funded programs that provide research and collect data on common diseases in women and highlight racial disparities in the rates of these diseases.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4066. Mr. KENNEDY (for himself, Mr. MCCAIN, and Mr. GRAHAM) proposed an amendment to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes.

SA 4067. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4068. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4069. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4070. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4071. Mr. BOND (for himself and Mr. GREGG) submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4072. Mrs. CLINTON (for herself, Mr. OBAMA, Mrs. BOXER, Mr. SALAZAR, and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill S. 2611, supra.

SA 4073. Mr. SALAZAR (for himself, Mr. DURBIN, Mr. KENNEDY, Mr. BINGAMAN, and Mr. REID) submitted an amendment intended to be proposed by him to the bill S. 2611, supra.

SA 4074. Mr. OBAMA (for himself, Mr. REID, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4075. Mrs. FEINSTEIN (for herself and Mr. GRASSLEY) submitted an amendment intended to be proposed by her to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4076. Mr. ENSIGN (for himself, Mr. GRAHAM, and Mr. CRAIG) submitted an amendment intended to be proposed by him to the bill S. 2611, supra.

SA 4077. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4078. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4079. Mr. OBAMA (for himself, Mr. DURBIN, Mr. REID, Mr. HARKIN, and Mr. SALAZAR) submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4080. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4081. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

SA 4082. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2611, supra; which was ordered to lie on the table.

CORRECTED TEXT OF AMENDMENT SUBMITTED ON MAY 17, 2006

SA 4052. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 345, strike line 10 and all that follows through page 395, line 23, and insert the following:

Subtitle A—Mandatory Departure and Reentry in Legal Status

SEC. 601. MANDATORY DEPARTURE AND REENTRY IN LEGAL STATUS.

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended by inserting after section 218C, as added by section 405, the following:

"SEC. 218D. MANDATORY DEPARTURE AND REENTRY.

''(a) IN GENERAL.—The Secretary of Homeland Security may grant Deferred Mandatory Departure status to aliens who are in the United States illegally to allow such aliens time to depart the United States and to seek admission as a nonimmigrant or immigrant alien.

''(b) REQUIREMENTS.—

''(1) PRESENCE.—An alien shall establish that the alien—

''(A) was physically present in the United States on the date that is 1 year before the date on which the Comprehensive Immigration Reform Act of 2006 was introduced in Congress; and

''(B) has been continuously in the United States since that date; and

''(C) was not legally present in the United States under any classification set forth in section 101(a)(15) on that date.

''(2) EMPLOYMENT.—An alien must establish that the alien—

''(A) was employed in the United States before the date on which the Comprehensive Immigration Reform Act of 2006 was introduced in Congress; and

''(B) has been employed in the United States since that date.

''(3) ADMISSIBILITY.—

''(A) IN GENERAL.—The alien must establish that the alien—

''(i) is admissible to the United States (except as provided in subparagraph (B)); and

''(ii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

''(B) GROUNDS NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), and (7) of section 212(a) shall not apply.

''(C) WAIVER.—The Secretary of Homeland Security may waive any other provision of section 212(a), or a ground of ineligibility under paragraph (4), as applied to individual aliens—

''(i) for humanitarian purposes;

''(ii) to assure family unity; or

''(iii) if such waiver is otherwise in the public interest.

''(4) INELIGIBLE.—An alien is ineligible for Deferred Mandatory Departure status if the alien—

''(A) has been ordered removed from the United States—(i) for overstaying the period of authorized admission under section 217; (ii) under section 235 or 238; or (iii) pursuant to a final order of removal under section 240;

''(B) failed to depart the United States during the period of a voluntary departure order under section 240B;

''(C) is subject to section 241(a)(5);

''(D) has been issued a notice to appear under section 239, unless the sole acts of conduct alleged to be in violation of the law are that the alien is removable under section 237(a)(1)(C) or inadmissible under section 212(a)(6)(A);

''(E) is a resident of a country for which the Secretary of State has made a determination that the government of such country has repeatedly provided support for acts of international terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371);

''(F) fails to comply with any request for information by the Secretary of Homeland Security; or

''(G) the Secretary of Homeland Security determines that—(i) the alien, having been convicted by a final judgment of a serious crime, constitutes a danger to the community of the United States; (ii) there are reasonable grounds for believing that the alien has committed a serious crime outside the United States prior to the arrival of the alien in the United States; or (iii) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

''(H) the alien has been convicted of a felony or 3 or more misdemeanors.

''(I) Exception.—Notwithstanding subparagraphs (A) and (B), an alien who has not been ordered removed from the United States shall remain eligible for Deferred Mandatory Departure status if the alien's ineligibility under subparagraphs (A) and (B) is solely related to the alien's—(i) entry into the United States without inspection; (ii) remaining in the United States beyond the period of authorized admissions; or (iii) failure to maintain legal status while in the United States.

(J) Waiver.—The Secretary may, in the Secretary's sole and unreviewable discretion, waive the application of subparagraphs (A) and (B) if the alien was ordered removed on the basis that the alien—(i) entered without inspection; (ii) failed to maintain status, or (iii) was ordered removed under 212(a)(6)(c)(i) prior to April 7, 2006, and—(i) demonstrates that the alien did not receive notice of removal proceedings in accordance with paragraph (1) or (2) of section 239(a); or (ii) establishes that the alien's failure to appear was due to exceptional circumstances beyond the control of the alien; or (iii) the alien's departure from the United States now would result in extreme hardship to the alien's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence.

''(5) MEDICAL EXAMINATION.—The alien may be required, at the alien's expense, to undergo an appropriate medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

''(6) TERMINATION.—The Secretary of Homeland Security may terminate an alien's Deferred Mandatory Departure status—

''(A) if the Secretary determines that the alien was not eligible for such status; or

''(B) if the alien commits an act that makes the alien removable from the United States.

''(7) APPLICATION CONTENT AND WAIVER.—

''(A) APPLICATION FORM.—The Secretary of Homeland Security shall create an application form that an alien shall be required to complete as a condition of obtaining Deferred Mandatory Departure status.

''(B) CONTENT.—In addition to any other information that the Secretary determines is required to determine an alien's eligibility for Deferred Mandatory Departure, the Secretary shall require an alien to answer questions concerning the alien's physical and mental health, criminal history and gang membership, immigration history, involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States government, voter registration history, claims to United States citizenship, and tax history.

''(C) WAIVER.—The Secretary of Homeland Security shall require an alien to include with the application a waiver of rights that explains to the alien that, in exchange for the discretionary benefit of obtaining Deferred Mandatory Departure status, the alien agrees to waive any right to administrative or judicial review or appeal of an immigration officer's determination as to the alien's eligibility, or to contest any removal action, other than on the basis of an application for asylum pursuant to the provisions contained in section 208 or 241(b)(3), or under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

''(D) KNOWLEDGE.—The Secretary of Homeland Security shall require an alien to include with the application a signed certification in which the alien certifies that the alien has read and understood all of the questions and statements on the application form, and that the alien certifies under penalty of perjury under the laws of the United States that the application, and any evidence submitted with it, are all true and correct, and that the applicant authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

''(c) IMPLEMENTATION AND APPLICATION TIME PERIODS.—

''(1) IN GENERAL.—The Secretary of Homeland Security shall ensure that the application process is secure and incorporates antifraud protection. The Secretary shall interview an alien to determine eligibility for Deferred Mandatory Departure status and shall utilize biometric authentication at time of document issuance.

''(2) INITIAL RECEIPT OF APPLICATIONS.—The Secretary of Homeland Security shall begin accepting applications for Deferred Mandatory Departure status not later than 3 months after the date of the enactment of the Comprehensive Immigration Reform Act of 2006.

''(3) APPLICATION.—An alien shall submit an initial application for Deferred Mandatory Departure status not later than 6 months after the date of the enactment of the Comprehensive Immigration Reform Act of 2006. An alien that fails to comply with this requirement is ineligible for Deferred Mandatory Departure status.

''(4) COMPLETION OF PROCESSING.—The Secretary of Homeland Security shall ensure that all applications for Deferred Mandatory Departure status are processed not later than 12 months after the date of the enactment of the Comprehensive Immigration Reform Act of 2006.

''(d) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—An alien may not be granted Deferred Mandatory Departure status unless the alien submits biometric data in accordance with procedures established by the Secretary of Homeland Security. The Secretary of Homeland Security may not grant Deferred Mandatory Departure status until all appropriate background checks are completed to the satisfaction of the Secretary of Homeland Security.

''(e) ACKNOWLEDGMENT.—An alien who applies for Deferred Mandatory Departure status shall submit to the Secretary of Homeland Security—

''(1) an acknowledgment made in writing and under oath that the alien—

''(A) is unlawfully present in the United States and subject to removal or deportation, as appropriate, under this Act; and

''(B) understands the terms of the terms of Deferred Mandatory Departure;

''(2) any Social Security account number or card in the possession of the alien or relied upon by the alien;

''(3) any false or fraudulent documents in the alien's possession.

''(f) MANDATORY DEPARTURE.—

''(1) IN GENERAL.—The Secretary of Homeland Security may, in the Secretary's sole and unreviewable discretion, grant Deferred Mandatory Departure status to an alien for a period not to exceed 5 years.

''(2) REGISTRATION AT TIME OF DEPARTURE.—An alien granted Deferred Mandatory Departure shall—

''(A) depart the United States before the expiration of the period of Deferred Mandatory Departure status;

''(B) register with the Secretary of Homeland Security at the time of departure; and

''(C) surrender any evidence of Deferred Mandatory Departure status at time of departure.

''(3) RETURN IN LEGAL STATUS.—An alien who complies with the terms of Deferred Mandatory Departure status and departs before the expiration of such status—

''(A) shall not be subject to section 212(a)(9)(B); and

''(B) may immediately seek admission as a nonimmigrant or immigrant, if otherwise eligible.

''(4) FAILURE TO DEPART.—An alien who fails to depart the United States before the expiration of Deferred Mandatory Departure status is not eligible and may not apply for or receive any immigration relief or benefit under this Act or any other law for a period of 10 years, except as provided under section 208 or 241(b)(3) or the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, in the case of an alien who indicates an intention to apply for asylum under section 208 or a fear of persecution or torture.

''(5) PENALTIES FOR DELAYED DEPARTURE.—An alien who fails to immediately depart the United States shall be subject to—

''(A) no fine if the alien departs the United States not later than 1 year after being granted Deferred Mandatory Departure status;

''(B) a fine of $2,000 if the alien remains in the United States for more than 1 year and not more than 2 years after being granted Deferred Mandatory Departure status;

''(C) a fine of $3,000 if the alien remains in the United States for more than 2 years and not more than 3 years after being granted Deferred Mandatory Departure status;

''(D) a fine of $4,000 if the alien remains in the United States for more than 3 years and not more than 4 years after being granted Deferred Mandatory Departure status; and

''(E) a fine of $5,000 if the alien remains in the United States for more than 4 years after being granted Deferred Mandatory Departure status.

''(g) EVIDENCE OF DEFERRED MANDATORY DEPARTURE STATUS.—Evidence of Deferred Mandatory Departure status shall be machine-readable, tamper-resistant, and allow for biometric authentication. The Secretary of Homeland Security is authorized to incorporate integrated-circuit technology into the document. The Secretary of Homeland Security shall consult with the Forensic Document Laboratory in designing the document. The document may serve as a travel, entry, and work authorization document during the period of its validity. The document may be accepted by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B).

''(h) TERMS OF STATUS.—

''(1) REPORTING.—During the period in which an alien is in Deferred Mandatory Departure status, the alien shall comply with all registration requirements under section 264.

''(2) TRAVEL.—

''(A) An alien granted Deferred Mandatory Departure status is not subject to section 212(a)(9) for any unlawful presence that occurred before the Secretary of Homeland Security granting such status to the alien.

''(B) Under regulations established by the Secretary of Homeland Security, an alien granted Deferred Mandatory Departure status—

''(i) may travel outside of the United States and may be readmitted if the period of Deferred Mandatory Departure status has not expired; and

''(ii) shall establish, at the time of application for admission, that the alien is admissible under section 212.

''(C) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (B) shall not extend the period of Deferred Mandatory Departure status.

''(3) BENEFITS.—During the period in which an alien is granted Deferred Mandatory Departure status under this section, the alien—

''(A) shall not be considered to be permanently residing in the United States under the color of law and shall be treated as a nonimmigrant admitted under section 214; and

''(B) may be deemed ineligible for public assistance by a State or any political subdivision of a State that furnishes such assistance.

''(i) PROHIBITION ON CHANGE OF STATUS OR ADJUSTMENT OF STATUS.—An alien granted Deferred Mandatory Departure status may not apply to change status under section 248 or, unless otherwise eligible under section 245(i), from applying for adjustment of status to that of a permanent resident under section 245.

''(j) APPLICATION FEE.—

''(1) IN GENERAL.—An alien seeking a grant of Deferred Mandatory Departure status shall submit, in addition to any other fees authorized by law, an application fee of $1,000.

''(2) USE OF FEE.—The fees collected under paragraph (1) shall be available for use by the Secretary of Homeland Security for activities to identify, locate, or remove illegal aliens.

''(k) FAMILY MEMBERS.—

''(1) FAMILY MEMBERS.—

''(A) IN GENERAL.—The spouse or child of an alien granted Deferred Mandatory Departure status is subject to the same terms and conditions as the principal alien, but is not authorized to work in the United States.

''(B) APPLICATION FEE.—

''(i) IN GENERAL.—The spouse or child of an alien seeking Deferred Mandatory Departure status shall submit, in addition to any other fee authorized by law, an additional fee of $500.

''(ii) USE OF FEE.—The fees collected under clause (i) shall be available for use by the Secretary of Homeland Security for activities to identify, locate, or remove aliens who are removable under section 237.

''(l) EMPLOYMENT.—

''(1) IN GENERAL.—An alien may be employed by any United States employer authorized by the Secretary of Homeland Security to hire aliens.

''(2) CONTINUOUS EMPLOYMENT.—An alien granted Deferred Mandatory Departure status shall be employed while the alien is in the United States. An alien who fails to be employed for 30 days may not be hired until the alien has departed the United States and reentered. The Secretary of Homeland Security may, in the Secretary's sole and unreviewable discretion, reauthorize an alien for employment without requiring the alien's departure from the United States.

''(m) ENUMERATION OF SOCIAL SECURITY NUMBER.—The Secretary of Homeland Security, in coordination with the Commissioner of the Social Security System, shall implement a system to allow for the enumeration of a Social Security number and production of a Social Security card at the time the Secretary of Homeland Security grants an alien Deferred Mandatory Departure status.

''(n) PENALTIES FOR FALSE STATEMENTS IN APPLICATION FOR DEFERRED MANDATORY DEPARTURE.—

''(1) CRIMINAL PENALTY.—

''(A) VIOLATION.—It shall be unlawful for any person—

''(i) to file or assist in filing an application for adjustment of status under this section and knowingly and willfully falsify, misrepresent, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

''(ii) to create or supply a false writing or document for use in making such an application.

''(B) PENALTY.—Any person who violates subparagraph (A) shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

''(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

''(o) RELATION TO CANCELLATION OF REMOVAL.—With respect to an alien granted Deferred Mandatory Departure status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 240A(a), unless the Secretary of Homeland Security determines that extreme hardship exists.

''(p) WAIVER OF RIGHTS.—An alien is not eligible for Deferred Mandatory Departure status, unless the alien has waived any right to contest, other than on the basis of an application for asylum or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, any action for deportation or removal of the alien that is instituted against the alien subsequent to a grant of Deferred Mandatory Departure status.

''(q) DENIAL OF DISCRETIONARY RELIEF.—The determination of whether an alien is eligible for a grant of Deferred Mandatory Departure status is solely within the discretion of the Secretary of Homeland Security. Notwithstanding any other provision of law, no court shall have jurisdiction to review—

''(1) any judgment regarding the granting of relief under this section; or

''(2) any other decision or action of the Secretary of Homeland Security the authority for which is specified under this section to be in the discretion of the Secretary, other than the granting of relief under section 1158(a).

''(r) JUDICIAL REVIEW.—

''(1) LIMITATIONS ON RELIEF.—Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

''(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to—

''(i) an order or notice denying an alien a grant of Deferred Mandatory Departure status or any other benefit arising from such status; or

''(ii) an order of removal, exclusion, or deportation entered against an alien after a grant of Deferred Mandatory Departure status; or

''(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

''(2) CHALLENGES TO VALIDITY.—

''(A) IN GENERAL.—Any right or benefit not otherwise waived or limited pursuant this section is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

''(i) whether such section, or any regulation issued to implement such section, violates the Constitution of the United States; or

''(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority the Secretary of Homeland Security to implement such section, is not consistent with applicable provisions of this section or is otherwise in violation of law.''.

(b) CONFORMING AMENDMENTS.—

(1) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218C the following:

''Sec. 218D. Mandatory departure and reentry.''.

(2) DEPORTATION.—Section 237(a)(2)(A)(i)(II) (8 U.S.C. 1227(a)(2)(A)(i)(II)) is amended by striking the period at the end and inserting ''(or 6 months in the case of an alien granted Deferred Mandatory Departure status under section 218D),''.

SEC. 602. STATUTORY CONSTRUCTION.

Nothing in this title, or any amendment made by this title, shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

SEC. 603. EXCEPTIONS FOR HUMANITARIAN REASONS.

Notwithstanding any other provision of law, an alien may be exempt from Deferred Mandatory Departure status and may apply for lawful permanent resident status during the 1-year period beginning on the date of the enactment of this Act if the alien—

(1) is the spouse of a citizen of the United States at the time of application for lawful permanent resident status;

(2) is the parent of a child who is a citizen of the United States;

(3) is not younger than 65 years of age;

(4) is not older than 16 years of age and is attending school in the United States;

(5) is younger than 5 years of age;

(6) on removal from the United States, would suffer long-term endangerment to the life of the alien; or

(7) owns a business or real property in the United States.

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $1,000,000,000 for facilities, personnel (including consular officers), training, technology, and processing necessary to carry out this title and the amendments made by this title.

TEXT OF AMENDMENTS

SA 4066. Mr. KENNEDY (for himself, Mr. MCCAIN, and Mr. GRAHAM) proposed an amendment to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; as follows:

On page 295, after line 16 insert the following:

''or

''(iv) the Secretary of Labor determines and certifies that there are not sufficient United States workers who are able, willing, qualified, and available to fill the position in which the alien is, or will be, employed; and

''(v) the alien submits at least 2 documents to establish current employment, as follows:

''(I) Records maintained by the Social Security Administration.

''(II) Records maintained by the alien's employer, such as pay stubs, time sheets, or employment work verification.

''(III) Records maintained by the Internal Revenue Service.

''(IV) Records maintained by any other government agency, such as worker compensation records, disability records, or business licensing records.

SA 4067. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

§ 161. Declaration of English

English is the common language of the United States that helps provide unity for the people of the United States.

§ 162. Preserving and enhancing the role of the national language

The Government of the United States shall preserve and enhance the role of English as the national language of America. Unless otherwise authorized or provided for by law, no person has a legal entitlement to services authorized or provided for by the Federal Government in any language other than English.

(b) CONFORMING AMENDMENT.—A The table of chapters for title 4, United States Code, is amended by adding at the Language of the Government of the United States.

Section 767. Requirements for Naturalization

(a) FINDINGS.—The Senate makes the following findings:

a. Under United States law (8 USC 1423 (a)), lawful permanent residents of the United States who have immigrated from foreign countries must, among other requirements, demonstrate an understanding of the English language, United States history and Government, to become citizens of the United States.

b. The Department of Homeland Security is currently conducting a review of the testing process used to ensure prospective United States citizens demonstrate said knowledge of the English language and United States history and government for the purpose of redesigning said test.

(b) DEFINITIONS.—for purposes of this section only, the following words are defined:

(1) KEY DOCUMENTS.—The term 'key documents' means the documents that established or explained the foundational principles of democracy in the United States, including the United States Constitution and the amendments to the Constitution (particularly the Bill of Rights), the Declaration of Independence, the Federalist Papers, and the Emancipation Proclamation.

(2) KEY EVENTS.—The term 'key events' means the critical turning points in the history of the United States (including the American Revolution, the Civil War, the world wars of the twentieth century, the civil rights movement, and the major court decisions and legislation) that contributed to extending the promise of democracy in American life.

(3) KEY IDEAS.—The term 'key ideas' means the ideas that shaped the democratic institutions and heritage of the United States, including the notion of equal justice under the law, freedom, individualism, human rights, and a belief in progress.

(4) KEY PERSONS.—The term 'key persons' means the men and women who led the United States as founding fathers, elected officials, scientists, inventors, pioneers, advocates of equal rights, entrepreneurs, and artists.

(c) GOALS FOR CITIZENSHIP TEST REDESIGN.—The Department of Homeland Security shall establish as goals of the testing process designed to comply with provisions of [8 USC 1423 (a)] that prospective citizens:

a. demonstrate a sufficient understanding of the English language for usage in everyday life;

b. demonstrate an understanding of American common values and traditions, including the principles of the Constitution of the United States, the Pledge of Allegiance, respect for the flag of the United States, the National Anthem, and voting in public elections;

c. demonstrate an understanding of the history of the United States, including the key events, key persons, key ideas, and key documents that shaped the institutions and democratic heritage of the United States; and

d. demonstrate an attachment to the principles of the Constitution of the United States and the well being and happiness of the people of the United States; and

e. demonstrate an understanding of the rights and responsibilities of citizenship in the United States.

(d) IMPLEMENTATION.—The Secretary of Homeland Security shall implement changes to the testing process designed to ensure compliance with [8 U.S.C. 1423(a)] not later than January 1, 2008.

SA 4068. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 350, strike line 1 and all that follows through ''inference.'' on page 351, line 1, and insert the following:

''(II) OTHER DOCUMENTS.—An alien who is unable to submit a document described in subclause (I) may satisfy the requirement in clause (i) by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment for each required period of employment, including—

''(aa) bank records;

''(bb) business records;

''(cc) sworn affidavits from non-relatives who have direct knowledge of the alien's work, including the name, address, and phone number of the affiant, the nature and duration of the relationship between the affiant and the alien, and other verification information; or

''(dd) remittance records.

''(v) BURDEN OF PROOF.—An alien applying for adjustment of status under this subsection has the burden of proving by a preponderance of the evidence that the alien has satisfied the employment requirements in clause (i).

Beginning on page 366, strike line 9 and all that follows to page 368, line 16.

On page 374, line 22, insert after ''work'' the following: '', including the name, address, and phone number of the affiant, the nature and duration of the relationship between the affiant and the alien, and other verification information''.

At page 391, line 25, strike ''deferred mandatory departure status'' and replace with ''any benefit under this title''.

At page 392, line 12, strike ''deferred mandatory departure status'' and replace with ''any benefit under this title''.

At page 393, lines 6–7, strike ''deferred mandatory departure status'' and replace with ''any benefit under this title.''

At page 393, lines 11–12, strike ''deferred mandatory departure status'' and replace with ''any benefit under this title''.

At page 392, lines 8–9, strike ''deferred mandatory departure status'' and replace with ''any benefit under this title''.

Insert at page 392, line 23: ''(r) The Secretary of Homeland Security shall ensure that denials of any benefit under this title are subject to supervisory review and approval.''

SA 4069. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 348, between lines 21 and 22, insert the following:

''(V) The employment requirement in clause (i)(I) shall not apply to an individual who is over 59 years of age on the date of enactment of the Immigrant Accountability Act of 2006.

SA 4070. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform

and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. NUMERICAL LIMITATIONS ON H–2A VISAS.

Section 214(g)(1) (8 U.S.C. 1184(g)(1)), as amended by sections 408(g) and 508(c)(1), is further amended—

(1) in subparagraph (A)(ix), by striking ''or'' at the end;

(2) in subparagraph (B), by striking ''and'' at the end;

(3) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(D) under section 101(a)(15)(H)(ii)(a) may not exceed 90,000.''.

SA 4071. Mr. BOND (for himself and Mr. GREGG) submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 336, strike line 14 and all that follows through ''(d)'' on page 337, line 19, and insert the following:

(b) CREATION OF J-STEM VISA CATEGORY.—Section 101(a)(15)(J) (8 U.S.C. 1101(a)(15)(J)) is amended to read as follows:

''(J) an alien with a residence in a foreign country that (except in the case of an alien described in clause (ii)) the alien has no intention of abandoning, who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, and who—

''(i) is coming temporarily to the United States as a participant in a program (other than a graduate program described in clause (ii)) designated by the Secretary of State, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if coming to the United States to participate in a program under which the alien will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying the alien or following to join the alien; or

''(ii) has been accepted and plans to attend an accredited graduate program in the sciences, technology, engineering, or mathematics in the United States for the purpose of obtaining an advanced degree.''.

(c) ADMISSION OF NONIMMIGRANTS.—Section 214(b) (8 U.S.C. 1184(b)) is amended by striking ''subparagraph (L) or (V)'' and inserting ''subparagraph (F)(iv), (J)(ii), (L), or (V)''.

(d) REQUIREMENTS FOR F–4 OR J-STEM VISA.—Section 214(m) (8 U.S.C. 1184(m)) is amended—

(1) by inserting before paragraph (1) the following:

''(m) NONIMMIGRANT ELEMENTARY, SECONDARY, AND POST-SECONDARY SCHOOL STUDENTS.—''; and

(2) by adding at the end the following:

''(3) A visa issued to an alien under subparagraph (F)(iv) or (J)(ii) of section 101(a)(15) shall be valid—

''(A) during the intended period of study in a graduate program described in such section;

''(B) for an additional period, not to exceed 1 year after the completion of the graduate program, if the alien is actively pursuing an offer of employment related to the knowledge and skills obtained through the graduate program; and

''(C) for the additional period necessary for the adjudication of any application for labor certification, employment-based immigrant petition, and application under section 245(a)(2) to adjust such alien's status to that of an alien lawfully admitted for permanent residence, if such application for labor certification or employment-based immigrant petition has been filed not later than 1 year after the completion of the graduate program.''.

(e) WAIVER OF FOREIGN RESIDENCE REQUIREMENT.—Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by inserting ''(1)'' before ''No person'';

(2) by striking ''admission (i) whose'' and inserting the following: ''admission—

''(A) whose'';

(3) by striking ''residence, (ii) who'' and inserting the following: ''residence;

''(B) who'';

(4) by striking ''engaged, or (iii) who'' and inserting the following: ''engaged; or

''(C) who'';

(5) by striking ''training, shall'' and inserting the following: ''training,

''shall'';

(6) by striking ''United States: *Provided*, That upon'' and inserting the following: ''United States.

''(2) Upon'';

(7) by striking ''section 214(l): And provided further, That, except'' and inserting the following: ''section 214(l).

''(3) Except''; and

(8) by adding at the end the following:

''(4) An alien who has been issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(J)(ii), or who would have qualified for such nonimmigrant status if section 101(a)(15)(J)(ii) had been enacted before the completion of such alien's graduate studies, shall not be subject to the 2-year foreign residency requirement under this subsection.''.

(f)

On page 339, line 10, strike ''(e)'' and insert ''(g)''.

On page 340, strike line 12 and all that follows through ''(f)'' on page 341, line 5, and insert the following:

''(A) the alien has been issued a visa or otherwise provided nonimmigrant status under subparagraph (J)(ii) or (F)(iv) of section 101(a)(15), or would have qualified for such nonimmigrant status if subparagraph (J)(ii) or (F)(iv) of section 101(a)(15) had been enacted before the completion of such alien's graduate studies;

''(B) the alien has earned an advanced degree in the sciences, technology, engineering, or mathematics;

''(C) the alien is the beneficiary of a petition filed under subparagraph (E) or (F) of section 204(a)(1); and

''(D) a fee of $2,000 is remitted to the Secretary on behalf of the alien.

''(3) LIMITATION.—An application for adjustment of status filed under this section may not be approved until an immigrant visa number becomes available.''.

(h)

SA 4072. Mrs. CLINTON (for herself, Mr. OBAMA, Mrs. BOXER, Mr. SALAZAR, and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; as follows:

On page 259, line 23, strike ''section 286(c)'' and insert ''section 286(x)''.

On page 264, strike line 13, and insert the following:

''(x) STATE IMPACT ASSISTANCE ACCOUNT.—

''(1) ESTABLISHMENT.—There

On page 264, strike line 20, and insert the following:

''218A and 218B.

''(2) STATE CRIMINAL ALIEN ASSISTANCE PROGRAM ACCOUNT; STATE HEALTH AND EDUCATION ASSISTANCE ACCOUNT.—

''(A) STATE CRIMINAL ALIEN ASSISTANCE PROGRAM ACCOUNT.—

''(i) ESTABLISHMENT.—There is established within the State Impact Aid Account a State Criminal Alien Assistance Program Account.

''(ii) DEPOSITS.—Notwithstanding any other provision under this Act, there shall be deposited in the State Criminal Alien Assistance Program Account 25 percent of all amounts deposited in the State Impact Aid Account, which shall be available to the Attorney General to disburse in accordance with section 241(i).

''(B) STATE HEALTH AND EDUCATION ASSISTANCE ACCOUNT.—

''(i) ESTABLISHMENT.—There is established within the State Impact Assistance Account a State Health and Education Assistance Account.

''(ii) DEPOSITS.—Notwithstanding any other provision under this Act, there shall be deposited in the State Health and Education Assistance Account 75 percent of all amounts deposited in the State Impact Aid Account.

''(3) STATE IMPACT ASSISTANCE GRANT PROGRAM.—

''(A) ESTABLISHMENT.—Not later than January 1 of each year beginning after the date of enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary of Homeland Security, in cooperation with the Secretary of Health and Human Services (referred to in this paragraph as the 'Secretary'), shall establish a State Impact Assistance Grant Program, under which the Secretary shall award grants to States for use in accordance with subparagraph (D).

''(B) AVAILABLE FUNDS.—For each fiscal year beginning after the date of enactment of this subsection, the Secretary shall use ½ of the amounts deposited into the State Health and Education Assistance Account under paragraph 2(B)(ii) during the preceding year .

''(C) ALLOCATION.—The Secretary shall allocate grants under this paragraph as follows:

''(i) NONCITIZEN POPULATION.—

''(I) IN GENERAL.—Subject to subclause (II), 80 percent shall be allocated to States on a pro-rata basis according to the ratio that, based on the most recent year for which data of the Bureau of the Census exists—

''(aa) the noncitizen population of the State; bears to

''(bb) the noncitizen population of all States.

''(II) MINIMUM AMOUNT.—Notwithstanding the formula under subclause (I), no State shall receive less than $5,000,000 under this clause.

''(ii) HIGH GROWTH RATES.—Twenty percent shall be allocated on a pro-rata basis among the 20 States with the largest growth rate in noncitizen population, as determined by the Secretary, according to the ratio that, based on the most recent year for which data of the Bureau of the Census exists—

''(I) the growth rate in the noncitizen population of the State during the most recent 3-year period for which data is available; bears to

''(II) the combined growth rate in noncitizen population of the 20 States during the 3-year period described in subclause (I).

''(iii) FUNDING FOR LOCAL ENTITIES.—The Secretary shall require recipients of the State Impact Assistance Grants to provide units of local governments with not less than 70 percent of the grant funds not later than 180 days after the State receives grant funding. States shall distribute funds to units of local government based on demonstrated need and function.

''(D) USE OF FUNDS.—A State shall use a grant received under this paragraph to return funds to State and local governments, organizations, and entities for the costs of providing health services and educational services to noncitizens.

''(E) ADMINISTRATION.—A unit of local government, organization, or entity may provide services described in subparagraph (D) directly or pursuant to contracts with the State or another entity, including—

''(i) a unit of local government;

''(ii) a public health provider, such as a hospital, community health center, or other appropriate entity;

''(iii) a local education agency; and

''(iv) a charitable organization.

''(F) REFUSAL.—

''(i) IN GENERAL.—A State may elect to refuse any grant under this paragraph.

''(ii) ACTION BY SECRETARY.—On receipt of notice of a State of an election under clause (i), the Secretary shall deposit the amount of the grant that would have been provided to the State into the State Impact Assistance Account.

''(G) REPORTS.—

''(i) IN GENERAL.—Not later than March 1 of each year, each State that received a grant under this paragraph during the preceding fiscal year shall submit to the Secretary a report in such manner and containing such information as the Secretary may require, in accordance with clause (ii).

''(ii) CONTENTS.—A report under clause (i) shall include a description of—

''(I) the services provided in the State using the grant;

''(II) the amount of grant funds used to provide each service and the total amount available during the applicable fiscal year from all sources to provide each service; and

''(III) the method by which the services provided using the grant addressed the needs of communities with significant and growing noncitizen populations in the State.

''(H) COLLABORATION.—In promulgating regulations and issuing guidelines to carry out this paragraph, the Secretary shall collaborate with representatives of State and local governments.

''(I) STATE APPROPRIATIONS.—Funds received by a State under this paragraph shall be subject to appropriation by the legislature of the State, in accordance with the terms and conditions described in this paragraph.

''(J) EXEMPTION.—Notwithstanding any other provision of law, section 6503(a) of title 31, United States Code, shall not apply to funds transferred to States under this paragraph.

''(K) DEFINITION OF STATE.—In this paragraph, the term 'State' means each of—

''(i) the several States of the United States;

''(ii) the District of Columbia;

''(iii) the Commonwealth of Puerto Rico;

''(iv) the Virgin Islands;

''(v) American Samoa; and

''(vi) the Commonwealth of the Northern Mariana Islands.''.

On page 371, line 4, strike ''(B) 10 percent'' and insert the following:

''(B) 10 percent of such funds shall be deposited in the State Impact Aid Account in the Treasury in accordance with section 286(x);

''(C) 5 percent

On page 371, line 8, strike ''(C) 10 percent'' and insert ''(D) 5 percent''.

SA 4073. SALAZAR (for himself, Mr. DURBIN, Mr. KENNEDY, Mr. BINGAMAN, and Mr. REID) submitted an amendment intended to be proposed by him to the bill. S. 2611, to provide for comprehensive immigration reform and for other purposes; as follows:

At the appropriate place insert the following notwithstanding any other provision:

SEC. 161. DECLARATION OF ENGLISH

English is the common and unifying language of the United States that helps provide unity for the people of the United States.

SEC. 162. PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE

The Government of the United States shall preserve and enhance the role of English as the common and unifying language of America. Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the government of the United States in any language other than English.

For the purposes of this section, law is defined as including provisions of the U.S. Code the U.S. Constitution, controlling judicial decisions, regulations, and Presidential Executive Orders.

(b) CONFORMING AMENDMENT.—The table of chapters for title 4, United State Code, is amended by adding at the Language of Government of the United States.

SA 4074. Mr. OBAMA (for himself, Mr. REID, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 151, between lines 6 and 7, insert the following:

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Director of the Federal Bureau of Investigations $3,125,000 for each of fiscal years 2007 through 2011 for improving the speed and accuracy of background and security checks conducted by the Federal Bureau of Investigations on behalf of the Bureau of Citizenship and Immigrations Services.

(d) REPORT ON BACKGROUND AND SECURITY CHECKS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigations shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the background and security checks conducted by the Federal Bureau of Investigations on behalf of the Bureau of Citizenship and Immigrations Services

(2) CONTENT.—The report required under paragraph (1) shall include—

(A) a description of the background and security check program;

(B) a statistical breakdown of the background and security check delays associated with different types of immigration applications;

(C) a statistical breakdown of the background and security check delays by applicant country of origin; and

(D) the steps the Federal Bureau of Investigations is taking to expedite background and security checks that have been pending for more than 60 days.

SA 4075. Mrs. FEINSTEIN (for herself and Mr. GRASSLEY) submitted an amendment intended to be proposed by her to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 343, strike lines 12 through 24 and insert the following:

(B) in subparagraph (A)—

(i) in clause (vii), by striking ''each succeeding fiscal year; or'' and inserting ''each of fiscal years 2004, 2005, and 2006; and''; and

(ii) by adding after clause (vii) the following:

''(viii) 115,000 in each succeeding fiscal year; or''; and

On page 344, line 7, strike the semicolon at the end and all that follows through line 24 and insert a period.

SA 4076. Mr. ENSIGN (for himself, Mr. GRAHAM, and Mr. CRAIG) submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; as follows:

At the end of subtitle C of title I, add the following:

SEC. 133. TEMPORARY NATIONAL GUARD SUPPORT FOR SECURING THE SOUTHERN LAND BORDER OF THE UNITED STATES.

''(a) AUTHORITY TO PROVIDE ASSISTANCE.—(1) With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform annual training duty under section 502(a) of title 32, United States Code, to carry out in any State along the southern land border of the United States the activities authorized in subsection (b), for the purpose of securing such border. Such duty shall not exceed 21 days in any year.

(2) With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform duty under section 502(f) of title 32, United States Code, to provide command, control, and continuity of support for units or personnel performing annual training duty under paragraph (1).

''(b) AUTHORIZED ACTIVITIES.—The activities authorized by this subsection are any of the following:

''(1) Ground reconnaissance activities;

''(2) Airborne reconnaissance activities;

''(3) Logistical support;

''(4) Provision of translation services and training;

''(5) Administrative support services;

''(6) Technical training services;

''(7) Emergency medical assistance and services;

''(8) Communications services;

''(9) Rescue of aliens in peril;

''(10) Construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States; and

''(11) Ground and air transportation.

''(c) COOPERATIVE AGREEMENTS.—Units and personnel of the National Guard of a State may perform activities in another State under subsection (a) only pursuant to the terms of an emergency management assistance compact or other cooperative arrangement entered into between Governors of such States for purposes of this section, and only with the approval of the Secretary of Defense.

''(d) COORDINATION OF ASSISTANCE.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the performance of activities under this section by units and personnel of the National Guard.

''(e) ANNUAL TRAINING.—Annual training duty performed by members of the National Guard under subsection (a) shall be appropriate for the units and individual members concerned, taking into account the types of units and military occupational specialties of individual members performing such duty.

''(f) DEFINITIONS.—In this section:

''(1) The term 'Governor of a State' means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

''(2) The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

''(3) The term 'State along the southern border of the United States' means each of the following:

''(A) The State of Arizona.

''(B) The State of California.

''(C) The State of New Mexico.

''(D) The State of Texas.

(g) DURATION OF AUTHORITY.—The authority of this section shall expire on January 1, 2009.

(h) PROHIBITION ON DIRECT PARTICIPATION IN LAW ENFORCEMENT.—Activities carried out under the authority of this section shall not include the direct participation of a member of the National Guard in a search, seizure, arrest, or similar activity.

(i) REIMBURSEMENT.—The Secretary of Homeland Security shall reimburse the Secretary of Defense for any support beyond that authorized by subsection (a)(1) that is provided by the National Guard or the armed forces to components of the Department of Homeland Security for the purpose of securing the southern land border of the United States.

SA 4077. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 259, strike lines 5 through 8 and insert the following:

''(1) any relief under section 240A(a), 240A(b)(1), or 240B; or

''(2) nonimmigrant status under section 101(a)(15) (except subparagraphs (T) and (U)).

SA 4078. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. RETURN OF TALENT PROGRAM.

(a) SHORT TITLE.—This section may be cited as the ''Return of Talent Act''.

(b) TEMPORARY RETURN OF ALIENS TO HOME COUNTRY.—

(1) IN GENERAL.—Title III (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

''TEMPORARY ABSENCE OF PERSONS PARTICIPATING IN THE RETURN OF TALENT PROGRAM

''SEC. 317A. (a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall establish the Return of Talent Program to permit eligible aliens to temporarily return to the alien's country of citizenship in order to make a material contribution to that country if the country is engaged in post-conflict or natural disaster reconstruction activities, for a period not exceeding 24 months, unless an exception is granted under subsection (d).

''(b) ELIGIBLE ALIEN.—An alien is eligible to participate in the Return of Talent Program established under subsection (a) if the alien meets the special immigrant description under section 101(a)(27)(O).

''(c) FAMILY MEMBERS.—The spouse, parents, siblings, and any minor children of an alien who participates in the Return of Talent Program established under subsection (a) may return to such alien's country of citizenship with the alien and reenter the United States with the alien.

''(d) EXTENSION OF TIME.—The Secretary of Homeland Security may extend the 24-month period referred to in subsection (a) upon a showing that circumstances warrant that an extension is necessary for post-conflict or natural disaster reconstruction efforts.

''(e) RESIDENCY REQUIREMENTS.—An immigrant described in section 101(a)(27)(O) who participates in the Return of Talent Program established under subsection (a), and the spouse, parents, siblings, and any minor children who accompany such immigrant to that immigrant's country of citizenship, shall be considered, during such period of participation in the program—

''(1) for purposes of section 316(a), physically present and residing in the United States for purposes of naturalization within the meaning of that section; and

''(2) for purposes of section 316(b), to meet the continuous residency requirements in that section.

''(f) OVERSIGHT AND ENFORCEMENT.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall oversee and enforce the requirements of this section.''.

(2) TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 317 the following:

''317A. Temporary absence of persons participating in the Return of Talent Program.''.

(c) ELIGIBLE IMMIGRANTS.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)), as amended by section 508, is further amended—

(1) in subparagraph (M), by striking ''or'' at the end;

(2) in subparagraph (N), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(O) an immigrant who—

''(i) has been lawfully admitted to the United States for permanent residence;

''(ii) demonstrates an ability and willingness to make a material contribution to the post-conflict or natural disaster reconstruction in the alien's country of citizenship; and

''(iii) as determined by the Secretary of State in consultation with the Secretary of Homeland Security—

''(I) is a citizen of a country in which Armed Forces of the United States are engaged, or have engaged in the 10 years preceding such determination, in combat or peacekeeping operations;

''(II) is a citizen of a country where authorization for United Nations peacekeeping operations was initiated by the United Nations Security Council during the 10 years preceding such determination; or

''(III) is a citizen of a country which received, during the preceding 2 years, funding from the Office of Foreign Disaster Assistance of the United States Agency for International Development in response to a declared disaster in such country by the United States Ambassador, the Chief of the U.S. Mission, or the appropriate Assistant Secretary of State, that is beyond the ability of such country's response capacity and warrants a response by the United States Government.''.

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of State, shall submit a report to Congress, which describes—

(1) the countries of citizenship of the participants in the Return of Talent Program established under section 317A of the Immigration and Nationality Act, as added by subsection (b);

(2) the post-conflict or natural disaster reconstruction efforts that benefitted, or were made possible, through participation in the Return of Talent Program; and

(3) any other information that the Secretary determines to be appropriate.

(e) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out this section and the amendments made by this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal year 2007, such sums as may be necessary to carry out this section and the amendments made by this section.

SA 4079. Mr. OBAMA (for himself, Mr. DURBIN, Mr. REID, Mr. HARKIN, and Mr. SALAZAR) submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 151, between lines 6 and 7, insert the following:

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Director of the Federal Bureau of Investigation $3,125,000 for each of fiscal years 2007 through 2011 for improving the speed and accuracy of background and security checks conducted by the Federal Bureau of Investigation on behalf of the Bureau of Citizenship and Immigration Services.

(d) REPORT ON BACKGROUND AND SECURITY CHECKS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report, unclassified to the greatest extent possible with a classified annex, if necessary on the background and security checks conducted by the Federal Bureau of Investigation on behalf of the Bureau of Citizenship and Immigration Services.

(2) CONTENT.—The report required under paragraph (1) shall include—

(A) a description of the background and security check program;

(B) a statistical breakdown of the background and security check delays associated with different types of immigration applications;

(C) a statistical breakdown of the background and security check delays by applicant country of origin; and

(D) the steps the Federal Bureau of Investigation is taking to expedite background and security checks that have been pending for more than 60 days.

SA 4080. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 409, between lines 19 and 20, insert the following:

(vi) ENGLISH LANGUAGE.—The alien has demonstrated an understanding of the English language as required by section 312(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1423(a)(1)).

SA 4081. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 250, strike lines 5 through 10, and insert the following:

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Secretary of Homeland Security may grant a temporary visa to an H–2C nonimmigrant during the 5-year period beginning on the date of the Comprehensive Immigration Reform Act of 2006 if such nonimmigrant demonstrates an intent to perform labor or services in the United States (other than the labor or services described in clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or subparagraph (L), (O), (P), or (R)) of section 101(a)(15).

''(2) SUNSET.—Notwithstanding any other provision of law, after the date of end of the 5-year period referred to in paragraph (1), no alien may be issued a new visa as an H-2C nonimmigrant for an initial period of authorized admission under subsection (f)(1). The Secretary of Homeland Security may continue to issue an extension of a temporary visa issued to an H–2C nonimmigrant pursuant to such subsection after such date.

SA 4082. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2611, to provide for comprehensive immigration reform and for other purposes; which was ordered to lie on the table; as follows:

On page 288, line 22, strike the period at the end and insert ''and stated in such posting that a worker hired for such opportunity will receive compensation that includes health insurance that provides benefits that are, at a minimum, actuarially equivalent to the benefits that the worker would receive under the State Medicaid plan established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) of the State in which the employment opportunity will be located if the worker were eligible for benefits under such plan, as determined by such State.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on May 18, 2006, at 9:30 a.m. to conduct a hearing on ''The Report of the Congress on International Economic and Exchange Rate Policies.''

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to met during the session of the Senate on Thursday, May 18, 2006, at 9:30 a.m. to mark up S. 1811, the ''San Francisco Old Mint Commemorative Coin Act;'' S. 633, the ''American Veterans Disabled for Life Commemorative Coin Act;'' and S. 2784, the ''Fourteenth Dalai Lama Gold Medal Act.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. INHOFE. Mr. President. I ask unanimous consent that the Senate Committee on Commerce, Science and Transportation be authorized to meet on Thursday, May 18, 2006, at 10 a.m. on S. 2686, the Consumer's Choice, and Broadband Deployment Act of 2006.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. INHOFE. Mr. President. I ask unanimous consent that the Senate Committee on Commerce Science and Transportation be authorized to meet on Thursday, May 18, 2006, at 2:30 p.m. for an Executive Session.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. INHOFE. Mr. President, I ask unanimous consent that the Senate Committee on Commerce Science and Transportation be authorized to meet on Thursday, May 18, 2006, at 2:30 p.m. for an Executive Session.

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

COMMITTEE ON FINANCE

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Thursday, May 18, 2006, at 10:30 a.m., in 215 Dirksen Senate Office Building, to consider proposed legislation implementing the U.S.-Oman Free Trade Agreement, and the nomination of W. Ralph Basham, of Virginia, to be Commissioner of Customs, Department of Homeland Security.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, May 18, 2006, at 9:30 a.m. to hold a hearing on Iran's Political/Nuclear Ambitions and U.S. Policy Options.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Thursday, May 18, 2006, at 10 a.m. to consider the nomination of Robert I. Cusick to be Director of the Office of Government Ethics.

PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. INHOFE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 18, 2006 at 9:30 a.m. to hold a confirmation hearing on General Michael V. Hayden to be Director of the Central Intelligence Agency.

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

SPECIAL COMMITTEE ON AGING

Mr. INHOFE. Mr. President, I ask unanimous consent that the Select Committee on Aging be authorized to meet May 18, 2006 from 10 a.m.–12 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Federal Financial Management, Government Information, and International Security be authorized to meet on Thursday, May 18, 2006, at 2:30 p.m. for a hearing regarding ''Unobligated Balances: Freeing up Funds, Setting Priorities and Untying Agency Hands.''

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

SUBCOMMITTEE ON NEAR EASTERN AND SOUTH ASIAN AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations Subcommittee on Near Eastern and South Asian Affairs be authorized to meet during the session of the Senate on Thursday, May 18, 2006, at 2:30 p.m. to hold a hearing on Nepal: Transition from Crisis to Peaceful Democracy.

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

PRIVILEGES OF THE FLOOR

Mr. AKAKA. Mr. President, I ask unanimous consent that Dr. Bonni Berge, a Brookings fellow in my office, be allowed floor privileges for the duration of the Senate's debate on S. 2611, the Comprehensive Immigration Reform Act of 2006.

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

HEROES EARNED RETIREMENT OPPORTUNITIES ACT

Mr. CHAMBLISS. Mr. President, I ask that the Chair now lay before the Senate the House message to accompany H.R. 1499.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

H.R. 1499

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 1499) entitled ''An Act to amend the Internal Revenue Code of 1986 to allow members of the Armed Forces serving in a combat zone to make contributions to their individual retirement plans even if the compensation on which such contribution is based is excluded from gross income, and for other purposes'', with the following House amendment to Senate amendment:

At the end of the Senate amendment add the following:

On page 3, after line 3 of the House engrossed bill, insert the following:

(c) CONTRIBUTIONS FOR TAXABLE YEARS ENDING BEFORE ENACTMENT.—

(1) IN GENERAL.—In the case of any taxpayer with respect to whom compensation was excluded from gross income under section 112 of

the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 2003, and ending before the date of the enactment of this Act, any contribution to an individual retirement plan made on account of such taxable year and not later than the last day of the 3-year period beginning on the date of the enactment of this Act shall be treated, for purposes of such Code, as having been made on the last day of such taxable year.

(2) WAIVER OF LIMITATIONS.—

(A) CREDIT OR REFUND.—If the credit or refund of any overpayment of tax resulting from a contribution to which paragraph (1) applies is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date that such contribution is made (determined without regard to paragraph (1)).

(B) ASSESSMENT OF DEFICIENCY.—The period for assessing a deficiency attributable to a contribution to which paragraph (1) applies shall not expire before the close of the 3-year period beginning on the date that such contribution is made. Such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(3) INDIVIDUAL RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term ''individual retirement plan'' has the meaning given such term by section 7701(a)(37) of such Code.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the Senate concur in the House amendment, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

BROADCAST DECENCY ENFORCEMENT ACT OF 2005

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the Committee on Commerce be discharged from further consideration of S. 193, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 193) to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language.

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

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD.

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

The bill (S. 193) was ordered to be engrossed for a third reading, read the third time and passed, as follows:

S. 193

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 ''Broadcast Decency Enforcement Act of 2005''.

SEC. 2. INCREASE IN PENALTIES FOR OBSCENE, INDECENT, AND PROFANE BROADCASTS.

Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively;

(2) by inserting after subparagraph (B) the following new subparagraph:

''(C) Notwithstanding subparagraph (A), if the violator is—

''(i)(I) a broadcast station licensee or permittee; or

''(II) an applicant for any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission; and

''(ii) determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane language, the amount of any forfeiture penalty determined under this subsection shall not exceed $325,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $3,000,000 for any single act or failure to act.''; and

(3) in subparagraph (D), as redesignated by paragraph (1), by striking ''subparagraph (A) or (B)'' and inserting ''subparagraph (A), (B), or (C)''.

CONDEMNING THE MILITARY JUNTA IN BURMA

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 484 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 484) expressing the sense of the Senate condemning the military junta in Burma for its recent campaign of terror against ethnic minorities and calling on the U.N. Security Council to adopt immediately a binding, nonpunitive resolution on Burma.

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

Mr. MCCONNELL. Mr. President, today's Burma resolution reflects the Senate's grave concern about the deteriorating situation in Burma. It also reflects the view of the Senate that, while a second United Nations Security Council briefing on Burma is welcomed, there now needs to be a legally binding, nonpunitive resolution regarding Burma passed by the U.N. Security Council. Absent such action, the Association of South East Asian Nations could very well end up being tougher on Burma than the U.N. The Senate has expressed its concern for the plight of the Burmese not only through this resolution but also by recently including $5 million in the emergency supplemental bill to assist refugees from Burma who are in Thailand.

On a related note, I have concerns about the visit of U.N. envoy, Ibrahim Gambari, to Burma this week. This visit should not be viewed as a success unless and until Mr. Gambari has an audience with Nobel Peace Prize winner, Daw Aung San Suu Kyi and Burmese leader, Than Shwe. Mr. Gambari should consider cutting his trip short if it becomes apparent he will not be permitted to hold these meetings, or if the SPDC otherwise interferes with his visit.

I would also add that I applaud the President's action today in extending the state of emergency with respect to Burma. It reflects the clear recognition by the President of the grave problems facing this beleaguered country.

These problems were poignantly addressed by Benedict Rogers, in his May 16, 2006, piece in The Wall Street Journal. In that piece, Rogers told of his encounter with a 15-year-old Burmese boy. This youth had witnessed the murder of both parents and the razing of his village and had endured abduction into forced labor. He hauntingly pleaded to Rogers '[p]lease tell the world not to forget us.' The Senate has not forgotten Burma and it is my profound hope that the U.N. will not either.

Mr. CHAMBLISS. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 484) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 484

Whereas the regime in Burma, the State Peace and Development Council (SPDC), reportedly threatened to abolish the pro-democracy National League for Democracy;

Whereas recent reports indicate that the SPDC escalated its brutal campaign against ethnic groups in November 2005;

Whereas reports indicate that the military operation has resulted in approximately 13,000 new internally displaced persons in Burma;

Whereas reports estimate that approximately 540,000 people are now internally displaced within Burma, the most serious internal displacement crisis in Asia;

Whereas the Thailand Burma Border Consortium reports that the military junta in Burma has destroyed, relocated, or forced the abandonment of approximately 2,800 villages in eastern Burma over the past 10 years;

Whereas refugees continue to pour across Burma's borders;

Whereas those forced to flee their homes in Burma are increasingly vulnerable, and the humanitarian situation grows more dire as the rainy season approaches;

Whereas the United Nations Security Council was briefed on the human rights situation in Burma for the first time ever in December 2005;

Whereas United Nations Secretary-General Kofi Annan and Under-Secretary-General for Political Affairs Ibrahim Gambari acknowledged the seriousness of the problems in Burma, and the Secretary-General's office suggested the first-ever course of action on Burma at the United Nations Security Council at the December 2005 briefing;

Whereas numerous efforts outside the United Nations Security Council to secure reform in Burma, including 28 consecutive non-binding resolutions of the United Nations General Assembly and United Nations Commission on Human Rights, have failed to bring about change;

Whereas there is ample precedent in the United Nations Security Council for action on Burma; and

Whereas Daw Aung San Suu Kyi remains the world's only incarcerated Nobel Peace Prize recipient:

Now, therefore, be it

Resolved, That it is the sense of the Senate—

(1) to condemn the military junta in Burma for its recent campaign of terror against ethnic minorities; and

(2) to call on the United States and other democracies to continue to work with the Association of South East Asian Nations to promote democracy, human rights and justice in Burma; and

(3) to call on the United States to lead an effort at the United Nations Security Council to pass immediately a binding, non-punitive resolution calling for the immediate and unconditional release of Daw Aung San Suu Kyi and all other prisoners of conscience in Burma, condemning these atrocities, and supporting democracy, human rights and justice in Burma.

ORDERS FOR FRIDAY, MAY 19, 2006

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Friday, May 19; I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate resume consideration of S. 2611, the Comprehensive Immigration Reform Act.

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

PROGRAM

Mr. CHAMBLISS. As announced this evening, tomorrow we will continue to work on the bill, but we will not have any rollcall votes during Friday's session. The next rollcall votes will occur on Monday afternoon. At this point, we have two votes locked in for 5:30 Monday. We will be in session tomorrow to continue this constructive debate.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. CHAMBLISS. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 10:17 p.m., adjourned until Friday, May 19, 2006, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate May 18, 2006:

FEDERAL RESERVE SYSTEM

DONALD L. KOHN, OF VIRGINIA, TO BE VICE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOUR YEARS, VICE ROGER WALTON FERGUSON, RESIGNED.

SECURITIES AND EXCHANGE COMMISSION

KATHLEEN L. CASEY, OF VIRGINIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR A TERM EXPIRING JUNE 5, 2011, VICE CYNTHIA A. GLASSMAN, RESIGNED.

THE JUDICIARY

BOBBY E. SHEPHERD, OF ARKANSAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT, VICE MORRIS S. ARNOLD, RETIRING.

KIMBERLY ANN MOORE, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT, VICE RAYMOND C. CLEVENGER, III, RETIRED.

DEPARTMENT OF JUSTICE

MARTIN J. JACKLEY, OF SOUTH DAKOTA, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF SOUTH DAKOTA FOR THE TERM OF FOUR YEARS, VICE STEVEN KENT MULLINS.