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## House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, November 19, 2002, at 12 noon.

## Senate

FRIDAY, NOVEMBER 15, 2002

The Senate met at 9:45 a.m. and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

### PRAYER

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

Almighty God, all power and authority belong to You. You hold the universe in Your hands and focus Your at-

tention on the planet Earth. We humble ourselves before You. You alone are Lord of all nations and have called our Nation to be a leader of the family of nations. By Your providence You have brought to this Senate the men and women through whom You can rule wisely in soul-sized matters that affect the destiny of this Nation. With awe and wonder at Your trust in them, the

Senators press on in consideration of the homeland security legislation.

Grip their minds with three assurances to sustain them today: You are Sovereign of this land and they are accountable to You; You are able to guide their thinking, speaking, and decisions if they will ask You; and You will bring them to unity so that they may lead our Nation in its strategies of

### NOTICE

If the 107th Congress, 2d Session, adjourns sine die on or before November 22, 2002, a final issue of the Congressional Record for the 107th Congress, 2d Session, will be published on Monday, December 16, 2002, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT-60 or S-123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 13. The final issue will be dated Monday, December 16, 2002, and will be delivered on Tuesday, December 17, 2002.

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By order of the Joint Committee on Printing.

MARK DAYTON, *Chairman*.

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



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defense and the world in its shared obligation to confront and defeat the insidious forces of terrorism.

God of peace, hear our prayer. You are our Lord and Saviour. Amen.

#### PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW led the 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 legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, November 15, 2002.

To the Senate:

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

ROBERT C. BYRD,  
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

#### RECOGNITION OF THE ACTING MAJORITY LEADER

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

#### SCHEDULE

Mr. REID. Madam President, there is going to be a period of morning business until 10 a.m. this morning with the time to be equally divided between the two leaders. At 10 a.m., the majority leader or his designee is to be recognized, and at that time there will be an effort to move to the conference report on terrorism. A rollcall vote is expected on the motion as soon as possible. At 10:45, the Senate will vote on cloture on the substitute amendment to the Homeland Security Act.

There is much work to be done today, including completing the homeland security legislation. The chairman of the Banking Committee is here, and also the chairman of the Rules Committee, the Senator from Connecticut, Mr. DODD. They have worked long and hard on the terrorism insurance legislation. The House passed that last night, and that will be passed as soon as possible. We are not going to leave here until that legislation is passed—whether it takes the next 10 minutes or the next 10 days. Both leaders have indicated it will be passed. It is something the White House wants very badly.

Finally, we have things worked out. We now have a conference report. I don't know it if has been given to us yet. But, if not, it will be presented shortly.

I would indicate for all those who are listening that there are ways: For example, someone could call for a quorum. Of course, we could call for a live quorum immediately. That is going to happen.

We are not going to have games played with terrorism insurance any longer. This legislation is supported by the President of the United States and the two leaders. It passed the House, and the legislation is going to pass.

#### RESERVATION OF LEADER TIME

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

#### MORNING BUSINESS

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

The Senator from Connecticut.

#### HOMELAND SECURITY AND TERRORISM INSURANCE

Mr. DODD. Madam President, I am curious, if I could get the attention of the distinguished majority whip, what is the plan this morning, if I can inquire of how we are going to proceed?

Mr. REID. We, of course, in 55 minutes, are going to vote on cloture on homeland security. Prior to that time, it would be our desire to move to the very important antiterrorism legislation that has been here for more than a year. We are going to do that. We would like to do it by unanimous consent. As the chairman knows, it is a nondebatability motion to move to that matter. We are going to have a vote on that in the near future. We do not know exactly when.

We are going to try to get a unanimous consent agreement, perhaps, to only have one vote and get rid of the legislation. That would be preferable, rather than trying to mess around with a cloture motion on it because, if necessary, we will file cloture on it.

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

Mr. REID. I am happy to yield.

Mr. BYRD. Is the Senator talking about a conference report when he says it is a nondebatability motion? Is he talking about a conference report?

Mr. REID. Yes. What I am talking about is, we have terrorism insurance legislation passed in the House last night.

Mr. BYRD. Is that a conference report?

Mr. REID. Yes, it is a conference report.

Mr. SARBANES. Will the Senator yield further for a question?

Mr. REID. Yes. I am happy to yield.

Mr. SARBANES. I am taken aback by the notion that we are not going to be able to go to this legislation by some unanimous consent, that we are going to have to invoke cloture, and all the rest of it. I do not quite understand where that opposition is coming from.

In fact, it passed the House on a voice vote without any opposition whatever expressed over on the House side. And this is something that has been laboriously worked over under the very effective leadership of my very distinguished and able colleague from Connecticut. I was operating under the assumption that we would be able to go to it in short order.

People will want to make some speeches and explanatory statements, I would assume, although I don't see any need for any lengthy debate or a long involvement of time in order to finally conclude this legislation.

Mr. REID. I respond to my friend, the chairman of the Banking Committee, logic, reason, common sense has not applied to this legislation. We have worked on this for more than a year, and just when it appears we are over the hill, some phantom objection comes and we are not able to do it.

We are now at this point, and I think that what should happen is there should be a couple of hours. This is some of the most important legislation that has passed this body. It is extremely important to all sectors of our economy. I think we should have a couple of hours to explain the legislation and then have a vote on it and get it out of here and send it to the President's desk. I think that would be the preference of a vast majority of the people here.

But I want to make it very clear to everyone here, if we cannot do it in a logical, reasonable, orderly way, we are going to do whatever it takes to get this legislation out of here. If we have to work tomorrow, Sunday, Monday, this legislation will pass. And we are now in the procedural perspective where alternatives to slowing this down are very slim.

Mr. SARBANES. I thank the Senator.

Mr. BYRD. Will the Senator yield?

Mr. REID. I am happy to yield to the President pro tempore.

Mr. BYRD. I hope we are not going to work on Sunday. That is a religious holiday for this Senator. We do observe religious holidays around here. Furthermore, I think the distinguished Democratic whip's mention of reason and logic and common sense should be applied to the homeland security legislation as well.

I hope all Senators within the sound of my voice here in this Chamber and listening on the TV—

The ACTING PRESIDENT pro tempore. The time controlled by the majority leader has expired.

Mr. BYRD. Madam President, I ask unanimous consent to proceed for 1 minute.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. I hope that all Senators within the sound of my voice will vote no on cloture today. Here is a 484-page bill that we have not seen until the wee hours of the morning on Wednesday, the day before yesterday. And the Senators are being asked to invoke cloture on this measure when we do not know everything about it. What is in it? We are entitled to have some time to study this bill. We owe it to our constituents.

Mr. SARBANES. Will the Senator yield on that point?

Mr. BYRD. Yes, I yield, if I may have an additional 2 minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. GRAMM. Madam President, could the Senator have an additional 10 minutes so we could discuss this?

Mr. BYRD. Yes.

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

Mr. BYRD. I yield to the distinguished Senator from Maryland.

Mr. SARBANES. I just wondered, has the Senator noticed that the newspapers are filled now with stories about provisions that are in this legislation that have appeared, in a sense, out of nowhere? All of a sudden they have manifested themselves in this legislation, provisions that were not in this bill before, dealing with unrelated, extraneous matters.

Mr. BYRD. Yes, exactly, one of which happens to appear to target a facility for a district represented by a Member of the House from Texas. We do not know what that facility is, but it has been slipped into this measure.

Mr. SARBANES. I say to the distinguished Senator, I was not even aware of that one. That one has not yet risen to the level of being covered in these newspaper stories.

Mr. BYRD. I think that is where I got a glimmer of it, somewhere in a newspaper story.

Mr. SARBANES. I missed that. But that is just another example of what may well be stacked away—it is not as though this is simply or straightforwardly a revision or an alteration of provisions directly related to homeland security which we have been dealing with here, and so there have been some changes or modifications.

As I understand it, it is becoming increasingly evident that there are a number of provisions in here that have nothing to do with homeland security. Is that the Senator's understanding?

Mr. BYRD. Exactly. And I am very much alarmed by it. I spent 3 hours yesterday talking about some of these provisions. And, of course, there is a provision in here to reward the pharmaceutical companies. That is pork for pharmaceutical companies. That just came to light. That did not go through any committee. That had no hearings, no testimony of witnesses—just slipped

into the bill in the wee hours of the morning of Wednesday. It is alarming.

Here we are about to pass this massive bill without our knowing its contents. It has never seen a day or an hour of hearings in any committee, and it is just put together by somebody in the shades of darkness. And then, here it is, dropped on our desks yesterday morning.

We are supposed to pass this. It provides for a massive shift of power to the executive branch, a massive shift, and Congress will be left out of the loop. I think we ought to at least have a few more days to study this bill, have our staffs able to study it, and advise us as to what is in it. That is all I am asking.

I do not doubt cloture will be invoked at some point, but it should not be invoked today. We ought to at least have until sometime next week to further study this before cloture clamps its beartrap on us.

Mr. SARBANES. I think the Senator raises a very important point. It would at least then give us the weekend to go through the provisions of this proposal.

Mr. BYRD. Yes. I thank the distinguished Senator from Maryland for his observations.

Mr. DORGAN. Madam President, I wonder if the Senator from West Virginia will yield further for a question.

Mr. BYRD. I will be glad to, if I may do so.

Mr. DORGAN. Madam President, if the Senator from West Virginia continues to have time—

The ACTING PRESIDENT pro tempore. Yes.

Mr. DORGAN. I would like to make an inquiry similar to the inquiry made by my colleague from Maryland.

There is an article in this morning's newspaper which contains some information which is very surprising to me, which was referenced briefly yesterday on the Senate floor, relative to the homeland security bill. This homeland security bill has a provision in it which says:

Riding along on legislation to create a new federal Department of Homeland Security is a White House-backed provision that could head off dozens of potential lawsuits against . . . pharmaceutical [companies].

It goes on to further explain what this is. It says: Richard Diamond, a spokesperson for the retiring majority leader in the other body, RICHARD ARMEY:

. . . said the provision was inserted because "it was something the White House wanted. It wasn't [Armeys'] idea."

This is a circumstance where a homeland security bill contains a provision dealing with protection for pharmaceutical companies. The pharmaceutical companies, according to a Wall Street Journal article, spent \$16 million.

Mr. BYRD. How much?

Mr. DORGAN. They spent \$16 million in the recent election. Much of it went through organizations such as Seniors United and others set up to move this

money out under the guise of an organization called Seniors United in order to defeat Democratic lawmakers and support Republican lawmakers.

The point is, this provision now is slipped into a homeland security bill. It has nothing to do with homeland security. Yet it is a provision that likely will be very beneficial to the pharmaceutical industry that spent \$16 million in the last election.

Mr. BYRD. It is a blatant payoff to the pharmaceutical companies in return for their massive contributions to candidates during the election. That is a massive payoff.

Mr. DORGAN. If I may inquire further, has the Senator from West Virginia or have other Senators heard from the President or the White House by what justification would they insert—again, the White House apparently wanted it; that is what the majority leader of the House says—a special provision benefiting one industry in something called homeland security. Has anyone heard an explanation of that?

Mr. BYRD. That was very revealing what the majority leader's staff person from the other body had to say, pointing the finger at the White House. That was very revealing. I hope we have more time.

Mr. SARBANES. Will the Senator yield further?

Mr. BYRD. How much time do I have?

The PRESIDING OFFICER (Mr. CARPER). There are 4 minutes remaining.

Mr. BYRD. I yield.

Mr. SARBANES. This morning the Baltimore Sun has an editorial—they entitled it "Homeland Insecurity"—discussing this legislation.

Mr. BYRD. And rightfully so.

Mr. SARBANES. One paragraph follows right along with what the able Senator from North Dakota was bringing to our attention. I want to quote it:

Most alarming is that the version of the legislation passed by the House on Wednesday—with the Senate apparently soon to follow—is a 500-page, 11th hour rewrite few lawmakers have read and perhaps none fully understands.

Mr. BYRD. Well stated.

Mr. SARBANES. Continuing:

New snakes slither out daily, but doubtless many will remain hidden until long after the measure is enacted into law.

Mr. BYRD. Well stated. Well stated. I hope Senators will take notice of that editorial. I hope the Senator will put that in the RECORD.

Mr. SARBANES. Mr. President, I ask unanimous consent to print the editorial in the RECORD.

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

[From the Sun, Nov. 15, 2002]

#### HOMELAND INSECURITY

ONE LAMENTABLE result of this month's elections is that the stalemate has been broken over the creation of a monstrous Department of Homeland Security. This cosmetic

response to the myriad failures that made the nation vulnerable on Sept. 11, 2001, offers no assurance that Americans will be safer. Instead, it poses new dangers.

Most alarming is that the version of the legislation passed by the House on Wednesday—with the Senate apparently soon to follow—is a 500-page, 11th-hour rewrite few lawmakers have read and perhaps none fully understands. New snakes slither out daily, but doubtless many will remain hidden until long after the measure is enacted into law.

How can a bill that purports to protect the homeland be so scary? Let us count some ways:

First, the basic concept is flawed. Combining 22 separate departments and agencies with nearly 200,000 employees into one super agency is a recipe for bureaucratic chaos that will distract workers from their security duties rather than sharpen their focus. New bosses, new locations, new personnel rules, new rivalries, new turf battles. These are the issues that will most concern workers in the years just ahead. How helpful is that?

The recent squabble between the FBI and the Bureau of Alcohol, Tobacco and Firearms, neither of which is to be included in the new department, demonstrates there is little chance that blending separate agencies to eliminate overlap and clarify control can be anything but a bloody task.

This proposal came originally from Democrats and was opposed by President Bush. But the pressure on Congress to take some action that promised Americans greater security was so great that Mr. Bush decided to board the train before it ran over him.

Second, the White House refused to accept a Senate provision that would have created an independent commission to investigate government failures that preceded the Sept. 11 attacks, squelching what looked like the best chance of authorizing such an inquiry. Unless another opportunity emerges soon, there may never be a detailed look at what went wrong and why.

Third, union rights and other worker protections will be stripped from the employees of the new department because the president says he needs new flexibility to hire, fire and move people around. No convincing national security rationale has been offered to justify this broad power grab.

Fourth, citizen access to information about risks or threats related to critical infrastructure is sharply curbed, and criminal penalties will be imposed on workers who violate these strictures. This is a sweeping and unjustified infringement on press freedoms.

Fifth, the Defense Department is working on a plan to collect financial and other personal information on all Americans in the name of homeland security. The new legislation doesn't permit this outrageous privacy violation—but it doesn't prohibit it, either.

There's more, but critics are cowed.

Mr. Bush snatched the homeland security issue from Senate Democrats, then clubbed them with it in a campaign that challenged their patriotism. A cynical play that matches this bill.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Michigan.

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

Mr. BYRD. The Senator can't do that. I have the floor.

Mr. REID. Oh, you have the floor. Sorry about that.

Ms. STABENOW. Mr. President, I thank the Senator from West Virginia. As the distinguished Senator knows,

we were on the floor last evening talking about this very subject related to the pharmaceutical industry and the fact that there is a provision in this bill that has been slipped in, more for the financial security of Eli Lilly and the pharmaceutical industry than homeland security. In fact, it jeopardizes the rights of families who are now in court as a result of an additive to a vaccine for infants that contains mercury, where the concern is that it may, in fact, lead to autism. That is yet to be determined, but there are serious issues of health.

What we now have in this homeland security bill is an effort to eliminate any responsibility from the Eli Lilly company for the possibility that a product of theirs may, in fact, lead to an extremely harmful health problem for children, autism. I find it outrageous that in the middle of trying to deal with homeland security and legitimate issues for the American people that we would find it is, in fact, the White House slipping into this bill an effort to protect people who were clearly one of their biggest backers in the last campaign. It is clear that when the pharmaceutical industry put up millions of dollars to support the efforts finished on election day, they already are receiving rewards as a result of what they did in the election.

The American people do not deserve this kind of approach. I appreciate the Senator bringing it to our attention again. I know there is an amendment to strike these items which I strongly support. I think it is absolutely outrageous that, while we are trying to do something serious for the American people, we would see this kind of help put into this bill for an industry that is already heavily subsidized by taxpayers.

Mr. BYRD. Absolutely.

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. DORGAN. Mr. President, I ask unanimous consent the Senator have 10 additional minutes.

The PRESIDING OFFICER. Is there objection to the unanimous consent request for 10 additional minutes for the Senator from West Virginia?

Mr. DASCHLE. Mr. President, I didn't hear the request.

The PRESIDING OFFICER. Is there objection to the unanimous consent request that the Senator from West Virginia be recognized for an additional 10 minutes?

Mr. DASCHLE. I have no objection.

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

Mr. NELSON of Florida. Will the Senator yield?

Mr. BYRD. Let me compliment the distinguished Senator from Michigan for her correct, characteristic, acute perception of what is in this bill. She spoke about this very item on yesterday. I wonder how many Senators were listening. She is speaking again today, quite appropriately, calling it to the attention of the Senate and the American people. I thank her.

I yield to the distinguished Senator from Florida, Mr. NELSON.

Mr. NELSON of Florida. Mr. President, I thank the Senator for yielding to me. Isn't it interesting, in the eleventh hour, the closing hours of the session, when the country is at war and a bill that is perceived to be vital to the defense interests of this country—

Mr. BYRD. Hear, hear.

Mr. NELSON of Florida. That there would be suddenly inserted or deleted—

Mr. BYRD. Oh, yes.

Mr. NELSON of Florida. For example, the provision that was deleted that passed unanimously in the Senate that we would have a bipartisan commission to understand the ramifications of September 11? That was in our version of the bill. And because the White House objected to that, even though an overwhelming vote had taken place in the House of Representatives, it was deleted. And because there was such an outcry, the morning's news says they are going to try to resurrect some bipartisan commission.

But it shows the legislative sleight of hand in the rush to adjournment that would now delete a provision so important to the security of this country, such as a bipartisan commission to find out what went wrong in the intelligence apparatus that led to September 11 and at the same time would insert provisions into this bill that would create all kinds of havoc, as enumerated by the Senator from West Virginia and the Senator from Michigan.

I thank the Senator for yielding.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Florida for his observations and for his contribution and for his service to his country, his service here in the Senate.

Liberty, freedom, justice, and right cry out today to be heard here on the Senate floor. I urge Senators not to vote later today for cloture. Let's see what else is in this bill. Let us have time to amend it, to correct the errors that may be in it, on behalf of the American people. I ask that we not vote for cloture today.

I suppose my pleadings, my importunings will fall upon deaf ears in many areas of the Senate Chamber, but please, let our constituents be heard on this bill which comes to us in the name of homeland security but within it has many injustices, many wrongs, I am sure, many things, many provisions the American people do not want.

I yield to the distinguished Senator from New Jersey.

Mr. CORZINE. Mr. President, the distinguished Senator from West Virginia has done a tremendous service to our Nation by pointing out, over the last several hours while we have been in session, some of the flaws in this 484-page bill, which many of us have been trying to study.

One of those flaws—and I would love to hear the Senator's comments—is with regard to freedom of information and the provision of that information

to the American people, and to the people in Congress who are responsible for oversight of this new Department. Is it not true that in this new Department there have been given broad waivers of opportunity for the administration—any administration—to pick outside advisory committees to come in and give advice, to make specific policy recommendations with regard to the direction of the country—not unlike what we saw with regard to our energy policy—and then not have any of that information made available to the public, where it can be challenged in situations where there is a serious concern about conflicts of interest and about how people might approach these issues.

I think, if I have read this right, there is an almost blanket ability for the administration—any agency, and not necessarily Republican or Democrat—to completely keep from Congress, keep from the State, keep from others the ability to understand what is taking place within the policy-making arrangements of this new Department.

Mr. BYRD. Mr. President, I thank the distinguished Senator for what he has just called to the attention of the Senate. What he has made reference to, I have every reason to believe, is section 871 dealing with advisory committees. Let me read it. I will have more to say about this. As a matter of fact, I will have an amendment to change this. It is section 871:

**Advisory Committees.**

(A) IN GENERAL.—The Secretary may establish, appoint members of, and use the service of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92-463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of Title 18, United States Code, for official actions taken as a member of such advisory committee.

A separate reading of this language does not stir one's blood, but a clear understanding of the laws that are referenced begin to stir one's blood.

Under current law, advisory committees may be appointed and the President may exempt a committee on a case-by-case basis. The public has a right to know what these advisory committees are doing. The public has a right to know what is happening. They have a right to know what is going on in Government, in these advisory committees.

But here is a provision that will give the Secretary blank authority to keep from the public the knowledge of what these advisory committees are saying, as to what's going on, and so on.

Mr. CORZINE. Will the Senator yield for one more quick question?

Mr. BYRD. Yes.

Mr. CORZINE. Am I not correct this was neither in the original Lieberman proposal that came out of the Governmental Affairs Committee, nor was it in the compromise proposals that were on the floor before we went into recess? This is another one of these midnight strikes, additions, that is completely outside of any of the review process that we normally have, is that right?

Mr. BYRD. To the best of my knowledge, it is. My staff, upon a cursory examination of this bill, informs me this is something that is new. So the President and the Secretary will be given blanket authority. Whereas, at the present time, under the Advisory Committee Act—I believe that is what it is called, and it is referenced in this language—one has to see what is being said behind the lines here. But now the Secretary would have blanket authority to shut out the press. The press ought to be aware of what is in this bill, and the Senator from New Jersey is calling the attention of the Senate and the world—may we have order, Mr. President.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 36 seconds.

Mr. SARBANES. Will the Senator yield?

Mr. BYRD. Yes.

Mr. SARBANES. Mr. President, I want to take advantage of these few seconds to thank the very able Senator from West Virginia for raising these extremely important questions about this legislation. This editorial I made reference to that was in the Baltimore Sun talked about all these other provisions that were coming in, and it went on to talk about the basic concept of this bill itself—something the Senator has been addressing for days on the floor of the Senate. Listen to this. They are talking about the homeland security bill:

First, the basic concept is flawed. Combining 22 separate departments and agencies with nearly 200,000—

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

Mr. SARBANES. I ask unanimous consent to proceed for 5 additional minutes.

The PRESIDING OFFICER. Is there objection?

The Senator from West Virginia is recognized.

Mr. BYRD. I yield to the Senator from Maryland.

Mr. SARBANES. I will quote this:

First, the basic concept is flawed. Combining 22 separate departments and agencies with nearly 200,000 employees into one super agency is a recipe for bureaucratic chaos that will distract workers from their security duties, rather than sharpen their focus. New bosses, new locations, new personnel rules, new rivalries, new turf battles—these are the issues that will most concern workers in the years just ahead. How helpful is that? The recent squabble between the FBI

and the Bureau of Alcohol, Tobacco, and Firearms, neither of which is to be included in the new Department, demonstrates there is little chance of blending separate agencies to eliminate overlapping, and clarifying control can be anything but a bloody task.

Then they go on to say:

Union rights and other worker protections will be stripped from the employees of the new Department because the President says he needs new flexibility to hire, fire, and move people around. No convincing national security rationale has been offered to justify this broad power grab.

The problems inherent in this legislation, I have come to the conclusion, will divert focus, energy, and attention from the substantive challenge of providing homeland security to this kind of a procedural fight.

They are going to have to get a new location, new organization. They are going to be spending all their time on getting the boxes on the chart instead of focusing on the substance of the job that confronts them.

Mr. BYRD. Yes.

Mr. SARBANES. That is one of the basic points the Senator has been making consistently, as I understand it.

Mr. BYRD. How telling, how telling, how revealing what the distinguished Senator from Maryland just said in this excellent editorial in the Baltimore Sun. I thank him for that.

Senators need to wake up. Senators need to wake up as to what is going on.

Mr. President, I do not intend to take more time than I have because I know the leaders want to speak. How much time do I have?

The PRESIDING OFFICER. Two minutes and ten seconds.

Mr. BYRD. Does the distinguished Senator from Maryland have anything further to say?

Mr. SARBANES. No. I thank the Senator for yielding.

Mr. LEVIN. Will the Senator yield me 30 seconds for a parliamentary inquiry?

Mr. BYRD. Yes, I yield for a parliamentary inquiry.

Mr. REID. Will the Senator yield for an inquiry? The majority leader is in the Chamber and will take just a few seconds to offer a unanimous consent request. Can that happen? Then this dialog can take place for a long time after that.

Mr. BYRD. Yes, I yield to the majority leader. I hope I retain my 2 minutes.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the distinguished Senator from West Virginia retain the remainder of his time.

The PRESIDING OFFICER. The Senator from West Virginia retains the remainder of his time.

Mr. DASCHLE. Mr. President, after I have propounded this unanimous consent request.

**UNANIMOUS CONSENT  
AGREEMENT—H.R. 3210**

Mr. DASCHLE. Mr. President, I ask unanimous consent that immediately

upon passage of H.R. 5005, the homeland defense bill, the Senate proceed to the terrorism insurance conference report to accompany H.R. 3210; that the Senate then vote immediately on cloture on the conference report; that if cloture is invoked, the Senate then immediately, without any intervening action or debate, vote on passage of the conference report; that if cloture is not invoked, the conference report continue to be debatable.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I do not fully understand this request. I want to know what this does to homeland security.

Mr. DASCHLE. Mr. President, if I can respond to the distinguished Senator from West Virginia, this has no effect at all on the debate on homeland defense. All Senators are protected with regard to their rights under cloture, if cloture is invoked on homeland security. This only deals with the next issue, the terrorism insurance bill, to be taken up once homeland defense has been completed.

Mr. BYRD. Mr. President, further reserving my right to object, and I will be very brief, I am supportive of the measure the distinguished majority leader is seeking to advance in connection with this request. Does this in any way have a psychological effect with respect to the cloture we are going to vote on this morning?

I plead to Senators—further reserving my right to object—I plead with Senators not to invoke cloture today. I understand cloture will be invoked at some point. I just hope it will not be today. I hope we will have the weekend for our staffs to study this bill so that we will be better prepared after we have had more time to study it.

What I am concerned about is the desire to get to the bill about which the majority leader is speaking and which I fully support. I hope that desire will not have some psychological impact on Senators causing them to vote for cloture today.

I wonder if our two leaders would propose a unanimous consent request that would vitiate a cloture vote for today, push the cloture vote over until Monday. I know cloture is going to be invoked, but for God's sake, for Heaven's sake, for the sake of liberty and justice, and for the sake of Senators being able to understand what they are voting on in this 484-page bill that has been sprung on us—and we have only been able to see it at the beginning of Wednesday, the day before yesterday—would the leaders please consider at least vitiating that vote and putting it over until Monday so that we and our staffs will have some more time for study?

For Heaven's sake, would the majority leader and minority leader consider this request? That is all I am asking.

I know cloture is going to be invoked at some point, but for Heaven's sake, we have a right to know what is in this 484-page bill, and the people out there who are watching this debate through those electronic lenses have a right also to know. We have a duty to know what we are voting on. At this moment, as we get ready to invoke cloture, we do not know what is in this bill.

Mr. President, I remove my reservation.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? Without objection, it is so ordered.

Mr. DASCHLE. I thank all of my colleagues. I thank in particular the distinguished Senator from West Virginia. I yield the floor.

#### ORDER OF PROCEDURE

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

Mr. DASCHLE. Mr. President, I ask for the regular order which, as I understand, acknowledges 2 minutes remaining for Senator BYRD.

The PRESIDING OFFICER. The Senator from West Virginia has 1 minute 30 seconds remaining, and Senator LOTT retains 4½ minutes.

Mr. BYRD. I yield 1 minute to Senator LEVIN.

#### STATUS OF AMENDMENTS

Mr. LEVIN. Mr. President, parliamentary inquiry: A large number of amendments have been filed which, on their face, appear to be relevant to this bill. If cloture is invoked, not only non-germane but even relevant amendments would be precluded from being offered.

My parliamentary inquiry is this: How many of the amendments which have been filed and reviewed by the Parliamentarian would fall as being non-germane?

Mr. BYRD. What bill is the Senator referencing?

Mr. LEVIN. Homeland security.

The PRESIDING OFFICER. The Chair will attempt to answer that question.

Mr. LEVIN. The list I have, they all appear, most appear to be relevant amendments, but because of the technical rules, many of these would not be allowed apparently; many would be not allowed if they are not strictly germane. How many of these amendments are non-germane in the eyes of the Parliamentarian?

The PRESIDING OFFICER. The Parliamentarian advises the Chair that of the list of approximately 40 amendments, preliminary analysis indicates 10 are not germane and roughly 30 are either germane or are clearly relevant.

Mr. BYRD. Will the Chair repeat the response?

Mr. LEVIN. Ten of these amendments could not be offered after the vote.

The PRESIDING OFFICER. That is correct.

Mr. BYRD. Would the Chair repeat—

The PRESIDING OFFICER. And that is homeland security.

Mr. BYRD. Would the Chair please repeat the response that was given to the Senator from Michigan so we can hear it? I did not hear the response.

The PRESIDING OFFICER. Of the list of approximately 40 amendments, preliminary analysis indicates 10 are not germane. Approximately 30 are either germane or are arguably germane.

Mr. LEVIN. That was not the question. The question is, Of the amendments reviewed, how many would not be strictly germane and therefore would fall?

The PRESIDING OFFICER. There are 10 amendments.

Mr. LEVIN. Pardon?

The PRESIDING OFFICER. Ten.

The time of the Senator from West Virginia has expired. The Republican leader has 4½ minutes. The Republican leader is recognized.

Mr. GRAMM. Will the Republican leader yield to me?

Mr. LOTT. Mr. President, I yield time off my leader's time. How much time does the Senator from Texas need?

Mr. GRAMM. We have 4½ minutes. Ten minutes.

Mr. LOTT. I yield 10 minutes of leader's time to Senator GRAMM.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

#### HOMELAND SECURITY

Mr. GRAMM. Mr. President, we have drifted into a debate which I think we should be engaged in now, and that is a debate on whether we should vote for cloture on the pending amendment and, therefore, cloture to proceed with homeland security.

At this late hour, I do not think anybody is going to be convinced in terms of whether this is a good thing or a bad thing as it is written. I think people have pretty well reached that decision. I simply would like to make a couple of points that I think are important in making the decision.

I begin by saying I do not think anybody set out with a goal of homeland security becoming an issue that sort of divided us along party lines. I do not think anybody had that intention, but the net result is it happened. We now are at a point where we have one last opportunity to do this bill.

I make two arguments for doing it that I think are strong, and I make them not to the people who are for it—they are already convinced and I hope they will not listen because I do not want to change their mind. I want to make my argument to the people who are on the other side of the issue.

The first argument is that we have had an election. It is very easy in elections to read into them what you want

to read into them. Elections are sort of like the Bible in the sense that everybody finds something in them that they want to find and they neglect the things they do not want to see. I do think one of the themes of the election was a desperate desire of the American people to see a homeland security bill passed.

Mr. BYRD. Will the Senator yield?

Mr. GRAMM. Whether it was this one or another one, I think that is open to interpretation, but I think they wanted to see it passed.

I certainly will yield.

Mr. BYRD. Just one quick observation. I hope the Senator will delete from his remarks which will appear in the RECORD any reference to the Holy Bible in the context that he was speaking. I do not think that has any place in this argument. I say that lovingly and fondly.

Mr. GRAMM. Well, I appreciate that. Let me remove "the Bible" and put "teaching" or "holy script."

What we tend to do with revered documents—whether it is the Constitution, the Koran, or some other holy teaching—is we take from it what we like and we tend to leave out what we do not like, and that was the point I was making. I thank my colleague for making the point.

The point I want to make beyond that is, I do believe an objective reading of the election shows a desire, an almost desperation of the American people, to see action taken on a homeland security bill, though I am not claiming necessarily this bill.

The second argument I hope opponents of the bill will listen to is, this bill does represent a compromise. The President would have not been subject to much criticism if, after the election, he had said: Look, I have already compromised too much on this issue. Given the results of the election and the mandate, I am going to get exactly what I want, and so as a result I am going to stop negotiating. We are going to go home, come back in January, and do it exactly my way.

He could have done that, and I do not think people could have been critical of him. But the President did not do that. Even though he perceived, and many others perceived, that he got a mandate in the election on this issue, he came back and compromised again. He compromised again by not giving public employee labor unions the ability to veto a homeland security reorganization, but by strengthening their ability to have input into it. That represented an additional compromise.

The bill before us is not a bill that all of our colleagues support. I know our dear colleague from West Virginia is very sincere in his opposition, but I say this: The first major issue that the distinguished Senator from West Virginia raised, in opposition to the original bill, was that it interfered with Congress's power of the purse by giving the President power—and the Senator and others argued arbitrary power—to rewrite appropriation bills.

I argue to our colleagues that whether they support or oppose this bill, that concern was responded to, and the bill before us sets an amount that the President has flexibility in, but it gives him no power, without reprogramming—which means the approval of the chairman and the ranking member—to move money around.

I simply say to my colleagues this is a compromise, even though it may not be one that the Senator finds supportable. But I ask the following question: Does the Senator believe the bill that will be adopted in the new Congress will be closer to what he wants than this bill is? Does he have a guarantee that in the new Congress the concerns that were dealt with here will be dealt with?

I guess really what I am saying—and not doing a very effective job in saying it—is the following: I ask my colleagues who oppose the bill to look at it in its totality, to look at the compromises that are in it, protecting our right to the purse, giving public employees an opportunity to have an input but not a veto. We all know the bill is going to pass now or it is going to pass later, and so will the bill passed in the new Congress be more to the liking of my colleagues who would vote no today than this bill? The answer is probably no.

Finally, the one thing we all agree on is, in creating this new department—whether it is a good idea or a bad one—if we do not do it now and do it 3 months later, we have lost the 3 months. So the bill we would do in 3 months might very well be less to the liking of the people who oppose it and we will be doing it 3 months later.

I think if I were on the other side, what I would probably conclude is I am not for the bill and I am going to vote against it, but doing it in the new Congress with the makeup of the new Congress will probably produce a bill that I like less and that the victories that have been won in it—and there have been some; this is a compromise—would be lost, could be changed, and waiting 3 months to get a bill that might be worse from my point of view is not a good decision.

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

Mr. GRAMM. I am happy to yield.

Mr. BYRD. The Senator is absolutely right in what he says with reference to the appropriations process. That was a major weakness of the original bill, and the Senator from Texas knows that. He had a lot to do with a compromise that developed with respect to the appropriations process—he and Senator STEVENS, above all, on that side of the aisle. That part has been vastly improved. So I have not had much to say in my expressions of opposition to the way we are proceeding. I have had little to say except to compliment Senator STEVENS, and I will compliment the distinguished Senator from Texas because he has privately told me upon occasion that that was

almost an unassailable position I was taking with reference to that appropriations process within the constitutional system.

This measure has gone a long way. It has not gone all the way, but it has gone a long way. I have had very little to say about that.

Finally, let me say, would we have a better bill 3 months later?

Mr. GRAMM. Mr. President, I ask for an additional 4 minutes if the Senator is going to speak. I want to conclude with one remark.

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

Mr. BYRD. Mr. President, with reference to the question, will the bill be better 3 months from now? I say there is an excellent chance the bill would be better, that the failings of this compromise as brought to light by the press and by Members, through the help of their staffs, the things that they are complaining about in this bill, yes, we would have time to remove those after debate and we would come out with a better bill. I think always that more debate results in a better end product.

As far as I am concerned, the answer is, yes, 3 months from now we could have a better bill. We would have more time. Our staff would have more time. The press would have more time. I am just pleading for us not to invoke cloture today so we can have at least the weekend to look at this bill.

I thank the distinguished Senator.

Mr. SARBANES. Will the Senator yield?

Mr. GRAMM. I would be happy to yield, but I do want to make sure I have 3 minutes at the end to sum up and we are 5 minutes from the vote.

I am happy to yield.

Mr. SARBANES. One of the things we could do if we had more time is get the special interest provisions out of this bill. As I understand it, and with appropriate respect to the Senator from Texas, those provisions were never in the alternatives being offered in the Senate as we considered homeland security.

In fact, I may or may not agree with your provisions on homeland security and think it should be done differently, but at least it was homeland security. Now we discover and are discovering every moment there are other special interest provisions that are in this legislation. I argue we should not invoke cloture, if for no other reason than in order to address those special interest provisions.

Mr. GRAMM. Mr. President, let me address that and get back to the Senator's point, which is the relevant point.

First of all, this bill results from three things: One is the old Gramm-Miller substitute with which we are all familiar and we debated for 6 weeks. It also includes compromises that were reached with three Democrat Members to try to increase input that public employees have in the process. I am first



to say it does not give them veto power, but it gives them a greater degree to be heard. The third thing it entails is a compromise with the House. We had to meet with Members of the House to try to bring the two bills together, given we are at the end of the session, so they could pass the bill in the House and we could pass it in the Senate.

Are there special interest provisions in the bill? There are. But does anyone believe we would go to conference in February or March and not have special interest provisions in the bill? I am proud that my colleague has noted I didn't have any in the substitute we offered.

I say the following in addressing the important point of the Senator from West Virginia, and then I will conclude. I believe this is a good amendment. I believe it is a result of 6 weeks of work. It is a compromise that has been made, and then an additional compromise has been made on top of that. I believe from my point of view we might get a better bill in February, but I don't believe from the point of view of the opponents of this bill they would get a better bill. And to the extent we got greater support, we would get a bill that is not as good.

Secondly, I remind my dear colleague from West Virginia that when Benjamin Franklin read the Constitution, he asked himself: Is this the best product that we are going to get? As he knows, better than I, there were things in it he was doubtful of. I am not comparing this 484 pages to what, in a secular sense, is a document that is pretty holy to me and the Senator from West Virginia, and that is the Constitution.

But the point is relevant. This is a compromise. Even the Senator said his biggest concern has been dealt with. I say to critics, the fact that is the case says something about the fact that there was a genuine effort to compromise. I am not asking my colleagues that have taken a hard position to vote yes. I know that will not happen. I know I will not convince the Senator from West Virginia, but I hope I will convince him of two things.

The first is the most important one, and that is this bill is not all bad and there are some good things in the bill and there has been some legitimate effort to compromise. Second, when we do get cloture, we are at a point where we need to go ahead and act and adopt the bill.

I thank my colleague for the debate. Probably the Senator from West Virginia has had more impact in changing this bill than anyone else because of the strength of his arguments. I simply say, it is a long way from what he would like. I have voted on many bills here in my 18 years in the Senate, and they were a long way from what I liked. But you ultimately come down to, especially in these circumstances, the following questions: Is it going to get any better? Might it get worse? Is it worth waiting 3 months to find out?

My conclusion, and it is one I feel very strongly about, is that I believe it is a good bill. I don't believe it would get better with time, especially from the point of view of people who are concerned about workers' rights. And finally, waiting 3 months does not serve anybody's interests.

Thomas Jefferson said good men with the same opinion are prone to disagree.

Mr. BYRD. I yield the floor.

How much time does the Senator have remaining?

The PRESIDING OFFICER. Two minutes and nineteen seconds.

Mr. BYRD. I hope he has 3 additional minutes.

Mr. McCAIN. I object.

Mr. GRAMM. I give the 2 minutes to Senator BYRD.

Mr. BYRD. Mr. President, with reference to Benjamin Franklin, when the Constitutional Convention ended we are told a lady approached Benjamin Franklin with the question: Dr. Franklin, what have you given us?

His response: A republic, Madam, if you can keep it.

That is what is wrong with this bill. That is the problem. The third leg of the trilogy of reasons we have this compromise, which was related to us by the distinguished Senator from Texas, is that third leg, that compromise that he spoke of, which was entered into with the House so that the House could pass this measure over there virtually without debate, that is the leg I think we could improve with an additional 3 months. That is the leg which has the major flaw. That is the leg which has the dagger pointed to the heart of the Republic, which we all love. It is that leg which I think another month or 2 months or 3 months would vastly improve, I say with all due respect.

Mr. SARBANES. Will the Senator yield?

Mr. GRAMM. I have the time.

Mr. SARBANES. I say to the Senator, I think it is clear, I understand his point on the homeland security provisions about now or next year. But it seems to me clear that next year you will not have these special interest provisions that are in this legislation. They were not in your legislation. They have been put in here by the House. Some of them are absolutely outrageous.

Mr. GRAMM. Let me say when Senator MILLER and I wrote the substitute, it is true we did not have any special interest provisions in it. It is true that there are a few special interest provisions in this bill. But I would have to say—without getting into an argument with anybody on what may be my last words in the Senate—that more often than not when you are negotiating between the two bodies, you end up with some provisions, (a) you don't like, and (b) that have are promoted by some special interest. I would have to say—and I am sure my colleagues will remember me going through bills at midnight looking at proposed amendments

that were going to be accepted—seldom have I seen a bill that had none of those. I am not going to be here in future years, so I guess I will read about it in the paper. But if we do not invoke cloture, I would be willing to bet good money, and I hope to have it to bet at that time, that there will be more special interest provisions in it 4 months from now than there are right now.

Mr. REID. Mr. President, all time is expired on this; is that right?

The PRESIDING OFFICER. That is right.

Mr. REID. I advise all Senators, we heard a lot of debate this morning. There will be immediately an up-or-down vote on cloture on the Gramm-Miller substitute amendment to the Homeland Security Act. On our side this is opposed by Senator BYRD. It is my understanding that Senator LIEBERMAN will vote in favor of the cloture motion.

Mr. DORGAN. Mr. President, I wish to inquire of the Senator from Texas where this negotiation took place?

Mr. ROBERTS. Regular order.

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

Mr. BYRD. Mr. President, I ask unanimous consent that the Senator from—

Mr. ROBERTS. I object.

Mr. BYRD. I know the Senator objects.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the call of the quorum be terminated.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. No, reserving the—I can't reserve the right to object. I object until we get a clear understanding that the Senator from North Dakota can have 1 minute.

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. I ask that the Senator from North Dakota be recognized for 1 minute and the Senator from Texas, Mr. GRAMM, be recognized for 1 minute.

Mr. GRAMM. And the vote occur immediately thereafter.

Mr. REID. The vote to occur immediately thereafter.

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

The Senator from North Dakota.

Mr. DORGAN. I merely wish to inquire of the Senator from Texas: He indicated in the process of completing legislation, sometimes at midnight there is a negotiation that goes on and things happen. I am wondering if the Senator from Texas can tell us where the negotiation occurred that put in the homeland security bill the special piece for the pharmaceutical industry



that shows up now, today, that says there will be special liability protections for the pharmaceutical industry. And the majority leader of the House, Mr. ARMEY, says: Well, I put it in, but it wasn't my idea; it was the White House.

I am asking, was there a negotiation someplace, sometime, between some people, of which I am unaware? Because I have heard of no such negotiation by which that provision should have ended up in this bill.

I inquire of the Senator from Texas where this negotiation occurred. Who was involved in it? Who made the decision that a special protection for the pharmaceutical industry that just spent \$16 million in the last election ought to be stuck in this bill? Who was involved in it?

The PRESIDING OFFICER. The time has expired. The Senator from Texas has 1 minute.

Mr. GRAMM. I am glad the Senator picked one with which I am totally familiar.

In the Senate bill, we had a provision where the Federal Government indemnified those manufacturers that produced items to be used in the war on terrorism whereby the taxpayer would pay liability that arose from it.

I was never much for that provision, but I was desperately trying to get the votes to prevail, and so I took that provision.

The House had a provision that limited liability, similar to what we did in World War II and what we have done in most major conflicts. When you produce an item for defense purposes, there is a limited liability. It seemed to me that, rather than the taxpayer bearing the burden, forcing these cases into Federal court and limiting liability was a preferable choice.

That is where the negotiation came from. This was not a provision out of the clear blue sky. We had a provision, they had a provision, and we took less liability protection than they had. This is a good provision of the bill.

Mrs. LINCOLN. Mr. President, I rise in support of cloture on the Homeland Security bill because our country needs a unified effort to defend our shores. But I want my colleagues on the other side of the aisle to know that I am ashamed of the tactics that you have used. And this Senator will not forget what you and your patrons in the pharmaceutical industry have done to this bill and to the American people in the dark of the night. It appears that the \$12 million PhRMA donated during the last election cycle can buy more than a handful of House and Senate seats. It can also buy a sneak attack on people—autistic children—who have been harmed by vaccines.

I say to my friends across the aisle and to my friends in the pharmaceutical industry: sneaking this unrelated provision into critical legislation like Homeland Security is not the way to make good public policy. It is un-American, and something to be ashamed of.

Why should the parents of autistic children—children who were injured by thimerosal in vaccines—lose some of their legal options in the name of Homeland Security? They too care about the security of our nation, but you cannot doubt their love and concern for their precious vulnerable children. The homeland security bill is not an appropriate vehicle to make this change to the vaccine injury compensation program on behalf of one interest group.

## HOMELAND SECURITY ACT OF 2002

### Pending:

Thompson (for Gramm) Amendment No. 4901, in the nature of a substitute.

Lieberman/McCain Amendment No. 4902 (to Amendment No. 4901), to establish within the legislative branch the National Commission on Terrorist Attacks Upon the United States.

Dodd Amendment No. 4951 (to Amendment No. 4902), to provide for workforce enhancement grants to fire departments.

### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which 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, hereby move to bring to a close debate on the substitute amendment No. 4901 to H.R. 5005, the Homeland Security legislation.

John Breaux, Ben Nelson of Nebraska, Larry E. Craig, Jon Kyl, Mike DeWine, Don Nickles, Craig Thomas, Rick Santorum, Trent Lott, Fred Thompson, Phil Gramm, Pete Domenici, Richard G. Lugar, Olympia J. Snowe, Mitch McConnell.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Thompson amendment, No. 4901, for H.R. 5005, an act to establish the Department of Homeland Security and for other purposes, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUE), the Senator from Maine (Mr. KENNEDY), the Senator from Maine (Mr. KERRY), and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Colorado (Mr. CAMPBELL) are necessarily absent.

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

The yeas and nays resulted—yeas 65, nays 29, as follows:

[Rollcall Vote No. 244 Leg.]

### YEAS—65

Allard	Edwards	Lugar
Allen	Ensign	McCain
Barkley	Enzi	McConnell
Bayh	Feinstein	Miller
Bennett	Fitzgerald	Murkowski
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Breaux	Gramm	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Cantwell	Hatch	Smith (NH)
Carnahan	Hollings	Smith (OR)
Chafee	Hutchinson	Snowe
Cleland	Hutchison	Specter
Cochran	Inhofe	Stevens
Collins	Johnson	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Lieberman	Voinovich
DeWine	Lincoln	Warner
Domenici	Lott	

### NAYS—29

Akaka	Dodd	Murray
Baucus	Dorgan	Nelson (FL)
Biden	Durbin	Reed
Boxer	Feingold	Reid
Byrd	Harkin	Rockefeller
Carper	Jeffords	Sarbanes
Clinton	Kohl	Schumer
Conrad	Leahy	Stabenow
Corzine	Levin	Wyden
Dayton	Mikulski	

### NOT VOTING—8

Campbell	Inouye	Kerry
Helms	Kennedy	Torricelli

The PRESIDING OFFICER. On this vote, the yeas are 65, the nays are 29. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The majority leader.

### AMENDMENT NO. 4902

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Lieberman amendment No. 4902 be in order.

Mr. GRAMM. Mr. President, I object. The PRESIDING OFFICER. Objection is heard.

The majority leader.

Mr. DASCHLE. Mr. President, I very regretfully make a point of order that amendment No. 4902 is not germane.

The PRESIDING OFFICER. The Chair sustains the point of order. The amendment falls.

### AMENDMENT NO. 4911 TO AMENDMENT NO. 4901

Mr. DASCHLE. Mr. President, I call up amendment No. 4911.

Mr. BYRD. Mr. President, what is happening? What was the request? What has happened?

Mr. DASCHLE. Mr. President, I have called up amendment No. 4911. I would like it read.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. BYRD. Mr. President, parliamentary inquiry. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. BYRD. Mr. President, what was the request agreed to; what happened? What was the decision of the Senate?

The PRESIDING OFFICER. A unanimous consent request that the pending first-degree amendment be in order was objected to. Objection was heard. A point of order was then made against the amendment on the grounds that it was not germane. The Chair sustained

the point of order, and that amendment fell.

Mr. BYRD. I thank the Chair. There was so much noise in the Chamber that many of us could not hear what was going on.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. LIEBERMAN, proposes an amendment numbered 4911 to amendment No. 4901.

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

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

The amendment is as follows:

(Purpose: To provide that certain provisions of the Act shall not take effect, and for other purposes)

At the end, add the following:

**TITLE XVIII—NONEFFECTIVE PROVISIONS**  
**SEC. 1801. NONEFFECTIVE PROVISIONS.**

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

- (1) Section 308(b)(2)(B) (i) through (xiv).
- (2) Section 311(i).
- (3) Subtitle G of title VIII.
- (4) Section 871.
- (5) Section 890.
- (6) Section 1707.
- (7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

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

The PRESIDING OFFICER. Is there a sufficient second?

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

Mr. DASCHLE. Mr. President, I retain the floor.

The PRESIDING OFFICER. Is there a sufficient second?

In the opinion of the Chair, there is not a sufficient second.

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

The PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4953 TO AMENDMENT NO. 4911

Mr. DASCHLE. Mr. President, I call up amendment No. 4953.

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

Mr. DASCHLE. Mr. President, I hold the floor.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. LIEBERMAN, proposes an amendment No. 4953 to amendment No. 4911.

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

Mr. NICKLES. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue the reading of the amendment.

The legislative clerk continued the reading of the amendment, as follows:

Strike all after the first word and insert the following:

**TITLE XVIII—NONEFFECTIVE PROVISIONS**  
**SEC. 1801. NONEFFECTIVE PROVISIONS.**

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

- (1) Section 308(b)(2)(B) (i) through (xiv).
- (2) Section 311(i).
- (3) Subtitle G of title VIII.
- (4) Section 871.
- (5) Section 890.
- (6) Section 1707.
- (7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

(d) The amendment made by subsection (a)(1) of this section shall be effective one day after enactment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. I ask unanimous consent that during the next 90 minutes—that is until 1:30 today—there be no action, other than debate, on the matter now before the Senate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Texas.

Mr. GRAMM. Mr. President, I do not want to give a lengthy speech, but briefly I will talk about where we are and then talk about the amendment that is pending. We have now invoked cloture on the pending substitute, and so we are in a very tightly scripted 30-hour period. The Democrat majority leader put into place two amendments, and in the process no amendment now is in order. This produces a situation where at some point, at the end of 30 hours, there will be a vote on the pending Lieberman amendment.

The pending Lieberman amendment is the amendment I will discuss. It is clear these amendments will not be dealt with until the 30 hours expires. So we will have one vote on the Lieberman amendment and then we will move to vote on final passage. I want to address the Lieberman amendment because what tends to happen in

these cases, where things are done at the last minute, is that it is sort of easy to confuse people as to what has been done. I want people to understand where the provisions came from and why they are important. One can agree with them or disagree with them, but I want my colleagues to basically know where they came from.

Over the weekend, we had a series of negotiations. I want to go back to the point that the President could have said, after the election, that he had a mandate, that this Congress could go home, that we would then have a new Congress and he would write the homeland security bill the way he wanted it written, or he would have Congress write it that way. I think it tells us a lot about our President that he decided not to do that.

In fact, after having gotten a strong electoral mandate, the President actually negotiated further and made additional changes in his bill.

The substitute that is before us is basically the Gramm-Miller amendment, which is well-known, which we debated for 6 weeks—few amendments have ever been debated that long in my 18-year career in the Senate—with two sets of changes. One, the agreements that the President reached with three Democrat Senators and an Independent Senator in negotiations over the weekend, whereby the following changes were made: Workers in the Federal sector and unions that represent them were given a greater voice in expressing their views about how the new Department is organized, and they were given more clearly defined due process. They were not given veto power, but they were given a guaranteed input under a specific time period. That is the significant change that was made. That represents a compromise from the original Gramm-Miller amendment.

The second change that was made was recognized that the House had passed its own bill. So realizing that we were coming to the end of the Senate, one of the things we did over the weekend is we met with the House to try to make changes in our substitute to assure that at the end of the session we would not have to do a conference once we had passed the bill. Quite frankly, the Democrats who have been supportive of this effort felt strongly that they did not want to negotiate with us and then end up negotiating with other Republicans in conference. That makes sense. When a deal is cut, one wants it to be a deal. So we brought in the House. As a result, we took 95 percent of our provisions, took about 5 percent of the House provisions, and that now is the bill before us. This bill has been adopted by the House, which has now left town. They will be here in pro forma session on Monday, but practically the House has adjourned.

I will address the generic issue about add-on provisions and then I want to talk about something else. I hope nobody is offended by this, but I have to

say I have probably been as strong in speaking out against add-on provisions as anybody. I remind my colleagues that many times at midnight or 2 in the morning we have had seemingly noncontroversial amendments that did all kinds of special projects that we were going to accept. In fact, earlier this Congress I sat in that very room and went through a list of amendments. One amendment would have the Federal Government absorb a billion dollars of liability for a project in one State. Now that is pretty targeted. I am not going to mention the State, and it does not matter.

Any time we negotiate with the House, with 435 Members focused on a very small congressional district, they are going to put in provisions that relate to their district. That has been the nature of the body from the very beginning. It started with the first Congress. It will end with the last Congress. It will never go away.

For the people who say there are extraneous matters in this bill, of all the major bills I have looked at that have been agreed to by the House and Senate, there are probably fewer extraneous matters in this bill than any major bill I have looked at in a very long time. I would like go down the list of amendments being discussed and explain where they came from and why they make sense.

The first one has to do with vaccines. We had a provision in our bill related to vaccines and related to the production of items to be used in the war on terrorism. In every war we have ever fought we have had some form of indemnification for people who produce things used in that war. The provision we had in the Senate bill was a taxpayer indemnification. I did not like that provision, but I had Republican colleagues who were for it. We were trying to get 51 votes. So I took it.

The House had a far better procedure. That was a limit on liability. We did not take all the limits on liability they had in the compromise because we were afraid that might offend powerful special interest groups. But what we did in three of the six items mentioned is we simply applied the principle that has been applied to every war this Nation has ever fought: if you are producing a new vaccine or new weapon or new system for use in that effort, there are some liability limits involved. That is where the item of vaccines came from and where the item of airport screening came from and the item on manufacturers came from.

To suggest this is some special interest sweetheart deal makes good political rhetoric, but the bottom line is it is not true. Not only do the provisions fit, not only are they part of the fabric of the bill, but we had a provision to have the taxpayer pay for the liability risk, and we picked a better, preferable approach, which is to limit liability when we introduce new technology like airport screening and new vaccines. We always had some limit on vaccines be-

cause they are risky, but the threat is now serious. It has never been relevant to a war effort before because we have not viewed smallpox as being a weapon. We do now.

In three areas our colleagues have singled out as being special interests—vaccines, airport screening, and manufacturing of items used in the war on terrorism—those items were in the Senate substitute, but they were in it in the form where the taxpayer would have paid. We put in simple limits that make sense and that have been part of every war we ever fought of any significance in American history.

The next item viewed as being extraneous is a change made to the Wellstone amendment. Senator Wellstone introduced an amendment adopted by a voice vote because it was clear it would pass and nobody wanted to vote on it. It said if any company has ever been domiciled in America, throughout American history, and that company is now domiciled somewhere else, that company cannot bid on contracts related to the war on terrorism.

The change made in the amendment is a good government change. It is not an extraneous special interest provision. It is simply a provision that says the President, for national security reasons, has a right to waive this requirement. Why would he do it? First, there might be only one supplier. Second, there might be no competitor if it is not waived, in which case you could end up paying an exorbitant price. Finally, it might actually be better from America's point of view if the company has substantial production in America, even though its home office is somewhere else, for us to buy from that company for national security reasons, for job reasons, and for economic reasons. That provision is hardly an add-on provision. It is, in fact, a good government provision.

Now, let me discuss transportation security rules. We know the provisions and deadlines we mandated for air travel security are so strenuous they cannot be met. Occasionally, we get into these situations where we are debating some deadline and we know the deadline cannot be met and will not be met, no matter what we write into law. What this bill does in a careful and reasoned way is set out a new deadline for meeting them, a deadline that can be met and that is reasonable. Instead of creating a farce in law where we say something will be done by December 31—and we know very well it cannot and will not be done and, as a result, you get no pressure to do it on time—we set a realistic deadline.

Next we have these advisory committees. If there is anything more useless than an advisory committee, I don't know what it is. I am not saying advisory committees cannot be valuable. I am not saying there are not some that are valuable. But we use them so often they become irrelevant. The striking or not striking of these advisory committees has no import, no significance

to this bill. If, however, by striking the committee we change the bill and end up killing homeland security because the House has adjourned, then it becomes very significant.

Those are five of the six items that have been listed. The final item is the designation that a university be involved in the process. It is one item where there is an earmark. Seldom do we see a major piece of legislation that we do not have several dozen earmarks.

We are down to a simple question, and I will conclude on this. This is hardly an unknown amendment. We have debated it for several weeks. I know there are strong feelings on the issue, but we had an election, and if anybody got a mandate out of that election on any issue, the President got a mandate: Pass homeland security.

The House passed a bill. They negotiated with us in good faith. Was everyone involved in the negotiations? No. But I didn't help write the Lieberman amendment, either, because it was his amendment. We have bipartisan effort. We have a majority vote. We are down, now, to where an amendment has been proposed that would strike six provisions. I believe if the amendment is adopted, it will jeopardize the bill. The House passed the bill, they have gone home, and they are only going to be back in pro forma session. Five of the six provisions represent important elements in the bill.

To suggest trying to protect and encourage the production and distribution of smallpox vaccine is a special interest favor to a drug company is taking politics beyond the realm of reason.

On airport screening and manufacturer protection, this liability protection is something we have done in every war we fought. This is either a war or it is not a war. Should we start to buy from foreign companies over companies that are producing products in America but the headquarters was here in 1804 and it is now in London? I think we take this Buy America stuff too far. We should buy the best product at the lowest possible price that conforms with our national security. But to give the power to waive it when our national security interest is involved is hardly unreasonable.

Changing the deadline on airport security—every Member of the Senate knows we are not going to meet the deadline. Why not change it?

Finally, advisory committees—who cares? You could strip all of them out and I wouldn't care. But by stripping them out you are risking killing the bill.

So, in the end, this amendment really comes down to a threat to the passage of homeland security. Five of the six provisions are totally defensible. The sixth one is important only if appropriations occur and we are going to pass the appropriations later, so we are not committing to anything.

Contrary to the criticism that there are extraneous materials in this bill, there are fewer extraneous matters in

this bill than any major bill I have seen in many years. When you reach an agreement between the two Houses, you are always going to have extraneous material.

So, we will have a vote at 5 o'clock on Monday. First of all, I think it is bad policy to strike these six provisions. I think no legitimate case can be made against four of them. I think one of them is irrelevant—whether we have advisory committees or not. I think the other one is a small item in a big bill and I do not think it is worth risking this bill to make that change. Nor do I believe this issue would ever have been raised, that this amendment would ever have been offered, had this not been an extraordinarily controversial bill to begin with.

So I just have to say, in the big picture, I feel totally comfortable in defending the great majority of these six provisions. I think we need them. On substantive grounds, we should limit liability for new vaccines that may save American lives; for airport screening equipment that may keep our children, our spouses, or ourselves from being killed on airplanes; and from new manufactured items and new weapons we need in the war on terrorism. Those items should not be stricken.

I know special interest groups like the plaintiffs' attorneys are opposed to these provisions. But they are limited, they are narrow, they are reasonable, and the alternative, which we had in the Senate amendment, was to have the taxpayer pay all these damages. So this seems preferable to me.

I urge my colleagues when we vote on Monday to vote against this amendment and, in the process, let us pass this bill in the form it passed the House and, to the maximum extent possible, guarantee that we are successful in seeing this bill become law.

I yield the floor.

The PRESIDING OFFICER (Mr. LEAHY). The senior Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that my name may be added as a cosponsor of the pending Daschle-Lieberman amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator's name is added as cosponsor.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, it is a very special moment on the floor of the Senate to hear my colleague from Texas defend special provisions being put in legislation—actually to hear him describe the negotiations at the end of the process that result in these special provisions. Because he has been a tireless opponent of provisions that are put in pieces of legislation that in most cases or many cases have nothing to do with the underlying bill. So it is a real treat today to hear my colleague from Texas justify and support and ask Members of the Senate to support these special provisions that were put in the homeland security bill which, in most cases, had nothing at all to do with homeland security.

I must say, with respect to the issues of childhood vaccines liability protection, manufacturer liability protection, transportation security—I would wonder whether these have had hearings. Because we so often hear our colleagues, especially my colleague from Texas, say: You know, someone has put a provision in the bill. There has been no hearing on the bill. I am wondering whether these provisions have had hearings and discussion, and if there were negotiations, as was represented earlier by my colleague, were the parents of autistic children part of the negotiations? Where were the negotiations? Was it late at night? Early in the morning? Was it at the White House, as Congressman ARMEY would have us believe? I don't know the answer to that. But my hope is our colleagues will vote to strip these provisions from the bill.

Homeland security, that is what this legislation is about. Frankly, the way this legislation has been created, it was not under normal circumstances, where you have committee exploration in some detail and some depth of all of these provisions. What has happened is at the eleventh hour a piece of legislation is written and it is placed on desks. It has a rubber band around it. It is four-hundred-and-some pages and I know of very few Members of the Senate who would have read all of it at this point.

But having heard my colleague from Texas, for whom I have great fondness, describe his support for special provisions, especially at the end of his career here in the Senate, I must say that this is a very unusual moment. We will, of course, miss him for a lot of reasons. Among other things, I will miss him because at the end of most bills, he will be the one counted on to stand up and say: I object to these special provisions.

But he seems to have hit a speed bump here at the end of the road, on special provisions. I hope my colleagues will decide they want to vote to strip these provisions out of this bill.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. DORGAN. I will, of course, yield.

Mr. BYRD. I will only be a moment. The distinguished Senator from North Dakota, Mr. DORGAN, has referred to the distinguished Senator from Texas, Mr. GRAMM. May I interpose this observation.

Diogenes went about the streets of Athens with a lantern, saying that he was looking—in broad daylight—he was looking for a man, he was seeking a man.

Plato, upon going to Syracuse, was asked by Hieron the—I wouldn't say he was a beneficent dictator. But he was asked why he came to Syracuse.

He said: I came seeking an honest man.

I rarely make the observation as a premise to what I am about to say—I believe the Senator from Texas is not

only a man, but is also an honest man. He is very frank and open. He doesn't have to come to the floor with written speeches as I often do. He speaks from the heart and from the head and is very up front. He has always been that way. He explains his reasons. He doesn't hide his reasons. And he will answer your questions and he will answer honestly.

So I pay tribute to the Senator from Texas in that regard. I am glad the distinguished Senator from North Dakota has given me the platform for a moment to say that. We may not agree with the distinguished Senator from Texas. I certainly don't agree with the request for some of the special interest provisions here in this bill. But I do say here is an honest man, as far as I am concerned. He is aboveboard. He will answer your questions. He doesn't need a written speech to do it.

So I say I wish we had more PHIL GRAMM in the Senate. Excuse me for taking this time. I will say no more, except to thank him for the good relations.

Mr. GRAMM. Will the Senator yield for just 30 seconds? It is said, in the old Confederate Army, that they didn't give medals.

So the single honor was to be mentioned in Robert E. Lee's communiques to Richmond.

Having the distinguished Senator from West Virginia say something about me and to pronounce me a honest man I take in the same way that any private in Hood's brigade would have taken in the mention of their name in one of those communiques.

I love the Senator from West Virginia, as he knows. I think he serves a great purpose in the Senate. In my opinion, he is not always right, but right is not always easy to find. I think it is the give and take that ultimately produces it. Senator Wellstone, in my opinion, was not always right, he did speak honestly and with clarity. And he knew where he was coming from, and you could be for it or against it. I do think that is important to the Senate.

I thank the Senator.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, the comment that not always right but never in doubt may well apply to every Senator. I must say to my colleague from Texas that I intend for a few moments on Monday to say a word about the Senator from Texas, and my colleagues from South Carolina and North Carolina, and others who are leaving the Senate. I don't know if Senator BYRD indicated that he wished there were more such as the Senator from Texas, and he is, indeed, an extraordinarily bright and talented Senator. There are times at midnight when he is objecting to all kinds of provisions that I suspect the Senator from West Virginia and a few others would not wish that we had 25 more exactly in the same mood at midnight on important pieces of legislation. But he and so

many others contribute in very significant ways to this body.

This body produces for the American people best when it achieves the best ideas that everyone has to offer. There are times when we end up with the worst rather than the best. I have always thought that politics and our political system is not who is the worst; it is who is the best, who has the best ideas, and who can best manifest those ideas in public debate to achieve a result for this country.

Regrettably, too much of American politics—especially if you are coming off recent campaigns—is not at all about who is the best but rather who is the worst. That, in my judgment, becomes an anvil on the body politic. John F. Kennedy used to say with some beautiful prose that mother kind of hopes her child might grow up to be President, as long as they don't have to become active in politics. But, of course, politics is the way we make decisions in America.

I am enormously proud of this political system of the participation by Republicans, Democrats, Conservatives, Liberals, Independents, and moderates. I think all bring a great deal to the public debate and discussion, and strengthen our country.

Having said that, on Monday I will say a few words about our colleagues who will be leaving us—Senator CLELAND, Senator CARNAHAN, and others who have been mentioned on the Republican side. I believe that it is a great privilege to serve with each and every one of them, even though we from time to time have our differences. It is a remarkable privilege to be here and to serve with them.

I wish to make a point about homeland security that is not a part of this bill but I think a part of something that is very important. To underscore how important it is, I would note that we have been told by the head of the CIA that the threat of attack by al-Qaida and other terrorists now is as high as it was the day before September 11.

On October 25 of this year, a task force headed by former Senators Warren Rudman and Gary Hart issued a report on America's homeland security. That report was entitled "America Still Unprepared, America Still In Danger." It was a bipartisan task force sponsored by the Council on Foreign Relations, which included former Secretaries of State, Warren Christopher, George Shultz, ADM William Crow, Retired, former Chairman of the Joint Chiefs of Staff.

They found that 1 year after the September 11 attacks America remains dangerously unprepared for another terrorist attack.

I specifically wish to talk about one of their concerns raised in this report that I read, which gave me great personal concern.

In the report, the task force concluded that the 650,000 local and State law enforcement officials around the

country "continue to operate in a virtual intelligence vacuum without access to the terrorist watch list provided by the U.S. Department of State to Immigration and consular officials."

Our government has a watchlist to identify foreign nationals suspected of ties to terrorist organizations. That watch list is at the State Department. It is provided to the Immigration Department and to consular officials. It sets out the names of people whom we ought to watch because they are known terrorists. They are people who associate with terrorists; they are a terrorist threat to this country.

Guess what. That watch list is unavailable to state and local law enforcement officials around this country.

Thirty-six hours before the September 11 attack, one of the hijackers was pulled over by a Maryland State police trooper for driving 90 miles an hour on Interstate 95. The hijacker's name was Ziad Jarrah. He was a 26-year-old Lebanese national. He was one of the key organizers of the al-Qaida terrorist cell formed in Germany 3 years ago. He shared an apartment with Mohammed Atta. And he was at the controls of flight 93 when it crashed in a rural area of Pennsylvania.

When that hijacker—or at that point the potential hijacker—was pulled over by the Maryland trooper, he was driving a car rented under his own name.

There are a couple of things with respect to this issue that are interesting.

No. 1, his name was not on the watch list.

No. 2, had it been on the watch list, it wouldn't have mattered because a highway patrolman or a city police officer has no access to that watch list. The officer can run the name of an individual through the NCIC computer and find out if that individual has an outstanding warrant, or if there are law enforcement warnings about him but the officer has no way of knowing if the individual is on the State Department terrorism watch list.

The State Department watch list has the names of 80,000 terrorists or suspected terrorists on it. And 2,000 names are being added each and every month. The watch list is drawn from a good many area intelligence agencies. And as we speak, there is no way for law enforcement authorities to access the database.

Let me read in detail an excerpt from the Hart-Rudman report:

"With just fifty-six field offices around the nation, the burden of identifying and intercepting terrorists in our midst is a task well beyond the scope of the Federal Bureau of Investigation. This burden could and should be shared with 650,000 local, county, and state law enforcement officers, but they clearly cannot lend a hand in a counterterrorism information void. When it comes to combating terrorism, the police officers on the beat are effectively operating deaf, dumb, and blind. Terrorist watch lists provided by the U.S. Department of State to immigration and consular officials are still out of bounds for state and local police. In

the interim period as information sharing issues get worked out, known terrorists will be free to move about to plan and execute their attack."

This comes from the report of former Senators Hart and Rudman, entitled "America Still Unprepared, America Still In Danger."

I asked my staff—after I read this in the Report—to contact the task force. The task force, through my staff, has told me that they are not aware of any administration initiative to fix the problem. This, despite the fact that this is a top recommendation of a blue-ribbon task force.

So I asked the Congressional Research Service to contact the White House Office of Homeland Security, the Department of State, and the Department of Justice. They have done this in recent days.

My understanding is that after I made these inquiries the White House convened a meeting with State and Justice officials, and they are now apparently looking into ways to integrate the State Department terrorist watch list—called the "Tipoff" database—with the National Crime Information Center, which is accessible by State and local law enforcement authorities.

This effort must be expedited. Let me quote from the article in the Washington Post of just yesterday:

U.S. intelligence officials, increasingly confident that al Qaeda leader Osama bin Laden is the speaker on a new audiotape released this week, said yesterday that the message was part of a disturbing pattern indicating that terrorist groups may be planning a new wave of attacks on Western targets.

Even before the purported bin Laden tape surfaced on the al-Jazeera satellite network on Tuesday, the CIA, FBI and National Security Agency had detected a significant spike in intelligence "chatter" over the previous 10 days that strongly indicated new assaults are being planned, officials in U.S. intelligence agencies said.

That is from the Washington Post.

They continue to say:

The amount of alarming information was approaching the volume seen in the weeks before the Sept. 11, 2001, attacks in Washington and New York, and again in the middle of last month following a wave of attacks on overseas targets, some sources said.

The point is this: Homeland security and homeland protection rests, yes, with our intelligence-gathering agencies, yes, with the FBI, the CIA, and all of the officials who are working very hard, spending a lot of hours doing the best job they can to make it work. But beyond that, it also rests with cooperation with all of the local responders, especially local law enforcement officials across this country. There are 650,000 of them.

If, today, a terrorist drives through a rural county in North Dakota this afternoon, or a rural county in Vermont, or Kentucky, or in the middle of New York City, and is picked up for a traffic violation, and is a known terrorist on a watch list—guess what—

that highway patrolman, that city police officer is going to run that terrorist's name through the database at the NCIC, and they are going to get no warning that what they have on their hands is a terrorist in the car in front of them. There would be no warning at all because they cannot access the watch list.

If we have a watch list in which we have identified the names of terrorists and suspected terrorists, it makes no sense at all to withhold that information from law enforcement officers, who every single day climb out of bed and go protect this country on America's streets, on our highways. They are our eyes and ears. They are also watching out for the security of this country. They ought to have access to that watch list.

Again, let me say, this was the No. 1 recommendation in the report offered by former Senator Rudman and former Senator Hart. The report, which I would urge everyone to read, is entitled: "America Still Unprepared—America Still in Danger." These are former Secretaries of State, former Senators, Republicans, Democrats, evaluating what needs to be done to protect this country for this country's security.

I want to go back to read just a portion of the report. The task force had this to say:

With just fifty-six field offices around the nation, the burden of identifying and intercepting terrorists in our midst is a task well beyond the scope of the FBI. The burden could and should be shared with 650,000 local, county, and state law enforcement officers, but they clearly cannot lend a hand in a counterterrorism information void.

Yesterday, I was on the phone with a community in North Dakota, and the county sheriff was there in the room, and we talked by conference phone. We talked about this issue. He is not too far from the Canadian border. If one of his deputies or that county's sheriff stops a car on a rural highway, and it turns out to be a terrorist driving a rented car, he is not going to know because he does not have access to the watch list, he does not have access to the information. The FBI will not know, the CIA will not know, no one will know that terrorist was driving a car on that rural road because the person who apprehended him—the county sheriff, the city police officer—had no access to the information the State Department has, the consular officials have, the CIA has. It is not that the information does not exist, it is that it is not shared with local law enforcement officers across this country for the purpose of securing this country's homeland.

So this was the task force's top recommendation. This was not No. 5 or No. 10, it was the top recommendation of this group, a group that included several former Secretaries of State under Republican and Democratic administrations, Republican and Democratic former Senators, and others.

So I implore the President and the folks who are apparently now working on this to do everything they can in this regard. When a trooper stops someone for speeding tomorrow, or the day after tomorrow, or the day after that, and the individual that was pulled over is a terrorist, I want that trooper to realize who he has in that car—for the trooper's protection, and for the protection of this country.

Let me talk briefly about one other piece of homeland security, and we addressed part of it yesterday.

I have told my colleagues previously, I was recently at a port in Seattle. I don't know much about ports because I come from a landlocked State. I don't come from a State near an ocean. So I went down to see how the ports worked. They showed me all these ships that come in with all these containers.

I asked: What is in all these containers? They said: We have all these bills of lading and invoices, so we know what is in them. I asked: Can I see? And they showed me some containers they were opening.

They showed me a container from Poland that had frozen broccoli in it in 100-pound bags. They pulled out a bag of frozen broccoli and cut it open. Sure enough, it was frozen broccoli. I asked: What is in the middle of the container? I know what is in this bag. And they said: Well, we just know what's on the invoice.

We are spending \$7 to \$8 billion to see if we can stop an incoming missile because we are very afraid a terrorist group might get hold of an ICBM. But it is more likely a terrorist group might put a weapon of mass destruction in a container on a container ship that comes in at 3 miles an hour pulling up to a dock in New York City or Los Angeles.

We have 5.7 million containers every year coming into our ports. So 5.7 million containers every single year; 100,000 are inspected, 5.6 million are not. Is that a matter of homeland security? You bet your life it is.

A fellow in the Middle East—many of you read about this fellow—decided he was going to ship himself to Toronto and then come into this country. He had a GPS, a computer, a toilet, fresh water, a cot, all in a container loaded on a container ship, shipping himself to Toronto, Canada, with the intention, apparently, of coming into this country.

Do we need to be concerned about these things? You better believe it. And many of these issues, even if we passed a homeland security bill, will not be resolved.

The first issue I mentioned today is not resolved, and will not be resolved with the passage Monday of this bill: The fact that 650,000 local law enforcement authorities have no ability to access a watch list to determine who is a terrorist and who isn't. And 5.6 million uninspected containers coming into our ports will not be inspected next

Tuesday when the homeland security bill is passed.

So my point is, there is much left to be done for those of us—and I am sure that is all of us—who care deeply about homeland security in this country.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York was on his feet. I know the Senator from Tennessee is waiting.

Mr. SCHUMER. If the Senator will yield, I was waiting behind the Senator from North Dakota, Mr. DORGAN. If we are going back and forth—I only want to speak for about 10 minutes.

Mr. FRIST. Mr. President, I sought recognition first.

The PRESIDING OFFICER. There is not a particular order. The custom is usually to go back and forth from side to side. I am wondering if we might recognize the Senator from Tennessee, to follow the normal custom.

Mr. FRIST. Normal procedure would be to turn to me?

The PRESIDING OFFICER. I am sorry. I heard the Senator from New York, but if the Senator from Tennessee says he sought recognition earlier, then I will apologize for not hearing him.

Mr. FRIST. Mr. President, I would be happy to yield, although I felt I was—

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee.

Mr. FRIST. Mr. President, I will yield 10 minutes to the Senator from New York. Is that enough time?

Mr. SCHUMER. I appreciate it. I don't want to break the protocol.

The PRESIDING OFFICER. I am prepared to recognize the Senator from Tennessee.

The Senator from New York.

Mr. SCHUMER. I thank the Senator from Tennessee.

The PRESIDING OFFICER. I thank both my colleagues for helping the Chair out of a difficult situation.

Mr. SCHUMER. Let us hope and pray that is the Chair's most difficult situation in the upcoming months.

I thank the Senator from Tennessee for allowing me to speak. I will try to be brief. I would like to talk about two related subjects in this bill: What is in the bill and what is not in the bill.

What is in the bill, aside from the original homeland security provisions which we have been debating for a very long time, are little pieces of legislation unrelated to homeland security, none of which could stand the scrutiny of individual debate. In other words, if any of these little provisions were put in separate legislation and brought to the floor of the Senate, my guess is they would be overwhelmingly defeated.

For those to be in homeland security right now, for those pieces of pork, for those rifleshoot pieces of legislation that benefit one company to be in this bill, particularly after the President made such a fuss about keeping this bill the way he wanted it without any other provisions in it, is very wrong.



I hope we will support the Lieberman amendment. There are a few that are particularly galling to me. Probably the worst is a provision in this bill that was in the original bill that the House just took out that said, if you go overseas to avoid paying taxes, the original provision said, you can't bid on homeland security contracts. This takes it out. It says to companies that move overseas that they can benefit from the homeland security issues. I find that very troubling.

There is a provision that exempts one company, Eli Lilly, from any liability against a drug that is already subject to many lawsuits because of its mercury levels. That kind of provision would never pass standing on its own, and it was slipped in in the dark of night by the other body. We should not countenance it here.

There are provisions that redebate the tort law. We will have plenty of debates about tort law next year; I am sure of that. But to put them in this legislation with no debate would make the Founding Fathers gag.

We should stop doing these things, but particularly in a homeland security bill that was so subject, in the election, to a debate that the President wanted it his way or no way and led, at least if you believe some of the pundits, to some of our colleagues losing their elections because they wanted it a slightly different way. Now to put these sometimes pork, sometimes lard, sometimes extraneous provisions in this legislation is unfair, is wrong. We should support the Lieberman amendment.

I also would like to talk about what is not in the bill. This bill is a reorganization of agencies. All things being equal, it is better than not having it. But anyone who thinks, as my colleague from North Dakota has outlined, that this is going to make us safer, this is going to do the job, is sadly mistaken. I will support the legislation because it is a little bit better than the present situation. But I am worried that then we will think we have done all we can on homeland security.

This administration is letting our Nation down on domestic security—not by design but by effect—when they say that nothing can be added to homeland security that costs money. I don't get it. We are willing to spend \$80 billion on a war in Iraq which I have supported, but we are not willing to spend \$250 million to prevent nuclear weapons from being smuggled into our country. Where is the logic there?

Does anyone think that rearranging agencies is going to get the INS to have better computers or the Coast Guard to better defend our borders? No. And this administration is going to run up against a serious problem if it continues to have the view that we cannot spend a nickel on domestic security. The analogy, the comparison is stark. The military gets all the money it needs—it should—but our domestic

agencies, both Federal and State and local, that deal with homeland security get virtually no dollars at all.

I was told that my provision, which had bipartisan support—Senator LIEBERMAN, Senator THOMPSON, Senator MCCAIN, Senator HOLLINGS—that would have enabled us to have nuclear detection devices attached to the cranes that load and unload containers and could detect a nuclear weapon that would be smuggled in, had to be out of the bill because it cost money. I find that to be sad. I find that to be troubling in the sense that we are letting our national guard down. If we were under such spending constraints when it came to the rest of the parts of the war on terrorism, I would say OK. But I don't understand why we can spend all the money we want overseas but when we come to the water's edge, even carefully thought out small amounts of money are not allowed.

This bill is problematic for what was just added in and what was not put in. It is a little bit better than nothing. It is a baby step in the direction of better homeland security because our agencies do have to be reorganized. But I hope and pray that not only we take out the extraneous provisions that should be debated another day, but that we don't make the mistake that this reorganization bill is doing what we need for homeland security.

With that, I yield the remainder of my time and once again thank my colleague from Tennessee for his graciousness in allowing me to speak. I will now exit for the shuttle to New York.

THE PRESIDING OFFICER. The distinguished Senator from Tennessee is recognized.

MR. FRIST. Mr. President, I rise to speak in opposition to the Lieberman amendment and will spend a little bit of time over the next probably 30 minutes going to the substance of what this amendment does, talking policy, but also talking to the impact that passing the Lieberman amendment would have on our homeland security.

The bottom line is that I believe striking the provisions, which is what the Lieberman amendment does—it pulls out certain provisions from the underlying bill—will put the people of our Nation at greater risk, when we are talking about homeland security and safety and protection of individuals, of families, of children. That is a broad statement. It is a bold statement for me to make. But over the next several minutes I want to give you the substance of it.

A lot of people have said these provisions having to do with vaccines and smallpox are one-company provisions. The second argument is that in some way these provisions cut off the rights of individuals to go to court. We have heard statements by the proponents that one agent, one preservative, causes autism and thus in some way the underlying bill will hurt families with children with autism.

As a scientist, as a physician, as someone who is very familiar with the

provisions that were placed in the homeland security bill, I have a certain obligation to walk my colleagues and the American people who are listening through what the Lieberman provision would do by stripping out the smallpox provisions, by stripping out the vaccine provisions.

Let me begin by saying we are a nation at risk. We are at risk from nuclear weapons and from chemical weapons; we know. But when it really comes to what could potentially happen to our homeland—remember this is homeland defense that we are talking about—I would argue that the greatest risk for a weapon of mass destruction to be microorganisms, to be anthrax, which terrorized the Nation, when we don't even think, we don't know, we don't think it was used by a State, or the introduction of smallpox, which we know is a weapon of mass destruction, if introduced into a population that is unprepared, that has not been vaccinated. Vaccine is the front line for people at risk from anthrax. It is the front line for people at risk from smallpox. That means your children. That means your spouse. That means your grandparents. That means your family.

So we must not do anything and the LIEBERMAN amendment would do this—to increase the barrier for you to be protected.

Iraq has been mentioned. Most of my colleagues know that Iraq had one of the most robust biological weapons programs in the history of the world. It loaded anthrax, it loaded botulism toxin on missiles during the gulf war, inserted it into the warheads of these missiles. We don't know about smallpox. We didn't know that refrigerators had been found in Iraq that said "smallpox" across them, but we do know this robust biological weapons program is the foundation for a program of weapons of mass destruction.

The interesting thing about these microorganisms, these viruses, these bacteria, is that you don't have to have a big ship out there to send in a missile. We know that once you put smallpox in a society, it will travel through our schools, it will travel through our businesses and through our homes, and the only defense we have—the only defense, in terms of a medical treatment, is that vaccine. That is why, when we talk vaccines and when we talk smallpox, it is incumbent upon us to have those provisions in this bill.

I will begin with smallpox because it is the one that, a week from now, can be a problem. What about right now, or tomorrow morning, if we hear of three or four smallpox cases in the country? What actually happens at that standpoint? Smallpox is a disease that is one of the most deadly infectious diseases. There is a 30-percent chance, to anybody who gets it, that they are going to die. If three people are here, one of those three will die if they get smallpox.

What is the treatment? The only treatment—real treatment—is to get



that vaccine on your arm within 3 days. Some people say 4 days. I personally think it is 3. Some say 5 to 10, but if your child has smallpox, not from when the manifestations start appearing but from the time of actual contact, and that entails having a vaccine out there—say 300 million doses, because we know smallpox in an unprotected population, which we are, knows no barriers. Right now, if I had smallpox lesions within my mouth, people around these four or five desks probably would already be infected. The only protection is the vaccine itself. The only treatment for smallpox—and this isn't true with all biological agents, but the only treatment is the vaccine within 3 days.

The administration has a policy, that I agree with, that basically is, if there is an outbreak, or a case, you can inoculate people in that area. That is a great policy. We don't need to mass-vaccinate everybody. What about right now?

People listening, saying we are a nation at risk—Iraq has had biological weapons programs. We know Saddam Hussein is a mass killer, a serial killer, who kills his own people and other people. He hates the United States. We know the most powerful weapon of mass destruction is smallpox, and we know there is a refrigerator sitting there that has "smallpox" written on it.

What if I wanted to get the vaccine now, just in case? Right now, you cannot get it. I argue that you should be able to get it. But that is not yet the policy of the United States. I think with informed consent, knowing the side effects and knowing what the advantages could be—lifesaving—weighing the relative risk—what about if a case breaks out in the Northwest, say Oregon, tomorrow? If you wanted to get the vaccine and you live in Nashville, TN, you could not get it. We ought to change that. That is not what we are talking about today, but you see that vaccines are a front line for homeland security.

I don't know what is going to happen in Iraq; none of us knows. If we come back and deal with this 6 months from now, or a year from now, or 2 years from now, we are inadequately protecting the American people. I don't want to overstate it, but that is my belief.

If smallpox hits here, right now, we are inadequately protected. The Lieberman legislation would strip out a provision, within 2 days or 3 days or 4 days, that would make us more adequately protected as a nation.

The threat of liability—this is where the other vaccine provisions are important—should not become a barrier to the protection of the American people. I will repeat that. The threat of liability should not become a barrier to the protection of the American people.

Then you go back to the question, What is this threat of liability? I will boil it down and use smallpox as an ex-

ample. Smallpox can hit here tomorrow or in 30 days or in 60 days from now or in 90 days or maybe never. We all pray it never hits. We have 300 million doses of vaccine. It is not all licensed yet, but it is good vaccine and I have utmost confidence in it. It is a risky vaccine. The childhood vaccines we use, which we are inoculated with—even the anthrax vaccine that potentially has certain side effects—if you look at these, I put smallpox among the most risky because we know the side effects are that about 1 in a million people would die. If you vaccinated 300 million people, about 300 would die. Ten times that number would have serious side effects—maybe encephalitis or many others that are life threatening. As a matter of fact, probably 30, 40 times that many would have a bad rash, many of which would cause hospitalization. So it is a vaccine, in medical terms, with more potential side effects than others.

What would you say if there were an outbreak tomorrow? You would call in nurses and public health officials, and pediatricians and other doctors, and you would say, as part of the American response to bioterrorism and the use of bioterrorist agents or microorganisms as weapons of mass destruction, you need to get this vaccine to as many people as you can within 3 days. It could be maybe 100 or maybe 1,000, or 10,000; and in a city such as New York, it could be a million easily within 3 days. Okay, you have the vaccine. You have willing health care providers. I think of myself as a physician. Everybody could be mobilized to do that. You are basically saying, as American policy: You need to give that vaccine. It has side effects, but we are not going to protect you in the event there is a side effect—death or encephalitis. We are not going to protect you in any shape or form, although you are fulfilling the mandate and the policy, the emergency response of the American people.

Why would they not do that? Because of the lack of protection from skyrocketing lawsuits. I have a great fear—and I don't want to say I know for sure, but I have a fear in talking to health care providers and to the nurses who recognize, given that vaccine is important to life saving, but at the same time is subjected to these unlimited lawsuits with punitive damages—they just might say: I cannot subject myself to giving a thousand of those doses, even looking at the statistics. That is the problem, that is why the smallpox provision has to be in there.

We have had so many people make all these statements, but nobody has been to the substance. The bill extends the Federal Tort Claims Act—the FTCA—protection to any person, such as a doctor, or a pediatrician, or a nurse, or somebody who is qualified to be giving that inoculation, lifesaving inoculation, in your arm. It provides them a protection of the Federal Tort Claims Act.

What is important there—people say if that is the case, you cannot sue. Well, that is simply not true. It basically says that the Federal Government is going to be on your side and will defend you in any lawsuit and the Federal Government will pay the damages. It does not deny adequate, just, fair compensation if there is a side effect, but what it does do is you are going to have somebody behind you; namely, the Federal Government, to pay you damages. It does say you go to Federal court. People say Federal courts cannot do this. In truth, we all know Federal courts can do that.

It is important to point out that in Federal court, the rules that are actually used are going to be applicable to that State or according to State law.

Thus, you can still sue, but the Federal Government pays. A lot of people say you should be able to punish anybody—punish that nurse who put that vaccine in your arm—so let's have punitive damages on top of compensation. The underlying bill says you get adequate, just, fair compensation. You are defended by the Federal Government and they will pay you, but there is no punitive damages component, which makes sense because, remember, that nurse is putting that inoculation on your arm to save your life under a plan put forward by our Government, probably in response to an emergency.

Over time, I think we need much more balance in terms of the overall provisions. It was not my idea, although I support these provisions strongly, to take these specific provisions out and to put them into the bill. So over time, we need to develop a more comprehensive policy to make sure we have both a full range of vaccines developed, that we have appropriate countermeasures, and if somebody is harmed by a vaccine, there is fair compensation.

We need to come back and visit this in a more comprehensive way as we go forward. I will add, though, there is some sense of urgency to this given the threats today.

The issue of what is front line is important because the use of germs, microorganisms, and bacteria is new to the American people as weapons of mass destruction. It is causing us to say we understand nuclear weapons, gas, but what about these organisms that can wind their way through a society? What is the front line?

That is why vaccines are absolutely important because they become the front line, and that is why we address vaccines in the homeland security bill, especially since we are at risk today. One cannot turn on a television or read a newspaper without learning of this enhanced risk, this higher risk.

Let me back out of this broader issue of vaccine. Smallpox is one case. It happens to be a virus. What about the plague which wiped out a third of Europe? What about anthrax? We have an old vaccine. The vaccine has to be administered over and over, so we need newer vaccine developed for anthrax.

What about Ebola? About 3 months ago, the National Institutes of Health said in their response to bioterrorism that one of its major priorities is going to be the development of a vaccine for the Ebola virus. That makes sense because we know that other states in their offensive biological weapons programs—and there are 12 offensive biological weapons programs outside the United States; people need to know that—there has been a linkage of smallpox with the Ebola virus. We know Ebola has a 90-percent mortality rate; smallpox has a 30-percent mortality rate. We should at least be thinking of a front line there which means a new vaccine. NIH said 4 months ago—and most people do not even know it—has as one of their major initiatives development of an Ebola vaccine. Why? Because intelligence tell us people have attempted to link viruses. Thus, we need to have an effective response system in terms of the development of vaccine.

Research is good. NIH is doing research. But unless we have manufacturers in the field manufacturing vaccines, we can have the greatest research in the world and know how to do it, but unless we can produce it and produce it quickly, the know-how does not do us any good because we are not going to be able to develop the vaccine to put on your arm and protect you from the Ebola virus.

There are provisions in this bill that provide smallpox as a microcosm, but in the macro sense, there are other vaccines. Every year—and the distinguished Presiding Officer knows this—we hear about these shortages of vaccines about every 6 months. People ask: Why are there these shortages? It is multifactorial, and we have to address that.

One of the issues we know is this unlimited liability. Think back to the smallpox vaccine. It is put on your arm, and you have a bad side effect. Somebody is going to sue for that side effect. There are no protections today. In the same sense, the manufacturers, the pharmaceutical companies, which is very popular for people to beat upon aggressively these days, the manufacturing companies, the pharmaceutical companies are the only ones that can make the smallpox vaccine, the front line for that weapon of mass destruction, for the Ebola virus.

We can, through NIH, promote the research, but only a manufacturing firm, a pharmaceutical firm can make the Ebola vaccine. There used to be in the eighties 12 pharmaceutical companies making vaccines. Then it dwindled to 10, then to 8, then to 7, then to 6, then to 5, and there are now only 4 vaccine manufacturers licensed to sell vaccines in the United States, and only two of these are American companies.

Why is that the case? Why would they stand out totally exposed for making a medicine that is lifesaving, yes, but one that with one lawsuit can wipe out their whole development proc-

ess, their whole manufacturing process today?

That is an issue that has to be developed, and the urgency of it is the fact we are a nation at risk from biological agents, and there are 12 states that have offensive biological weapons programs, and we are today unprotected.

On the liability issue, people have said one preservative causes autism. They mentioned this on the floor. That is just wrong. The Institute of Medicine has made it very clear that there is no established causal relationship between that preservative and autism. I will and others need to go back and look at the data, but the Institute of Medicine has basically said that to date. We need more research.

I was one of the primary authors of the autism research bill. We need to look at it again. I want to assure families in the country that those statements made on the floor of the Senate are wrong. There is nothing in the underlying bill that slows down research for autism or just compensation, if there is an association between autism and a certain preservative.

It is interesting, with these vaccines being sort of inherently risky, with the risk of liability costs driven up so high because it is easy—it is not easy, but we can have lawyers coming in and starting these lawsuits.

In the 1980s, this body started the Vaccine Injury Compensation Program. They did this through the National Children's Vaccine Injury Act. It was passed in 1986, I believe. The whole purpose of this program is to provide injured patients compensation while attempting to control litigation, based on the recognition that vaccines will always be an easy target because they have inherent side effects and everybody gets vaccines—everybody in this body has been vaccinated. Everybody listening hopefully has been vaccinated. We all depend on those vaccines. That at the end of the day, since everybody gets it and there are certain side effects, that if you want to make a lot of money you can go out and start getting these people and start creating these lawsuits. That is why in the mid-1980s we said we have to put all of this together and look at it in a reasoned way, a way that is efficient, a way that is fair to people broadly. The vaccine injury compensation program is essentially a no-fault alternative to the traditional tort system in this whole area of vaccines. It has been a key component of stabilizing the vaccine market, of not driving even those last four companies—or the last two in this country—out of making vaccines. It has a streamlined process. It puts down a less adversarial alternative so not everybody is going to court and spending weeks, months, and in some cases years trying to have their cases actually looked at.

It encourages research and development of new and safer vaccines, and it provides the appropriate liability protection to that nurse who is putting

that inoculation, that vaccine, in your arm, as well as the health care providers, the facilities, and the manufacturers.

What is in the underlying bill is a narrow set of provisions that were actually taken from a bill that I have studied for the last 3 years and that I introduced this Congress, that should eventually be passed in this comprehensive form, but the provisions have been taken out and included in the underlying bill I feel strongly about and I will continue to talk to my colleagues about them individually as they understand why those provisions were included.

I will say that the provisions that are in the bill are far narrower than what I think we actually need to do to have this balance in our liability system so we can continue to develop vaccines to protect our children, the current generation. In the event there is a bioterror attack a week from now, a month from now, a year from now, we will be adequately prepared.

The Lieberman proposal would strike these sections that are in the underlying bill. And all of them merely restate to some extent what was intended by Congress. This is a clarification, a restatement. In 1986, when it passed the bill, the underlying bill called the National Children's Vaccine Injury Act, what that act did was to create an administrative mechanism by which those children who have a serious side effect from a vaccine can receive compensation without ever having to prove in court a vaccine caused their particular injury. So you do not have to go to court. You can go to this new administrative body.

There are a handful of people who do not believe in vaccines. They just say all vaccines are bad. Most know that they are invaluable and have spared our children from many of the diseases that haunt us. Thus, when you have that which we all really fully understand today, that they are a protection for our children, plus this new threat of bioterror, that is why you link it to homeland security and that is why it is important in this bill. We know we must preserve that manufacturing base so with the research that is done, yes, by the pharmaceutical companies, but also maybe even more importantly by the NIH, we can actually manufacture those vaccines.

Section 171 clarifies that the components and ingredients of a vaccine listed in the vaccine's product license application and label are not contaminants or adulterants. Importantly, the advisory committee, from which all of this essentially was taken, is an advisory committee called the Advisory Commission on Childhood Vaccines. They unanimously concur with this particular provision.

The next section, section 1716, adds a definition of "vaccine" to the Public Health Service Act since that term was not defined at all in the initial legislation back in 1986. This section states

the obvious—that the term “vaccine” includes all components and ingredients listed in the vaccine’s product license application and product label. Again, the Advisory Commission on Childhood Vaccines recommended the appropriate modification which is a part of the underlying homeland security bill, again, which the Lieberman amendment would strip out.

Sections 1715 and 1716 restate the original intent of the law that a vaccine is all the ingredients and components in the product which are approved by the FDA. This is an important one because there have been some allegations that all this was stuck in for a single company. The fact is that there are presently more than 150 of these lawsuits against the four vaccine manufacturers, as well as pediatricians, children’s hospitals, state health departments and other healthcare providers. From my comments, one can see that it is not a single company. We are talking about a huge issue that reflects back to the protection of our families and our Nation.

Section 1714 clarifies that the term “manufacturer,” under the VICP, includes any corporation, organization, or institution that manufactures, imports, processes or distributes any vaccine on the vaccine injury table, including any component or ingredient of such vaccine. The Advisory Commission on Childhood Vaccines, again, an independent body making specific recommendations—it is composed, by the way, of trial lawyers, medical providers, and injured parties—unanimously supported this provision. This provision restates Congressional intent to ensure that any lawsuit alleging vaccine-related injury or death follow the same process and groundrules regardless of whether it is against the final manufacturer, a physician or hospital, or a component or ingredient manufacturer and addresses those lawsuits seeking to circumvent the Vaccine Injury Compensation Program.

I also want to point out that these provisions are supported by the American Academy of Pediatrics, and I will talk more about that in a minute.

I want to run through a couple of other specific ones, again because nobody has really talked to the substance underlying what this amendment would mean.

The congressional intent very much was to encompass the manufacturers of component materials of vaccines in the definition of “vaccine manufacturer,” and these provisions—what they do is clarify this intent. They restate the congressional intent as part of the Vaccine Injury Compensation Act. The courts are presently correctly ruling that these amendments—what they are doing is part of that congressional intent. The courts have correctly rejected the contention that a component or ingredient of an FDA-approved vaccine can also be considered substitute an adulterant or contaminant.

Among these decisions, the court charged with adjudicating the vaccine

injury compensation program recently concluded that the language and legislative history of the National Children’s Vaccine Injury Act demonstrated that claims relating to components of covered vaccines are plainly subject to the act. As to the misconceptions that have been presented on the floor, No. 1, these provisions do not prevent patients from suing in court. The statement has been made that it takes away rights. It does not. It does not prevent patients from suing in court. Instead it merely requires, as is required under current law, claimants must first go through the compensation program designed in the 1980s which has worked effectively but does need to be modified, as is being carried out in these provisions. They maintain their right to pursue a court case.

One can go through that program itself, the administrative program, in a timely way. If someone does not agree with the compensation that they put forward, they can go to court. I will say that without this clarification, litigation outside the program—and that is what is happening today—will continue and the supply of vaccines could well be jeopardized as we have these huge lawsuits.

One lawsuit today is \$30 billion. That is what they are looking for in one lawsuit, \$30 billion. The whole vaccine industry is only \$5 billion. There are about 150 of these lawsuits out there today. Those who desire to bring litigation outside the compensation program will continue to sue the manufacturers of components of vaccines and ultimately that is going to result in the manufacturers of the products themselves simply walking away and not making vaccines and getting out of the vaccine business. Then who is going to make the vaccine for the Ebola virus, which our Federal Government, through intelligence, has identified as one of the six agents of which we are at risk, one of the six agents against which other nations have had offensive biological weapons programs.

If litigation continues against component manufacturers outside of the vaccine injury compensation program, those companies that make the components simply are going to be unnecessary to provide the vaccine or those people who make FDA-approved components and give them to the vaccine manufacturers will stop making those components. We saw that in the mid-1990s when raw material suppliers refused to sell the necessary components to the medical device manufacturers. People just stopped making materials there because of this fear of litigation. Ultimately there it took an act of Congress to protect those component manufacturers, the people making the pieces that go, for example, into a pacemaker or, in this case, it would be a component of the vaccine. It took an act of Congress to prevent a shortage back then of pacemakers and of other vital medical devices.

These provisions that are in the underlying bill have been unanimously supported by the Advisory Commission on Childhood Vaccines. As I mentioned, that includes injured patients, trial lawyers, and an expert group of patients as well. They have been endorsed by the American Academy of Pediatrics.

I ask unanimous consent to have a portion of letters from the Advisory Commission on Childhood Vaccines and the American Academy of Pediatrics printed in the RECORD.

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

ADVISORY COMMISSION  
ON CHILDHOOD, VACCINES,  
*Alexandria, VA, June 19, 2002.*

Hon. TOMMY G. THOMPSON,  
*Secretary of Health and Human Services,*  
*Washington, DC*

DEAR SECRETARY THOMPSON: The Advisory Commission on Childhood Vaccines (ACCV) is authorized under Section 2119 of the Public Health Service Act to advise the Secretary of Health and Human Services (the Secretary) on the implementation of the National Vaccine Injury Compensation Program (VICP). At the June 6 meeting, the ACCV discussed in detail the need for urgent modifications of the VICP and the necessity to ensure the viability of the Vaccine Safety Datalink Project. Actions are needed to address a variety of concerns that directly impact the VICP.

#### BACKGROUND

As of May 2002, more than 50 individual and class action lawsuits with millions of plaintiffs alleging potential thimerosal-related injuries from childhood vaccines have been filed in state and federal courts. The plaintiffs in these lawsuits argue that their claims are not governed by the VICP because they allege that thimerosal is an “adulterant” to, and not a part of the vaccines. *These claims have been filed against vaccine companies and, in some instances, against health care providers. Thimerosal, as you know, is approved for use by the Food and Drug Administration and is part of the vaccine formulation when licensed; hence clarification is needed to direct these claims to the VICP before tort remedies can be pursued.*

Concurrently, some 500 incomplete cases have been filed as placeholders with the VICP alleging that thimerosal (mercury) has caused vaccine-related injuries. The medical records that the Act requires upon filing do not accompany many VICP petitions, including these cases. This causes problems because of the time constraints spelled out in the Act. The presiding special master must generally resolve a case within 240 days (this period excludes any period of suspension and any period during which a petition is being remanded). If the special master fails to issue a decision within such time, the petitioner may withdraw from the VICP and pursue outside litigation without affording respondent or the special master any meaningful opportunity to evaluate the VICP claim.

THE ACCV BELIEVES THIS DISTURBING NEW  
TEND IN CIVIL LITIGATION COULD CIRCUMVENT  
THE ACT

We submit the following recommendation for action:

#### RECOMMENDATION ON CERTIFICATION OF COMPLETENESS OF PETITIONS

The ACCV recommends that the Secretary propose legislation to amend the National Childhood Vaccine Injury Act of 1986, as amended, to require special masters to issue

a certificate of completeness once a determination is made that a petition is complete in accordance with section 2111. The time period described in sections 2112(g) and 2121(b) of the Public Health Service Act would begin from the date the special master issues a certification of completeness. This would allow for a period of 240 days excluding any period of suspension of any time the petition is on remand) for the parties to consider all of the evidence and for a decision to be reached. If the special master fails to issue a decision within this time period, calculated from the date the certificate of completeness is issued, the petitioner could withdraw from the VICP and pursue outside litigation.

#### SENATOR FRIST'S BILL

In addition to the previous request, we also ask that you consider our recommendations regarding legislation introduced by Sen. William Frist (R-IN), "Improved Vaccine Affordability and Availability Act" (S. 2053). The ACCV concentrated on Title II of the bill that has provisions to ensure that all claims for a vaccine-related injury or death are first filed with the VICP. The ACCV makes the following recommendations:

#### RECOMMENDATIONS ON THE "IMPROVED VACCINE AFFORDABILITY AND AVAILABILITY ACT"

The ACCV unanimously concurs with the following sections of S. 2053 which are the same as or very similar to proposals made in the "Vaccine Injury Compensation Program Amendments of 1999" (the 1999 Amendments), which were developed from recommendations made by the ACCV and sent to Congress as legislative proposals by the former Secretary:

Section 206, "Clarification of When Injury is Caused by Factor Unrelated to Administration of Vaccine";

Section 208, "Basis for Calculating Projected Lost Earnings";

Section 209, "Allowing Compensation for Family Counseling Expenses and Expenses of Establishing Guardianship";

Section 211, "Procedure for Paying Attorneys' Fees";

Section 212, "Extension of Statute of Limitations";

Section 213, Advisory Commission on Childhood Vaccines"; and

Section 218, "Conforming Amendment to Trust Fund Provision."

The ACCV unanimously concurs with the following sections of S. 2053:

Section 204, "Jurisdiction to Dismiss Actions Improperly Bought";

Section 215, "Clarification of Definition of Manufacturer";

Section 216, "Clarification of Definition of Vaccine-Related Injury or Death";

Section 217, Clarification of Definition of Vaccine"; and

Section 220, "Pending Actions".

The ACCV does not concur with the following sections of S. 2053 and recommends:

Replacing Section 201, "Administrative Revision of Vaccine Injury Table", which changes the public comment period from 180 to 90 days with Section 2, "Administrative Revision of Vaccine Injury Table", of the 1999 Amendments which changes the public comment period from 180 to 60 days and shortens from 90 to 60 days the period that the ACCV has to review a proposed rule;

Modifying Section 202, "Equitable Relief", and Section 214, "Clarification of Standards of Responsibility" to add "past or in front of present physical injury". Some individuals may have sustained a vaccine-related injury in the past, but do not have a present physical injury. These individuals should not be prohibited from obtaining relief in a civil action filed against a vaccine manufacturer or administrator;

Replacing Section 207, "Increase in Award in the Case of a Vaccine-Related Death and

for Pain and Suffering" with the 2001 ACCV recommendation to increase the \$250,000 benefit caps for both death and pain and suffering. These \$250,000 benefit caps should be retroactively increased since 1988, and increased annually, thereafter, to account for inflation using the Consumer Price Index for All Urban Workers (CPI-U) as envisioned by Congress in the original National Childhood Vaccine Injury Act of 1986;

Replacing Section 210, "Allowing Payment of Interim Costs" which does not stipulate a timeframe for when the interim payment is to be made with Section 6, "Allowing Payment of Interim Costs of the 1999 Amendments, which states that the interim payment can only be made after a determination has been made concerning whether or not the petitioner is entitled to compensation;

Modifying Section 219, "Ongoing Review of Childhood Vaccine Data" by deleting the phrase, "together with recommendation for changes in the Vaccine Injury Table"; and

Replacing Section 221, "Report", which this language, "The ACCV shall provide the Secretary of Health and Human Services with annual status reports on the Vaccine Injury Compensation Trust Fund (the Trust Fund), including recommendations on the allocation of funds from the Trust Fund."

With regard to Section 203, "Parent Petitions for Compensation", the ACCV believes that the language in this section must be modified. The issue of compensating parents and third parties was raised when the original Act was drafted, but the focus remained on the need for an adequate compensation package that would cover the life of the injured child. Over the years, a few parent or third party petitions for compensation have been filed in state and federal courts. However, many of the class action suits contain parent petition, which prompted ACCV to revisit the issue. ACCV strongly believes that parent or third party petitions for compensation are more appropriately managed and adjudicated through the VICP rather than through outside litigation. Because of our concern for the well being of the child, the ACCV recommends that the award to the vaccine-injured child be separate from any award offered to the parent. At your request, the ACCV will develop options for such an award. In addition, this Section, as is currently drafted, raises serious constitutional concerns. The ACCV recognizes that the proposed provision, as drafted, may need to be supplemented to: (1) address potential constitutional concerns; and (2) assure that such parents or third parties claims may be properly administered by the VICP. Moreover, the ACCV believes that further consideration should be given to review of whether a third party's claim should be tied to the injured party's claim in civil actions.

Section 205, "Application", is a conforming charge to Section 203, and therefore, the ACCV does not concur with this Section until the language in Section 203 is sufficiently modified.

#### BACKGROUND ON THE VACCINE SAFETY DATALINK PROJECT

In order to enhance the understanding of rare adverse effects of vaccines, CDC developed the Vaccine Safety Datalink (VSD) project in 1990. This project is a collaborative effort, which utilizes the databases of eight large health maintenance organizations (HMOs). The database contains comprehensive medical and immunization histories of approximately 7.5 million children and adults. The VSD enables vaccine safety research studies comparing prevalence of health problems between unvaccinated and vaccinated people. Over the past decade, the VSD has been used to answer many vaccine-related questions, and has been used to sup-

port policy changes that have reduced adverse effects from vaccines.

Rep. Dan Burton, (R-IN), Chairman of the Committee on Government Reform, requested any and all records collected under the VSD and was prepared to subpoena the records if he was not given access. The CDC and HMOs, understandably, do not want to give this data to Rep. Burton because these records include confidential patient information. For now, Rep. Burton agreed to a compromise with CDC which would allow an independent researcher to replicate or conduct a modified analysis of a previous VSD study, while maintaining the confidential nature of the data, but Rep. Burton has not rescinded his threat of the subpoena. Therefore, the ACCV makes the following recommendation:

#### RECOMMENDATION ON THE VACCINE SAFETY DATALINK PROJECT

The Vaccine Safety Datalink Project (VSD) is a critical component of our vaccine safety infrastructure. Participation by health maintenance organizations in the VSD is predicated on confidentiality of patient identifiers. In order to assure the continued viability of the VSD, the privacy of individual patient data must be protected. Therefore, the ACCV recommends that the Secretary of Health and Human Services take all steps necessary to protect the privacy of patient data in order to ensure the continued support and viability of this important project.

In conclusion, Mr. Secretary, we believe that the VICP plays a critical role in our nation's childhood immunization program, and we urge your immediate attention to our concerns. The ACCV greatly appreciates your continued support, and looks forward to your timely reply.

Sincerely,

ELIZABETH J. NOYES,  
Chair, ACCV.

Mr. FRIST. In part it says:

These claims have been filed against vaccine companies and, in some instances, against health care providers. Thimerosal, as you know, is approved for use by the Food and Drug Administration and is part of the vaccine formulation when licensed; hence clarification is needed to direct these claims to the VICP before tort remedies can be pursued.

That is what the underlying bill does. That is what the Lieberman amendment strips out.

The American Academy of Pediatrics also wrote in support of this. I'll quote a final sentence from this letter of June 19, 2002:

The AAP has reviewed S. 2053 and has the following comments beginning first and foremost with our strong support that all claims for vaccine-related injury or death first must be filed with the VICP.

In addition, we concur with the ACCV's most recent recommendations in support of sections 204, 215, 216, 217 and 220.

I ask unanimous consent to print the letter in the RECORD.

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

AMERICAN ACADEMY OF PEDIATRICS,  
Washington, DC, July 19, 2002.

Hon. BILL FRIST,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR FRIST: The American Academy of Pediatrics (AAP), and the 57,000 pediatricians we represent, greatly appreciates your leadership and support of the various

immunization provisions outlined in your bill, S. 2053, the Improved Vaccine Affordability and Availability Act. This legislation addresses several issues of critical importance to the Academy.

#### VACCINE INJURY COMPENSATION PROGRAM

Enacted in the late 1980's, with the support and guidance of the AAP, the National Vaccine Injury Compensation Program (VICP) has helped to stabilize what was then and appears to be again a fragile vaccine market. For the past 14 years, this program has been successful in its efforts to ensure an adequate supply of childhood vaccines, promote more research and development of even safer and better vaccines and most importantly to provide for a fair and just compensation program for those that suffer vaccine-related injuries. However, over time, as reflected in your legislative proposal, some modifications are necessary to ensure that the VICP is working at its full potential.

The AAP has reviewed S. 2053 and has the following comments beginning first and foremost with our strong support that all claims for vaccine-related injury or death first must be filed with the VICP.

The Academy concurs with several sections of the bill, some of which were previously proposed in 1999 by the Advisory Committee on Vaccine Compensation (ACCV) and you have incorporated in S. 2053. These include: Sections 206, 208, 209, 211, 212, 213 and 218. In addition, we concur with the ACCV's most recent recommendations in support of sections 204, 215, 216, 217, and 220. The AAP is particularly pleased that S. 2053 includes language that allows compensation for family counseling, ongoing review of childhood vaccine data and clarifies the definition of vaccines, manufacturers, and vaccine-related injury or death.

The AAP, however, does have specific concerns about Section 203, "Parent Petitions for Compensation," as currently drafted. The AAP believes that petitions for compensation by parents or third parties must be adjudicated through the VICP and not through the judicial system. Moreover, in addition to potential constitutional issues that this provision may pose, we contend that such claims by parents should be separate and apart from awards to the vaccine-injured child. Although the issue of the compensation of parents and third parties was initially raised during the drafting of the VICP in the 1980's, it was rejected to maintain the focus of the Act on providing appropriate and just compensation that covers the life of the vaccine-injured child. We believed then, as well as now, that this approach is in the best interest of the child. The AAP would suggest that consideration could be given to providing, within the scope of the VICP, a provision for the loss of consortium that would be separate from the award to the vaccine-injured child.

The AAP agrees with your identification in Section 207, of the need for an adjustment to the award for a vaccine-related death and for pain and suffering. However, we recommend a modification to this section as written. Use of the Consumer Price Index (CPI) to account for annual inflation in providing these benefit awards had been the original intent of Congress in drafting the VICP. The AAP encourages your adoption of this approach that was also recommended in 2001 by the ACCV. In 2002 dollars, such an award would be the equivalent of an award of over \$300,000.

#### MENINGITIS AND INFLUENZA VACCINES

The AAP supports your recommendation in Section 103 to provide information to a variety of entities concerning bacterial meningitis. We are ready to work with you to implement these efforts.

This past June, the Advisory Committee of Immunization Practices (ACIP) made the decision to expand the Vaccine for Children (VFC) program coverage of the influenza vaccine to all healthy children aged 6 to 23 months. This will take effect March 1, 2003. As physicians, we are both aware that this age group has a high likelihood of hospitalization if they get the flu, therefore the availability of an adequate supply of the influenza vaccine is critical. In addition, this expanded recommendation means that adequate funding—both public and private—is essential. The estimated first-year costs of influenza vaccination of children, according to the Centers for Disease Control and Prevention, are \$11.5 million in the VFC program, \$2.6 million in Section 317 funds, and \$1.42 million in state funds. This assumes vaccination of 20% of children aged 6 to 23 months (most requiring two doses), 15% of high-risk children aged 2 to 18 years, and 5% of children living with high-risk household contacts. These costs dramatically increase as we assume higher vaccination coverage rates for these populations of children. We applaud your support of increasing the supply of the influenza vaccine (Section 101) and encourage your proactive support to ensure sufficient public and private funding to meet the need and demand of the pediatric population. We should expect nothing less than, at a minimum, coverage by the Medicaid program for our youngest citizens as is received under Medicare for our senior citizens.

#### IMMUNIZATION RATES

The AAP appreciates the recognition of increasing immunization rates and data collection especially for adolescents as well as adults included in Section 102 of S. 2053. However, as pediatricians dedicated to the health, safety and well being of infants, children, adolescents and young adults we would be remiss if we also did not encourage the inclusion of *all* infants and children in the collection of data and in efforts to increase immunization rates. We have made remarkable progress. Presently, the rates of immunizations for children may well be at an all time high. But we still have significant disparities and pockets of need among rates of immunization for racial and ethnic groups. This is further exacerbated by the potential impact that vaccine shortages may have on the rates of immunizations. We cannot allow complacency or less vigilance of rates for infants and children at this critical time.

#### VACCINE SUPPLY

Although pediatricians over the years have encountered brief childhood vaccine shortages nothing compares to the most recent situation because of both the number of different vaccines involved and the scarcity of the available supply. For most of the first half of this year, the shortage of vaccines included eight of the 11 diseases preventable through routine vaccination of children. In many instances these shortages and delays by necessity resulted in temporary changes to immunization entry requirements for day care and school. Until just recently the longest-standing significant shortage was with the Td vaccine that began about a year ago and affected the ability to give teens the booster Td they need. Currently, the most serious shortage continues to be with the new 7-valent pneumococcal conjugate vaccine (PCV7, Prevnar). The AAP supports and appreciates the recognition in Section 104 of the need to maintain a sufficient vaccine supply. Moreover, we also support the discretionary authority of the Secretary of Health and Human Services to develop a national vaccine stockpile for a minimum of six months and as long as 12 months. This stockpile should include *all* of the routine rec-

ommended childhood vaccines and certain other vaccines that may be critical to the public's health such as Hepatitis A and meningococcal.

Thank you for your commitment to an immunization strategy that promotes the safety, efficacy as well as the adequacy of the supply of vaccines for the nation. We look forward to working with you as this legislation moves forward.

Sincerely,

LOUIS Z. COOPER,  
President.

Mr. FRIST. I will read from a statement by Dr. Timothy Doran, testifying on behalf of AAP, to the Health, Education, Labor and Pensions Committee earlier this year on behalf of the American Academy of Pediatrics, relating to these provisions. He testified it was crucial:

to preserve and strengthen the liability protections for consumers, manufacturers and physicians through the Vaccine Injury Compensation Program. The VICP has been an integral part of maintaining the vaccine market. Enacted in the late 1980's with the support and guidance of the American Academy of Pediatrics the VICP has helped to stabilize what was then and appears again to be a fragile vaccine market. We reiterate our strong support that all claims for vaccine-related injury or death must be filed first with the VICP. We appreciate the intent of the legislative proposal put forth by Sen. Frist and others to craft appropriate modifications as necessary to ensure that the VICP is working to its full potential.

Those are the provisions in the underlying bill. That is exactly what is in the homeland security legislation that would be stripped out by the Lieberman amendment.

The effect of these provisions in this bill is important because of the new era of bioterrorism, not knowing the direction the world is moving, recognizing we are unprotected today from smallpox. We now have a tremendous initiative by the administration, the private sector, and the public sector. We have better coordination and better public health infrastructure, better communication, better coordination. But at the end of the day, if smallpox is in your community and you know it, you know where to go, that is good, but unless you have a health care provider to put it on your arm, you are not protected. We do not know when it will hit again.

The fact the Advisory Commission on Childhood Vaccines endorses these provisions is important. The fact that the American Academy of Pediatrics endorses these provisions is also important. This shows they are not just pulled out or from a single company or they have not been thought through by both trial lawyers and patients and families and providers. We have heard the claims that these are not relevant to the underlying bill. But at the end of the day, in this world where we are at risk from bioterrorism, germs, viruses, I guarantee, based on everything I know and everything I have read, it is critical we increase our protection for these agents. That is what the underlying bill does.

The liability protections are important for health care providers. I argue,

also, for the facilities where they are administered and the manufacturers. If we allow out-of-control lawsuits to drive people out of the business of making these vaccines, no matter how good our research is, we will not be able to make vaccines which are critically important. We started with 12 companies and we are now down to 4 companies in the United States who make the vaccines. We have no guarantee they will stay in the business. They are unlikely to stay in the business if the huge lawsuits hit them in a way that simply is not favorably judged.

The provisions in the underlying bill only restate the original intent of Congress. They restate current law that individuals claiming injury for covered vaccines must first file for compensation under the vaccine injury compensation program, the VICP. These sections state what really should be obvious. A vaccine itself is the sum total of all of its parts as determined by our Food and Drug Administration, and that the manufacturers of vaccines include those who contribute to each of these various components. We have the vaccine, the components, the manufacturers who make the vaccine, and also the people who make the components.

Nothing in this language takes away one's right to sue. These provisions simply clarify and restate current law which requires all claims of injury related to a vaccine covered by the compensation program must first go through the compensation program before a lawsuit can be filed. There is much more that needs to be done, I believe in a more comprehensive way, but these provisions take the first step in a timely way, when time certainly matters.

In the long run, it is critical to expand the vaccine market for a whole range of microorganisms we are not protected from. We need to provide greater access to their vaccines. We need to be able to look the parents in the eye and say, when you take your child to the doctor or the public health center, those children, as well as all Americans, are not going to be in some way turned away by a barrier that we failed to address in the Senate. That is why a vaccine provision is necessary, is necessary now, is necessary in this homeland security bill.

I yield the floor.

Mr. REID. Mr. President, we have a consent in order for debate only until 1:30 p.m. There are numerous Senators who wish to speak. I ask unanimous consent that the order for debate only be extended until 3 o'clock today.

The PRESIDING OFFICER (Mrs. LINCOLN.) Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. REED. Madam President, I rise to discuss the amendment proposed by the Senator from Connecticut, Mr. LIEBERMAN. First, I commend the Senator from Connecticut, Mr. LIEBERMAN, not only for his amendment but also

for his work on this very important legislation. He introduced this legislation months ago, even before the administration recognized the need for a homeland security bill. He has brought to the floor a very well-crafted, well-balanced, thoughtful piece of legislation, a product of deliberation over many months. It is disheartening at this moment to see a piece of legislation that has arisen in the last couple of days, almost 500 pages long, with greater omissions but also including what I argue in certain cases to be extraneous provisions.

One of the provisions at issue is the of curtailing the ongoing discussion about the scope of the vaccine injury compensation program. We have a situation where vaccine manufacturers included a preservative, Thimerosal. This preservative has been alleged to have caused medical harm; it has not been scientifically proven. The Senator from Tennessee has indicated the Institute of Medicine has suggested there is no causal link between Thimerosal and autism or other childhood diseases. Yet there is ongoing litigation to determine if this, in fact, is a causal factor.

In a homeland security bill designed to focus our attention on the most urgent and dramatic threats to the United States, we find a very transparent attempt by at least one manufacturer to curtail potential liability because of their products. Frankly, there is no other rationale for putting this one provision in the legislation. It is inappropriate to be included in this legislation. It certainly does not raise the urgency of the issues the Senator from Tennessee discussed in terms of smallpox protection or potential for a mass casualty crisis because of the use of a biological agent.

In point of fact, Thimerosal was withdrawn from use in vaccines in 1999. So this is not a situation where we have to act today, in this very critical legislation, to ensure that manufacturers will continue to use this material. In fact, quite the contrary, this material, although no one has established a definitive link to any particular disease, has been voluntarily withdrawn from inclusion in vaccines.

So what we have is a situation where allegations have been made by parents of children that this preservative caused a disease in their child. And as the Senator from Tennessee rightly pointed out, in 1987 Congress enacted the Vaccine Injury Compensation Program as a no-fault alternative to the tort system for resolving these types of claims. The procedure for the compensation program is that you must first go through this system of evaluation of your claim and determination of award, if any, before you are allowed to pursue your claim in court.

What has occurred in this situation is that families have alleged that this particular element, Thimerosal, is not covered under the Vaccine Injury Compensation Program because, even though it is an ingredient listed on the

label, was a contaminant or adulterant and, as a result, is not included in the scope of the VICP. That is a legal issue. That legal issue is being decided as we speak.

In fact, the VICP has requested that the Special Master of the U.S. Court of Federal Claims consider this question, and the Special Master is currently deliberating the issue, but has not yet ruled.

So here we are, at the 11th hour of this legislative session, trying to pass a homeland security bill. And what we find, mysteriously and surprisingly, is a provision in the bill that would short circuit the ongoing litigation, that would thrust our view on the courts. And, frankly, I suspect the Special Master has a much more attuned notion of what are the permutations, what are the consequences, what are the legal precedents of concluding whether or not Thimerosal is covered under the VICP, than we have on this floor.

Again, this is reduced quite easily, quite simply, quite transparently, to an attempt by an industry to insert, within a bill that is deemed to be absolutely necessary to pass, a provision that short circuits all of the legal discussion and potentially short circuits the rights of parents to recover the full compensatory and other damages that they deserve because of their child's illness.

None of this has been settled in terms of scientific cause and effect. But procedurally I think we have to, in short, allow the process to take place. It is not uncommon—in fact, it is quite common—that there are disputes about the interpretation of a particular statute, the coverage of a particular statute. But we seldom—unless of course there are very well connected and influential proponents—we seldom pick out these items for legislative relief prior to any type of judicial conclusion. So I suggest, particularly with regard to this matter—the striking of these specific provisions—is appropriate.

Indeed, one wonders why we are spending time debating this issue on a homeland security bill when in fact there are so many other needs that deserve our attention and deliberation. Many of my colleagues have suggested that, not just with regard to what is in this bill but, frankly, the need to support more vigorously those programs and policies that we already have in place might take precedence over simply recreating and reshuffling the deck in terms of the organization of the Federal Government with respect to homeland security.

I urge my colleagues to support Senator LIEBERMAN's efforts, at least to eliminate these items which are entirely extraneous to the homeland security bill, and in fact fall far from the urgency that is so apparent, appropriately, in the homeland security bill.

A final point I should say, and I think my colleague from Tennessee



said it so well, is that the issue of access to vaccines is a very critical issue that warrants our close attention. I was fortunate enough to chair a hearing of the Senate Health, Education, Labor and Pensions Committee in which the General Accounting Office testified about existing obstacles to a dependable and adequate supply of vaccines for children. The Senator from Tennessee, with his unique perspective as a physician, not only has been helpful but has taken a very prominent role, working with others and myself, in developing a comprehensive approach. That comprehensive approach might require an examination of the VICP program. It certainly might also require vaccine stockpiles, notification by manufacturers, if they chose not to produce a vaccine, so that our public health authorities know prior to the onset of a particular shortage that you will have one, two, three, or four manufacturers in the market to meet the demand.

So I would argue that a comprehensive approach to maintaining the supply of vaccine is important. The Senator from Tennessee has been working on it. I have been working on it. But that is not what we are talking about this afternoon. We are not talking about protecting the American public in a systematic, comprehensive way by ensuring that vaccines are available. What we are talking about today is a special interest provision that short circuits ongoing litigation involving a product that is no longer being used as a preservative. It is not about what we need to do today to protect ourselves from the very real threat of bioterrorism. Frankly, my assumption was, when we came to the floor to talk about the homeland security bill, we would be talking about what we need to do today to protect this country in the future.

So I urge my colleagues to support Senator LIEBERMAN, to recognize this bill would be much improved by adopting the provisions he has suggested.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, we have heard hours and weeks of debate on the Senate floor on this legislation. Among the principal arguments of some of the opponents of this bill is that President Bush and his administration cannot be trusted. I think the election last week proved that many Americans do believe our President can be trusted. He is a man of character. He is a man of integrity. He says what he means, and he means what he says.

I think an example of that was—if you recall, there were many people who were opposed to the passage of the Iraq resolution by the Senate. Many of the calls I got in opposition to it were from folks who believed the President, if the resolution passed, would peremptorily go into Iraq and take out Saddam Hussein.

I think all of us were quite impressed with his patience and the diplomacy of

Secretary of State Powell that somehow was able to get through a very strong resolution in the Security Council that will finally enforce Iraq's compliance with those 16 previous resolutions of the United Nations.

I think we do have a President who can be trusted. I think that is the basis of this legislation. It is not perfect, but I am confident it will not be abused. It is not, as some say, an encroachment on legislative branch prerogatives, as I have heard some contend.

Madam President, I rise today to talk about an issue of critical importance to our Republic, and that is the urgent need for Federal civil service reform. I came to this floor earlier this fall to discuss how civil service reform can improve our ability to secure the homeland, and I rise again today because this issue remains at the crux of our renewed debate on the homeland security legislation.

As a member of the Governmental Affairs Committee and chairman and ranking member of the Oversight of Government Management subcommittee, I have worked to focus the spotlight on this issue since I came to the Senate 4 years ago. During the course of 12 hearings and numerous meetings with national leaders in management and public policy, it became crystal clear that we were in the midst of a human capital crisis in the U.S. Government. Moreover, it became clear that this crisis is growing and will only get worse unless this Congress acts decisively to address it.

Some people still ask what the human capital crisis is, how serious is it, and whether it really threatens the operations of the Federal Government. The human capital crisis is, simply stated, the inability of the Federal Government to properly manage its workforce. Robust personnel management includes the ability to recruit the best candidates, hire people in a timely manner, award performance bonuses and other motivational tools to provide training and professional development opportunities and the flexibilities to shape a balanced workforce. Good management includes the flexibility to act quickly and to compete as an employer of choice in this fast-paced 21st century knowledge economy.

Madam President, I believe that if a Federal agency or department is important enough to receive the hard-earned tax dollars of my constituents and yours, we have a moral responsibility to see to it that the people's money is spent wisely. Outdated personnel practices and lack of training not only put agencies at risk of not being able to fulfill their mission and providing needed services to the American people, they also represent wasteful spending. We simply must provide the flexibility agencies need and give them the right tools to do their work.

Within 2 years, more than 50 percent of the 1.8 million person Federal workforce will be eligible for early or regular retirement. It is virtually impos-

sible to predict accurately the amount of experience and institutional knowledge that is literally going to walk out the door by the end of the decade. That is why it is not only right to focus attention on our human capital crisis, it is essential.

Unfortunately, until recent months, very few Members of Congress have paid much attention to this growing set of challenges.

Now, as the Senate is considering legislation designed to reorganize the Federal Government in a way that will help secure our Nation against future terrorist attacks, civil service reform is front and center. This issue, which for years has not been substantively addressed, is of paramount importance in the consideration of the most significant government reorganization to take place in our Nation in half a century. It's about time.

Congress last enacted major civil service legislation for the entire Federal Government 24 years ago in 1978. To operate effectively, the Federal Government cannot afford to revise its personnel laws only every quarter century. So much has changed over the years, and changing times require new thinking and new laws—policies that allow flexibility in our Federal government's civil service system.

During the 107th Congress, I have worked with some of the Nation's premier experts on public management to determine what new flexibilities are necessary to create a world-class 21st century Federal workforce. These include: the Council for Excellence in Government, Partnership for Public Service, Private Sector Council, Brookings Institution, National Academy of Public Administration, and the Volcker Commission; Administration officials including OPM Director Kay James, and former OMB Deputy Director and current NASA Administrator, Sean O'Keefe; and representatives of federal employee groups like Bobby Harnage of the American Federation of Government Employees, Colleen Kelley of the National Treasury Employees Union, and Carol Bonosaro of the Senior Executives' Association. I am grateful for the respective and recommendations all of these groups provided and we drafted our legislation based on their insights.

Our bill, S. 2651, the Federal Workforce Improvement Act of 2002, which I introduced with Senators THOMPSON and COCHRAN, is designed to get the right people with the right skills in the right jobs at the right time. It is a consensus package of human capital reforms that I believe will have a positive impact on the Federal Government's personnel management.

Working closely with Senator AKAKA, I successfully amended key provisions of this bill to the homeland security legislation during its consideration by the Governmental Affairs Committee in July. I am grateful for the support that Senator AKAKA provided as we adopted those important government-



wide personnel flexibilities. I only wish we had put more of S. 2651 in the homeland security bill. We need to get it all done.

Next year, I intend to introduce these provisions again, as well as other human capital legislation that was not enacted this year. For example S. 1817, which would make Federal student loan forgiveness benefits tax-free; S. 1913, the Digital Tech Corps Act, which would establish a public-private exchange program for IT professionals, and S. 2765, the Federal Law Enforcement Pay Equity and Reform Act, which would create an employee exchange program between Federal agencies that perform law enforcement functions and state and local law enforcement agencies. These bills would strengthen the performance of our Federal workforce throughout the government.

In the 108th Congress, I also intend to take a closer look at compensation issues, especially for the Federal law enforcement community. Serious recruitment and retention challenges have been a problem at agencies such as the FBI and other law enforcement agencies for a long time and we simply have to address this issue.

The governmentwide human capital provisions we have already included in the homeland security legislation will have an impact not only on the new department, but on all Federal agencies. Our language will help the Federal Government begin to address its human capital challenges—challenges that extend far beyond the corridors of the proposed Department of Homeland Security.

The language does the following:

It creates Chief Human Capital Officers at the Federal Government's 24 largest departments and agencies—officials who will have responsibility for selecting, developing, training and managing a high-quality workforce;

And, it establishes an interagency Chief Human Capital Officers Council, chaired by the OPM Director, to advise and coordinate the personnel functions of each agency and meet with union representatives at least annually.

In other words, we are giving human capital a much higher priority in the Federal Government, just as it is given in most corporations that are successful.

It requires OPM to design a set of systems, including metrics, for assessing agencies' human capital management, something that has been largely ignored;

It reforms the competitive service hiring process, allowing agencies, consistent with merit principles (including veterans' preference), to use an alternative category ranking method for selecting new employees instead of the "Rule of 3," making the process more efficient and fair—a practice that has been very successful at the Department of Agriculture for the past decade;

It provides government wide authority for offering voluntary separation

incentive payments and voluntary early retirement ("buyouts" and "early outs") for the purposes of workforce reshaping, not downsizing. This authority, which I was able to secure with legislation three years ago, is currently being used effectively on a limited basis at the Department of Defense;

It lifts the total annual compensation cap for senior executives, allowing performance bonuses to be paid in full in a single year;

And, it reduces restrictions on providing academic degree training to Federal employees, thereby emphasizing the importance of individual professional development.

All of these things I just talked about are not only going to impact the homeland security department, but they are governmentwide. All agencies will be able to take advantage of these provisions in the homeland security bill.

In light of the fact that there has not been government-wide civil service reform in a quarter century and, as the Hart-Rudman Commission noted just last year, personnel is the basis for maintaining national security, it is absolutely appropriate that this legislation be included in the bill to create the Department of Homeland Security. In fact, in testimony before the Subcommittee on Oversight of Government Management, former Defense Secretary and member of the Commission, James Schlesinger noted:

... it is the Commission's view that fixing the personnel problem is a precondition for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy.

If we do not fix the personnel problem, we are not going to be able to fix anything else that is wrong with the system.

I thank the leadership on both sides of the aisle for including these important provisions in the compromise language we are considering today.

The Homeland Security Department is not the first—and not the last—agency that needs to have greater flexibility. Flexibilities and reforms, similar to those proposed in the compromise language for the Department of Homeland Security, which I will describe in a moment, are needed throughout the executive branch.

I would like to take a few moments now to discuss the personnel provisions in the compromise language that apply specifically to the new department. As I said, I have worked with Republicans and Democrats on these provisions and I believe this language will provide the Department with the tools it needs to get the job done, and at the same time will respect the rights of those union workers being transferred into the new department.

First, the compromise language includes the House-passed language proposed by Representatives CONNIE MORELLA and CHRIS SHAYS with an additional provision that I have rec-

ommended. This language would, for the first time, limit the current authority of the President to exclude an agency or agency subdivision from participation in a collective bargaining unit.

Under current law, the President may exclude participation in a collective bargaining unit upon determining that the entity has as a primary function intelligence, counterintelligence, investigative or national security work and that permitting the entity to have collective bargaining rights would be inconsistent with national security requirements and considerations.

The compromise language would limit the President's current authority only with regard to the new department. It would prohibit the President from using the exclusionary authority unless the mission and responsibilities of a transferred agency materially change and a majority of the employees within such an agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism. So in effect, we have limited the President's authority to exclude employees from union membership.

The language does provide, however, that the President could waive the above limitations on his authority if he determines in writing that their use would have a substantial adverse impact on the department's ability to protect homeland security. If he does this, I presume he will do it under this provision.

We have also added some language I have proposed requiring that if the President does not execute his authority under the Morella language, he must notify Congress at least 10 days prior to the issuance of his written order. This will bring the light of day into his decisionmaking process. I don't expect him to do it, but I think that is one way we can guarantee that such action will not be arbitrary and capricious.

The second compromise provision in this bill was proposed by Representatives JACK QUINN and ROB PORTMAN over in the House. I want everyone to understand this so they can see how much more limited this bill is than what the President originally sent us.

That initial proposal featured a personnel system that was similar to the one established last fall for the Transportation Security Administration, which waived most of title 5. Of course, the Homeland Security Department, the President realized Congress would flesh out his proposal, and that is what happened. This legislation we are considering would create a new agency under title 5, allowing modifications in only six areas.

The House-passed version is less flexible than what the administration wanted, but it is designed to deal with the personnel flexibility sought by the President, and to address the collective bargaining rights that many of our colleagues seek to protect, including me.

This language would preserve employee rights, including hiring and promotion based on merit and equal pay for equal work, and would protect employees from improper political influence and reprisal for whistleblowing. Employees would still be protected from prohibited personnel practices, such as illegal discrimination, politicized hiring or promotion processes, and violation of veterans' preference requirements.

Furthermore, employees would still have the right to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them.

The compromise language requires the new Department collaborate with unions and other employee organizations in creating its personnel system. The language also improves the arbitration process by ensuring both employees and management concerns are fully and publicly vetted.

If a collective bargaining unit disagrees with a management proposal related to one of the 6 areas subject to modification, the union representative would have 30 days to consult with agency management on rule changes and offer recommendations. If agreement is not reached, the Secretary of Homeland Security could declare an impasse and submit the dispute to the Federal Mediation and Conciliation Service, a process that could last an additional 30 days. At the conclusion of that period, the Secretary could proceed with the proposed changes, regardless of the mediator's recommendations.

Again, this is very much like the language I added requiring the President to make public his decision if he waives the Morella language. In this case, at the beginning of the 30-day arbitration period, the differences between collective bargaining unit employees and management would be established so everyone would know what the differences are. In other words, if there is a difference of opinion, it is aired publicly. It is not going to be hidden somewhere. We are all going to know about it. The American people will know about it, and Congress will know about it.

After the 30-day period, the differences would be resolved. At the end of the total of 60 days, it is over.

I would have been open to more robust participation of the Federal Mediation and Conciliation Service or another third-party mediator in resolving disagreements over title 5 modifications. However, the system established by this legislation is a compromise, and I support it.

The real test of this language is going to be how the administration handles work rule changes, whether or not disputes are handled openly, and the unions' concerns treated fairly. It will be imperative for the administration to demonstrate its commitment to an open and fair process in a spirit of cooperation rather than confrontation with the unions.

If we do not resolve some of the differences between the administration and the unions, the chances of this new agency being successful are remote. And I have encouraged the President to meet with Bobby Harnage and with Colleen Kelley.

As a mayor and Governor, I went through reorganizations, and I learned that you cannot get it done unless you have built trust with your labor union members.

I would like to make one final observation on this bill before us today. We should not sacrifice the good for the perfect. I recognize Members on both sides of the aisle have some concerns about certain provisions. So do I. For example, I disagree with the language that will transfer the first responder program from its current location in FEMA to the new Department's Border Security Directorate rather than the Emergency Preparedness and Response Directorate. That does not make sense to me. Nevertheless, the legislation before us to create a new Department of Homeland Security, I think, overall, is a good bill, and I intend to vote for it.

I have been one of the leaders on civil service reform during the last two sessions of Congress. I believe I have probably dedicated more time than any other Senator to addressing the Federal Government's personnel needs. I have tried to raise the profile of this issue, and then to work in good faith with all interested parties to develop solutions.

Based on my work, I want my colleagues to know I feel that the personnel provisions in the compromise language can go a long way towards putting personnel management in the executive branch back on track.

I urge the passage of this very important bill. We have to get on with it. It is going to take time to establish this new department. We have to secure the homeland. We need to get going.

I thank the Chair.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I compliment the Senator from Ohio for his very thoughtful and important comments in which he reached to a deeper level, which I was going to do, but now I do not feel the need to because he spoke of the importance for good working relations between management and those who work with management, particularly in a field as important as homeland security.

I rise today to lend my support to the Homeland Security Act. I thank Senator LIEBERMAN for taking really the lead, before anybody else did, on this issue and for his tireless work to bring the new Department to the point it is today. I think it is a remarkable feat on his part.

I also would be remiss in not thanking my senior colleague from West Virginia, with whom I disagree on this important issue, but who has, nevertheless, led the opposition with clarity, with conviction, and passion.

In the end, I am glad it now appears we will be able to answer the President's call to pass this legislation, and to do so before we adjourn this session.

The tragedies of September 11, and the continuing terrorist threat to our Nation, demand powerful and decisive action from us and from the President.

He has asked this Congress, after the leadership of Senator LIEBERMAN, to support him by creating a new Department of Homeland Security. I think we should do that. The President believes this massive reorganization of government, combining our currently fragmented homeland security functions into a single Cabinet-level agency, makes sense.

Anybody who thinks we are prepared, no matter what reports you read—including the most recent ones—that we are prepared to handle attacks of any sort, is just greatly wrong. In each of our individual States, as you look at hospitals and police departments, and all the rest, we know that is the case.

So I think a single Cabinet-level agency is crucial in providing this Nation and its citizens with the protection they deserve.

I agree this historic reorganization is a bold and necessary step that we, as lawmakers, must take, quite frankly, in order to be faithful to our first and foremost duty as lawmakers—I do not think this is generally understood by the American people—because our first and foremost duty as lawmakers is the guaranteeing of the safety of people we represent in our individual States, and also throughout the country.

I hope all who are present will recognize this is but a first step. This is going to be an extraordinarily complicated evolution.

When the Aviation Security Act was passed not very long after September 11, it became the assumption of the American people that all airport security would be in place, ready to go, with all of the equipment and people trained, within a matter of months. I said from the very beginning it was probably a matter of 3 to 4 to 5 years before we would arrive at a point where we had the kind of aviation security, the training, personnel, and the equipment that we needed.

People have to understand all of this is going to take time, but you can't start the clock running unless you pass a bill to get homeland security going.

I don't think anybody should be under the illusion that this new Department will solve all of our security problems at home. I hope we will remember the lessons of the Goldwater-Nichols Act of 1986, which basically made the largest previous reorganization of Government—that is, the creation of the Department of Defense in 1947—a working reality. I strongly believe this new Department of Homeland Security will be a work in progress; that the public has to understand it is a work in progress; that you cannot take 170,000 people, meld them together, create a whole new series of

layers of intelligence agencies, and expect them all to work very crisply together, when they don't work crisply together now. Nevertheless, there needs to be a central point. I believe in that firmly.

So with the understanding it is a work in progress, we will, therefore, have to shepherd its ongoing development, and we will.

Although the homeland security act should not be mistaken for the definitive answer for all of our security woes, I believe it is a strong piece of legislation with a lot of potential to serve its purpose and all of us and the people we represent well.

The Department we are creating is strikingly similar to the original proposals both the White House and Senate introduced last summer. It has been some time since then.

The new Department will combine the functions of 22 Federal agencies and subagencies. Again, this will be complicated. There will be all kinds of problems. We have to assume that. That is not a bad thing. That is the evolution of anything that large that takes place, whether it is in business or in government; change, reorganization of that sort, does not happen quickly.

By placing these agencies and all of their people in one new Department, we should foster much better communication—it will take time—eliminate internal redundancies—that will take time—and greatly improve our ability to detect, respond to, and recover from future actions from terrorism.

The new Department is intended to be a cooperative environment in which intelligence from all sources is brought together, analyzed, and then used more efficiently than in the past, guiding the customers, as the term is used, which is the President and his National Security Council, allowing us a much clearer view of all threats from whatever source against America.

The Department is charged with carefully coordinating with State and local governments, none of which is prepared at this point to handle what could very well and probably will be confronting them. As well, I might say, private industry faces this same challenge. Some have responded, most have not, partly because they don't know what to do. Secondly, the economy is not strong, and they don't feel they can do that now. But their condition will be much worse if they don't. So to them we have to collect and pass along threat information. They have to respond. This whole system has to begin to function in a rational way.

This is the most serious subject we could be discussing in the Halls of this Congress. Border security should be greatly improved under the new agency. Our ability to prevent chemical and biological and radiological and nuclear threats may be stronger than ever before. We have to make sure that is the case.

In the event the horrors of terrorism, in fact, visit our shores again, as I

think they will, the new Department should be better equipped to respond with disaster relief.

However, we must not forget that many of the assets that we will need to respond to disaster or terrorism will continue to reside in agencies which are outside of the homeland security bill. The one that comes to my mind is, of course, the Veterans' Administration, which is the largest health care system in this country. That whole system is going to have to be not incorporated in the bill but incorporated into the process which I hope this bill will engender of its own force and momentum.

I have confidence in this act. I nevertheless would like to go on record as saying that clearly it does not do everything that I and many of my colleagues, including the Chair, to whom I am particularly grateful, wanted. I regret that we were unable to work effectively to create a new Department where dedicated employees are guaranteed the civil service protection to which they are entitled. However, having said that, I think that, as the Senator from Ohio said in his very powerful and deep speech, I have to believe our President will act wisely, partly because of the light that will be on him, partly because of the situation, partly because of the need for workers to be happy and to be doing their work well, assuming the flexibility that we give him only when he really needs that, and that he will be wise in that respect.

So with this act, Congress and the White House have cooperated to make a powerful statement to our citizens as well as to our enemies. We will work together to ensure that the American people are as free as possible from terror and as free as possible from the fear of terrorism.

I am very thankful to have been able to play a role in the creation of the Department. I look forward to playing a continuing role, as I indicated, in watching this development in sort of a congressional oversight mode.

I ask my colleagues to join with their support of this homeland security act.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I take to the floor to talk about where we are in the homeland security bill, and to call attention to some special interest provisions added to this bill in the hope that the American people will take a look at what is happening to their country.

As Senator VOINOVICH has stated, Osama bin Laden is still alive. While we cannot be positive of that, it appears that he is still alive. Certainly, al-Qaida is alive and certainly al-Qaida is working full time to hurt us—meaning the American people. That we know. The world is a terribly dangerous place.

Taking care of America is crucial. That is why I was so stunned and upset

when the President refused to spend \$5.1 billion that this Congress gave him for homeland security to ensure that our ports are more secure, to ensure that our nuclear power plants are safe, to ensure that our chemical plants are safe, to ensure that our airports are safer, and to speed up development of necessary vaccines. I was stunned when the President did what he did.

I was also stunned when he opposed the idea of making the Homeland Security Department a Cabinet position. Stunned. Only after Senator LIEBERMAN and his committee had voted out a bill—at least the Committee Democrats did—did the President decide he wanted to support this concept.

We know one thing about September 11th. We know that the CIA and the FBI were not speaking to each other. We know that they were not communicating with each other. And yet there is not one thing in this homeland security bill that addresses that issue.

The homeland security bill tinkers around the edges with creating new ways for the intelligence community to let the Homeland Security Director know what is happening. But we do not get to the heart of that cultural problem that exists between these agencies. That is amazing to me, since we know one thing—that there was a breakdown in communication between these two agencies.

I also happen to believe that massive reorganization is generally an invitation to chaos and more bureaucracy. I began my political career a long time ago in a small county of about 200,000 people. We found that when you combine agencies in the name of trying to be efficient, oftentimes you have less accountability. That is what is happening here—combining all of these agencies, with some 170,000 people, creating all kinds of subheads, and so on and so forth.

So I am very worried. I hope to be proven wrong because this bill will pass, but I am worried that there will be less accountability rather than more. That is why I supported the Byrd amendment, way back when we started this debate, which would create a Cabinet level Homeland Security Director and a streamlined Homeland Security Department, with people who would be held accountable, and with a way for the Congress to continue to play a role as we develop this very important agency. I thought that would have been the way to go. I was proud to stand with ROBERT BYRD on his amendment.

I happen to believe in my heart of hearts that the President's change of heart about the need for a homeland security department had a lot to do with the fact that he is very interested in stripping away worker protections. I have to believe that deep in my heart. Why do I say that? Because of his actions. Of the 170,000 people in the new Department, only 40,000 of them have worker protection, that is all. There are people at the bottom of the barrel,

in terms of pay; the secretaries, the janitors, the file clerks. I don't understand—and I have said this before on the floor of the Senate—why a President who calls himself “compassionate” would want to take away the most minimum of rights from such people, endanger their level of health care. I don't understand why this President would have held up this bill all this time for that.

Now there is a compromise. I am glad a few more protections are added. That is good. But I don't know how a person who says he is compassionate could go after people who have the most minimal job protections. They don't have the right to strike. No Federal employee has the right to strike. They can scarcely collectively bargain given the provisions of this bill. That, to me, is a sour note in this debate and continues to weigh on my heart—that maybe this President changed his mind, in part, because of this “opportunity” to take after these workers. It is really a sad thing to me.

If we look at the economy today—and I know my colleague from West Virginia gets this because he talks to me about it all the time—it is a tough economy we have. The fact is, in the last couple of years, as the President came into power, we have seen a tremendous loss of private sector jobs. More jobs have been lost than at any time in 50 years. We know what is happening to people's retirement security because of the stock market, with the worst performance in more than 50 years. People are frightened. So why do you go after 40,000 workers and give them insecurity?

We heard yesterday that the President is going to move more than 800,000 jobs into the private sector from the Federal Government—more than 800,000 jobs. At a time when people are feeling insecurity, he is going to throw them out into the marketplace where they will have very little security. There is something missing here that is upsetting to me.

So here we are. In my opinion, we have a bad choice to make when we finally vote on homeland security. I will make what I consider to be the best of that bad choice—a choice between no homeland security bill and one that I believe was thrown together in a way that is going to make it less accountable and is going to hit a lot of bumps in the road. Taking FEMA and putting it in there—what will happen when we have an earthquake in California? What is going to happen with the Coast Guard when they have to do search and rescue? These are troubling questions to me.

We will have that choice to make. That is life. We often don't have great choices here, and we will make that decision. But one thing I know I am going to vote for with great pride on Monday is the Daschle-Lieberman amendment.

I see a couple of colleagues on the floor who care about these issues, and

I want to recognize my friend from Michigan, who called us together today to explore the ramifications of a particular rider that was added in the dead of night. I will explain it, and I hope she will engage me in a bit of a colloquy.

In the dead of night, with no one watching, after we thought we had made the compromise on these workers, a few things were snuck into this bill. A big campaign contributor of the Republican Party was rewarded phenomenally. A provision was added to the homeland security bill that protected that big contributor but it has nothing to do with homeland security or protecting the American people. In fact, I say that this provision which was added will create insecurity in our homeland by sending a message to thousands of families that their children's health takes a distant second to the interests of large, wealthy, powerful corporate America.

Let me explain. In my State of California, autism—a very haunting and mysterious brain disorder—has increased an astonishing 273 percent over the last decade and a half. Dr. Neil Halsey, a respected pediatrician and an expert in vaccination, for years said there was no connection between vaccines and autism. I am quoting from an article that appeared in Sunday's New York Times. There is “some real risk to children,” he said, “from vaccines that contain mercury. It is used as a preservative in some of these vaccines.”

So what provisions did the Republicans put into the bill? A provision that holds harmless the company that produces Thimerosal, a mercury-based preservatives for vaccines.

What does that have to do with homeland security? Absolutely nothing. Childhood vaccines have nothing to do at all with homeland security. What does it mean if this stands and we don't have the guts to strip it out? What does it mean to real people who are fighting this disease? Many of the families have filed class action lawsuits because—if you have ever seen an autistic child, although their symptoms range from mild to severe, in severe cases you are talking about essentially 24-hour care for that child. What will these families have to do? They will have to go to a taxpayer fund—a compensation fund that taxpayers pay for—which has very little money left in it, which is capped at an amount that will never pay for the cost of raising a child with this terrible disease.

We heard testimony on the House side that some families trying to collect from this compensation fund have had to fight for 10 years to receive their awards.

All the while, if this special interest rider passes, the companies that cause the problems will continue about their business. There is a lot about this rider which is upsetting and disturbing.

First of all, how would you feel if you were a parent of a young child and all

of a sudden, without any science, you have a liability waiver for this mercury compound? They are going to think: My goodness, if the Republicans—the Bush administration—is protecting their biggest contributors, maybe they know something we do not know; that this is really a problem because why would they bother doing it if they were not worried?

This has nothing to do with homeland security. If it did, they would have said smallpox vaccines; they would have cited the vaccines.

There are moments when I wonder why we are here if we are not willing to stand up and fight for the American people. The special interests, the powerful interests have so much behind them. They can so easily hire the lawyers they need, the representatives they need to come here to lobby. But the average family that gets struck with this type of a tragedy, all they have is the love in their family to get them through. What are we doing here? We have to help these people, not have a special interest provision that is put in in the dead of night that says to them: We do not care about you; we do not care about your kids; and if you have to suffer through, too bad, because we are going to protect the people who write the large contributions.

(Mr. ROCKEFELLER assumed the chair.)

Ms. STABENOW. Will my friend from California yield?

Mrs. BOXER. I will be happy to yield to my friend.

Ms. STABENOW. On that point, we actually have counted the number of pharmaceutical lobbyists in the Senate. There are six lobbyists for every Member of the Senate: Six for me, six for the Senator from California, six for the Senator from New Jersey. Six lobbyists are being paid full time to lobby and bring in these kinds of provisions and also to kill other provisions.

We passed legislation to lower prescription drug prices for everyone, to increase competition of generic drugs, and open the border to Canada. There is a bill that has been languishing in the House for months that has been stopped by the same group that could take the time at the last minute to put this outrageous provision into the homeland security bill.

I thank the Senator from California for her eloquence and for standing up for families, because as a mother—and I know she is as well—it is outrageous to think that parents who are concerned about their children will not have an opportunity to have their day in court over something that potentially is extremely damaging and hurtful to them.

Mrs. BOXER. I thank my friend for her leadership. I point out to my colleagues who are here that four desks down from me sat Paul Wellstone for 12 years. If Paul was here now, he would be stepping outside that desk and telling us: Now is the time to stand up for people, for children, for people without a voice.

Autistic kids sometimes cannot talk. We have to stand up and be counted on Monday when this vote takes place and take the consequences if somebody gets mad at us here or there because there is no reason to be here if we do not protect the people of this country.

Mr. President, I am not going to take the Senate's time anymore. I have expressed myself. I look forward to casting a vote on the Daschle-Lieberman amendment to strike this rider and the other riders that were attached at the last minute, which I think is just a blatant attempt to give out special favors to the detriment of the American people.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. I thank the Chair.

Mr. President, before I begin, I commend the Senator from California on raising not only the issue regarding childhood vaccines but the whole issue of adding riders about which I am going to speak in a moment on a whole series of issues. It makes a complicated and troubling piece of legislation even more difficult to weigh and balance as to whether it is truly one that gets us to a more secure future for America. All of us want to protect our freedoms and protect the lives of citizens across this country, but one has to think about it in the context of what is the give and take and whether it actually works.

My first comment is not dissimilar to what I heard from a number of Members who are supportive and not supportive of the direction we are taking. It is hard to conceive of how we can put 170,000 or 175,000 people together who had trouble in the organization that was in place before when it was smaller and more manageable and come up with a sense of security that we are actually going to make things better by pushing them together.

At least in my experience in my private life, sometimes mergers do not always amount to what is intended, and value is not always created. It certainly leads to a question of whether we have the flexibility and responsiveness in an organizational structure.

I am certainly troubled by the idea of creating a larger organization made up of parts that apparently have not been working so well historically. Clearly, we need to take positive steps. It may very well be we are doing that with the proposal with regard to homeland security, but at least as one individual, I am troubled with the overall size of the operation and whether it will bring about the responsiveness to the need, which I think all of us feel quite clearly needs to be addressed, of protecting the American people.

I also am equally concerned about a number of these provisions that were added in a closed manner.

I have to second my colleague's comments with regard to liability protection for pharmaceutical companies on

vaccines. That should be an issue that is debated openly and understood. It should be fully vetted. It is an open question about whether this is a serious problem, but I do not think adding it as a rider that is particularly attractive to a particular segment is germane to the context of homeland security. It attacks the fundamental premise about which we are talking.

I wish to relate that to something about which I will talk which is really the heart of my comments today—chemical plant security—which I think is missing from the homeland security debate.

It is also troubling and hard to understand why pieces of the Wellstone amendment which prohibited contracting with corporate expatriates is pulled out of the bill. We have some adds and we have some drops. I am not sure why we are doing that. This was unanimously accepted by the Senate. I find it very difficult to understand why we are resourcing, promoting, or allowing those companies which choose not to be supportive of America with their tax dollars to have equal access and participate in contracting with the Federal Government with regard to homeland security issues.

It is hard for me to understand why this particular amendment was dropped. There are a whole series of these. There are special earmarks for a given university. There are liability protection issues that really get at tort reform debates which we ought to have on the Senate floor—no question about that—with regard to airport screening, negligent manufacturing of homeland security devices. All of those issues should be the subject of fair debates. So why are they added as a so-called element of compromise, on the floor of the Senate, without a debate? It is unclear to me, other than we are more interested in rewarding special interests than the general interests, which is what I think is the basic theme of both the administration and certainly Senator LIEBERMAN's initial proposal coming out of the Governmental Affairs Committee with regard to homeland security. There is a need. We all embrace that concept and think we should move forward.

For the life of me, I do not understand why we are putting down new barriers to the Transportation Security Agency with respect to rules for rail transportation in this country—it is one of those areas of vulnerability assessments that almost anyone would talk about—other than we are responsive to special interests and that it is going to cost too much.

As I earlier entered into a colloquy with the senior Senator from West Virginia on the freedom of information activities, I continue to be troubled as to why we are writing a blank check to cover up the kind of advisory meetings that could be held with private industry, hand-picked advisers, with regard to setting policy within an administration.

There may be things that should be carved out from public view, but when private sector individuals can have a perspective of conflict of interest in the advice, it seems perfectly clear that ought to be made available to the American public, and I am very troubled by the blank check mentality we are taking with regard to secret activity, particularly when it involves the private sector.

We have had that debate with regard to our energy policies, and I think we are now making that a normal course of events.

So for all of those reasons—and those are mostly adds, except for maybe the drop with regard to the Wellstone initiative—I am troubled.

Finally, this National Commission on September 11 and the review, to me, is incomprehensible. Hopefully we will find another way to bring this back, but in my 30 years in the world of management I have never seen a situation where you have a failure, a breakdown, a problem that people do not stand back and say, what went wrong and what could we have done differently to make sure we are secure going forward, without an independent review that people can have confidence that all of the facts are laid upon the table, including, by the way, observing whether congressional oversight is operated with its most effective provision.

I find it difficult to understand why we are investing so much with so great certainty about the direction we should be taking with regard to homeland security.

As I said, this is going to be a tough weekend for me because I have trouble with the conceptual issue of putting so many people together. Now that the senior Senator from West Virginia is present, we could argue that the Constitution he is carrying in his pocket would also raise serious questions about some of the authorities there. These special additions and drops at the end are particularly concerning to me.

So for all of those reasons, this is going to be a very difficult weekend for weighing and balancing these various elements because, like everyone else, and particularly for the people of New Jersey who lost 691 lives on September 11, there is an expectation that we have a responsibility to protect our homeland. It is obvious. It is self-evident. But it is not obvious and self-evident that we are, in my view, improving dramatically that effort.

I certainly believe there are risks in the transition from where we are today to the full implementation of this measure and that we may very well be operating under the analogy that people talk about of running a marathon while you are performing open heart surgery. Whether we are going to be more secure while that process is going on in the midst of a war is an open question. It has not been proven to me that we are actually developing greater certainty.

Now, there is another issue which has not been discussed on which I have worked very hard through most of this year and feel deeply about because it deeply impacts my State. Actually, it impacts almost every State in the Union.

I see the ranking member from the Committee on Environment and Public Works, the Senator from New Hampshire, who has heard much of this discussion in the committee, which I think is something that is missing from this bill, and that is the need to protect Americans from attacks on our Nation's privately owned chemical facilities.

I realize this is also one of those things that is futile in the context of the cloture debate, but it is absolutely essential that America be aware of an issue that needs to be focused on and needs to be moved forward. I would be remiss in not having brought this farther in the process, and hopefully this discussion and the efforts that have gone on before will keep it in the debate, in the committees, and in this new Department which is most certainly going to come to pass.

I will discuss it in the context that there are literally thousands of chemical facilities in the United States where a chemical release could expose tens of thousands of Americans to highly toxic gases. That is why these facilities are potentially so attractive to terrorists. As a matter of fact, if one goes to a chemical facility in Israel, they will see it protected by a security infrastructure that is not unlike what one would see at a nuclear powerplant in the United States.

As I will relate, if someone visits some of these facilities in the United States, they will see an entirely different standard by which we are securing them. In fact, there are currently no Federal security standards for chemical facilities—none—so that the private sector is left to do whatever it desires or believes it can afford. It is a completely voluntary situation.

Many facilities simply have not fulfilled their responsibilities, in my view. Many are certainly vulnerable to attack. As the statistics and studies show, literally millions of Americans are at risk. They are at risk in New Jersey. If one flies into Newark Airport and looks at the chemical plant storage facilities, the refining facilities that are right in the path of the landing strips, they will get a sense of the kind of exposure we have.

Also, if one looks at how easy it is to access, which I will speak more clearly to in a minute, they get an even greater sense of the insecurity with regard to this area of our infrastructure.

According to the EPA, there are 123 facilities in 24 States where a chemical release could expose more than 1 million people to highly toxic chemicals. One of these plants in New Jersey has exposure to 7½ million people inside the metropolitan region of New York. A lot of chemical plants are located in

our urban communities, not scattered out into the hinterland but right smack dab in the middle of where we have high concentrations of populations. There are about 750 facilities in 39 States where chemical release could expose more than 100,000 people to toxic chemicals. There are nearly 3,000 facilities spread across 49 States where a chemical release could expose more than 10,000 people to highly toxic chemicals.

I think the numbers speak for themselves, and they are staggering. There is a large exposure in a broad context in our Nation.

A single attack on a facility could unleash highly toxic chemicals such as chlorine, ammonia, and hydrogen fluoride that cause widespread injuries and death. Considering the literally thousands of potentially deadly facilities across the country, we cannot escape the conclusion that it represents a major vulnerability, a major homeland security problem.

It is not just my opinion. In fact, the Justice Department issued a report on this matter a year and a half before September 11. I will read a brief excerpt from a summary of the report issued April 18, 2000.

We have concluded the risk of terrorists attempting in the foreseeable future causing industrial, chemical release is both real and credible . . . Increasingly, terrorists engineer their attacks to cause mass casualties to the populace and/or more large-scale damage to property. Terrorists or other criminals are likely to view the potential of chemical release from an industrial facility as a relatively attractive means of achieving these goals.

That report was issued before September 11. Its conclusions have been echoed by several other Government agencies and individuals since.

For example, Governor Ridge said the following in recent testimony before EPW:

The fact is, we have a very diversified economy and our enemies look at some of our economic assets as targets. And clearly, the chemical facilities are one of them. We know that there have been reports validated about security deficiencies at dozens and dozens of those.

Let me talk about the reports Governor Ridge may have been referring to. Earlier this year, the Pittsburgh Tribune-Review conducted a major investigation of western Pennsylvania. Here is what they found:

A Pittsburgh Tribune-Review investigation has shown that intruder has unfettered access to 30 of the region's deadliest stockpiles of toxins and explosives, despite repeated warnings from the Federal intelligence agencies to safeguard large chemical tanks.

This Tribune-Review went on to say:

Security was so lax at the 30 sites that in broad daylight a Trib reporter—wearing a press pass and carrying a camera—could walk or drive right up to tanks, pipes and control rooms considered key targets for terrorists.

After this initial story, the Tribune-Review expanded the scope of investigation. They went to Houston, Baltimore, and Chicago to see if what they

found in western Pennsylvania was a fluke. They looked at 30 or more facilities in 3 other States and the findings were equally disturbing.

I point out in metropolitan New York the local television station has done similar sorts of walk-ons to chemical plant facilities, including the one that has the 7.5 million people exposure in metropolitan New York.

This is troubling, to say the least. There is a pattern. Perhaps that is why the chemical industry got low marks for post-September 11 terrorism response.

On September 10 of this year, the Washington Post graded critical infrastructure sectors, giving the chemical industry a D. Newsweek, which is owned by the same people, did a similar piece. They were even tougher. Newsweek gave the chemical industry an F. I have seen this repeatedly in a number of surveys of America's infrastructure.

While some companies may be doing everything they can, and I know there are some that are working very hard, they are concerned about it for security reasons and protecting their people and maybe themselves. But the fact is we need to do a lot more. We need to be a lot more certain the breadth of the industry is being attended to.

That is why in October 2001 I introduced the Chemical Security Act. That is why I worked with Senators on both sides of the aisle to move the bill through the EPW Committee. This is the hard part. Ultimately, the committee approved the legislation on a vote of 19-to-0. Not a single Senator voted no. I note Senator INHOFE did, in fairness, express concerns about the bill at markup and I agreed to continue to work with him on those issues afterwards, particularly so we could potentially add it as an amendment to homeland security.

In fact, as I suggested, I talked with other Members and we tried to keep the concerns of the bill, deal with them, and while I will not go through the post-markup negotiations, there were substantial revisions so it could get added to the bill. Unfortunately, we have not been able to get to conclusion in that process even though it was a 19-to-0 vote in committee for it. Sometimes I wonder whether special interests sometimes trump the people's interests.

I will not be offering my amendment; it is not germane. But I think we need to come back and go to work on this issue as soon, as forcefully, as possible. It is absolutely relevant to homeland security and protecting the American people. I know that is the case in New Jersey.

I will not go through it in detail, but the first thing we have to do is be very specific about identifying high priority chemical facilities. That can be done relatively straightforwardly. It will take cooperation between EPA and the new Homeland Security Department. There is some debate about that. We



need a list. It does not have to be published on the front page of the New York Times, but we need to understand what the exposures are and get about protecting the American people.

Second, we need to have audits of what that process is so there is a reality to what has been talked about. There is not a moral hazard saying we have done something and nothing really has occurred.

In a nutshell, that is what this is about. It is a little more complicated than that in detail, but I suggest this is something that really should be a priority when we return. I hope we do not face the stonewalling that has come up from some elements in the industry. The need to act is urgent. This is, by the way, consistent with some of the things other people who have looked at homeland security on a broader basis have talked about.

I will quote from a recent op-ed piece by Warren Rudman and Gary Hart, who have been following homeland security as effectively as any two Americans studying this. They have an op-ed page written in October of this year:

America's corporate leaders must accept their new responsibilities to protect the privately owned critical infrastructure and cease the behind-the-scenes lobbying against measures requiring them to do so. If necessary, the President must deliver this message bluntly and directly.

Some of those things that were added in the middle of the night, the kind of experience that I have experienced with regard to trying to deal with chemical plant security, is indicative that that process of resisting, protecting the American people, is not fully embraced in the private sector.

I could not agree more. We need to work together as a Congress, with the administration, and deal with this issue.

Homeland security in general, time is of the essence, as someone said around here. It is not neutral. So I hope we can move very quickly on this. I am sorry we have not been able to deal with this. There are some good voluntary efforts with regard to chemical security. But I don't think we have gone far enough. Voluntary efforts alone are not going to be sufficient. We need to work in Congress to make it happen.

Finally, I am proud to be an author, a promoter, a sponsor of this legislation with regard to chemical plants. I am also proud to be a cosponsor of the Daschle amendment that will deal with some of these other special interests. I think the two relate in the sense that we are not all on the same page pushing forward to protect the American people on homeland security. We need to get there. With both the private sector and the public sector.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. I ask unanimous consent that there be debate only on the matter now before the Senate until 3:30 today.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, if the Chair will bear with me momentarily.

Mr. President, over recent weeks as the President crisscrossed the Nation on campaign stops—campaign stop after campaign stop—he used a number of gimmicks, including this legislation, to rally support for his chosen candidates. He painted this bill as a panacea for the terrorist threats that plague us and challenged this Congress to pass this bill quickly.

On each occasion, as I followed the newspaper accounts of the President's stops during the campaign, the President left the impression among the public that this bill is urgently needed, and that it will make life safer for American families. But there was much he didn't say. Here is what the people can expect after the Congress approves this legislation to transfer 28 agencies and offices to a new Homeland Security Department.

Next February, the President will submit a plan—his plan—to the Congress about how he intends to transfer 28 agencies and offices into a massive new Department over the period of just 12 months. We don't know what is in the President's plan today, and we will not know what is in the President's plan when and if Congress passes this bill and it goes to the Chief Executive for his signature.

We will not know what is in the President's plan. After we have passed this bill and it becomes law, the President will then inform the Congress about how he intends to reorganize, consolidate, and streamline these 28 agencies as they are moved into the new Department. He will not seek approval of the Congress—the elected representatives of the people. He will not seek our approval. He will not need to because—according to the provisions of this bill on which we are being hurried and stampeded to act, according to the provisions of this bill—he will simply drop the plan in the laps of the committees so they can be informed about what he intends to do. He will not be asking for their approval. We will have already given our approval when we pass this bill.

I hope Senators understand that. When we pass this bill, we, the Con-

gress, are out of it. The President will in due time submit his plan. In due time he will inform the Congress as to what he intends to do. He won't have to ask us if we approve of what he is going to do. We will have already said to him: Here it is. You submit your plan. According to the provisions of this bill, your plan will go into effect in due time. And we will not have any more to say about it.

He will simply drop the plan. It will not fall like manna from heaven, because it won't come from heaven. This is what we are authorizing the President to do when we adopt this bill that is before the Senate.

Here it is. Those who are watching this floor through the electronic lenses before us, here is the bill. It is made up of 484 pages. These pages are not like reading "Robinson Crusoe" or Milton's "Paradise Lost." They are very difficult pages to understand. On only a single page there may be many references to various and sundry laws that are already on the statute books, so that in order to understand what may be on a single page, we have to go back, look at the references, and go back to those statutes that have been on the books—some of them—for many years or decades. We have to go back and see what those laws contain before we understand what is on a single written page. It is not like reading a novel. In some senses, it is made to sound like a fairy tale. But it is indeed not a fairy tale.

This is a bill that affects you—a bill that affects those two members of the staff back here who are talking. This is a bill that affects you. This is a bill that will affect you, each of you—you, you, you, you, each Senator. Each of those persons out there who are watching this debate—it is really not a debate. There is only one Senator talking here and one Senator listening and one Senator in the chair. So there are not too many Senators here. Hopefully, they are watching from their offices, as we all do.

This is the bill. Let me say it again: 484 pages of complicated material.

How long have we had it? A little over 48 hours. It came to us early in the morning on the day before yesterday. Today is Friday—early in the morning of Wednesday. There it is. There is the whole thing—the whole thing. I don't know what is in it. I know about some of the things that are in it. But no Senator in here knows everything that is in this bill. I daresay that. I would be happy for any Senator to stand on his feet and challenge me on that and say: Hold up here a minute; I know everything that is in it.

We are authorizing the President to submit this plan. He can do it without our subsequent approval. This legislation authorizes the President to reorganize, consolidate, or streamline these 28 agencies and offices any way he chooses—any way he, that one man, the President of the United States—as these various agencies are moved into the new Department.



All this legislation asks of the President of the United States is that he let us know what he has decided. That is not asking a lot from the Chief Executive of this country. That is all he needs to be concerned about. All he needs to be concerned about is to explain what he plans to do. Too late. I am sorry to say to any of you Senators that you can't do anything about this. You have already given him the approval. When you vote aye on this 484-page bill, you will have given the President the approval that he needs. You can be sorry for what you have done. You can crab about it and be cranky and wish you had not done it. But it is too late now.

You remember that old song: "It is too late now." Well, it will be too late for any of us—too late.

We can weep and gnash our teeth—if we have any teeth left. And I happen to have my full set after 85 years. I have a full—I can't say quite a full set. But I have lost about I think four teeth in my lifetime of 85 years. These are real teeth. I can't take them out at night and scrub them, wash them, and put them in a big glass of water. I can't do that. They are real. They are real teeth. And they can bite, thank God. We didn't have all of this fancy medicine and all of these fancy health programs that the young people and children have today, with which mothers and fathers are blessed. We didn't have anything like that in those days.

So all I have is what the good Lord gave me through my mother's and father's genes. Well, that is all I have.

So here we are. I can gnash my teeth. They are real teeth. I can gnash those teeth. I seldom show them around here, but they are there. I can gnash my teeth, and complain all I want, and say I wish I had known—I wish I had known. Well, it is too late now. That will be the way it is.

He can move these agencies any way he chooses. All this legislation asks the President to do is: You please just tell us what your plan is. Will you do that? Please, just tell us what your plan is.

There are 1.8 million people in West Virginia whom I represent, and who are represented by my colleague, Senator ROCKEFELLER.

My people, my 1.8 million, would love to know what those plans are. But bless his name, the President does not have to tell us today. And we don't ask him. But we will get on our knees and fold our hands and say: Mr. President, will you just please tell us, when you are ready, what you plan to do? You can do it now. Here is the bill. We are passing it today, but just please tell us what you are going to do.

All this legislation asks is that the President let us know what he—he, the President of the United States. He will be with us 2 more years, maybe 6. Who knows. But anyhow, this man down here in the White House, one man out of 280 million, he will tell us what he plans to do.

A few months after we receive the President's proposal—after he is so

generous to come up here and tell us what he plans to do—a few months after we receive his proposal, we will begin reading articles in newspapers and magazines. I am going to come back to the floor—the Lord willing, if He lets me live—I am going to come back on the floor and remind my colleagues; I am going to remind all these staff people around here: This is what I told you. I told you.

After we start reading all these articles in newspapers and magazines about special advisory committees—this is exactly what that Senator who is sitting in the Chair right now, the Senator from New Jersey, Mr. CORZINE, talked about this morning. He told us about it. He told us about these special advisory committees. And they will have been established, by the new Homeland Security Secretary, to make recommendations about certain homeland security-related issues.

Now, look at that. I hope Senators will go back and read today's RECORD or that of the first of the week about what Senator CORZINE had to say about this, yes, about certain homeland security-related issues.

Possibly, we will hear about an advisory committee being established—maybe we will see it in the Federal Registry, that an advisory committee has been established—to make recommendations about how the new Directorate of Information Analysis can look at our e-mail accounts. This will not be a laughing matter. I will tell you, this will not be a laughing matter.

Now, let me say that again. Possibly, we will hear about an advisory committee that has been established to make recommendations about how the new Directorate of Information Analysis can look at our e-mail accounts, can look at our banking transactions, can look at our telephone conversations, or can even look at our credit card transactions.

I don't have any credit cards. Let them look at mine. They can't look at my credit card transactions. I grew up the old-fashioned way. I pay for it as I get it. No credit card for ROBERT C. BYRD, or the Mrs. But to those who have credit cards, he can look at your credit card transactions to trace everything you purchase from butter to bullets. Welcome, Big Brother. How do you like that?

The American people will want to know, and will deserve to know, what recommendations are being made to the Homeland Security Secretary. The press will try to provide the public with answers. But under this bill, you can be sure that the press will not be allowed to access the minutes of those committee meetings. That is what we are making possible by the passage of this legislation. We are making it possible for the American public not to know what these special committees are considering. And the public will not be able to find out because this bill—this bill—here it is; 484 pages, new, never been in a committee, never seen

the light of day in a committee meeting. There is no analysis of this bill that I know of from any departments here. There have been no witnesses appearing before Senate committees supporting this bill. Nobody had any committee markup that I know about. This bill just suddenly emerged out of the darkness on the morning of Wednesday, the evening of Tuesday night. There it was.

But that bill—that bill—will allow the new Secretary to exempt such advisory committees from the public disclosure laws that are on the books now that enable the press—the fourth estate—and the American public to find out what these advisory committees are doing.

This bill will allow the Secretary to drop a veil, to bring the curtain of secrecy down, to drop a veil of secrecy over these advisory committees and hide their work from the press—from the all-seeing eyes of the press—and from the public.

Do you want to vote for that? Is that what you Senators want to vote for? Is that what your constituents want you to vote for, Senators? I hope, if you are not hearing me now, that your staffs are listening. I hope, if you don't hear me, that somebody will show it to you in the RECORD on Monday morning what Senator CORZINE, the distinguished able Senator from New Jersey, who presides over this Senate at this moment, I hope they will read what he said and what I am saying here about these advisory committees and about what we are about to let happen. And here is the bill that will allow it to happen.

I hope you Senators who vote on this matter—probably one day next week—will have to answer to your constituents for that. I have been in this Congress 50 years, and I have cast many votes. I have cast more votes, than any Senator who ever lived, in the Senate of this Republic. And I just have to say, I have cast some votes that were critical votes, but I think that what we are doing in this bill, more than anything else I have voted on in my 50 years in Congress, is shifting power to an administration, shifting power to a President.

I would say this: God, so help me—and God could drop me in my tracks right here in this moment if I were not saying what I believe—I would say the same thing about this bill if it were a Democratic President in the White House.

I have no ax to grind. I am not on the payroll of any pharmaceutical company or any other company in this country. I am on the people's payroll right here in this Senate. That is it. So I have no ax to grind. I am just saying that if it were a Democratic President in the White House, I would be standing here today saying the very same thing. It isn't because the current President of the United States is a Republican. That is not it. But there is something about this Republican administration that is far different from

what I have seen in former Republican administrations. And I served under Republican administrations, beginning with the Eisenhower administration.

This is a different kind of administration. This is a bill that I will vote against regardless of who might be in the office of the President. This bill will allow the Secretary to drop a veil of secrecy over these advisory committees and hide their works from the press and the public.

So what we are doing when we vote next week on this bill, if we vote next week, what we are doing is putting our hands over our eyes, and we are saying the public has no right to know. We are taking away the public's right to know.

That is what we are about to do to you out there in the land, across the land, across the plateaus, the Plains, the mountains, the valleys. That is what we are saying to you. You may not catch us at it, but that is what we are doing to you. That is exactly what we are doing to your right to know.

Later in the year, the people may begin to read in the newspapers about start-up problems in this vast new Department. The papers will possibly report about a failure by the new Immigration Service to deny entry to a known terrorist because the relevant immigration officials were too preoccupied with moving their offices, reconnecting their computers, re-installing their phones, or even changing the heading on their stationery to handle their primary responsibility; namely, protecting our borders.

This would bring about a clamoring of public disgust as agency officials are found to be too busy organizing their offices to properly handle their duties. Editorials will appear around the country remarking about the failures of the new Department, and the public very well may have reason to lose trust in that Department.

These kinds of high-profile debacles could carry over to the Transportation Security Administration, the Customs Service, FEMA, the Coast Guard, or any of the 28 agencies and offices and 170,000 employees being transferred to the new Department. Senators may well read a few months from now about Federal workforces in their home States and the jobs of Federal employees being privatized under the labor rules included in this bill.

Don't say that you were not warned, I say to my colleagues. Don't say that you were not warned.

The Washington Post reported today that the administration plans to open as many as 850,000 Federal jobs to private contractors. Have you read it? If you haven't, go to today's Washington Post. Look for that story. It is there. Read it with your own eyes, and you will believe it. What a nice plum that is for the big business friends of the administration. How about that? What a shortsighted, ill-conceived political gimmick it is. What a hoax it is to play on the taxpayers.

Privatization has nothing whatsoever to do with improving security. Look at the private security firms that were in charge at some of our Nation's largest airports on September 11. Remember reading about these in the newspaper? Go back and look at some of those old newspapers. Is more of that what this administration really wants? I ask, is more of that what this administration really wants?

The Wall Street Journal editorialized today about the fallacy of pushing this bill through at such a late date.

Now, imagine that. The Wall Street Journal. Hear me now. Paul Revere awakened Concord. I would like to be able to awaken this Senate and the other body. Do you suppose I could do that? Paul Revere did that. He was able to awaken Concord. Get out of your beds; the redcoats are coming.

Let me say that again. The Wall Street Journal editorialized today about the fallacy of pushing this bill through at such a late date.

How many of our Senators today voted for cloture? If Senators had read the Wall Street Journal, the editorial today about the fallacy of pushing this bill through at such a late date, would the Senators who voted yes—and I implored and I importuned and I urged, which I seldom do, I urged Senators right there in front of that desk, that table in the well of the Senate. There were several Senators I urged: Please don't vote for cloture today. You can vote for it next week perhaps, but don't vote today. Let's take a little more time and study this bill.

The answer I got: Well, you have the weekend. You have 30 hours. You have 30 hours; isn't that enough?

Do we have? No. We have already been told by the minority: You won't be able to offer any more amendments.

The only amendment that is going to be offered is the amendment that has been offered by the majority leader, Mr. DASCHLE, that amendment on behalf of Senator LIEBERMAN, and I added my name to it afterwards, when I saw what was going on. So there it is, the Daschle-Lieberman-Byrd amendment.

But we are told by the current minority—soon to be the majority—that you can't offer any more amendments. That is the only amendment we are going to let you offer.

So how about that cloture now? I was told by some of my colleagues on this side of the aisle: Well, you have the whole weekend. You can study.

Who saw this thing coming? Who saw the situation coming in which we would offer one amendment and we are told by our Republican friends, that is it, no more; that is the only amendment that will be offered?

So what about it now, my colleagues who reminded me that we have this weekend? Even under cloture, we have this weekend.

I said to one of the Senators who said that to me: I wasn't born yesterday. I am not a new kid on the street here. I have been in this Congress 50 years. I

know a little something. I have learned a little something about the rules of the Senate, and so forth.

But here we are, one amendment. That is all.

We are not going to be allowed to have any other votes on amendments, except that one. "You have 30 hours," I was told by Senators down in the well there. "Well, you have 30 hours; you have the weekend, and your staff has the weekend. You have 30 hours."

I have several amendments I would like to offer, but I cannot do it. The tree is filled. Remember the tree at the Garden of Eden? It is the first thing you read about in the Bible. The greatest scientific treatise ever written is that first chapter of Genesis. That will tell you more about science than many scientists today can tell you. It tells you the order of things in which they were created. The scientists of today will tell you that is the correct chronological order. Go back and read that first chapter of Genesis and you will read the chronological order of creation, and that was written thousands of years ago. What a piece of science that is.

I have three grandsons, two of whom are physicists. I have a son-in-law who is a physicist. I have a grandson who married a physicist. So we have lots of physicists, lots of scientists in my family. But before all those scientists came into being, the greatest scientific treatise ever written had been written right there in the Book of Genesis. We have no reason to stay dumb about how creation went forward. It is right there.

Anyhow, there it is for us. So here the Wall Street Journal editorialized today about the fallacy of pushing this bill through at such a late date. Here were these great Senators who stood up there in my face and two or three of them told me, "Well, you have this weekend, you have 30 hours," as though I didn't know that. How many Senators would like to tell me that? One or two of them did. I did say to one that this is not a new kid on the block. I know about that 30 hours.

Now look at what we have. I cannot offer an amendment, even though we have 30 hours. The tree is filled. But it is not that tree in the Garden of Eden. That is the tree of knowledge and we all can continue to learn. But I cannot offer an amendment. Our Republican friends would say you can go this far but no farther. You have an amendment pending, but that's all. That is the only amendment you are going to have to vote on before that 30 hours is up.

How do you like being given that kind of medicine? That is what we have to deal with here. Here is what the Wall Street Journal said. Get this:

There's little or nothing that this rump session can accomplish that couldn't be done better starting anew in January.

That reminds me of the distinguished Senator from Texas. I love him in many ways, and I agree with him on

occasion. He stood right here today and said, "This bill is the best you will get. How many in here are willing to believe that by putting this over another 3 months they can get a better bill?" I said, "I do." But that was his position, that this is the best bill you are likely to get. Do I think we will get a better bill after 3 months in a new Congress? Yes, I do. But that was his question.

I don't need to answer that. Let the Wall Street Journal answer that question. Do you think you can get a better bill if you wait 3 months? That is the question.

The first question that was ever asked was asked by God as He went into the Garden of Eden and started looking for Adam—Adam and Eve in that garden. God was walking in the cool of the day and he was looking for Adam in that paradise setting. How lovely that must have been. Here is old Adam over here somewhere under a tree, or back in the bushes, with some figleaves hiding from God. God said: "Adam, where art thou?" That was the first question ever asked.

The people are going to say to us: Senator, where were you? Those Senators who voted for cloture, God love them—and I love them and I respect their viewpoints. They have a right to cast the votes they want to cast them. I don't like to tell them how to vote. But let my constituents say: Robert, where were you? Where were you when you cast that vote?

So here is what the Wall Street Journal would say:

There's little or nothing that this rump session can accomplish that couldn't be done better starting anew in January.

Hallelujah. Thank God for the Wall Street Journal. They answer the question well—better than I.

There's little or nothing that this rump session can accomplish that couldn't be done better starting anew in January. That includes President Bush's priority of a new Department of Homeland Security . . . the proposal is mostly about rearranging the bureaucratic furniture . . . And as with any bill whipped through this quickly, we can expect to learn later about many bad ideas that deserved more scrutiny.

Mr. President, at a later moment, I will ask unanimous consent that the entire editorial be printed in the RECORD but not at this point. I suspect it won't be long before we begin to hear about the bad ideas that deserved more scrutiny.

Some Senators may find comfort in the fact that this bill has been touted as a compromise. It won't compare with the great compromise of July 16, 1787, which created this Senate. If it had not been for that compromise, you would not be here today, Mr. President. You would not be presiding over a Senate of equals, regardless of the size of your State, or the size of its population; you would not be in a Senate in which two Senators from the smallest State would have the same strength, as to their vote, as two Senators from the largest State in the Union. I would not be here. The Senator from New Hamp-

shire would not be here. The Senator who is the minority leader from Mississippi would not be here. The Senator who is the majority leader, the Senator from South Dakota, would not be here. All of these pages, they would not be here. No, this would not be the Senate. But it is that Constitution—here it is; I hold it in my hand. Senators should, above all people, become more acquainted with this Constitution.

Some Senators may find comfort in the fact that this bill has been touted as a compromise. I don't know who this bill was a compromise between, other than the White House and the congressional Republicans, who already supported some version of the President's original plan.

Call me old-fashioned. Yes, there he is, there is that old-fashioned guy. I am married to an old-fashioned sweetheart. Thank God for her. She has been my sweetheart now for 65 years and going on quickly to the 66th. Thank God for that kind of an old-fashioned sweetheart. I hope she thinks the same thing about her old-fashioned husband—ha, ha, ha, that old-fashioned guy. That is the man. He has been around 85 years—an old-fashioned guy.

I remember a time, Mr. President, when compromises were crafted by individuals who had differing views on an issue. This kind of compromise, this 484 pages—let me make sure I am right. Yes, it is 484 difficult, complicated, hard-to-read, harder-to-understand pages. There it is. This kind of compromise is like legislative shadow boxing.

Have you ever tried boxing? I tried it, and I got knocked on my anterior. That was the end of my boxing. I found I was not so good at boxing. This kind of compromise here is like some kind of shadow boxing. It would be laughable if it were not so serious. This kind of compromise is like legislative shadow boxing—punching and jabbing and sparring with absent opponents. The opponents are not there.

This ephemeral compromise makes no concessions with regard to the President's efforts to exempt this new Department from public disclosure law, such as the Federal Advisory Committee Act. You will not find that spelled out, but you will find reference is made to it. You have to go beyond the plain print in section 871. You have to go beyond the plain print. It is referenced there, but you have to go back to the statute books to see what they are talking about.

This ephemeral compromise makes no concessions with regard to the President's efforts to exempt the new Department from public disclosure laws, such as the Federal Advisory Committee Act. It includes no concessions with regard to the President's reorganizing the 28 agencies and offices being transferred to this new Department without congressional approval.

I have never seen anything like it. In 50 years in Congress, I have never seen anything like it—never. All this with-

out congressional approval. It includes only token concessions to those who have substantive, genuine reservations about this bill with regard to the civil service and collective bargaining issues. How can we pretend that this amendment is a serious attempt at a compromise when it is only an agreement between the President and the few supporters of the President's bill?

Oh, there are compromises in this. Yes, there are compromises in this amendment. It compromises the rights of Federal workers. It compromises the civil liberties of the American people out there. It compromises your dad-dies' and mothers' civil liberties, the parents of these nice pages we have here.

They are just the most wonderful people. They come here seeking to understand the legislative process. What are they getting? They are not getting the legislative process in this monstrosity. They are not getting the legislative process. These—I said kids; these are young people. They are all juniors in high school. They are at that tender age where they learn quickly. They have come here wanting to learn the legislative process. They are being cheated. I say to you young fine pages here, I love you.

From time to time, I meet out in the corridor with the pages, Republicans and Democrats. I tell them good stories, I mean wholesome stories. That is right. They are wholesome stories. I tell them stories in which there is a moral lesson. I tell them the story of the house with the golden windows. I tell them the story written by that great Russian, Tolstoy, "How Much Land Does A Man Need?" I tell them the story about "Acres of Diamonds" that was told, I understand, 5,000 times by that great Chautauqua speaker, Russell Conwell.

I tell these pages good stories, wholesome stories. I talk about the Bible. I talk about Milton. I talk about the Constitution. I talk about history. I talk about Nathan Hale to these young people here. Bless their hearts. I always am inspired when I talk to these young people. These are the cream of the crop. Mind you, there are millions across this country just like these. But they are being fooled. We are fooling these young people.

They come here to learn the legislative process. What do they get from this bill? This is not the legislative process. They do not learn in this amendment. They will go back one day and they will say: I heard Senator BYRD say that was not how our laws are made. No. We short circuited that process on this amendment, this 484-page bill. Here it is, 484 pages. What is in it? Don't ask me. I know a few things that are in it, and I have heard other Senators talk about a few things that were left out of it in the darkness of the night.

We talk about compromise. This 484-page monstrosity compromises the civil liberties of the American public.

It compromises the constitutional doctrines of the separation of powers and checks and balances that we find in the Constitution, which I hold in my hand.

This bill compromises the notion that the Senate should debate and amend legislation and act as the greatest deliberative body in the world before passing massive—massive—reorganizations of the Federal Government.

Mr. President, we have allowed ourselves to be stamped, and I could be as King Canute. A lot of King Canute's followers thought he could do anything. He thought he would disabuse his followers of that fallacy, that belief that King Canute could do anything. So he went down to the sands of the oceanside, and he commanded the waves to be still. The waves were not still. They did not go still, so the people finally understood that King Canute could speak to the ocean and it would not necessarily heed him.

I say that to say this, Mr. President: I might as well speak to the ocean. I might as well be like King Canute as to speak to some of my colleagues here. My speech would fall upon deaf ears, and they would say: There he goes again, that old-fashioned guy who believes that we ought to take the time; there he goes again.

We have allowed ourselves to be stamped into passing this bill. Afraid to be on the wrong side of this issue, we hear cries from both sides of the aisle that we must support our President. We hear cries of, "My President," "My party," "My Commander in Chief." When will we hear, Mr. President, "My country"? When will we hear, "My country"?

Senators are obviously upset about the miscellaneous provisions that were included in this bill at the last minute. The Washington Post this morning outlined a number of these provisions ranging from language that would help the FBI obtain customer information from Internet service providers to language incorporated in the bill by the House Republican leadership that gives Texas A&M—I do not believe it mentioned Texas A&M—that gives Texas A&M the inside track in hosting the first university center on homeland security to be established within 1 year.

It will not say that in the bill. Senators will not find that in the bill.

But the language in the bill is so targeted only that one—at least that one institution would be most favored over others.

Probably the most egregious provision inserted is a White House-backed provision designed to head off dozens of potential lawsuits against Eli Lilly and Company and other pharmaceutical giants that are being sued by parents who have linked their children's autism to those companies' childhood vaccines.

How about that? I ask the distinguished Members of the other body. How do they feel about having passed this bill with that kind of language in it? Hear me over there at the other end

of the Capitol. Yes, explain your vote, explain your vote to your constituents. You, back there in the other—we are not supposed to refer to the other body in our speeches, but the other body passed this bill in a hurry.

Those in the other body who voted for this, go back and look at what you voted for.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. SARBANES. Will the Senator yield to me on my time for a few questions?

Mr. BYRD. Yes, I will be glad to yield.

Mr. SARBANES. May I have this counted against my time under cloture?

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

Mr. SARBANES. I ask the distinguished Senator from West Virginia: In July, the Brookings Institution issued a report concerning this reorganization, and they said the following, and I am quoting from them now:

Any fundamental reorganization represents a huge managerial undertaking, one that becomes ever more daunting as the number of agencies to be included increases. The danger is that top managers will be preoccupied for months, if not years, with getting the reorganization right, thus giving insufficient attention to their real job, taking concrete action to counter the terrorist threat at home.

This Brookings report advocated some consolidation of agencies, but it proposed a much smaller, more streamlined consolidation, and the report went on to say: "Reorganization is not a panacea. In fact, there is a risk that reorganization could interfere with, rather than enhance, homeland security tasks." Certainly, changes should be made only when there is a compelling case that consolidation offers clear benefits.

I supported a proposal—and this leads up to my question—that the Senator from West Virginia offered earlier in the consideration of this issue, which would have undertaken to do a reorganization, but would have phased it and would have brought it back at periodic times for further scrutiny, examination, and implementation by the Congress. Was that the approach which the Senator had taken?

Mr. BYRD. Yes, it was. Mr. President, if I may respond to the distinguished Senator. The amendment I offered to the legislation that was being proposed by Mr. LIEBERMAN in his committee, the language I offered with several cosponsors and supporters, such as the distinguished Senator from Maryland, Mr. SARBANES, would have provided for the recommendations of the administration to come back to the Congress periodically—every 4 months, for the next 12 months—which recommendations would have to do with the phasing in of the various and sundry agencies, a few at a time, three times, every 120 days. Some of the agencies would be phased in.

Those recommendations would come back to the Congress and would go to the appropriate committees having jurisdiction—in this case it would be Mr. LIEBERMAN's committee and his committee's counterpart in the House of Representatives—and expedited procedures would require that committee to act to bring out a bill implementing those recommendations, or amending them or changing them. Then the Senate, under expedited procedures, would proceed to call up that bill and pass it. That would be done three times.

So the amendment which the distinguished Senator from Maryland refers to would provide for a phased-in approach over the same period of time that is going to be utilized by the President and the Secretary under this bill—namely, 12 months—and over that same period of time a phased-in approach with Congress still in the mix. Congress would still have a say at each of these three junctures.

Mr. SARBANES. It seems to me that this is a far more sensible way to proceed. First, I think it maintains a better balance with respect to the roles of the executive and the legislative branches of our Government. I think the Senator has been absolutely right to underscore the fact that what is at stake here is a tremendous grant of authority to the executive branch.

Mr. BYRD. Tremendous.

Mr. SARBANES. It is sweeping in its dimension.

Mr. BYRD. Sweeping.

Mr. SARBANES. Secondly, I think that review process is more likely, far more likely, to produce beneficial results, because as the Senator said earlier today, the more scrutiny and discussion you have, the higher the likelihood—not a guarantee, but the higher the likelihood—that you will have a better result.

As I have listened to the Senator over these weeks of the debate, I have increasingly come to have very deep concerns about what we are doing with this legislation. I feel for the Senator when he says people are not—even now, as we near the last hour, focusing fully on the implications and the consequences of what we are discussing.

Back in September, the Baltimore Sun published an editorial, and I want to read a couple of paragraphs from it. This is from September 23 of this year:

Months of debate have made clear that this bureaucratic boondoggle offers no promise of making the homeland more secure. Worse, it takes the focus off the need for tighter oversight of the Nation's security systems. President Bush offered the most sweeping government reorganization in a half a century, largely as a political and public relations tactic. He was trying to counter Senate Democrats who were advancing similar legislation of their own. He timed the unveiling of his plan to drown out the testimony of FBI Agent Coleen Rowley, who was blowing the whistle on the security failures of her hidebound agency that blinded it to the clues of the September 11 attacks. Shifting 22 Federal agencies and 170,000 workers into a new department will cost billions but will do nothing to solve the problems agent Rowley

addressed. What is needed is greater sharing, coordination and synthesis of the security information collected by the myriad agencies. But this new department will not even include the FBI and the CIA which are the two premier intelligence gatherers. Nor is there any guarantee that greater sharing would take place between them if they were together.

I think this is right on point and parallels much of what the Senator, as I understand it, has been arguing.

Mr. BYRD. Mr. President, before I respond to the distinguished Senator from Maryland, I understand that the able Senator from Hawaii, Mr. AKAKA, has a unanimous consent request he would like to make. Will the Senator from Maryland yield for that request since this is on his time?

Mr. SARBANES. Certainly.

Mr. AKAKA. I thank the Senator from West Virginia and the Senator from Maryland for yielding to me.

Mr. President, I ask unanimous consent that my hour under cloture be yielded to Senator BYRD.

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

Mr. BYRD. Mr. President, I thank the distinguished Senator from Hawaii, Mr. AKAKA, who is about to take the chair. He wanted to make the request before he took the chair.

Mr. REID. Mr. President, I ask unanimous consent that the order now in effect, that there be debate only until 3:30, be extended until 5 o'clock today.

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

Mr. BYRD. On the time of the distinguished Senator, let me be just a little bit loquacious in my response. I have served in this Senate for 44 years and in the Congress for 50 years. In my time in the Senate and in the House, the Senator from Maryland—I don't have to say this; I don't owe the distinguished Senator from Maryland the tribute I am about to say, except it is honest and he is entitled to it.

We often pass around our warm words of praise because we are Senators and this is a happy family here. I admire this son of ancient Greece. He is a son of Athens. He is American. He grew up in this country. His parents came to this country. He knows what being an immigrants means. He is a Rhodes scholar. I can't say that about ROBERT BYRD. But this man from Maryland is a Rhodes scholar. He is a true son of Athens, a son of the people whom Socrates, Sophocles, and Plato were a part. He is one of the most thoughtful Senators I have ever seen.

When I was majority leader and when I was minority leader—thank Heavens, thank Heavens that experience is in the background now; it is long past—but when I was the leader duly elected by my colleagues, I always had meetings in which I tried to get from the most brilliant, most thoughtful Senators on my side of the aisle, their thoughts, their opinion, their advice as to this or that issue, whatever issue might be before the Senate or about to come before the Senate. PAUL SAR-

BANES was one who was always there. He was never out of the room. Not because he was the "yes" American. He wasn't, by any means. But I knew I would get the real stuff from PAUL SARBANES.

Here is a man who is head and shoulders above some Senators with whom I have served, and I have served with a great many Senators. This man is a true thinker. We have seen the picture of The Thinker. This is the thinker, PAUL SARBANES.

A little while ago he said something which brought to my mind the words of William Wordsworth who said: No matter how high you may be in your department, you are still responsible for the actions of the lowliest clerk in your department.

I forget now what the Senator said, but it brought that thought to mind. We are talking about 28 agencies. Who is going to be responsible for the lowliest clerk's actions in this conglomeration, the epitome of chaos that will occur?

I thank the distinguished Senator from Maryland. Please, if he has something further I will sit down at any moment. If he has anything further of me, I will be glad to respond.

(Mr. AKAKA assumed the Chair.)

Mr. SARBANES. First, Mr. President, I appreciate the generous and gracious remarks of the distinguished Senator from West Virginia. I must say that with all of my schooling he mentioned, I have learned more from him than at any other point along the way. I am extremely appreciative to him for that.

I did want to cite this quote that the Senator has used in the course of this debate, which is so appropriate to our situation, from the Roman poet and the adviser to Nero, Gaius Petronius Arbiter. It is another instant in which the Senator has enlightened this institution through his use of Roman history. The quote could not be more on point. It is written as though it were written for the current situation. It is as follows:

We trained hard, but it seemed that every time we were beginning to form into teams, we would be reorganized.

I was to learn later in life that we tend to meet any new situation by reorganizing, and the wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization.

We could not have a more appropriate quote to the situation that we are confronting today.

If the Senator would indulge me for just a couple of minutes, I tie in with the demoralization, confusion, and inefficiency what this legislation is doing to loyal, dedicated, hard-working, committed Federal employees. I am very frank to say taking from our employees rights that they now have, which this legislation will do on the grounds of flexibility to enhance homeland security, will do just the contrary. It will deal a blow to homeland security. We are talking about dedicated employees

who are serving our country. They have been involved in protecting homeland security. They are loyal and committed workers. We want them to go on providing our high level of service, yet this legislation does not protect longstanding rights to bargain collectively about issues of importance, nor does it retain important civil service protections which have been worked out over a very long period of time.

The Federal employees in this new Department, all of whom are already working to protect our national security, ought to have the same rights and protections they heretofore have had. Taking these rights away, cutting them down, will undercut the morale of these employees. We will get lesser performance, although I think these are very dedicated people. In contrast, if we protect our workforce, our workforce will protect us.

Let me turn it around the other way. Our federal employees have been protecting us. Why should we withdraw from them important employee protections? Many of these protections came into being in order to protect whistleblowers who are trying to do a better job, to eliminate cronyism or favoritism or unfair labor practices. Some say that membership in unions by employees in the Homeland Department will impede efforts to protect our national security. I find this difficult to understand. There are currently 200,000 union employees—employees who have a union affiliation—at the Department of Defense. Many of those employees have high-level security clearances. This never seemed to impair our national security during the cold war. Many of the first responders on September 11 were union members. Their membership in unions in no way hindered their remarkable displays of bravery. They were thinking only of their duty to their country.

Many agencies that already protect homeland security have union members amongst their ranks: The Border Patrol, the Customs Service, the Federal Emergency Management Agency, to name just a few. These employees are already doing their job well. Are they to be rewarded by stripping them of these union protections, of these civil service rights?

We have spent a long part of our history working out these employee rights, and they are important to the success of the Government and to the attraction and retention of the best possible Federal employees. We ought not to be diminishing these rights and protections, as this legislation does.

I think that stripping the employees of these protections will harm national security rather than help it. That is a subissue within the larger issue on which the Senator from West Virginia has been focusing, about the dislocation that is going to be created by this sweeping proposal, the one that brings us back, of course, to this wonderful quote from Gaius Petronius Arbiter.

I urge my colleagues to reexamine this closely. I know this issue has now

been politicized. No one is against homeland security. No one is against enhancing the security that our people feel, and protecting it. The question then becomes, what is the best way to do it?

We have had studies on this point. The Brookings Institute made a very careful evaluation. They said they thought some consolidation was in order, but they thought it should be limited, it should be done carefully, it should be done thoughtfully, it should be done with prudence. They pointed out, of course, that it is a huge managerial undertaking; that it becomes more daunting as the number of agencies to be included increases. And then last summer they said in their report:

The danger is top managers will be preoccupied for months if not years with getting the reorganization right, thus giving insufficient attention to their real job, taking concrete action to counter the terrorist threat at home.

I think that is absolutely on point and it is a point which the able Senator from West Virginia has made repeatedly, of course, during this debate. It really tracks what Gaius Petronius Arbiter said, when he said:

I was to learn later in life that we tend to meet any new situation by reorganizing, and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization.

Mr. BYRD. Hear, hear, hear.

Mr. SARBANES. And that is exactly what we are confronted with here.

Mr. President, I thank the Senator for yielding, and I yield the floor.

Mr. BYRD. Mr. President, I thank the distinguished Senator for his contribution today, and for his references to the ancient Roman, Gaius Petronius Arbiter, whom the Senator from Maryland more than once has quoted on this floor. I thank the Senator for his defense of the patriotic Federal employees who work day and night to protect us.

Mr. President, we will not have one whit more protection with the passage of this 484 pages, not one whit protection more than we have now. The same people who will protect us at the borders, at the ports, at the airports and throughout the land at the ports of entry, the same people who will protect us then are out there now. They are there day and night protecting us.

So I thank the distinguished Senator from Maryland.

Mr. President, continuing my statement, and I will not be overly long, probably the most egregious provision inserted is a White House-backed provision designed to head off dozens of potential lawsuits against Eli Lilly and Company and other pharmaceutical giants that are being sued by parents who have linked their children's autism to those companies' childhood vaccines. The language would keep the lawsuits out of State courts, ruling out huge judgments and lengthy litigation and, instead, channel complaints to a Federal program set up to provide li-

ability protection for vaccine manufacturers. The program, funded through a surcharge on vaccines, compensates persons injured by such vaccines to a maximum of \$250,000.

A number of Senators, including the very distinguished Senator from Michigan, Ms. STABENOW, strongly criticized these provisions yesterday. And yet at the same time, some Senators who have made these statements—not the Senator whose name I have expressed just now—but some Senators at the same time have pledged to vote in favor of this bill, regardless of whether these provisions are included or removed. How about that. We are acting as though this is a conference report that cannot be amended, as though its passage is a fait accompli. We still have the opportunity to amend this bill, except for the fact that our Republican friends on the other side of the aisle have said: This far and no further. We have got an amendment pending in the tree and that is all you will get. You will get a vote on that amendment—up or down on or in relation to it, I suppose, at the end of the 30 hours—but no more amendments. That is it. That is the only amendment.

Well, we will see about that.

We still have the opportunity to amend the bill, at least the basic bill, H.R. 5005, even postclosure. So this amendment introduced by Senator DASCHLE will strike language in this bill which the Senate has not previously considered, the language that would allow the Homeland Security Secretary to establish advisory committees within the Homeland Security Department and to exempt these committees from the Federal Advisory Committee Act.

When I saw that in the amendment that the leader was introducing on behalf of Mr. LIEBERMAN—I saw that in the amendment, and I immediately wanted my name attached because I have been complaining, I have been criticizing that, complaining about that language in the bill.

This statute which has been on the books, the Federal Advisory Committee Act, which has been on the books for 30 years, ensures that the ad hoc committees used to craft policy in the executive branch provide objective advice that is accessible to the public. These public disclosure rules allow Congress and the media and groups outside of Government to know how the executive branch is making important policy decisions.

Section 871 of this new substitute we have just been given, less than 60 hours ago, provides the Secretary of Homeland Security blanket authority to exempt all advisory committees in the Department from existing public disclosure rules. This provision was not included in Senator LIEBERMAN's substitute, but it has been slipped into this new bill, which was made available to us, as I say, less than 60 hours ago, with the hope that Senators will not have enough time to scrutinize this dramatic change to existing statute.

Many of the advisory committees in this new Homeland Security Department will be dealing with issues of national security that should not be subjected to public disclosure rules. But the Federal Advisory Committee Act already allows the President to exempt these public disclosure rules for advisory committee for national security reasons. This is authority that the President has used for 30 years, and authority he will be able to use for advisory committees in the Homeland Security Department.

But instead of relying on the President's current authority to exempt committees on a case-by-case basis, the new language in this bill allows the Secretary to exempt ANY advisory committee from public disclosure rules, regardless of whether national security is pertinent or not.

This new blanket authority is not necessary. As a matter of fact, we ought not have it. It shouldn't be that way because it interferes with the people's right to know, and it is a danger to our liberty. It is a danger to our constitutional system.

The provisions in this bill allow the Secretary to use ad hoc advisory committees to craft policy in secret, without making specific findings that such secrecy is necessary in any particular instance.

The press, I hope, will read this bill and understand this bill. I hope the press is fully aware of how this presents a danger and a threat to the media's efforts to probe, to ask questions, and to scrutinize and to protect the public's right to know.

This unnecessary new blanket authority will give the President carte blanche to respond and expand the culture of secrecy that now permeates this White House—this administration.

Let me say that again.

This unnecessary new blanket authority can be used to give the President carte blanche to expand the culture of secrecy that now permeates this White House—this administration.

The public disclosure exemptions in this bill are a license for abuse. They are a danger. They are un-American. They should not become law.

I hope that Senators, before they cast their vote on the passage of this bill, will think about this. I hope they will be prepared to answer the public—their constituents—in the next election, whatever election down the road awaits them. I hope they will be prepared. There are going to be stories in the press as time goes on, I would wager, about this particular authority that the Senate will extend with passage of this bill to this administration and to this new Department—to the Secretary of this new Department.

We see on the front page of the Washington Times today—I have already mentioned the Wall Street Journal, and I mentioned the Washington Post. Now I call attention to the front page of the Washington Times this morning. There is a headline which reads



"Homeland Bill a Supersnoop's Dream."

There are many dreams to which we can allude—Jacob's dream—the dreams.

"Homeland Bill a Supersnoop's Dream."

In yesterday's New York Times, William Safire warned that if this homeland security legislation is passed as it is currently written, the Federal Government may be planning to use its new intelligence authority to compile computerized dossiers on every American citizen, including "every piece of information that government has about you . . ."

—every piece of information that the Government has about you, each of you, about you, about you, about you— . . . including "every piece of information that government has about you—passport applications, driver's license, bridge toll records, judicial and divorce records, complaints from nosy neighbors to the FBI, your lifetime paper trail . . ."

That is a long trail.

. . . "your lifetime paper trail plus the latest hidden camera surveillance."

No one knows about those hidden cameras and where they are.

They may be looking at you. Who knows. They may be in your office looking at you.

Do we need to add to all of this by providing even more authority for the Federal Government to hide decisions behind locked doors—decisions which affect the safety of every man, woman, and child in this Nation?

Exempting these committees from the Federal Advisory Committee Act also removes requirements that the advice of these committees be objective and that the membership of the committees represent balanced viewpoints on the issues. With this new authority, the Secretary will not have to make any effort whatsoever to ensure the integrity and objectivity of these committees.

The language in this bill—here it is—484 pages. It wasn't around a week ago today. Nobody saw one page a week ago today. This bill didn't exist a week ago today.

The language in this bill even exempts individual members of advisory committees from financial conflict-of-interest rules. We should not allow our homeland security policies to be crafted by corporate advisors with a financial interest in those policies. This bill should not become a vehicle for lining the pockets of corporate fat cats.

Section 232 of the new bill also exempts advisory committees within the Office of Science and Technology in the Justice Department. This means that this new office, which will serve as the focal point for developing law enforcement technology, may rely on advisory committees whose members have a personal stake in the policy recommendations adopted by the committees. I am worried that exempting this new Science and Technology Office will

allow the administration to provide special treatment for corporate campaign contributions who are pushing new anti-terrorism technologies.

It worries me that issues as important as homeland security and the safety of the American people may be decided in secret by ad hoc committees that are exempt from traditional good government laws. Under this language, the Secretary will be able to exempt not only new advisory committees, but also existing committees that are transferred into the Department along with these 28 agencies and offices.

This amendment, which I have co-sponsored, will strike this exemption authority from the bill.

This dangerous new authority should not be slipped under the cover of darkness, as it were, into legislation that Senators have had little time to study or amend. If the Secretary of the new Department of Homeland Security needs this blanket authority, let him come to Congress and make his case. Congress must not hand over blanket authority to this administration which would allow it to cloak decisions in secrecy.

Now, Senators, this is what we are about to vote on, this bill. Now, if the amendment fails, Senators should not then go ahead and vote for this bill. If this amendment to strike these provisions fails to be adopted, Senators have no right then to go home and say: Well, I voted for the amendment. I was for that, but it failed and I, therefore, went ahead and voted for this bill.

What a crappy bill. Don't hide behind your vote when you vote on this amendment or you vote in relation to it or whatever the vote is when it comes. Don't hide behind that. If that amendment fails, don't hide behind that and say: Well, I voted for the amendment, and so I tried to get it in there, but the Senate voted it down, so I went ahead and voted for the bill. Shame on you. And your constituents should say so: Shame on you. Now, you say you voted for the amendment, and that the Senate didn't adopt it. Your convictions were not very strong, so you went ahead and voted for the bill, then, after that amendment failed. Shame on you.

Mr. President, I don't know of any measure that has ever come before the Senate in connection with which I have spoken more passionately, with greater conviction, than I have in regard to this bill. I have no special ax to grind. No, I have no special ax to grind. I am on nobody's payroll except the people's.

I am concerned about this. I am more concerned about this bill than I believe any bill I have ever voted on or will ever have voted on. And I have cast more votes than any Senator in the history of this Republic.

I have no special ax to grind. You say: Well, he's 85. He won't be running again. Don't bet on it. Don't bet on it. That is a matter for the Good Lord to determine and the people of the State

of West Virginia. So don't count me out. There are those who may say: Don't count me in. I believe there is a song to that effect: "Don't Count Me In." But don't count me out.

That is my belief.

This dramatic reduction of transparency should not be clandestinely slipped into this eleventh-hour legislation, and the Senate should not allow such a dangerous provision to be rushed through this Chamber during the final minutes of this Congress.

So shame on you if you vote for this amendment, and then, if it fails, you turn around and vote for this 484-page bill. Don't use that as an excuse when you go back to your constituents.

Every Senator has the right to do what he thinks best, but, believe you me, your constituents, if you vote for this bill—if that amendment fails, and you still vote for this bill, I hope you won't try to hide behind your vote for the amendment that is before the Senate: Oh, I voted for that amendment, but the Senate rejected it, so I then felt that I had done my best, and I went ahead and voted for the bill. Shame on you.

This administration has worked hard to keep the Congress out of the loop. The President has sought to isolate himself from the American public and their Representatives in Congress. He has asked for the Congress to provide him with broad statutory powers to further block congressional involvement.

That is what this bill will do. Pass this bill, and you will say to the President: Well, I don't know what your plan is—you have not told us what your plan is—but we have approved it. Here it is. Here is the bill. So you have the next 12 months in which to determine your plan, and all you need to do—we hope you will tell us about it. The language here provides for the President "informing" the Congress about the plan.

Well, in some cases, Senators have supported the President on these issues, either to show unity with the leader of their party or because they fear political attacks if they do not. Less and less, it seems to me, do we think about these grants of power that will affect the constitutional checks and balances and separation of powers that protect the constitutional freedoms of our country.

I must say this, that the shelf life of appreciation one might expect from this administration, in having supported it—those of us, may I say, on this side of the aisle, in particular—the shelf life of appreciation from this administration for your efforts to curry favor with the administration, if that is what it is, is very short indeed.

We saw that in the case of the distinguished Senator from Georgia, Mr. CLELAND. We saw that in the case of the distinguished Senator from Missouri, Mrs. CARNAHAN. We have seen it in the cases of other Senators who supported the administration. They did



what they thought was right. But in any event, their votes were in support of the administration on various issues—the tax cut, the Iraq war resolution, whatever it might have been—and yet, the President, himself, went into those very States and campaigned against those Senators. So this administration's thanks don't go very far, may I say to Senators.

So the best thing to do, as always, is to do your best, vote your convictions, and stand by your people who send you here, and stand by the Constitution.

Henry Clay, as a Senator from Kentucky in 1833, in building the case for the censure of President Andrew Jackson, asked the Senate:

How often have we, Senators, felt that the check of the Senate, instead of being, as the Constitution intended, a salutary control, was an idle ceremony . . . We have established a system, in which power has been most carefully separated and distributed between three separate and independent departments. We have been told a thousand times, and all experience assures us, that such a division is indispensable to the existence and preservation of freedom. . . .

This is Henry Clay talking:

The president, it is true, presides over the whole . . . but has he power to come into Congress, and to say such laws only shall pass . . . to arrest their lawful progress, because they have dared to act contrary to his pleasure? No, sir; no, sir.

Well, Henry Clay was an opponent of the Presidential veto. He thought that was a despicable thing, the President's veto.

So he spoke, as I have just read. He spoke of the President and he said: It is true, he presides over the whole:

. . . but has he power to come into Congress, and to say such laws only shall pass . . . to arrest their lawful progress, because they have dared to act contrary to his pleasure? No, sir; no, sir.

The Senate must not blindly follow in the name of party unity. I don't blindly follow in the name of the Democratic Party unity. I don't do that. I won't do that. That will not be my guiding star. In storm or in tempest or in fair weather, that will not be my guiding star.

The Senate must not blindly follow, in the name of party unity or under the yoke of political pressure, a short-sighted path that ultimately undermines our sworn duty to support and defend the Constitution.

I will vote against this homeland security bill because even the amendment that is before the Senate is not enough. I have some amendments that I would like to offer. If this amendment fails, I would like to offer my amendments. It is very questionable as to whether I will get to do that, very questionable as to whether or not those amendments will pass the Senate. I doubt that they will.

So I intend to vote against this homeland security bill. I will raise my voice as long as I have a voice, and I will raise my hand as long as I can raise that hand to attempt to derail this blatant power grab and giveaway of the people's liberties.

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

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

Mr. AKAKA. Mr. President, I ask unanimous consent that I be able to reclaim 5 minutes of my time that I yielded to Senator BYRD.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise in support of the amendment offered by Senator DASCHLE, Senator LIEBERMAN, and Senator BYRD to the pending legislation concerning homeland security.

I voted earlier against invoking cloture on this legislation because in part I disagreed with many of the amendments which were added at the last moment by the House to this bill. The amendment offered by Senator DASCHLE and Senator LIEBERMAN would correct many problems in this House bill, although not all. There is much about the underlying bill which still needs to be corrected. I laid out earlier my concerns. Today however, I want to address the House's legislative "add-ons" that should be stripped from this bill. I think it is clear what the house has done in the midnight hour of this Congress.

The House leadership has taken a moving train—legislation for a Department of Homeland Security—and attached gilded carriages for their special friends to travel on this legislative express.

What has been added does not enhance the security of the American people. It enriches a select few companies and special individuals, and very special people. One provision is clearly meant to earmark a new university-based homeland security research center program for Texas A&M University, avoiding an open and competitive award process. All of us have universities, distinguished centers of higher learning in our states, all of which would welcome the opportunity to make their case for this funding. But under this bill, they will not get that chance. However, if the Daschle amendment passes, other colleges and universities would be permitted to demonstrate their competence to be a center for homeland security research, including Texas A&M.

Another provision in this legislation would limit liability to companies producing homeland security technologies. The main intent of this provision is to eliminate the ability of Americans to obtain compensation should they be harmed by any of these technologies. The provision is open-ended. It does not define how anti-terrorism technologies will be identified.

Under the liability provision sections, the Secretary has the discretion to designate which technologies will benefit from this additional protection from liability. This section is not about stimulating the development of new technologies to protect us. It is about finding new ways to protect companies from legal liability. Indeed one section of this bill is labeled "Litigation Management." That says it all.

The subparagraphs, almost too small to be noticed, undermine the Federal Advisory Committee Act, or FACA, and the public's right to know the make-up, meeting schedules, and findings of federal commissions, committees, councils, and task forces. These groups are chartered by the President, Congress, and agency heads to give independent advice and recommendations on substantial policy issues and technological problems.

Congress enacted FACA in 1972 to address concerns of committees being redundant, having inadequate oversight, using secretive operations, and not representing public interest. FACA requires that the advice provided by such committees be objective and responsive to public concerns. Committee meetings are required to be open and properly noticed, with specific exceptions. The House bill would give the Secretary of Homeland Security a blanket exemption from FACA requirements once the Secretary notices the creation of a committee and its intent. One wonders why the House Leadership wants to overturn sunshine rules. What do they want to hide?

This is a very serious matter. What sort of oversight will these committees have? Who will serve on them? Will all interests be represented? How will we confirm that the public interests have been met? To allow the Secretary of Homeland Security to set up advisory committees that are free from the balanced regulations of FACA is to retreat back to a time when special interests groups ran roughshod over the public's interest and recommended one sided-views without appropriate oversight.

The original Lieberman substitute, and the original Gramm-Miller amendment, were based upon provisions that were debated and discussed within the Governmental Affairs Committee through hearings and business meetings. The bill before us today has several provisions that have not had that treatment and will directly benefit the airline and rail companies and other special interests.

The Governmental Affairs Committee spent weeks and months studying, debating, and drafting legislation on homeland security. In contrast, this bill was not written in committee and some parts of the bill before us today have had only special interest input. That is not the best way to ensure public safety and national security.

I yield my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

#### INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003— CONFERENCE REPORT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the conference report to accompany H.R. 4628, the intelligence authorization; that the conference report be considered and agreed to; the motion to reconsider be laid on the table; and that any statements relating to the conference report be printed in the RECORD, without intervening action or debate.

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

The conference report was agreed to. (The conference report is printed in the House proceedings of the RECORD of November 14, 2002.)

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. Mr. President, I ask unanimous consent that the Senate be in recess subject to the call of the Chair.

There being no objection, the Senate, at 6:12 p.m., recessed subject to the call of the Chair and reassembled at 8:11 p.m., when called to order by the Presiding Officer (Mr. BARKLEY).

#### ORDER OF BUSINESS

Mr. REID. Mr. President, I appreciate very much, first of all, the patience of the Presiding Officer. We are sorry that in your first few hours in the Senate you have had to spend so much time here when we have not been doing a lot, but it is necessary that you are here, and we appreciate very much your patience, as I have indicated.

Mr. President, it is my understanding that we are not in morning business. Is that right?

The PRESIDING OFFICER. That is correct.

#### MORNING BUSINESS

Mr. REID. I ask unanimous consent that we now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

#### TRIBUTE TO SENATOR JEAN CARNAHAN

Mr. CONRAD. Mr. President, I rise today to pay tribute to my distinguished colleague from Missouri, Senator JEAN CARNAHAN. After losing her husband and eldest son in a tragic plane accident, Missouri called upon Mrs. CARNAHAN to fill the remainder of her husband's Term. Senator CARNAHAN answered the call of duty and did it with a fair, courageous hand.

Senator CARNAHAN was Missouri's first member of the Armed Services Committee in over 25 years. She also served on the Small Business Committee, the Governmental Affairs Committee, the Commerce Committee, and the Special Committee on Aging.

Senator CARNAHAN made a strong economy her top priority. Her ability to secure defense projects for Missouri and safeguard funding for family farmers hurt by flooding and drought clearly shows Senator CARNAHAN's desire to bolster Missouri's economy, provide good jobs for Missouri workers, and support our Nation's effort in the war against terrorism.

Senator CARNAHAN also knew that a highly skilled workforce required equal educational opportunities. Her Quality Classrooms Amendment allowed local schools greater flexibility in deciding how to utilize Federal dollars. She also worked to secure over \$1.3 million for programs boosting postsecondary education assistance to low-income students. These initiatives illustrate Senator CARNAHAN's deep commitment to a better education and a brighter future for all Missouri students.

Filling the seat of her late husband, Senator CARNAHAN led with dignity and courage as Missouri's first female Senator. She took office at a time of personal loss and hardship, yet prevailed and proved to be a strong leader for Missouri. I would like to join my colleagues in wishing Senator CARNAHAN and her family the very best in the future.

#### TRIBUTE TO SENATOR PHIL GRAMM

Mr. BUNNING. Mr. President, I rise today to pay tribute to my good friend and colleague, Senator PHIL GRAMM.

Without Senator GRAMM, none of us would ever know who Dicky Flatt is. We would not know nearly as much as we know about Texas A&M as we do. And we would probably still be trying to repeal Glass-Steagall.

I met Senator GRAMM on a number of occasions when I was a Member of the House of Representatives, but I did not really get to know him until I joined that Banking Committee in January 1999, when he was the chairman.

Senator GRAMM's first order of business was to finally pass a repeal of the Glass-Steagall banking law. I had

worked on this same repeal during my first term in the House, 12 years earlier, and I know many others had been working on this effort for much longer than that. But it was Senator GRAMM's dogged determination that finally pushed the ball over the goal line and brought our banking laws into the 21st Century.

I won't bore everyone by going into a long list of Senator GRAMM's other legislative accomplishments; they are too numerous to mention, but I would put him right up there with a small group of other senators who have had the greatest impact on the Senate in the past century.

Outside of our working relationship, I have also gotten to know Senator GRAMM, and his lovely life Wendy, very well over as friends.

I would also like to tell a little story about how Senator GRAMM's unselfishness greatly assisted me when I was in a tight spot. Everyone in this body remembers the anthrax attacks of last year. As a resident of the Hart Building, I was one of those who was forced to find other space when the Hart building was closed. The Architect of the Capitol, the Senate Superintendent and the Rules Committee did a great job, under very trying circumstances, of finding space for everyone. But there were about fifty offices that were relocated so space was tight. My staff and I were sitting on top of each other down in EF-100 underneath the back steps of the Capitol.

We were glad to have the space. But it wasn't much more than a glorified broom closet.

Well, Senator GRAMM heard about my predicament and very graciously let me use his Capitol hideaway office until the Hart building was reopened. He only asked that I did not "trash the place and leave empty whiskey bottles on the floor." I can assure the Members of the Senate and the people of the Commonwealth of Kentucky that I followed his instructions.

I am also fairly confident that as much as I appreciated the kind gesture, my staff appreciated the fact I had somewhere else to go even more. It is not just Members who will miss Senator GRAMM, but staff as well.

We will miss his leadership, but I think we will miss his courage even more. Senator GRAMM is willing to take unpopular stands. He is willing to lose a vote 99-1. He is willing to keep the Senate in all night to fight for what he believes in, no matter how unpopular that stand may be.

One example that stands out clearly in my mind was at the beginning of the debate on the Clinton health care bill. Many don't remember now, but when we first started working on that issue in Congress, President Clinton had a lot of momentum and it looked like only a foregone conclusion that he would get some sort of bill passed. Those of us who didn't the President's proposal really felt like we were swimming upstream.

Then PHIL GRAMM took the Senate floor, and laid out a withering assessment of the bill and why it would do so much harm to the country if passed. He wrapped up his remarks by saying that "the Clinton health bill would pass the Senate over my cold, dead political body." That served as a rallying cry for the rest of the Congress and signaled a real turning point in the debate. But, at the time, it wasn't popular and most people on Capitol Hill thought it wasn't very smart. But it was right. That's PHIL GRAMM for you.

I have heard him say on more than one occasion, "I've never taken a hostage I wasn't willing to shoot." Everyone knows Senator PHIL GRAMM will kill a bill if he thinks it's bad for America or if fellow Texans are being treated unfairly. And he has shot some legislative hostages.

But more often than not, he was able, through negotiation, to work out a better product.

I think the Senate will miss his homespun eloquence. I don't think there is anyone better at simplifying a complicated bill for his colleagues and the American people. Whether he uses the "Dicky Flatt test" or the wisdom his mama passed down to him, Senator GRAMM has the unique ability to make the complicated simple. On this side of the aisle, that eloquence will be missed, he always did a great job of articulating our position.

Mr. President, Senator GRAMM will be missed not just by me, but this entire body, the people of Texans and all Americans. I will miss him as a Senator and a friend.

#### TRIBUTE TO SENATOR FRED THOMPSON

Mr. BUNNING. Mr. President, I rise today to pay tribute to my good friend and colleague, Senator FRED THOMPSON.

Since his arrival in the Senate in 1994, Senator THOMPSON has been one of the most respected Members on both sides of the aisle. His constituents clearly have great admiration and respect for him. In 1996, Senator THOMPSON received more votes than any other candidate in the history of Tennessee and won his reelection by more than twenty points!

Throughout his tenure in the Senate, Senator THOMPSON has been a tremendous supporter of conservative ideals and principles. As a member of the Senate Finance Committee, he has fought to reduce taxes for his fellow Tennesseans and all Americans, and helped to stabilize Medicare and Social Security for future generations.

As a member of the Senate Government Affairs Committee, I have had the privilege of working with Senator THOMPSON on various projects when he served as chairman, and later as the ranking Republican member. The Senator should be congratulated for his hard work on the President's priority to create the Homeland Security Department.

In a recent interview, Senator THOMPSON said he has "always looked at public service as more an interruption to a career than a career itself." It is now time for Senator THOMPSON to begin his new career as the District Attorney on the hit television show "Law and Order." I wish my good friend Senator THOMPSON well in his new job, and I leave him with this little piece of advice: don't let Hollywood turn you into a liberal!

Senator THOMPSON will be missed not just by me, but this entire body, the people of Tennessee and all Americans. I will miss him as a Senator, but look forward to watching my friend on Wednesday nights as he begins his new career on "Law and Order."

#### TRIBUTE TO SENATOR TIM HUTCHINSON

Mr. BUNNING. Mr. President, it is with great pride that I rise today to pay tribute to Senator TIM HUTCHINSON of Arkansas.

Since 1985, when he first began his career in public service as a member of the Arkansas State House of Representatives, TIM HUTCHINSON has fought for the people of Arkansas and the citizens of the United States of America. Throughout his 12 years in public office at the State and Federal level, TIM has worked hard to push his conservative agenda and ideals. He has been a strong proponent of a balanced budget, tax relief and reform of our Nation's education system.

As a Member of the House of Representatives from 1992 to 1998, TIM authored the much needed \$500-per-child tax credit, which allows parents to place as much as \$2,000 per year, per child, in a designated savings account. He was also one of the main actors in the pursuit to reform this nation's struggling and inefficient welfare system. Besides his many accomplishments in the areas of tax relief, education and welfare reform, TIM has been a major advocate of issues affecting our nation's veterans. He has worked tirelessly over the years to open additional outpatient clinics for veterans across Arkansas.

As a Member of the U.S. Senate, TIM HUTCHINSON served on the Armed Service Committee, Health, Education, Labor and Pensions Committee, Agriculture Committee, Veterans Affairs Committee and the Special Committee on Aging. As a member of the Education Working Group, Senator HUTCHINSON led the charge to pass the "Education Savings Accounts" Legislation. I am also very proud to have worked with Senator HUTCHINSON on trying to pass legislation which bans human cloning.

I have had the honor of serving with TIM HUTCHINSON in both the House and Senate. I have served with him on the Senate Armed Service Committee and know first hand how hard this individual has worked to make this Nation a safer and better place for all to live.

With his background as a teacher and businessman, TIM was able to bring both expertise and leadership to the Republican party. We need more public servants like TIM HUTCHINSON who champion empowerment over dependency. It was a pleasure and honor to serve with him in this body.

#### THE PROTECT ACT

Mr. LEAHY. Mr. President, last night the Senate passed, by unanimous consent, the Hatch-Leahy PROTECT Act providing important new tools to fight child pornography. I want to take a moment to speak about the passage of this important bill and the effort that it took to get to this point. Although they have recessed subject to the recall of the Speaker of the House, I also want to implore the Republican leadership in the House of Representatives not to miss this important opportunity to pass such important bipartisan legislation as this.

In April, I came to the Senate floor and joined Senator HATCH in introducing S. 2520, the PROTECT Act, after the Supreme Court's decision in *Ashcroft v. Free Speech Coalition* ("Free Speech"). Although there were some others who raised constitutional concerns about specific provisions in that bill, I believed—and still believe—that unlike the Administration proposal, it was a good faith effort to work within the First Amendment.

Everyone in the Senate agrees that we should do all we can to protect our children from being victimized by child pornography. That would be an easy debate and vote. The more difficult thing is to write a law that will both do that and will stick. In 1996, when we passed the Child Pornography Prevention Act, "CPPA", many warned us that certain provisions of that Act violated the First Amendment. The Supreme Court's recent decision in *Free Speech* has proven them correct.

We should not sit by and do nothing. It is important that we respond to the Supreme Court decision. It is just as important, however, that we avoid repeating our past mistakes. Unlike the 1996 CPPA, this time we should respond with a law that passes constitutional muster. Our children deserve more than a press conference on this issue. They deserve a law that will last.

It is important that we do all we can to end the victimization of real children by child pornographers, but it is also important that we pass a law that will withstand First Amendment scrutiny. We need a law with real teeth, not one with false teeth.

After joining Senator HATCH in introducing the PROTECT Act, I convened a Judiciary Committee hearing on the legislation. We heard from the Administration, from the National Center for Missing and Exploited Children, NCMEC, and from experts who came and told us that our bill, as introduced, would pass constitutional muster, but the House-passed bill would not.

I then placed S. 2520 on the Judiciary Committee's calendar for the October 8, 2002, business meeting. I continued to work with Senator HATCH to improve the bill so that it could be quickly enacted. Senator HATCH circulated a Hatch-Leahy proposed Judiciary Committee substitute that improved the bill before our October 8 business meeting. Unfortunately the Judiciary Committee was unable to consider it because of procedural maneuvering by my colleagues that had nothing to do with this important legislation, including the refusal of Committee members on the other side of the aisle to consider any pending legislation on the Committee's agenda.

I still wanted to get this bill done. That is why, for a full week in October, I worked to clear and have the full Senate pass a substitute to S. 2520 that tracked the Hatch-Leahy proposed committee substitute in nearly every area. Indeed, the substitute I offered even adopted parts of the House bill which would help the NCMC work with local and state law enforcement on these cases. Twice, I spoke on the Senate floor imploring that we approve such legislation. As I stated then, every single Democratic Senator cleared that measure. I then urged Republicans to work on their side of the aisle to clear this measure—so similar to the joint Hatch-Leahy substitute—so that we could swiftly enact a law that would pass constitutional muster. Unfortunately, instead of working to clear that bipartisan, constitutional measure, colleagues on the other side of the aisle opted to use this issue to play politics before the election.

They redrafted the bill, changed crucial definitions, and offered a new version. Facing the recess before the mid-term elections, we were stymied again.

Even after the election, however, during our lame duck session, I have continued to work with Senator HATCH to pass this legislation through the Senate. As I had stated I would do prior to the election, I called a meeting of the Judiciary Committee yesterday. In the last meeting of the Judiciary Committee under my Chairmanship in the 107th Congress, I placed S. 2520, the Hatch-Leahy PROTECT Act, on the agenda again. At that meeting the Judiciary Committee approved this legislation, as amended. We agreed on a substitute and to improvements in the victim shield provision that I authored. Although I did not agree with two of Senator HATCH's amendments because I thought that they risked having the bill declared unconstitutional, I nevertheless both called for the Committee to approve the bill and voted for the bill in its amended form.

I then sought, that same day, to gain the unanimous consent of the full Senate to pass S. 2520 as reported by the Judiciary Committee, and I worked with Senator HATCH to clear the bill on both sides of the aisle. I am pleased that late last night that the Senate passed

S. 2520 by unanimous consent. I want to thank Senator HATCH for his help clearing the bill for passage last night.

I am glad to have been able to work hand in hand with Senator HATCH on S. 2520, the PROTECT Act, a bill that gives prosecutors and investigators the tools they need to combat child pornography. The Hatch-Leahy PROTECT Act strives to be a serious response to a serious problem.

The provisions of the Hatch-Leahy bill, S. 2520, as we introduced it are bipartisan and good faith efforts to protect both our children and to honor the Constitution. At our hearing last month, Constitutional and criminal law scholars—one of whom was the same person who warned us last time that the CPPA would be struck down—stated that the PROTECT Act could withstand Constitutional scrutiny, although there were parts that were very close to the line.

Unfortunately these experts could not say the same about the administration's bill, which seems to challenge the Supreme Court's decision, rather than accommodate the restraints spelled out by the Supreme Court. I have also received letters from other Constitutional scholars and practitioners expressing the same conclusion, which I will place in the RECORD with unanimous consent. The Administration's proposal and House bill simply ignore the Supreme Court's decision and reflect an ideological response instead of a carefully drawn bill that will stand up to scrutiny.

The PROTECT Act is a good faith effort, but it is not perfect and I would have liked to have seen some additional changes to the bill. Unfortunately, I could not obtain agreement to make the following modifications:

First, regarding the tip line, I would have liked to clarify that law enforcement agents cannot "tickle the tip line" to avoid the key protections of the Electronic Communications Privacy Act.

Second, regarding the affirmative defense, I would have liked to ensure that there is an affirmative defense for the new category of child pornography and for all cases where a defendant can prove in court that a specific, non-obscene image was made using not any child but only actual, identifiable adults.

Nevertheless, we were able to reach agreement in Committee on modifying the bill with my amendment to the victims' shield law by giving federal judges and prosecutors the discretion to override the new victim shield law when there is good cause, such as cases where the shield law is actually used as a sword by the defendant to help assert a defense.

As a general matter, I would have thought it far simpler to take the approach of outlawing "obscene" child pornography of all types, which we do in one new provision that I suggested. That approach would produce a law beyond any possible challenge. This ap-

proach is also supported by the National Center for Missing and Exploited Children, which we all respect as the true expert in this field.

Following is an excerpt from the Center's answer to written questions submitted after our hearing, which I will place in the RECORD in its entirety:

Our view is that the vast majority (99-100%) of all child pornography would be found to be obscene by most judges and juries, even under a standard of beyond a reasonable doubt in criminal cases. Even within the reasonable person under community standards model, it is highly unlikely that any community would not find child pornography obscene. . . .

In the post Free Speech decision legal climate the prosecution of child pornography under an obscenity approach is a reasonable strategy and sound policy.

Thus, according to the National Center for Missing and Exploited Children, the approach that is least likely to raise constitutional questions—using established obscenity law—is also an effective one.

Because that is not the approach we decided to use, I recognize that S. 2520 contains provisions about which some may have legitimate Constitutional questions. These provisions include:

A new "pandering" provision with a very wide scope;

a new definition of 'obscenity' that contains some, but not all, of the elements of the Supreme Court's test;

a new affirmative defense for pornography made not using any minors that does not apply to one new category of child pornography.

These provisions raise legitimate concerns, but in the interest of making progress I am pleased, as Chairman of the Judiciary Committee, to have tried to balance all the competing interests to produce a bill with the best chance of withstanding a constitutional challenge.

That is not everyone's view. Others evidently think it is more important to make an ideological statement than to write a law. A media report just this week on this legislation noted the wide consensus that S. 2520 is more likely than the House bill to withstand scrutiny, but quoted a Republican House member as stating: "Even if it comes back to Congress three times we will have created better legislation."

To me, that makes no sense. Why not create the "better legislation" right now for today's children, instead of inviting more years of litigation and putting at risk any convictions obtained in the interim period before the Supreme Court again reviews the constitutionality of Congress' effort to address this serious problem? That is what S. 2520 seeks to accomplish as drafted.

I want to commend Senator HATCH for working with me to include many other important provisions in the Hatch-Leahy bill that we developed together and are not as controversial. These include:

A tough new private right of action for victims of child pornography with punitive damages;

a victims' shield law to keep child victim's identity out of court and prevent them from suffering a second time in the criminal process;

a new notice provision designed to stop "surprise defenses;"

sentencing enhancements for recidivists and a directive to correct the disparity in the current sentencing guidelines that provides a lighter sentence for offenders who cross state lines to actually molest a child than for offenders who possess child pornography that has crossed State lines.

These provisions are important, practical tools to put child pornographers out of business for good and in jail where they belong.

I support S. 2520 as a good faith effort to protect our children and honor the Constitution, and the Committee substitute, which improved upon the original bill.

There were two amendments adopted in Committee to which I objected. I felt that they needlessly risked a serious constitutional challenge to a bill that already provided prosecutors the tools they needed to do their jobs. Let me discuss my opposition to two amendments offered by my good friend Senator HATCH that were adopted by voice vote by the Judiciary Committee.

Although I worked with Senator HATCH to write the new pandering provision in S. 2520, I do not support Senator HATCH's amendment, which criminalizes speech even when there is no underlying material at all—whether obscene or non-obscene, virtual or real, child or adult.

The pandering provision is an important tool for prosecutors to punish true child pornographers who for some technical reason are beyond the reach of the normal child porn distribution or production statutes. It is not meant to federally criminalize talking dirty over the internet or the telephone when the person never possesses any material at all. That is speech, and that goes too far.

The current pandering provision in S. 2520 is quite broad, and some have argued that it presents constitutional problems as written, but I thought that prosecutors needed a strong tool, so I supported Senator HATCH on the current provision.

I was heartened that Professor Schauer of Harvard, a noted First Amendment expert, testified at our hearing that he thought that the provision was Constitutional, barely.

Unfortunately, Professor Schauer has since written to me stating that this new amendment "would push well over the constitutional edge a provision that is now up against the edge, but probably barely on the constitutional side of it." I will place that letter and other materials in the RECORD with unanimous consent of the Senate.

Because this amendment endangers the entire pandering provision, because it is unwise, and because that section is already strong enough to prosecute

those who peddle child pornography, I oppose this amendment. Nevertheless, in light of the broader support for this amendment on the Committee, it was adopted over my objection.

Senator HATCH and I agree that legislation in this area is important. But regardless of our personal views, any law must be within constitutional limits or it does no good at all. Even though it is close to the line, I support S. 2520 as Senator HATCH and I introduced it in the Senate. Senator HATCH's amendment which would include all "virtual child pornography" in the definition of child pornography, in my view, crosses the constitutional line, however, and needlessly risks protracted litigation that could assist child pornographers in escaping punishment.

Although I joined Senator HATCH in introducing S. 2520, even when it was introduced I expressed concern over certain provisions. One such provision was the new definition of "identifiable minor." When the bill was introduced, I noted that this provision might "both confuse the statute unnecessarily and endanger the already upheld 'morphing' section of the CPPA." I said I was concerned that it "could present both overbreadth and vagueness problems in a later constitutional challenge."

The Supreme Court made it clear that we can only outlaw child pornography in two situations: No. 1, it is obscene, or No. 2, it involves real kids. That is the law as stated by the Supreme Court, whether or not we agree with it.

The "identifiable minor" provision in S. 2520 may be used without any link to obscenity doctrine. Therefore, what saves it is that it applies to child porn made with real "persons." The provision is designed to cover all sorts of images of real kids that are morphed or altered, but not something entirely made by computer, with no child involved. That is the provision as Senator HATCH and I introduced this bill.

The Hatch amendment adopted in Committee that redefined "identifiable minor" by creating a new category of pornography for any "computer generated image that is virtually indistinguishable from an actual minor" dislodged, in my view, that sole constitutional anchor. The new provision could be read to include images that never involved real children at all but were 100 percent computer generated.

That was never the goal of this provision and that was the reason it was constitutional. There are other provisions in the bill that deal with obscene virtual child pornography that I support. This provision was intended to ease the prosecutor's burden in cases where images of real children were cleverly altered to avoid prosecution.

I support the definition of 'identifiable minor' as we originally wrote and introduced it. Because Senator HATCH's amendment seriously weakened the constitutional argument supporting this entire provision, I op-

posed it. Nevertheless, given the broader support for this amendment on the Judiciary Committee it was been adopted, over my objection and I still sought passage of the bill, which we achieved last night.

Even though S. 2520 is not perfect, I was glad that I was able to work with Senator HATCH to secure its approval last night. I had hoped that the House of Representatives would adopt the bill before they recessed for the end of the year. That way, we could have sent a bill to the President for his signature right now. Instead, the House of Representatives' Republican leadership decided to adjourn without either taking up the Hatch-Leahy bill or working with us to resolve any differences. I hope that the House leadership will reconsider this decision and consider this measure, rather than start all over again in the next Congress. It is certainly unfortunate that the House Republican leadership would rather adjourn for a recess than take the opportunity to pass a bipartisan bill which passed the Senate unanimously.

As I have explained, I believe that this issue is so important that I have been willing to compromise and to support a measure even though I do not agree with each and every provision that it contains. That is how legislation is normally passed. Again, however, I fear that some in the Administration and the House have decided to play politics with this issue that is so important to our nation's children. I urge them to reconsider their "take it or leave it approach" and consider the Hatch-Leahy PROTECT Act—or at least come back to discuss our differences.

I ask unanimous consent that the letters and materials to which I referred be printed in the RECORD.

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

UNIVERSITY OF VIRGINIA  
SCHOOL OF LAW,  
Charlottesville, VA.

Senator PATRICK J. LEAHY,  
Chairman, Senate Committee on the Judiciary,  
Washington, DC.

DEAR CHAIRMAN LEAHY: On October 2, 2002, I testified before the Senate Judiciary Committee concerning S. 2520 and H.R. 4623. Each of these bills was drafted in response to Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389 (2002), in which the Supreme Court threw out key provisions of the federal child pornography laws. As I stated in my testimony, the new sections contained in S. 2520 have been carefully tailored with an eye towards satisfying the precise concerns identified by the Supreme Court. Recently, Senator Hatch offered an amendment in the nature of a substitute to S. 2520 (hereinafter "the Hatch Substitute"). I have examined the Hatch Substitute, and I believe that it contains a definition of child pornography that is nearly identical to the definition rejected by Free Speech Coalition. Therefore, the Hatch substitute is unlikely to survive constitutional challenge in the federal courts, and the Committee should decline to adopt it.

As you know, each of these bills contains some complicated provisions, including especially their definition sections. As you also

know, this complexity is unavoidable, for the Congress aims to intervene in and eliminate some of the complex law enforcement problems created by the phenomenon of virtual pornography. In the following comments, I will try to state my concerns about the Hatch Substitute as concisely as possible, while identifying the statutory nuances that are likely to generate significant constitutional questions in the event that the Hatch Substitute is enacted.

In Free Speech Coalition, the Supreme Court scrutinized provisions of the Child Pornography Prevention Act of 1996 ("CPPA") that were designed to eliminate obstacles to law enforcement created by virtual child pornography. The proliferation of virtual pornography has enabled child pornographers to escape conviction by arguing that it is so difficult to distinguish the virtual child from the real one that (1) the government cannot carry its burden of proving that the pornography was made using real children and/or (2) the government cannot carry its burden of providing scintilla evidence because the defendants believed that the images in their possession depicted virtual children, rather than real ones. In order to foreclose these arguments, the CPPA defined "child pornography" broadly so that it extended not only to a sexually-explicit image that had been produced using a real minor, but also to an image that "appears to be of a minor" engaging in sexually-explicit conduct. Free Speech Coalition rejected this definition of First Amendment grounds. The Court reaffirmed the holding of *New York v. Ferber*, 458 U.S. 747 (1982), under which the government is free to regulate sexually-explicit materials produced using real minors without regard to the value of those materials. However, the Court refused to extend the *Ferber* analysis to sexually-explicit materials that only appear to depict minors. The court noticed that many mainstream movies, as well as works of great artistic, literary, and scientific significance, explore the sexuality of adolescents and children. Such works, including ones that are sexually explicit, are valuable in the eyes of the community, and, as long as their production involves no real children, such works are protected by the First Amendment against governmental regulation.

In Free Speech Coalition, the Supreme Court expressly considered and rejected a number of arguments made by the Solicitor General on behalf of the CPPA definition. One of these arguments was that the "speech prohibited by the CPPA is virtually indistinguishable from child pornography, which may be banned without regard to whether it depicts works of value." In his opinion for the Court, Justice Kennedy explained that this argument fundamentally misconceived the nature of the First Amendment inquiry. Materials that satisfy the *Ferber* definition are regulable not because they are necessarily without value; to the contrary, *Ferber* itself recognized that some child pornography might have significant value. Indeed, the Court there reasoned that the ban on the use of actual children was permissible in part because virtual images—by definition, images "virtually indistinguishable" from child pornography—were an available and lawful alternative. Hence, as Justice Kennedy put it: "*Ferber*, then, not only referred to the distinction between actual and virtual child pornography, it relied on [the distinction] as a reason supporting its holding. *Ferber* provides no support for a statute that eliminate the distinction and makes the alternative mode criminal as well."

S. 2520 aims to reform the CPPA in ways that are sensitive to these First Amendment value judgments. By contrast, the Hatch Substitute proposes that the Congress should

reenact a definition that is almost identical to the one that the Supreme Court just rejected. In the Hatch Substitute, the definition of child pornography would cover, among other things, sexually-explicit materials whose production involved the use of an "identifiable minor." The Hatch Substitute defines "identifiable minor" as including a "computer or computer generated image that is virtually indistinguishable from an actual minor." As I explained above, the Solicitor General suggested in Free Speech Coalition that the First Amendment would be satisfied if the Supreme Court limited the CPPA to depictions that are "virtually indistinguishable" from child pornography, and the Court rejected that interpretation. To put it mildly, it is hard to imagine that the Supreme Court would be inclined to view the Hatch Substitute as a good faith legislative responses to Free Speech Coalition when all it does is reenact a definition that the Court there expressly considered and disapproved. You will notice that I here am paraphrasing the definition provisions in the Hatch Substitute and omitting some of their complexity. In particular, the Hatch Substitute provides a further definition of the phrase "virtually indistinguishable," requiring that the quality of the depiction be determined from the viewpoint of an "ordinary person" and providing an exception for "drawings, cartoons, sculptures, or paintings." But neither the definition of "identifiable minor" nor these refinements of "virtually indistinguishable" are calculated to satisfy the concerns raised in Free Speech Coalition. As Justice Kennedy explained for the Court, an absolute ban on pornography made with real children is compatible with First Amendment rights precisely because computer-generated images are an available alternative, and, yet, the Hatch Substitute proposed to forbid the computer-generated alternative as well. Likewise, an exception for cartoons and so forth is insensitive to the Supreme Court's commitment to protect realistic portrayals of child sexuality, a commitment that is clearly expressed in the Court's recognition of the value of (among other things) mainstream movies such as *Traffic* and *American Beauty*.

In this regard, you will notice that the Hatch Substitute closely resembles some of the defective provisions of H.R. 4623, which would prohibit virtual child porn that is "indistinguishable" from porn produced with real minors. Unlike S. 2520, both H.R. 4623 and the Hatch Substitute seem to embody a decision merely to endorse the unconstitutional portions of the CPPA all over again. The Committee should refuse to engage in such a futile and disrespectful exercise. The law enforcement problems posed by virtual pornography are not symbolic but real, and the Congress should make a real effort to solve them. In my judgment, S. 2520 is a real effort to solve them, and the Committee should use S. 2520 as the basis for correcting the CPPA.

The Hatch Substitute contains additional innovations that the Committee should study carefully. Because this letter already is too long, I will allude to only one of them here. The "pandering" provision set forth in the Hatch Substitute contains some language that strikes me as being both vague and unnecessarily broad, and the provision therefore is likely to attract unfavorable attention in the federal courts. The Hatch pandering provision would punish anyone who "advertises, promotes, presents, distributes, or solicits . . . any material or purported material in a manner that conveys the impression that the material or purported material" is child pornography. To be completely candid, I am not sure that I understand what problems would be solved by defining the

items that may not be pandered so that they include not only actual "material," but also "purported material." I suppose that there might be cases where a person offers to sell pornographic materials that do not actually exist and that the person might make the offer in a manner that violates the pandering prohibition. If that is the problem that the drafters of the Hatch Substitute have in mind, it seems that they might solve that problem more cleanly by adding the word "offers" to the list of forbidden conduct and deleting the references to "purported material." (In other words, the provision would punish anyone who "advertises, offers, promotes, presents, distributes, or solicits through the mails . . . any material in a manner that conveys the impression that the material" is child pornography.) If that is not the problem that the Hatch Substitute has in mind, I would suggest that the drafters identify the problem precisely and develop language that is clearer and narrower than the phrase "purported material," for that ambiguous term is likely to generate First Amendment concerns that otherwise could and should be avoided.

Respectfully yours,

ANNE M. COUGHLIN,

*Class of 1948 Research Professor of Law.*

THE COMMUNITARIAN NETWORK,

*Washington, DC, October 11, 2002.*

Hon. PATRICK J. LEAHY,

*Chairman, U.S. Senate, Committee on the Judiciary, Washington, DC.*

DEAR CHAIRMAN LEAHY: I want to thank you for your efforts to protect American children by filling the gap left by the Supreme Court's decision to strike down the Child Pornography Prevention Act. *Ashcroft v. Free Speech Coalition* dealt a blow to those who appreciate the important role the federal government must play in protecting young people from those who would exploit them. Your efforts to craft a bill, the PROTECT Act, that will withstand Constitutional scrutiny deserves the public's applause.

I would like to draw your attention to a similar, but separate, matter that also reflects on the health and security of our children in regards to pornography. Like the Child Pornography Prevention Act, the Child Internet Protection Act (CIPA), which was passed by the 106th Congress, has been struck down by the federal judiciary. In *American Library Association, et al. v. United States of America, et al.*, a District Court in Pennsylvania threw CIPA out, arguing that its efforts to prevent children from exposure to harmful material on school and library computers amounted to a violation of the First Amendment. The Justice Department has appealed that case to the Supreme Court, where the lower court's decision will very likely be upheld. Unfortunately, as Harvard Law School professor Frederick Schauer testified at the hearing you recently held on CPPA, "constitutionally suspect legislation under existing Supreme Court interpretation of the First Amendment, whatever we may think of the wisdom and accuracy of those interpretations, puts the process of [prosecution] . . . on hold while the . . . courts proceed at their own slow pace."

I think we ought not wait for what will likely be a disappointing conclusion. Rather, I hope you will lead an effort to craft new legislation which (1) passes Constitutional muster, and (2) better enables schools and libraries to protect children from harmful images and websites. Let me take a moment to delimit how exactly a new, improved Children's Internet Protection Act would differ from the bill passed by the 106th Congress.

First, a new bill should distinguish clearly between measures affecting adults and minors. Though the title of the legislation is



the Children's Internet Protection Act, it requires technology protection measures on all computers with Internet access, regardless of the age of the patron using each computer. If the aim is to protect minors, it is unnecessary to put filters on every computer in a library. This, of course, was one of the District Court's primary concerns. I hope you will draft legislation requiring separate computers for adults and minors. All those under 18 should be required to use filtered computers, unless accompanied by a parent or teacher. Those over 18 should have access to un-filtered computers in a separate area. In smaller facilities, where only one computer is available, special adult hours could be set during which the filter is disabled and only adults may use the computer. The rest of the time a filter would be in place.

Second, I would encourage you to incorporate language that distinguishes children 12 and under from teenagers 13-18. Teenagers have greater capacities to process information than children, as well as different needs for information. In recognition of this, I would hope that your new bill would require different policies for children and teenagers, such as providing different filter settings.

Third, I hope you will consider expanding the scope of your bill to include provisions that protect minors from violent images as well as sexual ones. I realize that limiting the access of children to violent content poses a potentially more difficult constitutional question, but based on the weight of social science evidence showing the harm caused to children by violence in the media, I believe that violence must be included in any definition of content that is "harmful to children."

To further explain the reasoning behind these recommendations, I am enclosing a law review article, "On Protecting Children from Speech," which will be published next fall in the Chicago-Kent Law Review. I would welcome the opportunity to discuss our position with you further. In the meantime, please feel free to contact Marc Dunkelman, Assistant Director of the Communitarian Network, with any questions. Thank you for your consideration.

Sincerely,

AMITAI ETZIONI.

May 13, 2002.

Chairman PATRICK J. LEAHY,  
U.S. Senate Judiciary Committee  
Washington, D.C.

DEAR CHAIRMAN LEAHY: We write to express our grave concern with the legislation recently proposed by the Department of Justice in response to the Supreme Court's decision in *Ashcroft, et al. v. The Free Speech Coalition, et al.*, No. 00-795 (Apr. 16, 2002). In particular, the proposed legislation purports to ban speech that is neither obscene nor unprotected child pornography (indeed, the bill expressly targets images that do not involve real human being at all). Accordingly, in our view, it suffers from the same infirmities that led the Court to invalidate the statute at issue in *Ashcroft*.

We emphasize that we share the revulsion all Americans feel toward those who harm children, and fully support legitimate efforts to eradicate child pornography. As the Court in *Ashcroft* emphasized, however, in doing so Congress must act within the limits of the First Amendment. In our view, the bill proposed by the Department of Justice fails to do so.

Respectfully submitted,

Jodie L. Kelley, Partner, Jenner & Block, LLC; Washington, DC.

Erwin Chemerinsky, Sydney M. Irmas Professor of Public Interest Law, Legal Ethics and Political Science, University of Southern California, Law School; Los Angeles, CA.

Paul Hoffman, Partner, Schonbrun, DeSimone, Seplow, Harris & Hoffman, LLP; Venice, CA.

Adjunct Professor, University of Southern California Law School; Los Angeles, CA.

Gregory P. Magarian, Assistant Professor of Law, Villanova University School of Law; Villanova, PA.

Jamin Raskin, Professor of Law, American University, Washington College of Law; Washington, DC.

Donald B. Verrilli, Jr., Partner, Jenner & Block, LLC; Washington, DC.

HARVARD UNIVERSITY,  
Cambridge, MA, October 3, 2002.

Re S. 2520.

HON. PATRICK LEAHY,  
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR LEAHY: Following up on my written statement and on my oral testimony before the Committee on Wednesday, October 2, 2002, the staff of the Committee has asked me to comment on the constitutional implications of changing the current version of S. 2520 to change the word "material" in section 2 of the bill (page 2, lines 17 and 19) to "purported material."

In my opinion the change would push well over the constitutional edge a provision that is now right up against that edge, but probably barely on the constitutional side of it.

As I explained in my statement and orally, the Supreme Court has from the *Ginzburg* decision in 1966 to the *Hamling* decision in 1973 to the *Free Speech Coalition* decision in 2002 consistently refused to accept that "pandering" may be an independent offense, as opposed to being evidence of the offense of obscenity (and, by implication, child pornography). The basic premise of the pandering prohibition in S. 2520 is thus in some tension with more than thirty-five years of Supreme Court doctrine. What may save the provision, however, is the fact that pandering may also be seen as commercial advertisement, and the commercial advertisement of an unlawful product or service is not protected by the Supreme Court's commercial speech doctrine, as the Court made clear in both *Virginia Pharmacy* and also in *Pittsburgh Press v. Human Relations Commission* 413 U.S. 376 (1973). It is important to recognize, however, that this feature of commercial speech doctrine does not apply to non-commercial speech, where the description or advocacy of illegal acts is fully protected unless under the narrow circumstances, not applicable here, of immediate incitement.

The implication of this is that moving away from communication that could be described as an actual commercial advertisement decreases the availability of this approach to defending Section 2 of S. 2520. Although it may appear as if advertising "material" that does not exist at all ("purported material") makes little difference, there is a substantial risk that the change moves the entire section away from the straight commercial speech category into more general description, conversation, and perhaps even advocacy. Because the existing arguments for the constitutionality of this provision are already difficult ones after *Free Speech Coalition*, anything that makes this provision less like a straight offer to engage in a commercial transaction increases the degree of constitutional jeopardy. By including "purported" in the relevant section, the pandering looks less commercial, and thus less like commercial speech, and thus less open to the constitutional defense I outlined in my written statement and oral testimony.

I hope that this is helpful.

Yours sincerely,

Frederick Schauer,  
Frank Stanton Professor of the  
First Amendment.

THE MEDIA COALITION INC.,  
New York, NY, September 23, 2002.

Re S. 2520 and H.R. 4623.

Senator PATRICK J. LEAHY,  
Chairman, Committee on the Judiciary, Washington, DC

Sen. ORRIN G. HATCH,  
Ranking Republican Member, Committee on the Judiciary, Washington, DC

DEAR SENATORS LEAHY AND HATCH: I am General Counsel of The Media Coalition, a trade association whose members represent most of the publishers, booksellers, librarians, periodical wholesalers and distributors, movie, recording and video game manufacturers, and recording and video retailers in the United States. While Media Coalition and its members unanimously deplore child pornography and support prosecution of offenders, they are also concerned that the dictates of the First Amendment remain inviolate, even as to material that one finds to be offensive.

The Media Coalition and its members believe that the various attempts to respond to the decision in *Ashcroft v. Free Speech Coalition*, 122 S.Ct. 1389 (2002), are unconstitutional and problematic in a number of respects, as described below.

S. 2520

1. As to proposed § 2525A(a)(3)(B)—the "pandering" provision—it seems to criminalize commercial fraud as child pornography. *Ginzburg v. U.S.*, 383 U.S. 463 (1966), held only that pandering could convert borderline non-obscene material into obscenity. ("Where the purveyor's sole emphasis is on the sexually provocative aspects of his publications, that fact may be decisive in the determination of obscenity.") This goes much further. It applies without regard to the nature or quality of the material "pandered".

2. Proposed § 2525A(c) adds an affirmative defense that, for computer-generated images, each pictured person was an adult and, for virtual child pornography, it was not produced using any actual minor. With respect to non-virtual child pornography, this results in a reversal of the usual burden of proof. In a prosecution for traditional child pornography (e.g., as defined in § 2256(8)(A)), one of the elements of the crime that the government must prove is that the production of the material involved the use of a minor. Further, under *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994), in the case of a librarian, retailer or distributor, the government must prove that he or she knew that the material was of an actual minor. This proposal impermissibly and unconstitutionally shifts this burden.

With respect to virtual child pornography, there are similar constitutional problems. The Supreme Court in *Free Speech Coalition* found that the evil in child pornography, and the basis for excluding it from First Amendment protection, is the unlawful conduct vis-a-vis an actual child. Thus, the Court held that, unless an actual child is used and thus abused in the creation of the material, there can be no crime as to otherwise First Amendment-protected material. The government must provide this necessary factual predicate. To shift the burden of proof as to this necessary element of the crime to the defendant is unconstitutional, even putting aside the often impossible task of proving the negative—that no child was used.

3. S. 2520 also amends the record-keeping provisions, which themselves have had a checkered constitutional history, having

been held unconstitutional (*ALA v. Thornburgh*, 713 F. Supp. 469 (D.D.C. 1989)), revised in 1990, again held unconstitutional by the District Court (*ALA v. Barr*, 794 F. Supp. 412 (D.D.C. 1992)), held constitutional, although certain regulations were invalidated (*ALA v. Reno*, 33 F. 3d 78 (D.C. Cir. 1994)), and subsequently the Tenth Circuit has held a regulation more central to the regulatory scheme unconstitutional (*Sundance Assocs. Inc. v. Reno*, 139 F. 3d 804 (10th Cir. 1998)). Throughout, however, the records kept have been barred from use in prosecutions other than for the failure to keep the records.

S. 2520 would permit the use of the record-keeping records in a child pornography prosecution. However, requiring producers to maintain records at the risk of criminal liability for not doing so, which records can be used against them in a child pornography prosecution, violates the constitutional prohibition against mandatory self-incrimination.

4. Finally, there is a provision in Section 9 creating a new §2252A(f), which is particularly pernicious. It permits a person aggrieved by reason of child pornography to commence a civil action for injunction relief and compensatory and punitive damages. First, it is vague, since both the grievance and the person aggrieved are apparently in unlimited, undefined categories; and the potential civil defendant is in another unlimited, undefined category. Moreover, apparently a defendant is liable whether or not he or she knows of the minority of the child. And, since it applies to both the pandering and "appears to be" prongs of the statute, there may be civil liability even when no child is involved.

Most important, it opens a Pandora's Box. Under state law, a person using a minor to create child pornography is not only criminally liable, but is also liable to the child whom he or she has used. But to open the protected class to parents, spouses, etc. and the defendant class to distributors, retailers, etc. is inappropriate and ultimately harmful to legitimate First Amendment interests. It raises the specter of the Pornography Victims Compensation Act, which raised such an outcry that it failed to pass Congress.

H.R. 4623

A. Section 3(a) of the Bill criminalizes as child pornography computer images as long as they are, or are indistinguishable from, actual child pornography. The majority in *Free Speech Coalition* clearly held that unless material either meets the *Ferber* test, which protects children exploited in the production process, or is obscene under, *Miller v. California*, it is protected by the First Amendment. Like the material covered by the unconstitutional CPPA, the material described in the "indistinguishable from" portion of section 3(a) does not involve or harm any children in the production process. Thus, section 3(a) is unconstitutional under *Free Speech Coalition*.

B. Section 3(c) of the Bill provides an affirmative defense to a child pornography prosecution that no actual child was involved in the creation of the material. Thus, despite section 3(a) discussed above, the Bill actually permits computer-generated sexually explicit depictions of minors (other than pre-pubescent minors and computer morphing which appears as an identifiable minor), if the defendant meets the burden of proving the affirmative defense. (Curiously, the provision limiting the defense excludes material defined in §2256(8)(A), i.e., that which used an actual minor in its production. Read plainly, that suggests that in a non-computer child pornography case, one cannot escape liability by proving that only

adults were photographed. It is unlikely that this is what was intended.)

As Justice Kennedy, writing for the Court, says in *Free Speech Coalition* (122 S.Ct. at 1404), shifting the burden of proof on an element of the crime raises serious constitutional issues. In fact, in the First Amendment context, we believe that shift is unconstitutional; among other things, it violates *Smith v. California*, 361 U.S. 147, 153 (1959) in that it eliminates the requirement that the government prove knowledge of minority by shifting the burden of proof to the defendant. Thus, defendant must prove a negative—that no children were used—a difficult chore, particularly if the computer programmer-designer is not available or known to the defendant. Finally, under *United States vs. X-Citement Video, Inc.*, 513 U.S. 64 (1994), in the case of a librarian, retailer or distributor, the government must prove that he or she knew that the material was of an actual minor. This proposal impermissibly and unconstitutionally shifts this burden.

C. Section 4 creates a crime of pandering child pornography, defined as the sale or offer of material intending to cause the purchaser or offeree to believe that the material is child pornography, whether it is or not. Similarly, one who accepts or attempts to receive or purchase material, believing it to be child pornography (whether or not it is such), is also guilty of this new crime. This, in effect, transforms consumer fraud into a felony. Once could be selling copies of *Mary Poppins* or the Bible, but if one intends to cause the buyer to believe that the book contains a visual depiction of a minor engaging in sexual conduct, it is a felony. In fact, the Bill goes one step further and provides that the crime can be committed even though no person actually provides, sells, receives, purchases, possesses or produces any visual depiction (e.g., selling an empty box). In effect, it criminalizes the intent to market or to procure child pornography if some action is taken to effectuate that desire, even if the material actually is not child pornography. As discussed above, this seems to go significantly further than *Ginzburg v. U.S.* permits and is therefore likely unconstitutional.

D. The first portion of section 5 of the Bill (new 18 USC §1466A) provides that computer images of persons indistinguishable from pre-pubescent children in sexually explicit conduct are punishable as child pornography. (A pre-pubescent child is defined as a child whose "physical development indicates" the child is 12 or younger, or who "does not exhibit significant pubescent physical or sexual maturation." "Indistinguishable" is defined as "virtually indistinguishable, in that . . . an ordinary person . . . would conclude that the depiction is of an actual minor" engaging in sexual acts. Drawings, cartoons, sculptures and paintings are excluded.) This is based on Justice O'Connor's distinction between virtual youthful-adult and virtual-child pornography. However, there appears to be no requirement under 1466A that minors were involved in the creation of the depiction. Thus, it falls under *Free Speech Coalition*.

E. The second part of §5 of the Bill is new §1466B, which appears to be similar to §1466A except it does not have the "indistinguishable" concept and it does apply to drawings, cartoons, sculptures and paintings. Thus it seems directly contrary to the *Free Speech Coalition* holding, differing only in its limited application only to depictions of younger children (i.e., 12 and under). Further, it appears that material covered by §1466A is a subset of that covered by §1466B, and would be covered by both.

Media Coalition and its members urge you and the other members of the Judiciary Committee not to approve either of these

bills. Not only are they clearly unconstitutional, but passage of either bill would result in constitutional challenges that could be exploited by person charged with possession of actual child pornography.

Sincerely yours,

MICHAEL A. BAMBERGER,  
General Counsel.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred January 11, 2002, in New York, NY. A gay man, Eric D. Miller, 26, was shot in the chest on a Harlem street by a man who shouted anti-gay remarks at him, according to police. Miller and his partner were walking down a street when they were confronted by two men who became enraged at the sight of the couple. The assailants yelled, "Black men shouldn't be gay," and threw rocks and bottles at the victims. During an ensuing scuffle, one of the assailants shot Miller in the chest. Miller was treated at a local hospital and released.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### IN HONOR OF THE NATION'S VETERANS

Mr. SANTORUM. Mr. President, I rise today in celebration of National Veterans Awareness Week, a time to commemorate and appreciate all the men and women who have served in America's Armed Forces. The week of November 10, 2002, is for honoring the soldiers, sailors, airmen, and marines—some now gone, and some still alive—who have fought to protect our freedoms and liberties.

The Nation's veterans have often stood as the last barrier between our country and the terrors of fascism, communism, and anarchy. They have waged war, kept peace, and deterred the threat of the unknown. The work of those in uniform is dangerous and difficult; it requires a personal commitment and sacrifice, as well as the patience and support of their families. Members of the armed services have a brave, admirable responsibility and a privileged perspective of history. It is with deepest respect that I thank them for their courage and their continued dedication to our Nation's security.

Pennsylvania is the proud home of more than a million veterans, all of

whom have demonstrated their love of country in defending our borders and our way of life. But in remembering and applauding their service, we must also recognize America's next veteran generation: the men and women in uniform today. Our duty as lawmakers is to ensure that our service members' commitment to the Nation is matched by the Government's diligence in preparing them to face our current and future threats. Also important is the quality of life that these service members and their families deserve. It should, therefore, be a priority to improve the salaries, benefits, and facilities that our military men and women, and their families, rely upon.

America's troops on the ground, on the sea, and in the air make up the most capable military force in all the world, and their equipment and support systems should be nothing less than first rate. The current war on terrorism and the changing threats of the 21st century demand a new level of readiness from our military that can only be met with better funding and more effective programs. The Nation's Armed Forces need to be prepared for the realities of a new security paradigm and a new kind of combat. Last year's terrorist attacks have changed our understanding of modern warfare and the need to protect our cities and our citizens. And in response to this realization, the Senate has passed legislation to increase spending so that our military can be equipped and trained to counter the world's growing, nontraditional threats.

We owe much to our veterans: respect and admiration, in addition to appropriate retirement and healthcare benefits. We can most greatly honor these men and women, however, by focusing on the needs of the current service members who will one day be veterans themselves. We must support their mission today so that we can celebrate their accomplishments tomorrow. I encourage my colleagues and my fellow Americans to join me in paying tribute to the veterans, past, present and future, who are an indispensable part of what makes our country the greatest in the world.

#### NOMINATION OF JAMES L. JONES TO BE SUPREME ALLIED COM- MANDER, EUROPE, SACEUR

Mr. LEAHY. Mr. President, I rise today to speak about the nomination of Gen. James Jones to be Supreme Allied Commander in Europe. General Jones has served in the Marine Corps with tremendous skill and dedication, and I know he will make an equally effective U.S. and NATO commander in Europe.

I first met General Jones when he served as a Corps liaison here in the U.S. Senate in the mid-1980s. Like other Marines, then Major Jones was quiet about his war record but I learned he served gallantly in Vietnam. In some of the worldwide travel that

the Corps supported and he helped arrange, I quickly realized that the service had itself a man of exceptional intellect, skill, and determination. In other words, the Corps possessed a leader in every sense of the word.

Despite his fluent French and obvious sense of diplomacy, General Jones is foremost a warrior and his career is dominated by such critical assignments as commanding the 24th Marine Expeditionary Unit. I visited this prestigious unit when it participated in Operation Provide Comfort after the Gulf War. One of the most impressive sights I have ever seen was then Colonel Jones giving crisp orders to his Marines only miles outside of the Iraqi town of Zaku while Air Force A-10 Thunderbolts provided aerial cover. He brought his typical professionalism to other combat-related assignments.

As the 32d Commandant of the Marine Corps, General Jones has served exceptionally. Under his leadership, the Marine Corps has developed new capabilities that will help America's 9-1-1 force to operate effectively at greater distances. In response to September 11 attacks, General Jones ordered the creation of a new unit to protect the country domestically, in addition to inspiring Marines to serve in truly outstanding action in Afghanistan and across the turbulent Middle East.

It is a testament to his achievements and character that the President selected General Jones to become the Supreme Allied Commander, Europe. General Jones will be the first Marine to take on this most prestigious military command. He faces a number of challenges, including navigating the expansion of the Atlantic Alliance along with the prosecuting the war on terrorism. He will command an enormous Area of Responsibility, including much of Africa where the AIDS/HIV epidemic promises to create untold security instabilities. If anyone is up to leading allied forces to protect our interests and promote our values it is Jim Jones.

Marcelle and I wish General Jones and his wife Diane all the best as they move to Mons, Belgium. Based on our friendship and contact over the years, I know he will make us proud. I congratulate him, and, as an American, I am thankful our country has his services.

#### ANTON'S LAW, H.R. 5504

Mr. FITZGERALD. Mr. President, I rise today to applaud the passage of Anton's Law, H.R. 5504, by the House of Representatives.

I introduced the Senate version of Anton's Law, S. 980, in May 2001. S. 980 is named in memory of Anton Skeen, a four-year-old who was killed in a car crash in Washington State. Anton's mother Autumn—a national passenger safety advocate—believes that Anton's life could have been saved had he been riding in a booster seat. Designed specifically to help standard adult seat belts fit better, booster seats are used

to protect children who have outgrown their car seats but are still too small to fit properly in an adult-sized safety belt. On average, children in this group range from 4 to 8 years of age, weigh 40 to 80 pounds, and are less than 4 feet 9 inches tall. It has been reported that only about 5 to 6 percent of these 19.5 million U.S. children are using booster seats. In 2000, 721 children aged five to nine were killed and 103,000 were injured in car accidents.

The Senate Committee on Commerce, Science and Transportation approved Anton's Law in August 2001, and the Senate passed the measure by unanimous consent on February 25 of this year. Last month, in order to help ensure that this important measure is placed on the President's desk for signature before the end of the year, the Senate Commerce Committee accepted my amendment to insert Anton's Law in the Senate version of the National Transportation Safety Board Reauthorization bill, S. 2950, which the Committee then approved by unanimous consent. I would like to thank all of my colleagues for their continued support of this bipartisan legislation that will help to improve the safety and effectiveness of child restraints in automobiles and protect our Nation's young people.

Like the bill that I introduced in this body, the bill that was passed yesterday by the House of Representatives will improve the safety of children from 4 to 16 years old by requiring the Secretary of Transportation to initiate a rulemaking regarding establishing performance standards for child restraints, especially for booster seats, for children weighing more than 50 pounds. This measure will also lead to the development of a 10-year-old dummy that can be used to test child restraint devices. It also requires automobile manufacturers to install three-point lap and shoulder belts in all rear seating positions of passenger vehicles.

Since February, I have been working to have this measure passed by the House, and I commend them for the work that they have done on this important issue. While I am happy that Anton's Law will finally be presented to the President, this bill represents only part of what the Senate sought to accomplish when we passed Anton's Law in February. The Senate's version of Anton's Law, unlike the House bill, contained provisions that would extend for 2 years a Federal grant program for States to promote child passenger safety and education, and that would encourage State action by providing States with financial incentives to adopt mandatory booster seat laws by 2004. Absent this incentive grant program, States will have little impetus to promulgate the laws needed to adequately protect this group of children. As I have already mentioned, the version of Anton's Law passed by the Senate this year has been incorporated in the Senate's version of the National Transportation Safety Board Reauthorization bill. I urge the conferees

from both the House and the Senate to retain these grant provisions in the conference report of this bill.

I thank Congressman SHIMKUS and Chairman TAUZIN for their work in securing passage of Anton's Law by the House of Representatives, and urge President Bush to sign this necessary child safety bill into law as soon as possible.

#### 2001 FEDERAL BUREAU OF INVESTIGATION UNIFORM CRIME REPORT

Mr. LEVIN. Mr. President, according to the Federal Bureau of Investigation's Annual Uniform Crime Report for 2001, 15,980 people were murdered last year; 8,719 of the 15,980 deaths were caused by a firearm, and of those murders, 6,790 were caused by a handgun. Six hundred and seventy-two murders occurred in my home State of Michigan. These numbers are staggering. There are several commonsense bills in the Senate that would reduce gun violence and gun crime, and I am disappointed that it appears that the 107th Congress will come to a close without the enactment of meaningful gun safety legislation.

On April 24, 2001, Senator REED introduced the Gun Show Background Check Act. This bill would close a loophole in the law which allows unlicensed private gun dealers to sell guns without performing a National Instant Criminal Background System check. I cosponsored that bill because I believe it would be an important tool to prevent guns from getting into the hands of criminals and other people prohibited from owning a firearm.

I am also a cosponsor of Senator DURBIN's Children's Access Prevention Act. Under this bill, adults who fail to lock up a loaded firearm or an unloaded firearm with ammunition would be held liable if the weapon is taken by a child and used to kill or injure themselves or another person. The bill also increases the penalties for selling a gun to a juvenile and creates a gun safety education program that includes parent-teacher organizations, local law enforcement and community organizations. This bill is similar to a bill President Bush signed into law during his tenure as the Governor of Texas.

More recently, I cosponsored Senator KOHL's Ballistics, Law Assistance, and Safety Technology Act, or BLAST Act, which would require licensed firearms manufacturers to test fire firearms, and prepare ballistics images of the fired bullets and casings of new firearms. Expanding the National Integrated Ballistics Information Network to include these ballistics images would increase the crime gun tracing capabilities of the Bureau of Alcohol, Tobacco, and Firearms. ATF agents could quickly identify firearms by using the ballistics images of cartridge casings and bullets recovered at crime scenes, even when criminals obliterate the serial number.

In recent months, we have seen snipers with an assault rifle kill people around the country and a student at the University of Arizona go to his school and kill three of his teachers and himself. These events represent only a few of the thousands of murders that have already occurred this year. These brutal killing sprees were given national media attention, and hopefully will generate legislative action. While there is little time left in the 107th Congress to address these issues, it is critical that we press for consideration of these issues early in 108th Congress.

#### THE CONFIRMATION OF 98 JUDICIAL NOMINEES

Mr. LEAHY. Mr. President, yesterday the Senate confirmed the 98th judicial nominee of President George W. Bush.

These past 16 months, since the reorganization of the Senate Judiciary Committee following the change in majority last year, have been an historic and impressive period in which we have fairly considered hundreds of the President's executive and judicial branch nominees. Despite partisan rhetoric to the contrary, the Senate has done a good job.

If this Senate had a "lousy" record on judicial confirmations, then the Republican leadership, which controlled the pace on confirmations from 1995 through the first part of 2001, must have been far, far worse than "lousy". Under Republican control judicial vacancies on the Courts of Appeals more than doubled, from 16 to 33, and overall vacancies rose from 65 to 110. We have heard no criticism from the White House of that period, in which Senate Republicans blocked President Clinton's nominees. We have heard no apologies from the Republican leadership that engineered those efforts.

Just last night, in one night, the Democratic-led Senate confirmed more judges, 18, including more circuit judges, than the Republican-led Senate allowed to be confirmed in the entire 1996 session more in one day than Republicans were willing to proceed on for an entire year. Seventeen of those judges were the nominations we were able to get reported from the Committee on October 8 with some significant effort and in spite of Republican efforts to divert the Committee into other matters.

This week the Committee met, again, as I had said it would. We considered the nominations of Dennis Shedd and Michael McConnell and voted on them as the 101st and 102nd judicial nominations voted on by the Committee during the last 16 months and reported them to the Senate. One hundred judicial nominations have now been reported favorably to the Senate by the Judiciary Committee during the past 16 months; two were rejected. One indication of the fairness with which we have conducted ourselves is that as

chairman I have proceeded to consider nominations that I do not support and the Committee has reported nominations that I do not support to the Senate. As I said during this week's Committee consideration of the Shedd nomination, for example, having examined his record as a District Court Judge, I intend to vote against his nomination to the Court of Appeals for the Fourth Circuit.

With the Senate's actions last night, we have confirmed 98 of this President's judicial nominees in only 16 months. This compares most favorably to the 38 judicial confirmations averaged per year during the six and one-half years when the Republican majority was in control of the Senate. Last night, the Senate confirmed another 18 judicial nominees. In the entire 1996 session over the course of an entire year, the Republican majority allowed only 17 district court judges to be confirmed all year and would not confirm a single circuit court nominee—not one. Last night, the Democratic-led Senate confirmed all 17 district court nominees reported to the Senate by the Judiciary Committee after our October 8 business session as well as a 6th Circuit nominee from Kentucky. The Democratic-led Senate exceeded in one day what it took the Republican majority of the Senate an entire year to accomplish. That should put our historic demonstration of bipartisanship toward this President's judicial nominees in perspective.

The 17 district court nominees confirmed last night were on the Senate calendar because, on October 8, the Senate Judiciary Committee was able to report those nominations despite unparalleled personal attacks by Republicans on me as chairman. The circuit court nominee confirmed last night, Professor John Rogers, is the second of this President's judicial nominees confirmed to the Sixth Circuit this year. They are the first confirmations to the 6th Circuit since 1997, when Republicans for four years shut down consideration of President Clinton's nominees to that circuit. Three of President Clinton's nominees to that court were never allowed a hearing by the Republican majority; the Democratic majority has, in contrast, proceeded to confirm two new judges to that same circuit court.

The hard, thankless, but steady work of the Democratic members of the Judiciary Committee has reduced judicial vacancies substantially during these last 16 months. We inherited 110 vacancies and an additional 49 have arisen since July 10, 2002. Today, after 98 confirmations, district and circuit court vacancies combined number only 60—not the more than 150 vacancies that would exist had we shut down the process or the 111 vacancies that would exist if we had followed the Republican pace of confirmation during the Clinton administration. The President has failed to send nominations for almost half of the 60 current vacancies on the

district and circuit courts and only 11 of his remaining nominees have both home-State consent and ABA ratings. Despite false attacks on our record, the Senate has acted with bipartisanship, fairness and expedition on this President's judicial nominees, confirming 98 in just 16 months. We have reduced judicial vacancies from the 110 we inherited to fewer than the 65 vacancies the Republicans began with when they took over the Senate in 1995. Unlike the Republican majority that allowed judicial vacancies grow, we have outpaced attrition and reduced the overall level of vacancies, including the vacancies on the circuit courts.

#### IN MEMORY OF LIVES LOST IN THE BERING SEA ON OCTOBER 20, 2002

Mrs. MURRAY. Mr. President, I rise today to express my condolences to the families and friends of men who lost their lives recently because of an accident aboard the *Galaxy*, which was fishing for cod in the Bering Sea.

Aboard the *Galaxy* were First Mate Jerry L. Stephens of Edmonds, Washington; Crewman Jose R. Rodas of Pasco, Washington; and Cook George Karn of Anchorage, Alaska. From the *Clipper Express*: Crewman Daniel Schmiedt of Arlington, Washington.

On October 20, 2002, an explosion occurred aboard the *Galaxy*, a 180-foot vessel fishing for cod off of Alaska's remote Pribilof Islands. Preliminary reports indicate that crew members were battling a small fire below deck when a hatch was opened to allow smoke to escape. This triggered an explosion which ignited multiple fires that quickly superheated its iron hull. With little time to act, the crew scrambled to don survival suits and release lifeboats as they tried to rescue shipmates who had been thrown overboard by the blast.

Captain Dave Shoemaker of Carnation, Washington, sustained burns and broken ribs as he struggled through the fire to make the crucial Mayday call alerting the Coast Guard and other fishing vessels to come to the *Galaxy's* assistance. The heroic efforts of Deck Boss Ryan Newhall of San Antonio, Texas, saved the life of National Marine Fisheries Service biologist Ann Weckback, who was thrown into the icy water without a survival suit. One of the fishing boats which responded to the Mayday call, the *Clipper Express*, was drawn into the tragedy when 24 year old crew member Daniel Schmiedt was swept overboard during the rescue operation.

It may be months until we know what caused the fatal explosion on the *Galaxy*. However, the immediate response of the *Clipper Express* and the other ships that came to the rescue of the *Galaxy's* crew is a testament to the industry. My heart goes out to the families and friends of the four men who died on October 20, 2002. I extend my deep appreciation to all those in the fishing industry and the Coast

Guard who responded quickly to prevent even greater loss of life from this accident.

#### IDENTITY THEFT VICTIMS ASSISTANCE ACT OF 2002

Ms. CANTWELL. Mr. President, the Senate, last night, took a great step toward helping the victims of identity theft, and those law enforcement officers investigating identity theft, by passing S. 1742, the Identity Theft Victims Assistance Act of 2002.

This legislation provides a consistent national remedy for victims of identity theft to restore their credit and their good name. This bill is a critical step in helping victims of identity theft restore their good credit.

Identity theft can be extraordinarily destructive to people's lives. People are denied credit, spend enormous time, effort, and money correcting the problems caused by identity theft, and suffer profound frustration and distress in dealing with the problems that result from identity theft.

These problems often arise when they have the potential to wreak the greatest havoc: when buying a new home or a car, or getting a loan to put a child through college. It can be devastating to make a major life change, only to find out that your creditworthiness has been destroyed by fraud, and it is going to take months of excruciating effort by you to clear your name.

These crimes rarely meet the threshold for prosecution because each crime involves a small amount of money. Meanwhile victims must independently contact numerous federal, state and local law enforcement agencies, consumer credit reporting agencies and creditors over a period of years, as each new event of fraud arises.

One of the most significant problems victims face is gathering the evidence of the fraudulent use of their identity. In order to prove fraud, the victim needs copies of creditors' business records, such as applications, invoices or other information related to the fraudulent transactions. These records are often difficult to obtain because the victim's personally identifying information does not match the fraudulent information on file with the business. Ironically, in the interest of protecting consumer privacy, a business will refuse to provide the information to the victim, believing the victim to be an unauthorized third party.

This bill establishes a nationwide process for all victims of identity theft to obtain business records that are evidence of identity theft to enable a victim to reclaim his or her identity and assist law enforcement in finding the thieves.

This legislation also requires consumer credit agencies to block reporting of bad credit that arises from identity theft, so the harm caused to the victim is stopped dead in its tracks.

The bill also extends the statute of limitation from 2 years to 4 years, giv-

ing victims a reasonable time period to decide whether they need to sue a business under the Fair Credit Reporting Act.

Finally, the bill amends the Internet False Identification Prevention Act of 2000 to expand the jurisdiction and membership of the Coordinating Committee currently studying enforcement of Federal identity theft law. This will allow the Coordinating Committee to examine State and local identity theft law enforcement and identify ways the federal government can better assist state and local law enforcement in addressing identity theft and related crimes.

The bill is based on a Washington state law enacted in 2001. Other States, including California and Idaho, have enacted similar laws. But identity theft is a national problem growing at an exponential rate. Identity information may be stolen in Washington state and used to perpetrate a fraud in Wisconsin, New Jersey, or Alabama. That is why it is critical that we have passed this bill to help all victims move more quickly and easily through the process of restoring their good name at the least emotional and financial cost as possible.

I thank my colleagues who have worked hard with me to bring this legislation to the floor. Particularly, my thanks goes to Senators ENZI, GRASSLEY and LEAHY, and Banking Committee Chairman SARBANES.

I also want to mention the broad support that this legislation has received. The bill is supported by the National Center for the Victims of Crime, the Fraternal Order of Police, Consumers Union, Identity Theft Resource Center, U.S. Public Interest Group, Police Executive Forum, Privacy Rights Clearinghouse, and Amazon.com, and the Committee has received a letter of support signed by 22 Attorneys General.

The passage yesterday of this legislation is a win for consumers and a win for businesses because identity theft leaves both as victims in its wake. It should be among the highest priorities in the waning days of this Congress that we work together to get the bill enacted into law. The sooner we give victims of identity theft these tools, the more victims we will help and the fewer businesses that will be defrauded by identity theft in the future.

#### LOAN FORGIVENESS FOR SOCIAL WORKERS AND ATTORNEYS CAN IMPROVE CHILD WELFARE SERVICES

Mr. ROCKEFELLER. Mr. President, I am very proud to join my friend and colleague, Senator DEWINE, as an original cosponsor of two important bills, S. 3165 and S. 3166, to offer loan forgiveness to social workers and attorneys willing to work in the child welfare field. Senator DEWINE has been an inspiring leader on child welfare issues for many years, and I am delighted to work closely with him to continue to

seek ways to improve the administrative agencies and legal courts that serve such vulnerable children.

The bills are designed to encourage students graduating with social work degrees and law degrees to spend several years working in the child welfare system. Eligible students would receive loan forgiveness for working in child welfare agencies and courts for abused and neglected children. The amount of loan forgiveness would increase over time to reward experience, and to retain social workers and attorneys in the system.

Every day, approximately 500,000 children are in the foster care system. Services to such children need to be improved so that every child's health and safety is paramount, and every child secures a permanent home. These priorities were established in the 1997 Adoption and Safe Families Act, thanks to the leadership of Senator DEWINE and a bipartisan coalition. To achieve such bold goals, we must have trained, committed social workers and skilled attorneys serving such children and their families.

There is a compelling need to invest in social workers. The turnover rate for child welfare agencies has doubled in the past decade. Making decisions about a child's health and safety is a serious challenge, and we need more experienced and trained social workers to serve children and their families.

Many social workers are burdened with a staggering caseload. The number of social workers per children in the child welfare system varies widely from state to state, and not all states even report their child protective services workforce data. Still, we know there is a compelling need in many places. The Child Maltreatment 2000 Report published by the Department of Health and Human Services indicates that the national average is 130 children per investigative workers, and several states acknowledge that workers have over 200 children to monitor and assess. Obviously, we need to recruit and retain qualified social workers to serve children and families at risk.

Experienced attorneys are also needed to help manage the individual cases and to help ensure that the bold, new time frames established by the Adoption and Safe Families Act are met. Under this new law, courts face stricter requirements to monitor and make decisions about a child's safety, health, and placement in a permanent home. This means qualified attorneys need to work with the courts, the agencies, and the families.

In West Virginia, and across our country, children and families in the child welfare system need and deserve qualified social workers and attorneys. Senator DEWINE's bill to offer student loan forgiveness would provide the right incentive to recruit and retain new professionals in the system. It would be a meaningful addition to the Higher Education Act reauthorization.

#### SOWING THE SEEDS FOR DEMOCRACY IN CROATIA

Mr. SMITH of Oregon. Mr. President, I rise today to bring to my colleagues' attention the Civitas International Civic Education Exchange Program—a program that is helping to promote democratic principles in emerging and established democracies throughout the world.

The Civitas Exchange Program, administered by the Center for Civic Education and funded by the U.S. Department of Education under the Education for Democracy Act, engages educators from around the world in the development of effective civic education initiatives that can be implemented in their own countries. The program provides international leaders in civic education the opportunity to learn from one another and to assist each other in improving education for democracy in their nations.

The Civitas Exchange Program makes use of the experience, expertise, and programmatic offerings of U.S.-based State and national civic education centers by linking them in partnerships with public and private sector entities in emerging and advanced democracies. The partnerships serve to institutionalize civic education in these nations, creating working relationships that lead to tangible results for both American and international students and teachers. Today the Civitas Exchange Program is operating in 30 countries linked with 22 American States.

One of those partnerships involves my home State of Oregon, and the States of Delaware and Maryland, linked with the country of Croatia. Marilyn Cover, the executive director of the Classroom Law Project in Portland, OR, manages the partnership. Ms. Cover recently brought a delegation of American teachers and Croatian educators to Capitol Hill to observe our system of government first hand. I am pleased to recognize the two Oregonian teachers participating in the exchange, Bert Key from Sandy Union High School in Sandy, OR and Maggie McSwiggen, from Vocational Village in Portland, OR. I would also like to recognize the Croatian teachers in the delegation, Jadranka Kostanjak from Zagreb, Jasminka Zagorac from Zagreb, and Natalija Palcic from Split.

These teachers, and others from Delaware and Maryland, are currently working with teachers from Croatia to develop a series of lessons comparing the Constitutions of the United States and Croatia, examining political parties within each country, and exploring ideas of personal and civic responsibility for use in their respective classes. Begun during a summer writing program, the teachers continue to refine their lessons through team teaching in classrooms in both the United States and Croatia. It is an excellent example of the reciprocal nature of the exchange, which provides benefits to American students and international students alike.

The ideas exchanged in Oregon's partnership have led to at least two significant developments with the support of the Croatian Ministry of Education and Sport: first, as part of the exchange, an American civics curriculum, Foundations of Democracy program on justice, has been translated and is now a requirement in Croatian preschools and primary schools; second, We the People . . . Project Citizen, an American civic education program which engages young people in learning how to monitor and influence public policy, has become a requirement in grades 7 and 8 for secondary schools in Croatia.

The Civitas Exchange Program is an excellent example of how programs supported by the federal government can help achieve U.S. foreign policy objectives by helping emerging democracies develop a political culture supportive of democratic values, principles, and institutions. I wish to thank the Center for Civic Education for their successful administration of the Civitas program and applaud Oregonian Marilyn Cover for her excellent work in the project.

#### RETIREMENT OF SENATOR FRED THOMPSON

Mr. CONRAD. Mr. President, I rise today to pay tribute and recognize the accomplishments of a colleague who will be retiring at the end of this term. Senator FRED THOMPSON has represented Tennessee in the Senate for 8 years. During his tenure, he has been an important advocate for a wide range of legislative reform activities.

Throughout his Senate career, Senator THOMPSON has fought for protecting our national security, making government more efficient, and improving programs that are important to America's families, such as Social Security and Medicare. Senator THOMPSON has also been nationally recognized for his expertise in international affairs as was evidenced by his recent nomination to the prestigious Council on Foreign Relations.

As the ranking member of the Committee on Governmental Affairs, FRED THOMPSON held more than a dozen hearings on important national security issues, including missile defense technology and the proliferation of weapons of mass destruction. As a result of his efforts, Senator THOMPSON played a key role in bringing the issue of weapons proliferation to the forefront of the national agenda.

In addition, FRED THOMPSON has been the leader in many efforts to reform and improve government. He has strongly supported proposals to streamline the regulatory process and to ensure the cost-effectiveness and benefit of regulatory programs. As the primary author of the Government Information Security Act, he also championed efforts to enhance the security of government computer systems and to strengthen privacy protection on Federal Web sites.



Finally, as his colleague on the Finance Committee, I had the opportunity to work with FRED to address the challenges facing Social Security and Medicare. Among the efforts we jointly supported, a primary concern we have shared is improving the long-term solvency of these important social programs. As a Finance Committee member, as well as in the other roles he has served, Senator THOMPSON's work has been thoughtful, and our Nation is a better place because of his efforts.

Most of all, I will miss Senator THOMPSON's unfailing good humor. We shared many laughs as we bantered back and forth about his future in film and television. I will really miss his sense of humor and basic decency.

Mr. President, for these and many other reasons, I have been honored to serve with FRED THOMPSON. I would like to join my colleagues in wishing the Senator and his family the best in the future and in paying tribute to his contributions to the Senate and our Nation. I wish him well.

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO VASHON HIGH SCHOOL

• Mr. BOND. Mr. President, I rise to pay tribute to the 75th anniversary of Vashon High School. In the early quarter of the 20th century, the high school that most African-American students attended in St. Louis was overcrowded and quite a distance from their homes. Consequently, in 1922, a citizens group called the Central School Patron Association led by Reverend George Stevens and other community alliances began formulating plans for a second high school designated for African-American students. On September 6, 1927, Vashon High School opened and has been educating and changing the lives of students since. Over time, Vashon High School has established itself as a premier educational institute, known for its athletics as well as academics.

There are several outstanding individuals who have contributed to the founding and success of Vashon High School. The school was named for a family with a long tradition of struggle and sacrifice dedicated to the importance of education while battling to secure civil and human rights for African-Americans. Specifically, the school was named for George B. Vashon, 1824–1878, the first African-American graduate of Oberlin College, OH in 1844, and his son John B. Vashon, 1859–1924, an outstanding educator in the city of St. Louis for 34 years, James W. Meyers served as the first principal of Vashon from 1927–1932 and Otto Bohanan, a member of the faculty, composed the school song, "Vashon We Love". Many students honed their talents, skills, and abilities to become future educators and community leaders from the positive influence and support of these and other influential faculty members.

Over the past 75 years, Vashon High School has undergone changes and relocated to several different locations, but irrespective of physical location, the spirit of Vashon High School continues to inspire students to pursue their dreams and achieve their goals. Congratulations to the students, faculty, and alumni of Vashon High School.●

#### NEAL GONZALES

• Mr. BINGAMAN. Mr. President, I rise today to say a few words about Neal Gonzales, a prominent new Mexico labor leader who died in late October.

In the early 1970's when I became acquainted with the working of the new Mexico Legislature, I also became acquainted with Neal Gonzales, a powerful presence in the halls of power in our state. He was the representative of labor and as such his influence was felt in most of the important legislative battles that were waged.

Neal was a true professional at his job. Liked and respected by all, he was a formidable adversary as those who found themselves opposing him soon learned.

I learned much from watching Neal Gonzales work as the advocate for the working people of New Mexico. He kept his focus on the impact of legislation on the lives of those he represented. He did his homework and, more often than not, he prevailed.

With his death, many of us in New Mexico have lost not only a valued friend, but the working families of our State have lost a tireless champion.●

#### TRIBUTE TO DR. LURA POWELL

• Ms. CANTWELL. Mr. President, I rise today to say thank you to one of the true leaders in the Washington state science community, who has recently announced that she will be stepping down from her position at the end of the year. I am speaking of Dr. Lura Powell, vice president of Battelle and Director of the Department of Energy's Pacific Northwest National Laboratory, PNNL, in Richland, WA.

During the past 2 years, Dr. Powell has developed a bold strategy to ensure that the Pacific Northwest National Laboratory will play a significant role in carrying out the missions of the Department of Energy as we move forward into the 21st century. The recent installation of two major pieces of equipment will position the laboratory to be a leader in molecular research—research that reaches across many disciplines, including environmental cleanup, national security, and the life sciences. The new 9.2 teraflops supercomputer and the 900-megahertz nuclear magnetic resonance spectrometer, both of which are part of PNNL's Environmental Molecular Sciences Laboratory, will attract academia, industry, and other Government researchers to the lab in an atmosphere of collaboration and discovery. I had

the opportunity to attend the dedication of the NMR spectrometer on March 28, 2002. This equipment is poised to play a central role in the fast-approaching revolution in systems biology, the seeds for which were sown by the amazing success of the Human Genome Project.

Dr. Powell has set out to establish a systems biology program for PNNL that will position the laboratory to play a significant role in the Department of Energy's Genomes to Life initiative and to participate in the National Institutes of Health biomedical mission. Congress has consistently supported increased funding for scientific research in the biomedical sciences at NIH, and there is an equally important role for the Department of Energy to play in this field. Genomics research holds great promise for unraveling many previously intractable scientific problems, and will one day lead to the development of technologies that will help address some of our nation's most pressing challenges: carbon sequestration and climate change, the national security risks posed by bioterrorism, even clean and sustainable energy production. The Genomes to Life program will indeed enhance the Department of Energy's ability to fulfill its many diverse missions, and PNNL—thanks in large part to Dr. Powell—is poised to be a prime contributor to this initiative.

In her term as Director of the Pacific Northwest National Laboratory, Dr. Powell has reached out to create new partnerships within Washington State to support this agenda. They include the University of Washington, Washington State University, the Fred Hutchinson Cancer Research Center, and the Institute of Systems Biology. Meanwhile, conversations are ongoing with still other institutions in the Pacific Northwest that will further expand PNNL's collaborations. These efforts will bring a strong bioscience presence to the State of Washington, provide economic sustainability to the Tri-Cities area and lead to scientific discoveries that will ultimately benefit this Nation as a whole. I want to recognize Dr. Powell for her vision and commitment to public service and wish her much success in her future endeavors.●

#### TRIBUTE TO DR. VINCENT ZECCHINO

• Mr. CHAFEE. Mr. President, it is with great honor that I recognize Dr. Vincent Zecchino and his wife, Julia, for the numerous contributions they have made to the field of medicine in Rhode Island and throughout the world. I am pleased to say that after a lifetime of achievement, Rhode Island Hospital dedicated their newest facility as the Julia and Vincent Zecchino Pavilion on October 18, 2002.

After graduating from the University of Bologna Medical School in 1936 and completing his internship at the Long Island College Hospital in 1938, Dr.

Zecchino served his orthopedic and fracture residency at Rhode Island Hospital, which he completed in 1940. Subsequently, Dr. Zecchino continued his medical training as a fellow at Harvard Medical School and as a resident at Boston's Children Hospital and Mass General until entering the United States Army in 1942. Dr. Zecchino served the United States in the China Burma-India Theatre as Chief of Orthopedic Surgery until his discharge as Lieutenant Colonel in 1946.

Upon completion of his military service, Dr. Zecchino returned to Rhode Island where he joined the orthopedic staff at Rhode Island Hospital and Miriam Hospital and the faculty of Brown Medical School. During his illustrious career, Dr. Zecchino also served as Chief of Orthopedics at the Veterans Hospital, worked and taught at Project Hope medical schools in Columbia, Tunisia and Sri Lanka, and was a member of the Tufts Medical School faculty.

Dr. Zecchino has authored and co-authored numerous articles in medical journals and textbooks. He was critically important in the development of knee prosthesis and its instrumentation, and invented the double-edged bone cutting "Z" blade bone saw. After such a long and distinguished career, it is especially noteworthy that Dr. Zecchino founded an orthopedic clinic for people in need after his retirement in 1982.

Throughout his medical career, Dr. Zecchino has benefited from the love, compassion and commitment of his wife, Julia, who was in a nurse-training program when they met. Together, Dr. and Mrs. Zecchino have improved the lives of thousands of people and with the dedication of the Julia and Vincent Zecchino Pavilion, future generations will continue to benefit from the Zecchino's goodwill, dedication and tireless effort to improve the world around them.●

#### IN RECOGNITION OF HARTFORD MEMORIAL BAPTIST CHURCH ON THE OCCASION OF THEIR 85TH ANNIVERSARY

● Mr. LEVIN. Mr. President, I am pleased to recognize the members of the Hartford Memorial Baptist Church for 85 years of dedication and service to the Detroit community.

Since 1917, Hartford Memorial Baptist Church has established an environment of strength within the parish walls as well as throughout the surrounding community. Through commitment to social change, they welcomed the nonconformist insights of W.E.B. DuBois and Paul Robeson during the Civil Rights Movement and continue to make significant contributions to social development through extensive community outreach programs.

The establishment of the Hartford Agape House is one of their current initiatives dedicated toward an urban mission that provides needed social

services to the local community. Widely respected among the Michigan faith-based organizations, their exemplary programs take on the issues of poverty through hunger initiatives and free clothing; medical necessities through a public health consortium, Alcoholics Anonymous, and AIDS awareness; as well as educational assistance that provides both college preparation and scholarship programs.

I take great pride in recognizing the efforts of the Hartford Memorial Baptist Church throughout their 85-year history in the Detroit community. Their ministry attends to the entire person: mind, body and soul. I know my Senate colleagues will join me in saluting their contributions to society and wish them continued success in the future.●

#### SPINA BIFIDA AWARENESS MONTH

● Mrs. HUTCHISON. I rise today to let my colleagues know that October is National Spina Bifida Awareness Month and to pay tribute to the more than 70,000 Americans—and their family members—who are currently affected by spina bifida—the Nation's most common, permanently disabling birth defect. The Spina Bifida Association of America—SBAA—an organization that has helped people with spina bifida and their families for nearly 30 years, works every day—not just in the month of October—to prevent and reduce suffering from this devastating birth defect.

The SBAA was founded in 1973 to address the needs of the individuals and families affected by and is currently the only national organization solely dedicated to advocating on behalf of the spina bifida community. As part of its service through 60 chapters in more than 100 communities across the country, the SBAA puts expecting parents in touch with families who have a child with spina bifida. These families answer questions and concerns and help guide expecting parents. The SBAA then works to provide lifelong support and assistance for affected children and their families.

Together the SBAA and the Spina Bifida Association of Texas work tirelessly to help families meet the challenges and enjoy the rewards of raising their child. I would like to acknowledge and thank SBAA and the Spina Bifida Association of Texas for all that they have done for the families affected by this birth defect, especially those living in my State.

Spina bifida is a neural tube defect that occurs when the central nervous system does not properly close during the early stages of pregnancy. Spina bifida affects more than 4,000 pregnancies each year, with more than half ending tragically in abortion. There are three different forms of spina bifida with the most severe being myelomeningocele spina bifida, which causes nerve damage and severe disabilities. This severe form of spina

bifida is diagnosed in 96 percent of children born with this condition. Between 70 to 90 percent of the children born with spina bifida are at risk of mental retardation when spinal fluid collects around the brain.

We must do more to ensure a high quality of life for people with spina bifida so more families choose the blessing and joy of having a child with this condition. Fortunately, spina bifida is no longer the death sentence it once was and now people born with spina bifida will likely have a normal or near normal life expectancy. The challenge now is to ensure that these individuals have the highest quality of life possible.

Today, approximately 90 percent of all babies diagnosed with this birth defect live into adulthood, approximately 80 percent have normal IQs, and approximately 75 percent participate in sports and other recreational activities. With proper medical care, people who suffer from spina bifida can lead full and productive lives. However, they must learn how to move around using braces, crutches, or wheelchairs, and how to function independently. They also must be careful to avoid a host of secondary health problems ranging from depression and learning disabilities to skin problems and latex allergies.

The Spina Bifida Association of Texas has four chapters in San Antonio, Austin, Dallas, and Houston. These chapters serve the individuals and their families with spina bifida in the great state of Texas through a number of programs and services including providing emergency assistance; running a summer camp for children and a weekend retreat for adults; scholarships; and medical seminars. In addition, the Texas Scottish Rite Hospital is the largest single-site interdisciplinary center for the treatment of spina bifida in the United States and provides ongoing treatment for more than 13,000 children annually, without charge.

During the month of October, the SBAA and its chapters make a special push to increase public awareness about spina bifida and teach prospective parents about prevention. Simply by taking a daily dose of the B vitamin, folic acid, found in most multivitamins, women of child-bearing age have the power to reduce the incidence of spina bifida by up to 75 percent. That such a simple change in habit can have such a profound effect should leave no question as to the importance of awareness and the impact of prevention.

As a member of the Senate Appropriations Committee, I am pleased that we provided \$2 million in much-needed funding to establish a National Spina Bifida Program at the National Center for Birth Defects and Developmental Disabilities—NCBDDD—at the Centers for Disease Control and Prevention—CDC—to ensure that those individuals living with spina bifida can live active, productive, and meaningful lives. In

addition, I am proud that we in the Senate recently passed by unanimous consent the Birth Defects and Developmental Disabilities Prevention Act of 2002, which takes many critical steps that will work to prevent spina bifida and to improve quality of life for individuals and families affected by this terrible birth defect. I am hopeful that the House will act shortly to pass the measure so it can be sent to the President for his signature.

I again wish to thank the SBAA and its chapters for all of their hard work to prevent and reduce suffering from this birth defect and for their commitment to improve the lives of those 70,000 individuals living with spina bifida throughout our Nation. I wish the Spina Bifida Association of America the best of luck in its future endeavors.●

#### MESSAGES FROM THE HOUSE

At 10:34 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills and joint resolution, each without amendment:

S. 1010. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina.

S. 1226. An act to require the display of the POW/MIA flag at the World War II memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial.

S. 1843. An act to extend certain hydroelectric licenses in the State of Alaska.

S. 1907. An act to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon.

S. 1946. An act to amend the National Trails System Act to designate the Old Spanish Trail as a National Historic Trail.

S. 2239. An act to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers.

S. 2712. An act to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S. 3044. An act to authorize the Court Services and Offender Supervision Agency of the District of Columbia to provide for the interstate supervision of offenders on parole, probation, and supervised release.

S. 3156. An act to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.

S.J. Res. 53. A joint resolution relative to the convening of the first session of the One Hundred Eighth Congress.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 628. An act to designate the facility of the United States Postal Service located at 440 South Orange Blossom Trail in Orlando, Florida, as the "Arthur 'Pappy' Kennedy Post Office".

H.R. 629. An act to designate the facility of the United States Postal Service located at 1601-1 Main Street in Jacksonville, Florida, as the "Eddie Mae Steward Post Office".

H.R. 2458. An act to enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a broad framework of measures that require using Internet-based information technology to enhance citizen access to Government information and services, and for other purposes.

H.R. 3429. An act to direct the Secretary of Transportation to make grants for security improvements to over-the-road bus operations, and for other purposes.

H.R. 3747. An act to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System.

H.R. 3775. An act to designate the facility of the United States Postal Service located at 1502 East Kiest Boulevard in Dallas, Texas, as the "Dr. Caesar A.W. Clark, Sr. Post Office Building".

H.R. 3955. An act to designate certain National Forest System lands in the Commonwealth of Puerto Rico as components of the National Wilderness Preservation System, and for other purposes.

H.R. 4750. An act to designate certain lands in the State of California as components of the National Wilderness Preservation System, and for other purposes.

H.R. 5097. An act to adjust the boundaries of the Salt River Bay National Park and Ecological Preserve located in St. Croix, Virgin Islands.

H.R. 5280. An act to designate the facility of the United States Postal Service located at 2001 East Willard Street in Philadelphia, Pennsylvania, as the "Robert A. Borski Post Office Building".

H.R. 5334. An act to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

H.R. 5436. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon.

H.R. 5495. An act to designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the "Major Henry A. Commiskey, Sr. Post Office Building".

H.R. 5499. An act to reauthorize the HOPE VI program for revitalization of severely distressed public housing, and for other purposes.

H.R. 5504. An act to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.

H.R. 5512. An act to provide for an adjustment of the boundaries of Mount Rainier National Park, and for other purposes.

H.R. 5513. An act to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership and a land exchange in the State of Colorado to acquire a private inholding in the San Isabel National Forest, and for other purposes.

H.R. 5586. An act to designate the facility of the United States Postal Service located at 141 Erie Street in Linesville, Pennsylvania, as the "James R. Merry Post Office Building".

H.R. 5604. An act to designate the Federal building and United States courthouse located at 46 East Ohio Street in Indianapolis, Indiana, as the "Birch Bayh Federal Building and United States Courthouse".

H.R. 5609. An act to designate the facility of the United States Postal Service located at 600 East 1st Street in Rome, Georgia, as the "Martha Berry Post Office".

H.R. 5611. An act to designate the Federal building located at 324 Twenty-Fifth Street in Ogden, Utah, as the "James V. Hansen Federal Building".

H.R. 5716. An act to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year.

H.R. 5728. An act to amend the Internal Revenue Code of 1986 to provide fairness in tax collection procedures and improved administrative efficiency and confidentiality and to reform its penalty and interest provisions.

H.R. 5738. An act to amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians.

H.J. Res. 117. A joint resolution approving the location of the commemorative work in the District of Columbia honoring former President John Adams.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 466. Concurrent resolution recognizing the significance of bread in American history, culture, and daily diet.

H. Con. Res. 499. Concurrent resolution honoring George Rogers Clark.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 333) to amend title 11, United States Code, and for other purposes, with an amendment.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4628) to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The message also announced that the House has passed the following bill, with amendments:

S. 990. An act to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes.

The message further announced that the House has passed the following bill, with an amendment:

S. 2017. An act to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

The message also announced that the House passed the following bill, with amendments:

S. 2237. An act to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education, benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes.

The message further announced that the Speaker has signed the following enrolled bills:

H.R. 1070. An act to amend the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to carry out projects and conduct research for remediation of sediment

contamination in areas of concern in the Great Lakes, and for other purposes.

H.R. 2546. An act to amend title 49, United States Code, to prohibit States from requiring a license or fee on account on the fact that a motor vehicle is providing interstate pre-arranged ground transportation service, and for other purposes.

H.R. 3340. An act to amend title 5, United States Code, to allow certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over; to reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for other purposes.

H.R. 3389. An act to reauthorize the National Sea Grant College Program Act, and for other purposes.

H.R. 3394. An act to authorize funding for computer and network security research and development and research fellowship programs, and for other purposes.

H.R. 4878. An act to provide for estimates and reports of improper payments by Federal agencies.

H.R. 5349. An act to facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interests retained by the United States in 1955 when the land was conveyed to the State of Missouri.

The enrolled bills were signed subsequently by the President pro tempore (Mr. BYRD).

At 11:26 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4883. An act to reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes.

#### EXECUTIVE AND OTHER COMMUNICATIONS

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

EC-9537. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on Fiscal Year 2000 relative to Low Income Home Energy Assistance Program (LIHEAP); to the Committee on Health, Education, Labor, and Pensions.

EC-9538. A communication from the Administrator, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "7 CFR 1412—Peanut Buyout Program" (RIN0560-AG71) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9539. A communication from the Administrator, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "2002 Farm Security and Rural Investment Act of 2002 Sugar Program and Farm Facility Storage Loan Program" (RIN0560-AG73) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9540. A communication from the Administrator, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Apple Market Loss Assistance Program II" (RIN0560-AG63) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9541. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Nectarines Grown in California; Decreased Assessment Rate" (Doc. No. FV02-916-2) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9542. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Vidalia Onions Grown in Georgia; Revision of Reporting and Assessment Requirements" (Doc. No. FV02-955-1) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9543. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit" (Doc. No. FV02-905-5) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9544. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulation" (Doc. No. FV02-996-1) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9545. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Pork Promotion, Research and Consumer Information Order: Rules and Regulations—Decrease in Assessment Rate and Decrease of Importer Assessments" (Doc. No. LS-02-09) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9546. A communication from the Administrator, Foreign Agriculture Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Technical Assistance for Specialty Crops Program" (RIN0551-AA63) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9547. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables" (Doc. No. 98-030-4) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9548. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Importation of Clementines from Spain" (Doc. No. 02-023-4) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9549. A communication from the Administrator, Food and Nutrition Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Codification of Poultry Substitution and Modification of Commodity Inventory Controls for Recipient Agencies" (RIN0584-AD08) received on October 21, 2002.

EC-9550. A communication from the Administrator, Rural Development, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Farm Labor Housing Technical Assistance" (RIN0575-AC25) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9551. A communication from the Regulatory Contact, Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "United States Standards for Milled Rice" received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9552. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of 50,000,000 or more to South Korea; to the Committee on Foreign Relations.

EC-9553. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled "Visas: Aliens Ineligible to Transit Without Visas (TWOV), As Amended" (RIN1400-AA48); to the Committee on Foreign Relations.

EC-9554. A communication from the Acting Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of an amended rule entitled "Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulate" (22 CFR Part 22) received on October 28, 2002; to the Committee on Foreign Relations.

EC-9555. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification regarding the proposed transfer of major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more to United Arab Emirates; to the Committee on Foreign Relations.

EC-9556. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of \$50,000,000 or more to the Republic of Korea; to the Committee on Foreign Relations.

EC-9557. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of \$50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC-9558. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of \$50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC-9559. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of \$50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC-9560. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the

Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of \$100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-9561. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license involving the manufacture of Significant Military Equipment to the United Kingdom; to the Committee on Foreign Relations.

EC-9562. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of \$50,000,000 or more to Kuwait; to the Committee on Foreign Relations.

EC-9563. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or services sold commercially in the amount of \$50,000,000 or more to Taiwan; to the Committee on Foreign Relations.

EC-9564. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of \$50,000,000 or more to the Israel; to the Committee on Foreign Relations.

EC-9565. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or services sold commercially in the amount of \$50,000,000 or more to South Korea; to the Committee on Foreign Relations.

EC-9566. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or services sold commercially in the amount of \$50,000,000 or more to Israel; to the Committee on Foreign Relations.

EC-9567. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to the Foreign Operations Export Financing and Related Programs Appropriations Act, 2002, a notification that the President has exercised the authority provided to him and has issued the required determination to waive certain restrictions on the maintenance of a Palestine Liberation Organization (PLO) Office and on expenditure of PLO funds for a period of six months; to the Committee on Foreign Relations.

EC-9568. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license agreement involving the manufacture abroad of significant military equipment to Spain; to the Committee on Foreign Relations.

EC-9569. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license agreement involving the manufacture abroad of significant military equipment to Japan; to the Committee on Foreign Relations.

EC-9570. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license agreement involving the manufacture abroad of significant military equipment to The United Kingdom, Chile, and Germany; to the Committee on Foreign Relations.

EC-9571. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license agreement involving the manufacture abroad of significant military equipment to Italy; to the Committee on Foreign Relations.

EC-9572. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles and services sold commercially under contract in the amount of \$14,000,000 or more to Austria; to the Committee on Foreign Relations.

EC-9573. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to Global Project Authorization and Arms Export Control Act, the report of a certification of an export license involving technical data and defense services to Australia; to the Committee on Foreign Relations.

EC-9574. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of 100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC-9575. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of 100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-9576. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of 100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-9577. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of 100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-9578. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, agreements relative to treaties entered into by the United States under the Case-Zablocki Act; to the Committee on Foreign Relations.

EC-9579. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report relative to the operation of the premerger notification program; to the Committee on the Judiciary.

EC-9580. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, the annual report of

the Office of Police Corps and Law Enforcement Education for calendar year 2000; to the Committee on the Judiciary.

EC-9581. A communication from the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Passenger Data Elements for the Visa Waiver Program" received on October 15, 2002; to the Committee on the Judiciary.

EC-9582. A communication from the Acting Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC-9583. A communication from the Under Secretary of Defense for Acquisition and Technology, transmitting, pursuant to law, a report entitled "Defense Environmental Quality Program Annual Report" for fiscal year 2001; to the Committee on Armed Services.

EC-9584. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the report relative to the renovation of the Pentagon; to the Committee on Armed Services.

EC-9585. A communication from the Under Secretary of Defense, Acquisition and Technology, transmitting, pursuant to law, the report for Department purchases from foreign entities in Fiscal Year 2001; to the Committee on Armed Services.

EC-9586. A communication from the Secretary of Energy, transmitting, pursuant to law, the report relative to the material protection, control, and accounting of fissile materials in Russia; to the Committee on Armed Services.

EC-9587. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Performance-Based Contracting Using Federal Acquisition Regulation Part 12 Procedures" (DFARS Case 2000-D306) received on October 28, 2002; to the Committee on Armed Services.

EC-9588. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Caribbean Basin Country—Honduras" (DFARS Case 2002-DO28) received on October 28, 2002; to the Committee on Armed Services.

EC-9589. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Contracting Officer—Qualifications" (DFARS Case 2002-DO21) received on October 28, 2002; to the Committee on Armed Services.

EC-9590. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Competition Requirements for Purchase of Services Under Multiple Award Contracts" received on October 28, 2002; to the Committee on Armed Services.

EC-9591. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Performance of Secretary Functions" received on October 9, 2002; to the Committee on Armed Services.

EC-9592. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Partnership Agreement Between Department of Defense and the Small Business Administration" received on October 9, 2002; to the Committee on Armed Services.

EC-9593. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Department of Defense Pilot Mentor—Protege Program" received on October 9, 2002; to the Committee on Armed Services.

EC-9594. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Preference for Local 8(a) Contractors—Base Closure or Realignment" received on October 9, 2002; to the Committee on Armed Services.

EC-9595. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Competition Requirements for Purchases from a Required Source" received on October 9, 2002; to the Committee on Armed Services.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1284: A bill to prohibit employment discrimination on the basis of sexual orientation. (Rept. No. 107-341).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1602: A bill to help protect the public against the threat of chemical attack. (Rept. No. 107-342).

By Mr. LIEBERMAN, from the Committee on Governmental Affairs:

Report to accompany S. 3054, a bill to provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes. (Rept. No. 107-343).

## NOMINATION DISCHARGED

The following nomination was discharged from the Committee on Foreign Relations pursuant to the order of November 15, 2002:

### DEPARTMENT OF STATE

Mary Carlin Yates, of Oregon, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ghana.

## 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. BREAUX:

S. 3170. A bill to authorize Chief Judge Richard T. Haik, of the western district of Louisiana, to participate in the retirement program provided for judicial officials under section 376 of title 28, United States Code; to the Committee on the Judiciary.

By Mr. INHOFE:

S. 3171. A bill to amend the impact aid program under the Elementary and Secondary Education Act of 1965 to improve the delivery of payments under the program to local educational agencies; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BOND (for himself, Mr. KERRY, Mr. DOMENICI, Mr. CONRAD, Mr. BURNS, Ms. LANDRIEU, Ms. SNOWE, and Mr. HARKIN):

S. 3172. A bill to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes; considered and passed.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. BIDEN:

S. Res. 358. A resolution congratulating the people of Mozambique on their successful efforts to establish, build, and maintain peace in their country for the past ten years, and for other purposes; considered and agreed to.

By Mr. NELSON of Florida (for himself and Mr. SMITH of Oregon):

S. Con. Res. 158. A concurrent resolution urging the Government of Egypt and other Arab governments not to allow their government-controlled television stations to broadcast any program that lends legitimacy to the Protocols of the Elders of Zion, and for other purposes; to the Committee on Foreign Relations.

## ADDITIONAL COSPONSORS

S. 847

At the request of Mr. DAYTON, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 2215

At the request of Mrs. BOXER, the name of the Senator from Texas (Mr. GRAMM) was added as a cosponsor of S. 2215, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and by so doing hold Syria accountable for its role in the Middle East, and for other purposes.

S. 2573

At the request of Mr. REED, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2573, a bill to amend the McKinney-Vento Homeless Assistance Act to reauthorize the Act, and for other purposes.

S. 2626

At the request of Mr. KENNEDY, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2626, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2945

At the request of Mr. WYDEN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2945, to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

S. 2991

At the request of Mr. TORRICELLI, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 2991, a bill for the relief of Sharif Kesbeh, Asmaa Sharif Kesbeh, Batool Kesbeh, Noor Sharif Kesbeh, Alaa Kesbeh, Sandos Kesbeh, Hadeel Kesbeh, and Mohammed Kesbeh.

S. 3114

At the request of Mr. LEAHY, the name of the Senator from Illinois (Mr.

DURBIN) was added as a cosponsor of S. 3114, a bill to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

S.J. RES. 35

At the request of Mrs. FEINSTEIN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S.J. Res. 35, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

S. RES. 325

At the request of Mr. SESSIONS, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. Res. 325, resolution designating the month of September 2002 as "National Prostate Cancer Awareness Month".

AMENDMENT NO. 4911

At the request of Mr. BYRD, his name was added as a cosponsor of amendment No. 4911 proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

AMENDMENT NO. 4911

At the request of Mr. CORZINE, his name was added as a cosponsor of amendment No. 4911 proposed to H.R. 5005, supra.

AMENDMENT NO. 4911

At the request of Mr. LIEBERMAN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of amendment No. 4911 proposed to H.R. 5005, supra.

AMENDMENT NO. 4953

At the request of Mr. BYRD, his name was added as a cosponsor of amendment No. 4953 proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

AMENDMENT NO. 4953

At the request of Mrs. MURRAY, her name and the name of the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of amendment No. 4953 proposed to H.R. 5005, supra.

AMENDMENT NO. 4953

At the request of Mr. REED, his name was added as a cosponsor of amendment No. 4953 proposed to H.R. 5005, supra.

AMENDMENT NO. 4960

At the request of Mr. SARBANES, his name was added as a cosponsor of amendment No. 4960 proposed to H.R. 3529, a bill to provide tax incentives for economic recovery and assistance to displaced workers.

AMENDMENT NO. 4960

At the request of Mrs. CLINTON, the names of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 4960 proposed to H.R. 3529, supra.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INHOFE:



S. 3171. A bill to amend the impact aid program under the Elementary and Secondary Education Act of 1965 to improve the delivery of payments under the program to local educational agencies; to the Committee on Health, Education, Labor, and Pensions.

Mr. INHOFE. Mr. President, today I am introducing a bill to make the Impact Aid Program a Federal entitlement.

Over the past few years, the need for a change in the delivery of Impact Aid payments to eligible school districts has become increasingly clear. Impact Aid was originally designed to compensate a local school district for financial losses caused by a Federal presence in that district, whether due to a military base or to other designated Federal land in the community. Congress met its obligation and fully funded the program for the first twenty years of its existence. When the funding was cut in 1971, appropriations for Impact Aid were allocated for school districts according to a need-based formula. In subsequent years, multiple changes in the law have revised and further complicated both the formula and the additional factors that determine funding for each district. The result of these numerous revisions has been large payment disparities for the same types of students in different districts, as well as inherent flaws in reimbursements due to how school districts are defined in different states.

I have consistently defended increased appropriations for Impact Aid not only because it is a vital source of revenue for many local school districts, but also because it constitutes a clear-cut Federal responsibility. When the Federal Government's presence in a community detracts from the local tax base, which often comprises nearly 90 percent of local schools' funding, we must compensate for the lost funds. When we do not do so, the children suffer the consequences.

Despite increases in the past few years, Impact Aid remains substantially under-funded. We can no longer ignore the inequity this causes in educating our students. It is for this reason that I have introduced this bill today. When this legislation becomes law, Congress will be required to meet its obligation to the children and the schools that have been negatively impacted for so long. I urge my colleagues to join me in supporting our local schools by permanently fully funding the Impact Aid program.

## SUBMITTED RESOLUTIONS

# SENATE RESOLUTION 358—CONGRATULATING THE PEOPLE OF MOZAMBIQUE ON THEIR SUCCESSFUL EFFORTS TO ESTABLISH, BUILD, AND MAINTAIN PEACE IN THEIR COUNTRY FOR THE PAST TEN YEARS, AND FOR OTHER PURPOSES

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

Whereas, on October 4, 1992, having overcome the hardships of a colonial struggle, decolonization, and armed regional and national conflict, the people of Mozambique, the parties to the civil war in Mozambique, and the leadership of Mozambique reached a peaceful settlement to the devastating 16-year civil war;

Whereas this peace was facilitated by the good offices of the Comunita di Sant' Egidio in Rome and supported by regional friends and the international community;

Whereas in 1994 and 1999 Mozambique held multi-party elections deemed free and fair by the international community;

Whereas this peace has been consolidated and strengthened by Mozambique civil society, helping to keep the Government of Mozambique on a course of political and economic reforms despite the challenges currently presented by HIV/AIDS, floods, droughts, and regional instability;

Whereas the Government of Mozambique has initiated sound economic reforms, including the privatization of state-run enterprises, the reduction and simplification of import tariffs, and the liberalization of agricultural markets, resulting in extraordinary economic growth;

Whereas the resources that have become available by Mozambique's participation in the Highly Indebted Poor Countries Initiative have been responsibly channeled by the Government of Mozambique into anti-poverty programs;

Whereas, despite the progress that Mozambique has made, more than one-half of the people of Mozambique over 15 years of age are illiterate, twenty-eight percent of the children under five are malnourished, infant mortality stands at more than 12 percent, and life expectancy is only 42 years;

Whereas the United States values democratic principles, the rule of law, peace, and stability in all nations that comprise the community of states; and

Whereas Mozambique has been transformed from a war-torn country to one where political disputes are settled through peaceful means: Now, therefore, be it

*Resolved*, That the Senate—

(1) congratulates the people of Mozambique on ten years of continued peace and growing democracy and commends the Government of Mozambique for continued economic and political reforms;

(2) salutes the Comunita di Sant' Egidio for using its good offices to facilitate and mediate the peace process that led to the October 4, 1992, agreement;

(3) recognizes the indispensable role that civil society in Mozambique has played in both achieving peace and deepening democratic reforms; and

(4) stands ready to assist the Government of Mozambique on a variety of programs, including humanitarian and development assistance, HIV/AIDS prevention, and technical assistance to fight corruption.

# SENATE CONCURRENT RESOLUTION 158—URGING THE GOVERNMENT OF EGYPT AND OTHER ARAB GOVERNMENTS NOT TO ALLOW THEIR GOVERNMENT-CONTROLLED TELEVISION STATIONS TO BROADCAST ANY PROGRAM THAT LENDS LEGITIMACY TO THE PROTOCOLS OF THE ELDERS OF ZION, AND FOR OTHER PURPOSES

Mr. NELSON of Florida (for himself and Mr. SMITH of Oregon) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 158

Whereas in November 2002, a number of government-controlled television stations in Egypt began broadcasting a multi-part series, "Horseman Without a Horse", based on the Protocols of the Elders of Zion and conspiracy myths about Jewish global domination;

Whereas the Protocols of the Elders of Zion are a notorious forgery, written by Russian anti-Semites in the early 20th century, which purport to reveal a plot for Jewish domination of the world;

Whereas the Protocols of the Elders of Zion have been a staple of anti-Semitic and anti-Israel propaganda for decades and have long since been discredited by all reputable scholars;

Whereas the broadcast of this series takes place in the context of a sustained pattern of vitriolic anti-Semitic commentary and depictions in the Egyptian government-sponsored press, which has gone unanswered by the Government of Egypt; and

Whereas the Department of State has urged Egypt and other Arab states not to broadcast this program, saying "We don't think government TV stations should be broadcasting programs that we consider racist and untrue": Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That Congress—

(1) condemns any publication or program that lends legitimacy to the Protocols of the Elders of Zion;

(2) believes the use of such heinous propaganda, especially in the Arab world, serves to incite popular sentiment against Jewish people and the State of Israel rather than promoting religious tolerance and preparing Arab populations for the prospect of peace with Israel;

(3) commends the Department of State for its denunciation of the "Horseman Without a Horse" television series and its efforts to discourage Arab states from broadcasting it; and

(4) urges the Government of Egypt and other Arab governments—

(A) not to allow their government-controlled television stations to broadcast this program or any other racist and untrue material; and

(B) to speak out against such incitement by vigorously and publicly condemning anti-Semitism as a form of bigotry.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 4962. Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill

H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4963. Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 4940 submitted by Mr. DODD and intended to be proposed to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4964. Mr. NELSON, of Nebraska (for himself, Mr. HARKIN, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 124, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

**SA 4962.** Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all in the pending amendment No. 4902 and insert in lieu thereof the following:

Notwithstanding any other provision of this Act, section 1314 of the Thompson amendment is null and void, and shall have no effect.

**SA 4963.** Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 4940 submitted by Mr. DODD and intended to be proposed to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER Mr. THOMPSON, Mr. BARKLEY and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all in the pending amendment No. 4940 and insert in lieu thereof the following:

Notwithstanding any other provision of the Thompson amendment is null and void, and shall have no effect.

**SA 4964.** Mr. NELSON of Nebraska (for himself, Mr. HARKIN, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 124, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

#### SEC. \_\_\_\_ EMERGENCY AGRICULTURAL ASSISTANCE.

##### (a) CROP DISASTER ASSISTANCE.—

(1) IN GENERAL.—The Secretary of Agriculture (referred to in this section as the "Secretary") shall use such sums as are necessary of funds of the Commodity Credit Corporation to make emergency financial assistance authorized under this subsection available to producers on a farm that have

incurred qualifying crop losses for the 2001 or 2002 crop, or both, due to damaging weather or related condition, as determined by the Secretary.

(2) ADMINISTRATION.—The Secretary shall make assistance available under this subsection in the same manner as provided under section 815 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A-55), including using the same loss thresholds for the quantity and quality losses as were used in administering that section.

(3) CROP INSURANCE.—In carrying out this subsection, the Secretary shall not discriminate against or penalize producers on a farm that have purchased crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

##### (b) LIVESTOCK ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary shall use such sums as are necessary of funds of the Commodity Credit Corporation as are necessary to make and administer payments for livestock losses to producers for 2001 or 2002 losses, or both, in a county that has received a corresponding emergency designation by the President or the Secretary, of which an amount determined by the Secretary shall be made available for the American Indian livestock program under section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A-51).

(2) ADMINISTRATION.—The Secretary shall make assistance available under this section in the same manner as provided under section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A-51).

(c) FUNDING.—Of the funds of the Commodity Credit Corporation, the Secretary shall—

(1) use such sums as are necessary to carry out this section; and

(2) transfer to section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), an amount equal to the amount of funds under section 32 of that Act that were made available before the date of enactment of this Act to provide disaster assistance to crop and livestock producers for losses suffered during 2001 and 2002, to remain available until expended.

##### (d) REGULATIONS.—

(1) IN GENERAL.—The Secretary may promulgate such regulations as are necessary to implement this section.

(2) PROCEDURE.—The promulgation of the regulations and administration of this section shall be made without regard to—

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

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

(C) chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act").

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

##### (e) EMERGENCY DESIGNATION.—

(1) IN GENERAL.—The entire amount made available under this section shall be available only to the extent that the President submits to Congress an official budget request for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement for the purposes of the Balanced Budget and

Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.).

(2) DESIGNATION.—The entire amount made available under this subsection is designated by Congress as an emergency requirement under sections 251(b)(2)(A) and 252(e) of that Act (2 U.S.C. 901(b)(2)(A), 902(e)).

(f) BUDGETARY TREATMENT.—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the Joint Explanatory Statement of the Committee of Conference accompanying Conference Report No. 105-217, the provisions of this section that would have been estimated by the Office of Management and Budget as changing direct spending or receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) were it included in an Act other than an appropriation Act shall be treated as direct spending or receipts legislation, as appropriate, under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902).

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following calendar numbers: No. 1177 and No. 1179; that the nominations be confirmed, the motions to reconsider be laid on the table, the President be immediately notified of the Senate's action, and any statements be printed in the RECORD.

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

The nominations considered and confirmed are as follows:

##### THE JUDICIARY

Michael W. McConnell, of Utah, to be United States Circuit Judge for the Tenth Circuit.

##### DEPARTMENT OF JUSTICE

Kevin J. O'Connor, of Connecticut, to be United States Attorney for the District of Connecticut for the term of four years.

##### NOMINATION OF MICHAEL W. MCCONNELL

Mr. HATCH. Mr. President, it is my high honor and privilege to speak on the confirmation of Professor Michael McConnell to the Tenth Circuit Court of Appeals. Professor McConnell is a Utahn, a scholar of the highest talent, and a man of profound integrity and judicial temperament.

Professor McConnell holds the prestigious Presidential Professorship at the University of Utah College of Law in Salt Lake City. He began his legal career at the University of Chicago Law School, where he was Comment Editor of the Law Review and graduated Order of the Coif. Thereafter he served as a law clerk for two of the leading liberal jurists of the 20th century: Supreme Court Justice William J. Brennan, Jr. and D.C. Court of Appeals Judge J. Skelly Wright.

After completing those clerkships, Mike became Assistant General Counsel of the Office of Management and Budget and then served as Assistant to the Solicitor General. He then joined

the faculty of the University of Chicago Law School, where he was awarded tenure and later the William B. Graham Professorship.

In addition to his academic credentials, Professor McConnell is an able and experienced appellate lawyer. He has argued eleven cases before the United States Supreme Court—and won nine of them. In fact, the Los Angeles Daily Journal named one of his presentations to the Supreme Court “best oral argument” of the year. His clients include a wide range of entities: Fortune 500 companies such as NBC and Ameritech; organizations such as the United States Catholic Conference; municipal authorities including the New York Metropolitan Transit Authority; and many individuals.

This combination of intelligence and experience was very likely the reason that the American Bar Association rated Professor McConnell unanimously “well qualified”—its highest possible rating.

Now, Mr. President, I imagine you have heard some of the attacks waged against these fine nominees by the usual suspects—that group of Washington-based special interest lobbyists who make their living trying to thwart President Bush’s judges. Those groups are trying to make believe that Professor McConnell is out of the mainstream of American politics.

Well, let me set the record straight. I’ll mention just a few of the positions Professor McConnell has taken that prove he is an independent-minded thinker who calls things as he sees them, and does not follow anyone else’s political prescription. Professor McConnell represented, without charge, three former Democratic Attorneys General in opposition to an order of the first President Bush; publicly opposed impeachment of President Clinton; urged the confirmation of several of President Clinton’s judicial nominations; testified against a school prayer amendment; worked, without charge, on a lawsuit representing both People for the American Way and Americans United for the Separation of Church and State; has been described by Supreme Court Justice Antonin Scalia as “the most prominent scholarly critic” of Scalia’s approach to the free exercise clause; and has served as co-chair—together with a former ACLU president and a former American Bar Association president—of an organization whose purpose is to oppose MY proposed constitutional amendment to protect the American flag from desecration.

So you see, Mr. President, the idea that McConnell is in lock-step with the Republican party is absolutely untrue. Rather than credit all of the unsupported attacks with responses, I instead would like to tell you a couple of things the ARE true about Professor McConnell.

First, Professor McConnell is widely regarded as modern America’s most persuasive advocate for the idea that

our government should ensure every citizen’s right to worship—or not worship—in his or her preferred manner. Through his scholarship and advocacy in court, he has stood up for the rights of all religious people—including members of some politically out-of-favor faiths—to worship free of government restriction or intrusion.

Many Americans believe that the freedom to exercise their own religion is the most profound and important idea on which this country was founded. Before Professor McConnell began his prodigious scholarship in the area of the First Amendment’s religion clauses, the idea was taking root that the government must disfavor religion in its policies. That is, judges and scholars believed that all groups must be treated equally except religions, which must be excluded entirely from any government program or policy.

Professor McConnell’s scholarship served as a dramatic wake-up call. He researched the Founders’ writing and presented with illuminating clarity that the point of free exercise is for government to remain neutral as between religions, and must accommodate religious activity where feasible. He demonstrated there was no basis in the founding for the view that our government must be anti-religion. The persuasiveness of his writing reawakened American legal scholars and judges to the Founders’ view that the First Amendment’s purpose is to protect religion from government, not the other way around. His work has helped reinvigorate the healthy and dynamic pluralism of religion that has allowed all faiths to flourish in this promised land, the most religiously tolerant nation in human history.

McConnell’s views defy political pigeonholing. Although he has generally sided with the so-called liberal wing of the Court on questions of Free Exercise of Religion, McConnell’s view of Establishment of Religion is that religious perspectives should be given equal but not favored treatment in the public sphere—a view that has led him to testify against a school prayer amendment, while supporting the rights of religious citizens and groups to receive access to public resources on an equal basis.

Few people in modern America have contributed more to their area of expertise than Professor McConnell. He has written over 50 articles in professional journals and books. He has delivered hundreds of lectures and penned many op-ed pieces. He has contributed an immeasurable amount to the discourse of legal ideas. As Professor Laurence Tribe wrote to the Judiciary Committee, “McConnell is among the nation’s most distinguished constitutional scholars and a fine teacher.” Tribe further explained that he and McConnell “share a commitment to principled legal interpretation and to a broadly civil libertarian constitutional framework.”

The significance of McConnell’s contributions to the legal profession in

part explains why 304 professors—ranging from conservative to liberal to very liberal—have signed a single letter urging us to confirm McConnell’s nomination.

Mr. President, When was the last time that 304 professors agreed on anything? Professor McConnell’s peers consider him one of the nation’s foremost constitutional scholars and appellate advocates and as a person with a reputation for open-minded fairness.

Because of his outstanding reputation for scholarship, the attacks on Professor McConnell have not focused so much on his judicial abilities, but on his personal beliefs. I think this is wrong. All Americans have the right to think their own thoughts and believe their own beliefs. That right should apply as much to the Americans who don robes in service of the Federal Judiciary as to any other citizen.

One of the Senate’s most important roles in exercising advice and consent on judicial nominees is to make sure that they are free from any bias—whether political, religious, personal or otherwise—that would endanger their ability to follow the law as written by the legislature and interpreted by higher courts. No one wants a judge who plays legislator from the bench. We want and expect judges who know their limited role and will uphold the law regardless of their personal views. And as long as a judge is willing to do that, any other litmus test on their personal views is contrary to our constitutional responsibility, and an invasion into the freedom of conscience.

I am concerned that some who are involved in the judicial confirmation process are pursuing a course that endangers the freedom of conscience for the Americans who serve on our courts. This is not only a personal offense against nominees who are dragged through the mud or even rejected for their private, personal opinions, it is also an offense against the citizens of this great country, who rely on our federal judges to enforce our many rights and liberties. The diversity of backgrounds and points of view are often the stitches holding together the fabric of our freedoms.

If I may be blunt about this, an impression has been created this year that there are some in the Senate who are attempting to impose a litmus test on the issue of abortion. No one should stand for this—not even people who are pro-choice as a matter of public policy. In fact, people who are pro-choice should be especially reluctant to establish a precedent that would allow the Senate to select judges according to their personal views rather than their willingness to follow and enforce established legal precedents. Pro-choice activists have as much to gain from the triumph of precedent over person view as anyone else.

The fact that most people who are pro-choice hold their position as a matter of political viewpoint or ideology. They do so in good conscience no

doubt, and I respect that. But the great majority of people who are pro-life come to their positions as a result of their personal religious convictions. It is one thing to ensure that judicial nominees pledge to follow the law—we must do that—but quite another to require nominees to have a particular private view. Enforcing such a test would not only destroy the freedom of conscience, but also would exclude from our judiciary a large number of people of religious conviction who are prepared to follow the law.

Now, Professor McConnell has written about abortion, and it is very important for us not to violate his freedom of conscience while exploring his views. The most important thing he has written on this topic, for the Senate's purposes, is that U.S. Supreme Court precedent setting forth the basic abortion right is settled and secure. Indeed, he believes that lower court judges have a clear duty to follow and apply that case law, and he will do just that if confirmed.

Beyond that, Professor McConnell's scholarship on the subject defies standard stereotypes. His writings have focused on two questions. First is the methodology or legitimacy of the Court's reasoning in *Roe v. Wade*. Like many constitutional scholars—including prominent supporters of abortion rights such as Justice Ruth Bader Ginsberg—Professor McConnell has written that the Court in *Roe* overstepped the bounds of proper judicial decision making and has argued that, when facing other issues of deep moral disagreement—for example, assisted suicide—the courts should not constitute their judgment for that of the legislatures, particularly where there is a broad consensus among the states regarding the proper role for regulation.

The second area he has addressed is the possibility of middle-ground approaches to abortion that would find support even from many pro-choice advocates—dealing with such problems as inadequate counseling and support for troubled pregnant women. He has been critical of the extremes on both sides of the questions surrounding abortion, and has argued that one result of the constitutionalization of abortion law has been that it has prevented political leaders from exploring middle-ground approaches.

Professor McConnell has also written in defense of the free-speech rights of abortion protesters.

The fact is that, despite some attempts to confuse this issue, there is nothing in Professor McConnell's writings that should cause any doubt that Professor McConnell is committed to the ideas of stare decisis and controlling legal precedent. To look beyond that belief, to probe his personal views based on religious conviction, is not only to miss the point of our job but also to jeopardize the freedom of conscience of those who serve our country as members of the judiciary.

Many people across the political spectrum know that Professor McConnell will obey precedent even when it is at odds with his own views. That explains why Professor McConnell's nomination has been praised by a number of people who disagree with some of his opinions, including former Clinton administration officials Acting Solicitor General Walter Dellinger, Deputy White House Counsel William Marshall, Domestic Policy Advisors Bill Galston and Elena Kagan, and Associate Attorney General John Schmidt.

Listen to part of a letter I received from the Legal Director of the ACLU chapter in Utah. He wrote—in his personal capacity—to endorse Professor McConnell “enthusiastically and without qualification,” saying that “there can be no doubt that [lawyers who appear before him] will receive a fair and impartial hearing, thoughtful scrutiny and careful consideration toward a decision that will be based solely on the merits and not on any predetermined ideological or political agenda.”

Professor McConnell is immune to any political litmus test because he has a solid bipartisan reputation for integrity and fairness. He is committed to the rule of law and to the ideal of nonpartisan judging. He is known for his principled defense of a limited and restrained role for the judiciary in our constitutional system. He has argued for constitutional interpretation based on constitutional text, original understanding, historical experience, and precedent. He has criticized scholars and judges of both the right and the left for advocating interpretation based on the judge's own political or moral views. He has advocated a major role for Congress in defining and protecting civil rights and has criticized the Supreme Court's decisions limiting such measures to mere enforcement of the Supreme Court's own interpretations. Civil rights groups should take special note of his defense of broad congressional power under Section Five of the Fourteenth Amendment.

In conclusion, Mr. President, Professor McConnell is one of the very best people ever nominated to be a judge. I am very pleased that the Senate confirmed him today. He will be a great judge.

Thank you, Mr. President. I yield the floor.

Mrs. BOXER. Mr. President, tonight, the Senate will consider the nomination of Michael McConnell to a lifetime appointment to the Tenth Circuit Court of Appeals. I oppose this nomination.

Professor McConnell's record as a scholar, an advocate and an activist show him to be far outside the American mainstream on a number of critical constitutional, civil rights, and other legal issues. His views are so clear and consistent that I believe no litigant on areas such as reproductive rights or the separation of church and state could reasonably expect to receive a fair and impartial hearing in Judge McConnell's court room.

Let me tell you why I believe that. Professor McConnell has called the right to choose an “evil” and one of the greatest injustices of our day. He would not simply overturn *Roe v. Wade*—a disastrous outcome for American women—he has gone so far as to suggest that the courts should declare embryos persons under the Fourteenth Amendment. He has called *Roe v. Wade* “illegitimate,” and has called for a constitutional amendment banning the right to choose and granting constitutional rights to embryos.

Professor McConnell has also written and spoken against the Freedom of Access to Clinic Entrances Act (FACE). He believes—in contrast to every Federal appellate court that has considered the question—that it is unconstitutional. In a recent article, he expressed admiration for a district court judge who refused to apply FACE because the defendants did not act with “bad purpose.” Mr. President, that is not in the statute Congress passed. McConnell's statements of admiration for the “judicial nullification” of a Federal statute that he does not agree with speaks volumes about his inability to fairly and impartially apply a range of civil rights statutes that my conflict with his views.

And it makes it clear that as a judge, he would be a judicial activist.

McConnell has even criticized the Supreme Court's 8-1 decision in the *Bob Jones* case from 1983. In that decision, the Court ruled that the IRS may deny tax-exempt status to a school that discriminates against minorities. In a 1989 article, McConnell wrote that the “racial doctrines of a Bob Jones University” should have been “tolerated” because they were “church teachings.”

Mr. President, I realize that this is not a Supreme Court nomination. But, the reality is that Circuit Courts make new law in many areas where the Supreme Court has not spoken. The Supreme Court hears fewer than 100 cases per year, while the Courts of Appeal decide close to 30,000. The truth is, the appellate court are very often the courts of last resort. As Justice Scalia recently wrote, “the judges of inferior courts often make law, since the precedent of the highest court does not cover every situation, and not every case is reviewed.”

Already, Mr. President, increasingly conservative Federal courts are upholding greater and greater restrictions on the right to choose, chipping away at the protections of *Roe vs. Wade*. In the area of reproductive rights, the Circuit Courts routinely make new law, as anti-choice advocates test the constitutional limits with new and creative restrictions on the right to safe and legal abortion. The importance of each Federal judge in protecting the right to choose is underscored by the fact that many recent abortion cases have involved reversals and dissents, demonstrating that judges often disagree on the correct application of law. I believe that Professor McConnell's extensive anti-

choice record shows that he will use every opening the law permits to further restrict a woman's right to choose.

Unfortunately, Professor McConnell does not stand apart from other Bush nominees for his extreme ideology. I believe he was chosen because of it.

Remaking the Federal courts has been a long-term goal of the right-wing base of the Republican party. They have pursued this goal with dogged determination and persistence for more than two decades, and they are succeeding. More and more restrictions on a woman's right to choose are being upheld as constitutional by the increasingly conservative Federal courts, while portions of anti-discrimination law and Violence Against Women Act—a law that Senator Biden wrote and that I was proud to sponsor when I was in the House—are struck down. This is not the right direction for the federal courts.

Now Bush Administration is poised to tip the scales of justice even further to support an extreme anti-choice agenda, and the right to choose may well disappear for more and more American women—especially for poor women. Don't take my word for it. After last week's elections, former Reagan Administration attorney Bruce Fein said that there will be a philosophical revolution in the courts and that Bush nominees will impose a variety of new restrictions on a women's right to choose. The impact, he said, will be almost as great as if Robert Bork had been confirmed.

Mr. President, during the Clinton Administration, I was repeatedly told by the Republican leadership in the Senate that I should only recommend moderate judges to fill judicial vacancies on the Federal courts in the state of California. Otherwise, I was told, Republicans would not let them be confirmed.

President Bush should be held to the same standard. In fact, President Bush said he wanted to govern from the middle. And he fulfilled that commitment on the district court level in California when he agreed to a bipartisan committee selection process. That process has worked well, producing well-qualified mainstream nominees for eight open district court seats in California.

However, Professor McConnell's nomination does not meet the test. He does not fulfill President Bush's commitment to govern from the middle. He does not meet the requirement established by the Senate Republican leadership during the Clinton Administration that nominees be moderate. No, Mr. President, Professor McConnell is far outside the mainstream.

I again call on President Bush—as have so many in the Senate—to reach out across the aisle and to work with all of us to find and nominate the moderate, consensus judges that Americans deserve.

## NOMINATION DISCHARGED

### NOMINATION OF MARY CARLIN YATES TO BE AMBASSADOR TO THE REPUBLIC OF GHANA

Mr. REID. I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of the nomination of Mary Carlin Yates to be the Ambassador to the Republic of Ghana; that the Senate proceed to the immediate consideration of the nomination; that the nomination be confirmed, the motion to reconsider be laid on the table; that any statements be printed in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

The nomination considered and confirmed is as follows:

Mary Carlin Yates, of Oregon, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ghana.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

### UNANIMOUS CONSENT AGREEMENT—NOMINATION OF DENNIS SHEDD

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that at 12 noon on Monday, November 18, the Senate proceed to executive session to consider Executive Calendar No. 1178, the nomination of Dennis Shedd to be United States Circuit Judge; that there be a time limitation of 6 hours for debate equally divided between Senators Leahy and Hatch or their designees; that at the conclusion or yielding back of the time, but not before 5:15 p.m., the Senate vote on cloture on the nomination; that if cloture is invoked, the Senate then vote immediately on the confirmation of the nomination; that 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 if cloture is not invoked, the nomination be returned to the calendar and the Senate return to legislative session; and that the preceding all occur with no intervening action or debate; further, that the granting of this consent fulfill the cloture filing requirement under rule XXII.

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

### UNANIMOUS CONSENT AGREEMENT—H.R. 5005

Mr. REID. Mr. President, I ask unanimous consent that no other amend-

ments be in order to H.R. 5005 prior to the disposition of the Thompson amendment; that when the Senate concludes its business today, it next resume consideration of this bill on Monday, November 18, upon disposition of Executive Calendar No. 1178; that the 30 hours under cloture conclude at 10:30 a.m. on Tuesday, November 19; that the 90 minutes prior to that time on Tuesday be divided as follows: 30 minutes for each of the two leaders or their designees, and 30 minutes for Senator BYRD, with the Republican leader controlling the time from 10 to 10:15 a.m. and the Democrat leader controlling the time from 10:15 to 10:30 a.m.; that at 10:30 a.m. the Senate vote on the Daschle-Lieberman-Byrd amendment, No. 4953; that upon disposition of that amendment, the Senate then vote immediately on amendment No. 4911, as amended, if amended; that upon the disposition of that amendment, the Senate vote on or in relation to the Thompson amendment, No. 4901, as amended, if amended; that upon the disposition of Senator THOMPSON's amendment, the Senate then vote on cloture on H.R. 5005, with the preceding all occurring without intervening action or debate, provided further that no points of order be waived by this agreement.

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

Mr. REID. Mr. President, point of clarification: On Monday night after the Shedd matter is disposed of, will Senators be allowed to discuss the homeland security matter?

The PRESIDING OFFICER. That would be the order.

### SUBSIDY RATE FOR SMALL BUSINESS LOANS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 3172 introduced earlier today by Senator BOND.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3172) to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. KERRY. Mr. President, I ask my colleagues to support the small business subsidy rate improvement bill before the Senate today. It is not perfect, but it takes us a step in the right direction. It takes us a step in the right direction by reversing a current 60-percent cut in loan dollars available to small businesses through the Small Business Administration's flagship 7(a) loan program, and it includes a budget change mid-year with OMB's blessing, which is unprecedented. However, it does not go far enough in correcting the way the government calculates the

cost and fees of the SBA's small business loans. Specifically, the Administration would not also support our proposal to correct the errors in the subsidy rate used for the 504 development company loan program—errors that result in severe overcharging of thousands of dollars to 504 borrowers and lenders.

As so many of us in the Senate, House and White House have heard for months, the small business community supported the Senate's plan to enact a recommendation by the General Accounting Office as part of one of the continuing resolutions. However, that provision was blocked time and again by a few Republican Congressmen on behalf of the Administration. We are now faced with leaving small businesses strapped for financing until next year or enacting this bill that would put in place something called an econometric model to calculate the subsidy rate for the 7(a) program immediately, but for one year only.

Our goal—that of Senator BOND, Senator CONRAD, Senator DOMENICI, Senator HOLLINGS, Senator BYRD, and myself—was to right years of wrong in which the government has played budget games with the two largest loan programs at the Small Business Administration. Our goal was to end a double-standard in which the government cooks the books but small businesses get penalized if a comma is missing on their financial statements. Our goal was to put transparency, accuracy, and fairness into a system that has overcharged small business borrowers and private-sector lenders more than \$2 billion fees, fees that are tantamount to a tax on small businesses.

Specifically, our goal, in technical talk, was to put in place budget systems in this fiscal year that would more accurately calculate the cost of providing loans through the SBA's 7(a) and 504 lending programs, thereby maximizing appropriations to leverage an additional \$6 billion in small business loans and assessing fees that are more in line with the true cost of providing the loans. In the end, it would stimulate lending by creating a greater incentive for lenders to loan in these uncertain economic times, it would leave more money in the pockets of small businesses, and it would allow almost 190,000 jobs to be created or retained.

There is a lot of concern among small business trade groups, bankers, and members of Congress about adopting an econometric model at this stage because the administration has not been forthcoming with supporting documentation and the estimated subsidy rates over the testing period have varied greatly. Without that information, it is unreasonable to expect the small business community to trust the government. They have been fighting this problem for too long to settle for mere promises, when promises have been broken time and again. In the coming months I look forward to working with

the Administration to get this information and give all of us confidence that this model is more predictive and accurate.

On the plus side, as I mentioned earlier, passing this legislation would reverse the 60-percent cut in the 7(a) loan program by patching together \$6 billion in lending dollars. That restoration of loan dollars is significant on a micro and macro level. In my home state of Massachusetts, small businesses stand to lose \$121 million in loan dollars and almost 3,700 jobs if this bill isn't passed. Nationwide, a loss of \$6.2 billion in loans would translate into 189,000 jobs either lost or not created. In this economy, we can not afford to lose any more jobs or block job creation.

To my many colleagues who have courageously fought for small businesses on this issue—from Senator BOND and Senator CONRAD to Congressman MANZULLO and Congresswoman VELAZQUEZ—I thank them. To the small business groups—from 7(a)'s NAGGL and 504's NADCO to the small business coalition lead by the U.S. Chamber of Commerce, which included among many others, the National Black Chamber of Commerce, National Small Business United, and the American Bankers Association—I am proud to work with them. Because of your grassroots efforts, probably every member of Congress knows what a subsidy rate is and how it hurts the small business community when it is left uncorrected year after year. Last, I thank the Office of Management and Budget for reaching this agreement with our Committee, the Committee on Small Business & Entrepreneurship, the Committee on Budget, and the Committee on Appropriations. I know they are strongly opposed, in general, to changes to their subsidy rates, and, in particular, to any adjustment to the budget mid-year. But, small businesses do not care about technicalities and budget intricacies; they care about access to capital. This bill accomplishes that.

Mr. President, I ask unanimous consent that the following be printed in the RECORD: a letter from the small business coalition; a letter to OMB from our Committee with the Committee on budget regarding this issue; and a letter from OMB Director Mitch Daniels regarding the FY2003 subsidy rate for the 7(a) loan program.

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

SMALL BUSINESS ACCESS  
TO CAPITAL COALITION,  
September 18, 2002.

Hon. JOHN KERRY,  
*Chairman, Committee on Small Business & Entrepreneurship, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN KERRY: On behalf of the hundreds of thousands of small businesses represented by the undersigned organizations, we are writing you to ask your support for legislation that would limit the use of outdated default rate data in calculating the

subsidy rate for the Small Business Administration (SBA) 7(a) and 504 programs.

The undersigned associations believe government policies that foster and encourage robust entrepreneurial activity and small business ownership provide the basis for economic prosperity important to the long term vitality and success of our nation. Many of our small business members indicate that one major obstacle to entry or expansion of a small business is the availability and access to capital for small enterprises.

One source of funding, the SBA 7(a) and 504 guaranteed loan programs, play an important role in providing an alternative means of accessing capital for some small business owners where funding has not been available through conventional lending methods. However, in a recent Government Accounting Office (GAO) report, it was determined that the use of overly conservative default rate data by the SBA resulted in overestimated defaults for 1992 through 2000 by over \$2 billion for the 7(a) program alone when compared to actual loan performance.

Indeed, overly conservative default rates used in calculating the subsidy rate, according to the GAO report, has during the same period, resulted in the overestimation of the cost of the 7(a) program by nearly \$1 billion. Furthermore, consistent yearly program re-estimates of this magnitude serve to undermine the intent of Congress during the appropriations process.

Even so, overly conservative default rate assumptions are still being used to calculate FY 2003 subsidy rates, resulting in diminished numbers or sizes the loans capable of being made given current program funding levels. Taken into account historic levels of demand, we can anticipate program shortages that may needlessly shutout some small businesses to sorely needed funds to start or grow their businesses, thus limiting their contribution to the fragile economic recovery.

The consistent use of overly conservative default rate data, resulting in the overestimation of the subsidy rate for the 7(a) and 504 programs by SBA is not only contrary to the spirit and intent of the Credit Reform Act, but an affront on Congresses role in determining program funding levels in the appropriations process. As a result, we encourage Congress to take legislative action to assure the FY 2003's subsidy rate calculation and future calculations will be limited to the use of recent default rate data that reflect the use of revised program credit standards and thus preserve the integrity of the appropriations process.

AeA, Air Conditioning Contractors of America, American Bankers Association, American Hotel & Lodging Association, American Nursey & Landscape Association, Association of Small Business Development Centers, Asian American Hotel Owners Association, Hotel Brokers International, Independent Community Bankers Association, International Franchise Association.

National Association of Development Companies, National Association of Government Guaranteed Lenders, National Association of Small Disadvantaged Businesses, National Association of Women Business Owners, National Black Chamber of Commerce, National Restaurant Association, National Small Business United, National Tooling & Machining Association, Tire Industry Association, U.S. Chamber of Commerce, United Motorcoach Association, Women Impacting Public Policy, Yellow Pages Integrated Media Association.



U.S. SENATE,

Washington, DC, April 22, 2002.

Hon. MITCHELL DANIELS,  
 Director, Office of Management and Budget, Eisenhower Executive Office Building,  
 17th and Pennsylvania Ave., NW, Washington,  
 DC.

DEAR MR. DANIELS: We are writing to express our concern about what appears to be the continued and routine over-estimation by OMB of the cost of the Small Business Administration's 504 and 7(a) loan programs to the government under the requirements of the Federal Credit Reform Act (Credit Reform). The Senate has repeatedly raised this issue with the OMB, most recently in the FY 2002 appropriations cycle, at a Roundtable held by the Senate Committee on Small Business and Entrepreneurship last fall, and in meetings between Senate Budget Committee staff and OMB staff.

Last fall, the SBA Administrator publicly stated, and your senior OMB staff indicated to our staff, that the subsidy rate for the 7(a) program would be cut at least in half, all else being equal. Unfortunately, the 2003 budget request reflects that only half of that goal has been accomplished. Given the systematic mis-estimates in these programs, this progress, while in the right direction, has been too slow and does not do much to engender confidence in the Administration's approach in light of SBA or OMB mistakes in budget documents over the years.

In our view, failure to solve the problem will continue the unfair practice of forcing small business borrowers and lenders, year after year, to pay fees that are substantially higher than necessary to participate in and cover the government's cost of these programs.

The nexus of the problem appears to be the use of overly conservative loan default rates as part of each program's cost calculation under Credit Reform and the failure to adequately weight historical data to reflect more accurately the program changes, both statutory and regulatory, that have resulted in reduced default rates and improved program performance.

The FY 2003 credit subsidy rate for the 504 program assumes an 8.3 percent loan default rate. But program statistics from the Bank of New York suggest the rate is in the 4 percent range instead. Use of the higher default rate results in the average 504 borrower unnecessarily paying approximately \$10,000 in excess fees to participate in this program. We should emphasize that this program receives no federal appropriations and is totally funded through fees. Yet, since 1997 the program has paid nearly \$400 million in excess fees to the U.S. Treasury as a result of OMB reestimates. Since 1995, the use of overly conservative default rate assumptions in the 7(a) program has resulted in total downward re-estimates of \$1.429 billion, including interest.

The SBA testified earlier this year that it is developing an econometric model to estimate more accurately the default rate for each program. But, although we have already been told for at least a year how "econometric" modeling promises to be the solution, there is little to show for this new approach—at least, we have not seen anything yet. Because of the slow progress in the past and the experience of unfulfilled expectations, we remain skeptical that the emerging modeling approach will offer a significant improvement over previous approaches or that it will be ready with satisfactory results in time for the 2004 budget. Therefore, we request that OMB keep all of us up to date of the progress of the modeling through periodic briefings with our staff so we have an opportunity to ask questions.

Continued use of overly conservative assumptions in the credit reform model for

both of these programs and the resulting continuation of downward re-estimates could undermine support for Credit Reform, which we do not want to see happen. The bias in the estimates for these two programs is simply unacceptable. We do not expect perfect subsidy rate estimates year-in and year-out, yet we do expect that over time the re-estimate will be randomly distributed around zero. One year the estimates may be high and the next year they may be low, but over time they should balance out. Unfortunately, that is not true today, and we are not optimistic that change will occur, absent your active intervention, any time soon.

Repeated opportunities to address this problem have not been realized. We believe the problem has dragged on too long. At a minimum, we expect the Administration to submit and support a budget amendment for 2003 for sufficient subsidy appropriations that will make possible \$11 billion of 7(a) loan volume given the too-high subsidy rate OMB is currently using. Alternatively, if you expect that a review of the 2003 submission will reveal mistakes in the subsidy rates that would allow OMB to execute the 2003 budget using rates other than those published in the submission, as has occurred in other years, please submit that review. We would appreciate receiving your response to our letter, including the requests for an amendment and periodic meetings, by June 1, 2002. If legislative changes are necessary, we welcome your suggestions.

Sincerely,

PETE V. DOMENICI,  
 KENT CONRAD,  
 JOHN F. KERRY,  
 CHRISTOPHER S. BOND.

EXECUTIVE OFFICE OF THE

PRESIDENT,

OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, November 14, 2002.

Hon. DONALD A. MANZULLO,  
 Chairman, Committee on Small Business, U.S.  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of November 12, regarding the subsidy rate for small business loans.

As you know, the Administration is committed to improving the Small Business Administration's (SBA) ability to more accurately estimate the cost of subsidizing small business loans. This will enable the agency to allocate its resources more effectively, determine program risk more precisely, and increase its ability to target loan programs to the most deserving recipients.

In accordance with the commitment that the Administration made one year ago, the Office of Management and Budget has just approved SBA's 7(a) econometric subsidy model to calculate its fiscal year 2004 resource requirements. Further, in light of the fact that this improved subsidy calculation procedure is now available, the Administration would support legislation that allows us to implement the econometric model for fiscal year 2003 as well. Applying the econometric model would produce a subsidy rate of 1.04 percent rather than the 1.76 percent submitted in the FY 2003 budget.

Please let us know if you need any more information.

Sincerely,

MITCHEL E. DANIELS, JR.,  
 Director.

Mr. KERRY. Last, I want to remember Senator Wellstone, a true advocate for small business who faithfully attended our committee hearings and markups and worked hard to help the 7(a) and 504 programs not just on this issue, but every single time. His contributions were great, and I wish he were here to see this agreement pass.

Mr. BOND. Mr. President, I rise today in support of legislation that has just been introduced to permit the Office of Management and Budget (OMB) to use a recently-completed econometric model to calculate the credit subsidy rate for the 7(a) small business loan guarantee program, the flagship loan program at the Small Business Administration. This bill, once signed into law by President Bush, will allow the 7(a) loan program to meet the borrowing demands of our Nation's small businesses, which is approximately \$10 billion for Fiscal Year 2003. Without this bill, the program would limit 7(a) loans to less than \$5 billion for FY 2003. In addition, the bill will permit unobligated, no-year funds previously appropriated for the STAR terrorist disaster recovery loans to be used for the 7(a) loan program.

The "econometric model" is a significant reform in the way the SBA and OMB calculates the credit subsidy rate for the 7(a) loan program. The bill provides that the OMB and SBA will adopt the new econometric model effective retroactively to October 1, 2002. Developed by the SBA and OMB, the econometric model will use far more comprehensive data about individual borrowers and loans when forecasting anticipated defaults and establishing loan reserves to cover them.

Under the Credit Reform Act of 1990, the annual appropriation for the SBA must, in advance, provide sufficient funds to cover the cost of a Federal loan guarantee, after taking into consideration the fees paid by small business borrowers and lenders under the 7(a) program. This amount, referred to as the credit subsidy rate, is determined by the OMB prior to the submission of the President's annual Budget Request to the Congress.

Critics of the credit subsidy rate for the 7(a) program have cited the use of historical loan-performance data that pre-dates the enactment of the Federal Credit Reform Act as a major cause of a credit subsidy rate that greatly exceeds actual loan performance. The consequence is the use of the most conservative loan-default rates, year-in and year-out, and the failure by the OMB and the SBA to adjust historical loan performance data to reflect 7(a) program changes, both statutory and regulatory, that have led to real reductions in the default rates and improved program performance. According to an in-depth analysis undertaken by the General Accounting Office (GAO), the excessively high credit subsidy rates have resulted in nearly \$1 billion in unnecessary fees being paid by small business borrowers and lenders to the U.S. Treasury.

It is very unrealistic to believe that a 100% accurate credit subsidy rate estimate can be derived for the 7(a) loan program, or for any other Federal credit program. The econometric model, designed to calculate the 7(a) credit subsidy rate, is a major improvement over the "old" model. Originally, the

Administration stated that the econometric model would not be available until FY 2004. After exhaustive negotiations with the senior White House staff, I was able to secure an agreement to accelerate their use of the model retroactive to October 1, 2002, the beginning of FY 2003. The bill before us today is designed to waive a key provision of the Federal Credit Reform Act that prohibits the Congress from changing a credit subsidy rate estimate once it has been transmitted to the Congress as part of the President's annual budget submission. This may be the first time this provision has been waived since implementation of the Act in FY 1992.

We would not be where we are today resolving this important matter without the tireless efforts of my colleagues in the Senate and the House of Representatives. Mr. MANZULLO, Chairman of the House Committee on Small Business, fought for this change every step of the way. The Ranking Member, Ms. VELAZQUEZ, was especially vigilant in her efforts. In the Senate, my colleague from Massachusetts and Chairman of the Committee on Small Business and Entrepreneurship, JOHN KERRY, has kept the Committee focused on resolving this issue for the past year and has insisted that we resolve the credit subsidy rate controversy for FY 2003.

Resolving the 7(a) credit subsidy rate issue is good for small businesses. It will mean more jobs and economic fuel to grow start-up and growing small businesses. I urge each of my colleagues to vote a resounding "Aye" for this important bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid on the table with no intervening action or debate, and that any statements related to the bill be printed in the RECORD.

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

The bill (S. 3172) was read three times and passed, as follows:

S. 3172

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

#### SECTION 1. SUBSIDY RATE FOR SMALL BUSINESS LOANS.

Notwithstanding section 502(5)(F) of the Federal Credit Reform Act of 1990 and section 254(j) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Director of the Office of Management and Budget, in calculating the Federal cost for guaranteeing loans during fiscal year 2003 under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) may use the most recently approved subsidy cost model and methodology in conjunction with the program and economic assumptions, and historical data which were included in the fiscal year 2003 budget. After written notification to Congress, the Small Business Administration shall implement the validated, OMB-approved subsidy rate for fiscal year 2003, using this model and methodology. Such rate shall be deemed to have been effective on October 1, 2002.

#### SEC. 2. USE OF EMERGENCY FUNDS FOR SMALL BUSINESS LOANS.

Chapter 2 of division B of the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 is amended by striking "For emergency expenses" after "BUSINESS LOANS PROGRAM ACCOUNT" and inserting the following: "For loan guarantee subsidies under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or for emergency expenses".

#### CONGRATULATING THE PEOPLE OF MOZAMBIQUE

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the consideration of S. Res. 358 submitted earlier today by Senator BIDEN. The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 358) congratulating the people of Mozambique on their successful efforts to establish, build, and maintain peace in their country for the past ten years, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements in relation to this matter be printed in the RECORD.

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

The resolution (S. Res. 358) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 358

Whereas, on October 4, 1992, having overcome the hardships of a colonial struggle, decolonization, and armed regional and national conflict, the people of Mozambique, the parties to the civil war in Mozambique, and the leadership of Mozambique reached a peaceful settlement to the devastating 16-year civil war;

Whereas this peace was facilitated by the good offices of the Comunidade di Sant' Egidio in Rome and supported by regional friends and the international community;

Whereas in 1994 and 1999 Mozambique held multi-party elections deemed free and fair by the international community;

Whereas this peace has been consolidated and strengthened by Mozambique civil society, helping to keep the Government of Mozambique on a course of political and economic reforms despite the challenges currently presented by HIV/AIDS, floods, droughts, and regional instability;

Whereas the Government of Mozambique has initiated sound economic reforms, including the privatization of state-run enterprises, the reduction and simplification of import tariffs, and the liberalization of agricultural markets, resulting in extraordinary economic growth;

Whereas the resources that have become available by Mozambique's participation in the Highly Indebted Poor Countries Initiative have been responsibly channeled by the Government of Mozambique into anti-poverty programs;

Whereas, despite the progress that Mozambique has made, more than one-half of the

people of Mozambique over 15 years of age are illiterate, twenty-eight percent of the children under five are malnourished, infant mortality stands at more than 12 percent, and life expectancy is only 42 years;

Whereas the United States values democratic principles, the rule of law, peace, and stability in all nations that comprise the community of states; and

Whereas Mozambique has been transformed from a war-torn country to one where political disputes are settled through peaceful means: Now, therefore, be it

*Resolved*, That the Senate—

(1) congratulates the people of Mozambique on ten years of continued peace and growing democracy and commends the Government of Mozambique for continued economic and political reforms;

(2) salutes the Comunidade di Sant' Egidio for using its good offices to facilitate and mediate the peace process that led to the October 4, 1992, agreement;

(3) recognizes the indispensable role that civil society in Mozambique has played in both achieving peace and deepening democratic reforms; and

(4) stands ready to assist the Government of Mozambique on a variety of programs, including humanitarian and development assistance, HIV/AIDS prevention, and technical assistance to fight corruption.

#### MENTAL HEALTH EQUITABLE TREATMENT ACT

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to H.R. 5716, which is now at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5716) to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, and that any statements in relation thereto be printed in the RECORD.

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

The bill (H.R. 5716) was read the third time and passed.

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

● Mr. KENNEDY. Mr. President, we have passed tonight a bill to extend for one year the current provisions of the 1986 Mental Health Equitable Treatment Act which provides limited parity for insurance coverage of mental illness.

But today is not a day to celebrate. Instead, it is a call to arms—a call to pass the full and meaningful mental health parity bill that Paul Wellstone and PETE DOMENICI have fought for so tirelessly. It is a day to sound the battle cry for finally ensuring that no American is discriminated against because they suffer from a mental illness.

Mental illness is a pervasive problem in our society, and too often it is a problem that is swept under the rug

with an immense human cost. One out of five Americans will suffer from some form of mental illness this year—but only one-third of them will receive treatment.

The fight against discrimination is not new—it is as old as the Republic and as fresh as today's headlines. All Americans deserve equality of opportunity and fundamental fairness.

Next year this fight begins anew. All of us are saddened that Paul Wellstone is no longer with us to carry on this fight. But we intend to honor his memory and continue to fight for the cause for which he worked so hard. We will not rest until we enact legislation that ends the cruel discrimination that burdens so many Americans suffering from mental illness.●

#### REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 107-21

Mr. REID. 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 November 15, 2002, by the President of the United States:

Convention on Supplementary Compensation for Nuclear Damage, Treaty Document No. 107-21; I further ask 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:*

I transmit herewith, for Senate advice and consent to ratification, with a declaration, the Convention on Supplementary Compensation for Nuclear Damage done at Vienna on September 12, 1997. This Convention was adopted by a Diplomatic Conference convened by the International Atomic Energy Agency (IAEA) and was opened for signature at Vienna on September 29, 1997, during the IAEA General Conference. Then-Secretary of Energy Federico Peña signed the Convention for the United States on that date, subject to ratification. Also transmitted for the information of the Senate is the report of the Department of State concerning the Convention.

The Convention establishes a legal framework for defining, adjudicating, and compensating civil liability for nuclear damage that results from an incident in the territory of a Party, or in certain circumstances in international waters, and creates a contingent international supplementary compensation fund. This fund would be activated in the event of an incident with damage so extensive that it exhausts the compensation funds that the Party where the incident occurs is obligated under the Convention to make available.

The international supplementary fund would be made up largely of contributions from Parties that operate nuclear power plants. The improved legal certainty and uniformity provided under the Convention combined with the availability of additional resources provided by the international supplementary fund create a balanced package appealing both to countries that operate nuclear power plants and those that do not. The Convention thus creates for the first time the potential for a nuclear civil liability convention with global application.

Prompt U.S. ratification of the Convention is important for two reasons. First, U.S. suppliers of nuclear technology now face potentially unlimited third-party civil liability arising from their activities in foreign markets because the United States is not currently party to any international nuclear civil liability convention. In addition to limiting commercial opportunities, lack of liability protection afforded by treaty obligations has limited the scope of participation by major U.S. companies in the provision of safety assistance to Soviet-designed nuclear power plants, increasing the risk of future accidents in these plants. Once widely applied, the Convention will create for suppliers of U.S. nuclear equipment and technology substantially the same legal environment in foreign markets that they now experience domestically under the Price-Anderson Act. It will level the playing field on which they meet foreign competitors and eliminate the liability concerns that have inhibited them from providing the fullest range of safety assistance.

Second, under existing nuclear liability conventions many potential victims outside the United States generally have no assurance that they will be adequately or promptly compensated in the event they are harmed by a civil nuclear incident, especially if that incident occurs outside their borders or damages their environment. The Convention, once widely accepted, will provide that assurance.

United States leadership is essential in order to bring the Convention into force soon. With the United States as an initial Party, other countries will find the Convention attractive and the number of Parties is likely to grow quickly. Without U.S. leadership, the Convention could take many years to enter into force. The creation of a global civil liability regime will play a critical role in allowing nuclear power to achieve its full potential in the diverse and environmentally responsible world energy structure we need to build in the coming decades.

The Convention is consistent with the primary existing U.S. statute governing nuclear civil liability, the Price-Anderson Act of 1957. Adoption of the Convention would require virtually no substantive changes in that Act. Moreover, under legislation that is being submitted separately to imple-

ment the Convention, the U.S. contingent liability to contribute to the international supplementary fund would be completely covered, either by funds generated under the Price-Anderson Act in the event of an accident covered by both that Act and the Convention, or by funds contributed to a retrospective pool by U.S. suppliers of nuclear equipment and technology in the event of an accident covered by the Convention but falling outside the Price-Anderson system. In either case, U.S. taxpayers would not have to bear the burden of the U.S. contribution to the international supplementary fund.

The Convention allows nations that are party to existing nuclear liability conventions to join the new global regime easily, without giving up their participation in those conventions. It also permits nations that do not belong to an existing convention to join the new regime easily and rapidly. The United States in particular benefits from a grandfather clause that allows it to join the Convention without being required to change certain aspects of the Price-Anderson system that would otherwise be inconsistent with its requirements.

The Convention, without relying on taxpayer funds, will increase the compensation available to potential victims of a civil nuclear incident, strengthen the position of U.S. exporters of nuclear equipment and technology, and permit us to provide safety assistance to the world's least-safe reactors more effectively.

I urge the Senate to act expeditiously in giving its advice and consent to ratification of the Convention on Supplementary Compensation for Nuclear Damage, with a declaration as set forth in the accompanying report of the Department of State.

#### TO REDUCE PREEXISTING PAYGO BALANCES

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5708, which is now at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5708) to reduce preexisting PAYGO balances, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating to this matter be printed in the RECORD, without intervening action or debate.

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

The bill (H.R. 5708) was read the third time and passed.

**GILA RIVER INDIAN COMMUNITY  
JUDGMENT FUND DISTRIBUTION  
ACT OF 2002**

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 635, S. 2799.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2799) to provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill which has been reported from the Committee on Indian Affairs with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 2799

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

**[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.]**

[(a) SHORT TITLE.—This Act may be cited as the “Gila River Indian Community Judgment Fund Distribution Act of 2002”.]

[(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

[Sec. 1. Short title; table of contents.]

[Sec. 2. Findings.]

[Sec. 3. Definitions.]

**[TITLE I—GILA RIVER JUDGMENT FUND  
DISTRIBUTION]**

[Sec. 101. Distribution of judgment funds.]

[Sec. 102. Responsibility of Secretary; applicable law.]

**[TITLE II—CONDITIONS RELATING TO  
COMMUNITY JUDGMENT FUND PLANS]**

[Sec. 201. Plan for use and distribution of judgment funds awarded in Docket No. 228.]

[Sec. 202. Plan for use and distribution of judgment funds awarded in Docket No. 236-N.]

**[TITLE III—EXPERT ASSISTANCE LOANS]**

[Sec. 301. Waiver of repayment of expert assistance loans to certain Indian tribes.]

**[SEC. 2. FINDINGS.]**

[Congress finds that—

[(1) on August 8, 1951, the Gila River Indian Community filed a complaint before the Indian Claims Commission in Gila River Pima-Maricopa Indian Community v. United States, Docket No. 236, for the failure of the United States to carry out its obligation to protect the use by the Community of water from the Gila River and the Salt River in the State of Arizona;

[(2) except for Docket Nos. 236-C and 236-D, which remain undistributed, all 14 original dockets under Docket No. 236 have been resolved and distributed;

[(3) in Gila River Pima-Maricopa Indian Community v. United States, 29 Ind. Cl. Comm. 144 (1972), the Indian Claims Commission held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236-C;

[(4) in Gila River Pima-Maricopa Indian Community v. United States, 684 F.2d 852 (1982), the United States Claims Court held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236-D;

[(5) with the approval of the Community under Community Resolution GR-98-98, the

Community entered into a settlement with the United States on April 27, 1999, for claims made under Dockets Nos. 236-C and 236-D for an aggregate total of \$7,000,000;

[(6) on May 3, 1999, the United States Court of Federal Claims ordered that a final judgment be entered in consolidated Dockets Nos. 236-C and 236-D for \$7,000,000 in favor of the Community and against the United States;

[(7)(A) on October 6, 1999, the Department of the Treasury certified the payment of \$7,000,000, less attorney fees, to be deposited in a trust account on behalf of the Community; and

[(B) that payment was deposited in a trust account managed by the Office of Trust Funds Management of the Department of the Interior; and

[(8) in accordance with the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary is required to submit an Indian judgment fund use or distribution plan to Congress for approval.]

**[SEC. 3. DEFINITIONS.]**

[In this Act:

[(1) ADULT.—The term “adult” means an individual who—

[(A) is 18 years of age or older as of the date on which the payment roll is approved by the Community; or

[(B) will reach 18 years of age not later than 30 days after the date on which the payment roll is approved by the Community.]

[(2) COMMUNITY.—The term “Community” means the Gila River Indian Community.]

[(3) COMMUNITY-OWNED FUNDS.—The term “Community-owned funds” means—

[(A) funds held in trust by the Secretary as of the date of enactment of this Act that may be made available to make payments under section 101; or

[(B) revenues held by the Community that are derived from Community-owned enterprises.]

[(4) IIM ACCOUNT.—The term “IIM account” means an individual Indian money account.]

[(5) JUDGMENT FUNDS.—The term “judgment funds” means the aggregate amount awarded to the Community by the Court of Federal Claims in Dockets Nos. 236-C and 236-D.]

[(6) LEGALLY INCOMPETENT INDIVIDUAL.—The term “legally incompetent individual” means an individual who has been determined to be incapable of managing his or her own affairs by a court of competent jurisdiction.]

[(7) MINOR.—The term “minor” means an individual who is not an adult.]

[(8) PAYMENT ROLL.—The term “payment roll” means the list of eligible, enrolled members of the Community who are eligible to receive a payment under section 101(a), as prepared by the Community under section 101(b).]

[(9) SECRETARY.—The term “Secretary” means the Secretary of the Interior.]

**[TITLE I—GILA RIVER JUDGMENT FUND  
DISTRIBUTION]**

**[SEC. 101. DISTRIBUTION OF JUDGMENT FUNDS.]**

[(a) PER CAPITA PAYMENTS.—Notwithstanding the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) or any other provision of law (including any regulation promulgated or plan developed under such a law), the amounts paid in satisfaction of an award granted to the Gila River Indian Community in Dockets Nos. 236-C and 236-D before the United States Court of Federal Claims, less attorney fees and litigation expenses and including all accrued interest, shall be distributed in the form of per capita payments (in amounts as equal as practicable) to all eligible enrolled members of the Community.]

**[(b) PREPARATION OF PAYMENT ROLL.—**

[(1) IN GENERAL.—The Community shall prepare a payment roll of eligible, enrolled members of the Community that are eligible to receive payments under this section in accordance with the criteria described in paragraph (2).]

**[(2) CRITERIA.—**

[(A) INDIVIDUALS ELIGIBLE TO RECEIVE PAYMENTS.—Subject to subparagraph (B), the following individuals shall be eligible to be listed on the payment roll and eligible to receive a per capita payment under subsection (a):

[(i) All enrolled Community members who are eligible to be listed on the per capita payment roll that was approved by the Secretary for the distribution of the funds awarded to the Community in Docket No. 236-N (including any individual who was inadvertently omitted from that roll).]

[(ii) All enrolled Community members who are living on the date of enactment of this Act.]

[(iii) All enrolled Community members who died—

[(I) after the effective date of the payment plan for Docket No. 236-N; but

[(II) on or before the date of enactment of this Act.]

[(B) INDIVIDUALS INELIGIBLE TO RECEIVE PAYMENTS.—The following individuals shall be ineligible to be listed on the payment roll and ineligible to receive a per capita payment under subsection (a):

[(i) Any individual who, before the date on which the Community approves the payment roll, relinquished membership in the Community.]

[(ii) Any minor who relinquishes membership in the Community, or whose parent or legal guardian relinquishes membership on behalf of the minor, before the date on which the minor reaches 18 years of age.]

[(iii) Any individual who is disenrolled by the Community for just cause (such as dual enrollment or failure to meet the eligibility requirements for enrollment).]

[(iv) Any individual who is determined or certified by the Secretary to be eligible to receive a per capita payment of funds relating to a judgment—

[(I) awarded to another community, Indian tribe, or tribal entity; and

[(II) appropriated on or before the date of enactment of this Act.]

[(v) Any individual who is not enrolled as a member of the Community on or before the date that is 90 days after the date of enactment of this Act.]

[(c) NOTICE TO SECRETARY.—On approval by the Community of the payment roll, the Community shall submit to the Secretary a notice that indicates the total number of individuals eligible to share in the per capita distribution under subsection (a), as expressed in subdivisions that reflect—

[(1) the number of shares that are attributable to eligible living adult Community members; and

[(2) the number of shares that are attributable to deceased individuals, legally incompetent individuals, and minors.]

[(d) INFORMATION PROVIDED TO SECRETARY.—The Community shall provide to the Secretary enrollment information necessary to allow the Secretary to establish—

[(1) estate accounts for deceased individuals described in subsection (c)(2); and

[(2) IIM accounts for legally incompetent individuals and minors described in subsection (c)(2).]

**[(e) DISBURSEMENT OF FUNDS.—**

[(1) IN GENERAL.—Not later than 30 days after the date on which the payment roll is approved by the Community and the Community has reconciled the number of shares

that belong in each payment subdivision described in subsection (c), the Secretary shall disburse to the Community the funds necessary to make the per capita distribution under subsection (a) to eligible living adult members of the Community described in subsection (c)(1).

[(2) ADMINISTRATION AND DISTRIBUTION.—On disbursement of the funds under paragraph (1), the Community shall bear sole responsibility for administration and distribution of the funds.

[(f) SHARES OF DECEASED INDIVIDUALS.—

[(1) IN GENERAL.—The Secretary, in accordance with regulations promulgated by the Secretary and in effect as of the date of enactment of this Act, shall distribute to the appropriate heirs and legatees of deceased individuals described in subsection (c)(2) the per capita shares of those deceased individuals.

[(2) ABSENCE OF HEIRS AND LEGATEES.—If the Secretary and the Community make a final determination that a deceased individual described in subsection (c)(2) has no heirs or legatees, the per capita share of the deceased individual and the interest earned on that share shall—

[(A) revert to the Community; and

[(B) be deposited into the general fund of the Community.

[(g) SHARES OF LEGALLY INCOMPETENT INDIVIDUALS.—

[(1) IN GENERAL.—The Secretary shall deposit the shares of legally incompetent individuals described in subsection (c)(2) in supervised IIM accounts.

[(2) ADMINISTRATION.—The IIM accounts described in paragraph (1) shall be administered in accordance with regulations and procedures established by the Secretary and in effect as of the date of enactment of this Act.

[(h) SHARES OF MINORS.—

[(1) IN GENERAL.—The Secretary shall deposit the shares of minors described in subsection (c)(2) in supervised IIM accounts.

[(2) ADMINISTRATION.—

[(A) IN GENERAL.—The Secretary shall hold the per capita share of a minor described in subsection (c)(2) in trust until such date as the minor reaches 18 years of age.

[(B) NONAPPLICABLE LAW.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held by the Secretary under this Act.

[(C) DISBURSEMENT.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in subsection (c)(2) until such date as the minor reaches 18 years of age.

[(i) PAYMENT OF ELIGIBLE INDIVIDUALS NOT LISTED ON PAYMENT ROLL.—

[(1) IN GENERAL.—An individual who is not listed on the payment roll, but is eligible to receive a payment under this Act, as determined by the Community, may be paid from any remaining judgment funds after the date on which—

[(A) the Community makes the per capita distribution under subsection (a); and

[(B) all appropriate IIM accounts are established under subsections (g) and (h).

[(2) INSUFFICIENT FUNDS.—If insufficient judgment funds remain to cover the cost of a payment described in paragraph (1), the Community may use Community-owned funds to make the payment.

[(3) MINORS, LEGALLY INCOMPETENT INDIVIDUALS, AND DECEASED INDIVIDUALS.—In a case in which a payment described in paragraph (2) is to be made to a minor, a legally incompetent individual, or a deceased individual, the Secretary—

[(A) is authorized to accept and deposit funds from the payment in an IIM account or

estate account established for the minor, legally incompetent individual, or deceased individual; and

[(B) shall invest those funds in accordance with applicable law.

[(j) USE OF RESIDUAL FUNDS.—On request by the Community, any judgment funds remaining after the date on which the Community completes the per capita distribution under subsection (a) and makes any appropriate payments under subsection (i) shall be disbursed to, and deposited in the general fund of, the Community.

[(k) NONAPPLICABILITY OF CERTAIN LAW.—Notwithstanding any other provision of law, the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to Community-owned funds used by the Community to make payments under subsection (i).

#### **[SEC. 102. RESPONSIBILITY OF SECRETARY; APPLICABLE LAW.]**

[(a) RESPONSIBILITY FOR FUNDS.—After the date on which funds are disbursed to the Community under section 101(e)(1), the United States and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the funds disbursed.

[(b) DECEASED AND LEGALLY INCOMPETENT INDIVIDUALS.—Funds subject to subsections (f) and (g) of section 101 shall continue to be held in trust by the Secretary until the date on which those funds are disbursed under this Act.

[(c) APPLICABILITY OF OTHER LAW.—Except as otherwise provided in this Act, all funds distributed under this Act shall be subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

#### **[TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS]**

##### **[SEC. 201. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 228.]**

[(a) DEFINITION OF PLAN.—In this section, the term “plan” means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 228 of the United States Claims Court (52 Fed. Reg. 6887 (March 5, 1987)), as modified in accordance with Public Law 99-493 (100 Stat. 1241).

[(b) CONDITIONS.—Notwithstanding any other provision of law, the Community shall modify the plan to include the following conditions with respect to funds distributed under the plan:

[(1) APPLICABILITY OF OTHER LAW RELATING TO MINORS.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of this Act, by the Secretary.

[(2) SHARE OF MINORS IN TRUST.—The Secretary shall hold a per capita share of a minor described in paragraph (1) in trust until such date as the minor reaches 18 years of age.

[(3) DISBURSAL OF FUNDS FOR MINORS.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in paragraph (1) until such date as the minor reaches 18 years of age.

[(4) USE OF REMAINING JUDGMENT FUNDS.—On request by the governing body of the Community, as manifested by the appropriate tribal council resolution, any judgment funds remaining after the date of completion of the per capita distribution under section 101(a) shall be disbursed to, and deposited in the general fund of, the Community.

##### **[SEC. 202. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 236-N.]**

[(a) DEFINITION OF PLAN.—In this section, the term “plan” means the plan for the use

and distribution of judgment funds awarded to the Community in Docket No. 236-N of the United States Court of Federal Claims (59 Fed. Reg. 31092 (June 16, 1994)).

[(b) CONDITIONS.—

[(1) PER CAPITA ASPECT.—Notwithstanding any other provision of law, the Community shall modify the last sentence of the paragraph under the heading “Per Capita Aspect” in the plan to read as follows: “Upon request from the Community, any residual principal and interest funds remaining after the Community has declared the per capita distribution complete shall be disbursed to, and deposited in the general fund of, the Community.”

[(2) GENERAL PROVISIONS.—Notwithstanding any other provision of law, the Community shall—

[(A) modify the third sentence of the first paragraph under the heading “General Provisions” of the plan to strike the word “minors”; and

[(B) insert between the first and second paragraphs under that heading the following:

[[“Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of the Gila River Indian Community Judgment Fund Distribution Act of 2002, by the Secretary. The Secretary shall hold a per capita share of a minor in trust until such date as the minor reaches 18 years of age. No judgment funds, or any interest earned on judgment funds, shall be disbursed from the account of a minor until such date as the minor reaches 18 years of age.”]

#### **[TITLE III—EXPERT ASSISTANCE LOANS]**

##### **[SEC. 301. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO CERTAIN INDIAN TRIBES.]**

[(a) GILA RIVER INDIAN COMMUNITY.—Notwithstanding any other provision of law—

[(1) the balance of all outstanding expert assistance loans made to the Community under Public Law 88-168 (77 Stat. 301) and relating to Gila River Indian Community v. United States (United States Court of Federal Claims Docket Nos. 228 and 236 and associated subdockets) are canceled; and

[(2) the Secretary shall take such action as is necessary—

[(A) to document the cancellation of loans under paragraph (1); and

[(B) to release the Community from any liability associated with those loans.

[(b) OGLALA SIOUX TRIBE.—Notwithstanding any other provision of law—

[(1) the balances of all outstanding expert assistance loans made to the Oglala Sioux Tribe under Public Law 88-168 (77 Stat. 301) and relating to Oglala Sioux Tribe v. United States (United States Court of Federal Claims Docket No. 117 and associated subdockets) are canceled; and

[(2) the Secretary shall take such action as is necessary—

[(A) to document the cancellation of loans under paragraph (1); and

[(B) to release the Oglala Sioux Tribe from any liability associated with those loans.

[(c) SEMINOLE NATION OF OKLAHOMA.—Notwithstanding any other provision of law—

[(1) the balances of all outstanding expert assistance loans made to the Seminole Nation of Oklahoma under Public Law 88-168 (77 Stat. 301) and relating to Seminole Nation v. United States (United States Court of Federal Claims Docket No. 247) are canceled; and

[(2) the Secretary shall take such action as is necessary—

[(A) to document the cancellation of loans under paragraph (1); and

[(B) to release the Seminole Nation of Oklahoma from any liability associated with those loans.]

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Gila River Indian Community Judgment Fund Distribution Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Definitions.

**TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION**

Sec. 101. Distribution of judgment funds.

Sec. 102. Responsibility of Secretary; applicable law.

**TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS**

Sec. 201. Plan for use and distribution of judgment funds awarded in Docket No. 228.

Sec. 202. Plan for use and distribution of judgment funds awarded in Docket No. 236-N.

**TITLE III—EXPERT ASSISTANCE LOANS**

Sec. 301. Waiver of repayment of expert assistance loans to Gila River Indian Community.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) on August 8, 1951, the Gila River Indian Community filed a complaint before the Indian Claims Commission in *Gila River Pima-Maricopa Indian Community v. United States*, Docket No. 236, for the failure of the United States to carry out its obligation to protect the use by the Community of water from the Gila River and the Salt River in the State of Arizona;

(2) except for Docket Nos. 236-C and 236-D, which remain undistributed, all 14 original dockets under Docket No. 236 have been resolved and distributed;

(3) in *Gila River Pima-Maricopa Indian Community v. United States*, 29 Ind. Cl. Comm. 144 (1972), the Indian Claims Commission held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236-C;

(4) in *Gila River Pima-Maricopa Indian Community v. United States*, 684 F.2d 852 (1982), the United States Claims Court held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236-D;

(5) with the approval of the Community under Community Resolution GR-98-98, the Community entered into a settlement with the United States on April 27, 1999, for claims made under Dockets Nos. 236-C and 236-D for an aggregate total of \$7,000,000;

(6) on May 3, 1999, the United States Court of Federal Claims ordered that a final judgment be entered in consolidated Dockets Nos. 236-C and 236-D for \$7,000,000 in favor of the Community and against the United States;

(7)(A) on October 6, 1999, the Department of the Treasury certified the payment of \$7,000,000, less attorney fees, to be deposited in a trust account on behalf of the Community; and

(B) that payment was deposited in a trust account managed by the Office of Trust Funds Management of the Department of the Interior; and

(8) in accordance with the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary is required to submit an Indian judgment fund use or distribution plan to Congress for approval.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) **ADULT.**—The term “adult” means an individual who—

(A) is 18 years of age or older as of the date on which the payment roll is approved by the Community; or

(B) will reach 18 years of age not later than 30 days after the date on which the payment roll is approved by the Community.

(2) **COMMUNITY.**—The term “Community” means the Gila River Indian Community.

(3) **COMMUNITY-OWNED FUNDS.**—The term “Community-owned funds” means—

(A) funds held in trust by the Secretary as of the date of enactment of this Act that may be made available to make payments under section 101; or

(B) revenues held by the Community that—  
(i) are derived from trust resources; and  
(ii) qualify for an exemption under section 7 or 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

(4) **IIM ACCOUNT.**—The term “IIM account” means an individual Indian money account.

(5) **JUDGMENT FUNDS.**—The term “judgment funds” means the aggregate amount awarded to the Community by the Court of Federal Claims in Dockets Nos. 236-C and 236-D.

(6) **LEGALLY INCOMPETENT INDIVIDUAL.**—The term “legally incompetent individual” means an individual who has been determined to be incapable of managing his or her own affairs by a court of competent jurisdiction.

(7) **MINOR.**—The term “minor” means an individual who is not an adult.

(8) **PAYMENT ROLL.**—The term “payment roll” means the list of eligible, enrolled members of the Community who are eligible to receive a payment under section 101(a), as prepared by the Community under section 101(b).

(9) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

**TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION**

**SEC. 101. DISTRIBUTION OF JUDGMENT FUNDS.**

(a) **PER CAPITA PAYMENTS.**—Notwithstanding the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) or any other provision of law (including any regulation promulgated or plan developed under such a law), the amounts paid in satisfaction of an award granted to the Gila River Indian Community in Dockets Nos. 236-C and 236-D before the United States Court of Federal Claims, less attorney fees and litigation expenses and including all accrued interest, shall be distributed in the form of per capita payments (in amounts as equal as practicable) to all eligible enrolled members of the Community.

(b) **PREPARATION OF PAYMENT ROLL.**—

(1) **IN GENERAL.**—The Community shall prepare a payment roll of eligible, enrolled members of the Community that are eligible to receive payments under this section in accordance with the criteria described in paragraph (2).

(2) **CRITERIA.**—

(A) **INDIVIDUALS ELIGIBLE TO RECEIVE PAYMENTS.**—Subject to subparagraph (B), the following individuals shall be eligible to be listed on the payment roll and eligible to receive a per capita payment under subsection (a):

(i) All enrolled Community members who are eligible to be listed on the per capita payment roll that was approved by the Secretary for the distribution of the funds awarded to the Community in Docket No. 236-N (including any individual who was inadvertently omitted from that roll).

(ii) All enrolled Community members who are living on the date of enactment of this Act.

(iii) All enrolled Community members who died—

(I) after the effective date of the payment plan for Docket No. 236-N; but

(II) on or before the date of enactment of this Act.

(B) **INDIVIDUALS INELIGIBLE TO RECEIVE PAYMENTS.**—The following individuals shall be ineligible to be listed on the payment roll and ineligible to receive a per capita payment under subsection (a):

(i) Any individual who, before the date on which the Community approves the payment roll, relinquishes membership in the Community.

(ii) Any minor who relinquishes membership in the Community, or whose parent or legal

guardian relinquishes membership on behalf of the minor, before the date on which the minor reaches 18 years of age.

(iii) Any individual who is disenrolled by the Community for just cause (such as dual enrollment or failure to meet the eligibility requirements for enrollment).

(iv) Any individual who is determined or certified by the Secretary to be eligible to receive a per capita payment of funds relating to a judgment—

(I) awarded to another community, Indian tribe, or tribal entity; and

(II) appropriated on or before the date of enactment of this Act.

(v) Any individual who is not enrolled as a member of the Community on or before the date that is 90 days after the date of enactment of this Act.

(c) **NOTICE TO SECRETARY.**—On approval by the Community of the payment roll, the Community shall submit to the Secretary a notice that indicates the total number of individuals eligible to share in the per capita distribution under subsection (a), as expressed in subdivisions that reflect—

(1) the number of shares that are attributable to eligible living adult Community members; and

(2) the number of shares that are attributable to deceased individuals, legally incompetent individuals, and minors.

(d) **INFORMATION PROVIDED TO SECRETARY.**—The Community shall provide to the Secretary enrollment information necessary to allow the Secretary to establish—

(1) estate accounts for deceased individuals described in subsection (c)(2); and

(2) IIM accounts for legally incompetent individuals and minors described in subsection (c)(2).

(e) **DISBURSEMENT OF FUNDS.**—

(1) **IN GENERAL.**—Not later than 30 days after the date on which the payment roll is approved by the Community and the Community has reconciled the number of shares that belong in each payment subdivision described in subsection (c), the Secretary shall disburse to the Community the funds necessary to make the per capita distribution under subsection (a) to eligible living adult members of the Community described in subsection (c)(1).

(2) **ADMINISTRATION AND DISTRIBUTION.**—On disbursement of the funds under paragraph (1), the Community shall bear sole responsibility for administration and distribution of the funds.

(f) **SHARES OF DECEASED INDIVIDUALS.**—

(1) **IN GENERAL.**—The Secretary, in accordance with regulations promulgated by the Secretary and in effect as of the date of enactment of this Act, shall distribute to the appropriate heirs and legatees of deceased individuals described in subsection (c)(2) the per capita shares of those deceased individuals.

(2) **ABSENCE OF HEIRS AND LEGATEES.**—If the Secretary and the Community make a final determination that a deceased individual described in subsection (c)(2) has no heirs or legatees, the per capita share of the deceased individual and the interest earned on that share shall—

(A) revert to the Community; and

(B) be deposited into the general fund of the Community.

(g) **SHARES OF LEGALLY INCOMPETENT INDIVIDUALS.**—

(1) **IN GENERAL.**—The Secretary shall deposit the shares of legally incompetent individuals described in subsection (c)(2) in supervised IIM accounts.

(2) **ADMINISTRATION.**—The IIM accounts described in paragraph (1) shall be administered in accordance with regulations and procedures established by the Secretary and in effect as of the date of enactment of this Act.

(h) **SHARES OF MINORS.**—

(1) **IN GENERAL.**—The Secretary shall deposit the shares of minors described in subsection (c)(2) in supervised IIM accounts.

(2) **ADMINISTRATION.**—



(A) IN GENERAL.—The Secretary shall hold the per capita share of a minor described in subsection (c)(2) in trust until such date as the minor reaches 18 years of age.

(B) NONAPPLICABLE LAW.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held by the Secretary under this Act.

(C) DISBURSEMENT.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in subsection (c)(2) until such date as the minor reaches 18 years of age.

(i) PAYMENT OF ELIGIBLE INDIVIDUALS NOT LISTED ON PAYMENT ROLL.—

(1) IN GENERAL.—An individual who is not listed on the payment roll, but is eligible to receive a payment under this Act, as determined by the Community, may be paid from any remaining judgment funds after the date on which—

(A) the Community makes the per capita distribution under subsection (a); and

(B) all appropriate IIM accounts are established under subsections (g) and (h).

(2) INSUFFICIENT FUNDS.—If insufficient judgment funds remain to cover the cost of a payment described in paragraph (1), the Community may use Community-owned funds to make the payment.

(3) MINORS, LEGALLY INCOMPETENT INDIVIDUALS, AND DECEASED INDIVIDUALS.—In a case in which a payment described in paragraph (2) is to be made to a minor, a legally incompetent individual, or a deceased individual, the Secretary—

(A) is authorized to accept and deposit funds from the payment in an IIM account or estate account established for the minor, legally incompetent individual, or deceased individual; and

(B) shall invest those funds in accordance with applicable law.

(j) USE OF RESIDUAL FUNDS.—On request by the governing body of the Community to the Secretary, and after passage by the governing body of the Community of a tribal council resolution affirming the intention of the governing body to have judgment funds disbursed to, and deposited in the general fund of, the Community, any judgment funds remaining after the date on which the Community completes the per capita distribution under subsection (a) and makes any appropriate payments under subsection (i) shall be disbursed to, and deposited in the general fund of, the Community.

(k) REVERSION OF PER-CAPITA SHARES TO TRIBAL OWNERSHIP.—

(1) IN GENERAL.—In accordance with the first section of Public Law 87–283 (25 U.S.C. 164), the share for an individual eligible to receive a per capita share under subsection (a) that is held in trust by the Secretary, and any interest earned on that share, shall be restored to Community ownership if, for any reason—

(A) subject to subsection (i), the share cannot be paid to the individual entitled to receive the share; and

(B) the share remains unclaimed for the 6-year period beginning on the date on which the individual became eligible to receive the share.

(2) REQUEST BY COMMUNITY.—In accordance with subsection (j), the Community may request that unclaimed funds described in paragraph (1)(B) be disbursed to, and deposited in the general fund of, the Community.

#### SEC. 102. RESPONSIBILITY OF SECRETARY; APPLICABLE LAW.

(a) RESPONSIBILITY FOR FUNDS.—After the date on which funds are disbursed to the Community under section 101(e)(1), the United States and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the funds disbursed.

(b) DECEASED AND LEGALLY INCOMPETENT INDIVIDUALS.—Funds subject to subsections (f)

and (g) of section 101 shall continue to be held in trust by the Secretary until the date on which those funds are disbursed under this Act.

(c) APPLICABILITY OF OTHER LAW.—Except as otherwise provided in this Act, all funds distributed under this Act shall be subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

#### TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

##### SEC. 201. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 228.

(a) DEFINITION OF PLAN.—In this section, the term “plan” means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 228 of the United States Claims Court (52 Fed. Reg. 6887 (March 5, 1987)), as modified in accordance with Public Law 99–493 (100 Stat. 1241).

(b) CONDITIONS.—Notwithstanding any other provision of law, the Community shall modify the plan to include the following conditions with respect to funds distributed under the plan:

(1) APPLICABILITY OF OTHER LAW RELATING TO MINORS.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of this Act, by the Secretary.

(2) SHARE OF MINORS IN TRUST.—The Secretary shall hold a per capita share of a minor described in paragraph (1) in trust until such date as the minor reaches 18 years of age.

(3) DISBURSAL OF FUNDS FOR MINORS.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in paragraph (1) until such date as the minor reaches 18 years of age.

(4) USE OF REMAINING JUDGMENT FUNDS.—On request by the governing body of the Community, as manifested by the appropriate tribal council resolution, any judgment funds remaining after the date of completion of the per capita distribution under section 101(a) shall be disbursed to, and deposited in the general fund of, the Community.

##### SEC. 202. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 236-N.

(a) DEFINITION OF PLAN.—In this section, the term “plan” means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 236-N of the United States Court of Federal Claims (59 Fed. Reg. 31092 (June 16, 1994)).

(b) CONDITIONS.—

(1) PER CAPITA ASPECT.—Notwithstanding any other provision of law, the Community shall modify the last sentence of the paragraph under the heading “Per Capita Aspect” in the plan to read as follows: “Upon request from the Community, any residual principal and interest funds remaining after the Community has declared the per capita distribution complete shall be disbursed to, and deposited in the general fund of, the Community.”

(2) GENERAL PROVISIONS.—Notwithstanding any other provision of law, the Community shall—

(A) modify the third sentence of the first paragraph under the heading “General Provisions” of the plan to strike the word “minors”; and

(B) insert between the first and second paragraphs under that heading the following:

“Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of the Gila River Indian Community Judgment Fund Distribution Act of 2002, by the Secretary. The Secretary shall hold a per capita share of a minor in trust until such date as the minor reaches 18 years of age. No judgment funds, or any interest earned on judgment

funds, shall be disbursed from the account of a minor until such date as the minor reaches 18 years of age.”

#### TITLE III—EXPERT ASSISTANCE LOANS

##### SEC. 301. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO GILA RIVER INDIAN COMMUNITY.

Notwithstanding any other provision of law—

(1) the balance of all outstanding expert assistance loans made to the Community under Public Law 88–168 (77 Stat. 301) and relating to Gila River Indian Community v. United States (United States Court of Federal Claims Docket Nos. 228 and 236 and associated subdockets) are canceled; and

(2) the Secretary shall take such action as is necessary—

(A) to document the cancellation of loans under paragraph (1); and

(B) to release the Community from any liability associated with those loans.

Mr. REID. Mr. President, I ask unanimous consent that the committee substitute, as reported, be agreed to; that the bill, as amended, be read a third time and passed and the motion to reconsider be laid upon the table; and that any statements relating to this matter be printed in the RECORD.

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

The amendment in the nature of a substitute was agreed to.

The bill (S. 2799), as amended, was read the third time and passed.

#### ENHANCING THE MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES AND PROCESSES

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 2458, which is now at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2458) to enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a broad framework of measures that require using Internet-based information technology to enhance citizen access to Government information and services, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. LIEBERMAN. Mr. President, I rise to applaud passage by the House and Senate today of the E-Government Act of 2002. The E-Government Act is strong, bipartisan legislation that will help bring the Federal Government into the electronic age by improving the access of all citizens to the government services and information they rely on every day in their work and personal lives.

The bill that we are passing today, H.R. 2458, represents a consensus between Democrats and Republicans in the Senate and the House, and with the administration. It is the product of more than a year of negotiations and cooperation between Senators FRED THOMPSON, CONRAD BURNS and me, and

Congressmen TOM DAVIS, JIM TURNER, DAN BURTON, and HENRY WAXMAN. It is also the result of important input from a range of constituencies who support electronic government. This bill has won the support of the IT industry, of the public access community, of privacy advocates, and of non-profit groups interested in good government. There are many others who have contributed to the legislation, too many to name here. The bill demonstrates what can happen when we put aside partisan interests and work together to improve the performance of our Government.

I introduced the E-Government Act, S. 803, on May 1, 2001, with Senator BURNS as chief co-sponsor, and many original co-sponsors from both parties. This March after months of negotiations with the White House and with the help of my friend Senator THOMPSON, an amended version of the bill was reported out of the Governmental Affairs Committee. The committee filed Report No. 107-174 with the bill; this report provides important explanations and background on key concepts and terms in the legislation and should be referred to as relevant legislative history. The E-Government Act first passed the Senate on June 27 of this year. This fall, the House Government Reform Committee took up H.R. 2458, companion legislation to S. 803 that had been introduced by Rep. JIM TURNER on July 11, 2001. The House Government Reform Committee incorporated virtually all of the amended S. 803. It also expanded upon several provisions and added new ones, some of them initiatives that had been worked on for some time by Congressman DAVIS, TURNER, BURTON and WAXMAN. The revised E-government legislation was passed by the House by unanimous consent early this morning.

In less than a decade the tremendous growth of the Internet has transformed the way industry and the public conduct their business and gain access to needed information. This, in turn, has spawned a growing public expectation that government will make use of new information technologies, and a growing support for electronic government. Information technology, and the Internet in particular, provide a unique opportunity to re-package government information and services, so they are offered to the public according to the needs of individual customers. They can also facilitate interagency cooperation without requiring a major reorganization of government agencies. Ultimately, e-government can transform the way government operates, essentially effecting a "virtual" re-engineering of government. This paradigm shift requires systems based on function and the needs of the citizen rather than agency jurisdiction. If the government integrates processes across agency boundaries, the public will experience government as a seamless web of offerings. Federal services and information on the Internet can even be consolidated with those of state and local governments.

The "E-Government Act of 2002" will facilitate this transformation to a government organized more appropriately according to the needs of the public. The bill requires agencies to link their e-government initiatives to key customer segments, and to work collectively in doing so. The E-Government Fund provides necessary funding for inter-agency projects, overcoming the difficulty in securing appropriations for cooperative endeavors. The Federal Internet Portal provides "one-stop shopping" for citizens, businesses, and other governments: information and services will be integrated according to the needs of all users, all of it accessible from a single point on the Internet. The Administrator of the Office of Electronic Government will oversee and promote this vital transformation.

Among its many provisions, the E-Government Act would: establish an Office of Electronic Government, headed by a Presidentially-appointed Administrator within the Office of Management and Budget; authorize \$345 million over four years for an E-Government Fund to support interagency e-government projects; improve upon the centralized Federal Government online portal that now exists so that it is more user friendly and establish an online directory of Federal web sites, organized by subject matter; require Federal courts to post opinions and other information online, and regulatory agencies to conduct rule-making over the Internet; improve recruitment and training of information technology professionals in Federal agencies; and encourage electronic interoperability so that different agencies can communicate with one another more efficiently.

We have taken care to include significant privacy protections and we extend and improve successful information security provisions due to expire this month. The Thompson-Lieberman Government Information Security Reform Act, which was enacted at the end of the last Congress, has provided a sturdy management framework for protecting the security of government computers. Congressman DAVIS has authored a new version of the legislation, updating it and improving it.

As we are also in the process of debating homeland security legislation, it is worth noting that the E-Government Act is directly relevant to the goal of ensuring improved homeland security. The E-Government Act will give the Federal Government the tools and structure to transform its IT systems, one of the greatest vulnerabilities of agencies now tasked with homeland security missions. As we've seen through dozens of depressing revelations over the last year, we have desperate need for more effective information systems at agencies like the FBI, CIA, Department of State, the INS, and state and local authorities. The E-Government Act will help the Federal Government get that job done, by establishing more effective IT man-

agement, establishing mandates for action, and authorizing funding.

The bill will also substantially enhance the ability of the Federal Government to quickly provide information and services to citizens to help them prepare for, and respond to, terrorism, natural disasters, and other homeland threats. In the hours and days after the terrorist attacks of September 11, Americans flooded government websites in record numbers, seeking information more targeted than what the media was providing: what was happening; how they should respond to protect themselves from possible future attacks; how they could help victims; and how people who were victims themselves could seek assistance. The E-Government Act will substantially enhance the ability of the Federal Government to quickly provide information and services to citizens to help them prepare for, and respond to, terrorism, natural disasters, and other homeland threats.

Mr. President, Congress's passage of this legislation will result in a better Government and a stronger America.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 2458) was read the third time and passed.

#### UNANIMOUS CONSENT AGREEMENT—H.J. RES. 124

Mr. REID. Mr. President, I ask unanimous consent that the majority leader, with the concurrence of the Republican leader, may at any time proceed to the consideration of Calendar No. 762, H.J. Res. 124, the continuing resolution.

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

#### UNANIMOUS CONSENT AGREEMENT—AUTHORIZATION TO FILE

Mr. REID. Mr. President, I ask unanimous consent that following the sine die adjournment of the 107th Congress, the Select Committee on Intelligence be authorized to file, and the Secretary of the Senate be authorized to receive, a report in either classified or unclassified form, or both, solely on the committee's investigation into the intelligence community's activities before and after the September 11, 2001, terrorist attacks on the United States, on one of the following days: Friday, December 20, 2002, or Thursday, January 2, 2003, from 10 a.m. to 12 noon.

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

#### ORDERS FOR MONDAY, NOVEMBER 18, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate

completes its business tonight, it stand in adjournment until 11 a.m., Monday, November 18; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 12 noon, with Senators permitted to speak for up to 10 minutes each regarding retiring Members; and at 12 noon the Senate proceed to executive session under the previous order.

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

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ADJOURNMENT UNTIL MONDAY,  
NOVEMBER 18, 2002, AT 11 A.M.

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:21 p.m., adjourned until Monday, November 18, 2002, at 11 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 15, 2002:

DEPARTMENT OF STATE

MARY CARLIN YATES, OF OREGON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF GHANA.

THE JUDICIARY

MICHAEL W. MCCONNELL, OF UTAH, TO BE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT.

DEPARTMENT OF JUSTICE

KEVIN J. O'CONNOR, OF CONNECTICUT, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF CONNECTICUT FOR THE TERM OF FOUR YEARS.