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Senate

The Senate met at 10 a.m. and was called to order by the Honorable JON TESTER, a Senator from the State of Montana.

The PRESIDING OFFICER. Today's opening prayer will be offered by Captain Margaret Kibben, United States Navy.

PRAYER

The guest chaplain offered the following prayer:

Let us pray.

Gracious Creator, whose presence permeates like sunlight, whose mercy is revealed through Your ceaseless compassion, and whose authority has called the world into being, we call on You to bring forth this day in accordance with Your grace plan.

As the men and women who serve in the Senate gather together in this Chamber to exercise the processes of power and politics, remind them that it is Your transcendence that presides over today's deliberations, Your merciful will that guides the political debate, and Your ultimate authority that is the source and foundation of their objectives.

So reminded, ordain these elected officials this day to wield this Nation's legislative power guided by Your presence; to engage in partisan discourse in response to Your mercy; and to align their objectives in accordance with Your authority, so that all that is said and done here may reflect Your presence, Your mercy, and Your power.

We stand in Your grace and pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JON TESTER led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 23, 2007.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MINORITY LEADER

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

MARKING THE 24TH ANNIVERSARY OF THE U.S. MARINE BARRACKS BOMBING IN BEIRUT, LEBANON

Mr. MCCONNELL. Mr. President, normally the majority leader would proceed first. Since he is not on the floor at the moment, I wish to make a few remarks on leader time here as we get started.

I rise today in honor of the 241 U.S. marines, sailors, and soldiers who were killed in a despicable suicide bombing attack on the U.S. Marine barracks in Beirut, Lebanon. That attack occurred 24 years ago today on October 23, 1983.

President Ronald Reagan had dispatched U.S. forces in 1982 to maintain the peace in Lebanon. On the morning of October 23, one Lebanese terrorist drove a truck packed with explosives through three guard posts and a barbed-wire fence, straight into the

lobby of the U.S. Marine Corps' headquarters. The bomb exploded with the force of 18,000 pounds of dynamite. It transformed the four-story cinder block building into rubble.

It was so powerful, the U.S. District Court for the District of Columbia later described it as "the largest non-nuclear explosion that had ever been detonated on the face of the Earth."

Some of the men and women lost that day were murdered in their sleep. Others who saw the truck come crashing in may have seen the face of the enemy as their last sight on Earth. Either way, 241 Americans wearing their country's uniform were killed in a brutal attack that shocked America and the world.

Five Kentuckians were among the 241 who died in that attack. They were: PFC Sidney James Decker, U.S. Marine Corps, of Clarkson, KY; LCpl Virgil D. Hamilton, U.S. Marine Corps, of McDowell, KY; Hospital Corpsman 3rd Class Robert S. Holland, U.S. Navy, of Gilbertsville, KY; SGT Thomas C. Keown, U.S. Marine Corps, of Louisville, KY; and SGT Daniel S. Kluck, U.S. Army, of Owensboro, KY.

Terrorists and their favorite tactic—the suicide attack—are still with us today. Thankfully for America, so are the U.S. Marines.

Founded in 1775, the U.S. Marine Corps has been "at the tip of the spear" in every one of this Nation's wars, and they will never be stopped by a terrorist's suicide attack. This November, the country will celebrate the Corps' 232nd birthday, and thank them for defending our freedoms.

By taking the fight to the terrorists wherever they hide, the Marines have put terrorists on the defensive, making it less likely they will hit us again here at home. By their courage on the battlefield and constant risk of danger, today's Marines honor every one of their forebears who died defending our country.

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



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America still remembers her brave men and women lost in the Marine barracks bombing of 1983. We honor them and their families for their sacrifice. We continue to fight terror today with a steady hand, even if it is at times paired with a heavy heart. And we are proud of the brave men and women who fight for their country against the would-be terrorists of today and tomorrow.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION APPROPRIATIONS ACT, 2008

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3043, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3043) making appropriations for the Departments of Labor, Health and Human Services, and Education and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

Pending:

Harkin/Specter amendment No. 3325, in the nature of a substitute.

Vitter amendment No. 3328 (to amendment No. 3325), to provide a limitation on funds with respect to preventing the importation by individuals of prescription drugs from Canada.

Dorgan amendment No. 3345 (to amendment No. 3325), to require that the Secretary of Labor report to Congress regarding jobs lost and created as a result of the North American Free Trade Agreement.

Ensign amendment No. 3342 (to amendment No. 3325), to prohibit the use of funds to administer Social Security benefit payments under a totalization agreement with Mexico.

Ensign amendment No. 3352 (to amendment No. 3325), to prohibit the use of funds to process claims based on illegal work for purposes of receiving Social Security benefits.

Lautenberg/Snowe amendment No. 3350 (to amendment No. 3325), to prohibit the use of funds to provide abstinence education that includes information that is medically inaccurate.

Roberts amendment No. 3365 (to amendment No. 3325), to fund the small business childcare grant program.

Coburn amendment No. 3358 (to amendment No. 3325), to require Congress to provide health care for all children in the U.S. before funding special interest pork projects.

Chambliss modified amendment No. 3391 (to amendment No. 3325), to provide for a declaration of a public health emergency with respect to Sumter County, GA.

Cardin amendment No. 3400 (to amendment No. 3325), to provide support to Iraqis and Afghans who arrive in the United States under the Special Immigrant Visa program.

Landrieu amendment No. 3446 (to amendment No. 3325), relative to the Elementary and Secondary School Counseling program.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, we entered into a unanimous consent agreement last night. I will repeat it for the benefit of Senators.

Senators should be aware that we will now start a series of debates and we will stack the votes. The first amendment will be the amendment of the Senator from Wyoming, Mr. ENZI, amendment No. 3437. There will be 30 minutes of debate equally divided. That will be the first one.

The second one will be the amendment of the Senator from South Carolina, Mr. DEMINT; that is amendment No. 3387. There will be 20 minutes of debate equally divided.

The third one would be the amendment No. 3365 by the Senator from Kansas, Senator ROBERTS. There will be 10 minutes of debate equally divided.

Then the fourth one would be the amendment No. 3358 offered by the Senator from Oklahoma, Senator COBURN. There will be 20 minutes of debate equally divided. At the end of all of that time, the Senate will proceed to vote on and in relation to those amendments.

We are ready for the amendment of the Senator from Wyoming as soon as he arrives, and he is here.

AMENDMENT NO. 3437 TO AMENDMENT NO. 3325

Mr. ENZI. Mr. President, I call up amendment No. 3437.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. ENZI] proposes an amendment numbered 3437.

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

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

The amendment is as follows:

AMENDMENT NO. 3437

(Purpose: To prohibit the use of funds to modify certain HIV/AIDS funding formulas)

At the appropriate place in title II, insert the following:

SEC. _____. Notwithstanding any other provision of law, no funds shall be made available under this Act to modify the HIV/AIDS funding formulas under title XXVI of the Public Health Service Act.

Mr. ENZI. Mr. President, at the present time, the last numbers that I saw, Congress's approval rating was 12 percent. There is a reason for that. We have been nibbling around the edges on a lot of things, and we have been doing earmarks. I have an amendment that deals with one of the most egregious earmarks I have seen.

Less than a year ago we passed a bill in this body unanimously, that the House then passed unanimously, that addressed the Ryan White AIDS program, and it included transparency, it included accountability, and it included a change in the formula. The change in the formula gave some protection to those who have had a declining population, but it allowed the

money to follow the people who had the problem.

Today, in this bill, there is an earmark that provides for money now to go to people who may no longer even exist—people who are dead. It is a way that they are trying to change the authorization process we went through so meticulously, so unanimously, in such a way that it undoes it in an appropriations bill. We shouldn't be changing law in an appropriations bill. We especially shouldn't be changing law for a specific area of the country in an appropriations bill. That is why I bring this amendment.

I want to discuss the Ryan White program and the need to ensure that this Labor-HHS bill does not undo our recent work. Last December, after months of negotiations, the House and the Senate passed a new 3-year Ryan White reauthorization. Most importantly, we ensured that those new formulas focused on the lifesaving treatment by including individuals with HIV, not just AIDS.

One of the key items that delayed this reauthorization for months was the careful negotiations surrounding the funding formulas. In that bipartisan, bicameral agreement, we were very clear about the implications of those new formula changes. We provided GAO data runs that were nearly identical to how the funding has been distributed. I hope everybody takes a look at those GAO data runs.

Those funding formulas also included hold-harmless provisions to ensure the formula funding would not decrease by more than 5 percent from the previous year. While I would have preferred no hold-harmless provisions or ones that allowed for more dramatic fluctuations so the money could follow the HIV-infected person, that was what we agreed upon a few short months ago.

We didn't pull the wool over anyone's eyes; we provided clear information about the implications about those funding formulas. Now, with one simple pen stroke, the House majority would like to undo all of those carefully crafted, bipartisan, bicameral compromises and insert a new hold-harmless provision with little thought to how this change will affect others. I am pleased to note that the Senate did not include this egregious provision, and I hope today the Senate will go on record for opposing doing so.

What is even more ridiculous is that this provision primarily benefits San Francisco, a city that continues to receive funding to care for dead people. San Francisco received two-thirds of the \$9 million available, racking up \$6 million of new dollars. All the while, nearly every other city would have reduced funding just so San Francisco can receive more riches. That additional \$6 million is not based on the number of people they are treating or on how many new cases they have. As a hold-harmless provision, it is related to what that city has received before.

As GAO noted in the report last month, even within their current funding, they are receiving money for people who have died. Let me repeat that. GAO, the Government Accountability Office, confirmed that San Francisco currently receives funding under Ryan White for dead people. That is without this additional \$6 million earmark. Now, I don't know about my colleagues, but I find this a little reprehensible. Where I come from, that is called cheating. This is patently unfair to those cities and States that are striving to come up with the moneys for basic HIV/AIDS treatment.

House Democrats reneged on a bipartisan, bicameral solution and are trying to slide this authorizing legislation into an appropriations bill, hoping no one will notice. Well, I noticed. I object to this provision and the implications of it. Rather than providing nearly \$10 million to help those cities that don't need it, why aren't we providing funds to those cities with large numbers of people with HIV?

So I offer my amendment to Labor-HHS, Enzi amendment No. 3437. This amendment is quite simple. It states that the Labor-HHS bill cannot be used to undo all of the work we did on Ryan White. We should not be diverting key funds from cities with rising HIV cases to go to San Francisco—a city that is still receiving funds for treating people who have already died from AIDS. If you support keeping people alive, I believe you should also support my amendment. We did last December. We should again. We need to keep it on track to take care of the problem.

I yield some time to my fellow Senator from Oklahoma, such time as he would like.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, I wish to make a few comments about what is in the bill and what is going to happen if we don't accept Senator ENZI's amendment.

When we crafted the Ryan White Act, the goal was to make sure the dollars followed the disease and to make sure people who were infected with HIV who had no other means of seeking treatment and having a life that is not the scourge of this disease with the modern medicines that have come about, to create a platform where we could have fair availability for medicines and treatment and care to where the disease is growing.

What has come out of the House, with Speaker PELOSI's direction, is to actually take money from African-American women and the medicines they need to stay alive, or medicines to treat their newborn infants, and send it to San Francisco, which in the last few years has not even spent the entire amount of money that has gone to it.

Senator ENZI is right in the fact that this violates the very agreement we made over a long period of time to get Ryan White funds to start following

the disease. By taking an extra \$6.2 million and sending it to San Francisco, it violates, No. 1, the agreement on that bill, but most importantly, it takes away the opportunity for health for minority women, which is where the disease is growing the greatest amount. We have all these women throughout the country who have been on waiting lists for drugs for treatment. They are getting some, but they are not getting what is going to save their lives. And we are going to steal that opportunity for minority women to be adequately and fairly treated under this bill.

The Ryan White bill we passed last year was a good compromise, knowing that we needed to shift money to where the disease is. What happened in the House bill is we have actually reneged on that commitment. What we are actually saying is that the establishment age groups in northern California deserve more money than a single African-American woman who was infected with HIV and cannot get the medicines to treat her disease. That is the choice.

For the first time, the Ryan White Act changed the direction of where the money went. The Ryan White Act, as we passed it, had the money following the disease, going to those who need treatment rather than to established organizations that are used to a certain budget. So the tragedy will be that if we don't pass the Enzi amendment, we are taking a step backward from the very principle—a public health principle, by the way—that you put the money where the epidemic is. What is in the House bill negates that.

What we are doing is playing politics with the lives of African-American women, who are the fastest growing numbers of people who have HIV in this country. We are taking \$6.2 million away from them and we are putting it in facilities that, quite frankly, have done quite well under the Ryan White Act. The availability, the access, and the programs are at the greatest level in San Francisco as compared to any other place in this country. Yet we choose, if we do not accept the Enzi amendment, to say that is a higher priority than a poor African-American woman in the South. That is the choice.

I support this amendment. I think the Senate, in good conscience, ought to live up to its agreement on the Ryan White Act.

I yield back my time.

The ACTING PRESIDENT pro tempore. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I rise in opposition to the Enzi amendment. I congratulate the chairman and the ranking member for the work they have done on this bill. But this amendment significantly disadvantages at least nine jurisdictions facing HIV/AIDS crises throughout the country because it essentially would prevent any stop-loss provision enacted by the House from going into effect.

Senator ENZI, Senator KENNEDY, and the rest of the HELP Committee worked tirelessly for most of last year to reauthorize the Ryan White CARE Act. I voted for this reauthorization, and I recognized at the time that the method of counting HIV/AIDS victims had to change to more clearly reflect living victims. However, this then mandated huge cuts to vital programs, despite the fact that States and eligible metropolitan areas were assured that no jurisdiction would face destabilizing losses.

The HELP Committee staff provided GAO data during the debate projecting that San Francisco would receive approximately \$17.1 million in fiscal year 2007. But San Francisco did not receive that amount. Their formula award totaled \$14.6 million, which is \$2.5 million less than estimated.

A compromise was to offset losses by clearly making available supplemental award funding so that the Health Resources and Services Administration could consider the funding losses when awarding this supplemental funding. This amendment seeks to do away with all of this.

Despite these estimates and built-in protection, several areas of the country received significant funding cuts when the 2007 awards were announced earlier this year.

The San Francisco eligible metropolitan areas, which also include Marin and San Mateo Counties, lost approximately \$8.5 million. That is just those three counties—an \$8.5 million loss. This accounts for 30 percent of the Ryan White funding—a loss too great for any jurisdiction to absorb in 1 year.

It didn't surprise me when San Francisco lost money in 2007. The city knew it would likely face losses. But the protections put in place clearly were not adequate. The loss of one-third of total funding is clearly destabilizing. To be very candid with you, I find it highly objectionable.

This isn't only unique for San Francisco. Five other cities also lost 20 percent or more of their funding: Hartford, CT, 32.1 percent; New Haven, CT, 23.7 percent; Nassau-Suffolk County, NY, 21.7 percent; Ponce, Puerto Rico, 28.9 percent; Caguas, Puerto Rico, 34.3 percent.

No jurisdiction can absorb cuts of this magnitude in 1 year without significant harm to those they serve. To address this, the House of Representatives included a stop-loss provision to cap the losses faced by these jurisdictions in their version of the fiscal year 2008 Labor-HHS appropriations bill. This provision limits the fiscal year 2007 losses for eligible metropolitan areas, or EMAs, to 8.4 percent—not 30 percent but 8.4 percent—which is a manageable amount. Transitional grant areas will have their losses capped at 13.4 percent.

So there is a willingness to respond to the mandate; that is, change your method of counting and, secondly, absorb reasonable cuts. I don't think that

is too much to ask. I think this is overkill.

I was the mayor who first found AIDS, and I can take you back to 1981 and I can tell you what it was like. You won't like it. What I tried to do in the task force of the Conference of Mayors was to bring mayors into the modern day. San Francisco essentially led the Nation in the fight against AIDS. I think to have to take a 30-percent cut, when we are seeing some regeneration of AIDS, is a terrible mistake.

Senator ENZI's amendment could nullify the House's solution. Let me be clear. Under the House language, San Francisco would still lose \$2.3 million. All of the cities will still face significant cuts. This provision is designed not to stop all reductions but to limit them to a level that can be absorbed in 1 year. The House provided funding for the stop-loss on top of a \$23 million increase for part A of the Ryan White CARE Act. So virtually every area across the country sees an increase in funding. But these areas take a dramatic 30-percent cut in funding. I don't think that is right, and I don't believe we should accept it.

The Government Accountability Office examined the impact this stop-loss provision would have on jurisdictions in 2008. In addition to benefiting the 11 jurisdictions whose cuts are reduced, the House bill results in increased funding for 42 of the remaining 45 jurisdictions. The very minor cuts projected in the remaining three jurisdictions are less than one-tenth of 1 percent. A reduction of 30-percent is simply not manageable.

The provision makes no changes to the underlying reauthorization. It doesn't prevent it from moving forward at all. It caps the total losses faced by any jurisdiction in fiscal year 2007 with a one-time solution. It doesn't reopen the reauthorization so carefully crafted by Senators KENNEDY and ENZI and their committee.

The epidemic, as I mentioned, is far from over in San Francisco. AIDS continues to be the second leading cause of premature death in the city and counting. Nearly 23,000 people are currently living with HIV/AIDS in San Francisco, which is more than at any point in the epidemic. Listen to that—nearly 23,000 people in San Francisco are living with HIV now, and that is more than at any point during the epidemic. In addition, the population of San Francisco living with HIV/AIDS is increasingly impoverished, homeless, and struggling. Many have serious medical needs.

About 2 weeks ago, the San Francisco Chronicle reported that San Francisco doctors diagnosed 15 HIV patients with Kaposi sarcoma. That is a form of cancer commonly found in patients early in the epidemic but had become rare.

I will never forget, in a staff meeting I had with department heads back in 1981, when the director of public health said: Madam Mayor, something is happening. We are finding patients with

large purple lesions all over their bodies, and we don't know what it is.

His name is Merv Silverman. I said: Merv, find out what it is and come back and tell me.

Three weeks later, they came back, and it was the discovery for the first time of AIDS in this country. So I feel very sensitive about it. I started the first AIDS program in the Nation. We funded it with property tax dollars. That is how we became a leader in the area.

To take a 30-percent cut when we have the largest number of HIV/AIDS victims in our history in the city, to me, is discriminatory, wrongheaded, and it need not happen. So I very much hope this body will respond.

I understand Senator ENZI wants to protect the reauthorization and the funding formula he authored, but I think we have to admit that the impact on some areas of the country was not anticipated. Fixing these unintended consequences does not require reopening the legislation. It can be addressed with a one-time solution that will still leave some cities with a decline in funds; that means the House solution of stop-loss.

I urge my colleagues to join me in opposing the Enzi amendment, which would strike a dastardly blow to a city that has seen too much suffering, as well as others.

I thank the chair and yield the floor. The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ENSIGN. I yield to the Senator from Oklahoma.

Mr. COBURN. Mr. President, I wish to make a couple of points.

I know this is a large step down for San Francisco EMA and a smaller step down for some of the others. But the thing that needs to be kept in mind is the amount of dollars spent per HIV patient in those areas is 2½ times what the average is around the rest of the country—2½ times. We spend 2½ times more per HIV case in those areas than we do in North Carolina or Florida or Mississippi or Michigan or Kansas or Texas or Arizona. So what we are talking about is proportionality; giving the same opportunities to everybody who has HIV, not more opportunities.

So with the 30-percent cut, you are still going to be spending 1½ to 1¾ times more per HIV case in San Francisco as you are in the rest of the country. So I appreciate the work of the Senator in the HIV area, which is exemplary, and I understand she would want to protect this, but it is not fair to the rest of the country. It is not fair to tell somebody that you are going to spend 2½ times as much on somebody with HIV in San Francisco as you are in Dallas, TX, or Miami, FL. That is what this amendment is about—keeping the fairness that was in the Ryan White Act.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I don't think it is fair to take a 30-per-

cent cut in 1 year when you have the largest number of HIV/AIDS victims in the history of the epidemic in a city that has suffered such as no other city in America. I am not saying there shouldn't be cuts. I voted for the reauthorization knowing there would be cuts. What I am talking about is the level of cuts and the way these cuts fall because they decimate programs in an area that was ground zero on AIDS in the United States.

If you are going to take cuts, take those cuts so the communities involved in fighting HIV with prevention, with education, with care, with treatment, with drugs, with all of it, can essentially meet the mandate, which is to prevent the suffering of AIDS in HIV patients and also to prevent the disease from spreading. That is not easy to do, I can tell you that firsthand.

You take a 30-percent cut in 1 year and you decimate these programs. That is why the House put the stop-loss in. Take a moderate cut, and we will stand up like men and women and we will take that cut. Take a third cut and it is much more difficult and you affect services to people. That is all I am saying.

So I would very much hope the Senate would understand the need and the compassion to defeat this amendment and, once again, I would urge a "no" vote.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, before we passed the legislation, there were waiting lines in many of the States in this country, lines of people waiting to get treatment and care for AIDS. I am pleased to let you know there are no waiting lines today. No waiting lines anywhere—not in San Francisco, not in Connecticut, not in New Jersey or in New York.

There has been a cut. The cut is guaranteed to be no more than 5 percent under the formula. Now, there has always been supplemental money besides the formula. We did not guarantee the supplemental money. The supplemental money was never guaranteed. And if there are larger cuts, it comes out of the supplemental money, not the formula. So I certainly hope we don't change the formula under the appropriations bill instead of through the proper process, which is authorization.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Department of Health and Human Services in North Carolina with some very pertinent quotes.

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

NORTH CAROLINA DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

October 15, 2007.

Hon. MICHAEL ENZI,
Ranking Member, Committee on Health, Education, Labor, and Pensions, Hart Senate Office Building, Washington, DC.

DEAR SENATOR ENZI: Thanks to your leadership on the Committee on Health, Education, Labor, and Pensions (HELP), Congress took an important step last year and

modernized the Ryan White CARE Act (RWCA). You and many of your congressional colleagues—both Democrats and Republicans—took a principled stance in order to ensure that patients in need, no matter where they live, can access basic medical services to treat and prevent HIV.

The new Ryan White program funding is having a profound impact in North Carolina. The increase in North Carolina's AIDS Drug Assistance Program (ADAP) eligibility from 125% to 250% over the past two years is the direct result of your legislative initiative, resources provided by the new Ryan White funding and new state investments. The increased eligibility levels will result in approximately 600–750 new North Carolinians having access to ADAP services. The reforms you championed are making a crucial difference in the lives of people living with HIV.

Unfortunately, an effort is underway in the Congress to modify the original intent of the reauthorization—that funding would be based on demonstrated need. As you are aware, according to a Health Resources Services Agency document and the newly-released GAO report that you and your colleagues requested, the impact of the House-passed version of the FY2008 Labor-HHS Appropriations bill that would cap losses for certain EMAs would result in decreased funding for states that would have otherwise received new funding based on higher incidence of HIV.

As a direct result of your efforts last year, North Carolina and other parts of the country that have been hit hardest by new HIV cases now have a fighting chance to effectively increase HIV screening, link infected individuals to care and reduce the number of HIV infections reported from year-to-year. If this attempt to undermine the basic premise of the landmark Ryan White HIV/AIDS Treatment Modernization Act of 2006 is successful, CARE Act funding will be diverted from regions of the country that are most in need of federal assistance. Unless the harmful provision in the appropriations legislation is eliminated, I am gravely concerned for patients who are in desperate need of life-saving medical care, individuals who will be newly infected because their partners did not have access to CARE Act services and ultimately, the future prospects of addressing the HIV epidemic in North Carolina and throughout the country.

Thank you for your leadership on the Health Subcommittee, and thank you for your attention to this important issue.

Sincerely,

EVELYN FOUST,
State AIDS Director.

Mr. ENZI. Mr. President, I yield the floor, and I reserve my remaining time.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, in listening to this debate and having received a letter from the Speaker, the concerns I have are whether there was a disproportionate share going to some localities in California.

If I could direct a question to the Senator from California: What is your response to the concerns raised by the Senator from Wyoming that the formula was settled last year and that this, in effect, reopens the formula and is going to direct funds to areas in your State where those funds could be directed to the same serious problem which Pennsylvania has in our big cities—Pittsburgh and Philadelphia?

If you could first respond on the issue as to whether the formula was resolved last year.

Mrs. FEINSTEIN. Through the Chair, Mr. President, if I may, to the distinguished Senator from Pennsylvania, first of all, it is my knowledge that the cut to San Francisco and to 11 other jurisdictions is very large. With respect to the reauthorization of Ryan White, we do not agree that it applies only to the fiscal year 2007 cuts. It takes resources, actually, from other jurisdictions. The Pelosi fix in the House ensures a significant increase for title I that would both reduce cuts to a manageable level for 11 jurisdictions and still increase for other jurisdictions. So this isn't taking money away from other jurisdictions, as I understand it. The provisions in the House bill increases funding for 42 of the remaining 45 jurisdictions under title I.

Now, I don't know the particulars, to be candid with you, of how these cuts fell, but I do know the cut received in the Bay Area was substantial. I suspect it was from the way they counted AIDS cases, and they knew they had to change the methodology. But basically the point is the cut is substantially large and means you have to cut 30 percent across the board of AIDS programs at a time when San Francisco has the largest number of HIV/AIDS cases in its history—23,000.

Mr. SPECTER addressed the Chair.

The ACTING PRESIDENT pro tempore. Who yields time to the Senator? The time is controlled by the Senator from Wyoming and the Senator from California. Who yields time?

Mrs. FEINSTEIN. May I ask how much additional time I have?

The ACTING PRESIDENT pro tempore. A minute 10.

Mrs. FEINSTEIN. A minute 10. I am not sure I should yield it to the Senator.

Mr. SPECTER. That is up to the Senator. I am not decided on how I am going to vote, so you have to decide that question and I will decide—

Mrs. FEINSTEIN. I beg your pardon? Whose side did you say?

Mr. SPECTER. I am considering it.

Mrs. FEINSTEIN. Oh. Then I will yield. If the mind is open, I am happy to yield.

Mr. SPECTER. I know it is unsenatorial to say that, but I haven't made up my mind.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. I was listening to the Senator from Wyoming and the Senator from California and trying to figure it out. I don't want to be too unsenatorial, to think about it, but that is where I am.

Mrs. FEINSTEIN. I would be happy to yield my remaining minute to the Senator from Pennsylvania.

Mr. SPECTER. The problem is one of enormous seriousness, and it is very difficult to find the funding with what we have allocated on our discretionary spending. In a context where some \$36 million is being added in the House bill and some \$6 million has been allocated to San Francisco in the House bill—and

I am very sympathetic to San Francisco's problem and I understand the distinguished Senator from California was mayor of San Francisco and it is within the district of the Speaker of the House, so I understand their interest there—what I am trying to evaluate is whether there is undue funding going because of the prominence of the advocates of the position by the Senator from California.

I think I understand it now and I will weigh and consider it. I thank the Senator from California for yielding me the time.

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

Mrs. FEINSTEIN. I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. Time is yielded back.

Mr. HARKIN. Mr. President, under the unanimous consent agreement entered into last night, I believe the Senator from South Carolina would be recognized next for amendment No. 3387, with 20 minutes of debate equally divided.

Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the Roberts amendment first, and then we would, after the disposal of the Roberts amendment, then proceed to the DeMint amendment.

The ACTING PRESIDENT pro tempore. Is there objection? The chair hears none, and it is so ordered.

The Roberts amendment has been proposed and is now pending. The Senator from Kansas.

AMENDMENT NO. 3365

Mr. ROBERTS. Mr. President, I rise in support of the Roberts amendment, No. 3365, to fund a small business childcare grant program. The program was authorized earlier this year as part of the supplemental spending bill. It does have wide bipartisan support at this time, as well as last Congress when it was unanimously approved by the HELP Committee as part of the Child Care Community Development Block Grant.

This program is different from other childcare initiatives because it specifically targets small businesses and because it encourages them to work together. These small businesses are the lifeblood of many urban and rural communities. These grants will allow the local convenience store or the beauty shop, the auto shop, the implement dealer, the bank, to cooperatively work together to offer their employees quality childcare while they work. Right now, these daycare facilities are simply not available.

My program is also different from other grants because it encourages sustainability and ownership over these childcare facilities. With an annual increasing match requirement and a 2012 sunset provision, my program offers a fiscally responsible approach to plugging the lack of childcare for many hard-working American families.

I wish to thank Senators SPECTER, HARKIN, KENNEDY, DODD, and SALAZAR

for their support of this program in the supplemental spending bill. I am proud this was a bipartisan effort from the get-go, and I want that to continue. If you support hard-working American families, if you support small business and community development, if you support fiscal responsibility, then simply support this amendment.

Let me say I recognize and appreciate the concern of my good friends and colleagues, Senators COBURN and DEMINT. They feel this program could be duplicative. I do not think it is because the program targets small businesses and encourages them to cooperate with other entities to develop sustainable childcare facilities. Because of the matching and sunset requirements—50 percent the first year here, 67 percent the second year, and the third year, 75 percent, and then it sunsets—I think we are much more fiscally responsible.

There was a suggestion to use TANF funds. These are being held by States in emergency contingency accounts in case of a sudden economic downturn. This would be another allowable use of these funds. That is not the case. This is apples and oranges. This is a fiscally responsible plan on the part of the States and we should encourage that.

I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time? The Senator from Iowa.

Mr. HARKIN. Mr. President, I yield myself about 3 minutes.

The amendment offered by Senator ROBERTS is a good amendment. This was authorized in the emergency supplemental bill for fiscal year 2007. The grants are for small businesses that want to partner with each other or other organizations to establish employer-owned childcare programs. Funds can be used for startup costs, technical assistance, and training and special services for sick kids or children with disabilities.

The program is authorized at \$50 million in fiscal year 2008. As the Senator said, funding was not included. I think it is time we do fund it. I have long been a supporter of expanding the role of small businesses in providing the kind of childcare that their employees need.

I think the amendment of the Senator will further that goal, and I offer my support to the Senator's amendment and I hope the Senate will adopt it.

I yield back whatever time we may have.

The ACTING PRESIDENT pro tempore. All time is yielded back.

Without objection, that amendment is agreed to.

The amendment (No. 3365) was agreed to.

Mr. HARKIN. Mr. President, 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.

AMENDMENT NO. 3387 TO AMENDMENT NO. 3325

Mr. DEMINT. Mr. President, I ask unanimous consent the pending amendment be set aside and amendment No. 3387 be called up for immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] proposes an amendment numbered 3387.

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

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

The amendment is as follows:

(Purpose: To replace non-competitive earmarks for the AFL-CIO with competitive grants)

Beginning on page 4, strike line 22 and all that follows through line 7 on page 5, and insert the following: "workers: Provided further, That \$3,700,000 shall be for competitive grants, which shall be awarded not later than 30 days after the date of enactment of this Act".

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. DEMINT. Mr. President, I do want to make sure we have called up amendment No. 3387. I appreciate the chairman agreeing to this slight change in the purpose statement, not the legislative language.

This amendment is part of an effort to clear up what a lot of us have called the culture of corruption over the last several years. A lot of this has come from Americans connecting the dots between the earmarks that we give to our favorite causes back home and many of the campaign contributions and political support that we get back here in Congress. While motivations are generally good, at best the appearance of what is going on here has alarmed the American people.

My earmark amendment today addresses two specific earmarks in the appropriations bill that is in front of us. One of the earmarks provides \$1.5 million for the AFL-CIO Working for America Institute and \$2.2 million for the AFL-CIO Appalachian Council. These funds come in the form of what are referred to as noncompetitive grants, according to the text of the bill and the committee report—which means no one else can compete to deliver the services that are intended by the bill, that these are a specific earmark to divisions of the AFL-CIO.

These earmarks are problematic because they fund two organizations that are not competitive. They provide funds that could be better spent to achieve the mission of the Department of Labor set out by Congress in the Workforce Investment Act of 1998. Rather than continuing to give these groups handouts without any competition, we should force them to compete with other organizations so Americans

get the most value for their tax dollars. That is exactly what my amendment will do. It replaces these two earmarks that total \$3.7 million with competitive grants.

Let me be clear. I am not taking the money out of the bill. The money is still there for the purposes for which it is intended, but it allows organizations to compete to deliver these services so that the taxpayers get the most for their money.

Let me say a few things about the performance of the AFL-CIO organization so my colleagues understand why there is such concern. The AFL-CIO Working for America Institute originally received grants under the Workforce Investment Act. The grants were given to national organizations for the purpose of providing technical assistance in setting up systems of local and State workforce investment boards for the purpose of helping unemployed workers get the training and the jobs they need.

After 3 years, these capacity-building services were no longer needed, and the grants were terminated. However, the Working for America Institute failed to complete its mission in 3 years, so the Department gave it a fourth year of funding. After the fourth year, the Department terminated its contract with the Working for America Institute and explained:

It is difficult to make the case that the AFL-CIO should receive yet a fifth year of funding for organizational purposes when the other national organizations were able to achieve their goals in 3 years. Additionally, given that there are so many workers seeking training or retraining opportunities, we believe the Department of Labor's emphasis is rightly placed on promoting employment and reemployment projects having measurable outcomes.

The Department believes the technical assistance given by the institute is duplicative and less effective than a similar program already funded in their Employment and Training Administration. It said:

We should focus limited financial resources on programs that deliver actual training services to workers, rather than pour additional funds into organizational infrastructure. After 4 years, the AFL-CIO should have developed sufficient ability to participate effectively in the Workforce Investment Act system.

Despite these failures, Congress overrode the Department and earmarked funds for \$1.5 million in fiscal year 2005 in the appropriations bill in that year, and it continued the project through June of this year. Now this appropriations bill is trying to do the same thing again. This is a clear example of Congress interfering with agency decisions because of parochial or political interests. Congress should not fund a program that is duplicative and not a critical priority for an agency. It should have to compete for funds like every other organization.

Let me address the second earmark in this bill. The AFL-CIO Appalachian Council had a longstanding sole-source

contract with the Department of Labor that spanned several decades. The purpose of the contract was to provide career technical training and career transition services at job placement centers in Pittsburgh, PA, Charleston, WV, and Batesville, MS. It is important to note that the council does not manage or run these three centers. It simply provides the training, placement, and transition services.

The Department of Labor reviewed the council's performance in 2004 in light of the new requirements of the Workforce Investment Act. The review resulted in the Department terminating the council's sole-source contract because it was no longer the only and unique provider of career transition services and because it experienced a steady decline in program performance over a 5-year period.

Despite these failures, Congress stepped in and earmarked \$2.2 million for the council in fiscal year 2005, forcing the Department to continue the contract. Following this, the Department canceled the contract again, but Congress reversed the agency's decision a second time with another \$2.2 million earmark in 2006.

After the second year came to a close, the Department reviewed the performance outcomes of the council. In 2006, the council placed 265 graduates in apprenticeship programs and 71 graduates in jobs matching their vocational training. With the earmark funded at \$2.2 million, the cost of each of these graduates was \$6,547. Each of the council's 21 staff members placed less than 2 students per month in a registered apprenticeship program. Despite being given a second chance by Congress, the Department terminated the contract again this year.

Unfortunately, the appropriations bill we are considering gives another earmark to the council to continue the services and designates it a non-competing earmark, which means no one else can compete to do the service right. Here we have two examples of earmarks that circumvent the normal competitive process and abuse the American taxpayer.

The AFL-CIO has plenty of funds to continue these programs. In 2006, the AFL-CIO reported \$96 million in assets and \$157.2 million in receipts. Their top five executive officers made from \$179,000 to \$291,000 a year, with 204 employees making more than \$75,000 a year. Of their disbursements, about \$30 million, or nearly 40 percent of their total receipts, went for political activities and lobbying.

The AFL-CIO should either fund the program itself or help the institute develop a competitive grant proposal, but these organizations should not get a handout. My amendment, as I said before, does not eliminate the funds, but it does require the AFL-CIO to compete based on real criteria and accountability to deliver the services for the American taxpayer.

I urge my colleagues to support my amendment to turn these noncompeti-

tive grants into competitive grants so we accomplish the purpose in an accountable way. I ask my colleagues to vote for my amendment later on this morning. I appreciate their support.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time in opposition?

Mr. SPECTER. How much time do we have, Mr. President?

The ACTING PRESIDENT pro tempore. There is 10 minutes in opposition. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, the two programs which have been commented on by the Senator from South Carolina are very good programs, contrary to his assertions. The AFL-CIO Appalachian Council is a nationally recognized provider of educational training service. It was founded in 1964 and the council has represented Alabama, Georgia, Kentucky, Maryland, DC, Mississippi, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. I believe if the Senator from South Carolina looked closely at what has happened in his own State, which has been a beneficiary, he would find it has been a good program. The council operates major employment and training programs through the Department of Labor and Job Corps, as well as employee assistance programs, and provides funding for recruitment/replacement of some 1,000 Job Corps students in long-term jobs.

When you talk about the Job Corps, you are talking about a group of young people who might well be at risk. With the rising rates of violence in major American cities—two of them in my State, Pittsburgh and Philadelphia; Philadelphia had 406 homicides last year—taking some of these at-risk students off the streets, young people off the streets, and providing job training is very important.

The Working for America Institute, which is a program very near and dear to the heart of the senior Senator from West Virginia, Mr. BYRD, has an important retraining component of our manufacturing base, where we have seen too many high-paying jobs shipped overseas. During the current administration, more than 3 million American manufacturing jobs have been lost. We are dealing with an area of some of the Rust Belt States where job training and job development is very important and the Appalachian Council runs through those States and provides a very important service.

When the Senator from South Carolina talks about a political factor, that depends upon the eye of the beholder. These programs have worked very well. They are a very modest allocation with a total of \$3.7 million tackling an issue of job training in an area which has been beset by unfair foreign competition. They have been very carefully considered by the subcommittee, very carefully considered by the full committee, and they have been a part of

the budget for a considerable period of time. They have established their bona fides and their worthwhile nature.

I believe they are worth the money. I urge my colleagues to reject the DeMint amendment.

I yield to my distinguished colleague from Iowa.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. HARKIN. I wish to join with Senator SPECTER in opposing the DeMint amendment, which would strike two congressionally directed fundings in the bill—one for the Appalachian Council, and the other one would be for the Working for America Institute.

This institute was created, first of all, in 1989 and then in 1998 was spun off and made into a totally separate nonprofit organization with a functioning board of directors and everything else. They have over 30 years of experience in the field of job training, workforce development. They work with businesses, the private sector, they work with unions, and they work with communities. The institute has basically been a showcase of how to pull people together and get people together for workforce development. It is doing great work, and it benefits communities throughout the United States. In fact, I had the list of some here. Just last year alone, the institute provided assistance to Portland, OR, the Ohio State Workforce Board, the National Governors Association, and the National Alliance of Workforce Boards. So you can see they do things all over the country.

I point out that this institute received funding through the Department of Labor for over 30 years, through Republican and Democratic administrations. I can go back to Nixon and Ford and Carter, all through the Reagan years, the first Bush administration, the Clinton administration, and actually the first part of this Bush administration until just a couple of years ago when the Department of Labor decided to cut all funding for it. So we had to come in here a couple of years ago and put directed funding in there for the institute. It was widely supported.

So when the Senator from South Carolina says that: Well, we will just make it competitive. Well, the Department will not do it anyway. They are not interested in it. They will not put it out for competitive grant. So this is another instance where I think congressionally directed funding has validity because we have looked at these programs from a bipartisan standpoint, and we agree they should be funded, even though the Department of Labor does not want the funding.

Now, the second issue I wanted to address is—I do not know whether I caught the Senator from South Carolina correctly, but I heard something about lobbying and political activity. I just wanted to make it very clear that section 503 of the bill reads—and I will read it in its entirety:

No part of any appropriation contained in this Act shall be used, other than for normal

and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or video presentation, designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

B. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

So the recipients cannot do it, and they cannot hire lobbyists, either, to lobby for them for any legislation pending before the Congress. So I wanted to make it clear that none of this money can be used for lobbying or for any kind of partisan activities, nor can it even be used for them to hire a lobbyist or a lobbying firm for that activity. So I wanted to make that clear.

I support the Senator from Pennsylvania. The Appalachian Council has done a great job. They are doing great work in a number of States. The Working for America Institute, again, is one that has proven its worth. It has been widely supported throughout America, through business concerns, and State workforce investment boards all over this country.

Now is not the time to pull the rug out from underneath them. So I would join with Senator SPECTER in opposing the DeMint amendment.

I yield to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, just a supplemental comment or two. The Job Corps program, which is part of this overall operation, funds young people ages 16 through 24. In Philadelphia, there is a program which places graduates with 61 major health care employers in higher skill jobs which are in great demand in Philadelphia. That attacks an area of great importance, considering the homicide rate in Philadelphia, much of which is caused by young people, so many at-risk youth. This goes right to the heart of a very serious problem, to support the funding.

I want to supplement that, too, with the hearing which we held on July 22, 2004, where we had extensive testimony taken on the subject to establish the value of the program.

How much time remains, Mr. President?

The ACTING PRESIDENT pro tempore. Just under 1 minute 50 seconds.

Mr. SPECTER. We reserve the remainder of that time awaiting the argument of the Senator from South Carolina.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina. The Senator has 30 seconds.

Mr. DEMINT. Mr. President, I agree with all the purposes the Senator stated, all of the ideas of getting teenagers to work in Philadelphia. All of those things are good. I am not taking argument with any of them. If the AFL-CIO

is the best source to deliver these services, there should not be any problem with this at all. All we are asking is to make this a competitive grant so that we can have criteria and accountability in a system so that what we want to accomplish will actually get accomplished. I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. When you talk about accountability, it is present. It is an open book. The Job Corps is administered by the Department of Labor. It is not unusual to have a sole-source contract. When you have somebody like the AFL-CIO, which has so much knowledge, and so many of their experts are at work on this program, it makes very good sense to give the opportunity to carry out the program. It is all subject to the review by the Department of Labor. I think the quality of this program speaks for itself. There is agreement on it. It has an important purpose. I believe the record shows that these funds have been wisely spent.

I yield the floor.

The ACTING PRESIDENT pro tempore. All time has expired.

Mr. HARKIN. Mr. President, I move to table the DeMint amendment and ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second. The yeas and nays are ordered. Under the previous order, that vote will occur after debate on the Coburn amendment.

AMENDMENT NO. 3358

Mr. HARKIN. Mr. President, now we are going to go to the Coburn amendment.

I ask unanimous consent that the vote sequence be changed and that the vote in relation to the Coburn amendment be second in the sequence; that the remaining provisions remain in effect.

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

The Senator from Oklahoma.

Mr. COBURN. Mr. President, amendment No. 3358 is a pending amendment we discussed this last Friday. I believe under the unanimous consent agreement I have 10 minutes, and those in opposition do also. I am going to speak a few moments, if I may.

What the country is looking for us to do is to choose priorities, to make good choices about the priorities of what we do with their money. Quite frankly, there has not been a top-down review on all the Government programs, ever. We have had very limited oversight hearings, which should be the No. 1 part of our job. And we have in front of us a bill that has \$400 million in directed earmarks, which we think, through what the appropriations process has brought to us, is an important priority.

What this amendment says is that we are going to give the Members of the

Senate an opportunity to vote on whether those are the most important priorities or whether we ought to have children's health care because what this amendment does is redirects this money in abeyance until we say we have the kids in this country covered.

There is a large debate over the SCHIP bill that the President recently vetoed. There are a lot of things wrong with it. It is not wrong to help poor kids get health care. Nobody in the Senate opposed that. What they did oppose is changing, under the guise of a debate for children, a debate of having the Government start running all of the health care for kids. What it did do is spend \$4,000 to buy \$2,300 worth of care, and a lot of other things.

So what this amendment is about is asking the Senate to choose—choose your directed earmarks for back home or make a statement that says: We really believe kids health care is important, and we are not going to spend the money on directed earmarks until we have solved that problem.

I know this makes some of my colleagues bristle, that we would challenge the direction. This is not saying specific earmarks are not good ideas. A lot of the earmarks in this bill are good ideas. What it does say is: Should they be a priority before we take care of one of the greatest problems this country is facing, which is health care? Are we going to go after and really change health care to where we get value, we get controllable costs, we get freedom of choice, or are we going to continue to do the same thing of putting earmarks into bills and ignoring the big problems that are in front of us?

So what this amendment says is that until the Secretary of HHS, whoever they may be, certifies that we have the kids under 18 in this country covered, we should not be spending money on directed political benefits for ourselves and our careers; instead, we should be spending our time solving the health care needs of the kids in our country.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time in opposition? The Senator from Iowa.

Mr. HARKIN. Mr. President, I assume it comes as no surprise that I oppose the amendment offered by the Senator from Oklahoma.

I appreciate that the amendment of the Senator from Oklahoma raises again the issue of children's health care. I think that debate should go on since the plight of poor children in this country needs as much attention as we can give it. But I do not think this amendment is serious about addressing the health of children. The amendment does not put any money into it at all; it just says that we will not have any congressionally directed funding until every child in America has health care coverage. I believe that is the way it is worded. So it really does not fund it. It does not do anything at all. I think it is the kind of thing that kind of gives Congress a bad name in that we say we

want to do these things, but we do not provide any funding for them.

We really already know how to increase the number of children insured in this country—by providing an increase in the SCHIP bill program. The Senate recently voted 68 to 31 to do that—68 to 31, pretty overwhelming. That bill would have provided insurance to millions of children who do not have any. Well, maybe the Senator from Oklahoma did not agree with how that was done but, nonetheless, 68 Senators did agree on both sides of the aisle on that approach.

So, again, if the Senator was really concerned about the plight of these children, I would suggest that rather than voting against the SCHIP bill, which obviously provides some guidance and direction, that there is another way of doing it. Again, I point out that the Senate voted overwhelmingly to do that.

That vote on SCHIP was a key one on children's health insurance, not a completely unrelated vote dealing with congressionally directed spending, which is what this is.

I say to my friend from Oklahoma, if he wants more kids to have health insurance, then vote for a bill that would provide more health insurance to kids. If it is not the SCHIP bill, then what is it? It has been suggested that maybe a vote for the Coburn amendment might be a nice cover vote for those who oppose the SCHIP bill. I don't think so. Perhaps more and more people are finding out that a vote against the SCHIP bill was not a very popular one, as we hear from communities and States. But an amendment such as this doesn't change the facts about the SCHIP bill, one way or the other.

I also disagree with the Senator's implication, if I might say, that congressionally directed projects in the bill are unworthy of Federal spending. I am proud of the projects I included in this bill. I will be glad to defend every one of them. Again, with the transparency we have that came with the new ethics reform bill, all of these have been spread upon the record. We know who asked for them and we know how much money is involved. I am happy to defend every one of the ones I put in there. I should add that many of the projects the Senator wants to eliminate are, in fact, directed to children's health. Let me cite a few examples.

There is congressionally directed funding for St. Francis Hospital in Delaware to expand prenatal maternity and pediatric services to indigents. There is funding for the Youth Crisis Center in Jacksonville, FL to address the serious health consequences facing runaway and homeless youth. There is funding for St. Luke's Regional Medical Center in Boise, ID to expand pediatric services. There is funding for the St. Louis Children's Hospital in St. Louis for neonatal intensive care unit expansion. There is funding for the Mississippi Gulf Coast Children's Health Project which uses mobile units

to provide primary care to indigent children along the gulf coast. There is funding for Child Sight in New Mexico, a vision screening and eyeglass program especially for Native Americans on reservations. There is funding for St. Anthony's Hospital in Oklahoma City for construction of a newborn nursery. All of these would be cut out if the amendment were adopted. They are good provisions, and they will go a long way toward helping children's health in all of these instances.

Again, I don't see this as a serious means of doing anything to help children's health. It is an attack on congressionally directed funding to which the Senator is opposed. As I said, I support congressionally directed funding. I always have. I especially support it now with the new provisions on transparency and accountability as a result of the ethics bill we recently passed.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SPECTER. How much time remains?

The ACTING PRESIDENT pro tempore. The opposition has 4 minutes 50 seconds. The proponents have 6 minutes 50 seconds.

Who yields time?

Mr. HARKIN. I yield to the Senator whatever time he requires.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. I thank the chairman.

Mr. President, the Senator from Iowa, chairman of the subcommittee, has already advanced the substantive argument about our efforts to deal with health care for children. I have supported it with a very solid vote. We will take care of that issue. The President has vetoed the bill, and I and others have signified our willingness to vote to override. It was not overridden in the House. The President has signified his willingness to negotiate. There are some who do not want to negotiate on the congressional side. I believe that is a mistake. If they want to attach political blame to the President if the program should lapse, ultimately, we will have a negotiation because the American people would see through the facade and understand that those who refuse to negotiate are the ones responsible if the program lapses and is terminated. We will take care of congressional and Federal action for children's health.

What the amendment seeks to do is to eliminate earmarks. Earmarks have a specific congressional designation budget-wise and are vitally important projects, such as the dredging of the Delaware in Philadelphia to provide a 45-foot channel which traditionally has been the responsibility of the Federal Government under constitutional provisions on waterways and related matters. It would eliminate flood control, which is vital. It would eliminate many items where there is congressional expertise and understanding.

Take the budget that is on the floor now. It is \$152 billion. We have allo-

cated \$400 million, which is about one-quarter of 1 percent. So 99¾ percent goes to the bureaucrats in the Department of Education, the Department of Health and Human Services, and the Department of Labor. I suggest that is an imbalance. People in the House of Representatives know their districts much better than people sitting downtown in big bureaus in Washington. Senators know their States better than the bureaucrats. I dare say the astute Senator from Oklahoma, the proponent of this amendment, knows what is going on in Oklahoma better than the bureaucrats and would be in a better position to identify projects which are worthwhile. But to limit congressional control to one-quarter of 1 percent is certainly not appropriate, certainly not overbearing. I wouldn't call it de minimis because no dollar amount is de minimis. We understand it is not the Government's money; it is the taxpayers' money.

The Senator from Iowa has made a very fundamental point. In fact, he made a couple of fundamental points; in fact, he has made several fundamental points. One is the transparency. It is all out in the open. We are prepared to debate any move to strike any of the so-called earmarks. Earmarks has become a dirty word. But when you reach a real need somewhere and have an application for Federal funds that a Member of the House or the Senate understands, and in the broader context of one-quarter of 1 percent, I don't think that goes too far to having Members who know their States and know their districts make those allocations.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. COBURN. Mr. President, may I inquire as to the remaining time?

The ACTING PRESIDENT pro tempore. The Senator has 6 minutes 50 seconds, and the opposition has 23 seconds.

Mr. COBURN. I thank the Chair.

I stand somewhat amused that we are so powerless that the bureaucracy is going to decide where everything goes. Earmarks are not the only way to decide how the budget is put out, and the fact that we use the excuse that we don't have any control, it is called oversight. Last year in the last Congress more oversight hearings were held by myself and TOM CARPER, true oversight hearings, than all the rest of the Senate. The fact is, we don't want to do the hard work of oversight because it is easy to earmark something. But in fact, in dredging, you can hold the Corps of Engineers to a priority list. You can bring them before Congress and say: Why aren't you dredging this? How is this a priority against something else? We don't do the hard work of oversight. That is our problem. Instead, we want to do it the easy way.

I don't deny these are good projects. They are. I am not saying they are not. What I am saying is, what about the long term? What about the fact that a

child born today is inheriting \$400,000 in unfunded liabilities and that earmarks happen to be the tool that allows us to spend more than we should, not directly through the earmarks but by voting for bills that should not be voted on? But because we have an earmark in the bill, we vote for the bill.

We have an unfunded liability right now on Medicare of \$34 billion. We are never going to be trusted to fix that problem when we can't be trusted to have an arm's-length separate allocation and look at what the problems are in front of us in terms of labor, health, and human services.

I don't deny what people want to do in this bill could be prioritized. But the number of requests were 36,000 this year. The fact is, can we get what are priorities for this country if we continue the process of using earmarks?

How about children's health? Yes, we passed a bill. We passed a bill that truly wasn't paid for unless we want 22 million Americans to start smoking. We passed a bill that said: We are going to pay \$4,000 to buy \$2,300 worth of care. We are great stewards when it comes to the American taxpayers' money on this new SCHIP bill. There is no question we are going to get an SCHIP bill. That SCHIP bill is going to truly reflect the needs of the poor people who are not eligible for Medicaid. We are going to put the money there we need to accomplish that. But to confuse that bill with a process which has got us \$9.5 trillion in debt and hung every one of our kids out to dry, that is what this amendment is about. It is the process I am attacking.

I am not attacking individual Senators. I am saying if we are going to get control of the spending, at some point in the future we have to look at the process and how it works. For us to say it is easier for us to earmark than to hold the bureaucracy accountable means we are not doing our job. We can hold the bureaucracies accountable. All we have to do is have an oversight hearing three times a week and make them come up here and explain how they are spending their money. They will start spending on priorities Americans want. We don't have our hands tied behind us just because we don't do earmarks.

The real question America is asking is, are we going to change our ways about real priorities, the real future for our country, or are we going to continue the same old process that has brought us all the corruption we have seen come through the House in the past that leads to conflicts of interest?

We talk about transparency. We gutted the transparency rules as far as appropriations are concerned in this bill and in our ethics bill, because no longer do you say who is getting it or what it is for. You only say where it is going. The very things that are in the House bill in terms of transparency are not available to us in the Senate, so we can't claim transparency. We are going to get transparency in September of

next year when the transparency bill comes about.

Senator HARKIN mentioned that we didn't offer an option. Senator BURR and I both did, the Every American Kid Insured Act. We talked about it on this floor during the debate on the SCHIP bill. There are other ways to do this. Give them all a tax credit. Let them buy the insurance. We have 9 million kids out there uninsured, 3 million more within 1 year. There are ways for us to solve that. But this is not a farce amendment. This is an amendment about a very real problem. Will we have the right priorities when it comes to this country or are we going to send \$42 million to international labor organizations with no accountability whatsoever from the United Nations? That is what we are doing. That is what this bill does. We have another \$400 million worth of earmarks that are not competitively bid and will never be overseen, and you will never see where the money goes. So the question on the amendment is, will we change the process.

It is a serious amendment. We should not be earmarking things until we do our business of taking care of kids' insurance.

With that, I yield the floor.

Mr. SPECTER. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. There is 23 seconds remaining for the opposition.

Mr. HARKIN. Mr. President, I point out that the Coburn amendment doesn't put 1 cent into helping children's health, not 1 penny. Yet in the bill itself, as I pointed out, there are a number of programs that actually go to help children's health all over this country. The Coburn amendment would eradicate those.

Mr. COBURN. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

At the moment there is not a sufficient second.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I do want to give the yeas and nays to the Senator. I was just going to move to table the amendment and ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second on the amendment itself?

Mr. HARKIN. Yes.

The ACTING PRESIDENT pro tempore. There appears to be a sufficient second.

The yeas and nays were ordered.

The Senator from Oklahoma.

Mr. COBURN. Mr. President, parliamentary inquiry: As to the unanimous consent request that we agreed to, was it not agreed to that we were going to have votes on these amendments up or down?

Mr. HARKIN. No.

Mr. COBURN. That was not part of the unanimous consent agreement? Fine.

Mr. HARKIN. Mr. President, I say to my friend from Oklahoma, it was on or in relation to. So, yes, ask that again.

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

The ACTING PRESIDENT pro tempore. The yeas and nays have been ordered on the amendment itself.

The Senator from Pennsylvania

Mr. SPECTER. Mr. President, on the matter of management, after these votes we will move ahead to take up any other amendments that any Senators wish to offer. We had an understanding to conclude this bill by 12:30 today, and we are anxious to come as close to that time as we can. If Senators want to pursue any other amendments, they ought to consult with the managers immediately or we intend to go to third reading to complete this bill.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. HARKIN. Mr. President, I say to my friend from Pennsylvania, I think we are getting close. With these three votes coming up now, hopefully we are just a few amendments away from completing the bill, and hopefully we will have it done early this afternoon. I had hoped we would have it done by 12:30, but that does not look possible. But we are getting close. I hope when Senators come over to the Chamber we can work out some other amendments that are pending at this time, and perhaps we can get a consent to limit the number of amendments and bring closure to this bill sometime early this afternoon.

AMENDMENT NO. 3437

The ACTING PRESIDENT pro tempore. Under the previous order, the question recurs on the Enzi amendment. There is 2 minutes evenly divided.

The Senator from Wyoming.

Mr. ENZI. Mr. President, again, I would ask that Senators support my amendment to strike what we are talking about, which is an earmark of \$6.2 million for San Francisco and another \$3 million for a few other towns.

We are changing law that we passed less than a year ago under an authorization process. It is much harder to pass an authorization bill than it is an appropriations bill. We should not be changing formulas under an appropriations bill.

The GAO numbers that we said would happen are approximately what has happened. Of the \$9 million, San Francisco gets \$6.2 million. They already get twice as much per HIV/AIDS case as any of the rest of the towns. We put in a hold harmless provision so nobody would lose more than 5 percent of their money. We have been staying by that. We did not guarantee supplemental money. That was done less than a year ago. This is an earmark.

There were waiting lines for people who needed HIV treatment and care. There are no waiting lines today. What we did last year worked. We should not change it under appropriations now.

I ask that you vote for my amendment.

The PRESIDING OFFICER (Mr. CASEY). The Senator's 1 minute has expired.

There is 1 minute in opposition to the amendment.

Who yields time?

Mr. HARKIN. Mr. President, since no one wants to be recognized in opposition, I yield back the time.

Mr. ENZI. Mr. President, 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 amendment No. 3437.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Missouri (Mrs. MCCASKILL), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "no."

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 65, nays 28, as follows:

[Rollcall Vote No. 383 Leg.]

YEAS—65

Alexander	Crapo	Lugar
Allard	DeMint	Martinez
Barrasso	Dole	McConnell
Bennett	Domenici	Mikulski
Bingaman	Dorgan	Murkowski
Bond	Durbin	Nelson (FL)
Brown	Ensign	Nelson (NE)
Brownback	Enzi	Pryor
Bunning	Graham	Roberts
Burr	Grassley	Salazar
Cardin	Gregg	Sessions
Carper	Hagel	Shelby
Casey	Harkin	Smith
Chambliss	Hatch	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Tester
Coleman	Isakson	Thune
Collins	Kohl	Vitter
Conrad	Kyl	Voynovich
Corker	Levin	Warner
Cornyn	Lincoln	Webb
Craig	Lott	

NAYS—28

Akaka	Kerry	Rockefeller
Baucus	Klobuchar	Sanders
Bayh	Landrieu	Schumer
Boxer	Lautenberg	Snowe
Byrd	Leahy	Specter
Cantwell	Lieberman	Stabenow
Feingold	Menendez	Whitehouse
Feinstein	Murray	Wyden
Inouye	Reed	
Johnson	Reid	

NOT VOTING—7

Biden	Kennedy	Obama
Clinton	McCain	
Dodd	McCaskill	

The amendment (No. 3437) was agreed to.

AMENDMENT NO. 3358

The PRESIDING OFFICER. There are now 2 minutes equally divided on the Coburn amendment.

Who yields time?

Mr. HARKIN. Mr. President, first, I make a point of order that the Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, we now proceed to 2 minutes on the Coburn amendment. After that, then we will have 2 minutes on the DeMint amendment and vote. These will be 10-minute votes as per the prior agreement.

The PRESIDING OFFICER. Who yields time?

The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, this is a straightforward amendment. It is an amendment about where our priorities lie. Do they lie in our directed spending or do they lie with the children of this country who aren't covered?

It is a very simple amendment. I know there are things in the bill for children, but the fact is out of the 9.5 million who are uncovered, we have 3.6 million who have not been covered for a year.

So this amendment simply states we are not going to spend any money on the directed spending until the HHS Secretary certifies that we have done our job in terms of taking care of the kids. Whether that is the SCHIP bill, negotiations with the administration or whatever it is, we are not going to spend the money.

Mr. HARKIN. Mr. President, I ask the Senate please be called to order.

The PRESIDING OFFICER. The Senate will come to order.

The senior Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, the issue of providing health care for children will be taken care of on the SCHIP bill, which ultimately will be subject to negotiations between the President and the Congress. The allocations on earmarks amount to approximately one-quarter of 1 percent. Ninety-nine and three-quarters percent will go to the bureaucrats in the departments.

Members of the Senate and House have more knowledge about what is going on in their districts and their States, and this is a very modest application for very worthwhile programs. The Senator from Oklahoma conceded in the argument earlier that he is not challenging the worthwhileness of any of these programs. Any of them are subject to attack to be stricken, and they are all defensible.

I ask that the amendment of the Senator from Oklahoma be rejected.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I move to table the Coburn amendment and 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 motion.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "yea."

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 68, nays 26, as follows:

[Rollcall Vote No. 384 Leg.]

YEAS—68

Akaka	Grassley	Nelson (NE)
Alexander	Gregg	Pryor
Baucus	Hagel	Reed
Bayh	Harkin	Reid
Bennett	Hatch	Roberts
Bingaman	Hutchison	Rockefeller
Bond	Inouye	Salazar
Boxer	Johnson	Sanders
Brown	Kerry	Schumer
Byrd	Klobuchar	Shelby
Cantwell	Kohl	Smith
Cardin	Landrieu	Snowe
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Cochran	Levin	Stevens
Coleman	Lieberman	Sununu
Collins	Lincoln	Tester
Conrad	Lugar	Voinovich
Craig	Menendez	Warner
Domenici	Mikulski	Webb
Dorgan	Murkowski	Whitehouse
Durbin	Murray	Wyden
Feinstein	Nelson (FL)	

NAYS—26

Allard	Crapo	Kyl
Barrasso	DeMint	Lott
Brownback	Dole	Martinez
Bunning	Ensign	McCaskill
Burr	Enzi	McConnell
Chambliss	Feingold	Sessions
Coburn	Graham	Thune
Corker	Inhofe	Vitter
Cornyn	Isakson	

NOT VOTING—6

Biden	Dodd	McCain
Clinton	Kennedy	Obama

The motion was agreed to.

AMENDMENT NO. 3387

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I understand there will now be 2 minutes prior to the vote on the DeMint amendment, which we already have moved.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. DEMINT. Mr. President, I appreciate my colleagues' attention. I would first like to ask unanimous consent to add Senator ENZI as a cosponsor of my amendment.

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

Mr. DEMINT. Mr. President, I want to make clear to my colleagues that my amendment does not remove any money from this bill for its intended purpose. In fact, the amendment addresses the Workforce Investment Act, money that goes to training and job

placement in several places in the country. My amendment only changes the language from a sole-source non-competitive grant, which we would refer to as a direct earmark, to a competitive grant.

We have all seen that the competitive grant system is a better way to deliver Federal money to specific causes that we support as a Senate because there are criteria, there are standards, and there is accountability. So we are not excluding the AFL-CIO as a provider of the services that we intend, but it opens it for competitive bids. And it is important to realize that the Department of Labor, after judging the performance of the AFL-CIO, has found the performance lacking and has discontinued the contracts.

So please open this for competitive bidding. Please vote no on the motion to table.

The PRESIDING OFFICER. The senior Senator from Pennsylvania.

Mr. SPECTER. Mr. President, this program has been in operation for decades and has proven to be very effective. A hearing held by the subcommittee back on July 22, 2004, went into some of the detail. The program addresses job training and Job Corps. One program, illustratively, in Philadelphia seeks to give training to young people who are at risk, come from broken families—no father and a working mother. It is directed toward training across the Appalachian Council, States in the Rust Belt, which have been hit very hard by unfair foreign competition, to have training and to have workmanship skills developed.

It has been a successful program, and it ought to be retained. Vote aye to table.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the motion to table. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "yea."

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 60, nays 34, as follows:

[Rollcall Vote No. 385 Leg.]

YEAS—60

Akaka	Brown	Coleman
Baucus	Byrd	Collins
Bayh	Cantwell	Conrad
Bennett	Cardin	Domenici
Bingaman	Carper	Dorgan
Bond	Casey	Durbin
Boxer	Cochran	Feinstein

Harkin	McCaskill	Sanders
Inouye	Menendez	Schumer
Johnson	Mikulski	Smith
Kerry	Murkowski	Snowe
Klobuchar	Murray	Specter
Kohl	Nelson (FL)	Stabenow
Landrieu	Nelson (NE)	Stevens
Lautenberg	Pryor	Tester
Leahy	Reed	Voinovich
Levin	Reid	Warner
Lieberman	Roberts	Webb
Lincoln	Rockefeller	Whitehouse
Martinez	Salazar	Wyden

NAYS—34

Alexander	DeMint	Isakson
Allard	Dole	Kyl
Barrasso	Ensign	Lott
Brownback	Enzi	Lugar
Bunning	Feingold	McConnell
Burr	Graham	Sessions
Chambliss	Grassley	Shelby
Coburn	Gregg	Sununu
Corker	Hagel	Thune
Cornyn	Hatch	Vitter
Craig	Hutchison	
Crapo	Inhofe	

NOT VOTING—6

Biden	Dodd	McCain
Clinton	Kennedy	Obama

The motion was agreed to.

Mr. KERRY. Mr. President, I ask unanimous consent the order be delayed so the manager can propose a unanimous consent so that I can offer an amendment.

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

The Senator from Iowa is recognized.

AMENDMENTS NOS. 3351, AS MODIFIED; 3376, AS MODIFIED; 3397, 3401, 3430, 3436, 3418, AND 3388 EN BLOC

Mr. HARKIN. Mr. President, if the Senator from Massachusetts will withhold for a second, I have two modifications I send to the desk, a modification of amendment No. 3351, a Smith amendment, and amendment No. 3376. I have two modifications I send to the desk.

The PRESIDING OFFICER. Without objection, the amendments are so modified.

Mr. HARKIN. Mr. President, I call up amendments No. 3351, as modified; 3376, as modified; 3397, by Senator LAUTENBERG; 3401, by Senator CARDIN; amendment No. 3430, by Senator FEINGOLD; amendment No. 3436, by Senator HATCH; amendment No. 3418, by Senator LIEBERMAN; and amendment No. 3388, by Senator DEMINT. These have all been agreed to. I ask for their immediate consideration en bloc.

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

Without objection, the amendments will be considered en bloc.

If there is no further debate, the amendments are agreed to without objection, en bloc.

The amendments considered and agreed to en bloc are as follows:

AMENDMENT NO. 3351, AS MODIFIED

At the end of title II, add the following:

SEC. _____. (a) The amount made available under the heading "AGING SERVICES PROGRAMS" under the heading "ADMINISTRATION ON AGING" in this title shall be increased by \$10,000,000 of which—

(1) \$5,000,000 shall be used to carry out part B of title III of the Older Americans Act of 1965 (42 U.S.C. 3030d) for fiscal year 2008 (for supportive services and senior centers to allow area agencies on aging to account for projected growth in the population of older individuals, and inflation);

(2) \$2,000,000 shall be used to carry out part C of title III of such Act (42 U.S.C. 3030d–21 et seq.) for fiscal year 2008 (for congregate and home-delivered nutrition services to help account for increased gas and food costs); and

(3) \$3,000,000 shall be used to carry out part E of title III of such Act (42 U.S.C. 3030s et seq.) for fiscal year 2008 (for the National Family Caregiver Support Program to fund the program at the level authorized for that program under that Act (42 U.S.C. 3001 et seq.)).

(b)(1) The 3 amounts described in paragraph (2) shall be reduced on a pro rata basis, to achieve a total reduction of \$10,000,000.

(2) The amounts referred to in paragraph (1) are—

(A) the amount made available under the heading "SALARIES AND EXPENSES" under the heading "DEPARTMENTAL MANAGEMENT" in title I, for administration or travel expenses;

(B) the amount made available under the heading "GENERAL DEPARTMENTAL MANAGEMENT" under the heading "OFFICE OF THE SECRETARY" in this title, for administration or travel expenses; and

(C) the amount made available under the heading "PROGRAM ADMINISTRATION" under the heading "DEPARTMENTAL MANAGEMENT" in title III, for administration or travel expenses.

At the appropriate place in title II, insert the following:

SEC. _____. (a) Notwithstanding any other provision of this Act, there shall be made available under this Act a total of \$7,500,000 for the National Violent Death Reporting System within the Centers for Disease Control and Prevention.

(b) Amounts made available under this Act for travel and administrative expenses for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be further reduced on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$7,500,000.

AMENDMENT 3397

(Purpose: To require the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, to submit a report to the Committee on Appropriations of the Senate on workers' compensation set-asides under the Medicare secondary payer set-aside provisions under title XVIII of the Social Security Act)

At the appropriate place in title II, insert the following:

SEC. _____. (a) Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall submit a report to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives on workers' compensation set-asides under the Medicare secondary payer set-aside provisions under title XVIII of the Social Security Act.

(b) The report described in subsection (a) shall contain the following information:

(1) The number of workers' compensation set-aside determination requests that have been pending for more than 60 days from the date of the initial submission for a workers' compensation set-aside determination.

(2) The average amount of time taken between the date of the initial submission for a workers' compensation set-aside determination request and the date of the final determination by the Centers for Medicare & Medicaid Services.

(3) The breakout of conditional payments recovered when workers' compensation is the primary payer separate from the amounts in Workers' Compensation Medicare Set-aside Accounts (in this section referred to as "WCMSAs").

(4) The aggregate amounts allocated in WCMSAs and disbursements from WCMSAs for fiscal year 2005 and fiscal year 2006.

(5) The number of conditional payment requests pending with regard to WCMSAs after 60 days from the date of the submission of the request.

(6) The number of WCMSAs that do not receive a determination based on the initial complete submission.

(7) Any other information determined appropriate by the Congressional Budget Office in order to determine the baseline revenue and expenditures associated with such workers' compensation set-asides.

AMENDMENT NO. 3401

(Purpose: To express the sense of the Senate that the Secretary of Health and Human Services should maintain "deemed status" coverage under the Medicare program for clinical trials that are federally funded or reviewed as provided for by the Executive Memorandum of June 2000)

On the appropriate place, insert the following:

SEC. _____. It is the sense of the Senate that the Secretary of Health and Human Services should maintain "deemed status" coverage under the Medicare program for clinical trials that are federally funded or reviewed, as provided for by the Executive Memorandum of June 2000.

AMENDMENT NO. 3430

(Purpose: To require the Comptroller General of the United States to submit a report to Congress on student preparation techniques for standards-based assessments)

At the end of title III, add the following:

SEC. _____. (a) Not later than May 31, 2009, the Comptroller General of the United States shall submit a report to Congress on student preparation techniques to meet State academic achievement standards and achieve on State academic assessments.

(b) The report required under subsection (a) shall include a compilation of data collected from surveying a representative sample of schools across the Nation to determine the range of techniques that schools are using in order to prepare students to meet State academic achievement standards and achieve on State academic assessments, including the extent to which schools have—

- (1) extended the school day;
- (2) hired curriculum specialists to train teachers or work with individual students or small groups of students;
- (3) de-emphasized academic subjects of which State academic achievement standards and assessments are not required under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);
- (4) used commercial test preparation material;
- (5) provided increased professional development for teachers;
- (6) targeted low-performing students for specialized instruction or tutoring;
- (7) instituted formative or benchmark exams;
- (8) distributed old exam questions to teachers and students and focused instruction on these old exam questions;
- (9) increased instructional time on tested subjects; or
- (10) used any other techniques to prepare students to meet State academic achievement standards and achieve on State academic assessments.

(c) The data collected pursuant to this section shall be reported—

- (1) as data for all schools; and
- (2) as data disaggregated by—
 - (A) high-poverty schools;
 - (B) low-poverty schools;
 - (C) schools with a student enrollment consisting of a majority of minority students;
 - (D) schools with a student enrollment consisting of a majority of non-minority students;
 - (E) urban schools;
 - (F) suburban schools;
 - (G) rural schools; and
 - (H) schools identified as in need of improvement under section 1116 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316).

(d) The representative sample described in subsection (b) shall be designed in such a manner as to provide valid, reliable, and accurate information as well as sufficient sample sizes for each type of school described in subsection (c).

AMENDMENT NO. 3436

(Purpose: To assess the impact of education funding in western States with a high proportion of public lands)

At the appropriate place, insert the following:

"Provided further, That the Secretary of Education shall assess the impact on education felt by students in States with a high proportion of Federal land compared to students in non-public land States. The study shall consider current student teacher ratios, trends in student teacher ratios, the proportion of property tax dedicated to education in each State, and the impact of these and other factors on education in public land States. The Secretary shall submit the report not later than 1 year after the date of the enactment of this Act."

AMENDMENT NO. 3418

(Purpose: To prohibit the use of funds to close a field office of the Social Security Administration before submission of a report justifying the closure)

At the appropriate place, insert the following:

SEC. _____. None of the funds appropriated or otherwise made available in this Act or any other Act making appropriations to the agencies funded by this Act may be used to close or otherwise cease to operate the field office of the Social Security Administration located in Bristol, Connecticut, before the date on which the Commissioner of Social Security submits to the appropriate committees of Congress a comprehensive and detailed report outlining and justifying the process for selecting field offices to be closed. Such report shall include—

- (1) a thorough analysis of the criteria used for selecting field offices for closure and how the Commissioner of Social Security analyzes and considers factors relating to transportation and communication burdens faced by elderly and disabled citizens as a result of field office closures, including the extent to which elderly citizens have access to, and competence with, online services; and
- (2) for each field office proposed to be closed during fiscal year 2007 or 2008, including the office located in Bristol, Connecticut, a thorough cost-benefit analysis for each such closure that takes into account—
 - (A) the savings anticipated as a result of the closure;
 - (B) the anticipated burdens placed on elderly and disabled citizens; and
 - (C) any costs associated with replacement services and provisional contact stations.

AMENDMENT NO. 3388

(Purpose: To prohibit the use of funds by cities that provide safe havens to illegal drug users)

At the appropriate place, insert the following:

SEC. _____. Notwithstanding any other provision of this Act, none of the funds appropriated in this Act may be allocated, directed, or otherwise made available to cities that provide safe haven to illegal drug users through the use of illegal drug injection facilities.

AMENDMENTS NOS. 3350 AND 3446 WITHDRAWN

Mr. HARKIN. Mr. President, regarding amendment No. 3350 by Senator LAUTENBERG and No. 3446 by Senator LANDRIEU, I ask unanimous consent they both be withdrawn.

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

The Senator from Massachusetts is recognized.

AMENDMENT NO. 3398 TO AMENDMENT NO. 3325

Mr. KERRY. Mr. President, I know we want to and need to break for recess in a moment so I will not be very long at all. I call up amendment No. 3398. I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendments? Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KERRY] proposes an amendment numbered 3398.

Mr. KERRY. 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:

AMENDMENT NO. 3398

(Purpose: To provide funding for the Fire Fighter Fatality Investigation and Prevention Program)

At the appropriate place in title I, insert the following:

SEC. _____. To enable the National Institute for Occupational Safety and Health to carry out the Fire Fighter Fatality Investigation and Prevention Program, \$5,000,000, which shall include any other amounts made available under this Act for such Program. Amounts made available under this Act for travel expenses for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$2,500,000.

Mr. KERRY. Mr. President, in February of this year, I sent a letter to the inspector general for the Department of Health and Human Services regarding a report from the Centers for Disease Control that actually blocked an investigation into the death of six firefighters whose personal safety equipment had failed them between 1998 and the year 2000. In the response to me, the inspector general reported that funding of the current funds that exist in the Firefighter Fatality Investigation and Prevention Fund within the National Institutes of Occupational Health and Safety is flat. Their resources are such that they have had to

pick and choose where they can conduct those kinds of investigations.

Every year, about 100 firefighters die in the line of duty in America and about 87,000 are injured. This fund is an investigative fund that helps find ways in which we can protect firefighter lives—whether there is a certain kind of equipment that might have made a difference or a certain procedure that might have made a difference. Obviously, for those fire stations, fire houses with the losses or those that face a future risk, to know we are selectively choosing where we investigate and where we do not do the job. We need to investigate all of those fatalities, and we need to do everything possible to provide our firefighters the procedures and equipment necessary to save lives.

This funding will add an additional \$2.5 million to that investigative fund and allow us to complete our responsibility to those courageous firefighters across the country.

I ask unanimous consent a letter from the International Association of Fire Fighters and the International Association of Fire Chiefs be printed in the RECORD.

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

October 18, 2007.

Hon. JOHN F. KERRY
304 Russell Senate Office Building,
Washington, DC.

DEAR SENATOR KERRY: On behalf of the International Association of Fire Chiefs, representing nearly 13,000 chief fire and emergency officers, and the International Association of Fire Fighters, representing more than 280,000 professional fire fighters and emergency medical personnel, we are writing to express our strong support for your amendment to the FY 2008 Labor, Health and Human Services, Education and Related Agencies Appropriations Act providing \$5 million for the Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) of the National Institute for Occupational Safety and Health (NIOSH).

Of the 1.1 million fire fighters who selflessly serve their communities and their country, approximately 100 die on the job each year. Additionally, the National Fire Protection Association estimates that 80,100 fire fighter injuries occurred in the line of duty in 2005 alone. The FFFIPP is instrumental in discovering the primary factors contributing to fire fighter deaths and recommending ways to prevent future deaths and injuries.

Since its inception in 1998, the FFFIPP—in cooperation with fire departments and fire fighters around the country—has conducted over 300 fatality investigations. The findings and recommendations of these investigations have led to increased awareness of fire fighter safety and health hazards, and led to numerous cooperative efforts among and between the fire service and NIOSH to improve fire fighter safety and health.

Despite such successes, fatality investigations are not as common nor as comprehensive as they should be. According to a recent report by the inspector general of the Department of Health and Human Services, such shortcomings are caused, in part, by a lack of resources.

Congress clearly intended for NIOSH to thoroughly investigate every fire fighter

line-of-duty death. By doubling the funding allocated for the FFFIPP in FY 2007, your amendment will allow NIOSH to better fulfill its Congressional mandate and help prevent fire fighter injuries and deaths.

Thank you for your leadership in protecting the health and safety of our Nation's first responders. We look forward to continue working with you to prevent future deaths and injuries among fire fighters.

Sincerely,

CHIEF STEVEN P. WESTERMANN, CFO,
President, International Association
of Fire Chiefs.

HAROLD A. SCHAITBERGER,
General President, International
Association of Fire Fighters.

Mr. KERRY. I think both sides have now agreed to this amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. HARKIN. Mr. President, can we withhold for a second? The amendment by the Senator from Massachusetts is accepted on both sides.

The PRESIDING OFFICER. Without objection, the amendment is agreed to. The amendment (No. 3398) was agreed to.

Mr. KERRY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. KERRY. I thank the Chair and the distinguished manager.

RECESS

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

Thereupon, the Senate, at 12:41 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION APPROPRIATIONS ACT, 2008—Continued

The PRESIDING OFFICER. In my capacity as a Senator from the State of Delaware, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. I ask to speak as in morning business.

The PRESIDING OFFICER. Without objection, the Senator is recognized.

CALIFORNIA WILDFIRES

Mrs. FEINSTEIN. Mr. President, I wanted to take a few minutes to do what Senator BOXER did yesterday, which is essentially to update the Senate on the catastrophic fires in California. I offer these words on behalf of Senator BOXER and myself.

Today there are 14 fires, big fires, burning in California. The bulk of them

are uncontained and out of control. The containment factor is very small. More than half a million people have been told to evacuate their homes. More than 309,000 acres have been destroyed by fire, over 400 miles, from north of Los Angeles to San Diego and now across the Mexican border, and more, we fear, will be destroyed.

The deaths, fortunately, today are limited to one, with 34 injured throughout southern California, some of them firefighters. High wind and high temperatures persist. A red flag warning is in effect for the California coast from Monterey to the Mexican border. More than 1,000 homes have been destroyed; 11,500 are now threatened. Today more than 100 commercial buildings have been destroyed, and 2,000 are threatened; 52 outbuildings have been destroyed and 550 are threatened.

Health warnings have been issued because of smoke and particulate matter. As you know, these fires are driven by hurricane and gale-force Santa Ana winds, which are hot and contrary to the prevailing westerly flow, east to west. They are fueled by bone-dry brush from years of drought and virtually no humidity. Humidity is below 10 percent.

Fires are raging still in Malibu, at Lake Arrowhead in Irvine and Santa Clarita. The Arrowhead area is particularly dangerous because there are half a million acres of pine-beetle infested dead trees waiting to go up.

Of course, they are raging in San Diego County, which is bearing the brunt of two major fires which well could join. Already, the 300,000 people in San Diego County alone have been told to evacuate. More than 10,000 of them are now taking refuge in Qualcomm Stadium, home to the San Diego Chargers. These people will be there for 48 to 72 more hours and possibly more.

Sanitary supplies are going to become a problem. It is going to be a real effort to get food and water to these evacuees and the hundreds of thousands of people displaced around southern California.

Both Senator BOXER and I spoke to the Governor, and he has declared a seven-county disaster area. Yesterday the President declared southern California a disaster area to be able to speed the Federal Emergency Management Agency's relief, which is critical.

This is going to be a real test of FEMA. We are going to learn whether FEMA actually learned from the hurricane in New Orleans, a test of whether FEMA has gotten its act together post-Katrina.

FEMA must act quickly and urgently to get help to California. The State is going to need cots; it is going to need blankets; it is going to need water, food, and, most importantly, those sanitary facilities that are needed for the people who are camping out today, sleeping in cars, located in schools, or in Qualcomm Stadium.

Most importantly, this help has to be spread throughout the 14 different fire areas. It is not going to be enough to simply put it in one place.

Last night, the Secretary of the Interior informed me that the fires have crossed the line and are entering into Baja California, Mexico, and urged Mexican authorities to begin to speak out.

These fires are fast moving. You see them at a distance on a hill, and you do not believe you will be affected because the winds are contrary to what you expect. Then, suddenly, within a short period of time, 2 hours, the fire is upon you.

So people must be alert, and they must evacuate these fire areas. The military is pitching in. Fifteen hundred National Guard personnel are actively engaged or directly supporting firefighting efforts. We have 550 Active-Duty marines, 17,000 California National Guard personnel are available. I believe we have more than 5,300 State of California firefighters on the line, and hundreds more from local jurisdictions. Today, a combination of National Guard, Navy and Marine Corps aircraft, are either supporting firefighter efforts or are prepared to pitch in.

The problem is, with the wind and dense smoke, it is difficult for a plane or helicopter to know where they are going. Simply put, this is a disaster of huge proportions. It is catastrophic in terms of property loss and environmental damage.

Hopefully, it is not going to be a huge catastrophe in terms of loss of life. I do not think there is anything other than a catastrophic health incident that is more serious to a person or family than losing their home by flood or fire.

I know Californians will respond in their traditional stalwart and generous manner to help their neighbors. Both Senator BOXER's and my heart go out to all Californians today.

I ask unanimous consent that the specific statistical roundup of these larger fires be printed in the RECORD.

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

Here is a roundup of the larger fires:

San Diego: Witch Fire (NE S.D. County, near Santa Ysabel, burning toward Ramona and Julian)—Acres burned: 145,000; containment: 0%; residents evacuated: 100,000+; structures destroyed: 500 homes, 100 commercial properties; structures threatened: 2,000 homes, 400 commercial properties; firefighters: 625; injuries: none reported.

San Diego: Harris Fire (SE S.D. County, 75 miles east of downtown San Diego near the Mexican border)—Acres burned: 22,000; containment: 5%; residents evacuated: 1,000+; firefighters: 400; deaths—injuries: 1 man killed, 5 firefighters and 20 civilians injured.

Malibu: Canyon Fire (Burning toward Pepperdine University and Pacific Ocean)—Acres burned: 3,800; containment: 10%; residents evacuated: 1,500; structures destroyed: 6 homes, 1 church; structures threatened: 600; firefighters: 1,500; injuries: none.

Agua Dulce—Santa Clarita: Buckweed Fire (Mint Canyon area, burning toward Magic Mountain)—Acres burned: 35,550; containment: 20%; residents evacuated: 15,000; struc-

tures destroyed: 15 homes, 17 outbuildings; structures threatened: 3,800; firefighters: 1,200; injuries: 1 firefighter and 3 residents.

Orange County: Santiago Fire (Silverado Canyon, burning toward Portola Springs and Northwood village of Irvine)—Acres burned: 15,000 acres; containment: 30%; structures destroyed: 1 outbuilding; structures threatened: 2,000; residents evacuated: unk.; firefighters: 492.

Lake Arrowhead: Slide and Grass Valley Fires (Green Valley Lake and Lake Gregory)—Acres burned: 1,800; containment: 0%; structures lost: at least 450 homes; structures threatened: 1,900; firefighters: 82 engines, 7 hand crews.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. For the benefit of Senators, I understand a number of Republicans are at the White House for a White House meeting until 3:30, so there will not be any votes between now and 3:30. However, we want to get amendments up and debated. Hopefully at around 3:30 or shortly thereafter we can start a series of votes. Right now we have four amendments pending and three more amendments that are not pending but will be called up shortly. One of those will be offered by the Senator from New Mexico. That is the lay of the land. It looks as if we are down to about seven votes, possibly, starting at or around 3:30 or shortly thereafter.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BINGAMAN. Mr. President, I understand there is still some checking to see if there is any objection to setting aside the pending amendment so I may offer an amendment. While we are waiting, I wish to describe the substance of the amendment I intend to offer.

This amendment is intended to reduce the Social Security backlog. Most of us who go back to our home States on weekends and during recesses know about the Social Security backlog. We hear from individuals in our States about how long they have to wait to find out whether their Social Security disability claims have been approved. We hear about elderly people waiting in long lines for service at Social Security offices. We hear about busy signals when they call the 1-800 number that is provided for people trying to find out the status of their Social Security claim. But I am not sure most of us understand the extent of the backlog, the consequences of it, or the reasons.

For more than 70 years Social Security has provided millions of American

workers and their families with a basic level of protection against poverty when a worker can no longer work due to old age. Of course, we are all aware of disability now being covered by Social Security. Social Security benefits are the only means of survival for millions of individuals with severe disabilities. These individuals rely on the Social Security Administration to promptly and fairly adjudicate their applications for disability benefits. Unfortunately, we are witnessing a trend where this is simply not happening.

According to the Social Security Administration, there are currently over 756,000 cases waiting for hearing. That is not waiting for a final determination, waiting for a hearing. The average time to get a hearing is 523 days. That is the longest it has been in the history of the Social Security Administration. The average processing time for a hearing is projected to increase next year, based on the numbers we have in the appropriations bill before us. This is a problem for individuals with disabilities in my State of New Mexico.

Currently the average processing time per case in the Albuquerque hearing office is 528 days. Keep in mind, this is only the time it takes to get a hearing. This does not include the time it takes for an initial determination or for a final determination. This past May the Finance Committee, on which I am privileged to serve, received testimony indicating there are thousands of individuals with disabilities who currently have cases pending with the Social Security Administration and have had those cases pending for 3 years or more. The Finance Committee received testimony regarding the extreme hardships individuals with severe disabilities must endure while awaiting a final decision on their disability claims. We heard instance after instance where individuals with severe disabilities were unable to work and were forced to declare bankruptcy. They lost their homes, suffered deterioration in their medical conditions, and some even died while their claims lingered in Social Security Administration offices.

According to the Social Security Administration, staffing levels are at their lowest since 1972. Thirty years ago, the Social Security Administration had more than 82,000 employees. In 2005 the Social Security Administration had 66,000 employees. In a few months, the expected employment at the Social Security Administration will drop below 60,000.

Thousands of employees are leaving the Social Security Administration's field and hearing offices without being replaced. As many of us know, the field offices around the country are reducing their hours.

In Carlsbad, NM—which I visited 2 weeks ago—due to a reduction in hours of service, seniors and people with disabilities are forced to line up around

the building, often waiting hours to get served. Even worse, some field offices are shutting their doors permanently.

Meanwhile, since 1990, the number of disabled workers drawing disability benefits has more than doubled. That number has gone from 3 million in 1990 to 6.8 million today. Field offices are averaging over 850,000 visitors a week during this current year.

As we know from the press, the first baby boomer officially filed for Social Security last week. So the demands on Social Security are only going to increase. In addition, Congress has significantly increased the Social Security Administration's responsibilities as part of the Medicare Part D legislation.

So the Social Security Administration finds itself in a very dire circumstance. The Social Security Administration has over 1,400 field and hearing offices in cities and towns across the country. Mandatory costs, such as program integrity, rent, guards, postage, employees' salaries, and benefits are continuing to rise. Unfortunately, Congress appropriated on average each year for the last 7 years about \$150 million less than the administration requested. The current budget situation has simply been compounded by years of sustained underfunding by the Congress.

According to the Social Security Administration, the present cost of processing the hearing backlog would be \$794 million. The difference between the amount of funding requested for administrative expenses and the amount appropriated for fiscal years 2001 through 2007 is \$962 million—more than enough to address the backlog. So if we had actually appropriated what the administration asked for during fiscal years 2001 through 2007, we would largely have this backlog problem solved. Unfortunately, we did not do that.

I thank the chairman and the ranking member of this subcommittee on the Appropriations Committee for their significant efforts to address the backlog. As you know, the chairman of the subcommittee has been a tireless leader on issues affecting individuals with disabilities. For decades, he has led the way in the Senate on reducing barriers for individuals with disabilities and ensuring full community participation.

Fortunately, the chairman and the ranking member recognized the current challenges individuals with disabilities are facing in accessing disability benefits, and they have worked hard to increase administrative funds for the Social Security Administration by \$125 million over the amount that was requested by the President. I believe we all recognize how important that infusion of funds will be.

In the committee report accompanying the bill that we are considering, the chairman requested the Commissioner of Social Security to set forth a plan to reduce the backlog. As

submitted, the Commissioner's plan would include: accelerating review of cases that are likely or certain to be approved; improving hearing procedures; increasing adjudicatory capacity; and increasing efficiency through automation and improved business processes.

Unfortunately, the amount of funding in the bill does not go far enough, in my view, to substantially reduce the backlog. According to the Commissioner, this amount of funding will merely "stem the tide." It will not address the backlog in a significant way.

The fiscal year 2008 budget resolution—which we all considered on the floor, and many of us voted for—recommends an increase of \$430 million above the President's request for the Social Security Administration's administrative budget in order to reduce this backlog. The amendment I am intending to offer later today would get us to half that amount by increasing the Social Security Administration's administrative budget by an additional \$160 million. The amendment would give the Social Security Administration the resources it needs to reduce the backlog to help get rid of these long lines.

The amendment is paid for. The amendment would shift excess Medicare funds to pay for this critical increase in funding to the Social Security Administration in this 1 year. These offsetting funds have been identified in close collaboration with Finance Committee staff and, of course, Senator BAUCUS is a cosponsor of the amendment.

Importantly, these funds would be immediately replaced at the beginning of fiscal year 2009 with generally available funding that was passed as part of the Transitional Medical Assistance extenders package.

Finally, the amendment would also permit the U.S. Treasury Department to invest its excess operating capital. So this represents responsible oversight by the Treasury Department. This policy has been recommended by the Government Accountability Office and others. It is estimated this policy will generate tens of millions of dollars for the Federal Government over the next 10 years.

The bottom line is millions of American workers and their families—people whom we represent—rely on Social Security to protect them against poverty in the event they are no longer able to work. This incredible insurance program is breaking down because of our failure to fund the administration of the program.

So I urge my colleagues to support my amendment. It is being offered on behalf of myself, Senator SNOWE from Maine, and Senator BAUCUS from Montana.

Mr. President, I do not believe we have yet gotten to a point procedurally where I am able to offer the amendment, so I yield the floor.

The PRESIDING OFFICER. The Senator yields the floor.

Who seeks recognition?

The Senator from Virginia.

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

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

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

Mr. WEBB. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator yields back.

Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

Mr. CASEY. Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from Vermont is recognized.

Mr. SANDERS. Madam President, let me take this opportunity to thank Senator HARKIN and his staff for their very hard work on the Labor-HHS legislation and commend the ranking member, Senator SPECTER, and his staff as well. The reality is that the needs facing the people of our country who are impacted by this bill are enormous. There is, unfortunately, not enough funding available to accommodate those needs, and within that context, Senator HARKIN and Senator SPECTER have done their very best.

I wish to say a few words about one particular program which is important to me, which is important to the people of Vermont, and which is vitally important to this whole country as we try to deal with the health care crisis our country is now facing, a crisis in which 47 million Americans have no health insurance, even more are underinsured, and the cost of health care is soaring every day. What this legislation deals with and I think deals with quite well is understanding that it is important for us to grow the number of community health centers in this country.

The community health center program is a wonderful success story, and it is widely recognized as one of the most cost-effective programs in the entire Federal Government. Community health centers are community-run. They are run by the people in the community themselves. They are run on a nonprofit basis. They provide not only affordable health care to their people but affordable dental care, which is a growing crisis all over rural America and in the State of Vermont. They provide mental health counseling—another serious issue. They provide low-

cost prescription drugs—in fact, the lowest cost prescription drugs available in America.

These federally qualified health centers serve people from all walks of life and all incomes. Whether you have private insurance, whether you have Medicare, whether you have Medicaid, or whether you have no health insurance, you are welcome into these community health centers. For those with no health insurance, payment is based on a sliding scale. If you don't have a whole lot of money, you don't have to pay a lot for your health or dental care.

Today, over 16 million Americans—16 million—benefit from the services health centers provide in every State and in almost every congressional district in our country. For an average Federal grant expenditure of only \$124 per patient per year, these centers offer comprehensive health care, regardless of ability to pay. At a time when more and more Americans are losing their health insurance, when they are finding it hard to secure primary health care, these centers play an extraordinary role, and they deserve to be adequately funded.

This legislation provides \$2.24 billion for the community health center program—a \$250 million increase above the fiscal year 2007 level. I thank Senators Harkin and Specter very much for their support for this program. It is estimated that this increase will allow us to expand or create some 500 new community health centers all over this country, serving an additional 2 million Americans. That is a big deal at a time when millions and millions of people are unable to find primary health care or just don't have the funds to pay for it. Given the fact that we have 47 million uninsured, it is clear this is not enough, but it is a significant step forward.

In Vermont in recent years, we have expanded the number of federally qualified health centers from two to six, and my hope is that we can add an additional three or four more centers in the next 3 years. These centers now serve over 86,000 Vermonters and provide quality health care, quality dental care, low-cost prescription drugs, and mental health counseling in some 23 different locations around the State of Vermont. The centers are the medical home for 24 percent of Vermont's Medicaid beneficiaries and serve 19 percent of our uninsured.

Nationally, health centers are not only providing quality, efficient care in underserved communities, they are filling a major gap in our Nation's health care system where primary care is becoming a lost profession. It is no secret that in many parts of America, especially rural America, it is very, very hard for people to locate a primary health care physician. It is also imperative that these centers play a role, which allow people to go to them rather than flooding emergency rooms in hospitals, which are much more expensive.

In addition to this appropriations bill, we are also in the process of reauthorizing the community health center program in the Health, Education, Labor and Pensions Committee on which I serve, and I thank our chairman and our ranking member for putting forth this important legislation that has the support of 68 Members from both sides of the aisle.

So I think this issue of community health centers is very much an issue and an area supported by people from different political perspectives. It is doing an enormous job in providing health care to millions of Americans. I am glad we are going to take a step forward when we pass this legislation.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAPO. Madam President, I ask unanimous consent to speak as in morning business.

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

METHAMPHETAMINE CONTROL

Mr. CRAPO. Madam President, in September, the Finance Committee held a hearing on the efficacy, over the past year, of the Combat Methamphetamine Epidemic Act, or the Combat Meth Act, for short. The Combat Meth Act implemented restrictions on drugs that go into the production of methamphetamines. Methamphetamine abuse has devastated lives, families, and communities across our Nation and across the world. The testimony given at this hearing by the U.S. Department of Homeland Security, the U.S. Department of State, and State agencies indicated that while the Combat Meth Act helped reduce the home production of methamphetamine across the U.S., it is now flowing at historic levels across our borders from countries where production controls are much less rigid.

A 2006 Substance Abuse and Mental Health Services Administration report found that my home State of Idaho had one of the highest rates of methamphetamine use in the preceding 12 months of those aged 12 and older. In rural Idaho, especially, the issue of methamphetamine abuse has almost become commonplace: I visit with local officials and community leaders to hear about problems affecting their community when I am home in Idaho. When I ask if it is still a problem, the response is almost always "of course," as if the very question was a little naive. This troubles me greatly.

Thomas Siebel, chairman and founder of the highly successful Montana Meth Project, also testified at the September Finance Committee hearing on the Combat Meth Act. The Montana Meth Project was established in 2005 as a nonprofit organization created to reduce first-time methamphetamine use through public-service messaging, public policy and community outreach. In the 2 years since the project has been active in Montana, the State has gone from being fifth in the Nation for per capita meth use to 39th today—a stag-

gering change. Adult meth use is down in Montana by as much as 70 percent. The Montana Meth Project is an example of a highly effective private sector education and prevention effort. This success is also good news for Arizona, Illinois and my State of Idaho, all three of which have started their own "Meth Projects." While this is very encouraging, we have a long way to go.

Montana and Idaho are just two States that have been overwhelmingly affected by meth production, use and addiction. Rural communities nationwide have been hit particularly hard by the demand and presence of this lethal drug, creating major challenges for law enforcement, health and welfare and environmental protection agencies, not to mention our families and school systems.

I have been approached by police officers, community leaders, health advocates, school administrators, and criminal justice leaders about the severe toll that this drug takes on our citizens, particularly teens and young adults. They have witnessed destroyed relationships and families torn apart, all suffering from this drug that invades neighborhoods, friends, and families. According to Idaho's Department of Health and Welfare, the number of children in foster care increased by 40 percent between 2002 and 2006. Approximately 3,000 children enter foster care in Idaho every year; the majority of them are children of meth-addicted single mothers. Our children are the unwitting and helpless victims of this menacing drug epidemic.

There is some encouraging news but, as is the case with drug trafficking, it is tempered with alarming trends. In 1999, Idaho implemented an initiative to fight meth production, coordinating regional and State level law enforcement efforts. These efforts have proven highly successful. In 2000, 186 meth labs were seized. In 2004, the number had dropped to 38 thanks to this enhanced coordination strategy. According to Idaho law enforcement agencies, meth lab seizures are now at an all-time low, which has resulted in less danger to neighborhoods and communities, as well as to environmental protection workers who are responsible for doing clean up of these sites after they are seized.

At the Finance Committee hearing last month, Gary Kendall, director, State of Iowa Governor's Office of Drug Control Policy, testified that Iowa had also seen success with "State and local prevention efforts" and "multijurisdictional task forces."

At the national and international level, according to the State Department Bureau for International Narcotics and Law Enforcement, since the passage last year of the Combat Meth Act, methamphetamine abuse has been trending slightly downward in the United States; unfortunately, worldwide consumption is growing. This is due in large part to the fact that, compared to organic illegal drugs such as

opiates and cocaine, methamphetamine is relatively easy to manufacture, can be produced just about anywhere and has a very substantial profit margin. It is the State Department's assessment that international mitigation and control of this disturbing worldwide trend can only be maintained by strong U.S. leadership. We have seen some success in recent months and years. During the first 6 months of this year, Operation Crystal Flow, a joint operation between the U.S. Government and governments in North and South America and West Asia, saw the halting, suspension or seizure of 53 tons of chemicals that go into meth production—so-called precursor drugs.

This operation was the joint effort of the International Narcotics Control Board through its Project Prism Task Force which includes the U.S. Drug Enforcement Agency and authorities in 126 other nations. This is just one of a number of international efforts in which the U.S. Government is participating.

With the crackdown here at home on methamphetamine production, the supply source has changed. Today, Mexico is the principal foreign supplier of methamphetamine to the United States. According to the State Department, 80 percent of drug addicts in Mexicali and Tijuana are using meth. Mexico itself has a very serious methamphetamine addiction problem among its population and, because of the success of the Combat Meth Act and activities undertaken by individual States, U.S. demand for the drug has gone south, so to speak. Meth from so-called "superlabs" in Mexico is reaching beyond the already-established demand of my State and surrounding western and southwestern States to other areas in the United States; we're seeing it in the Great Lakes, the Northeast, and Southeast.

Again, the lure of an enormous profit margin, coupled with the highly addictive nature of meth is a proven recipe for even greater disaster. The Mexican Government has been working over the past few years to exert more sweeping control of the movement of large amounts of methamphetamine precursor drugs. Our Government is working with the Mexican Government in ongoing border security and drug trafficking initiatives, but as supply lines are squelched in one area, they restart in other areas and other countries where controls and law enforcement are lacking. As I stated earlier, this is an international problem and efforts, led by the United States, must be global in scope.

According to the Department of Homeland Security and Immigration and Customs Enforcement, methamphetamine seizures have steadily increased. Although Immigrations and Customs Enforcement has increased its bilateral and multilateral drug interdiction efforts in recent years, and drug seizures are up, the supply is also increasing as it becomes the drug of

choice for 15 to 16 million people worldwide.

Our work to combat meth is a multipronged process and, as I said earlier, rural areas and States have been hit particularly hard by this trend. Small towns in Idaho, Montana, Wyoming, and other States remain under siege by the meth epidemic. These are not communities with substantial numbers of law enforcement personnel and resources, massive revenue bases, or specialized departments and offices to fight back.

Recently, an Idahoan with over 20 years' experience working with drug-endangered children shared an idea with me on how to best fight the meth problem in rural communities. His recommendation was that the Federal Government should assist local communities in forming multi-organization, school, parent, and agency task forces to educate children and adults about the perils of meth addiction. He reminded me that these task forces exert community and peer pressure to report the presence of labs and those selling and using meth in the community. In Idaho, this approach has proven to be the most effective way to combat meth problems in our rural communities. Educating people before they try meth like the Montana Meth Project has done, enabling and energizing local collaborative task forces to spread the word that their communities say "no" to meth, and maintaining a zero tolerance policy that includes severe penalties for breaking the law, will help reduce demand and dry up supply.

Integral to fighting methamphetamine in our communities is educating our children. To that end in Idaho, I have partnered with the Idaho State Department of Education Safe and Drug Free Schools program and issued a call for high schools across my State to create public service announcements that seek to educate other students about the dangers of methamphetamine abuse, on the model of the highly successful Montana Meth Project. Getting our youth involved directly in this outreach and education effort will reduce the potential for methamphetamine use.

Considering the growing international methamphetamine epidemic, it is in our Nation's interest to remain very active in cooperative endeavors such as those in which the State Department, the U.S. Drug Enforcement Agency, and the Department of Homeland Security are currently involved. These successful programs deserve continued funding in order to stop the supply of meth coming into our neighborhoods.

It is time for our Nation to mobilize to fight this deadly drug. It is time to let foreign drug traffickers know that the United States is closed to meth business. We have witnessed enough children with ruined bodies, minds, and lives. We have seen enough adults abandon their parental and societal re-

sponsibilities for the lie that is a meth high. We have seen the tragedy of newborn babies taken away from mothers unable to care for them, and the infants themselves suffering the same terrible addiction.

Meth continues to ravage America's communities, large and small. This will require an increased effort from the Federal Government to bring an end to meth use and production in these places. It is especially important to focus Federal dollars where they are truly needed—in rural communities nationwide that don't have the manpower or other resources to fight this battle alone. I call on my colleagues to support critical effective efforts in their respective States to work toward meth-free communities, and to continue to support U.S. leadership and involvement in international drug trafficking interdiction and suppression efforts.

There are many things we can do from the Federal level to the State level to the local community and, frankly, the family and individual levels to fight meth in this country.

One of the most important findings is simply educating people about the risks involved in the use of methamphetamines. It is critical to our ability to reduce the demand and to be able to get a handle on fighting the supply.

I yield back the remainder of my time.

Mr. HARKIN. Madam 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. ENSIGN. 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. ENSIGN. I want to talk about two amendments I have offered that hopefully will be voted on very shortly. Is there any kind of unanimous consent agreement?

The PRESIDING OFFICER. There is not.

Mr. ENSIGN. Just to alert the managers of the bill, I probably will not talk for more than about 10 minutes total.

AMENDMENT NO. 3342

The first amendment I want to talk about is the amendment that deals with the totalization agreement between the United States and Mexico, the latest attempt to drain the Social Security trust fund.

In 2004, the Commissioner of Social Security signed a totalization agreement with the Director General of the Mexican Social Security Institute. While the President has not yet submitted the United States-Mexico totalization agreement to Congress, I am concerned that the agreement can severely impact the Social Security trust fund and threaten the retirement benefits of hard-working Americans.

The proposed totalization agreement with Mexico does not contain protections against fraud, and there are too many unanswered questions about its cost to American taxpayers. The Government Accountability Office has already warned us that the proposed totalization agreement with Mexico will likely increase the number of unauthorized workers and make their family members eligible for Social Security benefits.

Mexican workers, who ordinarily would not receive benefits because they lack the required 10 years of legally documented employment in the United States, could qualify for partial Social Security benefits with as little as 1½ years of work history.

More family members living in Mexico would also qualify for United States Social Security benefits, because the proposed agreement waives rules that prevent payments to non-citizens such as children and spouses living outside the United States.

Because the Mexican Government does not keep sufficient records of births, deaths, and marriages, it would be nearly impossible to determine whether someone died so that the Social Security Administration could discontinue sending benefits. The Social Security Administration estimates that 50,000 additional Mexican workers would qualify for these benefits in the first 5 years, for a total estimated cost of over \$500 million. During that same time period, the agreement would save U.S. workers a little over \$100 million. If you do the math, it appears the cost of the agreement could be almost four times the savings.

Before we send scarce Social Security dollars to a foreign country, Congress must first determine whether a totalization agreement is in the best interests of our country.

To protect Social Security benefits to U.S. citizens, and to preserve the program for future generations, I am offering this amendment today. My amendment would bar funding for the administration of benefit payments under a totalization agreement with Mexico.

AMENDMENT NO. 3352

I am also offering a second amendment. There have been many media reports recently about those who are here illegally stealing American Social Security numbers. Every year employers are advised that nearly 800,000 employees do not have valid matching Social Security numbers. In too many of those cases, the numbers that are used belong to someone else in America.

Today, I am going to take a few moments to share with my colleagues a few of the stories of victims of identity theft. I have shared some of these stories in the past. Last year I spoke about Audra, who had been a stay-at-home mom since 2000. Her Social Security number was being used by at least 218 different illegal immigrants, mostly in Texas, to obtain jobs. The IRS accused her of owing back taxes of over

\$1 million on other people's illegal work.

There was also Caleb, who lives in Nevada with his wife and two young children. In December of 2003 Caleb was unable to work and he applied for unemployment benefits. He was denied benefits that were rightfully his and was told that it was because he was already working as a landscaper in Las Vegas. Las Vegas and Reno are about 500 miles apart. It would have been very difficult for this unemployed worker in Nevada.

Stories such as these are all too common. States have experienced a crime spree involving illegal immigrants using the 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 a little 8-year-old boy.

A little boy in Salt Lake City supposedly works for an express air freight company; quite an important job for an 11-year-old.

These stories are quite shocking. Americans are being denied unemployment benefits and are being unfairly targeted for failure to pay taxes on money they did not earn. My amendment prohibits the Social Security Administration from using funds to process claims for work performed under a stolen or fraudulent Social Security number.

We should not reward individuals who have knowingly engaged in illegal behavior. My amendment will ensure that the 218 illegal immigrants who stole Audra's Social Security number will not receive benefits from the Social Security trust fund. The landscaper who stole Caleb's Social Security number will not get credit for his work using one of my constituent's numbers, and the prep cook who stole an 8-year-old's Social Security number will not get credit for victimizing a child either.

We should value hard work and reward those who play by the rules. Therefore, I urge my colleagues to support both of these important amendments.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

GOLDEN GAVEL

Mr. REID. Madam President, the hour of 5 o'clock has arrived, and the occupant of the chair has now presided over the Senate for 100 hours. That is commendable. The Senator is the fourth to have done it this year. I am proud and appreciative of that. It is not easy to preside for 100 hours. Sometimes it is difficult. Frankly, having

presided over the Senate many hours myself—never 100 in a year, as the Senator has done—I know it is a very grueling process. You not only see the debate going on here on the floor but all things going on, as it has happened today, outside of the microphones. So with the Senator's experience as a Government worker, we are so glad to have her in the Senate. The people of Missouri sent us a real dandy when they sent the Senator here. Congratulations.

What I didn't say is that when someone serves for 100 hours, they get a golden gavel, which is a nice award. It has a nice case, and it is something the Senator will always have to remember her first year in the Senate.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, it is never really easy. We have a lot of procedural stuff. I have tried to be as patient as I can be. I have acknowledged publicly that the two managers have done everything within their power to move this bill; 12:30 has passed but the good faith is still here. We are going to work through and finish this bill. We have lost a few hours, but I think with this agreement we will accomplish everything we need to do, even if we had completed this bill earlier today.

Mr. President, I ask unanimous consent the following be the only amendments or motions remaining in order to the bill; that there be 2 minutes of debate prior to each vote, equally divided and controlled in the usual form, and that there be 20 minutes of debate equally divided and controlled prior to a vote on the motion to commit; that no second-degree amendments be in order other than as specified in this agreement; that upon disposition of all amendments and motions, if the motion to commit is defeated, then the substitute amendment, as amended, be agreed to, the bill be read a third time, and the Senate proceed to vote on passage of the bill with the vote sequence as listed below.

I will talk specifically about the listing of the amendments and the order in which they will be voted upon because this has been negotiated for the last several hours. After the first vote, the time for each vote be 10 minutes each. They will be voted on in the following order: No. 1, Cardin, No. 3400; No. 2, Ensign, No. 3342; No. 3, Ensign, No. 3352; No. 4, Vitter, No. 3328, and that it be in order for the amendment to be modified if agreed upon by the managers or Senator VITTER; the Dorgan pending amendment, No. 3345, will be withdrawn—that will be done by either Senator DORGAN or the chairman, Senator

HARKIN—No. 5, Bingaman, No. 3440, with 2 minutes each, BINGAMAN and KYL; No. 6, Kennedy, No. 3433, as modified; No. 7, Grassley-Sanders, No. 3396, and that the amendment be modified with the changes at the desk, and it is my understanding there will be a voice vote on that; No. 8, Schumer, No. 3404, as amended by the Durbin amendment, No. 3449—voice vote; No. 9, DeMint amendment on first-class air travel to be offered and agreed to; No. 10, Chambliss amendment No. 3391, as modified; No. 11, Republican motion to commit.

Further, I ask unanimous consent that upon the passage of H.R. 3043 the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees, and that the Senate then proceed to executive session to consider the nomination of Leslie Southwick to be U.S. Circuit judge; that a cloture motion on the nomination be filed at that time; that there be 4 hours for debate on the motion with the time to be divided between Senators LEAHY and SPECTER or their designees, and that 2 hours of that time be used today with the remaining time to be used tomorrow; following the Senate's convening at 9 a.m., that the Senate vote on cloture on the nomination to occur at 11 a.m. tomorrow; that if cloture is invoked, the Senate then vote immediately on confirmation of the nomination; if cloture is not invoked, the nomination be returned to the calendar and the Senate return to legislative session; if the nomination is confirmed, the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate return to legislative session; that regardless of the outcome, once the Senate returns to legislative session there be 20 minutes equally divided for debate between the two leaders or their designees prior to the cloture vote on the motion to proceed to S. 2205, the DREAM Act.

The PRESIDING OFFICER. Is there objection?

The minority leader is recognized.

Mr. MCCONNELL. Regretfully reserving the right to object, after the majority leader began to read this agreement, I have one potential snag over here, and I think it will be cleared shortly. I would like to suggest we have a quorum call briefly and let me check out one more thing. We should be able to go forward.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. It is my understanding there is a unanimous consent pending; is that right?

The PRESIDING OFFICER. The majority leader is correct. Without objection, it is so ordered.

AMENDMENT NO. 3345 WITHDRAWN

Under the previous order, the Dorgan amendment No. 3345 is withdrawn.

The Senator from Iowa.

AMENDMENT NO. 3443, AS MODIFIED, TO
AMENDMENT NO. 3325

Mr. HARKIN. Mr. President, before we start, I send a modification to the desk and ask for its immediate consideration on amendment No. 3443 for Senator HATCH.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for Mr. HATCH, proposes an amendment numbered 3443, as modified.

Mr. HARKIN. Mr. President, the amendment has been agreed to on both sides.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3443), as modified, was agreed to, as follows:

AMENDMENT NO. 3443, AS MODIFIED

At the appropriate place in title II, insert the following:

SEC. _____. (a) The amount appropriated under the heading "DISEASE CONTROL, RESEARCH, AND TRAINING" under the heading "CENTERS FOR DISEASE CONTROL AND PREVENTION" in this title is increased by \$1,000,000.

(b) The amount appropriated under the heading "GENERAL DEPARTMENTAL MANAGEMENT" under the heading "OFFICE OF THE SECRETARY" in this title is decreased by \$1,000,000.

(c)(1)(A) The Secretary of Health and Human Services (acting through the Director of the National Institute for Occupational Safety and Health) shall conduct, and shall invite the University of Utah and West Virginia University to participate in conducting, a study of the recovery of coal pillars through retreat room and pillar mining practices in underground coal mines at depths greater than 1500 feet.

(B) The study shall examine the safety implications of retreat room and pillar mining practices, with emphasis on the impact of full or partial pillar extraction mining.

(C) The study shall consider, among other things—

(i) the conditions under which retreat mining is used, including conditions relating to—

- (I) seam thickness;
- (II) depth of cover;
- (III) strength of the mine roof, pillars, and floor; and
- (IV) the susceptibility of the mine to seismic activity; and

(ii) the procedures used to ensure miner safety during retreat mining.

(2)(A) Not later than 1 year after beginning the study described in paragraph (1), the Secretary shall submit a report containing the results of the study to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Appropriations of the House of Representatives, and the Committee on Appropriations of the Senate.

(B) The report shall include recommendations to enhance the safety of miners working in underground coal mines where retreat mining in room and pillar operations is utilized. Among other things, the recommendations shall identify means of adapting any

practical technology to the mining environment to improve miner protections during mining at depths greater than 1500 feet, and research needed to develop improved technology to improve miner protections during mining at such depths.

(3) Not later than 90 days after the submission of the report described in paragraph (2) to Congress, the Secretary of Health and Human Services shall publish a notice in the Federal Register describing the actions, if any, that the Secretary intends to take based on the report.

AMENDMENT NO. 3430, AS MODIFIED, TO
AMENDMENT NO. 3325

Mr. HARKIN. Mr. President, I ask unanimous consent to vitiate the previous vote on amendment No. 3430, the Feingold amendment. I now send to the desk a modification of that amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. Amendment 3430, as modified, is agreed to.

The amendment (No. 3430), as modified, was agreed to, as follows:

AMENDMENT NO. 3430, AS MODIFIED

At the end of title III, add the following:
SEC. _____. (a) Not later than May 31, 2009, the Comptroller General of the United States shall submit a report to Congress on the strategies utilized to assist students in meeting State student academic achievement standards, including achieving proficiency on State academic assessments.

(b) The report required under subsection (a) shall include data collected from a representative sample of schools across the Nation to determine the strategies utilized by schools to prepare students to meet State student academic achievement standards and achieve proficiency on State academic assessments, including the following categories of strategies:

(1) Adjusting the structure of the school day, which may include the expansion of the school day, or modifications in the time spent on instruction in core academic subjects.

(2) The professional development provided to teachers or additional school personnel to assist low-performing students.

(3) Changes in the provision of instruction to students, including targeting low-performing students for specialized instruction or tutoring.

(4) Utilizing types of instructional materials to prepare students.

(5) Instituting other State or local assessments.

(6) Using other strategies to prepare students to meet State student academic achievement standards and achieve proficiency on State academic assessments.

(c) The data collected pursuant to this section shall be disaggregated by—

(1) schools with a high percentage of students eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

(2) schools with a low percentage of students eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

(3) schools with a student enrollment consisting of a majority of racial and ethnic minority students;

(4) schools with a student enrollment consisting of a majority of non-minority students;

(5) urban schools;

(6) suburban schools;

(7) rural schools; and

(8) schools identified as in need of improvement under section 1116 of the Elementary

and Secondary Education Act of 1965 (20 U.S.C. 6316).

(d) The representative sample described in subsection (b) shall be designed in such a manner as to provide valid, reliable, and accurate information as well as sufficient sample sizes for each type of school described in subsection (c).

(e) The data collected under subsection (b) shall be reported separately for the most common types of strategies, in each of the categories listed in paragraphs (1) through (6) of subsection (b), used by schools to prepare students to meet State student academic achievement standards, including achieving proficiency on State academic assessments.

AMENDMENT NO. 3433, AS MODIFIED, TO
AMENDMENT NO. 3325

Mr. HARKIN. Mr. President, under the previous unanimous consent agreement, I call up Kennedy amendment No. 3433, and I send a modification to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for Mr. KENNEDY, proposes an amendment numbered 3433, as modified.

The PRESIDING OFFICER. Under the previous order the amendment is agreed to.

The amendment (No. 3433) as modified, was agreed to, as follows:

AMENDMENT NO. 3433, AS MODIFIED

At the end of title III, insert the following:
SEC. _____. Prior to January 1, 2008, the Secretary of Education may not terminate any voluntary flexible agreement under section 428A of the Higher Education Act of 1965 (20 U.S.C. 1078-1) that exists on the date of enactment of this Act. With respect to an entity with which the Secretary of Education has a voluntary flexible agreement under section 428A of the Higher Education Act of 1965 (20 U.S.C. 1078-1) on the date of enactment of this Act that is not cost neutral, if the Secretary terminates such agreement after January 1, 2008, the Secretary of Education shall, not later than December 31, 2008—

(1) negotiate to enter, and enter, into a new voluntary flexible agreement with such entity so that the agreement is cost neutral, unless such entity does not want to enter into such agreement.

AMENDMENT NO. 3400

Mr. HARKIN. Mr. President, Parliamentary inquiry: What is the amendment now before the Senate?

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Cardin amendment No. 3400.

The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, I urge my colleagues to support the amendment. It is offered by Senator SMITH and myself. Refugees who come to this country are entitled to loans to help them defray the cost of transportation and to resettlement assistance once they arrive. I am for that.

This amendment provides similar benefits to those who qualify for Special Immigration Visas. These are Iraqi and Afghan translators who have helped us, and now, in risk of their

lives, are allowed to come to a safe haven, the United States.

This amendment extends a helping hand to those who have helped us under very difficult and dangerous circumstances. As I indicated, refugees are entitled to this benefit for up to 7 years. This provides benefits for only up to 6 months for the SIV holders.

It is carefully crafted. It has been scored at not adding additional costs to the budget. I think this is a matter of basic fairness. I urge my colleagues to support the Cardin-Smith amendment.

The PRESIDING OFFICER. Who yields time in opposition?

Mr. HARKIN. Mr. President, since no one is here to speak in opposition, I yield back all time.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from North Dakota (Mr. CONRAD), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

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

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 386 Leg.]

YEAS—92

Akaka	Dole	Lott
Alexander	Domenici	Lugar
Allard	Dorgan	Martinez
Barrasso	Durbin	McCaskill
Baucus	Ensign	McConnell
Bayh	Enzi	Menendez
Bennett	Feingold	Mikulski
Bingaman	Feinstein	Murkowski
Bond	Graham	Murray
Boxer	Grassley	Nelson (FL)
Brown	Gregg	Nelson (NE)
Brownback	Hagel	Pryor
Bunning	Harkin	Reed
Burr	Hatch	Reid
Byrd	Hutchison	Roberts
Cantwell	Inhofe	Rockefeller
Cardin	Inouye	Salazar
Carper	Isakson	Sanders
Casey	Johnson	Schumer
Chambliss	Kerry	Sessions
Coburn	Klobuchar	Shelby
Cochran	Kohl	Smith
Coleman	Kyl	Snowe
Collins	Landrieu	Specter
Corker	Lautenberg	Stabenow
Cornyn	Leahy	Stevens
Craig	Levin	Sununu
Crapo	Lieberman	Tester
DeMint	Lincoln	

Thune
Vitter

Voinovich
Webb

Whitehouse
Wyden

NOT VOTING—8

Biden
Clinton
Conrad

Dodd
Kennedy
McCain

Obama
Warner

The amendment (No. 3400) was agreed to.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3342

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on Ensign amendment No. 3342.

Who yields time?

Mr. REID. Mr. President, I am going to vote for the amendment offered by Senator ENSIGN with respect to the U.S.-Mexico Totalization Agreement, and I wanted to take a few minutes to explain my thinking on this issue.

The United States has negotiated totalization agreements with more than 20 countries. These agreements establish mechanisms for coordinating our respective Social Security systems so that U.S. citizens working abroad are treated fairly. For example, the agreements help prevent Americans from being subject to unfair double taxation. They also help ensure that work in each country can be combined for purposes of qualifying for benefits, so that those who split their careers between countries are not left uncovered. Of course, while their purpose is to protect American interests, the agreements also provide reciprocal benefits to citizens of the other countries.

Totalization agreements can be win-win arrangements that benefit both sides, provided they are crafted carefully to ensure that their benefits and their burdens are reasonably balanced. No agreement, no matter how carefully drafted, is likely to impose identical costs on both countries. More likely, there will be some difference in the burdens borne and benefits received by each nation. And if the United States ends up paying far more in benefits to citizens of another country than American citizens receive, our national interests could dictate that we reject or renegotiate that agreement.

The need to carefully scrutinize a proposed totalization agreement is especially great because its costs could directly affect the Social Security benefits of virtually all Americans in the future. This type of agreement has the potential of imposing significant burdens on the Social Security trust fund. Although the Congressional Budget Office projects that the trust fund will be solvent through 2046, we should be careful before approving any measure that would worsen the program's long-term challenges. Otherwise, the end result could be unnecessarily deep cuts in benefits or excessive increases in taxes for Americans.

Given this, I believe it is important that President Bush not be given unilateral power to negotiate and implement agreements without significant congressional involvement. Current law allows Congress to reject an agreement, but this mechanism probably is unconstitutional under the Supreme Court's *Chadha* decision, which invalidated so-called legislative vetoes. We need to develop a new mechanism, and I am pleased that Senator BAUCUS and Senator GRASSLEY have been working in a bipartisan manner to develop one.

While those efforts are ongoing, I believe it is appropriate to take interim steps to ensure that the Bush administration is not allowed to implement a totalization agreement unilaterally. That is what the Ensign amendment does. While not making a final determination about whether an agreement should be approved, the amendment effectively would ensure that, for the next fiscal year, an agreement with Mexico will not be implemented without congressional approval. I think that makes sense.

In my view, the Ensign amendment would have been stronger had it applied to all totalization agreements, not just the agreement with Mexico. Not only would that have helped ensure that all agreements serve our national interests, but it would have eliminated any perception that we are unfairly singling out Mexico for special treatment. Having said that, I do understand the view of the General Accounting Office that the Mexican agreement is, "both qualitatively and quantitatively different than any other agreement signed to date," largely because of the potential impact of the many workers who have come from Mexico into the United States. The extent of that impact is unclear. In any case, surely this complex issue deserves to be considered seriously here in the Congress before any agreement is implemented.

The Senator from Iowa.

Mr. HARKIN. Mr. President, in consultation with Senator ENSIGN, he does not wish to use his time. So, therefore, we yield back all time.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that, if present and voting, the Senator from Massa-

chusetts (Mr. KENNEDY) would vote "no."

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 91, nays 3, as follows:

[Rollcall Vote No. 387 Leg.]

YEAS—91

Akaka	Domenici	Mikulski
Alexander	Dorgan	Murkowski
Allard	Durbin	Murray
Barrasso	Ensign	Nelson (FL)
Baucus	Enzi	Nelson (NE)
Bayh	Feingold	Pryor
Bennett	Feinstein	Reed
Bingaman	Graham	Salazar
Bond	Grassley	Roberts
Boxer	Gregg	Rockefeller
Brown	Harkin	Salazar
Brownback	Hatch	Sanders
Bunning	Hutchison	Schumer
Burr	Inhofe	Sessions
Byrd	Inouye	Shelby
Cantwell	Isakson	Smith
Cardin	Johnson	Snowe
Carper	Kerry	Specter
Casey	Klobuchar	Stabenow
Chambliss	Kohl	Stevens
Coburn	Kyl	Sununu
Cochran	Landrieu	Tester
Coleman	Lautenberg	Thune
Collins	Leahy	Vitter
Conrad	Levin	Voinovich
Corker	Lieberman	Warner
Cornyn	Lincoln	Webb
Craig	Lott	Whitehouse
Crapo	McCaskill	Wyden
DeMint	McConnell	
Dole	Menendez	

NAYS—3

Hagel Lugar Martinez

NOT VOTING—6

Biden Dodd McCain
Clinton Kennedy Obama

The amendment (No. 3342) was agreed to.

Mr. HARKIN. Mr. President, 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.

AMENDMENT NO. 3352

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Ensign amendment No. 3352.

Who yields time?

Mr. HARKIN. Mr. President, it is my understanding we don't need any time. All time is yielded back.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

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

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 92, nays 2, as follows:

[Rollcall Vote No. 388 Leg.]

YEAS—92

Akaka	Domenici	Menendez
Alexander	Dorgan	Mikulski
Allard	Durbin	Murkowski
Barrasso	Ensign	Murray
Baucus	Enzi	Nelson (FL)
Bayh	Feingold	Nelson (NE)
Bennett	Feinstein	Pryor
Bingaman	Graham	Reed
Bond	Grassley	Reid
Boxer	Gregg	Roberts
Brown	Harkin	Rockefeller
Brownback	Hatch	Salazar
Bunning	Hutchison	Sanders
Burr	Inhofe	Schumer
Byrd	Inouye	Sessions
Cantwell	Isakson	Shelby
Cardin	Johnson	Smith
Carper	Kerry	Snowe
Casey	Klobuchar	Specter
Chambliss	Kohl	Stabenow
Coburn	Kyl	Stevens
Cochran	Landrieu	Sununu
Coleman	Lautenberg	Tester
Collins	Leahy	Thune
Conrad	Levin	Vitter
Corker	Lieberman	Voinovich
Cornyn	Lincoln	Warner
Craig	Lott	Webb
Crapo	Martinez	Whitehouse
DeMint	McCaskill	Wyden
Dole	McConnell	

NAYS—2

Hagel Lugar

NOT VOTING—6

Biden Dodd McCain
Clinton Kennedy Obama

The amendment (No. 3352) was agreed to.

AMENDMENT NO. 3328, AS MODIFIED

Mr. HARKIN. Mr. President, the next amendment up would be Senator VITTER's amendment No. 3328. I have a modification I send to the desk.

The PRESIDING OFFICER. Under the previous order, the amendment is so modified.

The amendment (No. 3328), as modified, is as follows:

On page 79, after line 4, insert:

SEC. ____ None of the funds appropriated in this Act may be used to prevent an individual not in the business of importing a prescription drug (within the meaning of section 801(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(g)) from importing a prescription drug from Canada that complies with sections 501, 502, and 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, and 355) and is not—

(1) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); or

(2) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262).

Mr. VITTER. Mr. President, I rise today to discuss my amendment, Amendment No. 3328, which is currently pending to the Labor-HHS-Education Appropriations bill before the Senate. My original amendment is simple. It would stop officials at HHS from

preventing individuals from bringing back a prescribed medication for themselves from Canada. I have agreed to make two modifications to my amendment. My amendment, as modified, would add explicit restrictions on controlled substances and biological products from my amendment.

Therefore, as modified, my amendment prohibits funds from preventing individuals, not wholesalers, from importing prescriptions for themselves, and that because there is no restriction in my language as to how they may import these prescriptions, it is understood that mail order and Internet importation is not prohibited along with carrying on the person over the border. All controlled substances and biological products are prohibited.

It is my understanding that my amendment will be accepted by voice vote today on the agreement that the chairman and ranking member of the subcommittee, Senator HARKIN and Senator SPECTER, will work hard for its inclusion in the final conference report for the final legislative vehicle for this bill.

Mr. HARKIN. Mr. President, I appreciate the sentiments by the Senator from Louisiana and accept this proposal on this modified amendment and will ask that it be adopted by unanimous consent. I agree to work hard for inclusion of this amendment in the conference report of the final legislation.

Mr. SPECTER. Mr. President, I concur with my colleague and confirm this agreement with my colleague from Louisiana, Mr. VITTER.

Mr. HARKIN. Mr. President, we are ready to vote on the Vitter amendment.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment.

The amendment (No. 3328), as modified, was agreed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from New Mexico is to be recognized.

AMENDMENT NO. 3440, AS MODIFIED, TO
AMENDMENT NO. 3325

Mr. BINGAMAN. Mr. President, this is an amendment to add \$150 million to the Social Security Administration account so that they can deal with the enormous backlog of cases that are pending there in people applying for disability benefits. The average wait is 523 days now. If a person filed today for a hearing in Social Security, they would expect to get that hearing in June of 2009. That is unacceptable. We need to do better. This amendment will help us do that.

I yield the remainder of my time to Senator DOMENICI.

Mr. DOMENICI. Mr. President, I suggest that this is absolutely imperative.

For citizens who are on disability to have to wait 2 years on an appeal, as the Senator said, is unacceptable. The money this is providing will take care of that. He asked the administrator, and that is what is needed, and we ought to do it. We have Social Security and disability, and then they make them wait 2 years, and all of the offices are being cut back because they don't have enough operating money. We should pass this amendment.

Mr. BINGAMAN. Mr. President, I call up amendment No. 3440, as modified.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 3440, as modified.

The amendment is as follows:

At the appropriate place, insert the following:

GENERAL PROVISIONS

SEC. 401. (a) Notwithstanding any other provision of this Act, the amount appropriated under the heading "LIMITATION ON ADMINISTRATIVE EXPENSES" under the heading "SOCIAL SECURITY ADMINISTRATION" shall be increased by \$150,000,000.

(b) Section 1848(1)(2)(A) of the Social Security Act (42 U.S.C. 1395w-4(1)(2)(A)), as amended by section 6 of the TMA, Abstinence Education, and QI Programs Extension Act of 2007 (Public Law 110-90), is amended by striking "\$1,350,000,000" and inserting "\$1,200,000,000, but in no case shall expenditures from the Fund in fiscal year 2008 exceed \$650,000,000" in the first sentence.

(c) Section 323 of title 31, United States Code, is amended to read as follows:

Mr. GRASSLEY. Mr. President, do we have an opportunity to address it?

The PRESIDING OFFICER. There is 2 minutes on each side.

The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I rise in support of the goals of this amendment. I want to speak about process so that nobody gets the understanding that the Committee on Finance has given up jurisdiction over this area. We also want to explain that the offset is coming from the Medicare physician assistance and quality initiative fund, which we have set aside to make sure doctors don't get a 10-percent cut this year in their formula. That is something which is going to come out of the Finance Committee in the next few weeks.

The reason we are going along with this offset is we have found another offset that will fill the void in this fund I just referred to, so that we will be able to keep this whole. I advise people that just because we are allowing this fund to be tapped, we are not going to tap this fund again because we are going to save this to make sure we can help doctors not get cut in their reimbursement on Medicare.

The PRESIDING OFFICER. Who yields time?

Mr. BINGAMAN. Mr. President, I yield back the remaining time and 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 amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

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

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 88, nays 6, as follows:

[Rollcall Vote No. 389 Leg.]

YEAS—88

Akaka	Ensign	Murkowski
Alexander	Enzi	Murray
Barrasso	Feingold	Nelson (FL)
Baucus	Feinstein	Nelson (NE)
Bayh	Graham	Pryor
Bennett	Grassley	Reed
Bingaman	Hagel	Reid
Bond	Harkin	Roberts
Boxer	Hatch	Rockefeller
Brown	Hutchison	Salazar
Brownback	Inouye	Sanders
Bunning	Isakson	Schumer
Byrd	Johnson	Sessions
Cantwell	Kerry	Shelby
Cardin	Klobuchar	Smith
Carper	Kohl	Snower
Casey	Kyl	Specter
Chambliss	Landrieu	Stabenow
Cochran	Lautenberg	Stevens
Coleman	Leahy	Sununu
Collins	Levin	Tester
Conrad	Lieberman	Thune
Corker	Lincoln	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	Martinez	Webb
Dole	McCaskill	Whitehouse
Domeneici	McConnell	Wyden
Dorgan	Menendez	
Durbin	Mikulski	

NAYS—6

Allard	Coburn	Gregg
Burr	DeMint	Inhofe

NOT VOTING—6

Biden	Dodd	McCain
Clinton	Kennedy	Obama

The amendment (No. 3440) was agreed to.

Mr. CARDIN. 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.

AMENDMENT NO. 3396, AS MODIFIED, TO
AMENDMENT NO. 3325

The PRESIDING OFFICER. Under the previous order, the Senator from Iowa, Mr. GRASSLEY, is recognized to offer an amendment.

Mr. GRASSLEY. Senator SANDERS should go first.

Mr. SANDERS. I call up my amendment.

Mr. HARKIN. Mr. President, I understand that under the unanimous consent agreement, the next amendment will be No. 3396, the Grassley-Sanders amendment. It has been modified.

The PRESIDING OFFICER. The Senator is correct. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for himself and Mr. SANDERS, proposes an amendment numbered 3396, as modified, to amendment No. 3325.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ____ AMERICAN COMPETITIVENESS SCHOLARSHIP PROGRAM.

(a) **SHORT TITLE.**—This section may be cited as the “American Competitiveness Scholarship Act of 2007”.

(b) **ESTABLISHMENT.**—The Director of the National Science Foundation (referred to in this section as the “Director”) shall award scholarships to eligible individuals to enable such individuals to pursue associate, undergraduate, or graduate level degrees in mathematics, engineering, health care, or computer science.

(c) **ELIGIBILITY.**—

(1) **IN GENERAL.**—To be eligible to receive a scholarship under this section, an individual shall—

(A) be a citizen of the United States, a national of the United States (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))), an alien admitted as a refugee under section 207 of such Act (8 U.S.C. 1157), or an alien lawfully admitted to the United States for permanent residence;

(B) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

(C) certify to the Director that the individual intends to use amounts received under the scholarship to enroll or continue enrollment at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) in order to pursue an associate, undergraduate, or graduate level degree in mathematics, engineering, computer science, nursing, medicine, or other clinical medical program, or technology, or science program designated by the Director.

(2) **ABILITY.**—Awards of scholarships under this section shall be made by the Director solely on the basis of the ability of the applicant, except that in any case in which 2 or more applicants for scholarships are deemed by the Director to be possessed of substantially equal ability, and there are not sufficient scholarships available to grant one to each of such applicants, the available scholarship or scholarships shall be awarded to the applicants in a manner that will tend to result in a geographically wide distribution throughout the United States of recipients' places of permanent residence.

(d) **AMOUNT OF SCHOLARSHIP; RENEWAL.**—

(1) **AMOUNT OF SCHOLARSHIP.**—The amount of a scholarship awarded under this section shall be \$15,000 per year, except that no scholarship shall be greater than the annual cost of tuition and fees at the institution of higher education in which the scholarship recipient is enrolled or will enroll.

(2) **RENEWAL.**—The Director may renew a scholarship under this section for an eligible individual for not more than 4 years.

(e) **FUNDING.**—The Director shall carry out this section only with funds made available under section 286(w) of the Immigration and Nationality Act, as added by subsection (g).

(f) **FEDERAL REGISTER.**—Not later than 60 days after the date of the enactment of this Act, the Director shall publish in the Federal Register a list of eligible programs of study for a scholarship under this section.

(g) **SUPPLEMENTAL H-1B NONIMMIGRANT PETITIONER ACCOUNT; GIFTED AND TALENTED STUDENTS' EDUCATION ACCOUNT.**—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

“(w) **SUPPLEMENTAL H-1B NONIMMIGRANT PETITIONER ACCOUNT.**—

“(1) **IN GENERAL.**—There is established in the general fund of the Treasury a separate account, which shall be known as the ‘Supplemental H-1B Nonimmigrant Petitioner Account’. Notwithstanding any other section of this Act, there shall be deposited as offsetting receipts into the account 85.75 percent of the fees collected under section 214(c)(15)(B).

“(2) **USE OF FEES FOR AMERICAN COMPETITIVENESS SCHOLARSHIP PROGRAM.**—The amounts deposited into the Supplemental H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in the American Competitiveness Scholarship Act of 2007 for students enrolled in a program of study leading to a degree in mathematics, engineering, health care, or computer science.

“(x) **GIFTED AND TALENTED STUDENTS EDUCATION ACCOUNT.**—

“(1) **IN GENERAL.**—There is established in the general fund of the Treasury a separate account, which shall be known as the ‘Gifted and Talented Students Education Account’. There shall be deposited as offsetting receipts into the account 14.25 percent of the fees collected under section 214(c)(15)(B).

“(2) **USE OF FEES.**—Amounts deposited into the account established under paragraph (1) shall remain available to the Secretary of Education until expended for programs and projects authorized under the Jacob K. Javits Gifted and Talented Students Education Act of 2001 (20 U.S.C. 7253 et seq.).”

(h) **SUPPLEMENTAL AND DEFICIT REDUCTION FEES.**—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

“(15)(A) Except as provided under subparagraph (D), if the Attorney General, the Secretary of Homeland Security, or the Secretary of State is required to impose a fee pursuant to paragraph (9) or (11), the Attorney General, the Secretary of Homeland Security, or the Secretary of State, as appropriate, shall impose a supplemental fee and a deficit reduction fee on the employer in addition to any other fee required by such paragraph or any other provision of law, in the amounts determined under subparagraph (B).

“(B) The amount of the supplemental fee shall be \$3,500, except that the fee shall be ½ that amount for any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

“(C) Of the amounts collected under subparagraph (B)—

“(i) 85.75 percent shall be deposited in the Treasury in accordance with section 286(w); and

“(ii) 14.25 percent shall be deposited in the Treasury in accordance with section 286(x).

“(D) Public hospitals, which are owned and operated by a State or a political subdivision of a State shall not be subject to the supplemental fees imposed under this paragraph.”

The PRESIDING OFFICER. Who yields time?

Mr. SANDERS. Mr. President, I will say a few words about this amendment.

I thank Senator GRASSLEY for working with me on this amendment. We modified the original amendment. This amendment is substantially similar to

the amendment Senator GRASSLEY and I offered last May on the immigration reform bill which passed the Senate with a bipartisan vote of 59 to 35.

This amendment is motivated by one major concern. We want to make certain that young Americans receive the educational opportunities they need in order to obtain the professional, good-paying jobs that are coming about in this country. To do that, we need to make sure they have the college education they need in math, science, engineering, health care, and other professional fields.

This amendment also expands the Jacob Javits Gifted and Talented Educational Program, long supported by Senator GRASSLEY.

This amendment will accomplish these goals by adding a \$3,500 surcharge on companies that utilize the H-1B program, the same surcharge that 59 Senators supported last May.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. Mr. President, I wish to speak to what this bill does or does not do for our most promising students.

In his best selling book, “The World Is Flat,” Thomas Friedman discusses the challenges of globalism using the metaphor of the world getting flatter.

What he means is that international barriers to the movement of goods, services, people, and ideas are breaking down. That means that American businesses are facing competition from different sources, and the competition will only get fiercer.

If Americans want us to remain an economic leader and keep high paying jobs, we will need to stay one step ahead of others around the world in coming up with new ideas and innovative products and services.

Thomas Friedman likens this moment in American history to the height of the Cold War when the Soviet Union leaped ahead of America in the space race by putting up the Sputnik satellite.

In response to Sputnik, Congress passed the National Defense Education Act, which really started the Federal involvement in education.

According to Thomas Friedman, to meet the challenges of what he calls “flatism” will require, “as comprehensive, energetic, and focused a response as did meeting the challenge of communism.”

We have heard a lot of talk in Congress about the need to do something about American competitiveness.

In fact, earlier this year we passed the America COMPETES bill, authorizing a series of new programs designed to stimulate advanced learning by young Americans. But are we serious about that?

The bill before us today is a \$5.35 billion increase over the previous year. That is not small potatoes. That is enough to give a boost to a lot of programs.

But one program that is not seeing a boost is the only source of Federal

funds currently focused on helping meet the unique learning needs of gifted and talented students.

The Javits Gifted and Talented Students Education Act has suffered a series of cuts in recent years due to across-the-board rescissions.

For the current fiscal year, Congress passed an unusual type of modified continuing resolution.

While the continuing resolution contained no specific language further cutting funding for gifted education, the program mysteriously suffered a significant 21 percent cut.

In total, gifted and talented education has taken a 33 percent cut since 2002, and that is not adjusted for inflation. The current bill retains that cut.

If we are serious about maintaining America's competitive edge internationally, our most promising students must be challenged and supported to reach their full potential.

We need these talented young people to go on to pursue advanced degrees and make the technological innovations that drive our economy.

Make no mistake, that will not happen by itself.

Gifted students learn faster and to a greater depth than other students and often look at the world differently than other students. As a result, it takes a great deal more to keep them challenged and stimulated.

If gifted students are not sufficiently stimulated, they often learn to get by with minimum effort and adopt poor learning habits that can prevent them from achieving their potential.

In fact, many gifted and talented students underachieve or even drop out of school.

The book "Genius Denied," by Jan and Bob Davidson from the majority leader's home, the State of Nevada, chronicles how we are letting gifted students throughout the Nation fall through the cracks, wasting their potential.

The Belin-Blank Center in my home State of Iowa produced a report titled, "A Nation Deceived: How Schools Hold Back America's Brightest Students."

We must do a better job of developing American talent if America is to remain competitive in the global economy.

Twice now, on the competitiveness bill and the immigration bill, I have proposed an amendment to provide an appropriate funding source for gifted and talented education.

My proposal would increase the fee employers pay for H-1B visas for highly skilled foreign workers to come to the United States and use that additional funding for the Jacob Javits Gifted and Talented Students Education Act.

H-1B visas are temporary visas.

Highly skilled foreign workers come to the United States, often working for less than Americans, and garner useful experience with American companies.

Then, by the nature of the H-1B program, they go home to use their talent in their native country.

That is hardly a permanent solution to our need for talented workers.

Doesn't it make sense to charge a fee to those investing in temporary talent from abroad and use it to invest in permanent talent for the future here at home?

The modified amendment at the desk is a compromise that I worked out with the Senator from Vermont, Mr. SANDERS.

The modification includes language that was agreed to during the immigration debate.

In fact, a similar amendment passed the Senate with a 59-vote majority.

It would increase the fee for H-1B visas and use the revenue to support gifted and talented education as well as an American Competitiveness Scholarship Program that the Senator from Vermont has authored.

I support his goal of creating a scholarship program for students pursuing a degree in math, engineering, health care, or computer science.

I appreciate Senator SANDERS's willingness to help me and to provide needed funding for gifted and talented students.

We cannot continue to shortchange our best and brightest students and still expect excellence from them.

Gifted students are the innovators of tomorrow that will keep our economic pump primed.

For their sake and ours, we cannot afford to squander this vital national resource.

I urge the adoption of my amendment.

Mr. HARKIN. If there is no one else to speak, I yield back the remaining time.

The PRESIDING OFFICER. The question is on agreeing to the amendment. Without objection, the amendment is agreed to.

The amendment (No. 3396), as modified, was agreed to.

Mr. SANDERS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3404 TO AMENDMENT NO. 3325

Mr. HARKIN. Mr. President, I understand the next amendment is the Schumer amendment No. 3404.

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. As amended by the Durbin amendment No. 3449.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for Mr. SCHUMER, for himself and Mrs. HUTCHISON, proposes an amendment numbered 3404 to amendment No. 3325.

The amendment is as follows:

(Purpose: To increase the domestic supply of nurses and physical therapists, and for other purposes)

On page 126, between lines 7 and 8, add the following:

SEC. 521. Section 106(d) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note) is amended—

(1) in paragraph (1)—

(A) by inserting "1996, 1997," after "available in fiscal year"; and

(B) by inserting "group I," after "schedule A,";

(2) in paragraph (2)(A), by inserting "1996, 1997, and" after "available in fiscal years"; and

(3) by adding at the end the following:

"(4) PETITIONS.—The Secretary of Homeland Security shall provide a process for reviewing and acting upon petitions with respect to immigrants described in schedule A not later than 30 days after the date on which a completed petition has been filed."

AMENDMENT NO. 3449 TO AMENDMENT NO. 3404

(Purpose: To increase the number of nursing faculty and students in the United States, to encourage global health care cooperation, and for other purposes)

Mr. HARKIN. Mr. President, I call up the Durbin amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for Mr. DURBIN, proposes an amendment numbered 3449 to amendment No. 3404.

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

Mr. DURBIN. Mr. President, my second degree amendment reflects my belief that we cannot continue to import nurses from other countries without also taking steps to step up capacity for training nurses here in the U.S. We all know that the United States faces a serious shortage of qualified nurses. Projections show that by the year 2020, our country will fall short of the nurses we need by one million nurses.

Why do we have this looming shortage? Certainly it is due in part to our growing and aging population. But there are also structural problems with the domestic nursing system that limit the number of nurses we educate and train in this country. The main structural problems are an insufficient number of nurse educators and a shortage of clinical space for training. An American Association of Colleges of Nursing survey showed that nursing colleges denied admission to nearly 43,000 qualified applicants in 2006 academic year. The top reasons these applications were not accepted were insufficient faculty and not enough admissions slots. This is a bottleneck that is stifling the supply of nurses in this country. And we need to fix it.

We need to devote resources to training and hiring new nursing faculty and expanding clinical space for nursing schools so they can accept more qualified students. These investments will exponentially increase the number of trained American nurses. The Schumer-Hutchison amendment's approach to fixing our nursing shortage is to allow up to 61,000 foreign nurses to enter the country as green card holders. Importing these thousands of foreign nurses is only a band-aid solution to our projected nursing shortage of 1

million. But it is also a step that deflates any momentum towards finding real solutions for our domestic nursing crisis. We have done these nursing visa recaptures before. In fact, 2 years ago in 2005, the President signed into law a recapture of 50,000 nursing visas as part of that year's Emergency Supplemental Appropriations Act. Did this 2005 visa recapture stop the nursing shortage? Of course not. It was a band-aid solution. But it did undermine momentum for efforts to undertake the real reform that we know we need. And so here we are again, 2 years later, with hospitals desperate for more nurses.

My second degree amendment is a reasonable compromise that will help both the hospitals in the short term and the domestic nursing supply in the long term. My amendment would require employers who successfully petition for a recaptured nursing green card to pay a \$1,500 fee.

This fee would be used to fund a grant program that would provide grants to U.S. nursing schools for hiring nurse faculty, expanding training capacity, and recruiting more students. \$1,500 is not a large fee—hospitals often spend many times that amount for the services of foreign nurse recruiting companies. However, under my amendment, hospitals that are in dire financial straits, like Health Professional Shortage Area facilities and Louisiana hospitals still recovering from Hurricanes Katrina and Rita, would receive a waiver from paying this fee. Neither does my amendment also impose the fee on the dependents of any nurses who receive a recaptured green card.

Again, the Durbin 2nd degree amendment is a reasonable compromise that will help both the hospitals in the short term and the domestic nursing supply in the long term. It will allow for the additional nursing green cards to address immediate needs, but it will also take steps that will put the American nursing profession on a path to sustainability. My amendment also contains two measured steps to enhance global healthcare cooperation and to safeguard against a crippling brain drain of foreign healthcare workers from countries where they are critically needed. The first provision would allow a healthcare worker who is a legal permanent resident in the U.S. to temporarily provide healthcare services in a country that is underdeveloped or that has suffered a disaster or public health emergency—like the 2004 tsunami—without jeopardizing his or her immigration status in the U.S. The second provision would require a foreigner who is petitioning to work in the U.S. as a health care worker to attest that he or she has satisfied any outstanding commitment to his or her home country under which the foreigner received money for medical training in return for a commitment to work in that country for a period of years. The goal of this second provision is to ensure that foreign countries do

not invest money in healthcare workers who then renege on commitments to work in their country without satisfying their commitment in some way, such as by a new voluntary agreement. There is a waiver available in case of coercion by the home country government. My amendment is strongly supported by the American Nurses Association and the American Association of Nursing Colleges.

I urge my colleagues to support the domestic nursing profession and support global healthcare cooperation. I urge passage of my amendment.

Mr. HARKIN. All time is yielded back.

The PRESIDING OFFICER. If all time is yielded back, without objection the second-degree amendment is agreed to.

The amendment (No. 3449) was agreed to.

The PRESIDING OFFICER. Without objection, the amendment, No. 3404, as amended, is agreed to.

The amendment (No. 3404), as amended, was agreed to.

Mr. HARKIN. 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.

AMENDMENT NO. 3450 TO AMENDMENT NO. 3325

The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina, Mr. DEMINT, is recognized to offer an amendment.

Mr. HARKIN. Mr. President, I have an amendment for Mr. DEMINT, which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for Mr. DEMINT, proposes an amendment numbered 3450 to amendment No. 3325.

Mr. HARKIN. 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 prevent Federal employees from purchasing unnecessary first class or premium class airline tickets at taxpayers' expense, and for other purposes)

At the appropriate place, insert the following:

SEC. _____. None of the funds made available under this Act may be used to purchase first class or premium airline travel that would not be consistent with sections 301-10.123 and 301-10.124 of title 41 of the Code of Federal Regulations.

Mr. HARKIN. Mr. President, the amendment has been agreed to on both sides.

The PRESIDING OFFICER. All time is yielded back. Without objection, the amendment is agreed to.

The amendment (No. 3450) was agreed to.

AMENDMENT NO. 3391 WITHDRAWN

Mr. HARKIN. Mr. President, I am informed that amendment No. 3391 by

Senator CHAMBLISS can be withdrawn, so I ask unanimous consent that amendment No. 3391 be withdrawn.

The PRESIDING OFFICER. Is there objection? The chair hears none, and it is so ordered.

The Republican leader.

MOTION TO COMMIT

Mr. McCONNELL. Mr. President, we are now in the fourth week of the new fiscal year, and Congress still hasn't sent a single 1 of the 12 appropriations bills to the President. Those who made a lot of noise about Republican spending habits before last year's elections are now making the same mistakes themselves.

There is a difference. This year, our Democratic friends are delaying the most essential business of Congress on a political gambit. They have stuffed this bill with so much extra spending it is guaranteed to draw a veto. Once again, they are setting up the kind of media circus that has become so common this year. Instead of having a debate about the issues, about spending, we will have a nondebate played out in front of cameras, complete with props and outrage. A story in Monday's "Roll Call" laid out the strategy. It said our Democratic friends think a Presidential veto of the Labor-HHS bill will allow them to paint the administration and Capitol Hill Republicans as "out of touch" with average Americans, just like the effort that is underway on SCHIP.

Well, it is time to stop painting and to start legislating. The fact is, the Labor-HHS bill is simply too expensive. It is \$9 billion over the President's request, and we all know what that means. Next year, Democrats will use that figure as their baseline, and on and on in perpetuity. They expect taxpayers to forget how much they increase spending this year so they can say it isn't that much when they do it again next year.

Our friends on the other side of the aisle like to downplay the spending hikes, but let's stop for a second and look at what some of their proposed increases this year would actually look like down the line. The spending hike they are asking for in this bill, if allowed to continue at the same rate, will cost the American taxpayer \$120 billion over the next 10 years. Let me say that again. This spending increase over what the President has requested, if allowed to stand year after year, which is the way this always works, will cost the American taxpayers \$120 billion over the next 10 years. That is equivalent to the entire budget of the State of New York just in discretionary increases, just on this one appropriations bill. So this increase on this bill, compounded out, \$120 billion over the next 10 years, is the equivalent of the entire budget of the State of New York.

So what we are telling taxpayers is this proposed \$23 billion increase over the President's request for this year's appropriations bills isn't all that

much. How many times have we heard that: this isn't all that much money? But let's look at the 10-year totals. The \$23 billion this year, at the same rate of growth, will end up costing taxpayers \$252 billion over 10 years.

What can we do with \$252 billion? We could fund this year's discretionary appropriations for the Department of Transportation, the Department of Housing and Urban Development, the Department of Justice, the Department of Commerce, the Department of Agriculture, the Departments of Homeland Security, Interior, Energy, and still have more left over than the entire 2005 Massachusetts State budget.

So our friends are saying that is not a lot of money. Only in Washington, DC, could this kind of spending be not much. We need to get serious about how we spend other people's money, and if we don't start on this bill, which represents the largest increase among all the appropriations bills, we won't cut anywhere.

Senator LOTT and I propose to send this bill back to committee and instruct them to prioritize spending in a way that is responsible and which will secure a Presidential signature. We cannot continue to use the Government charge card knowing our children and their children will have to pay the bill.

On behalf of Senator LOTT and myself, I move to commit H.R. 3043 to the Committee on Appropriations with instructions to report back with total amounts not to exceed \$140.92 billion, and I urge my colleagues to vote with us to get us out of the business of political theater and back to the business of governing in a responsible way.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, first, I commend Senator HARKIN for his skillful management of this bill. The Labor, HHS, and Education bill requires tough—did you hear me say that word, tough?—tradeoffs between critical programs that serve our Nation well. I thank Senator SPECTER for his many contributions to this legislation, which is bipartisan, and I urge Senators to vote no on the motion to commit the bill to the committee for the purpose of reducing the bill to the President's request.

Hear me now. Hear me now. Listen. I am going to pose a question. You will have an opportunity to answer it. If such a motion to commit were approved, the bill would need to be reduced by \$9 billion. To any Senator who intends to vote for the motion to commit so as to reduce the bill by \$9 billion, I ask: What programs would you cut? What programs would you cut?

The President proposes to cut National Institutes of Health funding by \$279 million for studying cancer, diabetes, and heart disease. Under the President's budget, the National Institutes of Health would have to eliminate 717 research grants that could lead to

cures or treatments for cancer, diabetes, Alzheimer's, and other diseases. Should we reduce funding for the National Institutes of Health? How about it? Do I hear a response? Ask yourself before you vote: Where would you cut? Where would you cut?

The President proposes over \$3 billion in cuts for education programs, including special education, safe and drug-free schools, and improving teacher quality. Should we reduce funding for educating our children? Should we? Which educational programs shall we cut? Step up to the plate.

The President proposes cuts of nearly \$1 billion in health programs such as rural health, preventive health, nurse training, and mental health grants. Should we reduce funding for programs that improve the health of our Nation? Should we? Ask yourself, which program—which program—should be cut?

Silence. The record will note silence in answer to the question.

The President proposes to cut low-income home energy assistance by \$379 million. Winter is coming on. It gets pretty cold in those West Virginia hills. As winter approaches and home heating oil prices rise, should we reduce funding for home energy assistance? No Senator will be cold this winter at home. I won't be cold at home. I am a Senator, proud to be a Senator. By how much should we slash low-income home energy assistance? By how much? Those who want to cut, now is the time to answer the question. By how much should we slash low-income home energy assistance?

Mr. President, it is easy to demand cuts until one has to say just what will be cut. Whose ox—whose ox, yours or mine—whose ox will be gored? Who will be left out in the cold?

To all Senators listening, I urge a "no" vote on the motion to commit.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator from Iowa has 3 minutes 15 seconds.

Mr. HARKIN. I yield—how much time remains?

The PRESIDING OFFICER. The Senator from Iowa has 3 minutes 15 seconds; the Republican leader has 5 minutes.

Mr. HARKIN. I will split it, 1½ minutes to Senator SPECTER, and I will take the last 1¼ minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I oppose the motion to commit because the President's budget is \$3.5 billion under the current expenditures, and figuring an inflation rate it would be \$8.5 billion less.

If we accept the President's figure, then we are abdicating our constitutional responsibility of the appropriations process. The Constitution gives to the Congress the appropriations

power. If we automatically defer to the President on the total figure, all we do is fill in the blanks, and that would be an abdication of our constitutional responsibility. In fact, I think it would be unconstitutional for us to delegate that authority to the President. There is case law to the effect that Congress may not delegate its constitutional authority.

I discussed an alternative motion to commit, and that is to arrive at a figure which would be acceptable to the President. On SCHIP the President has stated his willingness to negotiate. The Senate has its figure; the President has his figure. I would be prepared to commit this bill to committee to arrive at a compromise but certainly not to abdicate our constitutional authority and responsibility.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, first I thank Senator SPECTER for his help through all this debate and developing this bill. I thank Senator BYRD for his usual eloquence tonight. I think he encapsulated what this is all about.

This is a bipartisan bill. It passed the committee by a vote of 26 to 3. Frankly, I think at least two, maybe all three of those were opposed to the stem cell portion we had in there, which is no longer in the bill. Nonetheless, this passed 26 to 3.

To echo a little bit what Senator BYRD said, if you vote to commit, you are voting to cut community services block grants, to zero it out, and your social services block grants that go to your States will be cut by 30 percent. You would cut NIH, as Senator BYRD said, by \$279 million. How about special education? That would be cut by \$748 million. How about community health centers? That would be cut by \$250 million.

A "yea" vote means you agree with the President that we do not need any more community health centers, you agree with the President we don't need any more money to go to the States for special education, you agree with the President that we can cut funding for NIH, you agree with the President we can zero out the community services block grants and cut the social services block grants to the States by 30 percent. That is what a "yea" vote means.

Frankly, I hope we have an overwhelming vote to reject this motion to commit and keep this a strong bipartisan bill with which we can go to conference.

The PRESIDING OFFICER. The Republican leader.

Mr. McCONNELL. Mr. President, I yield the remainder of my time and 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 motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN),

the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "nay."

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 40, nays 54, as follows:

[Rollcall Vote No. 390 Leg.]

YEAS—40

Alexander	Crapo	Kyl
Allard	DeMint	Lott
Barrasso	Dole	Lugar
Bennett	Domenici	Martinez
Bond	Ensign	McConnell
Brownback	Enzi	Murkowski
Bunning	Graham	Roberts
Burr	Grassley	Sessions
Chambliss	Gregg	Sununu
Coburn	Hagel	Thune
Cochran	Hatch	Vitter
Corker	Hutchison	Warner
Cornyn	Inhofe	
Craig	Isakson	

NAYS—54

Akaka	Harkin	Pryor
Baucus	Inouye	Reed
Bayh	Johnson	Reid
Bingaman	Kerry	Rockefeller
Boxer	Klobuchar	Salazar
Brown	Kohl	Sanders
Byrd	Landrieu	Schumer
Cantwell	Lautenberg	Shelby
Cardin	Leahy	Smith
Carper	Levin	Snowe
Casey	Lieberman	Specter
Coleman	Lincoln	Stabenow
Collins	McCaskill	Stevens
Conrad	Menendez	Tester
Dorgan	Mikulski	Voinovich
Durbin	Murray	Webb
Feingold	Nelson (FL)	Whitehouse
Feinstein	Nelson (NE)	Wyden

NOT VOTING—6

Biden	Dodd	McCain
Clinton	Kennedy	Obama

The motion was rejected.

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

The motion to lay on the table was agreed to.

STUDY ON FOLIC ACID

Mr. SALAZAR. The distinguished ranking member, Senator SPECTER, and I wish to engage in a colloquy about an important public health matter.

Folic acid is an essential "B vitamin" that plays a critical role in the body's natural processes for making new cells throughout the body. As the Labor/HHS appropriations committee has indicated in its committee report, folic acid fortification can play a critical role in reducing the incidences of serious birth defects, such as spina bifida. In that regard, according to research conducted by the Centers for Disease Control, since the implementation of the FDA's policies governing folic acid fortification in enriched cereal grain products, the prevalence of spina bifida and other neural tube de-

fects has declined approximately 20 to 30 percent.

While this represents significant progress in the prevention of birth defects, the decline falls short of the national policy objective to achieve a 50 percent reduction by 2010. It also falls short of the 50 percent to 70 percent reduction in birth defects that the Public Health Service has estimated would result if all U.S. women of childbearing age consumed the recommended amount of folic acid daily.

Mr. HARKIN. Senator SALAZAR, I commend you for bringing this critical issue to my attention and to my Colleagues' attention. I agree with you that we must do all that we can to reduce serious birth defects.

Mr. SALAZAR. Thank you, Senator HARKIN. Of great concern to me is that the scientific evidence indicates that the progress that has been made since the current fortification policy was adopted is distributed unevenly, and public health efforts have not been successful in reaching some of the population groups that are at highest risk of having a child affected by NTD birth defects. For example, research analyzing the government's 2001-2002 National Health and Nutrition Examination Survey data found that approximately 60 percent of non-Hispanic white women, and nearly 80 percent of Hispanic women and nearly 80 percent African American women consumed less than the recommended amount of folic acid daily.

CDC research suggests that current fortification policy is a barrier to fortifying the types of food consumed by diverse groups and may help explain the disparate results that have been achieved in diverse U.S. populations. In view of the inadequacy of folic acid intake that persists among U.S. women who are most at risk of having a child affected by NTD birth defects, there is a need for further study to evaluate whether greater improvements in the nutritional status of women and the prevention of NTDs can be achieved through the expansion of food and beverage fortification with folic acid.

Senator SPECTER, the statistics show that our current fortification policy is not reaching all populations. Do you agree that we need the CDC to study this issue further, so that we can take appropriate action based on those results?

Mr. SPECTER. As a longstanding advocate of prevention and education programs, Senator SALAZAR, I believe that the CDC should conduct critical public health research regarding our current folic acid fortification policies, so that we have a chance to meet our public health objectives of significantly reducing the occurrences of spina bifida and other birth defects.

Mr. SALAZAR. I am familiar with the distinguished Senator's long history of supporting public health prevention and education programs, and I ask that you work with me when we get to conference to add report lan-

guage to the Labor, HHS and Education Appropriations bill that would direct the CDC to conduct a study of the additional disease prevention benefits to the U.S. population that would be gained from expanded folic acid fortification of the food and beverage supply consumed by populations currently at risk for inadequate folic acid intake. It is also my opinion that CDC should use public-private partnerships to facilitate that study.

Mr. HARKIN. Senator SALAZAR, I will work with you to expand folic acid fortification of foods and beverages.

Mr. SALAZAR. Thank you, Senator HARKIN and SPECTER. I appreciate your interest in and dedication to addressing this critical public health matter.

Mr. SPECTER. I commend my colleague for working on this important issue and concur with Chairman HARKIN.

COMMUNITY-BASED DOULA INITIATIVE

Mr. DURBIN. Mr. President, I rise to enter into a colloquy with the Senator from Iowa, chairman of the Labor, Health and Human Services, Education and Related Agencies Appropriations Subcommittee, Mr. HARKIN. I am pleased that the subcommittee has designated funding for a community-based doula initiative within the Maternal and Child Health Bureau. In particular, I am eager to see that this funding be used in part to support technical assistance and evaluation activities.

Poor and low-income adolescents make up 38 percent of all women ages 15 to 19, yet they account for 73 percent of all pregnancies in that age group. Teenage mothers are much less likely than older women to receive timely prenatal care and are more likely to smoke during pregnancy. Because of these and other factors, babies born to teenagers are more likely to arrive too early and at a lower birth weight, which puts them at greater risk for serious and long-term illness and developmental delays.

In Chicago, we have seen how the community-doula model can improve the odds for those young moms and their babies. The Chicago Health Connection pioneered this model. The group trained mentors from the community to work with at-risk moms, many of whom had few ideas of where else to turn. These mentors spend time in the neighborhood, finding and befriending pregnant women who need help. With the guidance of the doula, the Chicago Health Connection found that more young mothers were going to their prenatal care appointments, making better lifestyle choices, and not surprisingly delivering healthier babies. The doulas stay with the moms through the early months, encouraging breastfeeding, cuddling, interactive play, and other critically important developmental activities. The key to success in this model is the doula, who comes from the same communities they serve. The doula provides culturally sensitive pregnancy and childbirth education and helps ensure that

pregnant women know how to access prenatal care and social services.

My request to the subcommittee to transform this model into a national priority was supported by Senators OBAMA, BINGAMAN, BROWN and CASEY. In a time of budget constraints, I know that not many new programs were begun and I thank the chairman for making this program a reality. I also commend the chairman for his foresight in expanding it to include community-based breastfeeding programs in rural areas.

I am eager to see the Chicago Health Connection model successfully replicated and to make that happen, it is important that new programs have guidance and help to not reinvent the wheel. I would hope that the national program would include funding for a national leader with expertise in the replication of the community-based doula model as well as expertise in breastfeeding promotion to provide training, technical assistance and evaluation services.

Mr. HARKIN. I thank my friend from Illinois for his leadership on this issue. I have worked hard in this bill to make prevention a priority. Doula programs provide the help and support that families need to create a safe environment for new infants, particularly when mothers have nutritional challenges. Everything we learn from the National Institutes of Health reminds us that this early stage of development is so key to our health and well-being.

And I want to applaud my friend Senator DURBIN for bringing this proven model to me last year. We worked hard to include funding and I agree with him that expert technical assistance will be an important component to this initiative. I look forward to working with Senator DURBIN and Senator SPECTER to monitor the implementation of this program and the outcomes it provides.

PUBLIC ACCESS

Mr. ENZI. Mr. President, I wish to engage in a colloquy with the distinguished Senator from Oklahoma, Mr. INHOFE, and the chairman and ranking member of the Labor-HHS Appropriations Subcommittee, Senators HARKIN and SPECTER.

Mr. President, I am concerned about a provision in the fiscal year 2008 LHHS appropriations bill that would change the National Institutes of Health, NIH, public access policy to a mandate requiring that private sector commercial and nonprofit journal articles be made freely available for worldwide access on an online NIH Web site.

As ranking member of the Health, Education, Labor and Pensions, HELP, Committee, I am concerned that this matter has not been reviewed by our committee, the committee of primary jurisdiction over the NIH. This issue has been handled through the appropriations process, and I believe that the HELP Committee should study the issue and determine the best and most appropriate manner to implement and improve the current voluntary policy.

In the Statement of Administration Policy, SAP, issued last week, the administration echoed this sentiment and called on Congress to review the policy and balance the need for public access against the impact it could have on scientific publishing, peer review and intellectual property. The private sector invests hundreds of millions of dollars in the peer review process which vets scientific research, and I believe that a change in the NIH public access policy could undermine that investment.

I would respectfully ask when this bill is conferenced that the section of the Labor-HHS appropriations bill mandating the NIH public access policy be modified so it may receive further study by the committees of jurisdiction to ensure that it achieves its goals without unintended negative consequences.

Mr. INHOFE. I would like to add my voice to Senator ENZI's concern regarding the NIH public access mandate that would force private sector publishers to make their articles freely available on an NIH Web site. I am concerned that this proposal will harm the journal businesses, hurt scientific communication, and impose a severe regulatory taking on commercial and nonprofit publishers. I also believe that this change in policy could have a negative impact on the intellectual property protections for scientific journal articles. I believe this issue is different from making underlying scientific data available. I believe that federally funded scientific raw data should be available for other researchers to review. I would also ask that Senators HARKIN and SPECTER agree to work with me to revise this NIH provision when this bill is conferenced.

Mr. HARKIN. I remain committed to retaining the provision in conference as it is written in the Senate and House Labor-HHS appropriations bills. I will be happy to work with the Senators from Wyoming and Oklahoma to ensure that the policy is implemented as smoothly as possible for the NIH, researchers, and scientific publishers.

Mr. SPECTER. I thank the Senators from Wyoming and Oklahoma for their concerns about the NIH public access policy, which I share. I will work with the chairman to closely monitor the policy's implementation.

Mr. ENZI. I thank the distinguished chairman and ranking member of the subcommittee.

Mr. INHOFE. I also thank the distinguished chairman and ranking member of the subcommittee for their willingness to work with Senator ENZI and me on this important issue.

MENTORING CHILDREN OF PRISONERS GRANT PROGRAM

Mr. CORNYN. Mr. President, about 2 percent of all children under the age of 18 have at least one parent incarcerated in a State or Federal prison. According to the Bureau of Justice.

In 1999 an estimated 721,500 State and Federal prisoners were parents to 1,498,800 children under age 18. 22 percent of all minor

children with a parent in prison were under 5 years old. Prior to admission, less than half of the parents in State prison reported living with their children 44 percent of fathers, 64 percent of mothers.

As a group, children of prisoners are less likely than their peers to succeed in school and more likely to become engaged in delinquent behavior. So, it is important that we support organizations that provide positive adult mentors to address the needs of these at-risk children—organizations like the Seedling Foundation in Austin, TX; and national organizations like Big Brothers and Big Sisters, and Amachi, both of which have chapters in most States.

Many of these organizations depend on grants from the Mentoring Children of Prisoners Program, authorized in 2001 under section 439 of the Social Security Act and administered by the U.S. Department of Health and Human Services. This program was designed to keep children connected to a parent in prison in order to increase the chances that the family will come together successfully when the parent is released. Unfortunately, this program has been level-funded for the past few years.

The current allocation for the Mentoring Children of Prisoners Program is \$507,000 below the President's request and is at the fiscal year 2007 level. I would have preferred that the Senate adopt an amendment to a modest increase in fiscal year 2008 funding and restore this amount to the Senate bill. At the very least, I would encourage the conferees to retain the existing funding for this program.

Mr. HARKIN. I agree with my colleague and will work during the conference process to ensure that funding for this program is not reduced.

Mr. SPECTER. I share my colleague's strong and enthusiastic support for this important program. I will continue to support the existing funding levels for the Mentoring Children of Prisoners Program when we conference this bill.

DEAFBLIND PROGRAMS

Mr. KERRY. Mr. President, I would like to engage the distinguished chairman of the Subcommittee on Labor, HHS, and Education, Mr. HARKIN, in a colloquy concerning funding for deafblind services and programs at the Department of Education. Would the chairman and manager of the bill entertain a question?

Mr. HARKIN. Mr. President, I would be happy to.

Mr. KERRY. As the Senator knows, tremendous progress has been made in addressing the needs of deafblind children and their families over the past two decades. Despite a doubling of the population of children who are deafblind over that same time period, the 46 State and regional project centers that support the deafblind community have not had a budget increase in over 20 years.

In fiscal year 2007, the national technical assistance and dissemination program at the Department of Education

received \$48.9 million for all disability technical assistance, of which \$12.8 million is designated for deafblind programs and services. At a time when remarkable advances in medicine and technology are enabling many more of these infants and children to survive and live longer, it is important for Congress to recognize the need for increased support.

While the President's budget proposed baseline funding for this program, the House included a modest \$2 million increase for deafblind programs for fiscal year 2008 in their Department of Education appropriations bill. The equivalent allocation in the Senate was, of course, lower than in the House.

I know the chairman recognizes the urgent help our States need to improve their services for families, to support the activities of the national technical assistance and dissemination center on deafblindness, and to strengthen personnel preparation programs.

Mr. President, I would ask the chairman if he would be willing to continue to work during the conference process to include a \$2 million budget increase for deafblind funding?

Mr. HARKIN. Mr. President, I would say to the Senator from Massachusetts that I agree with his description of the challenges facing the funding for deafblind services and that it is my hope that we can find agreement with our House colleagues to retain the modest funding increase that appears in their bill.

Mr. KERRY. Mr. President, I thank the chairman for his help on this issue.

FAMILY LITERACY PROGRAM

Mrs. CLINTON. Mr. President, I wish to speak on a program that is not just important to me and to many of my constituents in New York but to thousands of children and parents across the country. The William F. Goodling Even Start Family Literacy Program is a highly valuable program that gives economically and educationally disadvantaged parents the tools necessary to support early literacy and language development for their young children. Even Start not only coordinates with early childhood education programs and home visitation programs like HIPPIYUSA to provide literacy and language development services, but also incorporates parental involvement. The program assists parents to fulfill their role as their child's first teacher by providing them with adult and parenting education, English as a second language instruction, and structured parent-child joint literacy activities that we all know are necessary for children to arrive at school ready to learn.

The Even Start Program is the only early literacy program that works with parents to serve children during the infant and toddler years, a developmental period that research shows is critical for building later reading proficiency. Moreover, Even Start has been shown to be highly effective in helping low-income parents support their children's education and breaking the cycle of illiteracy and poverty.

During recent years, Even Start has been plagued by a pervasive misconception that the program is ineffective. This has resulted in drastic funding cuts. To date, many Even Start Programs have closed down and thousands of vulnerable families have lost services. In 2005, Even Start Programs in New York were serving 3,064 families. Today, due to the Bush administration's budget cuts, Even Start is serving only 722 families. We can all agree these are dramatic cuts for a program that serves such vulnerable families. For New York, cuts to the Even Start Program have affected 2,342 families.

In order to keep the program alive, it is imperative the Senate ensure the Even Start Program receives the fiscal year 2007 level of \$99 million. I am proud to be joined by my colleagues, Senators HARKIN and SPECTER, and most of all by Senator SNOWE who has spent the last 3 years championing this program with me.

Ms. SNOWE. Mr. President, I support the William F. Goodling Even Start Family Literacy Program. I am proud to join my colleague, Senator CLINTON, on this important issue. Senator CLINTON and I have been fighting for this program for the last 3 years, and we are committed to continuing to fight until this program is fully restored.

The majority of Maine's neediest families have also had services taken away from them due to cuts over the past 2 years. In 2005, Even Start Programs in Maine served 168 families through 9 programs. Today, Even Start is only serving 57 families through 3 programs. This means that 66 percent of Maine families being served have lost Even Start services over the past 3 years.

These families depend on Even Start for help in learning English, pursuing educational opportunities, and obtaining job skills. In a Texas A&M University Study, 2004-05, parents participating in Even Start were more often and better employed. The study found that employment jumped from 17 percent before enrollment to 51 percent after program completion, and wages increased by more than 25 percent.

This program helps parents acquire important skills to be their child's first and most important teacher. In fact, Even Start complements other early childhood education programs such as Head Start and Reading First by providing the comprehensive family services that help children in these critical years. Even Start is also consistent with the parent involvement goals of the No Child Left Behind Act. The program supports parents to be effective advocates for their children.

Mrs. CLINTON. Mr. President, Even Start Programs are essential to breaking down the barriers that poverty and illiteracy create by integrating early childhood education, adult literacy, or basic education, and parenting education into a unified family literacy program. That is why 35 national organizations, including the Center for Law

and Social Policy, the Children's Defense Fund, the National Council of La Raza, Home Instruction for Parents of Preschool Youngsters USA, and Pre-K Now. We have an obligation to our most vulnerable families to support services that they need the most.

The criticisms of Even Start have been largely based on the findings from the U.S. Department of Education's national evaluation released in May 2003. However, this study contained serious methodological flaws that call into question the accuracy of the findings. For example, the study's sample was not representative of the Even Start population. Thus, findings cannot be generalized to all of Even Start, particularly Even Start participants in rural communities or special populations, such as migrant and Native American families. Experts in assessment of limited English-proficient, LEP, individuals caution that the findings for LEP individuals, who represent 75 percent of those assessed in the study, are flawed due to inappropriate assessment protocols and measures. Of the 118 Even Start projects eligible to participate in the study in 2003, only 18 programs self-selected, meaning that researchers included programs largely based on who volunteered rather than using random selection, and such a small pool of programs overall does not allow for the study's findings to be generalized to all of Even Start.

However, the California Department of Education Even Start evaluation found that the percentage of parents who reported reading to their child on a more regular basis and involvement in activities such as parent-teacher conferences increased each year that they were served by the program.

Even Start families are the most in need. Eighty-four percent of Even Start's families are at or below Federal poverty levels. Eighty-four percent of Even Start adults do not have a high school diploma or GED, and 44 percent of the parents have not gone beyond the ninth grade. Nearly one-third of children and parents served by Even Start are limited English proficient.

Mr. HARKIN. Mr. President, I thank my colleagues, Senator CLINTON and Senator SNOWE, for bringing this critical issue to the floor of the U.S. Senate.

The Even Start Family Literacy Program is a valuable program, and I agree with my colleagues that Congress must do all that it can to ensure that the Even Start Program receives an adequate funding level to keep the program alive.

Mr. SPECTER. Mr. President, I also want to thank Senators CLINTON and SNOWE for their hard work on this critical program, and I look forward to working with the chairman in providing the needed resources for the Even Start Family Literacy Program.

SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Mr. SANDERS. Mr. President, I first want to thank Chairman HARKIN and

Ranking Member SPECTER for their terrific work on the Labor-HHS appropriations bill. I appreciate how well the chairman and the ranking member were able to address so many of the important issues in this bill despite the overwhelming needs of so many worthy programs that have been terribly underfunded during the Bush administration. With this in mind, I want to enter into a colloquy to clarify a key issue concerning this measure.

As a member of the HELP Committee and its Retirement and Aging Subcommittee, I am a strong supporter of the Senior Community Service Employment Program, SCSEP, which provides part-time community service opportunities at minimum wage for unemployed low-income seniors over the age of 55 with poor employment prospects. This year, approximately 100,000 seniors nationally will have access to assistance from the SCSEP program. Last year, approximately 94,000 were served and 40 million hours of community services were provided at local community-based organizations, and 33 percent of participants obtained employment as a result of participating in this program.

Through SCSEP, low-income older people benefit from training, counseling, and community service assignments at nonprofit organizations and public agencies before transitioning into the workforce. Participants' community service assignments benefit schools, health facilities, homeless shelters and food banks, disaster relief agencies, and aging services. The wages participants earn makes the difference in their ability to care for basic necessities of life such as food and medicine. Many participants overcome homelessness and other obstacles such as disabilities, literacy deficiency, language, or lack of self-esteem through their participation, and are able to compete for jobs in their local communities. Each year thousands of participants transition to employment, allowing additional older workers to benefit from the SCSEP.

The SCSEP program was reauthorized last year as part of the Older Americans Act with strong bipartisan support as a result of the tremendous difference the program makes in the lives of our Nation's low-income seniors and our communities. As our population continues to grow grayer, the need for SCSEP services is anticipated to grow accordingly.

SCSEP rewards work and the important contribution our Nation's seniors can make to our society. However, program costs will rise this coming year as the increase in the minimum wage results in higher costs for the SCSEP program due to the minimum wage payments made to program participants. In order to continue current participant service levels, the House bill provided \$531 million for SCSEP, which provides adequate funds to cover the 2008 minimum wage increase.

I know that Senator HARKIN and Ranking Member SPECTER are sup-

porters of the program but had a funding allocation \$2 billion lower than their counterparts in the House.

Can the chairman provide his commitment of his intent to fund SCSEP at the House-passed level when he moves to conference with the House?

Mr. HARKIN. I thank the Senator from Vermont for his support of this important program and share his commitment to our Nation's low income seniors. I want to assure him that I am committed to funding the program at the highest level possible and will work with the House to do so within our existing budgetary constraints. I thank the Senator from Vermont.

Mr. SPECTER. I agree with the chairman.

Mr. SANDERS. I thank the chairman and the ranking member for their work on this critical issue.

NATIONAL HEALTH SERVICE CORPS

Mr. DORGAN. Mr. President, I commend the chairman and ranking member for rejecting the President's proposal to slash funding for rural health programs by more than 90 percent. The President proposed eliminating practically every rural health program except for the Federal and State offices of rural health. If enacted, these cuts would have a devastating effect on communities in North Dakota and all across rural America. Although one-fifth of the Nation's population lives in rural areas, 70 percent of all underserved areas in the country are rural. I thank the chairman and ranking member for restoring funding for the rural health programs in this bill.

One of the big problems in rural areas is recruiting and retaining health professionals. More than 80 percent of North Dakota's counties are designated as Federal health professional shortage areas. Although recruiting and retaining health professionals is a major challenge in rural communities, it is also a problem in some urban settings. In fact, more than one of every four counties in the United States is designated as a health professional shortage area. Residents who live in these areas frequently have to drive long distances or wait to access the care they need. One of the ways Congress has sought to reduce the number of shortage areas is by supporting a program called the National Health Service Corps, which provides full-cost scholarships or sizable loan repayment to clinicians who agree to serve in a shortage area. I was disappointed that the President proposed cutting funding for the National Health Service Corps by \$9 million in fiscal year 2008. I appreciate that the chairman and ranking member were able to restore funding to the fiscal year 2007 level. However, I believe that we must ramp up our investment in this program as well as consider other initiatives to reduce the number of health professional shortage areas.

When this funding bill gets to conference, I encourage the chairman and ranking member to support the funding

level proposed by the House for the National Health Service Corps. The House bill would provide a \$5.8 million increase for the National Health Service Corps for fiscal year 2008.

Mr. SANDERS. I would like to congratulate the chairman and ranking member for their ongoing championing of critical programs that support health care access, including making substantial investments in the Nation's community health centers. The expansion of the National Health Service Corps is essential if health centers are to continue to meet the health care needs of their growing disadvantaged populations, and if we are to address the impending crisis in the supply of primary care doctors and dentists. Increasing the program's funding over the next several years is an important goal. The program is strongly supported by the Association of American Medical Colleges, which has called for an increase of 1,500 Corps awards per year to help meet the need for physicians caring for underserved populations and to help address rising medical student indebtedness.

In fiscal year 2007, the National Health Service Corps was funded at \$126 million and the current level approved by the Appropriations Committee for fiscal year 2008 would level-fund the program. I thank the committee members for rejecting the administration's proposal which would have actually reduced funding by \$10 million for this vital resource in the face of a dwindling supply of primary care doctors and dentists. While I recognize the many competing needs of important programs within the Labor, Health and Human Services, and Education appropriations bill, at the very least, I would like to see the National Health Service Corps program funding increased by the \$5.8 million approved by the House of Representatives.

Ms. MURKOWSKI. I would like to thank the chairman and the ranking member of the subcommittee for providing one of the largest increases in funding for community health centers which include migrant health centers, health centers for the homeless, and public housing health services. Community health centers particularly impact medically underserved communities which can be in urban settings like New York City or in the most frontier of all States, my home State of Alaska.

I am pleased that the bill before us today recognizes the importance of community health centers and provides \$2.26 billion in funding for the program. But what about staffing these facilities? While it is important that we provide money for building these centers, we simply cannot ignore the fact that many community health centers throughout America are not fully staffed. According to a Washington Post article from June of this year, many of these centers rely heavily on the National Health Service Corps. Still, this is not enough to fill the gap,

according to the National Association of Community Health Centers. For lack of funding, the Health Service Corps had to turn away about 50 percent of the 1,800 doctors who applied last year.

Whether in a large urban city like New York, or a frontier community like Bethel, AK, the National Health Service Corps should be properly funded so that millions of underinsured and uninsured Americans have access to health care. I believe that with an increase to the appropriations for the National Health Service Corps we will be able to achieve that and encourage my colleagues to match the House-passed funding levels.

Mr. SCHUMER. Mr. President, I also would like to commend Chairman HARKIN and Ranking Member SPECTER for putting together a funding bill for the Departments of Labor, Health and Human Services, and Education that reflects of our Nation's priorities and will do much to help the American people. Of particular importance to me and my State is the funding for the National Health Service Corps. I appreciate that the chairman and ranking member were able to restore funding to the fiscal year 2007 level for this program, but believe that we need to do more to combat the serious issue of physician shortage in the underserved areas of our States. In my State, hospitals and health centers are searching for physicians who will fill the numerous vacancies that physician retirement and retention problems have created. We need more specialists, surgeons, and general practitioners, dentists, nurse practitioners, and nurse-midwives. We need to do more to recruit and retain these essential providers—and that is exactly what the National Health Service Corps does. Robust funding of this program, in addition to pursuing other strategies to assist areas experiencing health professions shortages, will make a significant difference to patients and the providers and facilities that care for them. I thank the chair and ranking member and hope that the National Health Service Corps program funding is increased by the \$5.8 million that was approved by the House of Representatives.

Mr. HARKIN. I share my colleagues' support for the National Health Service Corps and agree that we must do more to reduce the number of health professional shortage areas. In my State, 14 of our counties are designated as shortage areas, so I know this issue firsthand. When this bill gets to conference, I will support as much funding as possible for this important program, and I look forward to continuing to work with my colleagues to ensure an expansion of the National Health Service Corps.

Mr. SPECTER. I will work with Senator HARKIN to provide as much funding as possible for this program when we get to conference with the House.

LIFESPAN RESPITE CARE APPROPRIATIONS

Mr. WARNER. Mr. President, I speak in regard to Senate amendment No. 3394, an amendment sponsored by Senator CLINTON and I, which provides \$10 million in funding—fully offset—for the Lifespan Respite Care Act. Currently, the House of Representatives fiscal year 2008 Labor, Health and Human Services, Education appropriations bill contains \$10 million for this important program. However, the Senate's version contains no such funding.

As you know, the Lifespan Respite Care Act passed unanimously in the Senate last year and was signed into law by the President on December 21, 2006. This important program authorizes competitive grants to Aging and Disability Resource Centers in collaboration with a public or private non-profit State respite coalition to make quality respite available and accessible to family caregivers, regardless of age or disability.

I know that my good friends Senator HARKIN, the chairman of the Labor, Health and Human Services and Education Appropriations Subcommittee, and Senator SPECTER, the ranking member of the subcommittee, recognize that funding this program will be a win-win-win for everybody involved. Patients will be able to receive care in the home from loving, caring family members rather than in a nursing home. Family members will be even further encouraged to serve as a family caregiver knowing that services will be available to assist them. And, finally, the Federal Government and our health care system will recognize fiscal savings as more care will be given in the home by a family member rather than in the more costly nursing home setting. As we all know, given the aging baby boomer generation, the cost of Medicaid nursing home care is expected to be a primary reason of increased health care costs in the years to come. Funding the Lifespan Respite Care bill is one step in the right direction towards controlling these costs.

I encourage the chairman and ranking member to try to achieve \$10 million in funding for the Lifespan Respite Care Act.

Mrs. CLINTON. I rise today with my colleagues, Senators HARKIN, WARNER, and SPECTER to talk about the importance of providing adequate funding for the Lifespan Respite Care Act. Across our country quality respite care remains hard to find. Where community respite care services do exist, there are often long waiting lists. And until the Lifespan Respite Care Act, no Federal plan focused on respite care to coordinate among disparate and fragmented services.

This legislation, enacted almost 1 year ago, is designed to expand and enhance access to respite care services to provide support and relief to families providing care; to help ailing loved ones stay in their homes longer; and to control health care costs as respite care allows families to postpone or pre-

vent expensive hospitalization and nursing care.

Family caregivers provide 80 percent of all long-term care in the U.S.—work that is virtually always unpaid but valued at more than \$300 billion annually. That is more than the entire amount we spent on Medicare in 2004.

Because of their responsibilities at home, studies have shown us that it is much more difficult for caregivers to find and maintain jobs. Many caregiving families are struggling to stay afloat. The cost to businesses is estimated in the tens of billions of dollars, including the cost for employees who leave jobs due to overwhelming responsibilities at home.

This labor of love often results in substantial physical and psychological hardship. Research suggests that caregivers often put their own health and well being at risk while assisting loved ones. Many caregivers are exhausted and are more prone to illness themselves. One study found that caregivers are 51 percent more likely to experience sleeplessness and 61 percent more likely to experience depression.

Often, this incredible struggle—with little support despite the heroic efforts of the organizations advocating for and providing respite care—leads to more costly out-of-home placements as a family's only alternative.

Like Senator WARNER, I also ask the chairman and ranking member of the Labor, Health and Human Services Appropriations Subcommittee to try to provide \$10 million in funding for the Lifespan Respite Care Act.

Mr. SPECTER. The Lifespan Respite Care Act is a worthwhile piece of legislation that will impact almost all American families. I will work with the chairman to provide funding for these activities.

Mr. HARKIN. Respite care programs recognize the vitally important work that families do when a loved one is struck with illness or disability. I have long been a supporter of home and community-based services to keep people with disabilities in their homes and respite care is an important part of that effort. For that reason, I will work with my colleague, Senator SPECTER, to obtain funding for the Lifespan Respite Care Act in conference.

HEALTH INFORMATION TECHNOLOGY NETWORK DEVELOPMENT

Mr. ISAKSON. Mr. President, it is my understanding that the Health Information Technology Development program will see a substantial increase in this appropriations bill, and I applaud the chairman and ranking member's commitment to this program by recognizing the need to develop systems that will help disseminate vital information to help in the detection, prevention, and treatment of some of the most devastating diseases.

In particular, this program is important to improve access to quality care for Georgians living with cancer. Cancer unfortunately acutely affects Georgia, as it is the second leading cause of

death within the State, yet there is a shortage of options available for those afflicted with cancer. The Georgia Cancer Coalition, in partnership with and as the parent organization of the Georgia Center for Oncology Research and Education, GA-CORE, is an independent, nonprofit organization working to improve cancer care and strengthen clinical research throughout Georgia by encouraging collaboration, sharing of information, and improving the clinical trials process. To that end, the Georgia Cancer Coalition has created a model that harnesses the combined talents of cancer researchers, physicians, and academia throughout the State to work to eradicate this destructive disease. The State of Georgia has already recognized the importance of this initiative by allocating funds from the State's budget.

As I mentioned before, the Health Information Technology Development program will see a substantial increase in Federal dollars in fiscal year 2008, and I really believe that some of it should go to Georgia.

Mr. SPECTER. Mr. President, like my colleague from Georgia, I am supportive of the Health Information Technology Development program, and I was happy to support the chairman's effort to increase funding for it. I believe that the goals of the Department of Health and Human Services through its Office of the National Coordinator of Health Information Technology may be well-served by the sort of program that Senator ISAKSON described a moment ago.

Mr. HARKIN. I appreciate the comments by the Senator from Georgia, as well as the ranking member. I agree with them that the Health Information Technology Development program is a step towards better dissemination of health information and better health care, and I will work with my colleagues during conference with the House to provide as much funding as possible.

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

HIV/AIDS PROGRAMS

• Mr. DODD. First, I would like to thank and congratulate the distinguished chairman of the Labor, Health and Human Services, and Education Appropriations Subcommittee on putting together this vitally important appropriations bill that will restore and grow funding for so many of our Nation's domestic health, education and labor programs. In particular, he should be commended for his leadership in support of funding for domestic HIV/AIDS programs.

As a senior member of the Health, Education, Labor and Pensions—HELP—Committee, I am deeply troubled by the impact Public Law 109-415, the Ryan White HIV/AIDS Treatment Modernization Act of 2006, has had on the State of Connecticut. Is the distinguished chairman aware that the State of Connecticut lost a total of \$3.3 mil-

lion in Federal funding in the current fiscal year as a result of improper implementation of the reauthorization by the Bush administration?

Mr. HARKIN. I am aware of the cuts the State of Connecticut has sustained and am aware that these cuts directly impact individuals living with HIV/AIDS in your State.

Mr. DODD. I am particularly concerned because these funding cuts so deeply impacted Connecticut's two transitional grant areas, formerly eligible metropolitan areas, Hartford, which lost nearly \$1.5 million, and New Haven, which lost nearly \$1.6 million. Urban areas in my State, like many urban areas throughout the U.S. with a long history of the presence of this disease, have systems of medical care and treatment that have been disrupted by the Ryan White CARE Act reauthorization bill. When I put my support behind the final reauthorization bill, it was with the understanding that this bill would do no harm to my State. In fact, an analysis of the reauthorization bill provided by the Government Accountability Office and others prior to its passage showed that the State of Connecticut and the cities of Hartford and New Haven would gain over \$2 million as a result of its passage. However, this has not been the case.

Mr. HARKIN. Section 102 of Public Law 109-415 lists States by name that have sufficiently reliable and accurate names-based reporting of living non-AIDS cases of HIV. The State of Connecticut is not listed among those States. However, it is my understanding that the Health Resources and Services Administration, HRSA, has administered the program as if Connecticut were on that list. Is that true?

Mr. DODD. Yes, it is. Connecticut is not listed among the States with sufficiently reliable and accurate names-based reporting of living non-AIDS cases of HIV. During negotiations on the reauthorization bill, I was told by officials in the Bush administration that Connecticut's names-based reporting system could not yet be considered sufficiently reliable and accurate because it had not reported HIV cases by name for four consecutive years. Connecticut would not be in that position until 2009, at the earliest. The result has been that my State lost \$3.3 million in Federal funding.

I am also deeply troubled by reports of how HRSA may be measuring urban areas' demonstrated need for supplemental funding. Under Public Law 109-415, HRSA can consider the impact a decline in formula funding under title I would have on individuals living with HIV/AIDS for purposes of supplemental grant funding. It is my understanding that this language targets urban areas whose decline in formula funding has meant a decline or disruption of services for people living with HIV/AIDS by giving them priority in the supplemental funding process.

Mr. HARKIN. I see.

Mr. DODD. It is my hope that the impact of a decline in formula funding under title I will be measured based on the urban areas' prior year formula award. This is because applicants for supplemental funding do not know their current years' formula award at the time they apply for supplemental funding and therefore neither the applicant nor HRSA can measure the current years' decline or disruption of services for individuals living with HIV/AIDS. It is my hope that I can work with the distinguished chairman in conference to provide some clarification and guidance to HRSA on this critically important issue.

It has been stated that the Ryan White reauthorization bill better targeted funding so that infected persons would have better access to high quality health care. Residents in the State of Connecticut do not have better access to high quality health care as a result of the Ryan White reauthorization bill. However, there is funding in the House-passed Labor, Health and Human Services, and Education appropriations bill that is targeted to cities losing funding under title I. I strongly support this targeted funding and urge that it be maintained in the final conference report.

Mr. HARKIN. I appreciate knowing of the Senator's support for this provision. I will certainly keep it in mind as we move into conference negotiations.

Mr. DODD. I thank the Senator for his consideration.●

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

● Mr. MCCAIN. Mr. President, here we go again, pushing through a bloated appropriations bill chocked full of earmarks and far exceeding the President's budget request. This is the seventh annual appropriations measure that has been considered by the Senate and it is by far the biggest budget buster of those considered. The first six bills exceeded the President's request by over \$8 billion, while this bill alone exceeds the President's budget request by almost \$9 billion. At what point will Congress come to grips with the fact that we are mortgaging our children's and our grandchildren's futures by approving bills like this?

The Department of Labor, Health and Human Services, and Education, and Related Agencies appropriations bill for fiscal year 2008 provides over \$605 billion, including \$149.2 billion in total discretionary spending and, as I mentioned, exceeds the President's budget by \$8.95 billion. The Statement of Administration Policy begins with the following:

The Administration strongly opposes S. 1710 because, in combination with the other FY 2008 appropriations bills, it includes an irresponsible and excessive level of spending and includes other objectionable provisions. The statement goes on to say, The Administration has asked that Congress demonstrate a path to live within the President's topline and cover the excess spending in this bill

through reductions elsewhere, while ensuring the Department of Defense has the resources necessary to accomplish its mission. Because Congress has failed to demonstrate such a path, if S. 1710 were presented to the President, he would veto the bill.

Well, it looks like he will have the opportunity to do just that.

There are over 1,000 earmarks in this bill. Examples include: \$1 million for the Bethel Performing Arts Center in Liberty, NY, for the Woodstock Museum (which the Senate did strike by a vote 52:42); \$500,000 for the New York Botanical Garden, Bronx, NY, for the virtual Herbarium; \$200,000 for Dallas, TX, for the Women's Museum; \$200,000 for the Italian American Cultural Center of Iowa in Des Moines; \$250,000 for the James K. Polk Association in Columbia, TN, for exhibit preparation; \$100,000 for the Los Angeles Craft and Folk Art Museum; \$500,000 for the Southwest Museum of the American Indian in Los Angeles, CA; \$100,000 for the Warner Robbins Museum of Aviation in Georgia; \$200,000 for the Texas Historical Commission; \$600,000 for the Vermont Department of Labor for Job Training of Female Inmates in Vermont; \$2.4 million for Maui Community College for the Remote Rural Hawaii Job Training Project; \$1.8 million for Maui Community College for training and educational opportunities; \$750,000 for Minot State University to provide training and masters degrees to job corp center senior management personnel; \$250,000 for the United Auto Workers Region 9 Training Initiative in New York; \$900,000 for the Lyndon Baines Johnson Foundation in Austin, TX, for the Presidential Timeline Project; \$1.1 million for the Billings Clinic, Billings, MT—interestingly, the Billings clinic only has 272 beds in its hospital, and received recently an endowment of over \$1 million for its cancer center; \$5.9 million for Marshall University, WV, including \$1,575,000 for the Virtual Colonoscopy Outreach Program; \$3,600,000 for Mountain State University, Beckley, WV, for the construction of the Allied Health Technology Tower; \$3,150,000 for West Virginia University, for the construction and equipping of medical simulation research and training centers; \$4,050,000 for West Virginia University, for the construction of a Multiple Sclerosis Center; \$1,000,000 for Wetzel County Hospital, WV, for the expansion and remodeling of the Emergency Department; \$2,000,000 for the Iowa Department of Public Health to continue the Harkin Wellness Grant program; and \$100,000 for Iowa Games, Ames, IA, to continue the Lighten Up Iowa program.

I could go on and on calling out earmarks in this bill and its accompanying report. We are doing a disservice to the American taxpayers and ourselves by approving such wasteful spending. It doesn't have to be this way. In fact, for the past 2 fiscal years, the programs funded through the Labor-HHS bill were virtually pork-free. A fortunate disagreement resulted

in almost no earmarks in the fiscal year 2006 bill, which had about 3,000 earmarks the prior year. And last year, we funded the programs with a continuing resolution that, for the taxpayers, turned out to have been about the most fiscally responsible route that we could have taken.

I urge my colleagues to reject the excessive spending in the bill.●

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

● Mrs. CLINTON. Mr. President, I rise today to express my support and gratitude for the \$55 million included in this legislation to support our continued efforts to address the health impacts of 9/11. I would in particular like to thank Senator HARKIN, Senator BYRD, Senator SPECTER, and their colleagues on the Senate Appropriations Committee for their efforts to help the many responders, recovery workers, residents and others who have been suffering from persistent adverse health effects resulting from exposure to the toxins released during the attacks on the World Trade Center.

When the towers collapsed, thousands of tons of coarse and fine particulate matter were released into the air—including cement dust, glass fibers, asbestos, lead, hydrochloric acid, and other toxic pollutants. The combustion of jet fuel after the attacks created a dense plume of black smoke, filled with other toxic substances like benzene and polycyclic aromatic hydrocarbons. Fires at Ground Zero continued to burn underground for several months after the attacks.

Thousands worked and lived by this Ground Zero site, amidst the dust, smog, and toxic mix of debris. People also worked at Fresh Kills, the landfill in Staten Island, where workers sifted through the debris in an attempt to discover evidence and recover human remains. And in the first few months following the attacks, we began to hear reports of persistent coughing among rescue workers. These reports were among the first indications of the multiple physical and mental health impacts we have identified among workers, responders, and residents following 9/11—chronic respiratory illness, anxiety and depression, and musculoskeletal injuries, among others. I believe we have a moral obligation to take care of those suffering from 9/11 related illnesses, and I would like to commend the Appropriations Committee for helping to meet that obligation.

I have been working with my colleagues on the Health, Education, Labor and Pensions Committee to develop a long-term solution to address these health care needs, and I am pleased to note the bipartisan support from my colleagues there. As we continue our efforts to develop this solution, the cooperation of the appropriators in maintaining funding for existing programs is greatly appreciated.

In the wake of the attacks, I have been proud to work again and again

with Senators HARKIN, BYRD, SPECTER, and others to secure funding to establish necessary screening, monitoring and treatment programs to address the health care needs of those impacted by 9/11. Through our joint efforts, we have allocated funding to establish Centers of Excellence at the Fire Department of New York and Mt. Sinai Medical Center, as well as its affiliated institutions. These institutions have been working on these issues as the early reports of illness appeared, and providing care and medical guidance to the responders and recovery workers who were at Ground Zero and Fresh Kills.

In partnership with the National Institute for Occupational Safety and Health, these Centers of Excellence have engaged in efforts to treat those suffering these attacks, as well as research and monitoring to allow us to understand more about the ways in which these exposures do result in disease. And in addition to these efforts, I also want to highlight the work of the City of New York, which has established another Center of Excellence at Bellevue Hospital with city funds to meet the needs of residents, office workers and others who were exposed to these toxins.

The \$55 million included in this legislation will go towards continuing these programs to carry out the screening, monitoring and treatment activities administered by NIOSH. It also includes language requiring the Department of Health and Human Services, again working through NIOSH, to expand its efforts to address the needs of residents, office and commercial workers, students, and other individuals who were exposed.

With this funding, we will ensure that those who responded in our hour of need are helped in their hour of need. We will continue to expand our understanding of the ways in which exposure to environmental hazards adversely impact human health. We will be helping the previously healthy detectives, firefighters and construction workers—people in good physical shape before the attacks who now have difficulty breathing and who experience mental health concerns. For these individuals, their illnesses are a constant reminder of that terrible day, and evidence of the sacrifices made to assist our country after a terrorist attack.

Again, I would like to thank Senator HARKIN, Senator BYRD, Senator SPECTER, and others on the Appropriations Committee for helping to support these programs.●

Mr. CARDIN. Mr. President, I rise today in support of H.R. 3043, the fiscal year 2008 Department of Labor, Health and Human Services, and Education, and Related Agencies appropriations bill. Some call this legislation the most significant appropriations bill we will consider as it touches the lives of every single American. Each American citizen has the right to basic education, adequate healthcare, and access to employment opportunities. In providing funding across three major

agencies, we are ensuring that our citizens have every opportunity to reach their maximum potential. I appreciate the opportunity to highlight a few of the bill's major provisions.

American workers deserve every opportunity to provide for their families. Investment in training, education, and employment services leads to good jobs that provide self-sustainability for workers and their families. This was the purpose of the Workforce Investment Act and is what the funding provided for in this bill accomplishes through various job training programs. This bill acknowledges the value of training and employment services by continuing to fund adult employment and training, youth training and dislocated worker assistance programs.

This bill also provides critical funding for the National Institutes of Health, or NIH. NIH funds significant health research at over 3,000 institutions throughout the U.S. and around the world. While increased funding provided in this bill is a good start, we can, and must, do more. NIH funding supports research to develop and find cures for a myriad of health issues, including cancer, diabetes, stroke, and mental illness. These are significant health concerns facing Americans today.

As you are aware, NIH is headquartered in Bethesda, MD, where more than 18,000 are employed. So it is especially important to me, a Senator from Maryland, that we give all of these individuals the resources they need to improve and save lives through health research. I commend the Appropriations Committee for supporting this agency with a 3.3 percent increase to the overall NIH budget. However, if we expect America to remain a leader in medical advancements and technologies, we must be committed to providing researchers the resources they need to move forward. I am committed to that goal and urge my colleagues to remain vigilant, as well.

This bill provides a \$125 million increase above the administration's budget request for the Social Security Administration's, SSA, administrative expenses and for that I am grateful. However, that increase does not adequately address SSA's serious backlog issue. It is no secret that the Social Security Administration's resources are stretched thin. Disability claims are arising at an alarming rate. Currently, over three-quarters of a million individuals are waiting for a hearing decision as pending hearings have increased to a record 752,103. Further, the time that an applicant must wait for a hearing continues to rise, currently averaging 523 days. Compounding the crisis, Medicare reform legislation passed by Congress has increased SSA's responsibilities. Field offices average over 850,000 visitors a week. Meanwhile, SSA continues to downsize its labor force. Further, we hear a lot of talk about fraud, waste, and abuses within the SSA.

I submit that we will never get a handle on the problem unless we provide adequate resources to address it. We in Maryland are fortunate to have the Social Security Administration Headquarters in Baltimore. By not adequately addressing the SSA backlogs, not only are we doing harm to the hundreds of thousands of individuals that, due to health circumstances beyond their control, can no longer support themselves, we are also tying the hands of the hard-working individuals assisting them. Again, I commend the Appropriations Committee for providing additional funding SSA administrative expenses but note that the agency needs additional funding to avoid further staff reductions and an increasing disability backlog.

I would like to take this opportunity to thank my colleagues for their support of my amendment establishing the sense of the Senate that the Secretary of Health and Human Services should maintain "deemed status" coverage under the Medicare Program for clinical trials that are federally funded or reviewed. Under current policy, trials that are federally funded or reviewed by institutions such as the National Institutes of Health, received "deemed status" and were not subjected to additional review to be eligible for reimbursement. This policy has worked well for 7 years.

Prior to 2000, too few seniors participated in clinical trials. One reason for this disparity was Medicare's reimbursement policy. Because Medicare was modeled on the indemnity health insurance policies, it did not pay for treatment considered "experimental" in nature, and so often denied reimbursement for the routine patient care costs associated with clinical trials. Many seniors could not afford to pay these costs themselves, and so they were by and large excluded from these trials. CMS has recently considered changing this policy, requiring trial sponsors to undergo a process certifying that they have met 13 separate criteria to qualify for Medicare coverage. This new policy has the potential to reverse the progress that has been made over the past 7 years by making it much more difficult for trials to qualify.

Seniors' participation in clinical trials serves two vital functions. First it affords many seniors with serious illnesses their only hope for lifesaving treatment. Second, it is key to researchers' efforts to determine the effectiveness of therapies for seniors. Since this issue has come to light, I have heard from hundreds of patients and providers across the country who agree that we must continue to remove access barriers to innovative healthcare treatments for our seniors. Again, I thank my colleagues for their support on this important matter.

The Appropriations Committee is committed to funding significant programs that address real issues that touch the heart and home of Ameri-

cans. This includes some innovative programs in my home State of Maryland, such as: funding provided through this bill will allow the Chesapeake Bay Foundation, CBF, in collaboration with Living Classrooms Foundation, LCF, to continue providing students with rich, meaningful field and classroom programs focusing on the natural and cultural history of the Chesapeake Bay watershed. Funding will allow CBF and LCF to reach approximately 700 teachers, and 87,000 underserved students.

The bill funds KIPP Ujima Village Academy in Baltimore through its parent organization. KIPP Ujima opened its doors in the summer of 2002 with its first class of fifth graders, and now serves 300 fifth through eighth grades. Over 99 percent of its students are African American, and 87 percent qualify for Federal free or reduced-price meals program. KIPP Ujima is the highest performing public school serving middle grades in Baltimore City, as measured by the 2006 Maryland State Assessment. On that exam, 100 percent of seventh and eighth graders scored proficient or advanced in mathematics, achieving the highest math scores in the State of Maryland.

Carroll County Youth Service Bureau, CCYSB, provides a continuum of community-based mental health services for children, adults, and families throughout Carroll County. CCYSB uses a multidisciplinary approach to deliver prevention, intervention and treatment services in the least restrictive and most cost-effective manner. Funding provided in the bill will allow CCYSB to reach more underserved patients in need of mental health services.

The bill also provides funding for equipment and technology in a number of Maryland healthcare facilities, including St. Agnes Hospital, Mercy Medical Center, Northwest Hospital, Kennedy-Krieger, Lifebridge, and Holy Cross. The technology and equipment provided will allow these facilities to better detect, diagnose, and treat patients who suffer traumatic illnesses and injuries.

I thank Senator HARKIN, Senator SPECTER, and their staffs for all of their hard work to develop a bill that addresses many other basic rights that all Americans deserve: education, employment, and health care.

Mr. FEINGOLD. Mr. President, today the Senate will be voting on the fiscal year 2008 Labor, Health and Human Services, and Education appropriations act. I am pleased to support this bill, which provides healthier funding levels for our labor, health, and education programs for the first time in many years. At a time of rising poverty levels, rising health care and heating costs, and classrooms in desperate need of funding, this bill helps promote programs that offer solutions to these problems.

I am pleased that the Senate adopted four amendments I worked on. One was an amendment I cosponsored that Senator COLLINS offered to provide much

needed additional funding to improve access to dental health in rural and underserved areas. Our amendment successfully doubled the funding for the Dental Health Improvement Act, bringing funding from \$2 million to \$4 million. The Collins-Feingold Dental Health Improvement Act authorized a new State grant program that is designed to improve access to oral health services in rural and underserved areas. States can use these grants to fund or create programs tailored to State needs. For example, they can use the funds for loan forgiveness and repayment programs for dentists practicing in underserved areas. They can also use the grant funds to establish or expand community or school-based dental facilities or to set up mobile or portable dental clinics. In Wisconsin, funds were used to provide children with better access to sealants. This helps prevent further and more expensive dental work later in life.

The Collins-Feingold amendment to increase funding for this important program will help fund additional State programs so that more people in our country will have access to essential oral health care. I thank Senator COLLINS for her work on this, and also thank Chairman HARKIN and Senator SPECTER for their assistance in passing this.

Another adopted amendment will increase public access to automatic external defibrillators, or AEDs, in schools. In my home State of Wisconsin, as in many other States, heart disease is the No. 1 killer. Cardiac arrest can strike anyone. Cardiac victims are in a race against time, and unfortunately, for too many of them, emergency medical services are unable to reach people in need, and time runs out for victims of cardiac arrest.

Fortunately, AEDs are inexpensive and simple to operate. Because of advancements in AED technology, it is practical to train and equip police officers, teachers, and members of other community organizations on how to use these devices.

Over the past 6 years, I have worked with Senator SUSAN COLLINS on a number of initiatives to empower communities to improve cardiac arrest survival rates. We have pushed Congress to support first responders—local police and fire and rescue services—in their efforts to provide early defibrillation. Congress heard our call, and responded by enacting two of our bills, the Rural Access to Emergency Devices Act and the ADAM Act.

The Rural Access to Emergency Devices program allows community partnerships across the country to receive a grant enabling them to purchase defibrillators, and receive the training needed to use these devices. Approximately 95 percent of sudden cardiac arrest victims die before reaching the hospital. With every minute that passes before a cardiac arrest victim is defibrillated, the chance of survival falls by as much as 10 percent. After

only 8 minutes, the victim's survival rate drops by 60 percent. This is why early intervention is essential—a combination of CPR and use of AEDs can save lives.

If we give people in rural communities a chance, they may be able to reverse a cardiac arrest before it takes another life. Unfortunately, the President zeroed out the funding for the Rural AED program after the program was cut by 83 percent in fiscal year 2006 and kept at that level in fiscal year 2007. I am very disappointed that the program was eliminated in the President's budget. Our rural communities deserve better, and I am pleased that the Senate Appropriations Committee recognized this by providing \$3 million in funding for the program this year. That is double last year's funding level and, while it is still much lower than I would like, I hope the final version of this bill includes at least that much in funding.

Heart disease is not only a problem among adults. A few years ago I learned the story of Adam Lemel, a 17-year-old high school student and a star basketball and tennis player in Wisconsin. Tragically, during a timeout while playing basketball at a neighboring Milwaukee high school, Adam suffered sudden cardiac arrest, and died before the paramedics arrived.

This story is incredibly tragic. Adam had his whole life ahead of him, and could quite possibly have been saved with appropriate early intervention. This story helps to underscore some important issues. First, although cardiac arrest is most common among adults, it can occur at any age—even in apparently healthy children and adolescents. Second, early intervention is essential—a combination of CPR and the use of AEDs can save lives.

After Adam Lemel suffered his cardiac arrest, his friend David Ellis joined forces with Children's Hospital of Wisconsin to initiate Project ADAM to bring CPR training and public access defibrillation into schools, educate communities about preventing sudden cardiac deaths and save lives.

The ADAM Act was passed into law in 2003, but has yet to be funded. The ADAM Act is one way we can honor the life of children like Adam Lemel, and give tomorrow's pediatric cardiac arrest victims a chance at life.

The Feingold-Collins amendment provides modest funding for this act just \$200,000. This funding, while not much in the grand scheme of the Federal budget, will help jump start this valuable program. This amendment as drafted would be funded through the Rural AED line; however, I am pleased that the managers share my goal of not taking away any of the already limited Rural AED funding and are looking for additional ways to fund the ADAM Act. I am pleased that our amendment passed the Senate by unanimous consent and I urge the conferees to maintain this small but important program.

My third amendment that passed requires GAO to conduct an assessment

of current State health care reforms and comment on the potential role that Congress could take in assisting States with their efforts. I offered this amendment along with Senators GRAHAM, BINGAMAN, and VOINOVICH. There is momentum in many States to reform the broken health care system. This study would provide an overview of what is working in the States and the effect of Federal laws on State health care initiatives. In addition, the study would provide recommendations on how the Federal Government could better work with States to further efforts.

While Congress may not be able to reach consensus on how to ensure all Americans access to health services, a State-based model allows consideration of politically diverse solutions that could eventually be widely applied. Gathering data on what works at the State level will assist Congress in looking at broader reforms, which is why Senator GRAHAM and I have introduced legislation, with the backing of the Brookings Institute and the Heritage Foundation, to encourage and expand State efforts to extend health care coverage.

My fourth amendment directs GAO to examine the different techniques schools are using to prepare students to achieve on State standardized exams as well as meet State academic standards. Schools in Wisconsin and around the country are facing their sixth year under No Child Left Behind, NCLB, the centerpiece of President Bush's domestic agenda, and I continue to hear grave concerns throughout Wisconsin about the Federal testing mandates contained in NCLB and the ongoing implementation problems with the law.

Wisconsin teachers and parents are concerned about many of the unintended consequences of NCLB, including the narrowing of the curriculum to focus on the subjects that are tested under NCLB—reading and math. As a consequence of more narrowed curriculums, some students are experiencing reduced class time on other important subjects including social studies, civics, geography, science, art, music, and physical education. I have also heard numerous concerns that students are being drilled in reading and math in order to boost performance on these standardized tests, which may not be the best measure of students' higher order thinking skills. Many Wisconsinites are concerned that rote drill exercises in reading and math take the joy out of learning for students and have called for a reexamination of NCLB policies to ensure that a diverse and high-quality curriculum is taught in all of our Nation's schools.

I voted against NCLB in large part because of its Federal testing mandate and the potential ramifications of the primary focus on test scores in order to determine adequate yearly progress in our schools. I also remain deeply concerned that NCLB's testing and sanctions approach has forced some

schools, particularly those in our inner cities and rural areas, to become places where students are not taught, but are drilled with workbooks and test taking strategies, while in wealthy suburban schools, these tests do not greatly impact school curriculums rich in social studies, civics, arts, music, and other important subjects.

I do not necessarily oppose the use of standardized testing in our Nation's schools. I agree that some tests are needed to ensure that our children are keeping pace and that schools, districts, and States are held accountable for closing the persistent achievement gap that continues to exist among different groups of students, including among students in Wisconsin. But the Federal one-size-fits-all testing and punishment approach that NCLB takes is not providing an equal education for all, eradicating the achievement gap that exists in our country or ensuring that each student reaches his or her full potential.

My amendment calls on GAO to examine how the use of different preparation techniques varies based on the demographic characteristics of schools, including the concentration of poverty at schools, whether schools are located in a rural, suburban, or urban environment, and whether schools have been identified for improvement under NCLB. It is my hope that Congress will receive concrete data on how the student preparation varies among different types of schools so that we can get a better sense of how NCLB is impacting our Nation's schools. The disaggregation element of this GAO study should better help us determine whether various preparation techniques, including commercial test preparation programs and narrowing of the curriculum, are correlated with certain school demographics.

I was also pleased to cosponsor an amendment from my colleague, Senator BROWN of Ohio, to prohibit the Department of Education from continuing its problematic evaluation of the Upward Bound program until Congress has a chance to examine this policy as part of the Higher Education Act, HEA, reauthorization. I have been a strong supporter of the TRIO Upward Bound program for many years and continuously hear about the benefits it provides to Wisconsin students entering college, particularly first-generation college students.

Because of my strong support for Upward Bound, I continue to be concerned about the Department of Education's evaluation of Upward Bound, including the mandate that colleges had to recruit more students than they can serve under the Upward Bound program. I agree that Upward Bound, like other Federal programs, needs to be evaluated to ensure Federal dollars are being spent wisely and effectively. But the Federal Government has a duty to design responsible evaluations of Federal programs, and I do not think the Department fulfilled that obligation

with the design of this Upward Bound evaluation. I am pleased the Senate recognized that the ongoing evaluation is troublesome and agreed to prohibit funding for it until Congress can reexamine the Upward Bound evaluation as part of the ongoing HEA reauthorization.

I am pleased that my colleagues supported all of my amendments and accepted them. I thank Chairman HARKIN and Senator SPECTER for their assistance and support with these amendments.

I would also like to comment briefly on an amendment that the Senator from Colorado, Mr. WAYNE ALLARD, brought to a vote. This amendment would have redirected funds from programs deemed ineffective by the Program Assessment Rating Tool, or PART. This program was enacted into law as part of the Government Performance Results Act and is intended to better target Government dollars to the most efficient programs. Senator ALLARD's amendment would have cut the programs considered ineffective by PART by 10 percent, and then sent these dollars to the Federal deficit.

I share Senator ALLARD's goals of efficient Government spending and reducing the deficit; however, I have some concerns about the standards for evaluating Government programs in PART. There are several programs that are making a big, positive difference in communities, that score poorly on the assessment. Some of these programs I have supported for years, such as rural health programs, and various higher education programs. I think it is important to examine this tool more closely and see if there is a way to improve the assessment before cutting these programs. For this reason, I opposed this amendment, which would have had far-reaching implications.

I was pleased to support final passage of this bill which provides essential funding for education, health care, and job training programs. Many of these programs have seen drastic cuts over the past 6 years and I am happy that we have been able to more adequately fund these programs in this bill. I am disappointed that the President continues to say that he will veto this bill and I hope that he will reconsider in the coming days. Too many Americans are depending on the employment, health care, and education services provided in this legislation and they are the ones who will be negatively impacted if the President follows through on his veto threat. Much more remains to be done to correct the inadequate funding for these programs in recent years, but this bill is a step in the right direction.

The PRESIDING OFFICER. Under the previous order, the substitute, as amended, is agreed to.

The amendment (No. 3325), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. HARKIN. Mr. President, we have had a very productive 5 days of debate on the fiscal year 2008 appropriations bill for Labor, Health and Human Services, Education, and related agencies. I would like to again thank the ranking member, Senator ARLEN SPECTER, for his leadership and partnership in helping to shape this bipartisanship bill.

I would also like to take this opportunity to thank the subcommittee staff for the long hours and hard work they put into it. On the Democratic side, I thank Ellen Murray, Lisa Bernhardt, Teri Curtin, Erik Tatemi, Adrienne Hallet, and Mark Laisch. On the Republican side, I thank Bettilou Taylor, Sudip Parikh, and Jeff Kratz. These staff members set a very high standard of professionalism, excellence, and integrity, and we are very fortunate to have people of this caliber in public service.

Mr. President, we are just minutes away from the vote on final passage of the bill. I want to emphasize that this is an overwhelmingly bipartisan bill that meets the priorities of members on both sides of the aisle. Senator ARLEN SPECTER and I produced a bill that passed in committee with the support of 14 of 15 Democrats and 12 of 14 Republicans. This bill funds the most essential, life-supporting and lifesaving services for millions of people in this country. It reflects the values and priorities of the American people.

As I have said before, it is regrettable that, even before we brought this bill to the floor last week, President Bush threatened to veto it because it included a provision to expand embryonic stem cell research, and because it includes \$11 billion in funding above what he requested.

We have done our very best to accommodate the President, and to produce a bill that he can sign. To that end, we removed the stem cell provision from the bill before bringing it to the floor. This is a core priority for me, for Senator SPECTER, and for many other Senators. But we took it out of the bill in order to meet the President halfway. I remain hopeful that, in turn, he will meet us halfway, and join us in this spirit of bipartisan compromise.

I am an optimist, and I hold out hope that, if the President examines the substance of this bill, he will see that the additional funding above his budget request goes to essential programs and services that have been shortchanged in recent years.

President Kennedy said that "to govern is to choose." The President has made his choices. But, under the Constitution, Congress also gets to choose. And, in this bill, we have made the right choices. Let me cite just a few examples:

The President is requesting that we cut the National Institutes of Health—research into cancer, diabetes, Alzheimer's and other diseases—by \$279

million. In this bill, we increase funding for NIH by \$1 billion.

The President requests that we reduce the Head Start program by \$100 million, which would cut tens of thousands of children from the Head Start roles. This bill increases funding for Head Start by a modest \$200 million.

Despite predictions of record energy prices this winter, Mr. Bush requests that we cut the Low Income Home Energy Assistance Program for poor people by \$379 million. In this bill, we maintain LIHEAP funding at last year's level.

Mr. Bush requests that we eliminate the community services block grant, the safety net that includes job training, housing, and emergency food assistance. In this bill, we increase the community service block grant by a modest \$40 million.

In each of these program areas, the bill includes modest, reasonable increases in order to keep pace with inflation or to prevent significant cuts in essential services. This remains a barebones, no-frills bill that conforms to a very conservative budget allocation.

For 5 years, Congress has appropriated countless billions of U.S. taxpayer dollars for schools, job programs, hospitals, and human services in Iraq. Democrats and Republicans on the committee agree that it's time to look after those same needs in this country. And that is exactly what we do in this bill.

As I said, we tried hard to accommodate the President's concerns. There has been so much division and partisanship in Washington in recent months. This bill offers a great opportunity for Congress and the President to show the American people that we can resolve our differences with compromise and bipartisan goodwill. We have met the President halfway—in my opinion, more than halfway. Now it is time for him to respond in kind, and to rescind his veto threat.

It is important that we send a strong, bipartisan message to the American people that, at a time when we are spending enormous sums on wars in Iraq and Afghanistan, we will not neglect or shortchange essential, life-saving, and life-supporting programs and services here at home. I urge my colleagues to vote yes on this important bill. And I urge the President to join us in supporting this bipartisan bill.

I know Senators are eager to vote and go home. I just want to thank all of the Senators for their many kindnesses and their courtesies in bringing this bill to a close. It was 5 days, but it was 5 days of good debate and good amendments. We have a strong bipartisan bill. I hope we will pass it with a strong bipartisan vote, go to conference, and get it to the President's desk as soon as possible.

The PRESIDING OFFICER. The bill having been read the third time, the questions is, Shall the bill pass?

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

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "yea."

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 75, nays 19, as follows:

[Rollcall Vote No. 391 Leg.]

YEAS—75

Akaka	Feingold	Murkowski
Alexander	Feinstein	Murray
Baucus	Grassley	Nelson (FL)
Bayh	Hagel	Nelson (NE)
Bennett	Harkin	Pryor
Bingaman	Hatch	Reed
Bond	Hutchison	Reid
Boxer	Inouye	Roberts
Brown	Isakson	Rockefeller
Byrd	Johnson	Salazar
Cantwell	Kerry	Sanders
Cardin	Klobuchar	Schumer
Carper	Kohl	Shelby
Casey	Landrieu	Smith
Chambliss	Lautenberg	Snowe
Cochran	Leahy	Specter
Coleman	Levin	Stabenow
Collins	Lieberman	Stevens
Conrad	Lincoln	Sununu
Craig	Lott	Tester
Crapo	Lugar	Voinovich
Dole	McCaskill	Warner
Domenici	McConnell	Webb
Dorgan	Menendez	Whitehouse
Durbin	Mikulski	Wyden

NAYS—19

Allard	Cornyn	Kyl
Barrasso	DeMint	Martinez
Brownback	Ensign	Sessions
Bunning	Enzi	Thune
Burr	Graham	Vitter
Coburn	Gregg	
Corker	Inhofe	

NOT VOTING—6

Biden	Dodd	McCain
Clinton	Kennedy	Obama

The bill (H.R. 3043), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. LEAHY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate insists on its amendment and requests a conference with the House, and the Chair appoints the following conferees.

The Presiding Officer appointed Mr. HARKIN, Mr. INOUE, Mr. KOHL, Mrs. MURRAY, Ms. LANDRIEU, Mr. DURBIN,

Mr. REED, Mr. LAUTENBERG, Mr. BYRD, Mr. SPECTER, Mr. COCHRAN, Mr. GREGG, Mr. CRAIG, Mrs. HUTCHISON, Mr. STEVENS, Mr. SHELBY, and Mr. DOMENICI conferees on the part of the Senate.

EXECUTIVE SESSION

NOMINATION OF LESLIE SOUTHWICK TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDING OFFICER (Mr. SALAZAR). Under the previous order, the Senate will go into executive session and the clerk will report the nomination.

The legislative clerk read the nomination of Leslie Southwick, of Mississippi, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. The Republican leader.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send a cloture petition to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 291, the nomination of Leslie Southwick, of Mississippi, to be United States Circuit Judge for the Fifth Circuit.

Mitch McConnell, Arlen Specter, Wayne Allard, Johnny Isakson, Richard Burr, Norm Coleman, David Vitter, Kay Bailey Hutchison, George V. Voinovich, John Thune, Jim DeMint, Tom Coburn, Michael B. Enzi, Elizabeth Dole, Jeff Sessions, Jim Bunning, John Barrasso, Trent Lott, Thad Cochran.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

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

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

Mr. LEAHY. Mr. President, today, the Senate considers the controversial nomination of Leslie Southwick to the United States Circuit Court of Appeals for the Fifth Circuit. Unlike so many of President Clinton's nominees, Mr. Southwick was accorded a hearing on his nomination.

I refused to ambush Leslie Southwick the way Republicans ambushed Ronnie White in 1999. Thus, despite my opposition to this nomination, I made sure that Mr. Southwick was treated fairly and that his nomination was debated and voted upon by the Judiciary Committee. The process has been open and fair and the rights of every Senator Democratic or Republican have been respected.

During the Clinton administration, several outstanding nominees to the Fifth Circuit were pocket filibustered successfully by the Republicans. They included Judge Jorge Rangel of Texas, Enrique Moreno of Texas, and Alston Johnson of Louisiana. They were pocket filibustered without a hearing or committee consideration.

This is a seat on the Fifth Circuit that would have been filled long ago but for a series of troubling nominations. In the last Congress, President Bush nominated Michael Wallace to this seat, the first circuit court nomination since 1982 to receive a unanimous rating of "not qualified" from the American Bar Association.

This is the seat to which President Bush had previously used a recess appointment to put Charles Pickering on the bench, after his nomination was voted down by the Judiciary Committee in 2002. President Bush announced that appointment, as I recall, on the Martin Luther King Jr. holiday weekend in 2004, despite the significant concerns and open debate about that controversial nomination.

Those concerns included Judge Pickering's intervention with the Department of Justice in an attempt to get the sentence of a convicted cross burner reduced.

The nomination we consider today has engendered significant opposition. Those opposing this nomination include: the Leadership Conference on Civil Rights, the Human Rights Campaign, the Mississippi State Conference of the NAACP, the NAACP Legal Defense Fund, Lambda Legal, the National Employment Lawyers Association, the Magnolia Bar Association, the National Organization of Women, the National Urban League, the AFL-CIO, the Congressional Black Caucus, and many more.

A number of members of the Judiciary Committee spoke eloquently about their concerns and doubts during committee consideration on August 2.

I have given careful consideration to Mr. Southwick's record. Many share with me my concern about Judge Southwick's deciding vote in *Richmond v. Mississippi Department of Human Services*, 1998. This decision reinstated a white state social worker who had been fired for using a racial epithet what has come to be known colloquially as "the n word" in referring to an African-American coworker during a meeting with high-level company officials.

That epithet was called by one Fifth Circuit opinion "a universally recognized opprobrium, stigmatizing African-Americans because of their race." Yet the hearing officer at her appeal before the State Employee Appeals Board suggested that the use of the racial slur "was in effect calling the individual a 'teacher's pet.'" I am not sure any African American would consider it being called a "teacher's pet."

Judge Southwick provided the deciding vote to uphold the hearing officer's

conclusion, the opinion he joined finding that the racial slur was "not motivated out of racial hatred or animosity directed at her co-worker or toward blacks in general, but was, rather, intended to be a shorthand description of her perception of the relationship existing between the [co]worker and [a] DHS supervisor."

In dissent, two judges criticized this opinion for presenting a "sanitized version" of the facts and for suggesting that "absent evidence of a near race riot, the remark is too inconsequential to serve as a basis of dismissal." The dissent found that this racial epithet is "inherently offensive, and [its] use establishes the intent to offend." The dissent was right.

In my view, the Mississippi Supreme Court did the right thing in reversing that decision and I commend them. There is no place for "the n word" in the workplace or in use by a supervisor to and about an employee. None. Just as there is no place for it in this body or anywhere else. I am not naive enough not to know the word is used in parts of America, but it should be condemned by all wherever it is used, and it certainly is by me.

If, as Mr. Southwick now says, his view of the *Richmond* case was the narrow, technical, legalistic one that he now says justifies his providing the deciding vote to the majority opinion, he could have said so back then, in a separate opinion.

He could have noted that he felt such use of "the n word" was inexcusable, but that he felt constrained by his limited role on appeal to apply a standard of review that compelled him to reverse Judge Graves of the Circuit Court and reaffirm the Employee Appeals Board's reinstatement of the offending supervisor with back pay. That is not what he did, however.

In the face of a cogent dissent, he provided the deciding vote to uphold the decision excusing that remark.

Likewise I am troubled by Judge Southwick's actions in *S.B. v. L.W.*, in which he voted to uphold a decision taking an 8-year-old child away from her biological mother due to her mother's sexual orientation and the fact that she was living with a female partner.

My concern is not just that Judge Southwick joined the majority opinion but that he went out of his way to sign on to a concurring opinion that suggested that sexual orientation is an individual "choice" and an individual must accept that losing the right of custody over one's child is one of the "consequences flowing from the free exercise of such choice."

I also have concerns about his approach in some cases involving allegations of race discrimination in jury selection, such as his opinion in a 1997 case, *Brock v. Mississippi* upholding a criminal conviction where the prosecution struck an African-American juror, purportedly because he lived in a high crime area.

The dissenting judge criticized Judge Southwick's opinion for accepting a strike which "on its face appears geared toward a racially identifiable group." In another case involving jury discrimination, *Bumphis v. State*, 1996, three judges criticized Judge Southwick's majority opinion for "establishing one level of obligation for the state, and a higher one for defendants on an identical issue."

His legal writing also points to a narrow view of the role of the Federal courts in upholding protections against race discrimination. In one article, he found "compelling" a statement of a Mississippi Supreme Court Justice that "the judiciary is not the avenue to effectuate the removal of the Confederate battle flag from public property."

I have questions whether he would be balanced in protecting the rights of employees given the overwhelming number of cases 160 out of 180 written decisions—in which he has offered a narrow interpretation of the law to favor protecting business and corporate interests at the expense of the rights of workers and consumers.

In one 1999 case, *Dubard v. Biloxi, H.M.A.*, Judge Southwick authored a dissent expressing the virtues of a legal doctrine that would allow employers to fire employees for any reason, even though such an analysis was not relevant in the case before him.

My concerns about his bias are heightened by a law review article he wrote characterizing litigation against tobacco companies led by former Mississippi Attorney General Michael Moore as destabilizing and posing separation of powers concerns.

As I said in opposing this nomination in committee, this is not a decision I come to lightly. I take seriously the strong support of Senator COCHRAN and Senator LOTT whom I respect, and I have expressed my concerns directly to them as well as to the White House.

I also take seriously Mr. Southwick's answers to my questions and to those of others in connection with his hearing. I was glad to see that he now acknowledged the offensiveness of the racial epithet used in the *Richmond* case and also that human rights law has evolved since 2001 when he joined the decision in the child custody case.

Still, I share the deep disappointment of members of the African-American and civil rights communities that this administration continues to renege on a reported commitment to appoint an African American to the Mississippi Federal bench.

In more than 6 years, President Bush has failed to do so. He has appointed only 20 African-American judges to the Federal bench, compared to 52 African-American judges appointed by President Clinton in his first 6 years in office.

With an ever-growing number of outstanding African-American lawyers in Mississippi, the State with the highest percentage of African Americans in the country, it is not as if there is a dearth

of qualified candidates. Nonetheless, President Bush has now submitted 10 nominees to the Federal bench in Mississippi, seven at the district level and three to the United States Court of Appeals for the Fifth Circuit, and none of these nominees has been African American.

Our Nation's diversity is one of its greatest strengths, and I am disappointed that the President has missed yet another opportunity to reflect this great strength in our Federal courts. Many of us believe that diversity makes America what it is. It is the diversity in our States, our courts, this body, and our families that makes us stronger.

When viewed against his record on the bench, the importance of this seat on the Fifth Circuit, and the troubling lack of diversity on that court, I am not convinced that he is the right nominee for this vacancy at this time. I shall vote no on cloture and, if it is invoked, no on this nomination.

I ask unanimous consent that letters of opposition and others be printed in the RECORD.

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

LANGROCK SPERRY & WOOL, LLP,
Middlebury, VT, June 5, 2007.

Hon. PATRICK J. LEAHY,
Senate Russell Office Building,
Washington, DC.

DEAR PAT: I understand the nomination of Leslie Southwick to the 5th Circuit Court of Appeals is coming up for a vote this Thursday. The little I know about Judge Southwick absolutely frightens me. His attitude towards lesbian parents is just totally inconsistent with Vermont philosophy and with respect for human dignity. I also understand he has been involved in some cases which would indicate insensitivity to African Americans. I would certainly hope that your Committee does not approve him.

Sincerely yours,

PETER F. LANGROCK.

LEADERSHIP CONFERENCE
ON CIVIL RIGHTS,
Washington, DC, October 23, 2007.

DEAR SENATOR: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the confirmation of Leslie H. Southwick, a former Mississippi Court of Appeals judge, to the United States Court of Appeals for the Fifth Circuit. His record raises too many questions about his commitment to civil and human rights for him to be entrusted with a lifetime appointment to the federal judiciary. We urge you to vote no on cloture on the Southwick nomination.

The federal courts of appeal are the courts of last resort in most federal cases. Moreover, the Fifth Circuit has the highest percentage of minority residents of all the federal circuits, making Judge Southwick's record on matters of civil rights particularly important. Unfortunately, Judge Southwick's decisions as a state court judge, along with his hearing testimony, indicate that he favors the interests of the powerful over the interests of minorities, working people, and others who depend on judges to stand up for them. This record warrants the rejection of Judge Southwick's nomination to the Fifth Circuit.

In *Richmond v. Mississippi Dep't of Human Services*, Judge Southwick joined a 5-4 ruling upholding the full reinstatement order of the state's Employee Appeals Board (EAB) of a white state social worker who had been fired for calling an African-American co-worker "a good ole nigger." The ruling he joined had declared that, taken in context, this slur was an insufficient ground to terminate the white plaintiffs employment in part because it "was not motivated out of racial hatred or racial animosity directed toward a particular co-worker or toward blacks in general." Moreover, the EAB decision upheld by the Court of Appeals decision trivialized the use of the words "good ole nigger" by comparing them to the expression "teacher's pet." The Court of Appeals did nothing to distance itself from this aspect of the EAB decision.

The reasoning offered by Judge Southwick and his colleagues in the majority is nothing short of baffling. As two dissenters in the 5-4 decision rightfully pointed out: "The word 'nigger' is, and has always been, offensive. Search high and low, you will not find any nonoffensive definition for this term. There are some words, which by their nature and definition are so inherently offensive, that their use establishes the intent to offend."

Fortunately the Supreme Court of Mississippi reversed the decision, stating that the EAB should not simply be upheld, but rather that the matter should be remanded to the EAB for consideration of whether full reinstatement was truly justified under the circumstances or whether some other penalty short of discharge might be appropriate.

In another case, *S.B. v. L.W.*, Judge Southwick joined an opinion that upheld the removal of an eight-year-old girl from the custody of her bisexual mother. In addition to joining the majority opinion, he was the lone judge to join a colleague's gratuitously anti-gay concurring opinion. The concurrence argued the "choice" to engage in homosexuality comes with consequences, up to and including the consideration of "the homosexual lifestyle" as a determining factor in child custody cases. The views expressed in the concurring opinion raise doubts about Judge Southwick's interest in ruling fairly in cases that involve the civil rights of gays and lesbians.

In *Dubard v. Biloxi, H.M.A.*, Judge Southwick wrote a dissenting opinion in which he extolled the virtues of employment-at-will, a doctrine that provides that employers should be able to fire employees for virtually any reason, even though his analysis was not relevant to reaching a decision in the case. He wrote that "I find that employment at will, for whatever flaws a specific application may cause, is not only the law of Mississippi but it provides the best balance of the competing interests in the normal employment situation. It has often been said about democracy, that it does not provide a perfect system of government, but just a better one than everything else that has ever been suggested. An equivalent view might be seen as the justification for employment at will." His gratuitous comments raise questions about his ability to separate his own views from his duty to follow the law in labor and employment cases.

Judge Southwick also has a poor record in cases involving race discrimination in jury selection. He has routinely rejected defense claims that prosecutors struck African-American jurors based on race. At the same time, however, he has usually upheld allegations by prosecutors that defendants tried to strike white jurors on the basis of race. One of Judge Southwick's own colleagues, in response, accused him of "establishing one level of obligation for the State, and a higher one for defendants on an identical issue."

His record also shows a troubling tendency, in state employment law and tort cases, to favor business and insurance interests over injured parties. He did so in 160 out of 180 such published cases in which at least one judge dissented, giving him an 89 percent pro-business voting record.

When asked by Senator Durbin (D-IL) during live questioning at his hearing if he could think of one example of an unpopular decision he made in favor of the powerless, the poor, minorities, or the dispossessed, Judge Southwick responded that he could not. In response to a follow-up written question posed by Senator Durbin, Judge Southwick indicated that he could not find a single nonunanimous case, of the more than 7000 opinions that he wrote or joined, in which he voted in favor of a civil rights plaintiff or wrote a dissent on behalf of a plaintiff.

Given the tremendous impact that federal judges have on civil rights and liberties, and because of the lifetime nature of federal judgeships, no judge should be confirmed unless he or she demonstrates a solid commitment to protecting the rights of all Americans. Because Judge Southwick has failed to meet this burden, we urge senators to vote no on cloture on the nomination.

Thank you for your consideration. If you have any questions, please contact Nancy Zirkin, Vice President and Director of Public Policy, at 202-263-2880, or Paul Edenfield, Counsel and Policy Analyst, at 202-263-2852.

Sincerely,

WADE HENDERSON,
President & CEO.

NANCY ZIRKIN,
Vice President, Director
of Public Policy.

HUMAN RIGHTS CAMPAIGN,
Washington, DC, May 23, 2007.

DEAR MEMBERS OF THE COMMITTEE ON THE JUDICIARY: I am writing on behalf of the Human Rights Campaign and our 700,000 members and supporters to oppose the nomination of Leslie Southwick to the United States Court of Appeals for the Fifth Circuit. As a Mississippi Judge, Southwick demonstrated a serious lack of understanding of gay people and families. His statements during his hearing before this Committee and his written responses to your questions do not satisfy us that his positions have evolved nor that he would fairly judge cases involving the rights of gay, lesbian, bisexual, and transgender ("GLBT") Americans.

During his tenure on the Mississippi Court of Appeals, Judge Southwick (now in private practice) participated in a custody case involving a lesbian mother. The majority decision, which Southwick joined, took an eight-year-old child from the mother, citing in part that the mother had a "lesbian home." The opinion further denigrates what it calls the "homosexual lifestyle" and the "lesbian lifestyle."

More disturbingly, Judge Southwick joined a concurrence written by Judge Payne—completely unnecessary to effectuate the result—that emphasized Mississippi's public policy against lesbian and gay parents (using only the term "homosexuals"). Judge Southwick was the only judge in the majority to join Judge Payne's concurrence, which is rife with misconceptions and biases.

The concurrence does not even refer to gay individuals, but rather focuses on "the practice of homosexuality." It then cites Mississippi's law prohibiting same-sex couples from adopting children—even though this was not an adoption case, but rather a case regarding a biological mother's right to retain custody of her child. The opinion even goes so far as to cite the state's sodomy law (subsequently invalidated by the Supreme Court's decision in *Lawrence v. Texas*).

Perhaps most troublingly, the concurrence states that even if the mother's sexual acts are her choice, she must accept the fact that losing her child is a possible consequence of that "choice." This statement underscores Judge Southwick's disregard for commonly accepted psychiatric and social science conclusions. The American Psychological Association (APA) has made clear that sexual orientation is not a choice. The APA, along with every other credible psychological and child welfare group, has also concluded that lesbian and gay people are equally successful parents as their heterosexual counterparts. This disregard for widely accepted social science conclusions has ramifications not only for cases involving gay and lesbian people, but also in any case where respect for science comes into play—whether this involves reproductive choice, people with disabilities, environmental studies, to name a few.

No parent should face the loss of a child simply because of who they are. If he believes that losing a child is an acceptable "consequence" of being gay, Judge Southwick cannot be given the responsibility to protect the basic rights of gay and lesbian Americans.

When questioned before this Committee about why he joined this offensive concurrence, Southwick gave the unsatisfactory response that he did not write it. He further stated that the concurrence reflected Mississippi's public policy, but did not indicate why he joined the concurrence that his colleagues deemed unnecessary. He did not distance himself from the concurrence or the language that it contains.

In his written responses to questions about this case and about the rights of gay and lesbian Americans, Southwick did not provide adequate reassurance that his position has changed or that his understanding has evolved. Although he repeatedly indicated that *Lawrence v. Texas* is now controlling precedent, having overruled *Bowers v. Hardwick*, this is an insufficient answer. Although we are hopeful that *Lawrence* will bring about greater equality for GLBT Americans, Southwick's promise to adhere to that precedent does not address the question of whether he believes that gay people should have the same parenting rights as others.

The United States Court of Appeals for the Fifth Circuit has historically paved the way for civil rights advances. We believe that Judge Southwick's nomination is inconsistent with this important legacy, and would turn back the tide of progress by denying equal protections to GLBT Americans.

We therefore oppose his nomination and request that you vote against his confirmation. Only a judge who has demonstrated that he can be a fair and impartial judge for all Americans, regardless of their sexual orientation, is entitled to confirmation on this important court. For more information, please contact Senior Public Policy Advocate David Stacy at david.stacy@hrc.org, or Legal Director Lara Schwartz at lara.schwartz@hrc.org.

Sincerely,

ALLISON HERWITT,
Legislative Director.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
MISSISSIPPI STATE CONFERENCE,
Jackson, MS, May 9, 2007.

Hon. PATRICK LEAHY,
Dirksen Senate Office Building,
Washington, DC.

Hon. ARLEN SPECTER,
Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SPECTER: The Mississippi State Con-

ference of the NAACP is strongly opposed to the nomination of Leslie Southwick to the Fifth Circuit Court of Appeals.

As you are well aware, previous nominations to this particular seat on the Fifth Circuit have raised serious civil rights problems. In reviewing this history, we cannot help but conclude that this Administration is determined to place a person hostile to civil rights in the Mississippi seat on the Fifth Circuit. Judge Charles Pickering was nominated in 2001. The Senate refused to confirm him, largely based on his civil rights record. President Bush then nominated Michael Wallace to the same seat. The American Bar Association found Mr. Wallace to be "unqualified," due to his judicial temperament regarding civil rights issues. Wallace withdrew his nomination at the end of 2006. Now, President Bush has named yet a third nominee with a troubling civil rights record.

We note that the Southwick nomination does nothing to ameliorate the egregious problem with the lack of diversity on Mississippi's federal bench. Mississippi has the highest African-American population of any state (36%). Yet there has never been an African American appointed to represent Mississippi on the Fifth Circuit. African-American representation on the federal district court in Mississippi has been limited to one judge, Judge Henry Wingate, appointed over twenty years ago. In his two terms, President Bush has made ten nominations to the federal bench in Mississippi—district and appellate. None were African American. This is extremely disturbing to many Mississippians, who believe the State should be fairly represented on the federal bench.

The civil rights record of Judge Southwick on the Mississippi Court of Appeals gives us great pause. We are deeply troubled by his rulings on race discrimination in the areas of employment and jury selection.

Judge Southwick participated in a truly stunning decision, *Richmond v. Mississippi Dep't of Human Services*. He joined a ruling that a Mississippi state agency could not terminate an employee for using the word "nigger" toward an African-American coworker. At a business conference, the white employee had called the black employee "a good ole nigger," and then used the same term toward the employee the next day at the office. The state agency fired the white employee. But a hearing officer reinstated the employee, finding that calling the employee "a good ole nigger" was equivalent to calling her "teacher's pet." Southwick upheld the reinstatement.

The opinion endorsed by Southwick makes outrageous conclusions about the use of the term "nigger" in the workplace. The opinion states: "[The white employee] presented proof that her remark, though undoubtedly ill-advised and indicative of a rather remarkable insensitivity on her part, was not motivated out of racial hatred or racial animosity directed toward a particular co-worker or toward blacks in general." Astonishingly, the court credited the white employee's testimony that her remark was intended to be "a shorthand description" of the relationship between an employee and a supervisor.

Two of Southwick's colleagues strongly dissented. They stated that it "strains credulity" to compare calling the employee "a good ole nigger" with "teacher's pet." The dissent wrote: "The word 'nigger' is, and has always been offensive. . . . There are some words, which by their nature and definition are so inherently offensive, that their use establishes the intent to offend. . . . The character of these terms is so inherently offensive that it is not altered by the use of modifiers such as 'good ole.' . . . [The rulings] seem to suggest that absent evidence of a near race riot, the remark is too incon-

sequential to serve as a basis for dismissal. Such a view requires a level of myopia inconsistent with the facts and reason." Indeed, the Mississippi Supreme Court *unanimously* reserved the ruling joined by Southwick to uphold the reinstatement of the white employee.

Additionally, we are disturbed by Judge Southwick's rulings on race discrimination in jury selection. Dozens of such cases reveal a pattern by which Southwick rejects claims that the prosecution was racially motivated in striking African-American jurors while upholding claims that the defense struck white jurors on the basis of their race. In *Bumphis v. State*, an appellate colleague accused Southwick of "establishing one level of obligation for the State, and a higher one for defendants on an identical issue."

Finally, on issues affecting workers, consumers and personal injury victims, Judge Southwick rules overwhelmingly in favor of employers and corporations. We question his ability to be a fair and impartial decision-maker in these cases as well. Mississippians need to be confident that they will receive equal justice before the federal courts.

Respectfully yours,

DERRICK JOHNSON,
President.

CONGRESSIONAL BLACK CAUCUS,
Washington, DC, June 6, 2007.

Hon. PATRICK J. LEAHY,
Russell Senate Office Building,
Washington, DC.

Hon. ARLEN SPECTER,
Hart Senate Office Building,
Washington, DC.

DEAR MR. LEAHY AND MR. SPECTER: We write to be clear concerning the strong opposition of the Congressional Black Caucus to moving Leslie Southwick, formerly of the Mississippi Court of Appeals, through committee for the Fifth Circuit Court of Appeals. We are enclosing the press release that the Caucus issued just before Memorial Day recess asking that Leslie Southwick not be listed for a vote in committee. We understand that, nevertheless, Mr. Southwick may have a vote in committee on Thursday, June 7, 2007. We are astonished that the committee would seriously consider this nominee on a circuit that hears cases affecting more Blacks and Hispanics than any circuit in the country. Mr. Southwick's long record, revealing inexcusably insensitive and hostile views on race and on other issues that have directly harmed people of color, should spell the end of his consideration for the Fifth Circuit.

The enclosed release mentions the most obvious and overt racial example, involving Mr. Southwick's concurrence in *Richmond v. Mississippi Department of Human Services*, 1998 Miss. App. LEXIS 637 (Miss. Ct. App. 1998), allowing the use of a racial slur that was unanimously overruled, but importantly refers to many other areas of equally deep concern to us because they involved average Mississippi residents who typify the Black, Hispanic, and white residents of the Circuit.

Mr. Southwick's record provides nothing less than a case study of a judge with a closed mind and fixed far-right views. In no area of law have we been able to find decisions that did not seem to be entirely predicted by an ideological predisposition. We believe that the committee should be impressed by the frequency with which Southwick's opinions and concurrences have been overruled. Our investigation of 10 years of Southwick decisions reveals a one-sided animus against workers and consumers, in particular, with rulings almost always favoring business and insurance interests and almost never for working people and consumers.

Our Caucus is most concerned about Mr. Southwick's ability to afford equal justice under law in the Circuit where racial discrimination has always been most pronounced. The Southwick decisions show a remarkable predisposition to rule for whites alleging improper use of peremptory challenges and against Blacks who make similar allegations regarding peremptory challenges. Nothing could be more disturbing today, considering that Congress has allowed racially unfair mandatory minimums and sentencing guidelines to remain in tact, virtually destroying a generation of African American men. Rep. BENNIE THOMPSON's Mississippi constituents were profoundly and negatively injured during Southwick's tenure in virtually every area of state law. We ask that you avoid elevating Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit, where he is likely to do the same harm to residents of three states—Texas, Louisiana, as well as Mississippi.

We want to be clear that the Congressional Black Caucus could not be more troubled by the transformation of the Fifth Circuit by judges that make it difficult to believe in the fairness, balance and openness of the judiciary. Five members of the CBC represent constituents in this circuit, the largest number members in anyone circuit. The Fifth Circuit presides over the largest percentage of minority residents (44%) of any circuit and Mississippi has the highest African-American population (36%) of any state in the country. We therefore would take very seriously the reach to place yet another farright judge with offensive racial views on the Fifth Circuit so late in President Bush's last term. We ask that you reject Leslie Southwick.

Sincerely,

CAROLYN C. KILPATRICK,
Chairperson, Congressional Black Caucus.

BENNIE THOMPSON,
CBC Member—Mississippi.

Mr. LEAHY. I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I urge my colleagues to vote to cut off debate—that is, to invoke cloture—on the pending nomination of Judge Leslie H. Southwick for the U.S. Court of Appeals for the Fifth Circuit and then to vote to confirm him.

Judge Southwick comes to this nomination with an outstanding record. He received his bachelor's degree cum laude from Rice University and a J.D. from the University of Texas law school in 1975.

He was a law clerk for Judge John Onion, Jr., of the Texas Court of Criminal Appeals. He was a law clerk for Judge Charles Clark of the Fifth Circuit Court of Appeals. He practiced law from 1977 through 1989. He was a Deputy Assistant Attorney General for the U.S. Department of Justice, Civil Division, from 1989 to 1993. He has been a judge on the Mississippi Court of Appeals, which is an intermediate court, for some 12 years.

Judge Southwick has participated in about 6,000 cases and has personally authored some 985 opinions.

In a very remarkable move, when Judge Southwick was 53 years old—he had been in the Army Reserve since he

was 42, when he obtained an age waiver in order to join the Army Reserve—and in the year 2003, when he was 53 years old, he volunteered to transfer to a line combat unit. He was deployed to Iraq, serving as a staff judge advocate in forward operating bases near Najaf.

Major General Harold Cross, Judge Southwick's commanding officer, said:

This was a courageous move; as it was widely known at the time that the 155th was nearly certain to mobilize for overseas duty in the near future.

Judge Southwick was voted out of the Judiciary Committee on August 2 of this year on a bipartisan basis with a favorable recommendation.

Judge Southwick's critics have pointed to only two cases—where he was in a concurrence and did not write the opinions. One case involved the issue of the punishment for someone in Civil Service who used a very derogatory racial term. When that case was reviewed, it was decided that since the individual had made only an isolated remark, and immediately apologized, that it would be excessive to fire that person but that the penalty should be something less. That case was reviewed by the Mississippi Court of Appeals on a very constricted standard as to whether the finding was arbitrary and capricious—which is a very high standard—and that applicable standard determined that firing was excessive.

The case then went to the Supreme Court of Mississippi, and it agreed with the appellate court's conclusion that the dismissal was unwarranted. In this case they said:

[W]e find that the harsh penalty of dismissal . . . from her employment is not warranted under the circumstances.

Now, I emphasize that in both of these cases, Judge Southwick did not write the opinions but only concurred in the result. While some might say it would have been preferable to take a different position, in the context of deciding some 6,000 cases and having written some 985 opinions, that is very little to pick at.

The second case was a matter where the issue of custody came up. After an extensive hearing, the trial judge awarded custody to the father, and there was a reference to the fact that the mother was a lesbian. Here again, the references in the opinion—again, not written by Judge Southwick—might have been somewhat more sensitive. In the overall context, it is hardly the basis for denying confirmation to Judge Southwick.

I met with Judge Southwick at length, had a long talk with him about his approach to the judiciary, about his legal background. He is a very mild-mannered, very temperate man, who on the credentials, in black and white, has an outstanding record and in person was very impressive.

It is worth noting that a number of former African-American clerks have spoken out in solid support of Judge Southwick.

La'Verne Edney, a distinguished African-American woman who is a part-

ner at a prominent Jackson, MS, law firm and a member of the Magnolia Bar Association, the Mississippi Women Lawyers' Association, and a member of the Mississippi Task Force for Gender Fairness, stated this:

When I finished law school . . . I believed that my chances for landing a clerkship were slim because there was only one African-American Court of Appeals judge on the bench at the time and there were very few Caucasian judges during the history of the Mississippi Supreme Court or the Court of Appeals . . . who had ever hired African-American law clerks. . . . While Judge Southwick had many applicants to choose from, he saw that I was qualified for the position and granted me the opportunity.

As a clerk, Ms. Edney observed:

It did not matter the parties' affiliation, color or stature—what mattered was what the law said and Judge Southwick worked very hard to apply it fairly.

Patrick Beasley, a practicing attorney in Jackson, MS, who also is African American, endorsed Judge Southwick for his quality of being fair to minorities. Mr. Beasley wrote:

I speak from personal experience that Leslie Southwick is a good man who has been kind to me for no ulterior reason. I am not from an affluent family and have no political ties. While I graduated in the top third of my law school class, there were many individuals in my class with higher grade point averages and with family "pedigrees" to match. Yet, despite all of the typical requirements for the clerkship that I lacked, Judge Southwick gave me an opportunity. Despite [those who criticize him], Judge Southwick is a fair man and this is one of the qualities that makes him an excellent choice for the Fifth Circuit. . . .

Judge Southwick has ruled numerous times in favor of workers, the so-called little guy.

For example, in *Sherwin Williams v. Brown*, Judge Southwick held that a 45-year-old carpet layer was permanently and totally industrially disabled due to an onsite injury and that the carpet layer made reasonable efforts to obtain other employment.

In *United Methodist Senior Services v. Ice*, Judge Southwick affirmed the award of workers' compensation benefits to a woman who hurt her back while working as a certified nursing assistant, despite her first employer's claim that she exacerbated the injury during her subsequent employment.

In *Kitchens v. Jerry Vowell Logging*, Judge Southwick reversed the Workers' Compensation Commission's decision that a truck driver from a logging company did not suffer a permanent loss of wage earning capacity and remanded the case for further consideration.

In *McCarty Farms, Inc. v. Caprice Banks*, Judge Southwick concurred with an opinion affirming the Workers' Compensation Commission's award of permanent partial disability benefits for a woman who experienced a 70-percent industrial disability to her right arm and a 30-percent loss to her left.

Indeed, contrary to some suggestions, Judge Southwick has spoken out in dissent in favor of workers' rights.

In *Total Transportation Inc. v. Shores*, Judge Southwick joined with three other dissenters in a 6-to-4 decision, which would have upheld an award of workers' compensation benefits for a truck driver's widow, while the majority ruled in favor of the employer.

In *Burleson v. Hancock County Sheriff's Department*—a 6-to-3 decision—Judge Southwick wrote a dissent in which he argued that a public employee was improperly terminated without sufficient due process under the U.S. Constitution, while the majority ruled in favor of the employer.

Judge Southwick has ruled in favor of tort victims and against businesses in many cases. Illustrative are *Duckworth v. Wal-Mart Stores*, *Breland v. Gulfside Casino Partnership*, *Martin v. BP Exploration & Oil*, and *Wilkins v. Bloodsaw*.

Mr. President, I ask unanimous consent that a description of these cases be printed in the RECORD.

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

In *Duckworth v. Wal-Mart Stores*, Judge Southwick joined his colleagues in reversing the trial court's directed verdict against a customer who had slipped on an unknown substance at a Wal-Mart.

In *Breland v. Gulfside Casino Partnership*, Judge Southwick joined an opinion for the court that reversed summary judgment for a casino in a slip and fall action brought by a patron who had suffered multiple injuries falling down the casino's staircase.

In *Martin v. BP Exploration & Oil*, Judge Southwick joined his colleagues in reversing summary judgment against a plaintiff who injured her ankle upon exiting a gas station's restroom on an allegedly poorly constructed access ramp.

In *Wilkins v. Bloodsaw*, Judge Southwick joined an opinion for the court that reversed a grant of summary judgment in favor of a Pizza Hut, which was sued by a mother who was injured when her disabled son fell as she tried to help him exit the restaurant.

Mr. SPECTER. Judge Southwick has voted in favor of criminal defendants on numerous occasions, often in dissent. I cite a series of cases: *Jones v. State*, *Parker v. State*, *Mills v. State*, and *Harris v. State*, and ask unanimous consent that a description of these cases be printed in the RECORD.

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

In *Jones v. State* (a 5-5 decision), Judge Southwick dissented, arguing for reversing a conviction because the indictment did not provide the defendant with sufficient clarity and specificity to know with certainty what crime was being charged.

In *Parker v. State* (a 6-4 decision), Judge Southwick dissented (in an opinion joined by some of his Democratic brethren), arguing that a murder conviction should be reversed because the trial judge failed to give a proper jury instruction.

In *Mills v. State* (a 6-3 decision), Judge Southwick dissented from the majority opinion affirming a drug conviction on the grounds that the court should not have admitted a statement by the defendant's four-year-old son, and the state failed to disclose a piece of evidence against the defendant that it had in its possession.

In *Harris v. State* (a 5-4 decision), Judge Southwick dissented from the majority opinion affirming a DUI conviction on the grounds that the trial court erroneously allowed the state to avoid proving all the elements charged in the indictment.

Mr. SPECTER. Further, Judge Southwick has voted in favor of the so-called underdogs. The suggestion that he is biased against women and homosexuals is contradicted by a number of cases: *Curtis v. Curtis*, *Kmart Corp. v. Lee*, *Hughey v. State of Mississippi*. Again, I ask unanimous consent that a description of these cases be printed in the RECORD.

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

In *Curtis v. Curtis*, Judge Southwick wrote for a divided court and upheld the trial court's grant of divorce in favor of the wife on the grounds of adultery. The dissent would have reversed and remanded.

In *Kmart Corp. v. Lee*, Judge Southwick wrote an opinion upholding the lower court's decision to award \$500,000 to a woman who slipped on antifreeze in a Kmart. Judge Southwick sympathized with the woman, stating: "Before the fall, Lee was a hard working, independent woman who was able to take care of many problems at the apartment complex she managed herself. . . . now she is unable to work a full day. . . ."

In *Hughey v. State of Mississippi*, Judge Southwick affirmed the trial court's decision to disallow cross-examination as to the victim's sexual preference. He recognized that whether the victim was homosexual was not relevant to the defense and that such a line of inquiry would produce undue prejudice.

Mr. SPECTER. That is a very short statement of the qualifications of Judge Southwick. I believe if Judge Southwick were under consideration for any circuit court of appeals except for the Fifth Circuit—which has had a history of difficulties in obtaining confirmation and has had an overtone of concern about civil rights—if he were up for any other circuit, there would be no hesitation.

This man ought to be judged on the basis of his own record and his own qualifications. But he has demonstrated fairness and an appreciation for the rule of law and for equality regardless of race, color, creed and regardless of standing and has been willing to stand up for plaintiffs in tort cases and defendants in criminal cases and, as stated earlier, women and those of a different choice of sexual orientation, so that on the record he is deserving of confirmation.

It is my hope he will be judged as an individual. That is the American way. By that standard, he certainly would be confirmed.

Mr. President, how much time did I consume in my speech?

The PRESIDING OFFICER. The Senator has consumed 14 minutes.

Mr. SPECTER. I thank the Chair.

I now yield 20 minutes to the distinguished Senator from California and then 10 minutes to the Senator from Mississippi, Mr. LOTT. And if Senator—

Mr. CARDIN. Mr. President, there are still some requests on our side for

time. I would hope we would have a chance—

Mr. SPECTER. Mr. President, I ask Senator CARDIN, how much time would the Senator like?

Mr. CARDIN. Mr. President, I will be speaking for about 10 minutes.

Mr. SPECTER. Mr. President, 10 minutes to Senator CARDIN. And if Senator COCHRAN desires time: unlimited time, if he so desires.

Mr. COCHRAN. Five minutes.

Mr. SPECTER. Mr. President, Senator COCHRAN asks for 5 minutes.

I thank the Chair and yield the floor.

Mr. CARDIN. Mr. President, parliamentary inquiry: I was under the impression that time was divided between the proponents and opponents.

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Mr. President, may I inquire if Senator CARDIN is speaking in opposition?

Mr. CARDIN. Mr. President, I will be speaking in opposition to the nomination.

Mr. SPECTER. Mr. President, I think Senator CARDIN needs his time from Senator LEAHY, but I am sure there would be no difficulty in having 5 minutes.

Mr. CARDIN. I understand that. I wonder if we would follow the normal practice of allowing those in opposition to be able to speak in regular order rather than having to wait for the time.

Mr. SPECTER. I ask the Senator, do you want to speak now?

Mr. CARDIN. Yes, I would prefer to have an opportunity to speak.

Mr. SPECTER. I think that would be acceptable, if it is OK with the Senator from California.

Mrs. FEINSTEIN. That is fine.

Mr. SPECTER. Mr. President, I ask consent that Senator CARDIN be recognized now and then Senator FEINSTEIN be recognized next, and if others appear, it is appropriate, as Senator CARDIN suggested, that we alternate.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. I thank Senator SPECTER for the courtesy. I notice Senator LEAHY is not on the floor, and I appreciate my colleague from Pennsylvania organizing the debate on the floor.

I appreciate that.

This is a unique body, the Senate of the United States. One of our most important responsibilities is the advice and consent on Presidential appointments on the confirmation of Federal judges. The Constitution envisions that we will use independent judgment in order to make these decisions. Article III, section 2, clause 2 of the Constitution gives us the power to confirm Federal judges.

I know all of my colleagues know these are lifetime appointments, so this is our one chance in order to evaluate those who will serve as Federal judges. We are talking about the U.S. Court of Appeals. For most Federal cases, this will be the final decision on a case that is brought in the

Federal court. Very few in percentages of the cases reach the Supreme Court of the United States. So the Court of Appeals is responsible for much of our laws in this country as far as the final judicial determination.

When I sought to become a Member of this body, I went over with the people of Maryland the standards I would use in trying to decide whether to vote to confirm a judge. I talked about judicial temperament and experience, but I also talked about a standard that I think is very important, which is a judge's or potential judge's passion for the Constitution of this country in order to protect every individual. I think it is important that we take a look at that, particularly when we talk about an individual who will serve on the U.S. Court of Appeals.

I have sat in the confirmation hearings. I am a member of the Judiciary Committee. I had a chance to listen to Judge Southwick. I had a chance to listen to the questions that were posed back and forth. I must tell my colleagues I cannot support this confirmation. I will vote against it, and I would like to give the reasons why.

Senator SPECTER talked about some of the opinions that Judge Southwick participated in or some of his rulings, and I think that is what we should be looking at. For Judge Southwick, we do have an idea about his passion for the Constitution and what his priorities will be by looking at the type of cases he ruled on, the opinions he joined, and the opinions he wrote. So let me talk about the two opinions Senator SPECTER raises, because I think they are important opinions in order to get some insight as to this judge's passion for the Constitution.

The 1998 case of *Richmond v. Mississippi Department of Human Services* was an important case. It was very offensive to not just the minority community but the entire community. The racial term that was used should never be used, as Senator LEAHY said, in the workplace or anyplace else. The dissent of that opinion, of that decision, got it right, where it said that the racial epithet is inherently offensive and its use establishes the intent to offend. Unfortunately, that was the minority opinion in that court. On appeal it was overturned, but Judge Southwick joined the majority. The rationale in the majority opinion I think is important, because it speaks to what Judge Southwick used to reach his conclusions. In that opinion he said the absence of evidence of a near race riot, the remark is too inconsequential to serve as a basis of dismissal.

I find that very offensive. I think we do have to be held accountable to where we allow our name to be added. Fortunately, as I said, that was corrected, but it took an appellate court to do that.

In 2001, we have *S.B. v. L.W.* where a 12-year-old child is taken away from her mother. It was done because she was a lesbian. The language in the

opinion is very offensive. It talks about a homosexual lifestyle, words that I think we all know bring out bigotry in our society. But Judge Southwick went further in that case. He joined a concurring opinion that said your sexual orientation is a matter of choice and any adult may choose any activity in which to engage. That person is not thereby relieved of the consequences of his or her choice.

No wonder Judge Southwick is being challenged by many respected national groups. Upon questioning within our committee on confirmation, I didn't get a sense that there was a retraction by Judge Southwick of these decisions. He stuck by the decisions.

At the confirmation hearing, Senator DURBIN asked him a pretty simple question. He asked him a question about whether during his life or career, he ever took an unpopular point of view on behalf of those who were powerless or vulnerable and needed someone to stand up for their rights when it was not a popular position. That, to me, is a softball question: When did you stand up for someone else's rights? Judge Southwick couldn't think of a single example throughout his entire career.

So there is no wonder that there is concern about whether this potential judge on the court of appeals will protect all of our rights as the cases come before him and why there is so much concern about his confirmation.

But I want to go on to another issue that Senator LEAHY raised, and that is the issue of diversity. Diversity is very important. We expect all of our citizens will live according to the rule of law and will have confidence that the laws we make and the Court's rulings on those laws will be fair to all communities, so they have a right to expect that there will be equal access to participation in all branches of Government. Looking at the record in the Fifth Circuit, there is reason for concern. The Fifth Circuit is Mississippi, Louisiana, and Texas—the highest percentage of minority population in the country of any circuit outside of the District of Columbia—44 percent minority. Of the 10 nominees President Bush has submitted to the Federal bench from Mississippi and the Fifth Circuit—10—none have been African American. Mississippi has the largest percentage of African Americans of any State in the Nation: 36 percent. Of the 19 Federal judges on the Fifth Circuit, only one is African American. These are important issues to the people of that circuit and to the people of this country.

So there are many organizations that are opposing Judge Southwick's nomination. I ask unanimous consent that the letters of opposition and concern from the J. Franklin Bourne Bar Association and the National Organization for Women, the Legal Momentum, and the Jewish Alliance for Law and Social Action be printed in the RECORD.

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

J. FRANKLYN BOURNE
BAR ASSOCIATION, INC.,

Upper Marlboro, MD, June 7, 2007.

Re: Nomination of Leslie Southwick.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S.
Senate, Washington, DC.

DEAR SENATOR LEAHY: The J. Franklyn Bourne Bar Association, Inc. opposes the nomination of Leslie Southwick to the United States Court of Appeals for the Fifth Circuit.

Established in 1977, the Bourne Bar was formed to advance the status of African-American attorneys who work and/or live in Montgomery and Prince George's Counties, Maryland. The organization is named in honor of the Honorable J. Franklyn Bourne, the first African-American District Court judge in Prince George's County. The Bar Association's mission includes assisting in the development of African-American communities through the vehicle of law, educating the general public about legal issues of concern to all, and insuring the continuation of African-Americans in the legal profession. It is in the spirit of our mission that we register our opposition to the Leslie Southwick's nomination.

A representative democracy is a must in a free society, and as such the residents of the state of Mississippi, Texas and Louisiana are deserving of a federal judiciary that reflects the composition of their respective citizenry. More importantly, as federal judgeships are lifetime positions, each candidate for such an appointment must be closely scrutinized. Judge Southwick's pattern of approving preemptory challenges that exclude Blacks from juries while approving challenges when whites allege discrimination from such challenges is particularly troubling; so to is the decision Judge Southwick joined in the case *Richmond v. Mississippi Department of Human Services* which would have reinstated a white woman who used the phrase "good ole nigger" about an African American co-worker.

The Senate Judiciary is constitutionally tasked with the responsibility of approving nominations by the President following fair deliberations. In that regard, the Bourne Bar Association is confident that its opposition outlined above will be duly noted.

Thank you for your attention.

Sincerely,

ABIGALE BRUCE-WATSON,
President.

NATIONAL ORGANIZATION FOR WOMEN,
Washington, DC, June 6, 2007.

Senator PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: The National Organization for Women strongly opposes the nomination of Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit. We urge you to oppose this nomination both in the Judiciary Committee and on the floor of the Senate.

Judge Southwick has a disturbing record and an appalling lack of sensitivity on women's rights, racial justice, and discrimination based on sexual orientation. He demonstrates the usual Bush nominee bias toward big business and against consumers and individuals.

In the 2006 election, the voters clearly rejected right wing extremism. The National Organization for Women expects that those Senators who were elected by the votes of women will take their "advise and consent" role seriously and not put our rights in jeopardy by confirming such an individual to one of the highest courts in the land.

As we have learned from many past judicial battles, a "yes" vote in committee which allows a nomination to reach the floor of the Senate is tantamount to a vote for confirmation regardless of a subsequent "no" vote on the floor. We urge you to stand firm and to vote to stop this nomination in its tracks—in the Judiciary committee.

Sincerely,

KIM GANDY,
NOW President.

JEWISH ALLIANCE FOR LAW AND
SOCIAL ACTION
Boston, MA, June 8, 2007.

Re Maintaining an Independent Judiciary

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: As an organization devoted to upholding constitutional protections against racial and religious discrimination, we write to urge that you and your colleagues on the Judiciary Committee and in the Senate oppose the appointment to the Fifth Circuit Court of Appeals of Leslie Southwick.

Judge Southwick has demonstrated his disdain for equal rights and equal protection under the law. While on the Mississippi State Court of Appeals, he joined a decision that upheld the reinstatement, without any punishment whatsoever, of a white state employee who was fired for calling an African American co-worker a "good ole nigger", finding that this was not an offensive term. In another case, Mr. Southwick went out of his way to go beyond the majority decision against a lesbian mother, in a concurrence that was not only gratuitous but gratuitously anti-gay.

While the current President has tried to fill this seat on the Fifth Circuit with other appointees equally out of the mainstream, this is the first nomination since the Democratic Party has regained its Congressional majority. Now is the time to deliver a strong message that Democrats will protect the American people, the Constitution and the judiciary from the prospect of even more extremist right wing judges who will continue to undermine the judiciary's crucial role in preserving our bedrock constitutional protections.

We at JALSA urge you not only to reject this nomination but to do so in a way that makes clear that the Senate will protect the independence of the judiciary, and will no longer allow this administration to pack the courts in order to legislate an extremist agenda of bigotry and hatred.

Yours truly,

ANDREW FISCHER,
Chair, Judicial Nominations Committee.

LEGAL MOMENTUM,
Washington, DC, June 7, 2007.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee,
Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Senate Judiciary Committee,
Washington, DC.

CHAIRMAN LEAHY AND RANKING MEMBER SPECTER: On behalf of Legal Momentum, the nation's oldest advocacy organization that works to define and defend the rights of women and girls, I urge you to oppose the nomination of Judge Leslie Southwick to the US Court of Appeals for the 5th Circuit. While much of Judge Southwick's record remains unknown due to lack of publishing and incomplete Committee records, what has been revealed is disheartening for those who look to the federal courts to uphold and enforce laws barring discrimination on the basis of race, sex, national origin and religion.

Historically, the 5th Circuit Court of Appeals has served as a bulwark for the protection of civil rights. However, Judge Southwick displays a continued absence of dedication to upholding certain essential civil rights protections. In the case of *Richmond v. Mississippi Department of Human Services*, 1998 Miss. App. LEXIS 637 (Miss. Ct. App. 1998), reversed, 745 So. 2d 254 (Miss. 1999), Judge Southwick joined a 5-4 ruling upholding the reinstatement of a white state social worker, Bonnie Richmond, who had been fired for referring to an African American co-worker as "a good ole n*****" at an employment-related conference. The Mississippi Supreme Court unanimously reversed this ruling. Similarly, Judge Southwick's rulings on race discrimination in jury selection give us pause. A review of his decisions reveals a disturbing pattern in which Judge Southwick routinely rejects defense claims regarding racially motivated prosecutors who strike African-American jurors but upholds claims of prosecutors that defense attorneys are striking white jurors on the basis of their race. The 5th Circuit, which includes Louisiana, Mississippi and Texas, has the highest concentration of racial and ethnic minorities in the country. There is no room at any level of the judiciary for Southwick's troubling and seemingly biased approach to the enforcement of civil rights laws.

In another case, *S.B. v. L.W.*, 793 So.2d 656 (Miss. App. Ct. 2001), Judge Southwick wrote a separate concurring opinion positing that a "homosexual lifestyle" could be used to deprive a parent of the custody of her own child. His concurrence, a unwarranted and hurtful piece of work, took great pains to elaborate upon the punitive "consequences" that could be imposed on individuals in homosexual relationships, including the loss of custody of a child. Grounding his beliefs in the principles of "federalism", he promoted limiting the rights of gay and lesbian parents in the area of family law and characterized the participation in a homosexual relationship as a "choice" and an "exertion of a perceived right."

Discussing an issue not raised by either party in the case and citing incomplete legal analysis, the concurrence also identified a policy position of the Mississippi legislature that would limit the custody rights of homosexual parents. His opinion cited the Supreme Court's decision in *Bowers v. Hardwick*, which upheld criminal penalties for sodomy, but ignored the more recent decision in *Romer v. Evans*, in which the attempt to deny anti-discrimination protections to gays and lesbians via ballot initiative was found not to further a proper legislative end, but deemed a means to make them unequal and consequently struck down. His contorted and selective analysis showcases a distinct lack of the judicial impartiality necessary in appeals court judges.

Lastly, we cannot accept the possibility that there are no qualified African-Americans to serve on this Circuit's Court of Appeals. President Bush's glaring lack of racially diverse nominations remains unfathomable, and unacceptable to our organization, specifically in a region that displays such a long history of racial apartheid and disenfranchisement and continues to need integration at every level, particularly in the federal judiciary.

Given the arguments listed above, it is clear that the Senate Judiciary Committee must defeat Judge Southwick's nomination. He does not possess the requisite abilities to merit a life-tenured position in the federal judiciary. In rejecting Southwick's nomination, please urge President Bush to nominate a well-qualified individual with the appropriate judicial temperament to dispense justice as intended by our Constitution and a

demonstrated respect for fundamental constitutional rights.

Sincerely,

LISALYN R. JACOBS,
Vice-President for Government Relations.

Mr. CARDIN. Mr. President, I am going to quote very briefly from the letter from the Bourne Bar Association where it says:

A representative democracy is a must in a free society, and as such the residents of the State of Mississippi, Texas, and Louisiana are deserving of a Federal judiciary that reflects the composition of their respective citizenry.

Ten nominees from this area; none African American.

The National Organization for Women states:

Judge Southwick has a disturbing record and an appalling lack of sensitivity on women's rights, racial justice, and discrimination based on sexual orientation.

The Jewish Alliance for Law and Social Action:

Judge Southwick has demonstrated his disdain for equal rights and equal protection under the law.

So I am not convinced Judge Southwick is the best that we can find for the court of appeals. I am not going to give the President a blank check, and I will vote against the confirmation of Judge Southwick.

Once again, I thank my friend from Pennsylvania for his courtesy.

Mrs. BOXER. Mr. President, I plan to vote against cloture on the nomination of Judge Southwick, and, if cloture is invoked, against the nomination itself.

The Fifth Circuit serves one of the most racially diverse regions in the country. It is especially important, therefore, that a nominee to this court possess an unshakable commitment to equal justice and a willingness to protect the rights of all. Unfortunately, President Bush has chosen a nominee who does not pass this simple test.

During his tenure with the Mississippi State court, Judge Southwick joined a ruling that reinstated a State employee who used a very charged racial slur about another worker. That decision was unanimously reversed by the Mississippi Supreme Court. In another case, Judge Southwick joined in an opinion that took into consideration the sexual orientation of a mother rather than her love for her child when deciding to deny her custody. On other occasions, he voted against the concept of "a jury of our peers."

I am deeply disappointed that President Bush has once again attempted to fill the Fifth Circuit vacancy with a nominee holding views far to the right of most Americans, and I do not support the nomination of Judge Southwick to the Fifth Circuit.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I too rise to discuss the nomination of Judge Leslie Southwick and to explain why I will vote in favor of cloture and in favor of confirming him to the Fifth Circuit Court of Appeals.

There has seldom been an appellate nominee to whom I have given more thought than I have given to Judge Southwick. I am very much aware of the concerns many on my side of the aisle, in the House of Representatives, and in the community feel.

I have reviewed Judge Southwick's record and the transcript of his confirmation hearing. I have read the many letters, both pro and con, and I have spent about an hour or more talking with him in person.

What emerged for me was an understanding that Judge Southwick is a qualified, sensitive, and circumspect person. I think the personal qualities of an individual often get lost in our debates about judicial nominees. These nominees are not just a collection of prior writings or prior judicial opinions. They are, first and foremost, people; and the kind of person they are is, in fact, important. In my conversations with Judge Southwick, I have gotten a sense of the type of person that I believe him to be. He is not either insensitive or a racist but one who is thoughtful and analytical and a strong believer in the law. As an appellate court judge, he evaluates the specific legal issues of the case before him, not necessarily the veracity of the parties involved as would a trial judge.

I know some of my colleagues are opposed to this nomination. Concerns have been raised about his judicial record, particularly with regard to civil rights and the rights of gays and lesbians. I assure my colleagues that I have taken these concerns seriously. I gave them careful consideration and made my best judgment, which is all any of us can do.

While I respect the views of my colleagues who oppose this nomination, I also respectfully disagree. I think Judge Southwick made mistakes by concurring in the two opinions in question, but I don't think those rulings define his views. I don't believe they outweigh the other factors that suggest Judge Southwick should be confirmed.

As I see it, there are three factors that weigh in favor of confirmation. They are:

First, the qualifications and character of the judge himself;

Second, the need to fill this long-time vacancy in the Fifth Circuit which the judicial branch has designated as a judicial emergency;

And third, my very strong belief that when a future Democratic President sends up a judicial nominee who becomes controversial, the test should be whether the nominee is within the judicial mainstream and is qualified by education, experience, and temperament to be a sound judge or Justice in the Federal court system of our great country.

When I weighed those factors against the concerns I have heard, I decided to vote in favor of Judge Southwick in committee. They also will form the basis for my vote on Judge Southwick tomorrow.

The first factor I wish to address is his qualifications and character. I don't think anyone disagrees that Judge Southwick is an experienced appellate court judge. He sat on the State court of appeals in Mississippi for 11 years, from January 1995 to December of 2006. He has heard roughly 7,000 appeals.

How many judges have we confirmed without nearly that kind of experience? This is a large number of cases.

There is no organization better positioned to evaluate the performance of judges in Mississippi than the Mississippi State bar, and they awarded Judge Southwick their Judicial Excellence Award in 2004, after he had been on the State court bench for 10 years. That award describes him as: "A leader in advancing the quality and integrity of justice," and as "a person of high ideals, character, and integrity."

Isn't that the kind of judge we want to see on the bench?

I think those views from the bar association from his home State are important. I also think it is significant that the American Bar Association, which evaluates every judicial nominee that comes to the Senate for confirmation, unanimously rated Judge Southwick "well qualified"—their highest rating. In fact, the evaluation by the ABA for him to serve on the Fifth Circuit is stronger than it was when he was nominated to a district court last year.

For that nomination, the ABA was not unanimous in finding him "well qualified." But they were for the appellate court.

The Judiciary Committee approved that nomination, but the 109th Congress ended without further action on it. Now, Judge Southwick stands before us with a unanimous recommendation for the Fifth Circuit from the ABA.

I am also impressed, as Senator SPECTER spelled out, by his record of military service to our country. I find it singular among the judges in the 15 years I have served on the Judiciary Committee.

This judge joined the U.S. Army Reserves in 1992 at the age of 42. To do that, he had to get an age waiver.

How many would do that?

He had already achieved professional success as a lawyer. At the time, he was serving as the Deputy Assistant Attorney General in the Civil Division of the Department of Justice. Still, he felt a sense of duty to his country, and he did not let his age or his promising civilian legal career stop him.

He volunteered in 2004 for a unit that was going to be deployed to Iraq. That unit, the 155th Brigade Combat Team, was, in fact, deployed, and he was with it.

Judge Southwick was 53 years old at the time. He had a wife and family and a prestigious job as a judge on the State court of appeals. Yet, from January to December 2005, he served in Iraq—first as a Deputy Staff Judge Advocate at Forward Operating Base

Duke, and then as Staff Judge Advocate for the 155th Brigade at Forward Operating Base Kalsu.

How many judges have done that? Shouldn't that count for something?

Well, it counts to me, Mr. President. To me, it is a clear indication of the character of the man, and I deeply respect him for this military service.

The second factor that is important, in my judgment, is the need to fill this vacancy on the Fifth Circuit. It has been vacant for 7 out of the last 8 years. Judge Southwick is the third nominee for the position—not the first or the second, but the third.

The vacancy opened in August 1999—7 years ago—and went unfilled for more than 4 years. Then, in 2004, the President used a recess appointment to place Charles Pickering on the bench. The Senate did not confirm Judge Pickering to the seat, and since the end of 2004, it has been vacant again. Michael Wallace was nominated for it, but that nomination wasn't approved by the Judiciary Committee.

So at this time the Administrative Office of the U.S. Courts has declared this seat to be a "judicial emergency."

Now, I am not suggesting that we should confirm whomever the President nominates just because a seat has been vacant for a long time, or because the seat has been designated a judicial emergency. But I hope this urgent need to fill a longtime vacancy will help tip the balance in the nominee's favor. By any measure, 7 years is too long for a vacancy to remain open.

The third factor that weighs in favor of confirmation for me is my strong belief that we have seen too much delay and controversy over qualified nominees for too many years.

There are plenty of examples of long delays in the confirmation process when President Clinton was in office and the Senate was under the Republican control. For example, when Ronnie White had the support of Senator BOND and was voted favorably out of the Judiciary Committee twice, it took more than 2½ years for the nomination to come to the floor, and then the nomination was rejected.

William Fletcher was a well-qualified Ninth Circuit nominee in the 1990s. Unlike Judge White, at least Judge Fletcher was confirmed by the Republican Senate—thanks in large measure to Senator HATCH—but not until he had waited for 3½ years.

During that period of time, I had calls from prospective judges, saying: I don't know what to do. Do I stay the course, or withdraw? What do I do about my family? These are real problems and we ought to respond to them.

I also share the views of my colleague, Senator LOTT, that we must improve the confirmation process. He recently wrote an op-ed column in which he explained his vote to confirm Justice Ruth Bader Ginsburg to the Supreme Court. Since the Senator is sitting here, let me quote him:

I probably wouldn't agree with Justice Ginsburg on any philosophical issue, but she

was qualified to serve by education, experience, and temperament. Elections have consequences, and she had President Clinton's confidence.

That is the way it was. I have used the same analysis to arrive at my position on Judge Southwick. I probably would not agree with him on certain philosophical issues, but I think he is qualified to serve by education, by experience, and by temperament.

Critics of this nomination have pointed to two opinions: one that reinstated an employee who had been fired for using an egregious racial slur, and another that denied a woman custody of her child for reasons that included—but were not limited to—her involvement in a same-sex relationship.

These are 2 opinions out of 7,000 cases that he heard or that he sat on. They are opinions he joined, not ones he wrote. One was a majority opinion joined by four other judges on his court, and one was a concurring opinion in a case where he also joined the majority opinion.

Ultimately, the case involving the racial slur was reversed by the State supreme court and remanded for consideration of a different penalty. The ruling of Judge Southwick's court in the child custody case apparently was not appealed to the State's high court.

Critics of Judge Southwick have also pointed to certain rulings that, in their view, suggest that Judge Southwick will be hostile to workers, minorities, and those who lack power and privilege in our society. These are serious concerns. But I don't think these cases accurately reflect Judge Southwick's views. This is only my best judgment, based on my own discussions with him.

The racial slur case, *Richmond v. Mississippi Department of Human Services*, involved, as has been stated, a State employee who had used a racial slur in reference to an African-American coworker. The State agency fired the employee, and she appealed to an administrative board, which ordered her reinstated.

Judge Southwick joined a majority opinion that upheld the board's decision to reinstate the employee. The opinion stated that there was sufficient evidence in the record to support the decision of the board.

I believe he should not have joined the court's opinion, but I don't think his decision to concur in that opinion should disqualify him from being a Federal judge.

After our meeting in person, I asked the judge to put his thoughts in writing, and he did. I found the letter convincing.

Mr. President, I will quote some of this letter:

The court said that the use of the word "cannot be justified" by any argument. It could have gone far beyond that legalistic statement. Captured in this one terrible word is a long, dark, sad chapter in our history. This racial slur is unique in its impact and painful to hear for many, including myself. I said at my hearing that this is the worst of all racial slurs. Its use is despicable.

All people of good will should make their rejection of the word clear. The opinion had an opportunity to express more fully and accurately the complete disgust that should greet the use of this word. Such a statement would certainly be consistent with my own beliefs that this is the worst kind of insult. As I testified, everyone took this issue extraordinarily seriously. I regret that the failure to express in more depth our repugnance of the use of this phrase has now led to an impression that we did not approach this case with sufficient gravity and understanding of the impact of this word.

The letter goes on to say:

I always tried to treat everyone who came before me as a judge with respect. I gave a memorandum to each of my law clerks that they were to use no disparaging words towards anyone in a draft opinion, no matter what the appeal was about. From the bench and in my opinions, I followed that same rule. I believe that everyone whom I encounter, whether as a judge or in some purely private capacity, is deserving of my respect.

I took a broad view in looking for staff. I was one of the original ten judges on the Court of Appeals, taking office in January 1995. In my second year on the court, I became the first white judge to hire an African-American law clerk on that court. I could not have been more pleased with her work, and she went on to be a partner in a major Mississippi law firm. I was equally pleased with the two additional African-American clerks I hired before I left the court.

Judge Southwick concludes by saying:

Until the last two months, my fairness and temperament had not been subject to criticisms. The recent concern may have arisen from the fact that only one piece of evidence was being used, namely, the racial slur opinion. A much better explanation of my own abhorrence of this slur clearly could have been written. I have tried in this explanation to express my disgust for the use of that word and to present some of the evidence from my own life to prove my commitment to furthering the civil rights of all.

In the second case, the child custody case, which is called *S.B. v. L.W.*, Judge Southwick's court affirmed a decision to deny custody of a child to a mother who was in a same-sex relationship. The lower court had based its opinion on several different factors, such as employment, financial stability, and stability of the environment, and not just the sexual orientation of the mother.

In fact, a major concern in the case was that the mother was planning to move to a new city, and the mother had admitted that the move was not in the daughter's best interest. She said she did not know where her daughter would attend school, and also that she would be devoting a lot of time to starting a new business after the move.

Judge Southwick joined the majority opinion, upholding a lower court's decision that the best interests of the child would be better served by being in the father's custody. He also joined a concurring opinion written by another judge.

When asked about the case at his hearing, Judge Southwick said that he had joined the concurring opinion because it followed State law at the time,

which was governed by Supreme Court precedent that has since been overruled. Judge Southwick conceded at the hearing that under current law the analysis of the case, and perhaps the result, would be different.

Again, the question is whether his decision to join the opinion is grounds for disqualifying him from a Federal judgeship. To me, simply stated, it is not.

So I am voting in favor of Judge Southwick because I think, based on the letter he wrote to me, on my discussions with him, and on his record, he is not outside of the judicial mainstream.

That is the primary criterion I use when evaluating an appellate nominee, and I expect future nominees of Democratic Presidents to be treated in the same way.

I believe the concerns that have been raised about Judge Southwick are outweighed by his record of service to our country, his long experience as an appellate court judge, and the temperament I have come to know in my discussions with him.

Mr. President, I ask unanimous consent that the mandatory quorum required under rule XXII with respect to the Southwick nomination be waived.

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

Mrs. FEINSTEIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I obviously rise in support of the cloture motion and in support of the nomination of Judge Leslie Southwick to be confirmed to the Fifth Circuit Court of Appeals.

I begin by thanking Senator REID for allowing this nomination to be called up and even considered. He doesn't have to do that as our leader, but he should be commended by those of us who support Judge Southwick for his willingness to allow the nomination to be debated and considered.

Mr. President, I wish to express my appreciation to the very studied and careful job that Senator FEINSTEIN has done with regard to this nominee. I know it has not been easy, but I also know that she has taken time, she has been patient, she has done her homework. I am sure she has endured criticism. She has shown tonight that she is truly one of the outstanding lions or lionesses, I guess, is the correct word, of the Senate. She has shown courage.

She and I have worked together. Sometimes we have lost when we have worked together, and sometimes we have succeeded. But we have tried to do the right thing for the Senate and for our country. I have nothing but the utmost admiration and appreciation for the position she has taken. I actually am hesitant to proceed after her comments because they were so careful and so well thought out and presented.

I do think that I would like to put a few remarks into the RECORD tonight,

and I will add additional items tomorrow. I thank Senator FEINSTEIN so much. What she did tonight with regard to this nominee and how she is going to vote tomorrow is the kind of thing, I believe, that will affect in a positive way the nominations of other men and women in the future in the Senate. We have worked together on nominees from California in the past, and I stood against a filibuster then, and I am proud I did. I have voted for nominees, such as Justice Ginsburg, because I thought it was right.

I also have been a party to and have observed conduct in the Senate by my colleagues on this side of the aisle that I am sorry about, I regret. But how do we ever stop the slide downhill by the Republicans and then by the Democrats and then again by the Republicans? When can we rise above that type of personal and partisan attack and consider these nominations and legislation in a more respectful and responsible way?

I believe Senator FEINSTEIN has taken that first step that can lead to other steps, and we will stop this slide I have observed occurring more and more each year for 10 years. Now maybe this is the moment, maybe this will be the catalyst that will lead to other steps on this side of the aisle and on the other side of the aisle so that we will treat these nominations and legislation in a proper way.

I thank the Senator for staying and allowing me to commend her. I hope it doesn't get her into too much trouble, but I admire the Senator very much.

I do want to recognize the remarks made by Senator SPECTER of Pennsylvania and the thorough job he did in referring to particular cases. I don't want to repeat the cases that have been mentioned here tonight, or go over his whole resume again, but I wish to take a moment to maybe highlight some of the parts of that resume of this very distinguished nominee.

I also want to note the presence of the senior Senator from Mississippi, my colleague Senator COCHRAN. He and I have been in the Congress for 35 years. We were in the House together. He came to the Senate, and 10 years later I came to the Senate. One of the things I did when I came to the Senate, I sat down and talked to Senator COCHRAN about how to consider nominees for the Federal judiciary, because he was on the Judiciary Committee. He had some very good, helpful, and simple advice. Basically, he said if they are from your State, certainly if they are personally repugnant, you can vote against them. But basically, he said, if they are qualified by education and by experience and by temperament, you should be supportive. Kind of simple, but it was a thoughtful suggestion to me that came from this experienced member of the Judiciary Committee, and I have tried to do that, and I will continue to do so.

I do believe very strongly that this nominee is obviously well qualified.

One of the things that was noted about his outstanding academic record was that he graduated cum laude from Rice University, a well-known and well-respected academic institution. He didn't just graduate with honors, he graduated cum laude, right at the top. He later graduated from the University of Texas School Of Law, where he also had an outstanding record academically.

When he came to the State of Mississippi, he continued that record of success. He worked with one of the most revered members of the Fifth Circuit, Chief Judge Charles Clark, one of the most outstanding jurists I have ever observed in my career of watching our Federal judiciary.

When he went to work for a law firm, he didn't go with just any law firm, he went with one of the State's very best—Brunini, Grantham, Grower, and Hewes, where he became a partner. At every step along his career, he didn't do just well, he excelled in how he handled himself in the positions he had, and he continued that when he went on the court of appeals.

A lot has been made about the fact that he has served in the Mississippi National Guard. He reached the rank of lieutenant colonel. He didn't just serve as a reservist to meetings of the National Guard, he was actively involved with the 155th Separate Armored Brigade. And, of course, he went with the 155th Brigade Combat Team and was mobilized in Operation Iraqi Freedom. So even there he took risks. He was involved in a way at his age that wouldn't ordinarily have been expected. This further shows that he is a unique individual in terms of his education and his experience.

But more than anything else, with rare exception, I have never seen a more qualified nominee to be an appellate court judge; not just a Federal judge, but an appellate court judge. His experience has been in the Mississippi appellate court system, where he presided or participated over 7,000 cases. That point has already been made, but that is an extraordinarily large number of cases for him to be involved with over these several years that he was a member of the appellate court in Mississippi.

In terms of the kind of man he is, let me read one part of one letter from one of the most revered and respected former Governors of our State of Mississippi, a Governor who has a very progressive record of leadership and of civil rights issues, and who has continued until this very day to work for racial reconciliation and heads an organization at the University of Mississippi dedicated to that purpose. This is a Democrat. This is what most people would acknowledge in Mississippi would be one of your more moderate to liberal Democrats. Knowing him, he probably doesn't like those labels, but he has a record of involvement in those areas where this nominee has been challenged or criticized. This is what

William Winter, our former Governor, said:

I further know him to be a very intelligent, conscientious, ethical and hard-working member of the legal profession. I have a great deal of personal respect for him and based upon my association with him I believe he will reflect fairness and objectivity in his approach to all matters which may come before him as a judge.

I don't know what higher recommendation you could have from our State, from a member of the opposite party, and a former Governor of our State. So he knows the background of this nominee.

Mr. President, I ask unanimous consent to have printed in the RECORD the entirety of the letter of William F. Winter.

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

WATKINS LUDLAM WINTER
& STENNIS, P.A.,

Jackson, Mississippi, June 13, 2007.

HON. ARLEN SPECTER,

Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: I join a number of my colleagues in the Mississippi Bar in expressing support for the nomination of the Honorable Leslie Southwick for a seat on the U.S. Court of Appeals for the Fifth Circuit.

I personally know Judge Southwick as a highly regarded attorney and jurist in Jackson, Mississippi. I further know him to be a very intelligent, conscientious, ethical and hard-working member of the legal profession.

While it is generally known in this community that he and I do not share the same views on some public issues. I have a great deal of personal respect for him and based on my association with him I believe that he will reflect fairness and objectivity in his approach to all matters which may come before him as a Judge.

I, therefore, commend him to you as one whose personal character and professional record make him worthy of your favorable consideration for this important position.

Respectfully yours,

WILLIAM F. WINTER.

Mr. LOTT. Judge Southwick was awarded the Judicial Excellence Award by the Mississippi State Bar Association, and he was rated not just well qualified but unanimously well qualified by the American Bar Association. This is supposed to be the gold standard. The previous nominee for this position was not given that. He was given a "not qualified" rating by the bar association. So they don't just rubberstamp nominees, they look very closely at them.

If there is a question about his temperament, if there is a question about his record on civil rights issues, or anything else, they would have found it and they would have included it in their recommendations. And, by the way, this is the same nominee who, 1 year ago, was unanimously referred by the Judiciary Committee to be a Federal district judge. Now, 1 year later, there are those who question the same record they had a chance to review last year.

Of the opinions he actually authored, there is no criticism of the more than

1,000 decisions where he actually wrote the opinion. I assure you, they were scrubbed and reviewed very carefully. There are two decisions in 7,000 where he concurred but did not write the decision, where questions have been raised.

I know we all make mistakes, and we choose to associate sometimes with situations or people we regret later. I know he would do some of his decisions differently now if he had them to do over again. But this is a long distinguished record, with only a couple of phrases in two decisions that, obviously, are troublesome.

Now, beyond those qualifications, he also has the temperament. He is mild mannered, he is very judicious, he is moderate in his approach to being a judge and in his life; not to say that he won't be conservative in a lot of his rulings. I think he will. But I am talking about demeanor and temperament. Clearly, he has what Senator COCHRAN and I thought the Senate indicated they desired.

This is the third nominee for this vacancy. The other two didn't make it. We heard what the Senate had to say regarding these past nominees and we came up with a judge we thought met the criteria that was expressed by a lot of our colleagues here in the Senate. But I also want to emphasize this. I have stood on this floor and argued to my own colleagues that we should not set the precedent of filibustering qualified judicial nominees—

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

Mr. LOTT. Mr. President, I ask unanimous consent for 2 additional minutes, if my colleague, Senator COCHRAN, would yield me those 2 to wrap up.

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

Mr. LOTT. Mr. President, I have argued we should not filibuster Federal judges. One time when I sat in that seat as majority leader, my colleagues actually voted to filibuster a judge and opposed cloture. Senator HATCH and I took to the floor and said we are not going to do this. This is wrong. If you want to vote against him, vote against him, but we are not going to filibuster these judges. Those judges were Judges Paez and Berzon in 2000. We had a second vote, reversed the previous vote which opposed cloture, invoked cloture, and then voted on those nominees. I voted against them both, but I thought they deserved an up-or-down vote.

Here tonight and tomorrow, when we vote, at the very minimum we should not filibuster this nomination. We should allow this judge to have an up-or-down vote. One of the speakers tonight indicated he would vote against him. Fine, if that is what your conscience dictates. But first, we have to deal with this question of should we start down this trail of filibustering qualified judges because we disagree with some philosophical position. We shouldn't do that. If we do it here, we

will do it again later. If we do it in this administration, we will do it in another administration. Give the man an up-or-down vote. I believe—I am absolutely convinced—that he will be confirmed.

I will have a few more remarks probably in the morning, but let me say to you, Mr. President, and to my colleagues in the Senate, I have never before done this, but I can vouch on my honor to this institution that I have served for many years now and in leadership positions, this is a good and qualified nominee who will reflect credit on the institution that confirms him and in the court in which he serves.

The judicial confirmation process has always shown strong deference to the opinions of home State Senators. There is good reason for this. Home State Senators are uniquely positioned to know the personalities, qualifications, and reputations of the nominees from their state. The fact that this traditional courtesy of the Senate is being ignored should be cause for concern for every Senator in this Chamber.

I respected this traditional courtesy when I served as majority leader. In the last few years of the Clinton administration, a Republican Senate confirmed a string of highly controversial appeals court nominees who nonetheless had the backing of their home State Senators.

When the controversial nominations of Paez and Berzon where debated in 2000, I filed cloture on both of their nominations. While many on my side of the aisle opposed the nominations, I upheld my promise to bring their nominations to an up-or-down vote.

We are in danger of establishing an ill-advised precedent that could have longstanding negative ramifications on not just the legislative branch but also upon the judicial branch. Should this body block a clearly qualified nominee based on a "perceived controversy"?

Every Senator in this body needs to understand what is at stake here. This isn't a simple case of controversial nominee being taken down in a partisan fight.

This is a mainstream nominee to a seat that has been declared a judicial emergency, with the strong support of both home State Senators, with a "unanimously well qualified" rating from the ABA—the supposed gold standard for my colleagues on the other side of the aisle—who was reported out of the Judiciary Committee unanimously for a lower court nomination less than 12 months ago, and a military judge who courageously served in Iraq.

This isn't just about Judge Lesile Southwick. This is about the standard that is being set for the future. Every Senator in this Chamber will have judicial nominees that come from their home State, and they will expect those qualified nominees—with home State Senator support—to be confirmed. Well, that is not the precedent that we

are establishing here. Next time, this could be your nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, under the order, I think there were 5 minutes, and 2 of the minutes I yielded to my colleague and distinguished Senator, so it is my intention to proceed with 3 minutes.

The PRESIDING OFFICER. There is 9 minutes remaining on the Senator's side.

Mr. COCHRAN. I will use the balance of that in the morning.

The purpose of my being here tonight was to be sure I was available to hear the comments of all Senators who wanted to speak on this confirmation. This has been a very frustrating experience for me personally, because, as my colleague pointed out, we have confronted difficulties in submitting names for the consideration of the Senate for this particular position. Two he pointed out have been nominated by the President and, in fact, rejected. Names were withdrawn because of delays that made it clear those judicial nominees were unacceptable. So we put our heads together, we talked about what the other options were, and decided Leslie Southwick was the epitome of someone who had to be acceptable to the Senate. Not only is he an experienced judge in an appellate court position, but he is a person of great integrity, widely respected, even though he has been a Republican and active in politics in our State, supporting candidates that he thought were the best in his party who were available to be nominated and elected. He is a person who is widely respected by Democrats, as proven by William Winter's very generous letter complimenting him and pointing out his personal qualities. That should be instructive to the Senate in its consideration of this nomination.

I don't know of any situation I have confronted since I have been in the Senate that has been more frustrating than watching and listening to the criticism of this nominee who has been totally unjustified, totally unjustified on the record. Viewing his career as I have observed it, it is not the same person I hear described by those I hear criticizing and objecting to this nomination, reaching through 7,000 opinions trying to find something he had said or done or indicating a view that was unacceptable in a Federal judge. And they come up with two opinions that he didn't write, and they are fully explained by him, and totally contradictory, in the way they have interpreted, to his personality, his good judgment, and the way he has lived his life.

I think it is a lot more instructive if you could have been with me yesterday in Natchez, MI, dedicating a new Federal court building, the shock, I guess, that others might find, that the Presiding Officer at that ceremony was United States District Court Judge

Henry Wingate, an African American I had recommended 20 years ago for the Federal bench, who is now the chief judge of the Southern District in the United States District Court.

There are several other judges, all of whom were there. Edith Jones of the Fifth Circuit, who is the chief judge now of the Fifth Circuit Court of Appeals, was our principal speaker on this occasion. And I noticed that the person who is a U.S. marshal for the Southern District of Mississippi is Nehemiah Flowers, whom I had recommended many years ago and has served in that job with distinction and reflected credit on African Americans of our State, but also as an individual in his own right who is the chief keeper of the peace and law enforcement official in the Federal District Court, I was proud to be there on the podium with him.

Leslie Southwick is totally well qualified and ought to be confirmed by the Senate. I have spoken on the Senate floor a couple of times at great length about it and put into the RECORD letters from people all over our State commending him and vouching for him, talking about his experiences as a judge and my familiarity with him as a person. He has a record that would be the envy of anyone who would aspire to be admired and respected as a judge or a lawyer or a citizen. I can't believe that he is being challenged as harshly as he is by some in this body, and I urge the Senate to confirm him as a United States Court of Appeals judge tomorrow.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, how much time remains?

The PRESIDING OFFICER. Four minutes.

Mr. BROWNBACK. Mr. President, I want to speak in favor of Judge Southwick and the nomination and would take up that 4 minutes.

A couple of quick points I want to make on this because the time is short, the hour is late, and I appreciate the Presiding Officer staying. I have met and I have gotten to know Judge Southwick. I have worked with him. I have seen him now through two Senates, the last Senate and this Senate. This is an honorable man. This is a good man. I think this is a smear campaign that people are trying to do on him, on a good man.

I think if he came up in different circumstances everybody would say: Why, absolutely he is the right person for it.

Part of the reason I say that is you look at the last Congress when he came up in front of the Senate Judiciary Committee. Judge Southwick came up in the last Congress, and he was unanimously approved by the Judiciary Committee, seen as a consensus nominee who should move forward. He has been through these parts before. Why is it he was unanimous last time around and now he is a controversial candidate? Why is it you are looking at 7,000 opinions and somehow now we found something in a couple of opinions but didn't find those last year when people were fly-specking it?

I think this is kind of a sign of the times and where we are and the President's time period and the President's approval ratings. He is in his last 2 years and people are looking and saying we don't want to get these many circuit court judges approved. But if you look at the record, this is not fair to this judge.

Look at the diversity issue. I just want to put a chart up on the diversity of the Fifth Circuit because that issue has been raised, the number of appointees to the Fifth Circuit. Under President Clinton and Bush: Women appointed under President Clinton, zero; President Bush appointed two; African Americans, one under Clinton, none under Bush; Hispanics, one under Clinton, one under Bush, and actually there was a third woman appointed under Bush. I don't think that stands the review and test of us being honorable and honest with what the situation is.

This is a judicial emergency situation. Senator LEAHY has previously stated if a vacancy is deemed to be a judicial emergency, it should be addressed quickly. This is a judicial emergency, as determined by the non-partisan Administrative Office of the Courts. They have declared the seat to which Judge Southwick has been nominated a judicial emergency.

Senator LEAHY, for whom I have a great deal of respect and worked with on a number of additional issues other than this, has also said it is important whether the two home State Senators support the nominee. You have just heard from the two home State Senators who strongly support this nominee.

I think the criteria that have been previously set to fill a circuit court position have been met, in many cases even exceeded. Yet we have a controversy over a person who was seen, one Senate ago, one Congress ago, as a consensus candidate. This seems to be much more reflective of the time rather than the person, and I don't think that is meritorious of this body, to decide something on, OK, it is in this session of Congress rather than the prior session of Congress.

Here is an honorable, good man. If you have qualms with one of the nominees, fine. But let's make it a real set of qualms and let's not make it something that we invent this session, during this Congress, and try to take it out on somebody who is a good candidate.

Here is a person who served honorably in the military, even asked that his age be waived so he could join the Army Reserves at age 42. In 2002, at the age of 53, he volunteered to transfer to a line combat unit that was widely anticipated to deploy to Iraq.

This is an honorable man. I urge my colleagues to actually look past the way he is being painted and look to the reality of the facts and to the longevity of his service and what he seeks to do and to vote and to support this nominee.

I yield the floor.

LEGISLATIVE SESSION

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

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

NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDOR

Mr. CASEY. Mr. President, I rise today to address not only a major public policy issue for the State of Pennsylvania but also a fundamental issue of fairness and the proper role of Government, which I think will have an impact on the country as a whole.

Recently, the U.S. Department of Energy designated 52 counties—52 out of Pennsylvania's 67 counties—as part of a power transmission corridor, more formally known as the National Interest Electric Transmission Corridor. This means the Government will be able to turn three-quarters of the State of Pennsylvania into a superhighway of transmission towers.

Their authority to designate this corridor was granted in the Energy bill passed in 2005 in the previous Congress. This designation would allow the Federal Government to override State authority and construct high-voltage power transmission lines wherever they please—virtually wherever the Federal Government pleases. They could place the lines on farmland, through neighborhoods, through someone's backyard, and, for example, through a beautiful vineyard such as the one I saw most recently in Greene County in the furthestmost southwestern corner of Pennsylvania, so virtually anywhere in the Commonwealth and anywhere in the country.

Earlier this year, the Department had a public comment period where I and other public officials and most importantly my constituents spoke out loudly in opposition to the draft corridor plan. That draft plan is virtually identical to the final plan.

Let me give my colleagues a sense of what we are talking about here. This is a map which depicts the draft Mid-Atlantic and Southwest area national corridor. There are people in Washington who for years have been talking about creating opportunities for more power, and this is a national priority, they say. Yet we can see just by the dotted areas that there are a lot of States in the Northeast that will be impacted—obviously, New York and Pennsylvania, West Virginia, Maryland, and a few others, and then out West in the furthestmost reaches of the Southwest of our country, principally in the State of California. So for all of the talk about a national priority, there is very little that impacts the middle of our country.

I sent letters, as Senator SPECTER did, to the Department of Energy, but so far, I am not happy to report the Department of Energy has ignored my

constituents. I think this is an outrage, for a government bureaucracy to ignore the people they are supposed to serve. They pay their salaries—those taxpayers pay their salaries. The least this Department should do is respond not just in a timely way but to respond completely. But we haven't seen that yet.

Last week, I met with an Assistant Secretary of Energy to discuss my opposition to the transmission corridor as it is presently drafted. I have sent letters to the Energy Secretary, Mr. Samuel Bodman, most recently in early October. We are still waiting for a response to that, a letter signed by both Senator SPECTER and me, waiting for a response. I know people get busy, but I think it is time now to respond to that letter. We are also waiting for Secretary Bodman to respond to my request for a meeting. We are getting a little resistance there as well.

So while I am waiting for these responses from the Energy Secretary, I want to put him on notice and I want to put the Federal Energy Regulatory Commission—which we know by the acronym FERC—I want to put FERC on notice and I want to put the Senate on notice that I have grave concerns, as a lot of people in Pennsylvania have grave concerns, about this transmission corridor as presently designed or drafted. I am outraged by how my constituents have been treated so far in this process. I would argue they have been ignored in this process.

So I intend to use every means at my disposal—every means at my disposal—to prevent the National Interest Electric Transmission Corridor from moving forward until Pennsylvania is at a minimum treated equitably. So I intend to place a hold on the renomination of Joseph Kelliher, who is now serving as the Chairman of the Federal Energy Regulatory Commission, known as FERC. I will place a hold on his renomination, and I will be introducing tomorrow, in connection with the amendments to the farm bill, an amendment to prevent the use of eminent domain to take farmland for use as a part of this power transmission corridor.

One more chart before I conclude. The second chart here depicts the number of counties affected in the northeastern corner of the United States. I will speak just of Pennsylvania for today—52 out of those 67 counties. Basically, what the Federal Government has told us, in essence, implicitly—this is what I derive from their failure to respond to the State of Pennsylvania—is there is going to be a superhighway of power lines across Pennsylvania, and there is nothing anyone can do about it. The Federal Government is going to take over this effort and put those lines across the State of Pennsylvania.

Well, I have news for them. Pennsylvania is full of a lot of people who are concerned about this, whether they are in small towns or urban areas, and, as we are going to be speaking to tomor-

row, rural areas in Pennsylvania, farm communities. Most of those counties designated there are in rural communities. If the Federal Government and the Department of Energy or the Federal Energy Regulatory Commission or anyone else in this town wants to fight about this, we are ready to fight, and we will fight morning, noon, and night until our State, the Commonwealth of Pennsylvania, is treated equitably.

24TH ANNIVERSARY OF BOMBING OF MARINE CORPS BARRACKS IN BEIRUT

Mr. WEBB. Mr. President, 24 years ago today, at 6:20 in the morning, in Beirut, a yellow Mercedes-Benz truck drove into the Beirut International Airport, where the 1st Battalion 8th Marines was keeping its headquarters. The truck crashed through a barbed wire fence, went through the parking lot, passed between two sentry posts, and then crashed through a gate and into the lobby of the large building where the marines were keeping their headquarters.

At that point, the explosives were set off in this truck, ending up with the deaths of 241 American military servicemembers. This was the largest loss of life for the U.S. Marine Corps in one single day since Iwo Jima. It was the largest loss of life in one day for American service people from the beginning of the Tet Offensive of 31 January 1968, and it remains the largest single loss of life in one day since that time.

I believe it is appropriate for us to take a few minutes and remember today the sacrifices that were made and the contributions the United States was attempting to make in that particular circumstance.

I make these comments as someone who is proud to have served in the U.S. Marine Corps, who has a brother who served in the Marine Corps, who has a son who is now serving in the Marine Corps, and as someone who covered the marines in Beirut as a journalist and had recently left the country when this incident occurred.

The marines who went to Beirut came in peace. They had been sent in after several incidents occurred regarding multiparty incidents, which I will describe in a minute, at the request of the Lebanese Government. We had a U.S. Marine Corps representation. We had military people from the United Kingdom, Italy, and France. They were asked to help separate the warring factions inside Beirut during a vicious civil war and also to help separate the end result of an Israeli incursion, in which the Israelis were attempting to take out large elements of the Palestinian Liberation Organization.

So our marines began this “visibility” presence in September of 1982. They had been there through different cycles of rotation for a little more than a year when this event occurred.

They operated under enormously difficult rules of engagement. The situa-

tion in Beirut at that time was rather similar to what we see in Iraq today in terms of having a weak central government and many different factions around it.

On any given day, our marines in Beirut could be bumping up against Shia militia, Sunni militia, Christian Phalange, Druze militia, the Syrians over the border on one side—as well as with French, U.K., and Italian military units all operating in this environment. The Israeli military, which at this point had pulled back over the Chouf mountains, also was present.

These were very fine marines. I spent a good bit of time with them on their different positions. They were overall commanded by COL Tim Geraghty, an extraordinarily capable officer who had spent more than 2 tours in Vietnam. Their battalion commander, LTC Howard Gerlach, had done a tour and a half in Vietnam as infantry leader.

The rules of engagement were so strict in Beirut at the time that when our marines took fire, they could only return fire with the same type of weapon they were receiving fire from. These very restrictive rules ended up contributing to the situation in which the truck bomb went off. The sentries at the gate where the truck came in were not even allowed to have ammunition in their weapons at that time. They were precluded from being able to take out this truck when it entered because once they saw what was happening, they had to attempt to load their weapons and then fire at it.

This was an incident which combines so many different factors that are still in play right now in the Middle East. We should be remembering it. We should be remembering when we look back on it that the United States must play its hand very carefully in that part of the world. As one marine said to me during a firefight at one outpost I was covering as a journalist:

It is always difficult when you get involved in a five-sided argument.

We ought to think about that when we are looking at what is going on in other parts of the Middle East today.

But the main purpose of me speaking today is to urge all of us never to forget the courage and the risk and, ultimately, the sacrifice that so many of our young people are required to make on behalf of our country and under the direction of the leadership of those who decide to send them into harm's way.

HONORING OUR ARMED FORCES

CHIEF WARRANT OFFICER JOHN W. ENGEMAN

Mr. ROCKEFELLER. Mr. President, in the lush green hills of Arlington Cemetery, where peace holds its gentle sway, there is a headstone inscribed with the name of John W. Engeman. On it are his rank of chief warrant officer, and his honors, the Legion of Merit, Bronze Star, and Purple Heart. But, like all of the iconic white markers at Arlington, it only tells part of a hero's story.

Chief Warrant Officer Engeman enlisted in the Army when he was 18, and was stationed in Korea and Germany, and served in Kosovo and Operation Desert Storm. Two years ago, he moved with his family to West Virginia, where he was the active duty liaison between the National Guard and Reserves.

But he was more than a career military man; he was also a devoted father and husband, brother and son.

The soldiers in his unit called him a father figure and a great story teller. They recalled that whenever they needed advice, they always went to the Chief. They said they would follow him anywhere because he was a great leader, a good decisionmaker, and a good friend. And, they said, he loved to talk about his wife Donna or his two children, Nicole and Patrick.

So I can only imagine how he must have felt when the Army made special arrangements for him to watch his wife graduate from college. It had been a shared goal between the two of them, and on the day before Mother's Day, he sat half-a-world away and watched the dream turn into a reality. He ended that day by telling his wife how proud he was of her, and that he would call the next day to wish her a happy Mother's Day.

It was a call that would never come. Chief Warrant Officer Engeman's humvee would be struck by a roadside bomb later that evening.

From the earliest days of the Republic we have held a special place in our hearts for those families who have lost a loved one in war. Later this week, as part of the White House Commission of Remembrance, the family of Chief Warrant Officer Engeman will be honored, along with the families of other soldiers, sailors, and marines who have been lost in combat.

It is altogether right and fitting that we do this. Chief Warrant Officer Engeman answered the call to duty and served with honor and distinction. He won the respect of his soldiers and the admiration of his country.

But those truly timeless qualities—his laugh, his quirky smile he would give you when you needed his advice, and his love for his family—will live in the hearts of his wife, children, sisters, and parents forever.

All of West Virginia joins with me today in keeping the Engemans close in our hearts and prayers.

ESTABLISHING A FEDERAL STATUTORY FIRST AMENDMENT PRIVILEGE

Mr. LEAHY. Mr. President, The Senate Judiciary Committee has considered and for the first time reported a bill to establish a Federal statutory privilege to safeguard the freedom of the press. The Free Flow of Information Act, S. 2035, is bipartisan legislation that was reported on a strong bipartisan vote. The House has already passed legislation on this same subject,

H.R. 2102, with a strong, bipartisan and apparently veto-proof majority of 398 to 21. Thus, both S. 2035 and H.R. 2102 are available for Senate action on the Senate business calendar. I strongly support the enactment of a Federal shield law for journalists, and I urge the Senate to promptly consider Federal shield legislation.

All of us have an interest in enacting a balanced and meaningful first amendment privilege. Sadly, the press has become the first stop, rather than the last resort, for our Government and private litigants when it comes to seeking information. This is a dangerous trend that can have a chilling effect on the press and the public's right to know.

Enacting Federal shield legislation would help to reverse this troubling trend. In fact, proceeding promptly to consideration of this legislation is something I strongly support. Should the Senate take up the bipartisan shield bill that overwhelmingly passed in the House, Federal shield legislation could go immediately to the President's desk and be signed into law without delay this year.

The Senate bill has the support of a bipartisan coalition of Senators, including Senators SPECTER, SCHUMER, LUGAR, DODD, GRAHAM, and myself, who have all united to cosponsor this legislation. In addition, more than 50 news media and journalism organizations support this legislation, and the call for Senate action on this historic bill extends to editorial pages across the country, including the New York Times, Arizona Republic, L.A. Times, Salt Lake Tribune, and San Francisco Chronicle, among others.

The Senate and House bills protect law enforcement interests and safeguard national security. Moreover, both of these bills follow the lead of 33 States and the District of Columbia which have shield laws, and many other States, including Vermont, which recognize a common law reporters' privilege. Tellingly, the Bush administration has not identified a single circumstance where a reporters' privilege has caused harm to national security or to law enforcement, despite the fact that many courts have recognized such a privilege for years.

When he testified before the Judiciary Committee in favor of Federal shield legislation in 2005, William Safire told the Committee that the essence of newsgathering is this:

[I]f 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.

On behalf of the American public, I urge the Senate to protect the public's right to know by promptly considering and passing a Federal shield law.

KINGDOM GEMS OF VERMONT

Mr. LEAHY. Mr. President, I am pleased to stand before the Senate today to tell my friends about Vermont's Northeast Kingdom—a place

that is known as much for its natural beauty as the rural and industrious Vermonters who have settled there.

This region, defined by the three northeastern-most counties of Vermont that sit between the headwaters of the Connecticut River and the U.S.-Canadian border, became one of America's first National Geographic geotourism destinations. The designation highlights the character and sense of place that has come to define the dozens of mountain valley communities that sit in Orleans, Essex, and Caledonia Counties.

My wife Marcelle was born in the Northeast Kingdom, just south of the Canadian border in the city of Newport. Since then, like many Vermonters, we have often found ourselves heading to this part of Vermont to visit friends, go for a hike, or find a special place to have a meal. The people of the Northeast Kingdom have made this region of Vermont advance while carefully holding on to the key elements of their identity. Whether they are crafting furniture from the forests of the north woods or diversifying their family farm, these individuals have helped the communities of northeastern Vermont grow.

This autumn, Michelle Edelbaum and Daria Bishop of the Burlington Free Press published an article about a trip the two of them shared through the area, and I ask unanimous consent to have printed in the RECORD the text of the article offering a glimpse into these "Kingdom Gems."

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

[From The Burlington Free Press, Sept. 30, 2007]

KINGDOM GEMS

(By Michelle Edelbaum)

When trees scream with crimson, gold and orange, head to the Northeast Kingdom for world-class leaf peeping.

With foliage in mind, photographer Daria Bishop and I spent a day exploring the towns, shops and people that make the area special. We strayed from our loose plan to follow locals' hand-drawn maps down scenic dirt back roads to not-to-miss destinations.

On our 13-hour tour we didn't reach half the locations on our list, which included classic attractions Cabot Creamery, Great Vermont Corn Maze, Stephen Huneck's Dog Mountain and Fairbanks Museum. But we did visit a handful of gems worth a stop.

GREENSBORO

Twenty-eight years ago an enthusiastic David Smith and his wife, Willie, took over Highland Lodge in Greensboro from his parents and fostered a community-centric gathering place that hosts out-of-town guests and community gatherings. "The Walking Ladies," a group of 55 women who range in age from 40 to 86, meet thrice weekly in the dining room for coffee and muffins after they exercise.

On their recommendation we ate moist, sugar-crusted blueberry muffins, from-scratch blueberry pancakes and a fluffy cheese and veggie omelet with McKenzie sausage links. After breakfast, we set out on the lodge's 30 miles of trails from a grove of soaring pine trees decorated with colorful placards of children's artwork, courtesy of the lodge's summer campers.

In Greensboro village two stores dominate the retail scene. The Miller's Thumb, housed in a former grist mill, is filled with local artwork, fancy kitchen knickknacks, Italian pottery and antiques. Watch water rushing under the red building through a plexiglass-covered hole in the floor.

At Willey's Country Store, customer Doug Aronson of Woodbury declares "if you can't find it here, you can't find it anyplace." Wine, appliances, groceries, hardware and clothes are sold at the town institution, housed in a rambling white building that dates to the 1800s and has been owned by the Hurst family for five generations.

CRAFTSBURY

Look up as you approach Pete's Greens in Craftsbury. The roof of the farm's serve-yourself stand is laden with trailing plants, flowers and herbs. Peek inside at artful displays of colorful organic vegetables.

Consider yourself lucky if you hit Stardust Bookstore and Cafe on the idyllic Craftsbury Common during its limited school-centric hours. The store, run primarily by students from Craftsbury Academy, sells new and used books, coffee and espresso drinks inside the quaint 1940s former public library. Part of the proceeds are given to nonprofit organizations and granted as scholarships.

Just outside of town down a long dirt road lies Craftsbury Outdoor Center, on Great Hosmer Pond with 10 kilometers of trails open for biking and hiking. Ski director John Brodhead suggests spending an afternoon canoeing, mountain biking, walking with a naturalist, kayaking or relaxing in an Adirondack chair by the lake.

GLOVER

Untold treasures lie within Red Sky Trading Co. in Glover. Owner Cheri Safford's whimsy is on display in the unique and colorful assortment of vintage house wares, Melmac resin dishware, trays, china tea cups, garden decor, picture frames and more, that fill the maroon barn.

Buttery cookies, dense bars and rich chocolate cakes from Safford's kitchen share counter and refrigerator space with Vermont cheeses, natural sodas and local produce. Don't miss Safford's award-winning canned jellies, jams, bread and butter pickles, chutneys and pickled beets—just like Grandma made.

Between a bank of beer coolers and a rack of chips at Currier's Quality Market Inc. stand three stuffed deer and a black bear; turn the corner into the postal area and you'll come face-to-face with a 948-pound moose. More than 100 taxidermy animals are on display in the one-stop shop, including a porcupine, wild boar, ram and British timberwolf.

Jim Currier, who's owned the store for 40 years with his family, started the ever-growing collection 25 years ago with a deer head from his father. Hunters with a mount at the store earn "bragging rights," said Currier's daughter Julie McKay. Coming soon: a red fox, possum, and snow goose.

By 4 p.m. we hadn't eaten lunch and regretfully skipped Bread and Puppet Museum and its "Cheap Art." We missed Mount Pisgah in Barton, with stunning views of Lake Willoughby, biking in Burke at Kingdom Trails, and a mandarin orange chicken salad at River Garden Cafe. We also passed on flat bread and microbrews at Trout River Brewing Co. in Lyndonville and coffee and chit-chat at Miss Lyndonville Diner.

ST. JOHNSBURY

Instead we split for St. Johnsbury, where local-food-centric Elements Food and Spirits, like many destinations in the Northeast Kingdom that have irregular hours, isn't open on Monday.

At Kham's Thai, chef and manager Souki Luangrath, whose Essex Junction-based parents own the restaurant, says quality ingredients are a priority—he even deveins shrimp. Our refreshing late lunch included fresh spring rolls filled with crisp veggies, savory coconut Tom Kha soup and saucy panang curry with chunks of vegetables.

Railroad Street in downtown St. Johnsbury is home to several dozen independently owned shops and restaurants. Moose River Lake and Lodge Store sells jewelry with a Southwestern flair, Adirondack and Amish-style furniture, fine wine kept in a walk-in vault, art by illustrator Philip R. Goodwin, quality sportswear and home decor.

Scottie Raymond, formerly an employee at Outdoor Gear Exchange in Burlington, recently opened Kingdom Outdoors, which sells technical outdoor wear and gear. Raymond inked the graffiti-style mural in the skate shop and lounge downstairs.

During the day, hit Dylan's Caf for creative breakfast and lunch combinations, the newly opened Village Baker for artisan bread and pastries, or Boxcar and Caboose for coffee drinks and books. If you have time, check out PODO Shoes, the Northeast Kingdom Artisan Guild and Gallery and Frogs and Lily Pads.

DEVELOPMENT, RELIEF, AND EDUCATION FOR ALIEN MINORS ACT

Mrs. BOXER. Mr. President, I plan to vote in support of the Development, Relief, and Education for Alien Minors Act of 2007, better known as the DREAM Act.

The thousands of talented and hard working children and young adults who were brought to this country by their parents had nothing to do with the decision to disobey our laws.

I strongly believe this bill will strengthen our communities, our economy, and our military by requiring that undocumented students demonstrate good moral character, prove completion of a college or graduate degree, or serve in the U.S. military for 2 years in order to earn legalized status.

I urge my colleagues to support the DREAM Act.

NATIONAL PHYSICAL THERAPY MONTH

Mr. JOHNSON. Mr. President, I rise today in recognition of National Physical Therapy Month. What we currently celebrate as National Physical Therapy Month began in 1981 as a week long celebration in the month of June. In 1992, that week was extended to a whole month and was moved to October.

National Physical Therapy Month focuses attention on the value of physical therapy to one's health and the contributions of physical therapists to the health of their communities. This year National Physical Therapy Month is focusing on obesity because physical activity is a crucial component of weight loss and better health.

My understanding of physical therapy has greatly increased over the past several months. I owe a debt of gratitude to a great many doctors, nurses,

and therapists who brought me through the darkest moments of my life and who are walking with me on the road to recovery.

I am blessed to work with professional and talented physical therapists as I continue my recovery. Their confidence in my ability to improve is infectious, and my physical therapists motivate me to work harder than I thought possible. I am confident that with my hard work and the dedication of my physical therapists, my potential to improve is limitless.

Throughout my career in the U.S. House and Senate, I have strongly supported expanding access to all kinds of health care professionals. Physical therapists provide critical services to their patients. In a rural State like ours, where they may be the only provider of these services in their community, physical therapists greatly improve patient access to care and quality of life.

This year the Senate is considering the Medicare Access to Rehabilitation Services Act which would repeal the annual Medicare outpatient cap on certain physical and occupational therapy services and the Medicare Patient Access to Physical Therapists Act which would authorize qualified physical therapists to provide services for Medicare beneficiaries without requiring a physician referral. It would also provide for treatment of outpatient speech-language pathology services separately from outpatient physical therapy services. I am pleased to support both of these measures, and I commend them to my colleagues for their consideration.

I encourage everyone to consider with their health care professionals how physical therapy might benefit them, whether recovering from an accident or illness or seeking preventive care. National Physical Therapy Month is a great time to learn more about the benefits of physical therapy.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, 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 and a treaty which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 2:22 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the

following bills, in which it requests the concurrence of the Senate:

H.R. 53. An act to authorize the Secretary of the Interior to enter into a long-term lease with the Government of the United States Virgin Islands to provide land on the island of Saint John, Virgin Islands, for the establishment of a school, and for other purposes.

H.R. 189. An act to establish the Paterson Great Falls National Historical Park in the State of New Jersey and for other purposes.

H.R. 523. An act to require the Secretary of the Interior to convey certain public land located wholly or partially within the boundaries of the Wells Hydroelectric Project of Public Utility District No. 1 of Douglas County, Washington, to the utility district.

H.R. 767. An act to protect, conserve, and restore native fish, wildlife, and their natural habitats at national wildlife refuges through cooperative, incentive-based grants to control, mitigate, and eradicate harmful nonnative species, and for other purposes.

H.R. 783. An act to modify the boundary of Mesa Verde National Park, and for other purposes.

H.R. 813. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Prado Basin Natural Treatment System Project, to authorize the Secretary to carry out a program to assist agencies in projects to construct regional brine lines in California, to authorize the Secretary to participate in the Lower Chino Dairy Area desalination demonstration and reclamation project, and for other purposes.

H.R. 830. An act to authorize the exchange of certain interests in land in Denali National Park in the State of Alaska.

H.R. 1205. An act to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes.

H.R. 1337. An act to provide for a feasibility study of alternatives to augment the water supplies of the Central Oklahoma Master Conservancy District and cities served by the District.

H.R. 1462. An act to authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program for Endangered Species in the Central and Lower Platte River Basin and to modify the Pathfinder Dam and Reservoir.

H.R. 1803. An act to direct the Secretary of the Interior to conduct a feasibility study to design and construct a four reservoir intertie system for the purposes of improving the water storage opportunities, water supply reliability, and water yield of San Vicente, El Capitan, Murray, and Loveland Reservoirs in San Diego County, California in consultation and cooperation with the City of San Diego and the Sweetwater Authority, and for other purposes.

H.R. 1855. An act to authorize the Secretary of the Interior, acting through the Bureau of Reclamation to enter into a cooperative agreement with the Madera Irrigation District for purposes of supporting the Madera Water Supply Enhancement Project.

H.R. 2094. An act to provide for certain administrative and support services for the Dwight D. Eisenhower Memorial Commission, and for other purposes.

H.R. 2197. An act to modify the boundary of the Hopewell Culture National Historical Park in the State of Ohio, and for other purposes.

H.R. 3564. An act to amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States through fiscal year 2011, and for other purposes.

H.R. 3775. An act to support research and development of new industrial processes and technologies that optimize energy efficiency and environmental performance, utilize diverse sources of energy, and increase economic competitiveness.

H.R. 3776. An act to provide for research, development, and demonstration programs in advanced storage systems for electric drive vehicles, stationary applications, and electricity transmission and distribution applications, to support the ability of the United States to remain globally competitive in this field, and to promote the efficient delivery and use of energy.

At 5:04 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 327) to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to develop and implement a comprehensive program designed to reduce the incidence of suicide among veterans.

MEASURES REFERRED

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

H.R. 53. An act to authorize the Secretary of the Interior to enter into a long-term lease with the Government of the United States Virgin Islands to provide land on the island of Saint John, Virgin Islands, for the establishment of a school, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 189. An act to establish the Paterson Great Falls National Park in the State of New Jersey; to the Committee on Energy and Natural Resources.

H.R. 523. An act to require the Secretary of the Interior to convey certain public land located wholly or partially within the boundaries of the Wells Hydroelectric Project of Public Utility District No.1 of Douglas County, Washington, to the utility district; to the Committee on Energy and Natural Resources.

H.R. 767. An act to protect, conserve, and restore native fish, wildlife, and their natural habitats at national wildlife refuges through cooperative, incentive-based grants to control, mitigate, and eradicate harmful nonnative species, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 813. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Prado Basin Natural Treatment System Project, to authorize the Secretary to carry out a program to assist agencies in projects to construct regional brine lines in California, to authorize the Secretary to participate in the Lower Chino Dairy Area desalination demonstration and reclamation project, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 830. An act to authorize the exchange of certain interests in land in Denali National Park in the State of Alaska; to the Committee on Energy and Natural Resources.

H.R. 1205. An act to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 1462. An act to authorize the Secretary of the Interior to participate in the

implementation of the Platte River Recovery Implementation Program for Endangered Species in the Central and Lower Platte River Basin and to modify the Pathfinder Dam and Reservoir; to the Committee on Energy and Natural Resources.

H.R. 1803. An act to direct the Secretary of the Interior to conduct a feasibility study to design and construct a four reservoir intertie system for the purposes of improving the water storage opportunities, water supply reliability, and water yield of San Vicente, El Capitan, Murray, and Loveland Reservoirs in San Diego County, California in consultation and cooperation with the City of San Diego and the Sweetwater Authority, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1855. An act to authorize the Secretary of the Interior, acting through the Bureau of Reclamation to enter into a cooperative agreement with the Madera Irrigation District for purposes of supporting the Madera Water Supply Enhancement Project; to the Committee on Energy and Natural Resources.

H.R. 2197. An act to modify the boundary of the Hopewell Culture National Historical Park in the State of Ohio, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3775. An act to support research and development of new and industrial processes and technologies that optimize energy efficiency and environmental performance, utilize diverse sources of energy, and increase economic competitiveness; to the Committee on Energy and Natural Resources.

H.R. 3776. To provide for research, development, and demonstration programs in advanced energy storage systems for electric drive vehicles, stationary applications, and electricity transmission and distribution applications, to support the ability of the United States to remain globally competitive in this field, and to promote the efficient delivery and use of energy; to the Committee on Energy and Natural Resources.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1337. An act to provide for a feasibility study of alternatives to augment the water supplies of the Central Oklahoma Master Conservancy District and cities served by the District.

H.R. 2094. An act to provide for certain administrative and support services for the Dwight D. Eisenhower Memorial Commission, and for other purposes.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 2216. A bill to amend the Internal Revenue Code of 1986 to extend the Indian employment credit and the depreciation rules for property used predominantly within an Indian reservation.

S. 2217. A bill to amend the Internal Revenue Code of 1986 to extend the taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and

were referred or ordered to lie on the table as indicated:

POM-235. A resolution adopted by the Board of County Commissioners of Miami-Dade County of the State of Florida commending the Florida officials who provided for the installation of guardrails along bodies of water and in roadway medians; to the Committee on Commerce, Science, and Transportation.

POM-236. A resolution adopted by the Board of County Commissioners for Miami-Dade County of the State of Florida urging the Florida Legislature to designate West Flagler Street from 13 Avenue to 14 Avenue as Father Emilio Vallina Avenue; to the Committee on Commerce, Science, and Transportation.

POM-237. A resolution adopted by the Iberville Parish Council of the State of Louisiana urging Congress to vote in favor of H.R. 1229, the "Non-Market Economy Trade Remedy Act of 2007"; to the Committee on Finance.

POM-238. A resolution adopted by the Edina City Council of the State of Minnesota endorsing the United Nations principle of the Responsibility to Protect; to the Committee on Foreign Relations.

POM-239. A resolution adopted by the Gretna City Council of the State of Louisiana expressing its support for the implementation of legislation that would improve and eliminate barriers contained in the No Child Left Behind Act of 2001; to the Committee on Health, Education, Labor, and Pensions.

POM-240. A resolution adopted by the House of Representatives of the State of Michigan urging Congress to implement food policies that promote healthy food, farms, and communities by encouraging local production of fruits and vegetables by specialty crop farmers; to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE RESOLUTION NO. 156

Whereas, the federal Farm Bill traditionally provides crop subsidies to corn, wheat, soybean, and cotton farmers, and less than 40 percent of all United States farmers and ranchers actually receive any kind of subsidy from the federal government. However, there are many different kinds of farmers, both in Michigan and nationwide, growing nutritious and affordable fruits and vegetables that are vital to the health and well-being of Americans. Government support must emphasize nutritious, affordable, and locally available foods; and

Whereas, the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) encourages institutions participating in the school lunch program to purchase locally produced foods for school meals. While the real price of fruits and vegetables has increased by 40 percent since 1985, the cost of junk foods and sodas has declined by as much as 20 percent. We need to encourage the choice of fresh fruits and vegetables by purchasing locally grown produce and other foods, thereby supporting local farmers and benefiting students in need of high quality, nutritious food products. However, the USDA continues to discourage efforts by schools and other institutions to develop these important programs. The USDA claims that 7 CFR 3016.60(c) clearly prohibits the use of state or local geographic preferences and that all purchases are to be made competitively; and

Whereas, the Community Food Projects, a federally funded program designed to fight food insecurity through development of local food projects, promotes self-sufficiency of low-income communities. Grants from this program support urban nonprofits and urban residents in growing fresh vegetables in their

neighborhoods. Funding is also used to provide entrepreneurship training to urban farmers, again encouraging local specialty crop farmers in Michigan. However, maintaining current funding for the Community Food Projects is important to promoting healthy, locally grown foods in low-income communities; and

Whereas, the emphasis on traditional crops in the allocation of farm subsidies has resulted in a loss of fruit and vegetable farmers as well as a decrease in the acreage of specialty crop farmland used for farming nationwide. At the current rate, Michigan will lose 15 percent of its agricultural land by 2040, including 25 percent of the acreage used to grow fruit and 36 percent of the acreage used to grow dry beans. The Michigan House of Representatives supports the federal government encouraging and providing programs and assistance to farm operations that grow fruits and vegetables including but not limited to asparagus, cherries, apples, carrots, beets, lettuce, celery, squash, potatoes, peppers, pumpkins etc: Now, therefore, be it

Resolved by the House of Representatives, That we encourage Congress and the United States Department of Agriculture to implement food policies that promote healthy food, farms, and communities by encouraging local production of fruits and vegetables by specialty crop farmers; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of the United States Department of Agriculture, and the members of the Michigan congressional delegation.

POM-241. A resolution adopted by the California State Lands Commission expressing its support for legislation which would reduce pollution from marine vessels that use the nation's ports; to the Committee on Environment and Public Works.

RESOLUTION

Whereas, California's 1,100 mile coastline, with its beautiful beaches, wild cliffs, abundant fish stocks and fragile environment is a national treasure and a valuable state resource, which is at the heart of a tourist industry that generates nearly five billion dollars in state and local taxes each year; and is central to the state's \$46 billion ocean economy; and

Whereas, the California State Lands Commission has jurisdiction over the state-owned tide and submerged lands below the mean high tide line out to three miles from the coast as well as the lands underlying California's bays, lakes, and rivers; and

Whereas, the Commission is charged with managing these lands pursuant to the Public Trust Doctrine, common law that requires these lands to be used for commerce, fishing, navigation, recreation, and environmental protection; and

Whereas, the impacts of air pollution affect the public trust values of the lands under the Commission's jurisdiction and the utility of these lands to the public, future generations, and the environment; and

Whereas, most commercial goods imported to the United States come through our nation's ports by means of marine vessels; and

Whereas, California is home to the busiest ports in the nation, with large volumes of international goods entering through the Ports of Los Angeles, Long Beach, and Oakland, which rank as the first, second, and fourth busiest ports in the country, respectively; and

Whereas, in 2004, 1,900 ships visited California's ports, 87% of which were foreign ves-

sels, and it is estimated that freight volume will more than double in the Los Angeles region over the next 20 years; and

Whereas, marine vessels at California's ports emit large amounts of diesel particulate matter (PM), nitrogen oxides (NOx), and sulfur oxides (SOx), and

Whereas, most marine vessels use high emitting diesel bunker fuel, a low quality petroleum, high in sulfur, that is capable of producing approximately 50 times more haze-forming pollutants than the dirtiest trucks on our nation's highways; and

Whereas, bunker fuel used by marine vessels contains, on average, 27,000 parts per million (ppm) of sulfur, compared to the 15 ppm of sulfur allowed in diesel fuel used by heavy-duty trucks in the U.S.; and

Whereas, the pollutants emitted from burning bunker fuel cause environmental problems such as smog, soot, acid rain and global climate change, as well as damaging health effects such as asthma and cancer—as reported by the California Air Resource Board's Emission Reduction Plan for Ports and Goods Movement, air pollution from California's ports is the cause of 750 premature deaths each year; and

Whereas, in 2006, Maersk, Inc., which operates the largest container terminal in the Los Angeles harbor, voluntarily switched all 37 of its cargo ships to low-sulfur fuel, proving that it is feasible for marine vessels to use environmentally safer fuels, and

Whereas, the U.S. Environmental Protection Agency (EPA) announced a delay until December 2009 to adopt new emission and fuel regulations for big ocean ship propulsion engines and there is no assurance that the rules will be adopted by then or that they will be strict enough to significantly reduce air pollution; and

Whereas, the United Nations International Maritime Organization has before it a proposal, supported by the EPA, World Shipping Council, Pacific Maritime Shipping Association, and U.S. Coast Guard, to develop, among other things, stringent new standards on sulfur content in fuel used by marine vessels; however, it is uncertain if enough nations will support this proposal; and

Whereas, the Marine Vessel Emissions Reduction Act bill, introduced by Senators Boxer and Feinstein through S. 1499, and Congresswoman Solis through H.R. 2548, seeks to regulate the emissions of domestic and foreign-flagged marine vessels entering or leaving U.S. ports or offshore terminals; and

Whereas, specifically, the Marine Vessel Emissions Reduction Act, if passed, will mandate the EPA to set limits on the sulfur content of fuel used by these vessels, if they are within a certain distance from the coast (for the west coast, it is 200 miles), to no more than 1,000 ppm beginning December 31, 2010, unless the EPA determines that such a limit is not technically feasible, in which case there will be an interim limit of 2,000 ppm; and

Whereas, the Marine Vessel Emissions Reduction Act, if passed, will also mandate the EPA to establish standards for new and in-use engines in marine vessels that will require the maximum degree of emission reduction for PM, NOx, hydrocarbons, and carbon monoxide achievable by no later than January 1, 2012; therefore, be it

Resolved by the California State Lands Commission, that it supports the Marine Vessel Emissions Reduction Act (S. 1499 and H.R. 2548), which would reduce the emissions of air pollutants from marine vessels, including foreign-flagged vessels, entering or leaving U.S. ports or offshore terminals; and be it further

Resolved, That the Commission's Executive Officer transmit copies of this resolution to

the President and Vice President of the United States, to the Governor of California, to the Majority and Minority Leaders of the United States Senate, to the Speaker and Minority Leader of the United States House of Representatives, to the Chairs and Ranking Minority Members of the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, and to each Senator and Representative from California in the Congress of the United States.

POM-242. A resolution adopted by the House of Representatives of the State of Michigan urging Congress to address the recent approval of increased pollution by British Petroleum into the Great Lakes; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 172

Whereas, Lake Michigan is a national treasure and a vital natural resource shared by four states in trust for the entire nation. Lake Michigan is a drinking water source for millions of people and a recreational haven for swimming, fishing, and boating in all the states. Tourism and recreation based around Lake Michigan are worth billions of dollars each year to these states' economies; and

Whereas, Michigan and the other states bordering Lake Michigan rely on the federal Clean Water Act to limit polluted discharges originating from other states. Pollution originating from any state can negatively affect the public health and economy of the other states that use Lake Michigan water. Improving and preserving Lake Michigan's water quality are imperative to support the many uses of its water; and

Whereas, despite provisions in the federal Clean Water Act that prohibit degradation of water quality, the Indiana Department of Environmental Management approved, and the United States Environmental Protection Agency concurred with, a permit that allows the British Petroleum (BP) refinery in Whiting, Indiana, to increase significantly the dumping of industrial pollutants into Lake Michigan. These discharges threaten other uses of Lake Michigan water and are inconsistent with regional efforts to clean up the Great Lakes; and

Whereas, this decision sets a poor precedent for the future. States could approve increased pollution discharges to interstate waters for industries that economically benefit that state at the expense of other states that rely on that water: Now, therefore, be it

Resolved by the House of Representatives, That we urge the Congress of the United States and the United States Environmental Protection Agency to address the recent approval of increased pollution by British Petroleum into the Great Lakes; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, and the Administrator of the United States Environmental Protection Agency.

POM-243. A resolution adopted by the House of Representatives of the State of Michigan urging Congress to enact H.R. 2927, which responsibly balances achievable fuel economy increases with important economic and social concerns; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 165

Whereas, H.R. 2927 sets tough fuel economy standards without off ramps or loopholes, by requiring separate car and truck standards to meet a total fleet fuel economy between 32 and 35 mpg by 2022—an increase of as

much as 40 percent over current fuel economy standards—and requires vehicle fuel economy to be increased to the maximum feasible level in the years leading up to 2022; and

Whereas, H.R. 2927, while challenging, will provide automakers more reasonable lead time to implement technology changes in both the near and long term. Model year 2008 vehicles are already available today, and product and manufacturing planning is done through Model Year 2012. H.R. 2927 recognizes the critical need for engineering lead times necessary for manufacturers to make significant changes to their fleets; and

Whereas, H.R. 2927 respects consumer choice by protecting the important functional differences between passenger cars and light trucks/SUVs. Last year, 2006, was the sixth year in a row that Americans bought more trucks, minivans, and SUVs than passenger cars, because they value attributes such as passenger and cargo load capacity, four-wheel drive, and towing capability that most cars are not designed to provide; and

Whereas, while some would like fuel economy increases to be much more aggressive and be implemented with much less lead time, Corporate Average Fuel Economy (CAFE) standards must be set at levels and in time frames that do not impose economic harm on the manufacturers, suppliers, dealers, and others in the auto industry; and

Whereas, proponents of unrealistic and unattainable CAFE standards cite Europe's 35 mpg fuel economy, without ever mentioning Europe's \$6 per gallon gasoline prices, the high sales of diesel vehicles, the high proportion of Europeans driving manual transmission vehicles (80 percent in Europe vs. 8 percent in the U.S.), the significant differences in the size mix of vehicles, or that trucks and SUVs are virtually nonexistent among European households; and

Whereas, proponents of unreasonable CAFE standards claim they will save consumers billions, but they neglect to talk about the upfront costs of such changes to the manufacturers of meeting unduly strict CAFE standards—more than \$100 billion, according to the National Highway Traffic Safety Administration—which will lead to vehicle price increases of several thousand dollars; and

Whereas, proponents of unrealistic CAFE standards ignore the potential safety impacts of downsized vehicles on America's highways and overlook the historical role and critical importance of manufacturing plants to our national and economic security. They seem unconcerned about threats to the 7.5 million jobs that are directly and indirectly dependent on a vibrant auto industry in the United States. They also seem unconcerned about maintaining CAFE rules that require the continuance of small car production in the United States; and

Whereas, H.R. 2927 is a reasonable bill that balances a number of important public policy concerns. The bill represents a tough but fair compromise that deserves serious consideration and support: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the United States Congress to enact H.R. 2927, which responsibly balances achievable fuel economy increases with important economic and social concerns, including consumer demand; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-244. A resolution adopted by the Senate of the State of Michigan urging Congress

to extend the H2B returning worker exemption permanently; to the Committee on the Judiciary.

SENATE RESOLUTION NO. 96

Whereas, seasonal workers are a key component of our state's and our nation's tourism and recreation industries. Annually, thousands of young men and women use seasonal employment to begin their journey on the path to a career. Many tourism areas, however, do not have the populations necessary to fill all the seasonal jobs available. In Michigan, for example, world-renowned Mackinac Island hires up to 4,500 seasonal workers each year. Its 500 year-around residents cannot begin to supply the workforce necessary for peak-season employment levels; and

Whereas, foreign workers supplement the seasonal staff needs in a host of our tourism and recreation destinations. Many of these employees are in our country under the H2B visa program; and

Whereas, all workers under the H2B visa program are here legally, are tracked by the federal government to ensure they are doing the work their visa is intended for, and are paid under federally prescribed wage scales; and

Whereas, Congress took action to help alleviate problems with the H2B visa program by capping the number of visas available at 66,000, but also exempting workers who already held an H2B visa. This action ensures that there is enough of a workforce available for those industries that depend on seasonal workers; and

Whereas, there is a sunset in the law on the federal level that would remove the returning worker exemption. As of September 30, 2007, every returning worker will again be considered a new worker and be forced to apply under the 66,000 visa limit. This cap had been reached for each of the previous few years before Congress took action, just as the national economy has surged and more and more people are traveling. The cap also distorted hiring patterns across the nation, as employers are forced to put on workers far beyond service needs to help assure that they will have the employees they need when their season begins; and

Whereas, legislation has been introduced in Congress to revise the H2B visa program. The measure would extend the H2B returning worker exemption by removing the sunset language from current law. Clearly, this is an issue that needs prompt action: Now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to continue exempting returning workers allowed into this country under the H2B visa program by passing H.R. 1843; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the Michigan congressional delegation.

POM-245. A resolution adopted by the House of Representatives of the State of Michigan urging Congress to continue exempting returning workers from the cap on H2B visas; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 183

Whereas, seasonal workers are an essential component of the tourism and recreational industries of our state and nation. Even though thousands of young people use seasonal employment to begin their journey on the path to a career, many tourism areas do not have the populations necessary to fill all the seasonal jobs available. In Michigan, for example, Mackinac Island hires up to 4,500

seasonal workers each year. The island's 500 year-round residents cannot supply the workforce necessary for peak season employment levels; and

Whereas, foreign workers supplement the seasonal staff needs in a host of our tourism and recreation destinations. Many of these employees are in our country under the H2B visa program; and

Whereas, all workers under the H2B visa program are here legally, are tracked by the federal government to ensure they are doing the work prescribed under their visa, and are paid under federally prescribed wage scales; and

Whereas, according to the Michigan Travel Commission, the travel and tourism industry is a \$17.5 billion industry in the state of Michigan, contributing \$971 million annually to the state treasury. This industry is dependent upon seasonal workers in order to do business; and

Whereas, recently, the Congress of the United States took action to help alleviate problems with the H2B visa program by capping the number of visas available at 66,000 but also exempting workers who already have H2B visas. This action ensured that there is enough of a workforce available for those industries that depend on seasonal workers; and

Whereas, currently, there is a sunset in the law at the federal level that would remove the returning worker exemption. As of September 30, 2007, every returning worker would again be considered a new worker and be forced to apply under the 66,000 visa limit. This cap had been reached for each of the previous few years before Congress took action, just as the national economy has surged and more and more people are traveling. This cap also distorted hiring patterns across the nation, as employers are forced to put on workers far beyond service needs to help assure that they will have the employees they need when their season begins; and

Whereas, legislation has been introduced in the Congress of the United States to revise the H2B visa program. The measure would extend the H2B returning worker exemption by removing the sunset language from current law. Clearly, this is an issue that needs prompt action: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to continue exempting returning workers from the cap on H2B visas; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-246. A resolution adopted by the House of Representatives of the State of Michigan urging Congress to reestablish medical care for certain veterans whose income and disability status disqualified them for medical care as of January 17, 2003; to the Committee on Veterans' Affairs.

HOUSE RESOLUTION NO. 175

Whereas, we have been at war for nearly six years since the September 11th terrorist attacks on our soil. During this time, American military personnel have served around the world in combat. The wounds and illnesses that they may endure as the result of this service in our defense could affect them for a lifetime. It is our responsibility as a nation to honor their service and sacrifice by doing all we can to restore their health and opportunities in civilian life; and

Whereas, beginning January 17, 2003, veterans with income above certain levels and who have no service-connected disability

have been ineligible for Department of Veterans Affairs (VA) medical care. These Priority 8 category veterans may lack other sources of health care, and so ineligibility for VA health care could be a threat to their long-term health. Even veterans without evident war-related injuries or illnesses could have hidden health issues that can evolve into serious problems. Infections or viruses from serving in foreign lands might not reveal themselves until later in life. In addition, veterans with combat wounds such as traumatic brain injury (TSI) from blast effects or post-traumatic stress disorder (PTSD) may not display symptoms for years. Without early access to the VA healthcare system, veterans may not have the benefits of medical monitoring and early intervention in developing health issues; and

Whereas, Congress has before it two bills that would restore VA eligibility to these Priority 8 veterans under current standards with income levels too high and no service-connected disability. In the House of Representatives, HR 463 would restore this eligibility, while in the Senate, S 1147 has been introduced. We owe it to our veterans to act on this legislation to ensure that any long-term problems that may not be currently evident can be identified and treated in a timely manner. Providing quality health care is part of our duty as a nation to our veterans, and there is no excuse for failing to right this mistake: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the United States Congress to reestablish medical care for certain veterans whose income and disability status disqualified them for Department of Veterans Affairs medical care as of January 17, 2003; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 1845. A bill to provide for limitations in certain communications between the Department of Justice and the White House Office relating to civil and criminal investigations, and for other purposes (Rept. No. 110-203).

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. INHOFE:

S. 2216. A bill to amend the Internal Revenue Code of 1986 to extend the Indian employment credit and the depreciation rules for property used predominantly within an Indian reservation; read the first time.

By Mr. INHOFE (for himself and Mr. ROBERTS):

S. 2217. A bill to amend the Internal Revenue Code of 1986 to extend the taxable income limit on percentage depletion for oil and natural gas produced from marginal properties; read the first time.

By Mr. ROBERTS:

S. 2218. A bill to provide for the award of a military service medal to members of the

Armed Forces who were exposed to ionizing radiation as a result of participation in a test of atomic weapons; to the Committee on Armed Services.

By Mr. DURBIN (for himself, Mr. AKAKA, Ms. STABENOW, Mrs. BOXER, and Mr. OBAMA):

S. 2219. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare Program; to the Committee on Finance.

By Mr. AKAKA (for himself, Mr. INOUE, and Mr. MARTINEZ):

S. 2220. A bill to amend the Outdoor Recreation Act of 1963 to authorize certain appropriations; to the Committee on Energy and Natural Resources.

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

S. 2221. A bill to amend title XVIII of the Social Security Act to provide for the reporting of sales price data for implantable medical devices; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 507

At the request of Mr. CONRAD, the names of the Senator from Minnesota (Mr. COLEMAN) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 507, a bill to amend title XVIII of the Social Security Act to provide for reimbursement of certified midwife services and to provide for more equitable reimbursement rates for certified nurse-midwife services.

S. 719

At the request of Mr. LAUTENBERG, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 719, a bill to amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

S. 940

At the request of Mr. BAUCUS, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 940, a bill to amend the Internal Revenue Code of 1986 to permanently extend the subpart F exemption for active financing income.

S. 961

At the request of Mr. NELSON of Nebraska, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 961, a bill to amend title 46, United States Code, to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II, and for other purposes.

S. 972

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 972, a bill to provide for the reduction of adolescent pregnancy, HIV rates, and other sexually transmitted diseases, and for other purposes.

S. 982

At the request of Mrs. MURRAY, her name was added as a cosponsor of S.

982, a bill to amend the Public Health Service Act to provide for integration of mental health services and mental health treatment outreach teams, and for other purposes.

S. 1200

At the request of Mr. DORGAN, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1200, a bill to amend the Indian Health Care Improvement Act to revise and extend the Act.

S. 1375

At the request of Mr. MENENDEZ, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 1375, a bill to ensure that new mothers and their families are educated about postpartum depression, screened for symptoms, and provided with essential services, and to increase research at the National Institutes of Health on postpartum depression.

S. 1395

At the request of Mr. LEVIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 1395, a bill to prevent unfair practices in credit card accounts, and for other purposes.

S. 1413

At the request of Ms. MIKULSKI, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1413, a bill to provide for research and education with respect to uterine fibroids, and for other purposes.

S. 1445

At the request of Mrs. BOXER, her name was added as a cosponsor of S. 1445, a bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection.

S. 1553

At the request of Mrs. FEINSTEIN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1553, a bill to provide additional assistance to combat HIV/AIDS among young people, and for other purposes.

S. 1616

At the request of Mr. DURBIN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1616, a bill to amend the Clean Air Act to promote and assure the quality of biodiesel fuel, and for other purposes.

S. 1718

At the request of Mr. BROWN, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 1718, a bill to amend the Servicemembers Civil Relief Act to provide for reimbursement to servicemembers of tuition for programs of education interrupted by military service, for deferment of students loans and reduced interest rates for servicemembers during periods of

military service, and for other purposes.

S. 1847

At the request of Mr. DURBIN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1847, a bill to reauthorize the Consumer Product Safety Act, and for other purposes.

S. 1870

At the request of Mr. FEINGOLD, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1870, a bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

S. 2004

At the request of Mrs. MURRAY, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2004, a bill to amend title 38, United States Code, to establish epilepsy centers of excellence in the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes.

S. 2022

At the request of Mr. JOHNSON, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 2022, a bill to prohibit the closure or relocation of any county office of the Farm Service Agency until at least one year after the enactment of an Act to provide for the continuation of agricultural programs for fiscal years after 2007.

S. 2087

At the request of Mr. DORGAN, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 2087, a bill to amend certain laws relating to Native Americans to make technical corrections, and for other purposes.

S. 2128

At the request of Mr. SUNUNU, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 2128, a bill to make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent.

S. 2136

At the request of Mr. DURBIN, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 2136, a bill to address the treatment of primary mortgages in bankruptcy, and for other purposes.

S. 2160

At the request of Mr. AKAKA, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2160, a bill to amend title 38, United States Code, to establish a pain care initiative in health care facilities of the Department of Veterans Affairs, and for other purposes.

S. 2162

At the request of Mr. AKAKA, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 2162, a bill to improve the

treatment and services provided by the Department of Veterans Affairs to veterans with post-traumatic stress disorder and substance use disorders, and for other purposes.

S. 2166

At the request of Mr. CASEY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2166, a bill to provide for greater responsibility in lending and expanded cancellation of debts owed to the United States and the international financial institutions by low-income countries, and for other purposes.

S. 2190

At the request of Mr. ROCKEFELLER, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 2190, a bill to amend title XVIII of the Social Security Act to provide for the inclusion of barbiturates and benzodiazepines as covered part D drugs beginning in 2008.

S. 2205

At the request of Mr. DURBIN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2205, a bill to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

AMENDMENT NO. 3364

At the request of Mr. COLEMAN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of amendment No. 3364 intended to be proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3376

At the request of Mr. DURBIN, his name was added as a cosponsor of amendment No. 3376 proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3387

At the request of Mr. DEMINT, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of amendment No. 3387 proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3396

At the request of Mr. GRASSLEY, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of amendment No. 3396 proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3400

At the request of Mr. CARDIN, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of amendment No. 3400 proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3440

At the request of Mr. BINGAMAN, the names of the Senator from Maine (Ms. SNOWE), the Senator from Montana (Mr. BAUCUS), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Michigan (Ms. STABENOW), the Senator from Ohio (Mr. BROWN), the Senator from Missouri (Mrs. MCCASKILL) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of amendment No. 3440 proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

At the request of Ms. LANDRIEU, her name was added as a cosponsor of amendment No. 3440 proposed to H.R. 3043, *supra*.

AMENDMENT NO. 3447

At the request of Mr. SMITH, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of amendment No. 3447 intended to be proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROBERTS:

S. 2218. A bill to provide for the award of a military service medal to members of the Armed Forces who were exposed to ionizing radiation as a result of participation in a test of atomic weapons; to the Committee on Armed Services.

Mr. ROBERTS. Mr. President, I want to take a moment to honor those veterans who have served their Nation as quiet heroes. These quiet heroes, otherwise known as Atomic Veterans, were exposed unknowingly to ionizing radiation resulting from atomic testing conducted between 1945-1963.

Sacrifice in the service of your country can take many different forms. We see it everyday in our military efforts in Iraq and Afghanistan. We see it in the hospital beds of Walter Reed and VA hospitals nationwide. It is our duty as Americans, to honor the sacrifice made by our Nation's servicemembers.

In the case of the Atomic Veterans, sacrifice was not necessarily something that happened on the battlefield, nor

on the naval fleet. The price that many Atomic Veterans paid came due after their years of military service, when enduring mysterious cancers and other medical conditions related to their exposure to ionizing radiation. Their fight continues and the time is long overdue to recognize what, for some, has become the ultimate sacrifice.

In recognition of the silent sacrifices made by these American heroes, I am introducing the Atomic Veterans Medal Act. It is the Senate companion to H.R. 3471, offered by my colleague, Congressman TODD TIAHRT, in the House. We owe a debt of gratitude to brave Americans who have worn the uniform. It is my hope that this measure helps to show the respect and honor these Atomic Veterans deserve.

By Mr. DURBIN (for himself, Mr. AKAKA, Ms. STABENOW, Mrs. BOXER, and Mr. OBAMA):

S. 2219: A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare Program; to the Committee on Finance.

Mr. DURBIN. Mr. President, nearly 4 years have passed since Congress enacted the Medicare Modernization Act. Adding a prescription drug benefit to Medicare was long overdue, and many senior citizens and people with disabilities are relieved to finally have drug coverage.

But the drug benefit was not structured like the rest of Medicare. For all other Medicare benefits, seniors can choose whether to receive benefits directly through Medicare or through a private insurance plan. The overwhelming majority choose the Medicare-run option for their hospital and physician coverage.

No such choice is available for prescription drugs. Medicare beneficiaries must enroll in a private insurance plan to obtain drug coverage.

A report released today by the Medicare Rights Center, with the support of Consumers Union, identifies the problems this decision to rely exclusively on private drug plans has created.

Seniors are having trouble identifying which of the dozens of private drug plans works best for them. Anyone who has visited a senior center or spoken with an elderly relative knows that the complexity of the drug benefit has created much confusion.

Each drug plan has its own premium, cost-sharing requirements, list of covered drugs, and pharmacy network. After you have identified the right drug plan, you have to go through the whole process again at the end of the year because your plan may have changed the drugs it covers or added new restrictions on how to access covered drugs.

Medicare beneficiaries often cannot obtain the drugs they need because they are trapped in an appeals process that the Medicare Rights Center calls "hopelessly dysfunctional." Drug plans

often do not tell beneficiaries that they can appeal a drug plan's decision to deny coverage of a drug, even though they are required to do so. Beneficiaries who do appeal soon find that it is a long and difficult process.

The complexity of the Medicare drug benefit also has made beneficiaries more vulnerable to aggressive and deceptive marketing practices. Some insurers try to steer seniors into more profitable Medicare Advantage plans. Some seniors have been signed up for Medicare Advantage plans without their knowledge, and, unfortunately, there have also been unscrupulous insurance agents who have misrepresented what benefits would be covered.

Adding to the frustration with the program so far is accumulating evidence that private drug plans have not been effective negotiators, which means seniors end up paying more than they should.

Drug prices are higher in private Medicare drug plans than drug prices available through the Veterans Administration, Medicaid, and other countries like Canada.

A report by the House Oversight and Government Reform Committee estimated that taxpayers and Medicare beneficiaries would have saved almost \$15 billion in 2007 if administrative expenses in the drug program were as low as the traditional government-run Medicare program and if drug prices were the same as Medicaid levels.

It should come as no surprise then that the average beneficiary who stays in their current Medicare drug plan will see their monthly premiums increase 21 percent in 2008.

Today, I am introducing the Medicare Prescription Drug Savings and Choice Act. The bill would create a Medicare-operated drug plan that would compete with private drug plans and would require the Health and Human Services Secretary to negotiate with drug companies to lower drug prices.

This is the kind of drug plan that Medicare beneficiaries are looking for. According to a survey by the Kaiser Family Foundation, 2/3 of seniors want the option of getting drug coverage directly from Medicare, and over 80 percent favor allowing the government to negotiate with drug companies for lower prices.

The Health and Human Services Secretary would have the tools to negotiate with drug companies, including the use of drug formulary. The best medical evidence would determine which drugs are covered in the formulary, and the formulary would be used to promote safety, appropriate use of drugs, and value.

The bill would establish an appeals process that is efficient, imposes minimal administrative burdens, and ensures timely procurement of nonformulary drugs or nonpreferred drugs when medically necessary.

The Secretary would also develop a system for paying pharmacies that

would include the prompt payment of claims.

Seniors want the ability to choose a Medicare-administered drug plan. Let us give them this option, just as they have this choice with every other benefit covered by Medicare. Many seniors will find direct Medicare coverage to be a simpler, more dependable, and less costly option than private drug plans.

Mr. President, 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 placed in the RECORD, as follows:

S. 2219

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 “Medicare Prescription Drug Savings and Choice Act of 2007”.

SEC. 2. ESTABLISHMENT OF MEDICARE OPERATED PRESCRIPTION DRUG PLAN OPTION.

(a) IN GENERAL.—Subpart 2 of part D of the Social Security Act is amended by inserting after section 1860D–11 (42 U.S.C. 1395w–111) the following new section:

“MEDICARE OPERATED PRESCRIPTION DRUG PLAN OPTION

“SEC. 1860D–11A. (a) IN GENERAL.—Notwithstanding any other provision of this part, for each year (beginning with 2009), in addition to any plans offered under section 1860D–11, the Secretary shall offer one or more medicare operated prescription drug plans (as defined in subsection (c)) with a service area that consists of the entire United States and shall enter into negotiations in accordance with subsection (b) with pharmaceutical manufacturers to reduce the purchase cost of covered part D drugs for eligible part D individuals who enroll in such a plan.

“(b) NEGOTIATIONS.—Notwithstanding section 1860D–11(i), for purposes of offering a medicare operated prescription drug plan under this section, the Secretary shall negotiate with pharmaceutical manufacturers with respect to the purchase price of covered part D drugs in a Medicare operated prescription drug plan and shall encourage the use of more affordable therapeutic equivalents to the extent such practices do not override medical necessity as determined by the prescribing physician. To the extent practicable and consistent with the previous sentence, the Secretary shall implement strategies similar to those used by other Federal purchasers of prescription drugs, and other strategies, including the use of a formulary and formulary incentives in subsection (e), to reduce the purchase cost of covered part D drugs.

“(c) MEDICARE OPERATED PRESCRIPTION DRUG PLAN DEFINED.—For purposes of this part, the term ‘medicare operated prescription drug plan’ means a prescription drug plan that offers qualified prescription drug coverage and access to negotiated prices described in section 1860D–2(a)(1)(A). Such a plan may offer supplemental prescription drug coverage in the same manner as other qualified prescription drug coverage offered by other prescription drug plans.

“(d) MONTHLY BENEFICIARY PREMIUM.—

“(1) QUALIFIED PRESCRIPTION DRUG COVERAGE.—The monthly beneficiary premium for qualified prescription drug coverage and access to negotiated prices described in section 1860D–2(a)(1)(A) to be charged under a

medicare operated prescription drug plan shall be uniform nationally. Such premium for months in 2009 and each succeeding year shall be based on the average monthly per capita actuarial cost of offering the medicare operated prescription drug plan for the year involved, including administrative expenses.

“(2) SUPPLEMENTAL PRESCRIPTION DRUG COVERAGE.—Insofar as a medicare operated prescription drug plan offers supplemental prescription drug coverage, the Secretary may adjust the amount of the premium charged under paragraph (1).

“(e) USE OF A FORMULARY AND FORMULARY INCENTIVES.—

“(1) IN GENERAL.—With respect to the operation of a medicare operated prescription drug plan, the Secretary shall establish and apply a formulary (and may include formulary incentives described in paragraph (2)(C)(ii)) in accordance with this subsection in order to—

“(A) increase patient safety;

“(B) increase appropriate use and reduce inappropriate use of drugs; and

“(C) reward value.

“(2) DEVELOPMENT OF INITIAL FORMULARY.—

“(A) IN GENERAL.—In selecting covered part D drugs for inclusion in a formulary, the Secretary shall consider clinical benefit and price.

“(B) ROLE OF AHRQ.—The Director of the Agency for Healthcare Research and Quality shall be responsible for assessing the clinical benefit of covered part D drugs and making recommendations to the Secretary regarding which drugs should be included in the formulary. In conducting such assessments and making such recommendations, the Director shall—

“(i) consider safety concerns including those identified by the Federal Food and Drug Administration;

“(ii) use available data and evaluations, with priority given to randomized controlled trials, to examine clinical effectiveness, comparative effectiveness, safety, and enhanced compliance with a drug regimen;

“(iii) use the same classes of drugs developed by United States Pharmacopeia for this part;

“(iv) consider evaluations made by—

“(I) the Director under section 1013 of Medicare Prescription Drug, Improvement, and Modernization Act of 2003;

“(II) other Federal entities, such as the Secretary of Veterans Affairs; and

“(III) other private and public entities, such as the Drug Effectiveness Review Project and Medicaid programs; and

“(v) recommend to the Secretary—

“(I) those drugs in a class that provide a greater clinical benefit, including fewer safety concerns or less risk of side-effects, than another drug in the same class that should be included in the formulary;

“(II) those drugs in a class that provide less clinical benefit, including greater safety concerns or a greater risk of side-effects, than another drug in the same class that should be excluded from the formulary; and

“(III) drugs in a class with same or similar clinical benefit for which it would be appropriate for the Secretary to competitively bid (or negotiate) for placement on the formulary.

“(C) CONSIDERATION OF AHRQ RECOMMENDATIONS.—

“(1) IN GENERAL.—The Secretary, after taking into consideration the recommendations under subparagraph (B)(v), shall establish a formulary, and formulary incentives, to encourage use of covered part D drugs that—

“(I) have a lower cost and provide a greater clinical benefit than other drugs;

“(II) have a lower cost than other drugs with same or similar clinical benefit; and

“(III) drugs that have the same cost but provide greater clinical benefit than other drugs.

“(ii) FORMULARY INCENTIVES.—The formulary incentives under clause (i) may be in the form of one or more of the following:

“(I) Tiered copayments.

“(II) Reference pricing.

“(III) Prior authorization.

“(IV) Step therapy.

“(V) Medication therapy management.

“(VI) Generic drug substitution.

“(iii) FLEXIBILITY.—In applying such formulary incentives the Secretary may decide not to impose any cost-sharing for a covered part D drug for which—

“(I) the elimination of cost sharing would be expected to increase compliance with a drug regimen; and

“(II) compliance would be expected to produce savings under part A or B or both.

“(3) LIMITATIONS ON FORMULARY.—In any formulary established under this subsection, the formulary may not be changed during a year, except—

“(A) to add a generic version of a covered part D drug that entered the market;

“(B) to remove such a drug for which a safety problem is found; and

“(C) to add a drug that the Secretary identifies as a drug which treats a condition for which there has not previously been a treatment option or for which a clear and significant benefit has been demonstrated over other covered part D drugs.

“(4) ADDING DRUGS TO THE INITIAL FORMULARY.—

“(A) USE OF ADVISORY COMMITTEE.—The Secretary shall establish and appoint an advisory committee (in this paragraph referred to as the ‘advisory committee’)—

“(i) to review petitions from drug manufacturers, health care provider organizations, patient groups, and other entities for inclusion of a drug in, or other changes to, such formulary; and

“(ii) to recommend any changes to the formulary established under this subsection.

“(B) COMPOSITION.—The advisory committee shall be composed of 9 members and shall include representatives of physicians, pharmacists, and consumers and others with expertise in evaluating prescription drugs. The Secretary shall select members based on their knowledge of pharmaceuticals and the Medicare population. Members shall be deemed to be special Government employees for purposes of applying the conflict of interest provisions under section 208 of title 18, United States Code, and no waiver of such provisions for such a member shall be permitted.

“(C) CONSULTATION.—The advisory committee shall consult, as necessary, with physicians who are specialists in treating the disease for which a drug is being considered.

“(D) REQUEST FOR STUDIES.—The advisory committee may request the Agency for Healthcare Research and Quality or an academic or research institution to study and make a report on a petition described in subparagraph (A)(ii) in order to assess—

“(i) clinical effectiveness;

“(ii) comparative effectiveness;

“(iii) safety; and

“(iv) enhanced compliance with a drug regimen.

“(E) RECOMMENDATIONS.—The advisory committee shall make recommendations to the Secretary regarding—

“(i) whether a covered part D drug is found to provide a greater clinical benefit, including fewer safety concerns or less risk of side-effects, than another drug in the same class that is currently included in the formulary and should be included in the formulary;

“(ii) whether a covered part D drug is found to provide less clinical benefit, including greater safety concerns or a greater risk of side-effects, than another drug in the same class that is currently included in the formulary and should not be included in the formulary; and

“(iii) whether a covered part D drug has the same or similar clinical benefit to a drug in the same class that is currently included in the formulary and whether the drug should be included in the formulary.

“(F) LIMITATIONS ON REVIEW OF MANUFACTURER PETITIONS.—The advisory committee shall not review a petition of a drug manufacturer under subparagraph (A)(ii) with respect to a covered part D drug unless the petition is accompanied by the following:

“(i) Raw data from clinical trials on the safety and effectiveness of the drug.

“(ii) Any data from clinical trials conducted using active controls on the drug or drugs that are the current standard of care.

“(iii) Any available data on comparative effectiveness of the drug.

“(iv) Any other information the Secretary requires for the advisory committee to complete its review.

“(G) RESPONSE TO RECOMMENDATIONS.—The Secretary shall review the recommendations of the advisory committee and if the Secretary accepts such recommendations the Secretary shall modify the formulary established under this subsection accordingly. Nothing in this section shall preclude the Secretary from adding to the formulary a drug for which the Director of the Agency for Healthcare Research and Quality or the advisory committee has not made a recommendation.

“(H) NOTICE OF CHANGES.—The Secretary shall provide timely notice to beneficiaries and health professionals about changes to the formulary or formulary incentives.

“(f) INFORMING BENEFICIARIES.—The Secretary shall take steps to inform beneficiaries about the availability of a Medicare operated drug plan or plans including providing information in the annual handbook distributed to all beneficiaries and adding information to the official public Medicare website related to prescription drug coverage available through this part.

“(g) APPLICATION OF ALL OTHER REQUIREMENTS FOR PRESCRIPTION DRUG PLANS.—Except as specifically provided in this section, any Medicare operated drug plan shall meet the same requirements as apply to any other prescription drug plan, including the requirements of section 1860D-4(b)(1) relating to assuring pharmacy access.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1860D-3(a) of the Social Security Act (42 U.S.C. 1395w-103(a)) is amended by adding at the end the following new paragraph:

“(4) AVAILABILITY OF THE MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—A medicare operated prescription drug plan (as defined in section 1860D-11A(c)) shall be offered nationally in accordance with section 1860D-11A.”.

(2)(A) Section 1860D-3 of the Social Security Act (42 U.S.C. 1395w-103) is amended by adding at the end the following new subsection:

“(c) PROVISIONS ONLY APPLICABLE IN 2006, 2007, AND 2008.—The provisions of this section shall only apply with respect to 2006, 2007, and 2008.”.

(B) Section 1860D-11(g) of such Act (42 U.S.C. 1395w-111(g)) is amended by adding at the end the following new paragraph:

“(8) NO AUTHORITY FOR FALLBACK PLANS AFTER 2008.—A fallback prescription drug plan shall not be available after December 31, 2008.”.

(3) Section 1860D-13(c)(3) of such Act (42 U.S.C. 1395w-113(c)(3)) is amended—

(A) in the heading, by inserting “AND MEDICARE OPERATED PRESCRIPTION DRUG PLANS” after “FALLBACK PLANS”; and

(B) by inserting “or a medicare operated prescription drug plan” after “a fallback prescription drug plan”.

(4) Section 1860D-16(b)(1) of such Act (42 U.S.C. 1395w-116(b)(1)) is amended—

(A) in subparagraph (C), by striking “and” after the semicolon at the end;

(B) in subparagraph (D), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(E) payments for expenses incurred with respect to the operation of medicare operated prescription drug plans under section 1860D-11A.”.

(5) Section 1860D-41(a) of such Act (42 U.S.C. 1395w-151(a)) is amended by adding at the end the following new paragraph:

“(19) MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—The term ‘medicare operated prescription drug plan’ has the meaning given such term in section 1860D-11A(c).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

SEC. 3. IMPROVED APPEALS PROCESS UNDER THE MEDICARE OPERATED PRESCRIPTION DRUG PLAN.

Section 1860D-4(h) of the Social Security Act (42 U.S.C. 1305w-104(h)) is amended by adding at the end the following new paragraph:

“(h) APPEALS PROCESS FOR MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—

“(1) IN GENERAL.—The Secretary shall develop a well-defined process for appeals for denials of benefits under this part under the medicare operated prescription drug plan. Such process shall be efficient, impose minimal administrative burdens, and ensure the timely procurement of non-formulary drugs or exemption from formulary incentives when medically necessary. Medical necessity shall be based on professional medical judgment, the medical condition of the beneficiary, and other medical evidence. Such appeals process shall include—

“(A) an initial review and determination made by the Secretary; and

“(B) for appeals denied during the initial review and determination, the option of an external review and determination by an independent entity selected by the Secretary.

“(2) CONSULTATION IN DEVELOPMENT OF PROCESS.—In developing the appeals process under paragraph (1), the Secretary shall consult with consumer and patient groups, as well as other key stakeholders to ensure the goals described in paragraph (1) are achieved.”.

SEC. 4. PHARMACY PAYMENT UNDER THE MEDICARE OPERATED PRESCRIPTION DRUG PLAN.

Section 1860D-12(b) of the Social Security Act (42 U.S.C. 1395w-112 (b)) is amended by adding at the end the following new paragraph:

“(4) PHARMACY PAYMENT UNDER THE MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—

“(A) IN GENERAL.—Under the medicare operated prescription drug plan, the Secretary shall develop a system for payment to pharmacies. Such a system shall include a requirement that the plan shall issue, mail, or otherwise transmit payment for all clean claims submitted under this part within the applicable number of calendar days after the date on which the claim is received.

“(B) DEFINITIONS.—In this paragraph:

“(i) CLEAN CLAIM.—The term ‘clean claim’ means a claim, with respect to a covered

part D drug, that has no apparent defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

“(ii) APPLICABLE NUMBER OF CALENDAR DAYS.—The term ‘applicable number of calendar days’ means—

“(I) with respect to claims submitted electronically, 14 calendar days; and

“(II) with respect to claims submitted otherwise, 30 calendar days.

“(C) PROCEDURES INVOLVING CLAIMS.—

“(i) CLAIMS DEEMED TO BE CLEAN CLAIMS.—

“(I) IN GENERAL.—A claim for a covered part D drug shall be deemed to be a clean claim for purposes of this paragraph if the Secretary does not provide a notification of deficiency to the claimant by the 10th day that begins after the date on which the claim is submitted.

“(II) NOTIFICATION OF DEFICIENCY.—For purposes of subclause (I), the term ‘notification of deficiency’ means a notification that specifies all defects or improprieties in the claim involved and that lists all additional information or documents necessary for the proper processing and payment of the claim.

“(ii) PAYMENT OF CLEAN PORTIONS OF CLAIMS.—The Secretary shall, as appropriate, pay any portion of a claim for a covered part D drug under the medicare operated prescription drug plan that would be a clean claim but for a defect or impropriety in a separate portion of the claim in accordance with subparagraph (A).

“(iii) OBLIGATION TO PAY.—A claim for a covered part D drug submitted to the Secretary that is not paid or contested by the provider within the applicable number of calendar days (as defined in subparagraph (B)) shall be deemed to be a clean claim and shall be paid by the Secretary in accordance with subparagraph (A).

“(iv) DATE OF PAYMENT OF CLAIM.—Payment of a clean claim under subparagraph (A) is considered to have been made on the date on which full payment is received by the provider.

“(D) ELECTRONIC TRANSFER OF FUNDS.—The Secretary shall pay all clean claims submitted electronically by an electronic funds transfer mechanism.”.

By Mr. AKAKA (for himself, Mr. INOUE, and Mr. MARTINEZ):

S. 2220. A bill to amend the Outdoor Recreation Act of 1963 to authorize certain appropriations; to the Committee on Energy and Natural Resources.

Mr. AKAKA. Mr. President, today I am introducing legislation that will amend the Outdoor Recreation Act of 1963, to further enhance education, instruction and recreation opportunities available in our Nation's tropical botanical gardens. I wish to also thank my colleagues, Senators DANIEL INOUE, MEL MARTINEZ and BILL NELSON, for joining me in sponsoring this measure.

Studies have indicated that throughout the world, our plants and their habitats are quickly disappearing. With 90 percent of these species existing in tropical areas, it is imperative that we continue to strive for a greater understanding of how we can preserve these natural resources.

The legislation that I am introducing today, the Outdoor Recreation Act of 1963 Amendments Act, will authorize \$1

million for the National Botanical Gardens in fiscal year 2009, and up to \$500,000 each fiscal year thereafter. These funds are to be matched by State and local governments as well as private individuals.

Since Congress chartered the National Tropical Botanical Gardens in 1964, the gardens have not only thrived and flourished, but have provided valuable research. This research is vital to enriching our lives through not only perpetuating the survival of ecosystems, but preserving the cultural knowledge of these tropical regions.

As we, and the rest of the world, continue to develop rural areas, we slowly deplete our natural resources and place our Nation's tropical plant biodiversity at risk. It is our responsibility to ensure that measures are in place that will preserve our finite natural resources, or we may find ourselves without the basics for survival.

These gardens serve as safe havens for endangered tropical plants where scientists strive to understand the evolution, structure relationships and qualities of these plants for the future benefit of all Americans. The gardens also serve as a valuable educational tool, where students of all ages go to learn about environmental stewardship and horticultural practices, and discover that science can be fun. The collections at these gardens provide valuable information that conservationists and others utilize to study and determine how to protect these resources by halting further degradation of habitats so that at-risk species will have a better chance of surviving in the future.

I urge my colleagues to support this important legislation in order to ensure that these gardens continue to not only thrive for generations to come, but ensure that these resources will be preserved.

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

S. 2221. A bill to amend title XVIII of the Social Security Act to provide for the reporting of sales price data for implantable medical devices; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I am pleased to introduce today with Senator SPECTER the Transparency in Medical Device Pricing Act of 2007.

As we all know, both parties to a transaction need information in order for the free market to properly work. If only one party has information, the market does not properly function because you have a one-sided negotiation. The purpose of this legislation is to bring transparency to medical device pricing so that there will be sufficient information available for market forces to truly work.

In the Medicare program, most hospitals receive a single payment for all the health care goods and services provided during a beneficiary's stay. This payment structure is designed to give hospitals incentives to provide efficient, effective, and economical care.

Why? Because when a hospital lowers its costs, more of the Medicare payment can go toward the hospital's bottom line.

Hospitals normally have many resources like consultants or reference materials to help them when they negotiate prices for things like drugs, nursing care, or hospital gowns. Unfortunately, this is not the case with implantable medical devices like pacemakers, stents, and artificial hips and knees.

Hospitals have no way of knowing what a fair market price for a medical device is, because in this one industry there is a veil of secrecy over pricing information. In fact, manufacturers typically require hospitals to agree to secrecy or gag clauses in their contracts. The device makers actually prohibit hospitals from disclosing the price of a medical device to others. So hospitals have no idea of what is a fair price. Instead they must engage in one-sided negotiations with medical device manufacturers.

We all know that there must be enough transparency for market forces to work. The free market, after all, thrives on complete information and open competition—not on gag rules and secrecy clauses.

As a farmer, when I go out and buy a tractor, I first go out and talk to a number of people to help me figure out what is a fair price. Having this information puts me on equal footing with the dealer when we negotiate the price. After all, I don't want to be taken to the cleaners.

Today, there is no level playing field when hospitals negotiate with device manufacturers. It shows. This is a major reason why many hospitals pay absurdly more than others for the same medical device. The inflated prices many hospitals pay have implications for the health care system on multiple levels.

First, higher medical device costs take up more of the Medicare payment. That means hospitals have less to spend on other crucial components of care such as staff. And hospitals have less of the Medicare payment to devote toward their bottom line. So they have less money for activities to improve hospital quality and safety. They have less money to spend on health information technology systems. Most importantly, they have less money to keep their doors open and provide care to Medicare beneficiaries. In rural areas in my state where hospitals are barely squeaking by, this is a problem.

Also, I want to point out how hospitals paying more than the fair market price for medical devices adds to skyrocketing entitlement spending. Medicare hospital payments are updated every year. The update takes into account the increased cost of goods and services used to provide care to beneficiaries. Let us say medical device prices are higher than they should be. As a result, Medicare hospital payment updates and Medicare spending will rise faster than they should.

Also, let us remember that there are cost-sharing requirements for certain hospital services. And so Medicare beneficiaries will be paying more out-of-pocket than they should.

All this adds up to one thing: a need for greater transparency in medical device pricing. My good friend and colleague, Senator SPECTER, and I have developed a way to provide greater transparency.

The Transparency in Medical Device Pricing Act of 2007 would bring this needed transparency to medical device pricing by building on current initiatives at the Department of Health and Human Services, HHS. Under the act, here are some conditions device manufacturers would have to receive direct or indirect payments under Medicare, Medicaid, or SCHIP. Every quarter they would have to submit to the HHS Secretary data on average and median sales prices for all medical devices that are implanted during inpatient and outpatient procedures. Manufacturers would be subject to civil money penalties from \$10,000 to \$100,000 for failure to report or misrepresentations of price data.

Collecting such data is not new to HHS. The Secretary has been collecting average sales price data for drugs covered under Part B of the Medicare program for a number of years now.

The Secretary would also be required to make the data available to the public on the website of the Centers for Medicare & Medicaid Services, CMS. CMS would have to update the website on a quarterly basis.

Again, this is nothing new at HHS. It has been promoting transparency in Medicare for quite some time. The Secretary already publicly reports quality and price data of various Medicare providers. This is so beneficiaries can use these resources when selecting a provider.

Publicly reporting implantable medical device pricing would help hospitals negotiate fair prices. For once, they would have a resource to consult so negotiations would be fairer.

Mr. President, let me be clear. I fully support the medical device industry making a profit. I just think it should not be at the expense of hospitals, beneficiaries and the American taxpayer paying much more than they should. We must let the market work, and markets depend on information.

The Transparency in Medical Device Pricing Act of 2007 would go a long way toward ensuring that free market forces actually work. The act would enable hospitals to obtain medical devices at fair prices.

Mr. SPECTER. Mr. President, with Senator GRASSLEY, I introduce a bill that will help control Medicare spending and will increase transparency in our health care system. Medicare spending is a huge component of the Federal budget. In 2006, Medicare benefit payments totaled \$374 billion and accounted for 12 percent of the Federal budget.

Over the past several months I have received many letters from hospitals, consumer groups, employers, health and welfare funds, and health care journalists about the secrecy that the medical device industry is trying to impose around pricing for implantable medical devices, pacemakers, hip and knee replacements, which hospitals purchase. Hospitals are being told they can't share pricing information with any "third parties," that would include patients, physicians, auditors, and consultants. The hospitals are not the ultimate payers. The payers are patients and those who provide health insurance coverage, which includes small businesses, large employers, and local, State, and Federal Government programs. But the hospitals are the ones who have the role of negotiating fair pricing on behalf of the patients and other payers.

A New York hospital stated in a letter to me that many hospitals, patients, communities and Federal agencies are "prevented from participating in an open and fair marketplace—culminating in inflated pricing and less than optimal cost effective health care." This hospital said that it has an annual health care supplies spend of approximately \$300 million, and although the implantable items such as cardiac pacemakers and orthopedic implants represent only 3 percent of the total items the hospital buys, the expenditures are close to 40 percent of the total spend. Moreover, these devices are characterized by annual cost increases of from 8 percent to 15 percent. Since national sales of implantable devices are approximately \$65 billion annually, with an expected growth in utilization of close to 20 percent, the potential of adding 8 to 15 percent annual price increases to the expenditures clearly demands attention.

A smaller health system in Jackson, MS, reports savings in 2006 of more than \$10 million because it was able to get detailed objective and measurable information that neutralized the arguments from the vendors who were telling them that they were getting the best price. The National Partnership for Women and Families told me that consumers can learn more about the quality and price of a car than they can about these medical devices that are implanted in the body. The Pacific Business Group on Health, a collection of 50 of the Nation's largest purchasers of health care who spend billions of dollars annually to provide health care coverage to more than 3 million employees, retirees and dependents, also wrote to me that the critical strategy for improving the quality of our Nation's health care system is increasing its transparency.

The Transparency in Medical Device Pricing Act of 2007 would require medical device manufacturers, as a condition of receiving direct or indirect payments under Medicare, Medicaid, and SCHIP, to submit to the Secretary of Health and Human Services, on a quar-

terly basis, data on average and median sales prices for all implantable medical devices used in inpatient and outpatient procedures. Manufacturers would be subject to civil monetary penalties from \$10,000 to \$100,000 for failure to report or for misrepresentation of price data. The data would be available to the public on the website of the centers for Medicare and Medicaid Services.

Senator GRASSLEY and I believe this bill will improve the overall quality and efficiency of our health care system and will help ensure that health care programs administered or sponsored by the Federal Government, in particular, promote quality and efficient delivery of health care through 1. the use of health information technology; 2. transparency regarding health care quality and price; and 3. better incentives for those involved in these programs—physicians, hospitals, and beneficiaries. By making important information available in a readily useable manner and in collaboration with similar initiatives in the private sector and nonfederal public sector, we can help control government spending on health care. The rising cost of health care and health insurance is a problem for consumers, small business owners, large employers and union health and welfare funds. This bill says that if you want to do business with the Federal Government, you have got to show us your prices.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3449. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 3404 proposed by Mr. SCHUMER (for himself and Mrs. HUTCHISON) to the amendment SA 3325 proposed by Mr. HARKIN (for himself and Mr. SPECTER) to the bill H.R. 3043, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

SA 3450. Mr. HARKIN (for Mr. DEMINT) proposed an amendment to amendment SA 3325 proposed by Mr. HARKIN (for himself and Mr. SPECTER) to the bill H.R. 3043, supra.

TEXT OF AMENDMENTS

SA 3449. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 3404 proposed by Mr. SCHUMER (for himself and Mrs. HUTCHISON) to the amendment SA 3325 proposed by Mr. HARKIN (for himself and Mr. SPECTER) to the bill H.R. 3043, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes; as follows:

On page 2 of the amendment, after line 11, insert the following:

SEC. 522. (a) FEE FOR RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS.—Section 106(d) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note), as amend-

ed by section 521, is further amended by adding at the end the following:

"(5) FEE FOR RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall impose a fee upon each petitioning employer who uses a visa recaptured from fiscal years 1996 and 1997 under this subsection to provide employment for an alien as a professional nurse, provided that—

"(i) such fee shall be in the amount of \$1,500 for each such alien nurse (but not for dependents accompanying or following to join who are not professional nurses); and

"(ii) no fee shall be imposed for the use of such visas if the employer demonstrates to the Secretary that—

"(I) the employer is a health care facility that is located in a county or parish that received individual and public assistance pursuant to Major Disaster Declaration number 1603 or 1607; or

"(II) the employer is a health care facility that has been designated as a Health Professional Shortage Area facility by the Secretary of Health and Human Services as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e).

"(B) FEE COLLECTION.—A fee imposed by the Secretary of Homeland Security pursuant to this paragraph shall be collected by the Secretary as a condition of approval of an application for adjustment of status by the beneficiary of a petition or by the Secretary of State as a condition of issuance of a visa to such beneficiary."

(b) CAPITATION GRANTS TO INCREASE THE NUMBER OF NURSING FACULTY AND STUDENTS; DOMESTIC NURSING ENHANCEMENT ACCOUNT.—Part D of title VIII of the Public Health Service Act (42 U.S.C. 296p et seq.) is amended by adding at the end the following:

"SEC. 832. CAPITATION GRANTS.

"(a) IN GENERAL.—For the purpose described in subsection (b), the Secretary, acting through the Health Resources and Services Administration, shall award a grant each fiscal year in an amount determined in accordance with subsection (c) to each eligible school of nursing that submits an application in accordance with this section.

"(b) PURPOSE.—A funding agreement for a grant under this section is that the eligible school of nursing involved will expend the grant to increase the number of nursing faculty and students at the school, including by hiring new faculty, retaining current faculty, purchasing educational equipment and audiovisual laboratories, enhancing clinical laboratories, repairing and expanding infrastructure, or recruiting students.

"(c) GRANT COMPUTATION.—

"(1) AMOUNT PER STUDENT.—Subject to paragraph (2), the amount of a grant to an eligible school of nursing under this section for a fiscal year shall be the total of the following:

"(A) \$1,800 for each full-time or part-time student who is enrolled at the school in a graduate program in nursing that—

"(i) leads to a master's degree, a doctoral degree, or an equivalent degree; and

"(ii) prepares individuals to serve as faculty through additional course work in education and ensuring competency in an advanced practice area.

"(B) \$1,405 for each full-time or part-time student who—

"(i) is enrolled at the school in a program in nursing leading to a bachelor of science degree, a bachelor of nursing degree, a graduate degree in nursing if such program does not meet the requirements of subparagraph (A), or an equivalent degree; and

"(ii) has not more than 3 years of academic credits remaining in the program.

“(C) \$966 for each full-time or part-time student who is enrolled at the school in a program in nursing leading to an associate degree in nursing or an equivalent degree.

“(2) LIMITATION.—In calculating the amount of a grant to a school under paragraph (1), the Secretary may not make a payment with respect to a particular student—

“(A) for more than 2 fiscal years in the case of a student described in paragraph (1)(A) who is enrolled in a graduate program in nursing leading to a master's degree or an equivalent degree;

“(B) for more than 4 fiscal years in the case of a student described in paragraph (1)(A) who is enrolled in a graduate program in nursing leading to a doctoral degree or an equivalent degree;

“(C) for more than 3 fiscal years in the case of a student described in paragraph (1)(B); or

“(D) for more than 2 fiscal years in the case of a student described in paragraph (1)(C).

“(d) ELIGIBILITY.—In this section, the term ‘eligible school of nursing’ means a school of nursing that—

“(1) is accredited by a nursing accrediting agency recognized by the Secretary of Education;

“(2) has a passage rate on the National Council Licensure Examination for Registered Nurses of not less than 80 percent for each of the 3 academic years preceding submission of the grant application; and

“(3) has a graduation rate (based on the number of students in a class who graduate relative to, for a baccalaureate program, the number of students who were enrolled in the class at the beginning of junior year or, for an associate degree program, the number of students who were enrolled in the class at the end of the first year) of not less than 80 percent for each of the 3 academic years preceding submission of the grant application.

“(e) REQUIREMENTS.—The Secretary may award a grant under this section to an eligible school of nursing only if the school gives assurances satisfactory to the Secretary that, for each academic year for which the grant is awarded, the school will comply with the following:

“(1) The school will maintain a passage rate on the National Council Licensure Examination for Registered Nurses of not less than 80 percent.

“(2) The school will maintain a graduation rate (as described in subsection (d)(3)) of not less than 80 percent.

“(3)(A) Subject to subparagraphs (B) and (C), the first-year enrollment of full-time nursing students in the school will exceed such enrollment for the preceding academic year by 5 percent or 5 students, whichever is greater.

“(B) Subparagraph (A) shall not apply to the first academic year for which a school receives a grant under this section.

“(C) With respect to any academic year, the Secretary may waive application of subparagraph (A) if—

“(i) the physical facilities at the school involved limit the school from enrolling additional students; or

“(ii) the school has increased enrollment in the school (as described in subparagraph (A)) for each of the 2 preceding academic years.

“(4) Not later than 1 year after receiving a grant under this section, the school will formulate and implement a plan to accomplish at least 2 of the following:

“(A) Establishing or significantly expanding an accelerated baccalaureate degree nursing program designed to graduate new nurses in 12 to 18 months.

“(B) Establishing cooperative intradisciplinary education among schools of

nursing with a view toward shared use of technological resources, including information technology.

“(C) Establishing cooperative interdisciplinary training between schools of nursing and schools of allied health, medicine, dentistry, osteopathy, optometry, podiatry, pharmacy, public health, or veterinary medicine, including training for the use of the interdisciplinary team approach to the delivery of health services.

“(D) Integrating core competencies on evidence-based practice, quality improvements, and patient-centered care.

“(E) Increasing admissions, enrollment, and retention of qualified individuals who are financially disadvantaged.

“(F) Increasing enrollment of minority and diverse student populations.

“(G) Increasing enrollment of new graduate baccalaureate nursing students in graduate programs that educate nurse faculty members.

“(H) Developing post-baccalaureate residency programs to prepare nurses for practice in specialty areas where nursing shortages are most severe.

“(I) Increasing integration of geriatric content into the core curriculum.

“(J) Partnering with economically disadvantaged communities to provide nursing education.

“(K) Expanding the ability of nurse managed health centers to provide clinical education training sites to nursing students.

“(5) The school will submit an annual report to the Secretary that includes updated information on the school with respect to student enrollment, student retention, graduation rates, passage rates on the National Council Licensure Examination for Registered Nurses, the number of graduates employed as nursing faculty or nursing care providers within 12 months of graduation, and the number of students who are accepted into graduate programs for further nursing education.

“(6) The school will allow the Secretary to make on-site inspections, and will comply with the Secretary's requests for information, to determine the extent to which the school is complying with the requirements of this section.

“(f) REPORTS TO CONGRESS.—The Secretary shall evaluate the results of grants under this section and submit to Congress—

“(1) not later than 18 months after the date of the enactment of this section, an interim report on such results; and

“(2) not later than September 30, 2010, a final report on such results.

“(g) APPLICATION.—An eligible school of nursing seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.

“(h) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts in the Domestic Nursing Enhancement Account, established under section 833, there are authorized to be appropriated such sums as may be necessary to carry out this section.

“SEC. 833. DOMESTIC NURSING ENHANCEMENT ACCOUNT.

“(a) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account which shall be known as the ‘Domestic Nursing Enhancement Account.’ Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 106(d)(5) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note). Nothing in this subsection shall prohibit the depositing of other moneys into the account established under this section.

“(b) USE OF FUNDS.—Amounts collected under section 106(d)(5) of the American Competitiveness in the Twenty-first Century Act of 2000, and deposited into the account established under subsection (a) shall be used by the Secretary of Health and Human Services to carry out section 832. Such amounts shall be available for obligation only to the extent, and in the amount, provided in advance in appropriations Acts. Such amounts are authorized to remain available until expended.”

(c) GLOBAL HEALTH CARE COOPERATION.—

(1) IN GENERAL.—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

“SEC. 317A. TEMPORARY ABSENCE OF ALIENS PROVIDING HEALTH CARE IN DEVELOPING COUNTRIES.

“(a) IN GENERAL.—Notwithstanding any other provision of this Act, the Secretary of Homeland Security shall allow an eligible alien and the spouse or child of such alien to reside in a candidate country during the period that the eligible alien is working as a physician or other health care worker in a candidate country. During such period the eligible alien and such spouse or child shall be considered—

“(1) to be physically present and residing in the United States for purposes of naturalization under section 316(a); and

“(2) to meet the continuous residency requirements under section 316(b).

“(b) DEFINITIONS.—In this section:

“(1) CANDIDATE COUNTRY.—The term ‘candidate country’ means a country that the Secretary of State determines to be—

“(A) eligible for assistance from the International Development Association, in which the per capita income of the country is equal to or less than the historical ceiling of the International Development Association for the applicable fiscal year, as defined by the International Bank for Reconstruction and Development;

“(B) classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and having an income greater than the historical ceiling for International Development Association eligibility for the applicable fiscal year; or

“(C) qualified to be a candidate country due to special circumstances, including natural disasters or public health emergencies.

“(2) ELIGIBLE ALIEN.—The term ‘eligible alien’ means an alien who—

“(A) has been lawfully admitted to the United States for permanent residence; and

“(B) is a physician or other healthcare worker.

“(c) CONSULTATION.—The Secretary of Homeland Security shall consult with the Secretary of State in carrying out this section.

“(d) PUBLICATION.—The Secretary of State shall publish—

“(1) not later than 180 days after the date of the enactment of this section, a list of candidate countries;

“(2) an updated version of the list required by paragraph (1) not less often than once each year; and

“(3) an amendment to the list required by paragraph (1) at the time any country qualifies as a candidate country due to special circumstances under subsection (b)(1)(C).”

(2) RULEMAKING.—

(A) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall promulgate regulations to carry out the amendments made by this subsection.

(B) CONTENT.—The regulations promulgated pursuant to paragraph (1) shall—

(i) permit an eligible alien (as defined in section 317A of the Immigration and Nationality Act, as added by paragraph (1)) and the spouse or child of the eligible alien to reside in a foreign country to work as a physician or other healthcare worker as described in subsection (a) of such section 317A for not less than a 12-month period and not more than a 24-month period, and shall permit the Secretary to extend such period for an additional period not to exceed 12 months, if the Secretary determines that such country has a continuing need for such a physician or other healthcare worker;

(ii) provide for the issuance of documents by the Secretary to such eligible alien, and such spouse or child, if appropriate, to demonstrate that such eligible alien, and such spouse or child, if appropriate, is authorized to reside in such country under such section 317A; and

(iii) provide for an expedited process through which the Secretary shall review applications for such an eligible alien to reside in a foreign country pursuant to subsection (a) of such section 317A if the Secretary of State determines a country is a candidate country pursuant to subsection (b)(1)(C) of such section 317A.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) **DEFINITION.**—Section 101(a)(13)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(C)(ii)) is amended by adding at the end the following: “except in the case of an eligible alien, or the spouse or child of such alien, who is authorized to be absent from the United States under section 317A.”.

(B) **DOCUMENTARY REQUIREMENTS.**—Section 211(b) of such Act (8 U.S.C. 1181(b)) is amended by inserting “, including an eligible alien authorized to reside in a foreign country under section 317A and the spouse or child of such eligible alien, if appropriate,” after “101(a)(27)(A).”.

(C) **INELIGIBLE ALIENS.**—Section 212(a)(7)(A)(i)(I) of such Act (8 U.S.C. 1182(a)(7)(A)(i)(I)) is amended by inserting “other than an eligible alien authorized to reside in a foreign country under section 317A and the spouse or child of such eligible alien, if appropriate,” after “Act.”.

(D) **CLERICAL AMENDMENT.**—The table of contents of such Act is amended by inserting after the item relating to section 317 the following:

“Sec. 317A. Temporary absence of aliens providing health care in developing countries.”.

(4) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to U.S. Citizenship and Immigration Services such sums as may be necessary to carry out this subsection and the amendments made by this subsection.

(d) ATTESTATION BY HEALTH CARE WORKERS.—

(1) **ATTESTATION REQUIREMENT.**—Section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)) is amended by adding at the end the following:

“(E) **HEALTH CARE WORKERS WITH OTHER OBLIGATIONS.**—

“(i) **IN GENERAL.**—An alien who seeks to enter the United States for the purpose of performing labor as a physician or other health care worker is inadmissible unless the alien submits to the Secretary of Homeland Security or the Secretary of State, as appropriate, an attestation that the alien is not seeking to enter the United States for such purpose during any period in which the alien has an outstanding obligation to the government of the alien’s country of origin or the alien’s country of residence.

“(ii) **OBLIGATION DEFINED.**—In this subparagraph, the term ‘obligation’ means an obliga-

tion incurred as part of a valid, voluntary individual agreement in which the alien received financial assistance to defray the costs of education or training to qualify as a physician or other health care worker in consideration for a commitment to work as a physician or other health care worker in the alien’s country of origin or the alien’s country of residence.

“(iii) **WAIVER.**—The Secretary of Homeland Security may waive a finding of inadmissibility under clause (i) if the Secretary determines that—

“(I) the obligation was incurred by coercion or other improper means;

“(II) the alien and the government of the country to which the alien has an outstanding obligation have reached a valid, voluntary agreement, pursuant to which the alien’s obligation has been deemed satisfied, or the alien has shown to the satisfaction of the Secretary that the alien has been unable to reach such an agreement because of coercion or other improper means; or

“(III) the obligation should not be enforced due to other extraordinary circumstances, including undue hardship that would be suffered by the alien in the absence of a waiver.”.

(2) EFFECTIVE DATE; APPLICATION.—

(A) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(B) **APPLICATION BY THE SECRETARY.**—Not later than the effective date described in subparagraph (A), the Secretary of Homeland Security shall begin to carry out subparagraph (E) of section 212(a)(5) of the Immigration and Nationality Act, as added by paragraph (1), including the requirement for the attestation and the granting of a waiver described in clause (iii) of such subparagraph (E), regardless of whether regulations to implement such subparagraph have been promulgated.

SA 3450. Mr. HARKIN (for Mr. DEMINT) proposed an amendment to amendment SA 3325 proposed by Mr. HARKIN (for himself and Mr. SPECTER) to the bill H.R. 3043, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. _____. None of the funds made available under this Act may be used to purchase first class or premium airline travel that would not be consistent with sections 301–10.123 and 301–10.124 of title 41 of the Code of Federal Regulations.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a hearing during the session of the Senate on Tuesday, October 23, 2007, at 10 a.m., in room 253 of the Russell Senate Office Building.

This hearing will examine the Surface Transportation Board’s recent and ongoing efforts related to the commercial regulation of railroads, including rulemakings and recent cases. Wit-

nesses will provide their perspectives on the STB and its effectiveness in balancing the commercial needs of railroads and their customers and will provide an update on the Government Accountability Office 2006 report reviewing the freight railroad industry.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a hearing during the session of the Senate on Tuesday, October 23, 2007, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

The hearing is on the nomination of Mr. Todd J. Zinser, Inspector General—Designate, United States Department of Commerce; Mr. Robert Clarke Brown, Member of the Board of Directors—Designate, Metropolitan Washington Airports Authority; Mr. Carl B. Kress, Commissioner—Designate, Federal Maritime Commission; and Mr. A. Paul Anderson, Commissioner (Reappointment), Federal Maritime Commission.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Tuesday, October 23, 2007 at 10 a.m. in room 406 of the Dirksen Senate Office Building in order to hold a hearing entitled, “Examining the human health impacts of global warming.”

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to hold a hearing entitled “EEOICPA: Is the Program Claimant Friendly for Our Cold War Heroes?” during the session of the Senate on Tuesday, October 23, 2007 at 10 a.m. in room 430 of the Dirksen Senate office building.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, October 23, 2007, at 10 a.m. in order to conduct a hearing entitled “Six Years After Anthrax: Are We Better Prepared to Respond to Bioterrorism?”

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. HARKIN. Mr. President, I ask unanimous consent that the Select

Committee on Intelligence be authorized to meet during the session of the Senate on October 23, 2007 at 2:30 p.m. to hold a closed hearing.

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

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 110-9

Mrs. FEINSTEIN. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on October 23, 2007, by the President of the United States:

Protocol of Amendments to Convention on International Hydrographic Organization, Treaty Document No. 110-9.

I further ask unanimous consent that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Protocol of Amendments to the Convention on the International Hydrographic Organization done at Monaco on April 14, 2005. The Protocol amends the Convention on the International Hydrographic Organization, which was done at Monaco on May 3, 1967, and entered into force for the United States on September 22, 1970 (TIAS 6933; 21 UST 1857; 752 UNTS 41). I am also transmitting, for the information of the Senate, the report of the Secretary of State on the Protocol.

The Protocol will facilitate the reorganization of the International Hydrographic Organization (IHO). The IHO, which is a technical and consultative international organization headquartered in Monaco, facilitates safe and efficient maritime navigation throughout the world. It accomplishes these objectives by facilitating the coordination of the activities of national hydrographic offices, promoting uniformity in the nautical charts and documents generated by such offices, encouraging the adoption of reliable surveying methods, and fostering the development of the science of hydrography. Reorganization of the IHO will result in a more flexible, efficient, and visible organization.

Ratification of the Protocol would serve important U.S. interests. United States commercial shipping, the United States Navy, and the scientific research community rely heavily on hydrographic information collected and shared under the auspices of the IHO. The United States plays an important leadership role in the IHO and as

a result enjoys expeditious and economical access to this information. Moreover, the United States has committed more resources than any other country to research, development, and evaluation of hydrographic instruments and therefore stands to benefit significantly from the efficiencies generated by this reorganization.

Article XXI of the Convention sets forth the procedure for the approval and entry into force of amendments: amendments that are adopted or "approved" by the Conference enter into force for all Contracting Parties to the Convention 3 months after two-thirds of the Contracting Parties have notified the depositary of their consent to be bound.

I recommend that the Senate give prompt and favorable consideration to the Protocol and give its advice and consent to ratification.

GEORGE W. BUSH.
THE WHITE HOUSE, October 23, 2007.

MEASURES READ THE FIRST TIME—S. 2216 AND S. 2217

Mrs. FEINSTEIN. Mr. President, I understand that there are two bills at the desk, and I ask for their first reading en bloc.

The PRESIDING OFFICER. The clerk will report the bills by title for the first time.

The legislative clerk read as follows:

A bill (S. 2216) to amend the Internal Revenue Code of 1986 to extend the Indian employment credit and the depreciation rules for property used predominantly within an Indian reservation.

A bill (S. 2217) to amend the Internal Revenue Code of 1986 to extend the taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.

Mrs. FEINSTEIN. I now ask for a second reading, and in order to place the bills on the calendar under the provisions of rule XIV, I object to my requests en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will receive their second reading on the next legislative day.

ORDERS FOR WEDNESDAY, OCTOBER 24, 2007

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9 a.m., Wednesday, October 24; that on Wednesday, following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders reserved for their use later in the day, and the Senate then resume executive session and consideration of the Southwick nomination, with the time until 11 a.m. equally divided and controlled between the two leaders or their designees, and the time from 10:40 a.m. to 11 a.m. divided and controlled between the two leaders, with the majority

leader controlling the final 10 minutes; that the Senate then proceed to vote on the motion to invoke cloture on the nomination at 11 a.m., as provided for under a previous order.

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

ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9 a.m. tomorrow morning.

Thereupon, the Senate, at 9:28 p.m., adjourned until Wednesday, October 24, 2007, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF DEFENSE

JAMES SHINN, OF NEW JERSEY, TO BE AN ASSISTANT SECRETARY OF DEFENSE. (NEW POSITION)

DEPARTMENT OF TRANSPORTATION

ROBERT A. STURGELL, OF MARYLAND, TO BE ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION FOR THE TERM OF FIVE YEARS, VICE MARION C. BLAKEY, TERM EXPIRED.

FOREIGN SERVICE

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