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Senate

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

PRAYER

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

Let us pray.

O God our rock, great is Your glory, and worthy is Your name. We lean upon Your great strength, for You are our anchor on life's raging seas. As we prepare for the long day ahead, give Your servants in this place, the chosen of the people, the discipline to embrace Your wisdom. Remind them that true wisdom is pure, peaceful, gentle, impartial, sincere, merciful, and productive. May they remember that You expect from us faithful stewardship of our time. Give them the grace to use words responsibly, for the power of life and death is in the tongue. Place within their hearts a desire to be instruments for Your glory. Deliver them from discouragement and today let them mend the defective, bringing order where there is chaos and choosing the road that leads to life. We pray this in the name of Our Creator. Amen.

PLEDGE OF ALLEGIANCE

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

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. MCCONNELL. Mr. President, this morning, the Senate will begin consideration of the VA–HUD appropriations bill. We expect to have amendments offered and debated before the noon hour. Therefore, rollcall votes are anticipated. This is the final individual appropriations bill that will be considered on the floor, and it is my hope that we can finish the VA–HUD bill during today's session.

NOTICE

If the 108th Congress, 1st Session, adjourns sine die on or before November 21, 2003, a final issue of the Congressional Record for the 108th Congress, 1st Session, will be published on Monday, December 15, 2003, 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–410A of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 12, 2003. The final issue will be dated Monday, December 15, 2003, and will be delivered on Tuesday, December 16, 2003.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at ''Record@Sec.Senate.gov''.

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By order of the Joint Committee on Printing.

ROBERT W. NEY, *Chairman.*

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

As previously announced, the Senate will recess from 12:30 p.m. to 2:15 p.m. for the Democratic Party luncheon. Following that recess, there will be 20 minutes remaining for debate before the vote on the adoption of the Department of Defense authorization conference report. Immediately following that vote, the Senate will vote on the adoption of the military construction appropriations conference report.

As the majority leader stated previously, tonight we will begin an extended debate on judicial nominations. All Senators are encouraged to participate in this very important process.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 2861, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2861) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

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

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

Mr. REID. Mr. President, I know the distinguished Senator from Missouri is going to make an opening statement. Senator MIKULSKI, in an effort to move this bill forward, even though she had a longstanding commitment in Maryland this morning, asked that I represent her this morning, which I am happy to do.

However, her statement will be made at a later time at her convenience. She should be here in a relatively short period of time. As I indicated, she would not want to hold the bill up in any way. There is a lot of business going on today, as everyone knows, not the least of which Senator BOND and I are the chairman and ranking member of the Transportation Subcommittee of the Environment and Public Works Committee, and we are trying to move that bill along, too. That meeting started 5 minutes ago. I appreciate everyone's understanding, and I look forward to working as quickly and expeditiously as we can on this legislation.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Missouri.

Mr. BOND. Madam President, I thank the minority whip. I look forward to working with him on many issues, but the highway bill, which comes up once every 6 years, is being marked up in our subcommittee and full committee today. This is the perfect storm for me.

I understand Senator MIKULSKI's commitments today. I intend to make an opening statement, and then I have an amendment to lay down. I am going to have to turn over the floor to the Presiding Officer.

As always, VA–HUD is a challenging measure to produce, but this time it is particularly difficult because of the constraints in the budget. We have had to make some very hard decisions on how to fund almost every program in the bill. No one will be completely happy with this bill, but ultimately the decisions the distinguished ranking member, Senator MIKULSKI, and I have made with our committee have been the right ones, and the American taxpayers should be happy since our job is not only to fund programs, but to do so wisely, and that is what we have tried to do.

Ultimately, this is a good bill. It balances the needs and priorities of Members with requirements of the budget request of the administration. The bill also meets our discretionary budget allocation of $91.334 billion, and we are under our outlay allocation as well.

My compliments, once again, to my colleague and ranking member, Senator MIKULSKI, on her hard work, cooperation, and commitment to making this bill a balanced and good piece of legislation. I know that Senator MIKULSKI has a number of concerns about certain aspects of the bill, mostly regarding the funding level of certain programs. I share her concerns. But I believe we both understand we are drafting a bill with significant funding constraints. She and I worked hard to ensure the funding is targeted to key programs and priorities that we both strongly support, and we think most Members support as well.

To be clear, our most pressing and important priority in the VA–HUD 2004 appropriations bill is funding for our Nation's veterans and, most importantly, funding to provide quality and accessible medical care services from the Department of Veterans Affairs. I am proud to say our bill meets our commitments to our Nation's veterans and ensures the VA medical care system has adequate resources to meet its current and ongoing needs, especially for VA's core constituents, such as those with service-connected disabilities, low incomes, or needs for specialized services.

It is critical that we ensure VA can provide a safety net for our veterans, especially during a time when our Armed Forces are mobilized across the globe maintaining the peace and fighting the war against terrorism.

While we expect the brave men and women serving in Iraq, Afghanistan, the Philippines, Bosnia, and other places to face dangers on a daily basis, they should not expect to face the danger of inadequate medical services when they return from duty. This bill ensures that they have peace of mind, meaning the Government will be there for them when they return.

Further, our bill meets the funding agreement for the VA under the fiscal year 2004 budget resolution by providing $30.6 billion in discretionary spending, an increase of $2.9 billion over the fiscal year 2003-enacted level.

Consistent with the budget resolution, nearly all of the discretionary spending increase is for medical care. Further, the bill does not include the administration's request to impose new enrollment and higher prescription drug fees on certain veterans. We have not included the administration's proposal because I believe it is unfair to ask our Nation's veterans to bear too heavy a burden for the cost of the medical care they rightly deserve. The proposal has proposed a new $250 enrollment fee and an increase in prescription copays from $7 a month to $15 a month.

The administration also requested funds to implement its controversial outsourcing program. According to VA, if these were not enacted, it would need $1.3 billion to meet its projected medical care needs in fiscal year 2004. Therefore, we have rejected these new fees and have included an additional $1.3 billion to make up for the lost revenues from those fees.

Let's be clear. Without these funds, the VA would be forced to deny care to about 585,000 veterans. During a time when our troops are deployed, fighting in Iraq, Afghanistan, and other places, it is not just necessary to include the additional funds; it is our moral duty to include those funds.

For medical care, the VA/HUD bill before us provides $26.8 billion in funds without collections, representing a $1.57 billion increase over the request. With third party insurance collections, the medical care account will have over $28.3 billion in funds. That is about $3.1 billion over fiscal year 2003's enacted level and represents a 12.3 percent increase over fiscal year 2003, the largest increase in VA medical care history.

Let me illustrate the urgent and pressing needs. Several of us went to the VA hospital in Washington yesterday to thank the veterans and wish them happy Veterans Day. But on our visits around the system, we found that there are tremendous needs.

According to a recent VA analysis, 15,000—almost 16,000 service members who served in Operation Iraqi Freedom have separated from military duty, and among these service members almost 2,000 had sought VA health care during 2003. I point out, these numbers do not include those military men and women who are returning from Afghanistan

and other parts of the world, fighting the war on terrorism.

Every day in the news we hear the unfortunate, sad news of American soldiers killed in Iraq. However, as illustrated by the VA analysis and scores of news reports, we have found that our new medical care in the field has enabled us to save many service members who might not have survived. They come back with very serious wounds and perhaps disabilities.

USA Today, on October 1, said at least seven times as many men and women have been wounded in battle as those killed in battle. The good news is we have kept these people alive. But as these wounded service members are discharged, they confront new and challenging hardships in piecing together their lives. Most of them will be depending on the VA to meet their needs. Further, we know the demand for VA medical care is not going to lessen. We have already seen the VA medical care system overwhelmed by the staggering increase in demand for medical services.

Since 1996, the VA has seen a 54 percent growth, 2 million patients, in total users for the system. Further, the VA projects its enrollments will grow by another 2 million patients from the current level of 7 million to 9 million in 2009.

The other major highlight of VA funding is construction funding for VA's medical care infrastructure. The bill provides almost $525 million for minor and major construction projects. A significant portion of that is dedicated to the Department's Capital Asset Realignment for Enhanced Services, or CARES, initiative.

I want everybody to remember this because this CARES initiative is important. To jump-start the program, the bill includes authority for the Secretary to transfer up to $400 million from medical care to the CARES program. This transfer authority is provided because buildings that are no longer suitable for the delivery of modern health care cost the VA money out of medical care. Instead of spending these important resources on obsolete facilities, these funds could be used to provide quality care to more veterans closer to where they live. The GAO has concluded that the VA wastes $1 million a day on sustaining the obsolete and out-of-date, unused facilities. The CARES program is designed to move VA health care into the 21st century. It depends on a modernized infrastructure system located in areas where most of our veteran population lives.

Many veterans today have to travel hundreds of miles to receive care. I visited the VA hospitals in my home State of Missouri and found they all have great need for infrastructure improvements, such as modernized surgical suites, intensive care units, and research space. Most of the VA system was created right after World War II. It is outdated and located in areas that are not always easily accessible to veterans. That is why I strongly support the CARES initiative and believe Secretary Principi is on the right track in realigning the health care system.

As for HUD, we provide adequate funding for all programs either at last year's level or the budget request, and usually the higher of the two. However, there are several points to be made about funding for two programs: Section 8, and HOPE 6.

The administration proposed funding section 8 vouchers through a new account, Housing Assistance for Needy Families, which would have allocated section 8 certificates through a State block grant program. Under the budget request, section 8 project-based housing assistance would have continued to be funded through HUD. This program has been uniformly criticized and could have placed a number of families at risk of losing their housing over the next few years.

Instead, we funded the section 8 certificate fund at $18.4 billion, consistent with the budget request, without the new program structure. Many groups say this appropriation is inadequate and could result in the loss of housing. I share these concerns with several qualifications.

First, in previous bills we restructured the account to provide funding to PHAs only for the families actually using vouchers and then with the central reserve at HUD, to ensure additional funds would be available to fund vouchers for additional families up to the PHA—that is, public housing authority—authorized contract level.

This is new. The data is incomplete. There is a risk that there are not enough funds in the appropriation to meet all the needs of all families. But we do not know what that number will be.

In past years, HUD has found additional excess section 8 funding to meet all section 8 needs, and no doubt will next year and the year after until this new funding system is in place and data is reliable.

Nevertheless, we made it clear in the report that we expect the administration to alert us to any shortfalls and that we expect any shortfalls to be funded fully in a supplemental appropriations request.

Second, the administration eliminated the HOPE VI Program, which was funded last year at $570 million. This program has been a tremendous boost to the quality of housing for many low-income families. It has allowed PHAs to take down obsolete public housing, where we essentially warehouse the poor, and replace that housing with mixed income and public housing that has anchored new investments in distressed communities.

I have a personal interest in this program because we started this change. We made this change initially in St. Louis, MO, with one project which was totally uninhabitable, unsafe, and unfit to raise a family. It has been replaced with new, modern, mixed-income family housing. This program is working. This is one of the best things that has happened in public housing.

Does there need to be a change? Certainly we can look at it, but we need a discussion, a debate, and a decision before we try to shut down HOPE VI. We have not been able to fund this program fully, but we have provided $195 million for HOPE VI in fiscal year 2004 and provide limited authority to recapture funds from old projects unable to use their HOPE VI funding.

For the Corporation for National and Community Service, the bill provides $484 million for fiscal year 2004, about $100 million above the fiscal year 2003-enacted level and $113.6 million below the request. The dollar increase is the largest increase in the corporation's history, and the total amount provides the highest level of funding for the corporation. While our funding level does not meet the President's request, along with additional flexibilities we provided in the bill, it will support the President's goal of enrolling up to 75,000 new AmeriCorps members.

We have provided a robust appropriation for the corporation. I strongly believe the bill contains the necessary controls to ensure that the corporation does not continue to repeat the highly publicized mismanagement problems of the past. The bill ensures accountability, addresses the AmeriCorps enrollment problems, without penalizing the thousands of volunteers who want to serve and serve well.

Further, with the current chief financial officer in place, and Chairman Steve Goldsmith at the helm of the corporation's board of directors, I am very confident the corporation can correct its longstanding management problems.

I am a believer in tough love, and I can say with confidence this bill represents that philosophy. The promise of the corporation is too great to allow it to be derailed by inappropriate, inadequate mismanagement and the inability to count, which has perplexed the corporation in previous years.

For the Environmental Protection Agency, the bill provides $8.2 billion, some $552 million more than the budget request. The funding represents a number of tough decisions balancing Member priorities with the budget request. In particular, we were able to fund fully the clean water State revolving fund at the fiscal year 2003 level, which is $500 million more than the budget request. We also fully funded the drinking water State revolving fund at $850 million, which is equal to the budget request in the fiscal year 2003 level.

I know there will be some concerns about Superfund, which is funded at $1.265 billion, the same as fiscal year 2003, and $125 million less than the budget request. This is one of the tough choices, but this funding level reflects a level of funding consistent with the last few years.

We have included requirements to help push EPA toward more Superfund

closeouts. There is a contentious issue in the count. Language has been included to clarify an existing exemption in the Clean Air Act that engines that are used in farming and construction and are smaller than 175 horsepower are exempt from State regulation for emissions but remain subject to EPA regulations.

The problem we face today is that California is on the verge of issuing new regulations that would drastically change the emission requirements for small engines, whether they are used for lawn and garden or farm and construction. This California Air Resources Board threatens 17,000 jobs in other States and 5,000 jobs in Missouri.

Before the board acted, I specifically requested them to find a resolution to the issue which would not force U.S. manufacturers to move their plants offshore because I think Government-required export of jobs is unacceptable. The California Air Resources Board had an opportunity to adopt a rule supported by the entire industry to provide the environmental gains needed and protect the public from the risk of burn and explosion from catalytic converters on small engines, but they chose not to go this route. Unfortunately, the proposed regulations raise great threats to safety of lives and the health of consumers.

I will be addressing that in an amendment I will be offering which will clarify the purpose of these provisions and also respond to concerns raised by a number of Senators. I hope we can support this measure to assure that we can clean up our environment, and we do so in a way that does not bring additional risk of explosion and fire. We have seen what tragedies fires caused in California. We do not want to see fires caused by small engines, and we do not want to see 22,000 manufacturing jobs exported directly as a result of a regulation.

The underlying bill itself also includes $5.586 billion for the National Science Foundation, an increase of $276 million over the current funding level. It is an increase of only 5.2 percent, which is far short of the funding path, which I think an overwhelming majority of this Senate supports, to put NSF on a path to double in 5 years. To keep us from losing jobs to overseas, we have to have the high technology science that the NSF can provide.

In addition, people working in the National Institutes of Health tell us that continued gains in NIH, which we have so generously doubled, is being held back by the failure of the hard sciences in NSF, which are necessary to support the medical advances. I am pleased we are funding the priorities of nanotechnology, plant genome, and EPSCoR above the requested levels and continue to support research at all levels, from elementary school to postdocs and beyond.

Finally, we continue our support of minority-serving institutions, including such programs as historically Black-serving institutions and the Louis Stokes Alliance for Minority Participation, with $22 million in additional funds over the President's request.

NASA is funded at $15.3 billion, consistent with the 2003 level. We have funded the space shuttle program at the President's requested level of $3.97 billion. The Columbia Investigation Accident Board recently issued a final report, and the response of NASA has developed an implementation plan as a foundation for return to flight.

Nevertheless, NASA is facing a crossroads in its human space program and we need to understand the extent of the administration's commitment to the shuttle, the International Space Station, and human space flight.

The need to define this commitment has become even more important in recent weeks with the successful launch of a Chinese taikonaut and after the disturbing news that Russia will be unable to fund the next scheduled launch of a Progress to the ISS, meaning the current crew on the ISS will not return to Earth until next year.

The bill does have to necessarily reduce the budget for the International Space Station by $200 million, reflecting the current state of the ISS, with its reduced crew and the inability of NASA and international partners to continue its construction of the ISS, as well as the obvious risks of relying on Russia and Russian vehicles to supply the ISS for an indeterminate amount of time.

There are many constraints within this bill. We must consider all the current uses for funds versus a program that in some respects is on hold. We will gladly reconsider this action as NASA and the administration present a plan that will restart the construction of the ISS to reach core complete.

The bill also provides for some minor programmatic changes within the science aeronautics and exploration account. We do provide for an additional $50 million beyond the President's request in the area of aeronautics.

Europe has made it clear they intend to dominate the commercial aviation market, and we intend not to let that happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. I thank the Chair.

Madam President, I thank Senator BOND and the distinguished Senator from California for her graciousness as we proceed on both the bill and an amendment of Senator BOND and her advocacy in behalf of the State of California. Her advocacy on the issue is well known, but I know she also has pragmatic solutions. I also appreciate that she did not object to bringing this bill forward. We thank her very much.

The veterans need this bill. We need it to protect America's environment. We need it to empower communities, and we need to invest in science and technology that helps us come up with new ideas for the new products that are going to lead to new jobs right here in the United States of America.

The Presiding Officer knows about the loss of jobs in our country and the way we are going to not only have the jobs today, but also the jobs of tomorrow, is by coming up with these new products. We know we win the Nobel Prizes, but now we have to start winning the markets.

I am so pleased to bring the VA–HUD bill to the Senate floor with my dear colleague, Senator BOND. This is truly a bipartisan bill. I thank Senator BOND for his cooperation and collegiality in developing the framework for this legislation, as well as Senator STEVENS and Senator BYRD who worked with us as we tried to deal with a very spartan and frugal allocation in these tough economic times. We really appreciate Senator STEVENS trying to problem-solve with us on how we can meet the compelling needs that are in this legislation.

One of the most compelling needs is VA. During the August recess, I traveled to VA clinics all over Maryland, from the rural parts of my State all the way up to metropolitan areas, meeting with doctors and nurses, but also with veterans. What did I see? Outpatient clinics at capacity, waits to see specialists, and, at times, driving long distances to travel in rural areas. Everywhere I went, they all said they were being swamped by new veterans seeking care.

They are anticipating the return of the Iraqi war veterans, not only Jessica Lynch, but others who come back bearing the permanent wounds of war knowing that they are going to need the permanent help of the VA. We want to be on their side to stand up for that help.

We also saw that many people who had health care but lost their jobs or were forced into early retirement turning to the VA. When we took a look at the VA budget, we found that the President's request was about $1.5 billion under what we needed to deal with the waiting lines, the new Iraqi vets coming back, and also the fact that we need to take care of those category 7 veterans, those World War II veterans. So we need more money in VA. We tried to take care of this on the Iraqi supplemental, but that was not the time nor the place, and we count on working with the leadership, under Senator STEVENS, to solve this problem. We have come a long way in this VA–HUD budget in dealing with this issue.

While we stand up for our veterans, we also want to stand up for our communities. This is why the HUD budget offers promise to the area of housing and community development. We continue our commitment to core housing programs. We particularly are enthusiastic about the Community Development Block Grant Program because it goes to local communities; it is flexible funding where the local community decides where the public investment

needs to go to leverage jobs or to rebuild communities. This is why we like CDBG, whether it goes to North Carolina, to those small rural communities in Alaska, or to a big city such as Baltimore. Because of what we have done, we have helped retain over 100,000 jobs nationwide.

It is also the same for a program called HOME, which has created in the past 10 years over 700,000 affordable housing units. We are going to continue in this bill the longstanding commitment to renew all section 8 vouchers and also to keep the HOPE VI program going. So we are looking out for building housing, building hope, and providing access to the American dream.

We are also in this bill fighting to protect our environment. We are helping EPA by providing the right funds to clean up brownfields, improve air quality, and fix water and sewer systems. I am particularly proud of the way we have continued on a bipartisan basis to fully fund the Chesapeake Bay Program.

Where we would like to do more is in the water and sewer program. Every Senator has come to us, along with every Governor, to say: Increase water and sewer money. The communities need it to protect public health and the environment, but we also need it, say the Governors and the local officials, because this will also create jobs. We are under so many EPA-unfunded mandates that essentially this will push problems onto the local ratepayer.

We have funded water and sewer projects, but I am going to be offering an amendment to increase it even by $3 billion more.

We also have to have very strong enforcement of environmental laws. So we must not skimp on enforcement, and I will be supporting an amendment by Senator LAUTENBERG on this issue.

Then we go to national service. This bill also empowers communities through national service. Working with Senator BOND, we cleaned up a terrible accounting mess. The President has responded and given us new leadership, but right now we are working to increase the volunteer program. We continue to need additional funds and better management.

At the same time, we are working on NASA to return our space program to flight, but we want to ensure, as always, the safety of our astronauts, and we are absolutely committed to implementing the Gay-Min commission report so that when we go back to space, our astronauts will be safe.

Space science: This is where we look at big breakthroughs, whether it is Earth science, work at NASA Goddard, or the Hubbard telescope, but also Senator BOND and I worked to increase funding of aeronautics by $50 million.

In 1980, the U.S. had 90 percent of the commercial aviation market. Now we are down to 50 percent. This is unacceptable. We have to make sure we make airplanes in this country, and we come up with the best ideas and the breakthrough technology, not only for smart weapons of war, but where this is translated into the commercial airline business where we can fly and ensure that passengers are safe, but also maintain this manufacturing base. So Senator BOND and I put in $50 million for increased aeronautical research.

At the same time, we have put money into the National Science Foundation to make sure we have that farm team of the next generation of scientists and engineers, but also in breakthrough technologies, investment in biotech, infotech, and a marvelous new field called nanotech that could create thousands of new jobs.

Imagine that wonderful wedding ring the Chair has on, that our former colleague Senator Dole gave. As she looks at that ring, just know that that is the size of a supercomputer when we move our nanotechnology further ahead, that the entire Library of Congress will be in something less than the size of my earring. Is this not phenomenal?

There will come a day when someone will be able to take one little pill-like item a day, or even a month, and that nanotechnology will be an ongoing monitor for the diabetic, for the high blood pressure person, for the stroke-prone person and be able to send alerts to a doctor's office. This is what lies ahead.

We will not only be saving lives or collecting information, but what we will be doing is winning the Nobel Prizes and winning the markets and these products will be manufactured in this country and will revolutionize the world.

This is what VA–HUD is all about, standing up for our veterans, rebuilding communities, protecting the environment, answering a call to national service, making public investments in science and technology. So I am pleased to support this bill, along with my colleague, the chairman of the subcommittee, Senator BOND. This is a bipartisan bill. This is not a Democratic bill or a Republican bill. This is a red, white, and blue bill. We hope it moves expeditiously through the Senate with a few of the amendments we are proposing.

I yield the floor.

AMENDMENT NO. 2150

Mr. BOND. I call up an amendment at the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself and Ms. MIKULSKI, proposes an amendment numbered 2150.

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

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

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

Mr. BOND. Mr. President, this amendment before us is the one I described in my opening statement which will save 22,000 manufacturing jobs in 23 States. Let me repeat so that all will know what we are debating today, and that is whether we will decide to kill 22,000 manufacturing jobs in 23 States across America.

With this amendment, we will decide whether to close at least three American manufacturing plants. We will decide today whether we will send thousands of jobs to China. We will decide today whether we will kill thousands of jobs of manufacturing parts suppliers. We will decide today whether we will kill thousands of jobs of those dependent on a manufacturing paycheck. We will decide all of this with this very important amendment. Our answers must be a resounding no to killing 22,000 manufacturing jobs. Our answer must be a resounding no to sending more jobs to China by a State regulation. Our answers must be a resounding no to closing manufacturing plants. A ''no'' vote on this proposal and the underlying proposal is a vote to send thousands of jobs abroad.

Why are these jobs at risk? Quite simply a single agency in a single State has its own ideas of how to solve problems in the environment. The problem is they do so without a care in the world as to the consequences of their actions—the loss of jobs and the danger that it entails.

At issue is the desire of the California Air Resources Board to impose new air pollution reductions by imposing a massive redesign on small engines used in lawnmowers, generators, blowers, chain saws, and marine vessels. The California redesign would be so massive that it will force the use of expensive and dangerous technologies like super hot catalytic converters on hand-held equipment.

The California market and those States that may follow suit will be forced to do so because major chains that sell these small engines will not be able to make one kind of engine for a California market and another kind of engine for other markets. Instead of manufacturers rebuilding plants in the United States, they will rebuild them in China where it is cheaper and fill them with cheap labor. These workers will not be subject to U.S. wage, work, or environmental regulations.

This is not a question of what the company does in terms of its profit and loss statement. They can maintain the same profits by probably raising prices and sending their manufacturing to China. This is a question of U.S. jobs of the men and women who work in those plants.

I visited workers at a Poplar Bluffs, MO, plant which makes small engines. They are good people, hard-working people. They are supporting their families and their communities. They cannot understand why we would let a regulation of one State send their jobs to China. But they are not alone. Closure of these plants will have a ripple effect across the country.

When you include the direct loss from parts suppliers and payroll dependents, 22,000 jobs in 23 States from Minnesota to Florida, from Massachusetts to Texas and Arizona will be lost.

This map shows where those losses occur. They are significant losses—not only in my State but in Wisconsin, in Georgia, in Illinois, in Alabama, and in Texas. These are the States that will bear the burden.

I ask my colleagues: Can we afford to lose more than 22,000 manufacturing jobs? I think the answer is no.

The need to save these 22,000 jobs is so important that I have made changes in my small engines provision to address concerns of stakeholders and members. I believe and trust that these changes are appropriate and will assure that we have targeted our amendment to meet the real dangers.

First, the requirement that EPA establish new small engine standards to achieve additional pollution reduction for small engines.

Let me make it clear: EPA, under the Clean Air Act, already regulates small engines and has done at least two rounds of small engine air pollution reductions.

In this amendment, we direct them to within a year do another round of new standards so that the entire Nation benefits from cleaner small engines. In other words, we are going to get the cleanup that California wants in California, and which other States in the Nation need in their States. My own State of Missouri needs pollution reductions in Kansas City and St. Louis. In Missouri, we can't issue those regulations. I say to the occupant of the Chair, North Carolina can't issue those regulations on its own. But by directing EPA to enforce those standards nationally, we will get the cleanup that we need in every single one of our States. All 50 States will benefit from nationwide air pollution reductions.

While we are concerned about the loss of 22,000 jobs, changes in the amendment will also address vital safety concerns with the California rule. Safety professionals and the organizations they serve fear that the California rule will force unsafe changes to small engines that will increase the risk of fire, burn, and even explosion. This California regulation contains the requirement that would force small engine makers to install superheated catalytic converters.

Anybody who has been around them should know that catalytic converters reach extremely high temperatures when chemically breaking down air pollution. In fact, catalytic converters meeting California's standard can reach temperatures of 1,100 degrees Fahrenheit or more. Dry grass burns at just over 500 degrees Fahrenheit, and certainly human skin burns at much lower temperatures.

Keep in mind that were this California regulation to go into effect, you would be required to hold an 1,100-degree Fahrenheit catalytic converter attached to your weed whacker, chain saw, or lawnmower only inches from your hands and legs.

Keep in mind the California regulation would require you to wave around a 1,100-degree catalytic converter in the dry grass you are mowing or the dry brush you are cutting or in the dry leaves you are blowing. This is a safety hazard. There are basic safety warnings—avoiding the use of hot mufflers or use of equipment in dry grass or brush conditions must be avoided. The California rule ignores them. Not only did they not address these concerns, but in one example they provided misleading information to their own California Fire Chiefs Association. Initially, the California Fire Chiefs believed that the California combination of leaking fuel from overly pressurized tanks and excessive temperatures from a hot catalyst is a disaster waiting to happen. The fire chiefs thought the rule poses an unacceptable risk to the people of their State.

After promises from the Air Regulation Board were made to the fire chiefs that they change their regulations, the fire chiefs dropped their concerns. Unfortunately, they were misled, according to the fire chiefs.

This is an enlarged copy of the letter that was sent by the California Fire Chiefs Association. It documents how the operation of this new regulation would be a great danger.

I ask unanimous consent a copy of the letter be printed in the RECORD.

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

CALIFORNIA FIRE
CHIEFS ASSOCIATION,
Rio Linda, CA, November 6, 2003.

Hon. CHRISTOPHER BOND,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR BOND: The California Fire Chiefs Association represents fire chiefs from over 1,100 fire departments operating in the state of California. Member organizations consist of municipal fire service agencies, fire districts, state and federal government agencies, and corporate fire brigades.

Earlier this year in oral and written communications to the California Air Resources Board (CARB), our association expressed serious concerns about the CARB's plans to require catalytic converters on lawnmowers and other lawn and garden power equipment. Firefighters have far too much experience suppressing fires caused by catalytic converters on automobiles carelessly parked on combustible grass and leaves.

After this past month of fighting wildland fires, we are almost too tired to think about catalytic converters on lawnmowers which, after all, are intended for use on grass. California does not need yet another way of igniting fires.

Several weeks ago, the CARB's staff informed our representative, Assistant Chief Jim Medich of the West Sacramento Fire Department, that the catalytic converter requirement had been removed and the outdoor power equipment industry was now in support of the measure. Believing that statement to be true, we had no further objection to the CARB rule and have since been quoted in support of the regulation.

Unfortunately, we were misled. The catalytic converter provision was not dropped, and we cannot find any evidence of industry support. As such, we wish to go on record that we categorically do not support the proposed regulation, because we believe it will lead to a substantial increase in residential and wildland fires.

These are complex issues that are not simply solved by manufacturers according to an arbitrary regulatory schedule. Similar challenges exist with catalytic converters on board boats, and it may be years before they are resolved.

We are saddened an agency that exists only to protect the health and safety of Californians would choose to ignore fire safety and misrepresent the facts. Our hope is that, as this matter proceeds to the federal government, it will be managed with more integrity. As always, we stand ready to work with our many friends in the environmental protection community who so well understand that effective fire prevention saves lives and protects the environment.

Sincerely,
Chief WILLIAM J. MCCAMMON,
President.

Mr. BOND. Madam President, the California Fire Chiefs Association say they categorically do not support the proposed regulation because it will lead to a substantial increase in residential and wildland fires.

They state:

We are saddened an agency that exists only to protect the health and safety of Californians would choose to ignore fire safety and misrepresent the facts.

Not surprisingly, other agencies are very much concerned.

The National Association of State Fire Marshals remains very concerned that the California rule cannot be safely met.

The United States Consumer Products Safety Commission has concerns over the potential for burn fire material hazards that remain unaddressed.

The Missouri State Fire Marshal remains concerned that the California rules create a significant threat to the safety of people, property, and the environment.

The National Marine Manufacturing Association is concerned that California's activities create marine safety issues that must be evaluated further before they are imposed on industry. That is right. This rule can even make boats unsafe. Generators and engines kept in boats in enclosed spaces with poor ventilation requiring these superheated catalytic converters is a boating disaster waiting to happen.

I ask unanimous consent that copies of these letters be printed in the RECORD.

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

NATIONAL ASSOCIATION OF STATE
FIRE MARSHALS, EXECUTIVE COMMITTEE,
Washington, DC, October 7, 2003.

Re California's new emission regulations for lawn and garden equipment and request for a safety study.

Mr. JEFFREY R. HOLMSTEAD,
U.S. Environmental Protection Agency, Pennsylvania Avenue, NW., Washington, DC.

DEAR MR. HOLMSTEAD: The National Association of State Fire Marshals (NASFM) represents the most senior fire safety officials

in the 50 states and the District of Columbia. Our mission is to protect life, property and the environment from fire and other hazards. We receive virtually all of our resources from federal and state government agencies.

NASFM became aware of the proposed emission regulation being proposed by the California Air Resources Board (CARB) for lawn and garden equipment earlier this summer. Out of concern that the very hot catalytic converters and pressurized fuel tanks required by this rule would pose a risk for additional garage fires, wildland fires and operator burns, NASFM submitted the enclosed July 29, 2003, and September 12, 2003, correspondence to CARB. In this correspondence, NASFM urged the CARB Board ''not to proceed with [its proposed emission] regulation at this time, given the high probability that lives and property will be at risk if catalytic converters and pressurized fuel tanks are required before all critical safety parameters have been identified and before the industry can implement the proper safety measures.''

NASFM urged CARB to participate in a safety test program to evaluate and respond to the unresolved safety concerns with CARB's proposal to apply extremely hot catalysts and pressurized fuel systems to lawn and garden equipment. We are aware that a similar safety study is being undertaken with U.S. EPA, the U.S. Coast Guard and industry to research the effects of applying catalytic converters to marine engines. However, by moving forward with the adoption of regulations at its Board hearing on September 25, the CARB Board has effectively rejected the proposed safety study, thus denying NASFM (and other safety organizations) the needed time and therefore the ability to participate as a stakeholder in the CARB regulatory development process. Additionally, CARB has failed to identify and objectively explain to the public the risks and substantially unresolved safety issues associated with its regulatory program. For example, CARB's August 8 Staff Report failed to mention—or even cite to—the correspondence submitted to CARB by the California Fire Chiefs Association on July 18, comments of NASFM submitted on July 29, or the correspondence from the U.S. Consumer Product Safety Commission, all of which raised valid safety concerns with CARB's proposal.

CARB has indicated that manufacturers will simply respond to the increased heat from catalysts by adding more heat shielding and insulation—despite documentation by manufacturers that the installation of additional heat shielding and insulation to protect the operator from burns will inherently result in much longer cool-down periods, increasing the risk of fires during refueling and fires from retained grass clippings after the equipment is parked in the garage.

NASFM remains very concerned that the requirements adopted by the CARB Board at its September 25 Hearing cannot safely be met, particularly by the relatively small, unsophisticated equipment manufacturers that dominate the lawn and garden industry. Consequently, NASFM's suggested safety study is needed more than ever to accurately determine how much heat catalysts will generate; whether the added heat from a catalyst exhaust system can safely be mitigated through heat shielding; and how much pressurization a fuel tank can safely withstand.

NASFM also is concerned that other states are likely to ''opt into'' the California program if they are authorized by U.S. Environmental Protection Agency (U.S. EPA) under Section 209(e) of the Clean Air Act. Because of fundamental unresolved safety issues, the U.S. EPA must ensure that consumers across the country are adequately protected as required by the Clean Air Act. We urge U.S. EPA to evaluate, accurately identify for the public, and address the substantial unresolved safety issues presented by the CARB regulation. If EPA authorizes the CARB regulation without conducting a thorough and meaningful safety evaluation, then NASFM and its members will request substantial additional federal funding to respond to a dramatic expected increase in fires in and around people's homes, as well as an increase in operator burn injuries. We believe the additional costs in fire suppression—and the potential loss of life and property, as well as damage to the environment—that will result from CARB's regulations as currently written would dwarf the relatively small costs of conducting a meaningful safety study prior to the EPA decision on whether to authorize the regulations.

NASFM has established relationships with the EPA as well as with environmental nongovernmental organizations, other fire service organizations and the Building and Fire Research Lab at the National Institute of Standards and Technology. We stand ready to participate in a safety study on this issue if authorized by EPA.

Thank you for your consideration.

Sincerely,

DONALD P. BLISS,
President.

U.S. CONSUMER PRODUCT SAFETY COMMISSION,
Washington, DC, August 4, 2003.

ALAN C. LLOYD, Ph.D.,
Chairman, Air Resources Board, California Environmental Protection Agency, Telstar Avenue, El Monte, CA.

DEAR DR. LLOYD: A staff representative of the U.S. Consumer Product Safety Commission (CPSC) attended the Small Off-Road Engine Workshop held by the California Air Resources Board (CARB) in Sacramento on July 2, 2003. Part of that workshop included the discussion of potential safety issues associated with proposed air quality requirements in California. We understand that these proposed air quality requirements might require additional emissions control equipment on outdoor power equipment such as lawn mowers. The CPSC staff has conducted an initial review of potential safety issues that may arise as a result of the promulgation of these requirements and believes that these issues merit further consideration and discussion in the regulatory process conducted by CARB. Specifically, the CPSC staff recognizes the potential for burn, fire, or materials hazards that additional emissions control equipment could present.

The CPSC engineering staff requests an opportunity to discuss proposed emissions control requirements for outdoor power equipment with the appropriate CARB staff to learn more about the proposed requirements and their implications on consumer product safety. Hugh McLaurin, the Director for Engineering Sciences at the CPSC, will contact the appropriate authority at CARB to arrange further discussions.

Sincerely,

JACQUELINE ELDER,
Assistant Executive Director.

NATIONAL MARINE MANUFACTURERS ASSOCIATION,
Washington, DC.

Hon. KAY BAILEY HUTCHISON,
U.S. Senate, Russell Building,
Washington, DC.

DEAR SENATOR HUTCHISON: The National Marine Manufacturers Association (NMMA) is the nation's largest recreational marine trade association representing manufacturers of recreational boats, marine engines and marine accessories. NMMA has over 1500 members, many which are either located or conduct business in the state of Texas.

NMMA would like to inform you of recent actions by the California Air Resources Board that raises marine safety issues for recreational vessels equipped with generator sets. The recent rules for spark-ignited small off-road engines adopted by the California Air Resources Board would impose both new exhaust and evaporative controls on vessels equipped with these devices. This action was taken without consultation with NMMA, its members or the U.S. Coast Guard.

NMMA, the California Air Resources Board and the U.S. Coast Guard have a test program underway at Southwest Research in San Antonio to test catalysts on sterndrive/inboard engines. The purpose of this test program is to assure the performance, durability and safety of catalysts in this application. Nevertheless, California adopted regulations that would require catalysts on marine generators before completion of this study. The California rules would also require changes to the fuel systems on any vessel equipped with a marine generator. NMMA, our fuel tank and boat builder members and the U.S. Coast Guard have been actively engaged with the U.S. Environmental Protection Agency for several years in the development of regulations to control evaporative emissions from recreational vessels. It is our understanding that the requirements included in California's rules are similar to those which have raised safety issues in the EPA rulemaking. Like the exhaust rules, these requirements were adopted without consultation with the U.S. Coast Guard, and the boat building industry.

NMMA is concerned that California's activities create marine safety issues that must be evaluated further before they are imposed on this industry. For this reason, NMMA urges you to support Sen. Bond's provision included in the VA–HUD FY 2004 Appropriations bill which would limit California's ability to impose requirements on these devices and marine vessels.

Sincerely yours,

THOMAS J. DAMMRICH,
President.

DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF FIRE SAFETY,
Jefferson City, MO, October 24, 2003.

Senator CHRISTOPHER S. BOND,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOND: I write both as Missouri State Fire Marshal and as a director of the National Association of State Fire Marshals (NASFM). NASFM represents the most senior fire safety official in each of the 50 states and District of Columbia. NASFM's mission is to protect life, property and the environment from fire and other hazards. We receive virtually all of our resources from state and federal government sources, although we pride ourselves on the many productive relationships with industries that share our commitment to public safety.

First, I wish to thank you for giving serious consideration to serving as a sponsor of the American Home Fire Safety Act. This legislation has the potential to save two lives a day from the leading causes of fire in the home. As you know, I have lost family members in a fire involving the products contained in this bill. It would mean a lot to the Missouri fire service if you would help in this worthy effort.

But just as we seem to conquer one fire safety challenge, others take their place. We are especially concerned that a proposed California environmental regulation might move forward nationally and create a significant threat to the safety of people, property and the environment.

The issue is whether we have a sufficient understanding of how air emissions requirements for the small engines used with lawnmowers, snow-blowers and other small-engine outdoor power equipment might affect the number and severity of fires in residential garages and in rural communities most affected by wildland fires. We do not regard these potential fire hazards to be more important than air quality, but they certainly are no less important.

We stand ready to work with you, the environmental protection authorities and the manufacturers of these products to determine a common-sense approach to a complex series of questions about how best to have outdoor power equipment that is safe and clean. This is an attainable goal if we work together.

Most recently, the California Air Resources Board (CARB) has proposed air emission rules for these purposes. In cooperation with the California Fire Chiefs Association, and after consultation with the outdoor power equipment manufacturers and others with knowledge of these issues, NASFM urged CARB to give greater consideration to fire safety. While CARB acknowledged the concerns, the proposed rule does not.

The scenario is not hard to imagine—especially given the many garage and wildland fires that take lives, destroy property and spoil the environment every year. The CARB has not adequately examined the probability of increased gasoline leakage of the pressurized fuel tanks its rule will require. Nor has CARB considered the very high temperatures emitted by catalytic converters its rule will mandate.

Regulators have lost so much credibility over the years by forcing people to do illogical things. The combination of leaking fuel tanks and high temperatures is not something we wish to introduce into a residential garage with a gas water heater, discarded newspapers and rags, and combustible paints and solvents. Nor do we wish to see such power equipment left idle for even a minute on top of combustible vegetation. The forest fires that consume hundreds of thousands of acres and scores of homes can be ignited by a single, discarded cigarette. This could be far worse, and for that reason we have alerted the United States Department of the Interior to look into this matter.

As we understand the process, the CARB may proceed if it receives a federal waiver from the United States Environmental Protection Agency (US EPA), and that such waivers may be granted with little oversight. Once a waiver is granted, other states are likely to follow the CARB's lead. Even with the federal government's help, we cannot purchase enough fire apparatus and equipment or train enough firefighters to protect the public from the fires we now have. Prevention is the only answer. Creating new hazards—through regulation, no less—is unacceptable.

We will appeal directly to US EPA to give this matter very serious attention, but we would encourage you to use your good offices to encourage the US EPA to use this opportunity to protect the environment and human life from residential and wildland fires in the future. NASFM is not against states' acting to protect the environment from harmful emissions.

However, these fire safety issues will be a factor no matter where such measures are considered, and they are best dealt with on a national level for the benefit of all.

Best personal regards,

WILLIAM FARR,
Missouri State Fire Marshal, and
BOARD OF DIRECTORS,
National Association of State Fire Marshals.

Mr. BOND. Madam President, in the face of all of these concerned safety groups, I asked California to provide any kind of evidence or any kind of testing or any kind of analysis that these safety concerns were not true. They could not.

CARB failed to provide safety data or testing results using test procedures approved or witnessed by safety efforts.

CARB failed to provide any data testing or analysis of the danger of liquid or vapor fuel released from a pressurized tank used to comply with the rule lighting on fire after coming in contact with superheated catalytic converters used to comply with the rule.

CARB admitted that grass clippings can ignite if they come into contact with surfaces above 518 degrees Fahrenheit. CARB failed to provide any data showing that the shields were capable of protecting against temperatures of 1,026 degrees Fahrenheit. They admitted they failed to conduct standard testing applied to all internal combustion engines. This is a problem requiring us to act to solve it.

We are being asked to do something to protect 22,000 jobs, 3 manufacturing plants being moved to China. My provision would enable those jobs to stay in the United States. We are asking to prevent the risk of burn, fire, and explosion to millions of consumers, fires in our homes and in our wildlands. The provision to have EPA do a national rule instead of California will ensure that national environmental issues are met and that it will take into concern issues such as the safety in achieving the pollution reductions we need.

I made several changes in my amendment to address Member concerns. We made it clear that this would not have prevented their States from regulating existing or end-use engines. We made it clear this provision only applies to new engines. Some Members thought the initial language would prevent States from regulating diesel engines. We have specified these are limited to spark-only engines. They do not cover diesel engines because the State of California could continue to regulate them, and we have also seen that the EPA has issued regulations with respect to diesel engines.

Some Members were concerned that the original language would prevent their State from regulating mid- and large-sized engines such as airport tugs, forklifts, and cranes. We have no intention of limiting those. The amendment specifically applies only to small engines under 50 horsepower.

These are numerous changes that are well worth saving 22 manufacturing jobs. We will protect the environment. We are providing the air quality improvements to all 50 States. We are protecting public safety by assuring that the concerns of all of the safety interested groups I have indicated are taken into account by EPA in issuing their regulations. I don't want to be the one to go home and tell our workers we are sending their jobs to China. I don't want to tell our families they cannot have a breadwinner earning a good living in those factories. We want to tell communities that we will not cripple their tax base, their school systems, and cripple their services. We will protect the environment. We will protect public safety and the jobs.

I urge my colleagues to support this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. DORGAN. Madam President, as a member of the Appropriations Committee, let me compliment my colleague from Missouri and my colleague from Maryland, the chair and ranking member of this subcommittee. They have offered the Senate a good piece of legislation. While there may be some areas for discussion where we might have some disagreements about one level or another that has been proposed, by and large, Senator BOND and Senator MIKULSKI have done an excellent job bringing this appropriations subcommittee bill to the Senate. I appreciate their work.

The amendment just offered will spark some significant debate this morning. I believe my colleague from Idaho is also preparing to offer an amendment, and my hope is to be involved in that discussion when my colleague from Idaho offers his amendment this morning.

I would like to make a comment about another appropriations bill we will be dealing with this afternoon. I don't want to be in violation of the rule.

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

TRANSPORTATION/TREASURY APPROPRIATIONS CONFERENCE

Mr. DORGAN. Madam President, this afternoon at 5 o'clock, the Transportation, Treasury, and General Government appropriations conference will meet. I am one of the conferees on that conference. We meet at 5 o'clock this afternoon.

In the appropriations bill that comes from both the House and the Senate to that conference at 5 o'clock this afternoon, there are provisions that deal with travel to Cuba. I mention that because something important will happen today. We have identical amendments in the House and the Senate bills that prohibit the enforcement of the provision that prohibits travel to Cuba by the American citizens. No money in the bill shall be used to enforce that travel ban.

I am particularly interested in this because, for example, the Treasury Department earlier this year denied a license to the Farm Bureau and other farm organizations to help organize a trade show in Cuba to promote the sale of U.S. agricultural products.

I find that unfathomable. Why would we want to prohibit the promotion of

the sale of U.S. agricultural products to Cuba? Cuba must pay cash for those products they have been purchasing from our country because of an amendment I was involved in getting passed that allows U.S. companies to sell agricultural products to Cuba. There was a 40-year embargo, but we are now able to sell in Cuba. But inexplicably, the farm organizations, including the Farm Bureau, were denied a license to go to Cuba to promote the agricultural sales. That makes no sense to me. I hope we will have people who think more clearly about that.

What prompted me to talk about it this morning is a visit I had yesterday from a young woman who came to talk to me about a problem she has. I am going to show a picture of the young woman. Her name is Joni Scott. She went to Cuba 4 years ago. She is from Indiana. She went to Cuba 4 years ago, and she distributed free Bibles in Cuba. She and a group of folks from her church traveled to Cuba to distribute free Bibles. Last month, 4 years later, she received from the U.S. Government a fine of $10,000 for having traveled to Cuba to distribute free Bibles.

Yes, that is right, the Office of Foreign Assets Control at the Department of the Treasury tracked her down. It took them 4 years. I don't know why it took 4 years. They tracked her down and said: For the act that you have committed, traveling to Cuba to distribute free Bibles, we will fine you $10,000.

I have written to the Department of Treasury saying this does not make any sense. Is there no reservoir of common sense there, or at least some level below which they will not sink? Fining somebody $10,000 for distributing free Bibles in Cuba, what on Earth are we thinking about? This woman went with a church group to distribute Bibles free of charge to the Cuban people. Now she is being tracked down by our Government and levied a $10,000 fine. It makes no sense.

I also was contacted recently by another organization, the Disarm Education Fund. They donate medicine and medical supplies to Cuban health clinics. But more importantly, they send United States doctors to Cuba to teach advanced medical techniques to Cuban doctors. One of their projects involves a procedure called something called mandibular distraction, building new jaws for kids born without jaws. This is highly technical surgery. They have been not only doing this for children but teaching Cuban doctors the techniques of this intricate surgery.

This year, Disarm had to discontinue its programs because OFAC at the Treasury Department would not renew the license they had held since 1994. This went on for 6 months and they could not go to Cuba to help these children by distributing medicine and by performing intricate surgery and teach and train Cuban doctors.

On October 17, less than a month ago, after 6 months of consideration, OFAC issued a new license that allows the Disarm Education Fund to resume some of its programs in Cuba. However, the new license specifically prohibits this organization's doctors from training Cuban doctors. Do you know why? Because OFAC says training of Cuban doctors in this very intricate surgery constitutes an export of service to Cuba.

So they can now go down and perform this surgery on Cuban children. It is very intricate surgery. They can perform the surgery, but they cannot have a Cuban doctor around to be trained because OFAC recently decided that educating Cuban doctors is illegal. What in the world is this Administration thinking?

Mr. CRAIG. Will the Senator yield?

Mr. DORGAN. I will be happy to yield.

Mr. CRAIG. On the legislation that became law a couple years ago, with your backing and my backing, that is that agricultural goods and medical supplies could be traded and sold to Cuba without United States taxpayer credit, maybe we need to add the words and ''related medical services.''

That is really picking the flyspecks out of the pepper here down at the Department of the Treasury. Shame on them for standing in the way of a humanitarian effort to make kids healthier.

But behind you is the picture of Miss Scott. She also visited my office yesterday. I must say to this administration: Do not fight us on this issue. We are giving you the right way out. The House and the Senate, in a strong bipartisan voice—the loudest and the strongest vote we have ever had here on the floor of the Senate—said: Let's begin to back away from this travel embargo with Cuba. It does not work any longer. It is a 40-year-old failed policy. Now you are being arbitrary. Now you are being selective. We ought to get away from that.

So I hope this afternoon in conference the House and the Senate's bipartisan voice is heard. Frankly, the administration ought to view it as a gift. We are not abolishing the law that puts in that embargo. We are simply disallowing the expenditure of levying a $10,000 fine against a woman passing out Bibles because she trafficked through Canada and did not fill out the right form. That is what we are doing.

Let OFAC track down drug traffickers and terrorists and leave Ms. Scott alone. That is what we ought to be about. Somehow this has gotten very confused and very skewed.

I thank the Senator for bringing up this point. Please prevail in conference this afternoon.

Mr. DORGAN. Mr. President, the Senator from Idaho was part of a group, a bipartisan group, in the Senate. Then-Senator John Ashcroft, for example, was also a key part of that group. We changed the law with respect to trade with Cuba so that we could sell agricultural products into the Cuban marketplace. We did not open it very wide, but we opened it.

Last year, for the first time in 42 years, 22 train carloads of dried peas left North Dakota to go to the Cuban people. Cuba paid cash for it. Our farmers were able to sell into the Cuban marketplace. Good for them.

But this issue of travel and denying farm organizations, including the Farm Bureau, the right to go to Cuba to promote food sales is just unbelievable.

There are times, not very often, but there are times when I am profoundly embarrassed by the actions of this Government. Yesterday was one of them, when this young lady came to see me to say: I am really concerned and upset about this because I went to Cuba to distribute free Bibles, and now my Government is slapping me with a $10,000 fine.

That is an unforgivable policy, in my judgment. But it is not just her. It is not just this young lady who thought she was doing the world some good, and clearly she was. She was pursuing her faith and her interest in distributing Bibles to the Cuban people.

There is so much more than just her. I mentioned the doctors who have been denied the opportunity to travel to Cuba to do this intricate facial surgery on Cuban children and to train Cuban doctors to do the same surgery. Now, after 6 months, they are able to go do the surgery, but they are not able to train the Cuban doctors because that is the prohibited export of a service to Cuba. Again, that is an embarrassing decision on the part of this Government.

But let me just describe a couple more, if I might.

This young lady is named Joni Scott. She traveled to Cuba, as I said, 4 years ago. It took them 4 years to track her down.

Cevin Allen, from the State of Washington, wanted to bury the ashes of his father, who was a Pentecostal minister in prerevolutionary Cuba. He died, and his last wish was that his ashes would be buried on the church grounds where he served in Cuba. Well, his son, true to the faith in his father, took his ashes to Cuba to bury them, and what happened to him was he received a notice from the Federal Government. They were fining him $20,000 for taking the ashes of his dead father to be buried on the church grounds where he served as a minister in prerevolutionary Cuba.

Marilyn Meister was a 72-year-old Wisconsin schoolteacher. She bicycled in Cuba. She received a $7,500 fine.

I have shown the picture previously of Joan Slote, whom I also know. She is a Senior Olympian. She bicycles all around the world. She is in her midseventies. She went with a Canadian bicycle group to take a bicycle trip to Cuba. She was fined $7,630. I said to OFAC: You ought to be embarrassed about that. OFAC then reduced her fine to $1,900, and she paid it. I don't think she should have, but she paid it. Then she got a note from the Department of

the Treasury, after she paid it, that they were going to garnish her Social Security, and they sent a collection agency after her because, they said: Well, we never received it. She had the canceled check.

It is one thing for an agency to be incompetent; it is another thing for it to make fundamentally bad judgments about what it is going to do with its time. OFAC's should be chasing terrorists, not visitors to Cuba.

This is not a Republican or a Democrat issue; this went on under Democratic administrations as well, although I must say it has been ratcheted up—over double the effort—under this administration. And the President just announced, a month ago, on October 10: I have instructed the Department of Homeland Security to increase inspections of travelers and shipments to and from Cuba. He said: We will also target those who travel to Cuba illegally through third countries. He talks about using the investigative capability of the Department of Homeland Security to track down American travelers so we can levy fines against them.

My colleague from Idaho is right. It is ludicrous for OFAC to be tracking down some young woman who has distributed free Bibles in Cuba, so we can levy a fine. This is not, in my judgment, injuring Fidel Castro. This policy is attempting to take a slap at Fidel Castro, and it injures Americans and their right to travel freely.

I hope this afternoon, at 5 o'clock, when we go to this conference, with the identical provisions coming from the House and the Senate, that my colleagues, Republicans and Democrats, will support this policy of allowing travel to Cuba.

We long ago concluded with China, a Communist country, and Vietnam, a Communist country, that trade and travel and engagement is a constructive way to move forward. I believe that. I believe that is true with Cuba. The only voice Cubans hear is Fidel Castro's voice. I would much prefer they hear the voice of this young lady who travels to Cuba to talk to them about her faith and to talk to them about the Bible. I would much prefer they hear the voice of thousands and thousands of tourists who tell the Cubans what is happening in the rest of the world. The Cuban people deserve that. That is the quickest and the most effective way, I believe, to effect a change in the Government in Cuba.

So at 5 o'clock this afternoon, in the conference of Transportation-Treasury Appropriations bill, we will be making a very important decision, and because there are identical provisions in both the House and the Senate bills which will prohibit the enforcement of this travel ban in the future, I hope the conference will keep those provisions.

But the White House, as they have done in other areas, threatens a veto. I do not think they would veto this appropriations bill over this issue. But let them threaten. I believe very strongly, as my colleague from Idaho just suggested, that we ought to hold tight on this provision in conference this afternoon.

My intention of bringing this up now, and describing this young lady and her experience, is to ask my colleagues again: Let's do the right thing. Let's not be embarrassed by actions of the Government that fine the American people for traveling someplace to distribute free Bibles. That is outrageous, and it has to stop.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I rise to respond to the comments made by the Senator from Missouri, the chairman of the committee, in placing legislation, a rider, if you will, into the appropriations bill.

If ever there was a special interest provision in an appropriations bill, this is the mother and father of such a rider. I rise in opposition to what is called the small engine provision in the 2004 VA–HUD appropriations bill. I note that the Senator from Missouri did not send to the desk an amendment he plans to introduce to change the underlying amendment that was introduced in the Appropriations Committee markup. So I am going to try to address both pieces of legislation and indicate my opposition to both. Although the amendment that he says he is going to introduce is better than the language in the underlying bill, it is still unacceptable because it would effectively block any State regulation of small road engines anywhere in America. This provision was inserted into the chairman's mark at the request of a single engine manufacturing company, Briggs & Stratton from Missouri.

As originally written, the underlying bill would effectively preempt any State regulation of pollution from off-road engines smaller than 175 horsepower. I understand the Senator from Missouri now wants to narrow his provision to block any regulation of spark engines under 50 horsepower and not include diesel engines. This new provision is better but, as I said, still unacceptable.

Since the beginning, section 209 of the Clean Air Act has recognized that States, with extraordinary or extreme pollution, need flexibility to reduce pollution and protect public health. A California law actually served as the model for the original Clean Air Act. I think that is interesting. As a result, the Clean Air Act has always allowed California to set its own standards for some sources of pollution. Later changes in the law allowed other States to adopt the California standards, if they so chose.

The 1990 Clean Air Act amendments gave California the right to regulate emissions from off-road engines smaller than 175 horsepower, except for agricultural and construction equipment. So other States are currently free to adopt the California standards or not. The right of States to regulate small engines would quickly be taken away if the Bond provision is allowed to remain in this bill. Mr. President, individual States should have the right to regulate these small engines as they choose.

That is what States rights is all about. Many States have benefitted from the process established in section 209, and California's regulations often serve as models for the rest of the Nation. The small engine provision would amend section 209 and remove important rights from States. I oppose using the appropriations process to take away States rights under the Clean Air Act. This kind of change to a major law like the Clean Air Act deserves a full debate, hearing, and review in the Environment and Public Works Committee. It has had none of the above.

It is important for all of my colleagues to understand that one company is behind this so-called small engine provision. We are having this debate simply because Briggs & Stratton disagrees with a recently adopted California regulation which, incidentally, does not go into effect for another 5 years. I will explain why that becomes relevant later.

On September 25 of this year, California adopted a regulation reducing emissions from off-road engines smaller than 25 horsepower, mainly lawn and garden equipment. This is the interesting thing: This regulation is the equivalent of removing 1.8 million automobiles from California's roads by 2020. That is how big an item this is in my State. Once again, let me make it clear that we are talking about the equivalent of 1.8 million automobiles.

But the issue here is not whether we should support any particular regulation from the California Air Resources Board. The issue is whether we should permanently take away States rights to regulate these engines, period. Briggs & Stratton is using opposition to a single California regulation to block every State's efforts to regulate these engines anywhere in the future. I do not believe we should take such important changes to the Clean Air Act lightly, especially when such changes have been included in an appropriations bill without having adequately looked at the crucial stakes involved.

Briggs & Stratton has made a series of arguments in opposition to the California regulation. We heard the Senator from Missouri say the regulation would force the company to close plants, threaten thousands of American jobs, and for jobs to be moved to China. I don't know how the Senator from Missouri knows that they would move jobs to China unless Briggs & Stratton have told him that is what they plan to do.

At the very same time that Briggs & Stratton is lobbying this Senate to preempt California regulations, the company was telling the Securities and Exchange Commission an entirely different thing. On September 11 of this

year, while lobbying the Senate in support of the small engine provision, Briggs & Stratton filed their annual 10–K report with the Securities and Exchange Commission. Here is what they say in their report:

While Briggs & Stratton believes the cost of the proposed regulation on a per engine basis is significant, Briggs & Stratton does not believe that the [California Air Resources Board] staff proposal will have a material effect on its financial condition or results of operations, given that California represents a relatively small percentage of Briggs & Stratton's engine sales and that increased costs will be passed on to California consumers.

So point 1, California is just a small part of the Briggs & Stratton market. Point 2, it will not affect the financial viability of that market. And point 3, they would only pass on the costs of retrofitting these engines to whomever would buy it, something that is fairly typical. Now why all this talk about moving 22,000 jobs to China if, in fact, what they said on their SEC statement is correct? The SEC statement is the be-all-and-end-all for a company's integrity and credibility.

If you lie on your SEC statement, you get into a lot of trouble with the Securities and Exchange Commission.

Section 209 of the Clean Air Act gives California the right to regulate these engines. The company is free to pass along these costs to Californians. My State will accept those costs because we need cleaner air. As far as I am concerned, this is the way regulations should work.

Since we brought the annual report to the attention of the public, Briggs & Stratton has argued that the annual report was simply discussing the company's bottom line and that sending jobs overseas would not affect the bottom line. But that is not what the company's annual report says. The report says, again, California is but a small share of the Briggs & Stratton market. Increased costs will simply be passed along to California consumers. It does not say that any increased costs will force jobs overseas.

So Briggs & Stratton is telling the Securities and Exchange Commission that everything is fine and at the same time telling the media, the public, and this body that the sky is falling.

Senator BOXER and I have asked the Securities and Exchange Commission to investigate whether Briggs & Stratton has broken any securities laws by telling such drastically different stories. We are still waiting for a response.

In terms of jobs, my colleagues should also know that Briggs & Stratton's SEC report is referring to the original regulation proposed by the Air Resources Board. Since the SEC report was filed, the California Air Resources Board has continued to work with the industry to modify the regulation to correct fire safety concerns and to reduce costs, and I believe they will get there. They have 5 years to do so.

Madam President, what I am going to be doing in this portion of my remarks is essentially showing that Briggs & Stratton really is an isolated company asking for this. By so asking for it, they are going to cause additional costs to other industries. So I hope to make that argument now.

Last month, the Outdoor Power Equipment Institute, the small engine industry's leading trade group of which Briggs & Stratton is a member issued a press release which said that the industry's input into the adopted regulation made the regulation acceptable. This press release details the concessions made by the State and said that the Air Resources Board largely adopted the industry's counterproposal. In other words, the industry trade council, of which Briggs & Stratton is a member, had their counterproposal adopted by the State Air Resources Board and yet Briggs & Stratton is still opposing the action.

I quote the release:

For the past 2 years, the Outdoor Power Equipment Institute has been working proactively with the staff of the California Air Resources Board to improve proposed catalyst base exhaust standards for real problems.

The press release goes on to say:

In direct response to the Outdoor Power Equipment Institute's advocacy, the California Air Resources Board unanimously adopted on September 25 a modified framework which, one, relaxes the stringency of the California Air Resources Board's staff's proposed tier 3 exhaust standards and, secondly, substantially improves the overall general framework for the still-to-be-defined evaporative regulations.

I ask unanimous consent that the text of the Outdoor Power Equipment Institute's press release be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mrs. FEINSTEIN. Additionally, I have a September 26, 2003, letter from Alan Lloyd, the chairman of the California Air Resources Board, to the Senator from Missouri, detailing revisions that were made to the regulation. Referring to the modified regulation, Mr. Lloyd states as follows:

I believe the action taken by the Air Resources Board is a win/win situation. We achieved our emission reduction goal. The adopted regulation, based on an industry proposal, will reduce costs, simplify compliance and avoid job losses.

So the Air Resources Board took the industry's proposal, the industry association of which Briggs & Stratton is a member. That is why this thing is so unfair.

I ask unanimous consent that the text of this letter from Mr. Lloyd to the Senator from Missouri be printed in the RECORD following my statement.

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

(See exhibit 2.)

Mrs. FEINSTEIN. Briggs & Stratton also raised concerns about fire safety. The Senator from Missouri has placed a November 6 letter from the California Association of Fire Chiefs in the RECORD. That letter expressed concerns about the proposed California regulation. I take these concerns very seriously. The last thing I want to do is increase the risk of fire. So we need to make sure these engines are safe, and the regulation has 5 years to make adjustments before it goes into effect, ample time to make such changes as replacing heat shields and doing whatever else is necessary to ensure these engines are fire safe.

There is apparently some miscommunication between the fire chiefs and the Air Resources Board. I have just received a letter dated November 11. I want to read from this letter:

The fire safety issues we raised [and that would be the November 6 letter that Senator Bond printed in the Record] need more attention and require independent assessment before engineering and production decisions are made [which they have not been up to this time]. In our most recent discussions with [the Air Resources Board], they support the idea of an independent study, and have proposed moving forward with a study, much the same as what is now underway with catalytic converters being used in marine applications. We enthusiastically support this idea, and will be working closely with [the California Air Resources Board], the State Fire Marshal, and the U.S. Environmental Protection Agency to ensure that all fire safety concerns are addressed. We wish to make clear that we regard fire safety and environmental quality as being equally important, and wish to make it clear that we support without reservation the air quality goals of the proposed requirements. We support the regulation moving forward as we have received assurances from CARB [the California Air Resources Board] that our safety concerns will be addressed through this independent study.

So I think the concerns of the Senator from Missouri are a bit overstated in view of the fact that the fire chiefs, the fire marshal, and anyone else will work closely with CARB in the ensuing 5 years to correct any safety problems that might exist. The letter goes on, and this is important:

Finally, we understand that, as a separate matter, the Senate is debating the question of whether States are free to develop safety and environmental standards. We were never asked to comment on this matter but, for the record, we do not support legislation that would interfere with a State's ability to protect its own citizens. To the contrary, we have had to count on the State of California to develop fire safety standards for upholstered furniture, mattresses and bedding, because the Federal Government has failed to do so. The issues of air quality, as they relate to outdoor power equipment, can be addressed, and I believe that working closely with the Air Resources Board, we will find a solution that will provide a high degree of fire safety while maintaining the Board's goals for air quality.

I would like to work with the Senator from Missouri, the Air Resources Board, fire safety officials, and the small engine industry to make sure the California regulation is fire safe. We have 5 years do so. It is possible to do so. But what we cannot do is take away the State's rights to be concerned

about its citizens, and that is exactly what Senator BOND is trying to do.

He gives jurisdiction, for the regulation of small engines, to the EPA. What the fire chiefs have just said is the EPA has refused to move on areas such as bedding and other areas which cause fires, so the State has had to do it for themselves.

States rights are a major part of this issue and I thought these rights were part of everything we believed in—letting a State, where it can, regulate for itself. Again, I think it is unfortunate that Briggs and Stratton is using safety concerns about a single regulation to block all future efforts to reduce pollution from these engines in any State.

Let me tell you why this is so big for California. We have the worst air quality in the Nation. We have seven ozone nonattainment areas. That is more than any other State. Los Angeles is the Nation's only extreme ozone nonattainment area. The San Joaquin Valley is not far behind. This year has been the worst year for smog in southern California since 1997, and the San Joaquin Valley is in a similar situation.

This pollution has severe consequences for public health and for our economy in California. Let me tell you what the Air Resources Board says will be the result of the efforts of the Senator from Missouri. They say Senator BOND's provision could lead to 340 premature deaths per year in California due to deteriorating air quality.

I believe States with serious pollution problems need to be able to reduce emissions wherever possible. This small engine provision would place a very important source of pollution off limits to State regulation.

I understand a modifying amendment is going to be introduced on behalf of Senator BOND that will change the current bill language, which currently blocks the regulation of off-road engines smaller than 175 horsepower. All told, these engines alone emit as much pollution as 18 million automobiles. Can you believe that? Small off-road engines are emit as much pollution as 18 million automobiles. That is a big number for California and any reduction in this pollution would benefit California greatly.

The narrower version of this provision, which has yet to be introduced but I trust will be, would still block State regulation of spark engines smaller than 50 horsepower, which represents the majority of small engines that exist and operate in my home State. According to the California Air Resources Board, engines under 50 horsepower emit as much pollution as 4 million cars, just in California. This is more than 100 tons of smog-forming pollutants per day in my State alone.

The modifying amendment that we understand will be sent to the desk will essentially mandate 1,500 more tons of smog-producing pollutants a day in California—all to benefit one company that is not telling the truth on its SEC statement. These off-road engines are also among the least regulated and dirtiest engines around.

According to the California Air Resources Board again, operating the average gas-powered lawnmower for just 1 hour produces as much pollution as driving a car for 13 hours. I would hazard a guess that no one in this Senate knew that operating a lawnmower for 1 hour produces as much smog as operating a car for 13 hours. Keep in mind that the lawnmower is only about 5 horsepower and the car engine is far larger.

Even running a small string trimmer for an hour produces as much pollution as driving a car for 8 hours. Again, I hazard a guess that no one in this Senate knows that operating a small string trimmer for an hour produces as much pollution as 8 hours of driving a car. The bottom line: These are very dirty engines.

California is already struggling to comply with national air quality standards. We need every industry to do their fair share. According to the Air Resources Board, the State has to reduce emissions from these engines in order to achieve compliance with national air quality standards. In other words, if California is not allowed to proceed with the regulations they put forward on September 25, we will be violating clean air standards. What happens if we do it? What happens is that California loses $2.4 billion in highway transportation moneys. That is how important this issue is for the State of California and that is how dastardly this amendment—an authorization on an appropriations bill—really is.

California cannot afford to remain out of compliance with national standards. We also can't afford to take tools away from States that are in this situation. If we can't reduce emissions from off-road engines, then we will have to cut pollution from other sources. What does that mean? Other sources are already facing heavier regulation, so cutting their pollution will be more expensive and place more burden on other industries.

On this point I would like to quote a September 25 letter from the Environmental Council of the States. That is an organization that represents environmental agencies in all 50 States. Let me read what they say:

> Removal of this ability to regulate a substantial part of a State's inventory, means that States will have to obtain reductions from the stationary source area [key, from the stationary source area], an area that is already heavily regulated at substantially higher cost. Businesses facing global competition will opt to either shift work to offshore facilities or to simply close, with concomitant negative consequences on the local and national economy.

It is critical that this language be eliminated from the HUD–VA appropriations bill.

This is the environmental council to which every State belongs.

What does this mean? This means that every oil refinery will have to have tough requirements and that every utility will have to have tough requirements. The cost of gas will rise, and the cost of energy will rise. Every stationary source, if we can't tackle this area because it is so big, will have to have their standards tightened.

This is all for one company. Every other company that makes small engines has said they can comply, except one company in Missouri that says in their SEC report, no problem, and comes here and says, we are going to move our jobs to China. A whole series of companies will be disadvantaged, but one Missouri company will suffer no financial consequences.

I ask unanimous consent that the full text of this September 25 letter from the Environmental Council of States be printed in the RECORD following my remarks.

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

(See exhibit 3.)

Mrs. FEINSTEIN. Mr. President, the debate over the small engine provisions is focused on California for this point. But it is also clear that the effects go far beyond California.

Remember that under the Clean Air Act, once California passes the regulation, other States can then replicate that to any degree they so choose. This is where it begins to affect a number of other States. The small engine provision in the VA/HUD appropriations bill is a problem for every State and for every Senator who believes individual States should be able to adopt their own rules and regulations on issues such as these. States with serious pollution problems include Texas, Tennessee, Pennsylvania, Illinois, North Carolina, New York, New Jersey, Maryland, and many others know they need to be able to reduce pollution from every possible source. Some States have already moved forward with regulations affecting off-road engines.

This legislation—the underlying bill, as well as the amendment that we understand will be sent to the desk shortly—will cut this off, remove the right from a State and give it to the EPA that historically has been a slow mover in this area.

According to the associations representing State and local pollution control officials, the original version of the small engine provision would have blocked the current program in seven States—Alaska, Connecticut, Massachusetts, Nevada, Texas, and Wisconsin.

The 175-horsepower engine would also block programs in at least eight States that are considering future regulations: Alabama, Illinois, Nebraska, New Jersey, Pennsylvania, South Carolina, Tennessee, and Virginia, in addition to the District of Columbia.

The States recognize this threat to their rights. I have already quoted a letter from Environmental Council of

the States. We have also received letters in opposition to the Bond provision from the National Conference of State Legislatures, the Southeastern State Air Resources Managers representing State air pollution control agencies in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, and the associations representing State and local air pollution control officials from all 50 States.

I ask unanimous consent that the letters from these organizations be printed in the RECORD.

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

SOUTHEASTERN STATES AIR RESOURCE MANAGERS, INC.,
Forest Park, GA, November 20, 2003.

Re Bond Provision of S. 1584—Fiscal Year 2004 VA, HUD and Independent Agencies Appropriations Bill.

Hon. ZELL MILLER,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR MILLER: Southeastern States Air Resource Mangers, Inc. (SESARM), representing the directors of the southeastern state air pollution control agencies in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, is writing this letter to encourage your support of the removal of a provision introduced by Senator BOND in S. 1584, the Fiscal Year 2004 VA, HUD and Independent Agencies Appropriations Bill. The provision would amend Section 209(e)(1)(A) of the Clean Air Act to curtail state's authority to reduce emissions from diesel and gasoline off-road equipment and engines.

While Senator Bond's proposed provision regarding the off-road engines apparently was intended to address rules adopted only in California, it will limit the ability of all states to solve serious public health-related air quality problems. Senator Bond's proposal revises a very important provision of the Clean Air Act which allows states to adopt engine emission standards more stringent than the federal standards as long as appropriate federal review processes are followed. Congress wisely put this provision into the Act to give states the ability to deal with serious air quality problems across the country. SESARM opposes the impact of the Bond proposal on this important provision.

Please note that other compromise amendments which fall short of fully restoring Section 209(e)(1)(A) are, in our opinion, unacceptable and will constrain states as discussed above. SESARM and your state air pollution control agency would appreciate your support of removal of the Bond Amendment from S. 1584.

Sincerely,

HON. E. HORNBACK,
Executive Director.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, October 29, 2003.

Re S. 1584, FY2004 VA, HUD and Independent Agencies Appropriations Clean Air Act Amendment.

DEAR SENATOR: On behalf of the National Conference of State Legislatures, I write to urge your support for amendments that would strike a provision of S. 1584 that amends Section 209(e)(1)(A) of the Clean Air Act and curtails state authority to regulate diesel and gasoline off-road equipment and engines. Emissions from off-road sources contribute to ozone and fine particulate matter pollution. They pose a threat to public health and to state achievement and maintenance of national ambient air quality standards for ozone and particulate matter.

NCSL strongly believes that federal environmental policy should be addressed in substantive committee deliberations and not made through riders to appropriations bills. The amendatory language in S. 1584 would strip states of long-standing authority to exceed federal standards. It compromises state and local government capacity to determine the most effective means to address specific air pollution problems. It also has implications for agriculture and natural resource management none of which are addressed through the use of an appropriations rider.

The Clear Air Act appropriately recognizes that states are best suited to determine which sources, including off-road equipment and engines, contribute most significantly to air pollution and which strategies are most effective in addressing pollution-related problems. I again urge your support of amendments that strike the aforementioned off-road provision from S. 1584. Thank you for your consideration of NCSL's concerns.

Sincerely,

WILLIAM POUND,
Executive Director.

Mrs. FEINSTEIN. Mr. President, the States also propose compromise language that would still place some of these engines off limits. To quote the letter from the Southeastern States Air Managers:

Please note that other compromise amendments which fall short of fully restoring section 209(e)(1)(a) are, in our opinion, unacceptable and will constrain States as discussed above. This association and your State air pollution control agencies would appreciate your support of removal of the Bond amendment from S. 1584, the HUD VA appropriations bill.

Many other States are just beginning to realize the importance of this small engine provision. As we move forward with more protective air quality standards, more and more States will need to reduce emissions to comply with national standards. Those States will also need to reduce pollution from these very engines because there are so many of them and they are so very dirty. I strongly believe we should protect a State's right to do so.

We should not use this appropriations bill to take rights away from the States without knowing what we are doing, without a hearing, and without review by the authorizing committee.

As I said, this rider is the mother and father of all riders because it authorizes a major reduction in States rights with no hearings whatsoever, no ability to question Briggs & Stratton, and no ability to ask them why they said on their SEC report that this would cause no financial disadvantage to the company, that California is such a small portion of their market, and they would just pass on any additional costs to the consumer.

Why would they tell the Senate or the Senator from Missouri they would move jobs to China if this passed? The statements of Briggs & Stratton make me very suspicious.

The Clean Air Act has long recognized that States with serious air pollution problems need to be able to set strong standards to protect public health. The hard-fought 1990 Clean Air Act amendments give the States the ability to regulate these off-road engines.

With respect to the California regulation, I will work with fire officials, air resources boards, the industry, and the Senator from Missouri to ensure that the final regulation is safe. But I believe it is clear that this should not be a debate about a specific State regulation. That is our problem. We will handle it. California is entirely able and capable of handling this problem. We don't need someone else to tell us what to do.

This is a debate about making sure the States have the flexibility necessary to protect the public health.

It is hard for me to understand why anyone would do this on an appropriations bill when the consequences are so dire, with over 300 premature deaths likely to be caused by worsening air pollution, or if the State moves to further tighten stationary sources and really send a whole magnitude of companies offshore.

I don't think in an appropriations bill we should take well-earned States rights away from every State in this Union to benefit one company. Remember, every other manufacturer of small engines is going along with what California is doing. They have all said they could do it. They have all said they could adapt these standards into their manufacturing. They have all said they could change. They have all said they can add adequate heat shields.

Furthermore, the pollution from these engines under 175 horsepower accounts for 17 percent of California's mobile smog emissions. This is not minor. We are talking about 17 percent of a State that has seven nonattainment areas in it, 17 percent of their pollution, and an Air Resources Board that has accepted the industry's proposal, an industry trade council, to which Briggs & Stratton belongs, submitted a proposal they could live with to the Air Resources Board. The Air Resources Board accepted it. And now Briggs & Stratton is coming back and saying: We do not agree; we will get our Senator to put a rider in a bill—with no hearing, without understanding the consequences that this provision will move the right for every single State to protect its citizens.

That is truly wrong. This morning, I ask my colleagues to stand up for their states rights. I ask them to stand up and protect public health. I ask them to oppose this special provision on this appropriations bill put there to benefit one company when every other company says they can comply.

EXHIBIT 1

[From the Outdoor Power Equipment Institute]

OPEI SUCCEEDS IN DRAMATICALLY IMPROVING CALIFORNIA EMISSION REGULATIONS

For the last two years, OPEI has been working proactively with the staff of the

California Air Resources Board (CARB) to improve proposed catalyst-based Tier III exhaust standards for wheeled products, as well as new evaporative emission regulations, based on the use of carbon canisters and/or sealed fuel tanks, as well as less-permeable fuel tank materials and fuel lines. On August 8, 2003, CARB staff issued a proposed regulation that would have required wheeled products to install high-efficiency/high-heat generating catalysts in order to meet exhaust standards that were 50% more stringent than the current Tier II standards. CARB's August 8th proposal would also have required all lawn and garden equipment to be subject to shed-based performance testing to demonstrate that the entire piece of equipment complied with an overall evaporative/diurnal emission standard. CARB's August 8th proposal evaporative compliance program and exhaust stand would have: (1) imposed enormous compliance and product integration problems for both engine companies and OEMs; and (2) resulted in significant safety concerns as well, principally because of the substantial heat generated from the high-efficiency catalysts. Through written correspondence, the U.S. Congressional House Committee on Government Reform, the California Fire Chiefs Associations (CFCA), the National Association of State Fire Marshals (NASFM), and the U.S. Consumer and Product Safety Commission (CPSC) have gone on record as strongly opposing CARB's August 8th proposal because of the unresolved safety issues with high-efficiency/high-heat generating catalysts and pressurized fuel systems.

In direct response to OPEI advocacy, the California Air Resources Board (CARB) unanimously adopted on September 25th a modified alternative framework which: (1) relaxes the stringency of CARB Staff's proposed Tier III exhaust standards; and (2) substantially improves the overall general framework for the still-to-be-defined evaporative emission regulations. The CARB Board has adopted industry's proposed exhaust standards which are roughly 25% less stringent for Class I engines (less than 225 cc displacement) and 33% less stringent for Class II engines (greater than 225 cc displacement). Based on an economic study prepared for OPEI, the compliance costs of the industry counterproposal should be roughly one-third less than the costs associated with the August 8th CARB proposal. CARB's August 8th exhaust and evaporative proposed standards would have increased the average compliance cost for lawn mowers by $106 and the average compliance cost for riding mowers by $321. CARB's adopted less stringent exhaust and more flexible evaporative program are expected to result in an average total compliance cost increase of $73 for walk-behind-mowers and $189 for riding mowers.

The provisions in OPEI/EMA's counterproposal (as generally adopted by the CARB Board) also establish a much more straightforward and less burdensome, design-based (rather than shed-testing) program (for all products others than walk-behind-mowers) to demonstrate compliance with the evaporative requirements. OPEI has also persuaded CARB to allow the use of smaller and less-expensive carbon canisters. The provisions in OPEI's/EMA's counterproposal (as generally adopted by the CARB Board) provide industry with much longer lead-time compared to the August 8th CARB proposal. Specifically, industry has more than five years of additional lead time to achieve the ultimate evaporative emission requirements. This additional lead time should allow manufacturers with adequate time to develop and use new low-permeation barriers (such as co-extruded materials) in constructing their fuel tanks.

The Outdoor Power Equipment Institute (OPEI) is the major international trade association representing the manufacturers and their suppliers of consumer and commercial outdoor power equipment such as lawnmowers, garden tractors, utility vehicles, trimmers, edgers, chain saws, snow throwers, tillers, leaf blowers and other related products. Founded in 1952, the Institute is dedicated to promoting the outdoor power equipment industry by undertaking activities that can be pursued more effectively by an association than by individual companies.

EXHIBIT 2

AIR RESOURCES BOARD,
Sacramento, CA, September 26, 2003.

Hon. CHRISTOPHER S. BOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BOND: Thank you for your September 24, 2003, letter commenting on the proposed regulation to reduce pollution from small engines below 25 horsepower. Your letter was received prior to the California Air Resources Board (ARB) public hearing on this regulation, and read by each of my fellow Board members.

Your letter urged the Board to reach ''a comprehensive agreement with the entire small engine industry that saves jobs while also protecting the environment and public safety.'' I'm pleased to report that on September 25, 2003, the Air Resources Board unanimously adopted a revised regulation that I am confident addresses all the issues raised in your letter on behalf of the small engine industry. In particular, the regulation we adopted:

1. Removes any question regarding safety;
2. Results in the use of commonly available technologies which will not require engine redesign;
3. Prevents the possible loss of jobs referred to in your letter; and
4. Achieves nearly the same emission reductions.

The revised regulation is based on proposals we had requested and received in the past two weeks from members of the small engine industry. ARB staff used these proposals to design and include in the regulation two alternative methods of compliance. One of the alternatives closely reflects the proposal of the Engine Manufacturers, Outdoor Power Equipment Institute, and Briggs and Stratton.

The most important feature of the regulatory alternatives we adopted is a less stringent exhaust emission standard (offset by better evaporative emission controls). The new standard will reduce the heat generated by the engine's exhaust. Honda testified that with the revised exhaust emission standards, safety is no longer a concern. A representative of the California Fire Chiefs Association testified the revised regulation appeared to address their concerns. Similarly, a representative of the California Fire Marshall's office told our staff he believes ARB adequately handled the safety issues with the revised regulation. I am confident that the testimony of these experts assures us there will be no new safety issues resulting from implementing this regulation.

No testimony was presented to the Board regarding job losses and plant closures. However, I am aware that Briggs and Stratton has said the company will have to shut down some or all of its plants because major engine redesign would be required to meet California's proposal to reduce small engine emissions. I believe that statement referred to the original proposed regulation and no longer applies. Testimony at our hearing yesterday confirmed that relatively simple changes to engine components would allow these small engines to meet the revised emission standards we adopted. Better hoses and fuel tanks would prevent fuel vapors from leaking into the atmosphere where they form smog. A simple catalyst, similar to the ones used on over 15 million small motorcycles and mopeds worldwide, would reduce exhaust emissions without creating a heat hazard to the user. The testimony was clear that these simple changes were effective and no engine redesign that might cause job losses would be needed. Honda testified on the record that the regulations would not reduce its employment or production.

I believe the action taken by the ARB is a win-win situation. We achieved our emission reduction goal. The adopted regulation, based on an industry proposal, will reduce costs, simplify compliance and avoid job losses. Fire experts stated there is no safety problem.

As you stated in your letter to me, addressing these issues should obviate the need for Congressional action. We have successfully addressed all the issues you raised. Accordingly, I now request that you remove the expansive state preemption language from the HUD/VA budget bill, so in cooperation with small engine manufacturers, we can get on with the job of protecting the health of 35 million Californians.

Sincerely,

ALAN C. LLOYD, Ph.D,
Chairman.

EXHIBIT 3

ENVIRONMENTAL COUNCIL OF THE STATES, STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS, ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS,

October 24, 2003.

DEAR SENATOR: We write to you today on behalf of the Environmental Council of the States (ECOS), the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) to urge your support for amendments to strike a provision of the VA, HUD, and Independent Agencies FY 2004 appropriations bill that would amend Section 209(e)(1)(A) of the Clean Air Act to curtail states' authority to clean up diesel and gasoline off-road equipment and engines.

Emissions from off-road engines contribute significantly and increasingly to ozone and fine particulate matter ($PM_{2.5}$) pollution and are responsible for a variety of serious public health impacts. As state and local environmental agencies work to develop strategies for attaining and maintaining health-based National Ambient Air Quality Standards for ozone and $PM_{2.5}$, they will look to the regulation of off-road engines as a means for achieving their clean air goals.

The provision in the VA-HUD appropriations bill to amend Section 209 would have broad adverse consequences with respect to the ability of states to seek emission reductions from off-road engines. First, the provision would prevent not only California, but all other states as well, from setting new emission standards or enforcing existing standards for all off-road engines under 175 horsepower (hp), including, among others, those used in lawn and garden equipment, generators, forklifts, airport ground support equipment and mining equipment. Second, the provision would also preclude states from regulating off-road engines above 175 hp if the engines are certified in the same engine ''family'' as certain off-road engines under 175 hp. Third, the provision would prevent states from pursuing ''retrofit'' programs to clean up older, dirtier engines. In short, if this provision to amend Section 209 of the Act is retained in the VA-HUD appropriations bill, states' clean air efforts will be

thwarted and they will be forced to seek further, likely less cost effective, reductions in emissions from other sources that are already well controlled, including small businesses.

As the Clean Air Act appropriately recognizes, states are best suited to determine which sources contribute most significantly to air pollution in their respective jurisdictions and which programs will be most effective in addressing their specific problems. ECOS, STAPPA and ALAPCO urge that you support amendments to strike this off-road provision from the VA-HUD appropriations bill and preserve states' rights to pursue healthier air for our nation.

Sincerely,

R. STEVEN BROWN,
Executive Director, ECOS.
S. WILLIAM BECKER,
Executive Director, STAPPA and ALAPCO.

Mrs. FEINSTEIN. Madam President, I thank the Senator from Maryland for her comments. She is a superior ranking member. When she is chairman of the subcommittee, she is a superior chairman of the subcommittee. I do not know any Senator who loves her assignment more than the Senator from Maryland. If we hear one thing from her, it is about her VA–HUD bill. She does a super job. I am just so grateful for her service to our country, to our veterans, and to housing. It has just been exemplary.

I yield the floor.

The PRESIDING OFFICER. Senator CRAIG.

AMENDMENT NO. 2156 TO AMENDMENT NO. 2150

Mr. CRAIG. On behalf of Senator BOND and Senators MCCONNELL, TALENT, CHAMBLISS, MILLER, and CRAIG, I send the Bond amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Idaho, [Mr. CRAIG], for Mr. BOND, Mr. MCCONNELL, Mr. TALENT, Mr. CHAMBLISS, Mr. MILLER, and Mr. CRAIG, proposes amendment numbered 2156 to amendment No. 2150.

The amendment reads as follows:

(Purpose: Clarify the current exemption for certain nonroad agriculture and construction engines or vehicles that are smaller than 50 horsepower from air emission regulation by California and require EPA to develop a national standard)

Page 106, strike lines 16 to 20 and insert in lieu thereof the following:

''Section 209(e)(1) of the Clean Air Act (42 U.S.C. 7543(e)(1)) is amended by—

(a) striking the words ''either of''; and

(b) in paragraph (A), adding before the period at the end the following: '', and any new spark-ignition engines smaller than 50 horsepower''.

Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations containing new standards applicable to emissions from new nonroad spark-ignition engines smaller than 50 horsepower.''.

Mr. CRAIG. I will speak only briefly. I didn't think I had a dog in this fight, only a lawnmower and a weed eater.

Most of what the Senator from California said I agree with. But I also know when you have a large manufacturer that builds literally tens of thousands of engines a year spread out across the country and are allied to a variety of tools that are built by other companies, there does need to be uniformity in law.

The amendment requires EPA to establish that kind of uniformity for 50 horse and under. Of course, I can appreciate that. I have dealt with situations before, including when we had the lawsuit over Yellowstone Park. It said that snowmobiles in Yellowstone Park had to meet a certain standard. We said, wait a minute, let's build a standard so all snowmobiles meet, nationwide, both the issue of sound and air pollution.

That is exactly what is happening now. Most industries, when you can build a nationwide uniformity of standard, work obviously to meet it or they go out.

Briggs & Stratton is the last remaining large manufacturer of small engines in the country. I understand that California has made some exceptions, carving out for Honda and others to meet certain compliance issues.

I hope in this amendment we do recognize when you have a producer of this magnitude that sells worldwide and nationwide that we build or work to build uniformity across those standards. I believe that is the intent of the amendment.

The Senator is right, it has been reduced to 50 horsepower and does address EPA, requiring them to address this problem.

Mrs. FEINSTEIN. Will the Senator yield?

Mr. CRAIG. I am happy to yield.

Mrs. FEINSTEIN. Or we can go back and forth through the Chair if the Senator is in agreement. The problem is that because of the severe conditions in the State, 7 nonattainment zones, this is 17 percent of mobile sources. If we do not deal with it, we cannot meet the clean air standards and we jeopardize our highway funds.

There is the rub, so to speak. States do not have to follow. Clearly, States have followed, a large number of them. I don't know what else to do. Every State's air, as we have discussed with forests, Senator, is different. Pollution comes from different kinds of sources in every State. That is why this ability of a State, particularly one as large as California, fifth largest economic engine on Earth, should have the right to protect its people.

The concern is that EPA, (a) won't move fast enough; (b) will not do enough to severely reduce the pollution to enable California to come within its containment standards.

Mr. CRAIG. Regaining my time in trying to respond to that because I am not the expert in this area and I have not dealt with this issue per se, obviously, I recognize the need of California. Other States have that need. What this amendment does is it addresses EPA to move rapidly into that area to build a uniform national standard that meets those needs. Of course, EPA does have a broader test when it develops regulation. It does have an economic factor test involved in looking at regulations that some States are not required or simply do not have because they set their own standards.

It is a fine line between allowing States to move forward and developing uniform national standards. There have been exceptions. The Senator has spoken to those exceptions.

When a market has a magnitude of sales large enough, sometimes those exceptions are effectively made and economically companies can survive. In this instance, what we have seen in this particular market, because of costs of retooling, retrofitting, and bringing assembly lines online, oftentimes it is easier to move offshore—not that you will change the requirement—but you can, therefore, build the new plant for less cost, you drive down your costs because of labor, and that is what the Senator from Missouri is concerned about.

He is also concerned about pollution. That is why the amendment addresses EPA and says get at the business of dealing with this 50 horsepower and up issue. That is a major problem.

Mrs. FEINSTEIN. Will the Senator yield?

Mr. CRAIG. I am more than happy to yield.

Mrs. FEINSTEIN. The bulk of our problem, I am told by the Air Resources Board, otherwise I would not know, is under 50 horsepower. So it takes that right away.

Additionally, Senator, I guess what got my dander up, was the SEC filing of a company when they say this is not a financial problem. Actually, the finances drive everything in the country. We know that very well. This is not a financial problem. They will pass on added cost. California is a small part of the market. If the company is saying that is a 10(k) I would tend to believe the 10(k). Wouldn't you?

Mr. CRAIG. Mr. President, regaining my time, I obviously cannot address that issue. I am here for the purpose of introducing the amendment on behalf of Senator BOND. Senator BOND is in markup on surface transportation and will be back to the floor in a while to engage the Senator in these questions, I am sure, and he knows a great deal more about this issue than I.

What I would like to do at this moment, if the Senator from California would accept it, is to lay the amendment aside temporarily for the purpose of the introduction of another amendment, and when Senator BOND gets back to the floor he can bring this amendment back for the purposes of addressing it with the Senator. Would the Senator object to that?

Mrs. FEINSTEIN. Not at all.

Mr. CRAIG. I thank the Senator from California.

I ask unanimous consent that the Bond amendment be set aside.

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

AMENDMENT NO. 2158 TO AMENDMENT NO. 2150

Mr. CRAIG. With that, I send to the desk an amendment for the Senate's consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Idaho, [Mr. CRAIG], for himself, Mr. HARKIN, Mr. COCHRAN, Mr. CONRAD, Mr. CHAMBLISS, Mr. COLEMAN, Mr. CRAPO, Mr. LUGAR, Mr. BREAUX, Mr. ROBERTS, and Mr. FITZGERALD, proposes an amendment numbered 2158 to amendment No. 2150.

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

Mr. CRAIG. Mr. President, I have brought an amendment to the floor today that has been worked on for a long period of time in a bipartisan way, Democrats and Republicans, VA–HUD subcommittee, Senate Agriculture Committee, and others, to deal with pesticide registration and the fees of that registration.

For the last several years, the VA–HUD appropriations bill has, on an analyzed basis, advanced these fees automatically. We have done it through the appropriating process.

The administration basically said let's resolve this issue. A broad coalition of environmental organizations and chemical companies basically came together in the past several months to reach consensus on a permanent pesticide fees package. Through several long hours, an agreement was reached late this summer through a truly bipartisan effort that produced identical legislation in both the Senate amendment I have just sent forward with the 20-plus cosponsors and House H.R. 3188. So the House and Senate are now working in tandem on this issue.

The package includes a unique cross section of support from industry, labor, farmers, and the environmental community. Such groups as the Natural Resource Defense Council, the American Farm Bureau, the Sierra Club, the CropLife America group, and the Northwest Coalition for Alternatives to Pesticides now fully endorse this bill.

Cumulatively, there are over 20 agricultural organizations supporting this amendment, and they have asked for ''stable, effective and predictable pesticide regulation'' that is explicitly created in this legislation.

The amendment guarantees long-term stable funding to EPA that provides and expedites the pesticide registration process by using a performance-based approach. Additionally, the amendment provides a protection for small business and minor use products while funding efforts to protect workers.

The legislation ensures that EPA use sound science in its evaluation of products, and that existing rigorous standards are maintained, while reducing the timelag between approval and availability of these products to farmers and retailers who sell them.

The amendment is consistent with other user fees legislation, such as the successful Prescription Drug User Fee Act.

Congress has addressed the pesticide fees issue for several years, as I have mentioned, by simply rolling it over in appropriations bills. But it is truly an issue that deserves the full consideration of all parties involved and finality brought to it. And this amendment offers that.

I had offered it in the subcommittee, but because of our consideration of not dealing with legislation in the subcommittee, we chose, and I chose, to bring it to the floor on behalf of a very broad bipartisan group of Senators.

As in the past, the House and the Senate VA–HUD bills, as I said, spoke to a temporary approach, a 1-year fix for the issue.

Now, of course, I hope we can gain acceptance of this amendment on all sides so that we have a long-term solution so Congress can fully resolve the issue.

My amendment, our amendment, has the same budget impact as the 1-year rider currently in both the House and the Senate 2004 appropriations bills. Now is the time, I do believe, to provide a long-term fix to the pesticide fee program at the EPA by including this consensus legislation on an appropriations bill moving forward.

The diverse stakeholder coalition—from the agricultural industry, environmental groups, workers, and the consumer community—has worked long and hard to forge a consensus and is fully supportive of the terms of this amendment.

So I hope when we get consideration of this—it is possible there may be others who wish to speak to it—that we can bring it on this legislation and adopt it, hopefully, by consensus of the Senate.

Mr. President, I ask unanimous consent to add Senator PRYOR as a cosponsor of my amendment.

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

Mr. CRAIG. I know Senator DORGAN, who supports the initial legislation, has some concern about other issues and is on his way to the floor to speak to those.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, my understanding is that the pending amendment is an amendment offered by Senator CRAIG from Idaho dealing with pesticide registration fees. Is that correct?

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 2159 TO AMENDMENT NO. 2158

(Purpose: To permit the Administrator of the Environmental Protection Agency to register a Canadian pesticide)

Mr. DORGAN. Mr. President, that is a first-degree amendment. I will offer a second-degree amendment. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 2159 to amendment No. 2158.

Mr. DORGAN. 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 printed in today's RECORD under ''Text of Amendments.'')

Mr. DORGAN. Mr. President, I have visited with my colleague, Senator CRAIG, about this second-degree amendment. I have also visited with those who are running the Agriculture Committee.

This is an amendment to the pesticide registration fee amendment offered by Senator CRAIG. Let me point out, I support the underlying amendment. I believe it is an important amendment that Senator CRAIG has offered. I intend to vote for it. I will not insist on a vote. In fact, I will ask to withdraw my amendment following my presentation. But I did want to have a dialog with my colleague from Idaho about an issue that is related to the issue of pesticide registration. It deals with the issue of harmonization with Canada, something that was promised when we did the free trade agreement with Canada, that we would harmonize pesticides and herbicide pricing and policies.

The fact is it has not been done. A group of us in the Senate, a bipartisan group, including Senator CRAIG and Senator BURNS, myself, and others, have continued to work on this issue because we have a circumstance on the northern border where chemical prices are substantially different between the United States and Canada, even though in many cases the chemical itself is nearly identical—perhaps tweaked with one piece or another of the formula, but otherwise nearly identical.

For example, a chemical that is put on canola in Canada and then the canola is sent to our country to be crushed at the crushing plant and put into our food supply is a chemical our farmers cannot go get in Canada and bring back, despite the fact this chemical is substantially similar to one used on canola in the United States but is priced much lower in Canada. So we have had this promise of chemical harmonization for some long while dealing with Canada.

The current circumstance we believe is unfair to American farmers. The bipartisan legislation that is in the second-degree amendment I offer gives the EPA 60 days to approve or deny the

registration of a Canadian pesticide if it has similar use and makeup as a pesticide registered in the United States.

It allows the EPA, if the EPA so chooses, to delegate portions of the registration workload to the States to aid the EPA in completing the registration process. But the Environmental Protection Agency, under this approach, is ultimately responsible for this process. According to a study done by the North Dakota State University, we still have significant price disparities between chemicals that are almost identical. If those disparities had been eliminated with harmonization, North Dakota producers would have saved $20 million last year. That is a substantial amount.

We have worked with State agriculture commissioners in the various States. As I indicated, Republicans and Democrats in the Senate have worked together. As a result of that, we are anxious to move this legislation. We did have a hearing on a different version of it previously. We have now changed that version because of some objections to it. We would like to have a hearing and a markup. I understand there are some perhaps in the industry who do not support this. But on behalf of American farmers, we really need to do it.

I have offered it as a second-degree amendment. I have learned moments ago that the chairman of the Senate Agriculture Committee will commit to doing a hearing on this next February. That is a couple of months away. That is significant progress. I appreciate very much his cooperation, and I know the Senator from Idaho is a member of that committee. My hope would be, although there is not a commitment at this point, that that hearing, in which we demonstrate bipartisan support for this issue, would be followed by a markup. We really do need to move this legislation.

My only purpose for offering the second-degree amendment today is that my colleagues and I are frustrated that we have not been able to get this done previously. There are many reasons for it, but we do need to now take action. That is the purpose of this.

I say to my colleague from Idaho, as a member of the Agriculture Committee, I know he and Senator COCHRAN, leader of the committee, and others believe strongly that we need to have proper hearings on these issues. I know my colleague from Idaho is a strong supporter. I ask him how he feels about this legislation, the second-degree amendment I have offered.

Mr. CRAIG. If the Senator from North Dakota will yield, Mr. President, what the Senator speaks to is a very real problem, especially in border States such as his and mine, where farmers across that line that is often invisible—economically, environmentally, and climactically, but not jurisdictionally, certainly not from a national standpoint—can't understand why a product that appears to be the same—and as the Senator from North Dakota said, there may be some slight difference because it is not licensed in this country—cannot cross the border and find a substantial savings and bring it back for application on his agricultural crops in the lower 48. Yet product raised in Canada, harvested in Canada, can be trafficked into our markets, refined, and moved into our food stream.

There does clearly need to be a resolution of this problem, from an economic standpoint, from an environmental standpoint, and from a food safety standpoint. That was spoken to in the Canadian free trade agreement, the North American Free Trade Agreement. It is something we ought to resolve.

I am pleased that the chairman of the Agriculture Committee is willing to hold hearings early next year to review it. I will certainly encourage that. I will encourage that we move the next step, to a markup, to resolve this issue once and for all. There are remnants left of difficulties between the United States and Canada in a variety of areas as a result of the free trade agreement. I didn't support that agreement initially, but it is the law of the lands involved: Canada, the United States, and Mexico.

We ought to try to resolve these kinds of difficulties that create great problems. Twenty million dollars spread across the national economy is not so much money; $20 million in a State such as North Dakota or Idaho, on individual farmers who are, at best, breaking even in some of these crops and in many years below cost of production—that savings in itself is a very substantial reduction in the overall cost of doing business.

That is what harmonization was about: Environmentally, regulatorily, and certainly as a cost of product, and for food safety and all of those things within the food chain. This is an issue that cries out for resolution. I am pleased that the Senator is willing to withdraw his second degree and that that probably then allows us, hopefully, to go forward with the other one, maybe by a voice vote or an acceptance of the chairman and the ranking member of the committee.

I thank the Senator for bringing this issue to the floor. I am certainly an advocate of his position and will work to help him resolve it.

Mr. DORGAN. Mr. President, I thank my colleague from Idaho. He has been a strong supporter of this approach.

Perhaps for the record, I might add what farmers are upset about is the following. We see Canadian grain coming into our country. It is treated with their chemicals but their chemicals are deemed unfit here, not because it has the wrong ingredient or it would be unhealthy for us. It is just the way it is labeled in order to prevent it from being sold in this country.

On the chemical Liberty for use in canola, there is a $4.40 per-acre price difference between the United States and Canada for essentially the same chemical.

On Glyphosate, commonly known as Roundup, there is only about a $2 per-acre price differential; On a chemical Puma, $11 million more to apply just for North Dakota farmers. The chemical Stinger, which is sold as Lontrel in Canada—both are similar pesticides, use the same active ingredient—there is almost a $10 per-acre difference between the chemicals. That is what upsets farmers. They see that they can't buy the nearly identical chemicals for $10 an acre less, but they see the grain come in from Canada that has been treated with the same chemical. That is why the United States-Canada free trade agreement had a provision in it that called for harmonization in these areas, and yet almost no progress has been made. It is why a group of us are trying to do something about it.

I thank my colleague from Idaho and my colleague from Montana and my colleagues on this side of the aisle. I thank Senator COCHRAN, and especially his staff on the Senate Agriculture Committee, on the commitment to hold a hearing, in the next couple of months, on this, in the month of February. Also, my colleague's belief that we need to move along, and he will be pushing for a markup, gives me some hope that we will be able to move this legislation.

Let me conclude by saying again the first-degree amendment offered by my colleague from Idaho is one that is needed. It is very important, and I strongly support it. It provides the fees for pesticide registration. This Congress needs to pass that legislation. I support doing it as a first-degree amendment offered by my colleague from Idaho.

AMENDMENT NO. 2159 WITHDRAWN

Mr. DORGAN. Mr. President, I ask unanimous consent to withdraw my second-degree amendment.

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

Mr. DORGAN. I hope we will adopt the first-degree amendment of my colleague from Idaho by voice vote. Certainly, this appropriations bill is going to become law. Whether it is on the floor of the Senate with action or part of some omnibus bill, this is going to the President for signature. Having my colleague's first-degree amendment part of the bill, doing something that needs to get done now, not later, makes a lot of sense. I am pleased to be supportive of the amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, it is my understanding, under the agreement, that Senator BYRD will be on the floor at noon to speak for a period of time. Following that, I understand we will resume consideration of the VA–HUD appropriations bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. Under the previous order, the hour of 12 having arrived, the Senator from West Virginia, Mr. BYRD, shall be permitted to speak for up to 30 minutes.

Mr. CRAIG. That is the order. I understand we will then recess from 12:30 until 2:15 for the purpose of the Democrat policy luncheon.

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. How much time do I have remaining.

The PRESIDING OFFICER. The Senator from West Virginia has 29 minutes remaining.

Mr. BYRD. Mr. President, I thank the Chair. I will not use all of the remaining time.

DEPARTMENT OF DEFENSE AUTHORIZATION BILL

Mr. BYRD. Mr. President, on May 22 of this year, 2003, I cast my vote in opposition to the fiscal year 2004 Defense authorization bill. I cast that vote to protest the errant course of the defense establishment in seeking larger and larger regular defense budgets. The budget for the Department of Defense is exploding, even if we do not count the vast sums being used to maintain our troops in Iraq and Afghanistan.

The regular defense budget, not including the costs of the war on terrorism in Afghanistan or the other war, the war in Iraq which we started, has gone up by 31 percent since 2000. I will say that again. The regular defense budget, not including the costs of the war on terrorism in Afghanistan or the other war which we started in Iraq, has gone up by 31 percent since 2000.

In 2000, Congress authorized $304.1 billion to fund the routine day-to-day operations of our military. The conference report before the Senate today authorizes $401.3 billion to pay the routine bills for our defense establishment. As I say, I am not even speaking of the costs of Iraq on the one hand or the costs of Afghanistan. So if we were to just ignore Afghanistan and Iraq in looking at the costs of the military, we are authorizing today in the conference report $401 billion to pay the routine bills for our defense establishment as against the $304.1 billion that Congress authorized in the year 2000—in other words, roughly $100 billion more today than we authorized in 2000, just ignoring Iraq, on the one hand, and Afghanistan on the other.

The growth of the so-called peacetime budget of the Department of Defense is expected to continue into the foreseeable future. The Pentagon estimates that it will request $502.7 billion for routine defense operations in the year 2009. Think of that. That is more than a half trillion dollars. The Pentagon estimates it will request $502 billion for routine defense operations in 2009. But a request for half a trillion dollars—as we will be undertaking in 2009—should be anything but routine, especially if not one red cent of those funds would be for any contingency military operation.

Instead, these growing defense budgets are proof that there is no longer any real effort to provide a smarter defense plan that will modernize our forces for the 21st century while eliminating the vestiges of a cold war era military force. Nearly 3 years ago, Defense Secretary Donald Rumsfeld announced he would conduct a series of top-to-bottom reviews of the Pentagon. I lauded him for doing that. I applauded him publicly and in private conversations. I applauded the Secretary of Defense. Those reviews were supposed to get rid of old weapons systems, field new ones, and refocus the defense establishment to get more bang for the taxpayers' buck.

I, along with many others, supported those efforts as announced by the Secretary of Defense. But any hope of modernizing our Armed Forces while maintaining fiscal discipline has gone—gone out the window. The defense transformation effort which began as a frontal assault on irresponsible spending at the Pentagon has been replaced by the quest for flexibility—''flexibility,'' the latest buzzword to describe efforts to consolidate greater and greater and greater power into the hands of a select few at the top of the executive branch.

I voted against the Defense authorization bill on May 22 of this year. Why did I do that? I was the only one, the only Senator who voted against it. Why did I do that? I voted against that bill in order to voice my protest to spiraling defense budgets when the American people are expecting smarter spending by their Government, and I will vote against the conference report today to this bill for the very same reason, as well as because it gives rubberstamp approval to consolidating new, broad powers in the Secretary of Defense.

This conference report creates the ''National Security Personnel System,'' so-called, which gives the Secretary of Defense, Donald Rumsfeld, unchecked powers—unchecked powers to rewrite civil service rules for civilian employees of the Pentagon. The conference report includes sweeping authorities—sweeping authorities to allow the Secretary of Defense, Donald Rumsfeld, to waive landmark environmental protection laws with a stroke of the pen.

The conference report establishes new ''flexibilities''—flexibilities for the Pentagon to use to develop and deploy an unproven national missile defense system. That is a sinkhole, a sinkhole for your money, the taxpayers' money.

The conference report grants new multiyear authority to transfer appropriations—now, get this. Hear me! The conference report grants new multiyear authority to transfer appropriations of unlimited sums. This is not chickenfeed we are talking about. We are talking about unlimited sums of ''your money,'' the taxpayers' money, from numerous accounts in order to increase spending on Navy cruiser conversions and overhauls.

These are but a few examples of the new powers granted to the executive branch, downtown, at the other end of the avenue, in this bill—this bill. I am not reading from ''Alice in Wonderland.'' I am reading from this conference report.

Our country continues to be threatened by Osama bin Laden. Our troops are under fire in Iraq in the aftermath of a preemptive war, a preemptive war that we started, a preemptive war that our President, as Commander in Chief, started.

Fie on us, the Congress! For shifting that power to the President last October, last October 11. Twenty-three Senators in this body voted against shifting that power to the President. I was one of those 23. I was against shifting that power to this President or to any President. It doesn't make any difference to me what his politics—what his political party is, or would be, so help me, God. I would stand against that with any President. Fie on us! Only 23 Members in this body stood firm for the Constitution of the United States under which, power to declare war is vested in the legislative branch. Soldiers are fighting and dying half a world away and the wealth of this great country is being diverted from the United States Treasury in order to carry out an experiment in nation building in Iraq.

If there were ever a time to demand more accountability and efficiency in how taxpayer dollars are spent on our military, this is it. But instead of holding the feet of the Secretary of Defense to the fire, Congress gives the Secretary vast new powers to hire and fire workers as he sees fit.

Instead of turning the screws—the screws, instead of turning the screws—on this Defense Secretary to straighten out this mess, the accounting nightmare at the Pentagon, Congress grants the Pentagon more flexibility over how it can use funds appropriated to it. We cut the strings by which Congress limits the use of taxpayers' money. Instead of demanding greater accountability over how our military is preparing to meet the military threats of the coming decades, Congress creates new loopholes. The inescapable conclusion, is that Congress has been distracted from the most important issues facing our military posture. Instead, Congress is asked to take action on peripheral matters, and even then we simply pass the buck by closing our eyes and hoping that the Defense Department can straighten itself out if it is invested with enough new powers and ''flexibilities.''

If the leadership of the Pentagon thinks that ''defense transformation'' means getting Congress to stick its head in the sand, count me out. My idea of transformation means spending smarter to build a stronger military, not turning a blind eye to Executive Branch power grabs.

It is our fault. I can understand how the executive branch seeks to grab power. The executive branch is operating 24 hours a day every day, 365 days a year. Everywhere its imprint is seen throughout the globe, Congress sleeps.

The flexibilities in this bill are the antitheses of accountability. For each new ''flexible authority'' that Congress hands over to the Secretary of Defense—any Secretary of Defense—Congress signs away one more lever that should be used to compel the Secretary to build a smarter defense plan.

The Commander in Chief beats his chest and throws down the gauntlet, saying, ''Bring them on,'' in front of the TV cameras, but pictures of the fallen dead coming home to Dover are not allowed.

Oh, we don't want to display the pictures of bringing back the caskets at Dover, DE. No. The American people must not see that side of the war. This is a stubborn course that we have chosen that could tie down our forces in Iraq for months and months and months, and years even to come, and it is a course that I oppose today. It is a course I have opposed from the beginning. This ill-advised invasion and occupation of a Middle Eastern country stands to sap—sap—our military power through the attrition of our brave men and women in uniform. The effects of such a toll could affect our national security for decades to come.

The United States cannot afford to shelve—to place on the shelf—efforts to leap forward a generation in military power by investing in a smarter defense plan. If our country does not prioritize efforts to change our military to respond to the asymmetric warfare of the 21st century—whether those threats emanate from North Korea, or a belligerent China, or Iran—the long-term toll of the adventure in Iraq could weaken our military for years to come, just as our Armed Forces were found to be hollow in the years after Vietnam.

I will vote against the conference report to the Defense authorization bill. It transfers vast unchecked powers to the Defense Department while avoiding any break with the business-as-usual approach to increasing defense spending. It dodges the most important issues facing our national defense posture, and I cannot support such a bill.

I yield the floor. 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. Without objection, it is so ordered.

RECESS

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

Thereupon, the Senate, at 12:30 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mrs. DOLE).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004—CONFERENCE REPORT—Resumed

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 having arrived, the Senate will proceed to the consideration of the conference report to accompany H.R. 1588, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 1588, an act to authorize appropriations for fiscal year 2004 for military activities for the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strength for such fiscal year for the Armed Forces, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will be 20 minutes equally divided prior to a vote on the conference report.

Mr. REID. Madam President, if the manager will yield, it is my understanding the leadership is going to extend the time for the vote another 10 minutes.

Mr. WARNER. Madam President, the distinguished minority leader is correct that the time has been extended. The vote is to occur, I understand, at 2:45. The 30 minutes intervening is under the control equally of the distinguished Senator from Michigan, Mr. LEVIN, and myself.

Mr. REID. Madam President, I ask consent that that be the order. We have a caucus going on now.

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

Mr. WARNER. Madam President, I encourage any and all Senators who desire to address this bill to avail themselves of the opportunity. To the extent that I have control over the 15 minutes, I am happy to accommodate Senators as they come to the floor.

I yield such time as the distinguished Senator may require. I hope it will be around 5 or 6 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, I apologize to our distinguished chairman for not having been down here during this discussion. As he well knows, I chair the Environment and Public Works Committee. I am proud to say we were able to get a bill out, the reauthorization bill. I feel very good about that. It will be coming to the floor. It is a good compromise but it required my attendance.

I want to be on record to say that our chairman and the ranking member have done a very good job. We have worked closely together during the development of the authorization bill. We are making great headway. We are turning in the right direction. I particularly applaud those who participated in the ultimate compromise that we agreed on having to do with the lease program, the 767s. We all understand we have a crisis in our tanker fleet. Our KC–135s are getting old and there is controversy over how much longer they can be used. Nonetheless, our pilots who are performing this significant mission of refueling need to have the very best. We are addressing that problem.

In the area of TRICARE, we have made some advancements that are long overdue. I know in my State of Oklahoma, we probably have one of the highest populations of retired military, many of them in Lawton and scattered throughout the State. I know there are very serious concerns we have gone a long way to meet.

Environmental issues bother me a great deal, and maybe I am more concerned about what has happened to our ability to train our troops, because I happen to also chair the Environment and Public Works Committee. So we deal with the environmental issues.

But it is very disheartening when you go down to your part of the country and see what has happened in some of the endangered species programs and how we are addressing those.

In Fort Bragg, in Camp Lejeune, for example, we are spending such an inordinate amount of money protecting the suspected habitat of the red-cockaded woodpecker that it is having a very deteriorating effect on our ability to train. This is something that does concern me greatly, and we are starting to address that, I know, in relation to the issue of endangered species. We have clarified the law that is going to perhaps, hopefully, stop some of the injunctions that have been taking place. I think we are making some progress there.

I am glad we are addressing end strength—not as much as I would like to or our chairman would like to because this is a compromise situation, but we have to recognize that we allowed our end strength to deteriorate, in terms of numbers, to the point that we are OPTEMPO of our regular services, we are OPTEMPO for our Guard and the Reserves. It is at an unacceptably high rate.

I do not think there is one Member of this Senate who does not go home and talk to his Guard and Reserve units, only to find out that critical MOS, military occupation specialties, are being lost because they are just overworked. You cannot expect someone who is in a citizens militia to have to be full time. Essentially, that is what is happening right now.

So we are starting to address that, and I think we need to go much further in the future. When I see that we did have a problem all during the 1990s, that I articulated on this Senate floor,

when we had a lowering in the amount of attention that was given to our military in terms of end strength, in terms of modernization, in terms of national missile defense, these things were very disturbing to me. I know we are now recognizing it.

I hate to say it in this way, but I really think those who subscribe to the idea—or did subscribe to the idea prior to 9/11—that the cold war is over and we need not have the size military we once did are just dead wrong. I look wistfully back at those days when we knew what our enemies had. We had one major superforce out there, and that superforce was predictable.

Now we have the proliferation of both weapons of mass destruction throughout the world and the delivery system. We know what countries have a delivery system that could reach us here in Washington, DC. We need to make up for what was lost during that period of time.

Lastly, I would agree with Secretary Rumsfeld who at one of our earlier meetings suggested that throughout the entire 20th century, the percentage of our GDP that went to defense was about 5.7 percent, and that dropped down in the 1990s to about 2.7 percent. We are up to 3.4 percent approximately.

I think we need to stop and rethink that as an overall picture of a plan for the future, perhaps it should be somewhere around 4, 4.5, or 5 percent because the nature of the threat that is out there is more expensive. I think we need to address it. So I think this bill goes a long way in that direction.

I am very pleased with the product we have. We have a long way to go, and I hope we can join hands and do that in the future.

Again, I applaud our chairman and the ranking member for the efforts they have put forth in making this legislation a reality.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I thank my distinguished colleague for his steadfast service on our committee these many years, and particularly in this past year when we were confronted with a number of very serious issues. And I recognize the consideration of this conference report coincides with his markup in the Environment and Public Works Committee on which I am privileged to serve with him. But, I say to the Senator, you manage to do both quite well.

Mr. INHOFE. I thank the Senator.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I thank Senator INHOFE also for his service, his work on the committee. He travels to visit with our troops. He is totally dedicated to our troops and the national defense. I thank him for his kind words, but also for that commitment.

SECTION 336

Mr. HATCH. Mr. President, I was hoping that my friend, the distinguished chairman of the Armed Services Committee, might yield for a question.

Mr. WARNER. I would be happy to yield to my friend.

Mr. HATCH. As I was reading the Defense authorization bill, I noticed that under section 336, entitled ''Pilot Program for Best-Value Source Selection for Performance of Information Services,'' the conference committee had modified the normal examination procedures for determining the source, either public or private, for the performance of information technology services. My question therefore is: Does section 336 modify, change or interfere, in any way with provisions of Title 10 §2460, §2464, or §2466 commonly referred to as ''Core'' and ''50/50''?

Mr. WARNER. I thank the Senator for his question. The answer is no. It was not the intent of the conference committee to make any modification to Title 10 §2460, §2464, and §2466 which address the requirements for the Department of Defense to maintain an organic core logistics capability and ensure that at least 50 percent of depot level maintenance is performed by employees of the Department of Defense. The Department of Defense must still abide by these statutory provisions when they make any decision or action provided for in section 336.

Mr. HATCH. I thank the Senator for that answer.

TANKER PROVISION

Mr. MCCAIN. Madam President, I would like to review with my colleagues section 135 of the National Defense Authorization Act for fiscal year 2004. Under the leadership of Senate Armed Services Committee Chairman WARNER, and Ranking Member LEVIN, Congress recently agreed to modify the manner in which the Air Force may acquire Boeing 767 aerial refueling tankers. This compromise is contained in section 135.

In the words of Chairman WARNER on October 23, 2003, this compromise sought to put this program back into the traditional budget, procurement, and authorization process. Section 135 replaces the current authorization for the Air Force to lease 100 aircraft, with an authorization for the Air Force to lease no more than 20 tankers, and to buy no more than 80 aircraft using multiyear procurement authority and incremental funding. The original proposal to lease 100 tankers would have cost taxpayers $6.7 billion more than buying them outright, according to the Congressional Budget Office.

Mr. WARNER. The Senator from Arizona's understanding is correct. By providing for the lease of only 20 planes, and by putting the bulk of this acquisition back into the traditional budget, procurement and authorization process, this compromise is estimated to save taxpayers over $4 billion.

I would like to take this opportunity to correct the legislative record. In a colloquy in the House among Chairman HUNTER and Congressmen DICKS and TIAHRT, it was stated that this compromise codified an agreement with the administration as set forth in a November 5, 2003, letter to me from Deputy Secretary Wolfowitz. For the record, the compromise does not endorse or codify any such agreement. The compromise is intended to ensure that Defense Department acquires tankers in a manner that meets its own needs, but also the needs and interests of taxpayers. While the Air Force maintained that its original lease proposal achieved this goal, it clearly did not. I fully expect the Defense Department to execute the terms of this compromise in a manner that fully protects American taxpayers' interests.

Mr. MCCAIN. I am grateful to the Senator form Virginia for his leadership on this issue. Three of the four defense committees that were required to approve the original proposal to lease 100 tankers, did so without sufficiently examining the proposal or its effects on taxpayers. It was the Senate Armed Services Committee that put the brakes on that costly and misguided procurement plan.

By buying those tankers that it requires rather than leasing them, the Air Force can realize very significant savings. The Air Force can avoid paying the cost of borrowing the funds from the private market to build and acquire the planes, as originally proposed. The Air Force can also avoid paying the lease-specific costs that were apparently included in the price that it had previously agreed to pay for the tankers. Documents we have reviewed suggest that these lease-specific costs could be as high as $5.5 million per tanker. Arranging for a purchase of the tankers will also allow the Defense Department to question many of the other terms and conditions of the Air Force's original lease proposal, such as the maintenance and training costs, and whether the planes we are buying should be FAA-certified.

Mr. WARNER. I thank the Senator from Arizona for his steadfast leadership and vigilance on this critical issue. There could be no doubt as to the Senator's sincerity in always protecting the interests of taxpayers.

Mr. NICKLES. Mr. President, I commend the Senators from Arizona and Virginia for their leadership on this important issue. When the Air Force's original proposal to lease 100 tankers looked like a done deal a couple of months ago, both of these Senators stood up and made us consider the proposal in ways that we likely would not have, but for their commitment for the interests of both the warfighter and the taxpayer. In so doing, we now have before us, among other things, Section 135 of the National Defense Authorization Act for Fiscal Year 2004. As I understand this provision, the Air Force will be authorized to use the special non-confirming lease methodology to lease no more than 20 tankers, and buy the balance, not to exceed 80, under a

multiyear procurement/incremental funding methodology.

Mr. MCCAIN. The Senator is correct.

Mr. NICKLES. The Senator's rationale for agreeing to this compromise, whereby the total number of tankers to be leased was reduced by 80 percent, relied on the Congressional Budget Office's conclusion that the fewer planes that the Air Force leased, the greater the savings to taxpayers.

Mr. MCCAIN. The Senator is correct. The intent was to maximize savings to taxpayers. If the Defense Department, in the words of Senator WARNER, puts this program in the traditional budget, procurement, and authorization process, the taxpayer will see significant savings.

Mr. NICKLES. I understand that the Congressional Budget Office has concluded that if the Air Force implements the compromise by acquiring the tankers under two separate contracts, gets budget authority at the time it orders its planes, and pays progress payments, taxpayers will see $5.3 billion in savings over the Air Force's original proposal to lease 100 tankers.

Mr. MCCAIN. Yes. On the other hand, if the Air Force executes under a single contract—presumably under the current proposed contract—and pays at delivery, taxpayers will see savings cut nearly in half, according to Congressional Budget Office estimates. Unfortunately, I have every reason to believe that the Air Force will proceed in this manner, which fundamentally belies the compromise proposal. By proceeding accordingly, the Air Force succeeds in deferring having to make hard budget decisions to acquire tankers it says it ''urgently'' needs, Boeing locks the Air Force into a contract to acquire 100 tankers, and the investment bank gets its cut for setting up any financing and providing other financial services associated with the deal. All of this is done at an unnecessarily high cost to taxpayers—just as under the original proposal.

Mr. NICKLES. I agree. If the Defense Department proceeds accordingly, namely under the current contact, it will be attempting to meet its priorities through very many of the same convoluted means that were proposed under the original agreement—means that would cost more than necessary, thereby further increasing the deficit to unnecessarily high levels. Unfortunately, in the absence of a guarantee from the Defense Department that it will not implement Section 135 as suggested by the Defense Deputy Secretary's letter of November 5, 2003 and the recent colloquy in the House, I share your concern.

Additionally I want to reinforce your statement that it is not the intention of Congress, nor does this legislation reflect an agreement for the Air Force Secretary to implement the current contract on acquiring 100 tankers. We have heard testimony and the Institute of Defense Analysis has reported, and I quote, ''We believe that the $120.7 million is a conservative, robust estimate of a reasonable purchase price for the KC–767A aircraft . . . and . . . should satisfy Boeing and its shareholders.'' We should not agree to a purchase price of $138.4 million which is significantly higher, because it includes lease unique costs.

I take the opportunity to highlight for our colleagues that the Congressional Budget Office has scored this transaction as an $18 billion direct purchase, requiring full budget authority up front. Ordinarily, under these circumstances, I would make a budgetary point of order. I will not raise that point of order now. But, what I will do is call upon the Secretary of Defense to implement the compromise provision in a way that accurately reflects the intent of the conference—acquire its tankers for the Air Force in a way that maximizes savings to taxpayers. It is anomalous that the Congress would have intended to have taxpayers see only half the savings and not touch the $6.4 billion maintenance and training contract—a contract that was never competed for. In the spirit of compromise, under Section 135, the Congress has provided the Department with tools to acquire the tankers responsibly and in a way that protects the interests of taxpayers.

At the end of the day, whatever legislation comes out of this body, the administration is responsible for implementing it as the Congress intended. After months of investigation, inquiry and debate, there can be little doubt that the intent here is to best protect the interests of the taxpayer.

Mr. MCCAIN. I thank the Senator for his continuing, active concern on this most important issue.

Mr. FITZGERALD. Mr. President, I understand that preliminary estimates suggest that buying no more than 80 tankers in a way that avoids lease-specific costs could save taxpayers as much as $5.3 billion over the Air Force's original proposal to lease 100 tankers.

Mr. MCCAIN. The anticipated savings under the compromise as described in Section 135 of the National Defense Authorization Act for Fiscal Year 2004 are very significant. The original proposal to lease 100 tankers was extraordinarily costly, and the compromise allows us to avoid those costs. For example, the original proposal would have had us pay $7.4 million per plane in private construction financing costs. The compromise provides for the Air Force to make progress payments to build the planes, and in so doing, to avoid this significant and unnecessary cost.

One of the reasons that the compromise authorizes the Air Force Secretary to use incremental funding to buy no more than 80 tankers is to allow the Air Force to get the tankers it needs in a manageable way that protects taxpayers.

Senator WARNER has said that, contrary to the statements of our House colleagues, the compromise does not codify or endorse the tanker acquisition plan that Deputy Secretary Wolfowitz described in his November 5, 2003, letter. The reason the compromise does not codify this approach is because paying for the tankers on delivery as the Deputy Secretary proposes could be very costly and could dramatically slash the savings that this compromise intends to provide—an outcome that is unacceptable.

Mr. FITZGERALD. As I stated during a Commerce Committee hearing on September 2, 2003 regarding this issue, the original lease transaction is nothing more than a complex, byzantine transaction that obscured the true cost of the tankers, reduced the transparency of the arrangement, and would unnecessarily cost American taxpayers billions of dollars. I commend the Senator from Arizona for his watchful eye over the negotiation and execution of this tanker deal. I also commend Senators WARNER and LEVIN for brokering the compromise agreement and putting the public interest ahead of a powerful special interest.

Mr. HATCH. Mr. President, today I rise in support of the fiscal year 2004 Defense authorization conference report. This report is not only a tribute to the Congress's hard work, in particular that of my good friend, Chairman JOHN WARNER, but it is also a reaffirmation of our commitment to meet the challenges of this War on Terror.

The conference report contains a number of provisions designed to alleviate some of the burdens placed on our fighting men and women. For example, I am proud to state that the report deals directly with a concern of many service members, including Utah National Guard and Utah-based Reserve families, by continuing payment through December 31, 2004, of special pay for duty while subject to hostile fire or imminent danger in the amount of $225 a month and $250 a month for family separation allowance. Additionally, all service members will receive at least a 3.7 percent pay raise. In order to help retain our mid-career service members, their pay will be increased between 5.25 and 6.25 percent. The burden for many of our Reserve forces will also be lifted regarding healthcare. The report provides TRICARE coverage for members, and their families, of the Selected Reserve of the Ready Reserve and each member of the Individual Ready Reserve, if they do not already have health insurance.

Keeping our word to our Nation's veterans is vital to maintaining the honor of our country. No other issue is as important to our veterans as that of concurrent receipt, that is, simultaneously paying veterans a military pension and providing them with disability benefits. Under the current law, many veterans' retirement pay is reduced or offset dollar-for-dollar for any disability benefit they receive. Unfortunately, proposals to remedy this situation remain controversial due to cost. Therefore, I must commend and congratulate

Chairman WARNER once again for devising a compromise plan that boldly expands upon his previous efforts by providing full concurrent receipt for those veterans suffering disabilities from combat or combat-related operations and by phasing in this benefit, over a 10-year period for those retirees whose disability is rated at 50 percent or greater.

This legislation is also important because it reaffirms our transformation policy. Many at home will ask what is ''transformation'' and what does it mean to the future of our Nation's military? Simply put, transformation is a process of reform that will revolutionize the way the military conducts operations. We saw a glimpse of this emerging reality during the Iraqi conflict where information was gathered from a variety of sensors, whether on the ground or in the air, and that information was transmitted very quickly to commanders who could then exploit the weakness of our enemy. It was a remarkable operation and it reflects the high level of competence and expertise of our Nation's service men and women.

This Defense bill will accelerate transformation and ensure that our forces maintain their decisive edge. It is an important accomplishment and the chairman, ranking minority member and all the members of the committee deserve our thanks. Their efforts to make military transformation a reality have led them to fund the research and development of such revolutionary systems as the Army's Future Combat System, or FCS. FCS will allow our forces to deploy an army brigade anywhere in the world within 96 hours. The DDX and the Littoral Combat Ship will also be revolutionary in their stealth characteristics, automation systems, and command and control capabilities. The committee is also continuing its support for the Joint Strike Fighter, which will bring a stealth fighter to all of our air and naval/marine air forces.

That being said, I was disappointed to see that the President's request for full funding of the F/A–22 did not occur, although the report did authorize the President's request for the procurement of 22 F/A–22s. This is a system that is a transformational aircraft at its core. The F/A–22's supercruise engines allow for extended supersonic flight—a magnitude longer than its after-burner predecessors. Using stealth capabilities, the F/A–22 is able to penetrate an opponent's airspace and engage enemy aircraft at great ranges. Additionally, unlike our current air superiority fighter the F–15C, the F/A–22 will be able to engage integrated surface-to-air missile systems. Once again using stealth technology, the F/A–22 will be able to approach these missile sites and destroy them, utilizing internally carried GPS-guided bombs. The F/A–22, using this bombing capability, will also have the ability to track and launch attacks against ground-fixed and mobile targets. However, the truly transformational aspect of the aircraft is that it can accomplish all of these missions almost simultaneously. Paraphrasing the Air Force's motto, no aircraft comes close to the F/A–22's capabilities. I cannot say how proud I am and the rest of the State of Utah is that the sustainment and maintenance work on this extraordinary aircraft will be handled at Hill Air Force Base/Ogden Air Logistics Center.

I am also grateful that the committee was able to maintain the momentum toward transformation regarding our industrial policies. Instead of reverting to a protectionist posture, the report enables the Department of Defense and Congress to gather information on this issue. I believe that as the cost of research and development of our Nation's weapons systems continues to grow that it will become increasingly in our interests to harness the strengths of other nations in joint ventures. The future belongs to programs such as the Joint Strike Fighter, where the United States has been joined by the United Kingdom, Canada, the Netherlands, Italy, Turkey, Singapore and Israel to develop this stealthy and capable aircraft that will protect the forces of freedom at an affordable price. I commend the committee for its foresight on this matter.

As I close, once again I wish to congratulate my colleagues on the Armed Services Committee, especially Chairman WARNER, on this fine piece of legislation. It was a hard road, but once again the committee has risen to the challenge and supported our men and women in uniform. The Nation is in their debt.

Mr. HOLLINGS. Mr. President, I rise today to commend the chairman and ranking member of the Armed Services Committee for bringing the 2004 Defense Authorization Conference Report to the floor today. The conference report before us comes at a critical time in our national history with our troops engaged in conflict throughout the world.

The committee's leaders have demonstrated patience and grace under pressure, navigating a difficult legislative process. I know firsthand how difficult this process can be; I have walked a mile in their shoes. I have served as the chairman of the Committee on Commerce, Science, and Transportation and now serve as its ranking member. It is in this capacity that I rise to express my dismay to learn that the bill agreed to by the conference committee includes significant changes to legislation under Commerce Committee jurisdiction—the Marine Mammal Protection Act, MMPA. The changes include modifications to some of the most fundamental standards providing protection of marine mammals under the MMPA.

I am proud to have been one of the original authors of the MMPA back in 1972. Overall, it has worked extremely well in balancing the need to protect marine mammals while allowing other important activities, including the defense of our Nation, to move forward.

I firmly believe that the U.S. is capable of having both the strongest military force in the world, and at the same time, some of the best conservation laws of any country. I have been a great supporter of our Nation's military, having served on the Defense Appropriations Subcommittee for three decades.

The Committee on Commerce, Science, and Transportation, on which I currently serve as the ranking member, has jurisdiction over issues relating to marine mammals, including authorizations for and oversight of the MMPA. The Commerce Committee plans to take up reauthorization of the entire MMPA this Congress. Towards this effort, we have held hearings and numerous briefings with the many different entities who have an interest in the MMPA, including the Department of Defense, the National Oceanic and Atmospheric Administration, NOAA, the Fish and Wildlife Service, private industry, the scientific research community, and nongovernmental organizations. Many of these entities have offered comments, including some serious concerns, with respect to the MMPA language now included in the DOD authorization bill.

I regret to say that many of the provisions included in the bill before us simply don't make sense. For example, we have had testimony from respected scientists this year in hearings before our committee, as well as before the Senate Armed Services Committee, that the standard for ''harassment'' of marine mammals, now included in this bill, is scientifically indefensible. Moreover, some of the provisions included in the bill go far beyond DOD activities, including all research done by or on behalf of the Federal Government. Although no changes to the MMPA were in the bill that passed the Senate, the Senate leadership on the conference committee apparently felt that such changes would be acceptable.

The National Marine Fisheries Service, which along with the Fish and Wildlife Service, implements the MMPA, estimates that about 38 percent of all of the ''small take'' permits that it has issued under the MMPA were issued to the Department of Defense. That is over one-third of all such activities, and we know that there are numerous other defense activities for which no permit has even been sought. Yet not once did the leadership of the Senate Armed Service Committee reach out to consult with me or my staff on these provisions that will affect over one-third of the activities that it regulates.

We still plan to take up reauthorization of the MMPA in our committee, and we still have oversight of its implementation. I intend to work with my colleagues on the committee to carefully monitor how these changes are

interpreted, to ensure that activities that could have real impacts on marine mammals do not fall off the radar screen, as it were. MMPA was written the way it was because we are still learning about how various activities may impact marine mammals. We must ensure that under these new standards, the lack of perfect science is not used as a basis to avoid the mitigation of potential impacts.

Mrs. MURRAY. Madam President, as we work to complete the Defense authorization bill, we are reminded of our obligation to the brave men and women of our military. They are protecting us at home and abroad.

Congress must make sure they have the equipment and resources they need.

Two years ago, our country was attacked. Suddenly, we have to project sustained military force around the world, and we had to protect our skies at home—and we had to do it quickly.

But as our tanker fleet embarked on more than 30,000 air refueling missions, we found that our 43-year-old tanker fleet was outdated, too often down for repairs, and too expensive to maintain.

This conference report provides the Air Force with the ability to begin recapitalizing this crucial fleet, with 100 new KC–767 air refueling tankers. These tankers will enable our air crews to do their jobs more effectively, more efficiently and more safely.

Success has many authors, and I thank my colleagues, including: Chairman WARNER and Senator LEVIN for their vigilance on this issue and their willingness to work with my Senate colleagues and me to ensure the Air Force gets these 100 tankers: Senators STEVENS, INOUYE, CANTWELL, ROBERTS, BROWNBACK and CONRAD for their unwavering support for this program over the last 2 years; and, on the House side, I thank Congressmen DICKS, LARSEN, and MURTHA, as well as Chairman HUNTER and Speaker HASTERT.

Fairchild Air Force Base outside of Spokane, Washington is home to the 92nd Air Refueling wing.

I have been to Fairchild. I have visited with the families and talked with the brave men and women who fly these tankers. I know the difficult missions these crews handle for each of us every day.

I promised to give them the best equipment we could, and today we're delivering on that promise.

After 2 years of work, I am proud that this legislation provides the authority needed for the Air Force to enter into a contract for 100 KC–767s.

Section 135, of this conference report authorizes the Air Force to enter into a contract for the combined lease and purchase of 100 tanker aircraft under the terms and conditions of Section 8159 of the FY02 Defense Appropriations Act.

This section specifically authorizes the Air Force to enter into one contract for 100 aircraft, 20 by lease and 80 by purchase, or if necessary, more than one contract for the same combination of aircraft.

In their joint report language, the conferees agree that this section would—quote—''authorize the secretary to enter into a multiyear procurement program, using incremental funding'' for the 100 aircraft pilot program.

This language means the multiyear procurement program authorized by Section 135 would allow the Air Force to make payments as agreed to in the contract.

Furthermore, the language states that the Air Force would not be required to have the full budget authority required to purchase an aircraft in order to place an order for that aircraft under the contract.

I would like to point out that Section 135 was written after extensive negotiations between the Congress and the Department of Defense.

The agreement reached on Section 135 is based in part upon a letter sent on November 5, 2003 to the chairman and ranking member of the Senate Armed Services Committee by the Deputy Secretary of Defense, Mr. Wolfowitz.

The language included in Section 135 of this conference report represents a common understanding between the conferees, the Congress and the Administration on the agreement under which the Air Force will execute this 100 aircraft pilot program.

In closing, I again thank my colleagues for their help in fulfilling the promise I made to the brave men and women of the 92nd Air Refueling Wing.

Within 3 short years, Fairchild Air Force Base will be home to the first four of the 100 KC–767 air refueling tankers authorized in this bill.

Fairchild will get another 16 of these state-of-the-art aircraft just 1 year later.

I ask unanimous consent that the Wolfowitz letter be printed in the RECORD.

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

WASHINGTON, DC,
November 5, 2003.

Hon. JOHN WARNER,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you again for your consideration of the Department of Defense's proposal to lease 100 KC–767A aircraft. As you know, there has been a vigorous debate on the best way to get this program started. Your most recent amendment would allow the Air Force to lease no more than 20 of the 100 tankers. The Air Force has developed a proposal to implement that arrangement, and I hope that you will find it acceptable.

Our proposal strikes a necessary balance between the critical need for new air-refueling tankers and the constraints on our budget. As reflected in the enclosed chart, we intend to lease the initial 20 aircraft and then buy aircraft at a steady rate of 11 to 13 aircraft per year until delivery of the 100th. We commit to add $2.4B, in Fiscal Years (FYs) 2008 through 2010, to the funding profile for the original proposal to lease 100 aircraft. We also will add $1.4B in FY 2012 to 2013. The combination of these added funds achieves an immediate start to the program and allows us to purchase the last 80 aircraft at time of delivery.

I appreciate the support that you have provided in the past and look forward to working you in the future. If you require further information, please do not hesitate to contact me. A similar letter has been sent to the chairmen and ranking minority members of each of the defense committees.

Sincerely,

PAUL WOLFOWITZ,
Deputy Secretary of Defense.

Ms. MIKULSKI. Mr. President, I am here to stand up for our troops. I am going to vote for the Defense Authorization Act because it will give our troops the tools they need to fight the battles today and in the future. Every day our soldiers are fighting a war on many fronts, including in Iraq and Afghanistan. In Iraq soldiers are risking their lives every day, while their loved ones at home are praying for their safe return. Our troops are making grave sacrifices, some losing their lives in service to our Nation. Their families, their husbands and wives, parents and children, are also making sacrifices. It is the responsibility of Congress to provide the weapons, vehicles, and tools that our soldiers need to be an effective fighting force.

But I also stand up for those who are protecting the United States of America—our brave, our gallant Federal employees who are out there every day on the front line. I am here to defend the rights of hard-working civilian employees in the Department of Defense. When I stand up for America, I want to be able to stand up for what America believes in. And that includes basic rights for workers.

I think it is terrible that the DOD is using it's budget, which is so vital for our troops, as a cover for undermining the basic rights of dedicated employees. This bill creates a completely new—and completely unfair—personnel system for civilian Defense Department employees. The new system undermines the collective bargaining rights of civilian personnel. It weakens the rights of DOD employees to appeal personnel decisions to an independent body. It rejects the current salary system, and seeks to replace it with one that will leave workers vulnerable to the whims of their supervisors. It even takes away the guarantee of overtime, weekend, holiday, and hazardous duty pay. We should not put a system in place that distracts Federal employees from doing their jobs and requires them to play office politics.

This new civilian personnel system will seriously undermine morale, and opens the door to cronyism and political patronage. I am tired of the attempts by this administration to replace our effective civil service system with one that rejects the rights of workers. The thousands of civilian Federal employees at the Department of Defense are concerned about the security of our country, and work hard every day to ensure that our fighting forces are the best in the world. Many

have served on the front line in the war on terrorism, and have lost their lives in the terrorist attacks of September 11, 2001. I am ashamed that the Defense Department wants to take away their basic rights as workers.

I think it is terrible that I must choose between supporting our troops and supporting our civilian Federal employees. I am tired of the cynical manipulation of this process. I feel like I am being set up—that if we stand up for the workers, we are somehow or another getting in the way of national security. I am going to support the 2004 Department of Defense Authorization because it is important to our Armed Forces. You can count on me to continue to fight for everyone who is making sacrifices for our Nation. Our troops and our civilian Federal employees deserve no less.

Mr. KENNEDY. The Defense authorization bill contains many provisions that provide essential support for our military personnel, especially when we are asking so much from them in Iraq and around the world.

We have demonstrated our great appreciation for them by providing an across-the-board military pay raise of 3.7 percent, and a larger raise for mid-career personnel, raising the average increase to 4.1 percent. The separate increases already available for imminent danger pay and the family separation allowance are extended through December 2004.

The bill also recognizes the contributions of our Reserve personnel, by authorizing an allowance of up to $1,000 per month for Active and Reserve personnel who experience unusually high deployments. We expand commissary privileges for Guard and Reserve family members and we expand health care coverage both for Guard and Reserve personnel and for their families.

The bill increases benefits for families whose loved ones have made the ultimate sacrifice, by doubling the death benefit to $12,000 and by authorizing Survivor Benefit Plan annuities for surviving spouses of Guard and Reserve personnel who die on inactive duty training.

The bill recognizes the toll of these deployments on children, by providing $35 million in supplemental impact aid to assist schools with large numbers of children of military families.

The legislation also eases the path to citizenship for immigrants who serve in our Armed Forces and provides immigration benefits to surviving family members of those killed in service. 37,000 men and women in the Army, Navy, Marines, Air Force, and Coast Guard have the immigration status of permanent residents serving in our Armed Forces. Another 12,000 permanent residents are in the Reserves and the National Guard.

The legislation also improves access to naturalization for lawful permanent residents serving in the military. It provides expedited naturalization for members of the Selected Reserves during military conflicts. It protects spouses, children, and parents of soldiers killed in action, by preserving their ability to file for permanent residence in the United States.

Over a dozen immigrant soldiers have been killed in Iraq and these benefits are well deserved. These immigration provisions in the bill are a tribute to the sacrifices that these future Americans are already making for their adopted country. They deserve recognition for their bravery and loyalty to the basic ideals and freedoms of our country. Unfortunately, although the bill provides many needed benefits for our men and women in uniform, it lets down their civilian counterparts.

Many of us are extremely disappointed that the bill undermines fundamental protections for the 700,000 civilian employees of the Department of Defense.

Specifically, the report undermines collective bargaining, premium pay, the pay and classification system, third party review, and the appeals process. Many of the provisions are disguised as improvements, when in fact they undermine years of civil service protections.

Nearly 40 percent of Defense Department employees affected are veterans who have served the nation proudly. More than 8,000 are activated reservists serving in Iraq and other parts of the world. They are protecting us and we owe it to these patriotic Americans to protect their rights. They take pride in their work, their love their country, and they have served it with distinction, often for decades.

The Bush administration has demonstrated its intention to undermine workers' again and again. They have proposed privatizing up to half the Federal workforce. They have created a Department of Homeland Security that doesn't allow its employees to join a union.

Earlier this year, the administration stripped clerical and other workers in the Department of Justice and the U.S. Attorney's offices of their long-held union membership. They have even proposed taking overtime protections away from more than 8 million hard-working men and women.

It is an affront to these dedicated Federal workers to deprive them of their rights, even though no restrictions are placed on the rights of employees of government contractors performing similar jobs. Under the administration's proposal, we could well see Federal workers working alongside private workers with the Federal workers denied the same fundamental rights and protections that the private workers continue to have.

These workers repair planes, ships, and tanks. They manage the storage and distribution of weapons and supplies. They manage computer networks, provide training, analyze intelligence, investigate crimes, acquire major weapons systems, perform research on cutting-edge technologies, test munitions, care for children, operate hospitals and laboratories, and treat patients. Defense employees deserve civil service and collective bargaining rights, just as other Federal workers do. The administration is wrong to use this must-pass bill as a vehicle to deny these workers their basic rights, and I intend to do all I can to see that Congress repeals this unfair assault on these dedicated civilian workers of the Department of Defense.

Mr. FEINGOLD. Mr. President, first and foremost, I want to thank the members of the United States Armed Forces for their service to our country. These service men and women are performing admirably in the global fight against terrorism and the war in Iraq. They and their families are making great sacrifices for the American people. I am voting for this authorization legislation to support these people who are serving the country with such courage.

But this is not an easy vote for me. This legislation contains a number of good provisions, such as much-deserved pay raises for our men and women in uniform, expansion of TRICARE health insurance to some of the members of our Guard and Reserve, concurrent receipt for disabled veterans, 12 WMD Civil Support Teams, and ''Buy American'' provisions. However, the bill also contains two particularly bad policies: the elimination of civil service protections for Department of Defense, or DOD, civilian employees, and the environmental exemptions granted to DOD.

I am deeply troubled by the provisions included in the conference report that will effectively eliminate existing civil service protections for the more than 746,000 civilian Department of Defense employees. While I think we all can agree that some reforms are needed to the civil service system, I am concerned about the administration's approach to dismantling this system, in a seemingly department by department manner. I opposed the weakening of the civil service system during consideration of the bill that created the Department of Homeland Security, and I would have opposed the provisions in this bill if the Senate had considered them independently of this conference report.

The civil service system was put into place in order to end the corrupt patronage system that had permeated Government hiring and advancement. The provisions included in this conference report will put salary decisions into the hands of managers, which could be a slippery slope back to the bad old days of cronyism. I am also concerned that this new system will limit appeal rights.

Some in the administration have argued that the civil service system is rigid and could prevent the administration from acting quickly in the face of an imminent threat. This is not the case. The existing civil service system already provides the administration with broad flexibility, while at the

same time ensuring that Federal workers have a consistent framework of basic protections, including appeal rights.

In addition, I support the right of workers to join a union, and I am troubled by the implication that union membership is somehow a threat to our national security. The conference report that we are considering today will undermine existing union representation and collective bargaining agreements by allowing the Secretary to create a new labor relations system.

The expected enactment of these provisions, coupled with the ongoing implementation of the new employment system that was created for the Department of Homeland Security, will result in more than half of the Federal civilian workforce not being covered by the basic protections of the civil service system.

I am equally troubled by the provisions included in the conference report that exempt the DOD from several environmental laws. The Senate version of this bill struck a fair balance between the need to protect the environment and the need for military readiness. It allowed for some exemptions to the Endangered Species Act if the Secretary of Interior found that the DOD's resource management plan effectively conserved the threatened or endangered species and that DOD would fund the plan. The conference version destroys this balance by merely requiring that the DOD's management plan confer ''a benefit'' to threatened or endangered species. There is no mention of the need for DOD to fund its management plan. The new language means that the DOD will get exemptions from the ESA merely by having an integrated management plan on paper. The purpose of the critical habitat designation provisions of the ESA is to attempt full recovery of species by preserving habitat. The current bill falls short of that promise.

The assault on our environmental laws goes further. This conference report exempts the DOD from key provisions of the Marine Mammal Protection Act, MPPA. It allows, among other things, the Secretary of Defense to waive its provisions for 2 years if the Secretary believes it necessary for national security.

I am committed to supporting a strong Endangered Species Act, particularly because of the successes Wisconsin has had in rehabilitating endangered and threatened wildlife and plants. Recent news accounts of sensitive whale population deaths caused by high-frequency Navy sonar systems also trouble me. Our troops in Afghanistan and Iraq were expertly trained at DOD facilities that complied with environmental laws. It is my understanding that the DOD has never requested an exemption to the Endangered Species Act. DOD already has the authority to request exemptions from the ESA for national security reasons and this new provision in the conference report is unnecessary. I agree with Senator JEFFORDS that the Defense appropriations bill is not the appropriate place to have this debate.

The administration sought even more environmental exemptions than are contained in this authorization bill. Although I am disappointed with the included exemptions, I am thankful that my colleagues were able to limit the damage.

I will vote for this bill and for the good provisions it contains for our men and women in uniform and their families. However, I remain deeply concerned about the administration's policy on civil service reform and protection of the environment. I will support this flawed bill, but I do so with some reluctance and in the hope that the Senate will revisit these seriously flawed provisions next year in the proper committees.

Mr. BIDEN. Mr. President, the fiscal year 2004 Department of Defense Authorization Conference Report provides important benefits as our military personnel continue to do battle in Iraq, Afghanistan, the Balkans, South America, and elsewhere. It is not, however, a perfect bill. I voted for it because I believe that in a time of war we need to take care of our military personnel and our veterans. But, I am concerned that this bill unnecessarily undercuts important environmental protection measures and civil service protections. I am also troubled by some of the nuclear weapons provisions of the bill. First let me describe some of the key provisions that I do support in this bill.

This bill provides a 3.7 percent across-the-board pay increase and, because of some of the targeted pay raises for mid-career personnel, an average pay raise of 4.1 percent. It also authorizes increases in the critical pay bonus areas of family separation, hostile fire, and imminent danger pay from October of this year until next December. These increases are much needed and well-deserved.

I am also pleased that the bill would allow the Army to add 2,400 additional personnel. I supported adding 10,000 and would still like to see the number grow, but this is, at least, a start.

Perhaps most important as we create new veterans daily, this bill starts to live up to our promises to our veterans. I have long believed that the commitment we make to the retirement benefits of a veteran and the commitment we make to care for those veterans injured while serving should not be mutually exclusive. This bill takes a very real step toward allowing veterans full concurrent receipt. Military retirees with 20 years of service, active duty or Reserve Component, and a Purple Heart or a combat related disability will be eligible for full concurrent receipt as of January 1, 2004. The remaining retirees who are disabled at 50 percent and above will get full concurrent receipt phased in over the next 10 years.

In addition to the important personnel benefits of this bill, I am also pleased that the bill makes a common sense commitment on strategic airlift. The bill prohibits any decision to retire C–5 As until an A-model is completely modernized under the Avionics Modernization Program and Reliability and Re-Engining Program and then tested for its operational capability. This will allow decisionmakers to have the facts about what capability can be gained from the modernization programs. In addition, the Senate has required a March report updating the military's strategic airlift requirement. We know that the old requirement, defined pre-9–11, pre-Afghanistan, and pre-Iraq, is too low. Until we have a more accurate sense of what is really needed, it will be hard for Congress and the military to determine the best way to meet the need.

Let me now detail my concerns with the environmental and civil service provisions of this legislation. I believe it is important to balance our national security needs with the rights of our children and grandchildren to live in a country that has clean air and water. America is the home to tremendous natural bounty and diversity. Those natural treasures are something we hold in trust, not something we should allow destroyed for expediency. As the Nation has advanced, we have striven to find ways to balance environmental protection with our economic and military needs. We have done this in our environmental protection laws, most of which carry national security waiver provisions. It is still not clear to me why the conferees felt it was appropriate to make changes to two key environmental protection laws without taking into account the advice and wisdom of those who oversee that legislation daily.

Let me start by saying that I believe realistic military training is absolutely critical to the survival of our military personnel. Until now, we have managed to balance that need with our desire to safeguard our environment. This bill allows the Department of Defense to get around the Endangered Species Act, ESA, and to make enforcement of Marine Mammal Protection Act, MMPA, extremely difficult. With respect to ESA it is particularly troubling since, again, there is a national security waiver provision in that law. In the Senate, we were able to craft a compromise that allowed the Defense Department to avoid making any new critical habitat designations on installations that had Integrated Natural Resources Management Plans that the Secretary of the Interior had determined would in fact conserve the species on the installation and would be adequately resourced. This bill does not provide that safeguard.

In the case of MMPA, this bill provides a weaker definition of ''harassment.'' More extraordinary than that, the new weaker definition applies not just to military activities, but rather to any scientific research conducted by or on behalf of the Federal Government. We have been given no rationale

or justification for making it easier for federally funded scientists to harm marine mammals. The bill makes it easier for the Navy to get permits if their activities will have no more than a ''negligible impact'' on marine mammals. I also do not see why legitimate Naval activities should not receive the same full scrutiny they have always received. Again, we were not given good justifications for making such a change. At the end of the day, I am very disappointed that the conferees agreed to basically allow the Department of Defense to begin making their own environmental rules. While they have done a very good job managing many environmental issues, their track record is not one that suggests complete self-regulation is warranted or desirable. Their job is to fight and win our nation's wars. As a democracy, it is our job to provide them the legal framework that allows them to do their job while not sacrificing the nation's natural treasures. This bill is a step backwards.

In the area of civilian personnel reform at the Department of Defense, I am again troubled that this bill opens the door to cronyism and discrimination, things from which we have long sought to insulate our civil service. While I am open to the notion that civil service reform may be in order, I am again concerned that it is being done in an ad hoc fashion and without the proper input from the committees that oversee the entire civil service. I believe that we must be wary of the potential politicization of our workforce. The employees of the Defense Department are highly dedicated professional, and they must be free from political pressure. I will be taking a close look at how the administration goes forward with its new authorities. I will be watchful that the employees are free from political retaliation and secure in their jobs so that they can perform their vital tasks to the highest of professional standards.

Finally, let me say a few words about some of the nuclear weapons provisions in this bill. This conference report does a good job, on balance, of providing for our cooperative threat reduction and non-proliferation assistance programs in the former Soviet Union. It provides roughly the funding requested by the President and, in particular, a needed Presidential waiver provision so that we can continue to help build a chemical weapons destruction facility in Shchuch'ye, Russia. It requires the Secretary of Energy to study and report on the possibility of purchasing and safeguarding excess weapons-grade uranium and plutonium from the independent states of the former Soviet Union, so as to ensure that such dangerous material cannot be diverted to rogue states or terrorists. And it allows the President to use some Nunn-Lugar and non-proliferation funds for projects outside the former Soviet Union, if he determines that this will assist in the resolution of a critical emerging proliferation threat or permit the United States to achieve long-standing nonproliferation goals.

I regret that the Congress agreed to repeal the Spratt-Furse prohibition of work on low-yield nuclear weapons. I am pleased, however, that the conference report states that such work may not commence the engineering development phase, or any subsequent phase, of a low-yield nuclear weapon unless specifically authorized by Congress. I am also pleased that the Secretary of Energy is barred from commencing the engineering development phase, phase 6.3, of the nuclear weapons development process, or any subsequent phase, of a Robust Nuclear Earth Penetrator weapon unless specifically authorized by Congress.

Again, I voted for this bill because it contains many important provisions, particularly in this time of war. But I am very concerned that some of the provisions agreed to by the conferees are ill-advised and premature. I hope that we will be able to reconsider them next year.

Ms. SNOWE. Mr. President, I rise today to speak briefly on the fiscal year 2004 National Defense Authorization conference report.

I want to acknowledge the leadership of the senior Senator from Virginia, Senator JOHN WARNER, Chairman of the Armed Services Committee in bringing this bill to final passage. Of course, I must also recognize the ranking member, Senator CARL LEVIN. I had the privilege of working with them on the Committee for several years and I can attest that each year they work together tirelessly to pass the defense authorization bill because they understand how absolutely vital this legislation is to the effectiveness and well-being of our armed forces.

For that matter, let me also recognize every Senator on the committee for their efforts because this conference report authorizes the equipment, the training, and the operational funds necessary to support our troops who are right now operating across the globe to make our Nation and the world more secure.

It also reflects the service and sacrifice of our troops by making a solid investment in their quality of life by increasing their pay and enhancing educational and health care opportunities for our active duty military members, our National Guard and Reserve troops and their family members. And that is only right, for today we are asking a great deal of our gallant young men and women as they guard our Nation at home and abroad and, of course, risk their lives every day to restore freedom and prosperity to the oppressed peoples of Iraq and Afghanistan.

This legislation also recognizes that we owe a continuing debt to those who have served honorably by phasing-in for those with a service connected disability rated at 50 percent or more the same benefit available to every other retired Federal employee—the ability to collect full retirement pay and disability entitlements without offsets. There is much work to be done before we achieve the full equity of concurrent receipt for all disabled military retirees and I will continue to support these efforts until we finally achieve the goal of full concurrent receipt.

This $401.3 billion dollar authorization provides $74.3 billion for the critical procurement accounts. In particular, this bill makes some significant strides by providing almost $12 billion in an area that is critical to the security of the Nation—our shipbuilding capacity. It has become more and more apparent that as we engage the forces of terrorism around the world we have become increasingly dependent on the ability of our Navy to not only deliver troops and munitions to the fight, but to act as the sea base from which our forces can operate without restrictions virtually anywhere in the world.

Yet, as a former Chair of the Seapower Subcommittee, I remain concerned about the Navy's shipbuilding program, particularly with respect to the surface combatant force. As part of the 2001 Quadrennial Defense Review, the Navy and DoD approved a plan for maintaining a 310-ship Navy including 116 surface combatants—cruisers, destroyers and frigates. Partly because of continuing concerns about the Navy's uncertainty regarding plans for future surface combatants, last year's authorization directed that the Navy notify Congress should the number of active and reserve surface combatant ships drop below 116 and provide an operational risk assessment based on that number.

By the end of fiscal year 2003, the Navy's surface combatant fleet had fallen to 106 ships and in the latest report submitted by the Navy in June of this year, the Navy notified Congress that by the end of fiscal year 2004, it was their intent to reduce the force of surface combatants to 103 ships. According to the Navy, accelerating the decommissioning of *Ticonderoga*- and *Spruance*-class ships will free up funds for next-generation destroyer programs without appreciably raising the operational risk level to our Naval forces because they are ''significantly less capable than the more modern and survivable AEGIS-equipped DDG–51 class ships that are replacing them.''

Therefore, I am encouraged that this authorization provides $3.2 billion for the construction of three DDG–51 *Arleigh-Burke* class destroyers for it is these ships, along with cruisers and frigates, that provide protection to the carriers and amphibious ships deployed to the Persian Gulf and around the world to prosecute the war on terrorism. Moreover, it adds $20 million for the DDG Modernization program to begin the insertion of advanced technologies that will dramatically reduce operation and support costs to the fleet and mitigate the risk of back-fitting

these technologies on older ships. Above all, we must pursue every path necessary to provide technologies to our sailors that will ease their workload, enhance their training opportunities and increase the survivability of their ships.

In 2005, the Navy will complete the DDG–51 acquisition program, and the next generation of surface combatants, the DD(X) and the Littoral Combat Ship (LCS) are being funded in the research and development accounts. Although this authorization provides $1 billion for the continued development of the DD(X) and $183 million for the continued development of the LCS in the RDT&E accounts, there is a looming gap in the Shipbuilding and Conversion, Navy account for surface combatants. Without a focused effort on the part of the Navy to commit and invest in a robust surface combatant program, I am concerned not only about the ability of the Navy's surface combatant force to maintain current operating tempos but the continuing viability of our shipbuilding industrial base.

This trend not only applies to surface combatants but to our attack submarine fleet as well. Although the Navy and the Department of Defense has established a requirement of 55 attack submarines, the current inventory numbers only 54 of those ships. To compound the problem, the Navy continues to place submarines such as the USS *Jacksonville* on the list of submarines to be inactivated rather than funding their refueling as a solution to this force structure gap. The Senate wisely added $248 million for the refueling of that submarine and I am pleased this report sustained that effort.

I am also disappointed that the conferees have included Section 319 in this bill, on Military Readiness and Marine Mammal Protection. Under the Senate Rules, the Committee on Commerce, Science, and Transportation has jurisdiction over issues relating to marine mammals, including authorizations for and oversight of the Marine Mammal Protection Act (MMPA). The Subcommittee on Oceans, Fisheries, and Coast Guard, which I chair, intends to work on reauthorizing the MMPA in its entirety this Congress, and we have held a hearing and numerous briefings with all concerned marine mammal interests, including the Navy and the National Oceanic and Atmospheric Administration.

By including Section 319 in this bill, the conferees have disregarded our jurisdiction and work on the reauthorization of the Marine Mammal Protection Act, and they have seriously altered marine mammal policy in the United States. I have serious concerns about their changes to the definition of harassment, the Department of Defense exemption from the MMPA, and the incidental takings language. Changes of this magnitude on behalf of the military requires oversight and review by the Commerce Committee, and the implications of these changes for other regulated parties and interested MMPA stakeholders must be fully understood. Our Subcommittee will address these changes and many other marine mammal conservation issues as we proceed with full, comprehensive reauthorization of the MMPA.

Importantly, this bill sets aside $63.4 billion in the research and development accounts to develop the advanced technologies our troops will use to maintain their technological superiority over their adversaries. Significantly, conferees authorized $11 billion for the critical science and technology programs which brings us close to the goal of setting aside 3 percent of the defense budget to invest in the ''seed corn'' of our future military capability.

Much of that S&T investment will be executed at universities and colleges throughout America. For example, the University of Maine system has been on the forefront of the development of chemical and biological sensors and decontamination systems. The bill provides them with $1 million this year to begin the development of an environmentally-friendly photo-catalytic decontamination agent that holds much promise for the safe and rapid decontamination of exposed personnel as well as for the remediation of chemical agent and manufacturing and storage facilities.

In addition, this bill also authorizes $4 million for continued research at the University of Maine into the structural reliability of fiber-reinforced polymers composites in ship assemblies that will help define and ultimately control the significant property variations found in composite plates used in Navy ship construction.

One of the hallmarks of the Department of Defense is the interwoven nature of the military and civilian personnel who work together as our national security team. Civilian workers at DOD work alongside their military counterparts every single day, sometimes in the most hazardous conditions. For example, at the Portsmouth Naval Shipyard in Kittery, ME, workers hold a memorial service every year for the gallant crew of the USS *Thresher*, lost at sea in April, 1963 with 112 sailors and 17 fellow civilian workers from the shipyard. The civilian workers at the Department of Defense work and sacrifice to keep this Nation secure and we should recognize their dedication and professionalism.

While there are many positive provisions included in the bill, I am disappointed that the conferees did not include all of the personnel reform provisions put forward by my colleagues, Senators COLLINS, LEVIN, SUNUNU and VOINOVICH, instead adopting many of the provisions put forth by the Department. The current civilian personnel system was established over a period of decades in order to protect the rights of the civilian worker in areas such as merit-based hiring practices, equal pay for equal work, appeals of adverse personnel actions and collective bargaining. As the new National Security Personnel System established in this bill is set in place, the Department must keep faith with its civilian employees and provide for third-party appeals, third-party dispute resolution as part of the collective bargaining process and a credible, transparent performance rating system.

I will be watching closely as the Department institutes this new personnel system to ensure that Federal employee's rights are not abrogated and that the highly-skilled civilian defense workforce can continue to stand arm-in-arm with their military counterparts to provide for the security of our Nation.

Finally, and most importantly, the bill continues our commitment to the men and women in the armed forces and their families through the enactment of several important pay and benefits provisions. First, it includes an across-the-board pay raise of 3.7 percent for all military personnel and once again provides an additional targeted pay raise of 5.25 percent to 6.25 percent for the senior non-commissioned officers and mid-career personnel who are the backbone of our military.

There are also a number of provisions that will directly aid the families of service members such as an increase in the family separation allowance from $100 to $250 per month and an increase in the special pay for those subject to hostile fire and imminent danger from $150 to $225 per month.

This authorization rightly recognizes that our reservists and National Guard troops play an increasingly vital role in the war on terrorism, and extends to them expanded benefits in critical areas such as medical care and special pay rates. For example, reservists and their families will now be provided access to enhanced TRICARE coverage including non-mobilized reservists and their families who are either unemployed or whose employers do not provide health coverage. In addition, reservists and their families will be granted the same commissary privileges as active duty personnel.

Overall, this authorization provides the men and women of our armed forces with the equipment they need to accomplish their mission, the quality of life they have earned and security for their families. I support this legislation and urge my colleagues to pass this conference report unanimously because in a year when our Nation is facing unprecedented security challenges and dangers, we can do no less.

Mr. LIEBERMAN. Mr. President, I am disappointed that some provisions in this legislation giving the Department of Defense additional personnel flexibility go too far in weakening the legal protections of DoD civilian employees, who are critical to the military's performance and to its fighting men and women. I pledge to actively monitor DoD's implementation of its new authority to guard against abuse.

Throughout the development of this legislation, the administration has tried to push a regressive agenda to do away with important worker safeguards—and, in the process, to risk opening up the workplace to politicization and unfair treatment and to close off important channels of communication between labor and management. Congress rejected much of this, but some risks remain.

On the Governmental Affairs Committee, where I serve as Ranking Member, we worked hard and forged a sensible bipartisan compromise on these issues for the department. This legislation, S. 1166, was approved by our committee by a 10 to 1 vote. The provisions of S. 1166 were considered by the conferees, and some of our compromises were incorporated into this conference report. However, at the insistence of House majority conferees and the administration, the conference agreement also includes a number of provisions that risk opening up the workplace to cronyism and arbitrariness and undermining established means for fairly resolving issues between labor and management, so it is important that Congressional intent be closely adhered to.

For example, in the area of collective bargaining, the conference agreement included the provision of S. 1166 stating that the Secretary of Defense has no authority to waive chapter 71 of civil service law, which governs labor-management relations. The conferees also retained an amendment, which I had offered in our committee, assuring that the Secretary of Defense cannot choose to bargain only with large national unions and refuse to bargain with others that do not represent large numbers of Defense Department employees.

However, the conferees also agreed to a new provision authorizing the Secretary of Defense, together with the Director of the Office of Personnel Management, to establish a ''labor relations system'' for the Department of Defense to address the ''unique role'' of the Department's civilian workforce. As the conference report makes chapter 71 non-waivable, this new provision overrides chapter 71 only where the new provision and chapter 71 are directly inconsistent with each other. The new provision authorizing establishment of a labor relations system does not conflict with the statutory rights duties, and protections of employees, agencies, and labor organizations set forth in Chapter 71—including, for example, the selection by employees of labor organizations to be their exclusive representatives, the determination of appropriate bargaining units, the rights and duties of unions in representing employees, the duty to bargain in good faith, the prevention of unfair labor practices, and others—and such rights, duties, and protections will remain fully applicable at the department. The conference agreement provides that, in establishing a labor relations system, the Secretary will be authorized to ''provide for independent third party review of decisions, including defining what decisions are reviewable by the third party, what third party would conduct the review, and the standard or standards for that review.'' The Secretary may use this provision to expedite the review of decisions, but not to alter the statutory rights, duties, and protections established in chapter 71 or to compromise the right of parties to obtain fair and impartial review of decision. The mutual trust required for productive labor-management relations requires a level playing field.

The conference report also includes other provisions, which weaken a number of safeguards that we had included in S. 1166, including the statutory mandate that DoD meet standards for the quality of its system for rating employee performance and that the department phase in its new personnel system to enable the department to get fair and objective processes in place. The conferees also included new provisions that would give the Secretary of Defense latitude to waive premium pay for employees working irregular schedules or in dangerous situations, and to disregard statutory checks against cronyism and politicization in promoting, reassigning, and laying off employees.

Finally, even aside from the weakened employee protections in the legislation itself, I am very concerned that the department may try to impose its new personnel authorities without adequate preparation and funding. Under the new system, the department wants to use employee performance, rather than seniority, to determine salary increases. To avoid arbitrary pay decisions, however, the department must establish personnel systems that can make meaningful distinctions in employee performance based on appropriate criteria, and managers must be adequately trained to use these new authorities. In evaluating this legislation last summer, GAO warned that the vast majority of DoD's systems for appraising employee performance are not well-enough established to take on the task of supporting a meaningful performance-based pay system. Moreover, successful projects where pay is based on performance must be adequately funded, or else pay levels will be determined by budget constraints rather than by the competency and efforts of employees; and colleagues will be pitted against each other in competition for limited funding for performance pay, thereby disrupting unit cohesion and teamwork.

An experienced supervisor at the Defense Department, quoted in a news article today about this legislation, well expressed these risks in the following terms: ''The changes are going to be swift and we're going to go into this thing blind,'' he said. ''The worst thing we can do to the employees of the DoD . . . is to come in and demoralize them by putting in new pay systems that can't be financed or executed.''

As the department, together with the Office of Personnel Management, proceeds to develop the regulations and the personnel systems to implement this legislation, I intend to watch closely. I expect the department to provide a fully open process, in close collaboration with its employees, for developing the regulations necessary to implement the new personnel authorities. And the department should not implement pay-for-performance or other authorities until personnel systems are in place, managers are trained, and funding is available, so that the risks of favoritism, politicization, and a demoralized workforce inherent in this legislation are kept to a minimum.

Mrs. BOXER. Mr. President, I support the fiscal year 204 Department of Defense authorization bill.

With so many of our young men and women deployed in Iraq, Afghanistan and throughout the world, it is very important that Congress support our troops and the important pay increases and personnel benefits in this bill.

This legislation authorizes a 3.7 percent across the board pay increase for all uniformed members of the armed services and targeted pay raises of 5.25 percent to 6.25 percent for mid-career servicemembers. I strongly support these provisions of the bill. These pay increases are well earned.

I am also pleased that imminent danger pay at the level of $225 per month and family separation pay of $250 per month was extended until December 31, 2004. With United States troops bearing so much of the burden in Iraq, many military families are having a difficult time making ends meet. Extending these benefits is the least we can do.

But let me be clear. This $401 billion Defense authorization bill contains many troubling provisions that will make us less secure and that I oppose.

First, this legislation repeals a 1989 ban on the research and development of low-yield nuclear weapons and provides funding for research into new bunker-busting nuclear weapons. Developing new and low-yield nuclear weapons will not make us safer—it will only lead to a dangerous escalation in the arms race. These provisions send the wrong message to the rest of the world and are based on a flawed strategy developed by President Bush that contemplates scenarios for the preemptive use of nuclear weapons.

Second, this legislation significantly rolls back environmental safeguards on our military bases. The bill prohibits the Secretary of Interior from designating critical habitat under the Endangered Species Act on any lands owned or controlled by the Department of Defense if the lands are subject to a management plan developed by the military that provides a ''benefit'' to the species. the conference report also gives the military greater leeway to conduct activities that might disturb marine mammals, such as whales.

Under this bill, the Secretary of Defense may exempt any action or category of actions from the requirements of the Marine Mammal Protection Act, if the Secretary deems it is necessary for national defense. These environmental rollbacks are unfortunate. I urge the Department of Defense to take extra care not to abuse these new broad authorities.

Finally, I am concerned this bill did not do more to limit sole-source contracting by the Department of Defense. During Senate consideration of this bill, I offered an amendment stating that the Department of Defense should meet its own goal of replacing Halliburton's sole-source contract to reconstruct Iraq's oil industry with a fully competitive contract by August 31, 2003.

It is now November and Halliburton's sole source contract is still in place and a new competitive contract has not been awarded. I appreciate that the final bill contains a provision requiring a report within 30 days on why this sole-source contract has been allowed to continue. However, it is regrettable that conferees did not establish a deadline for the termination of Halliburton's sole-source contract.

Despite these concerns, I want to thank the chairman and the ranking member of the Senate Armed Services Committee for their hard work on this legislation. It is a bill that will help our military men and women who are serving to protect our Nation.

Ms. CANTWELL. Mr. President, I rise today to express my support for the Department of Defense authorization conference bill before us today. The bill will strengthen our Nation's military readiness, procure vitally important weapons systems and provide for our veterans. At the same time, I wish to highlight my concerns about provisions in the bill relating to civilian defense workers and the environment.

I am pleased that the bill allows the U.S. Air Force to move forward with the KC–767 Global Tanker Transport program. By allowing the modernization of our aging tanker fleet, the bill promotes our national security and the security of our friends and allies.

I became involved in this issue more than 2 years ago after visiting Fairchild Air Force Base in Washington State, which is one of the premier basing locations for the Air Force's KC–135 refueling tankers. It was clear to me then, and it is clear to me now, that these aging planes need to be replaced.

With an average age of over 40 years, the KC–135s are the oldest planes in the Air Force, older than most of the pilots that fly them and older than virtually all large commercial aircraft.

The bill authorizes a program that will provide the Air Force one hundred KC–767 aircraft by leasing the first twenty planes and purchasing the remaining eighty. This arrangement is the result of a 2-year effort to find the best way to provide our pilots with the equipment that they desperately need, while protecting the interests of taxpayers. This has been accomplished.

I want to congratulate my colleagues, Senator WARNER and Senator LEVIN, for their leadership on the Senate Armed Services Committee to develop a solution that will reach our goals. I also want to thank the Air Force and the Department of Defense for working to find the funds that will carry out this program.

I am particularly proud that the Air Force was able to improve our military capability by procuring an American product. Boeing has been the industry leader in the tanker market for fifty years and it has helped ensure our military's air power dominance.

The 767 is built by thousands of men and women in my home State and is sold around the world. I am excited to see that because of this legislation, the Boeing 767 tanker will keep our military flying in the 21st century.

I am also pleased that the bill provides for our Nation's veterans. I am profoundly grateful for the service of America's veterans and for the sacrifices they have made to defend our Nation and our freedom. We have an important responsibility to ensure that our veterans are provided benefits and assistance that they deserve.

Specifically, the bill authorizes that the full concurrent receipt will be phased in over a 10-year period for disabled military retirees and National Guard and Reservists who have at least 20 years of service. In each of the next 10 years, service members will receive an additional 10-percent increase, until the full concurrent receipt is reached in 2014.

The bill also expands the Combat-Related Special Compensation Program that was enacted as part of the Fiscal Year 2003 National Defense Authorization Act. This year's bill provides concurrent receipt to military retirees, National Guard and Reservists who have at least 20 years of service, any retiree who was awarded the Purple Heart, or any retiree with a service-connected disability incurred as a direct result of armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war, or through an instrumentality of war.

A strong national defense depends on active duty forces, Guard and Reserve personnel, a civilian workforce, military contractors and military communities. Civilian workers in my State play a key role in ensuring that the U.S. military is the best-trained and best-equipped in the world. Over 16,000 highly skilled and dedicated workers in the International Association of Machinists Local 160, the Bremerton Metal Trades Council, and other unions and organizations in Kitsap County help ensure that our sailors have the ships and equipment they need to combat terrorism and protect our security.

Accordingly, I am concerned about provisions in the bill that would erode existing protections for civilian DOD workers. These provisions will set back our efforts to ensure a fair and effective civil service system. Specifically, these provisions could weaken collective bargaining rights at the local level, reduce due process protections for DOD workers, and scale back appeals rights along with protections against favoritism in hiring in the workplace.

Given the recent contributions of our civilian workers in the war effort in Iraq and Afghanistan, we should not be taking away long-standing protections that have helped make the U.S. military the strongest in the world. I intend to work to ensure effective congressional oversight of the implementation of these controversial personnel provisions.

I am also troubled by provisions in the bill that would weaken current environmental protections for marine mammals and other species. For several decades, the military services have demonstrated a strong commitment to natural resource conservation while fulfilling their primary missions. Puget Sound is home to many military installations and sensitive species. Based on our experience in Washington State, I believe that we can have both the highest levels of military readiness and natural resource conservation.

However, I am very troubled that the bill would weaken both the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). Both of these acts currently provide significant environmental protections, while providing the military the flexibility to conduct training and other exercises. Because species recovery efforts pose unique challenges, I believe that amendments to these acts are best considered by the Commerce Committee and the Environment and Public Works Committee.

On balance, however, this bill marks a major step forward in support of America's soldiers, sailors, marines and air force personnel and our Nation's security. I am pleased to vote for it.

Mr. LIEBERMAN. Mr. President, I rise to express my support for the fiscal year 2004 Defense Authorization bill. At the same time, I am compelled to state for the record my dissatisfaction with the process that first delayed the conference report for months, and then presented the conferees with a conference report and a deadline for filing that precluded Senators from familiarizing themselves adequately with the final product.

Despite my concerns about the process, and my opposition to three specific provisions in this bill, the men and women in uniform protecting the United States need the support this bill provides. I commend Senator WARNER and Senator LEVIN for their dedication and leadership in bringing this difficult process to a successful conclusion. Our security depends upon the unrivaled strength of America's military and the

unmatched skills, dedication and bravery of America's servicemen and -women, which they are demonstrating on a daily basis. This defense blueprint ensures that we will be able to continue to give our troops in the field the best possible equipment, while at the same time preparing them for future challenges. The funds authorized in this bill will allow our military to continue to conduct operations with the intensity and effectiveness that the worldwide fight against terror requires. Secondly, and no less important, our military services will be able to continue transformation at the pace necessary to meet the challenges they will face in the coming decades.

There are many important provisions in this bill. I want to briefly highlight ones that I think are particularly important. First, the strength of our military depends primarily on the men and women who are serving with such dedication and courage. They deserve fair compensation and adequate support for their families. This bill authorizes critical increases in pay and improvements in their quality of life that are so important to America's soldiers and their families. This bill increases base pay by 4.1 percent, increases family separation allowance, increases hostile fire pay, authorizes the first increment of concurrent receipt for disabled retirees, expands commissary access for Selected Reserve members and their families, and enhances health care benefits for reservists. I am particularly pleased that we have made progress in increasing the benefits for our reservists and their families, because they are bearing an important share of the sacrifices our military is making for our defense.

We have also included important provisions to maintain the momentum in transforming our military services. The Airland Subcommittee, where I have the honor of serving as Ranking Member, under the able leadership of Senator SESSIONS, has fully supported the critical programs for transforming the Army and Air Force, such as the Army's interim brigades and the Future Combat System, and the Air Force F–22 fighter and the Joint Strike Fighter. I am also pleased that we have included a provision to improve the Department of Defense's capacity to expand high speed high bandwidth capabilities for network centric operations, which is critical for our military to expand it's military dominance.

Despite my approval of the bill, I oppose some of the labor/personnel and environmental provisions contained in the legislation, and I did not sign the conference report to signal my disagreement with these provisions. I am disappointed that some provisions giving the Department of Defense additional personnel flexibility went too far in weakening the legal protections of DOD civilian employees who are critical to the military's performance and to its fighting men and women and that key work of the Government Affairs Committee, which has primary jurisdiction, was ignored in propounding these provisions. I intend to describe at another time my concerns with the personnel provisions in this bill.

On the environmental front, I am disappointed that the conference bill contains unnecessarily broad exemptions for the Department of Defense from an array of environmental protections, most of which originated in the House of Representatives. Without question, we can protect our troops and conserve our natural resources—especially our wildlife and marine mammals—at the same time. We have built the strongest military force in the world while the Department of Defense has complied with the same environmental laws as everyone else. This bill undermines the protections for wildlife under the Endangered Species Act by allowing an Integrated Natural Resources Management Plan certified in writing to confer an undefined ''benefit'' on species to substitute for critical habitat designation. Unlike the Senate's bill, the conference bill does not require the Department of Defense to fund or dedicate resources to implement or monitor the plan; or the Department of Interior to determine that the plan will effectively conserve species within the lands it covers. While I would hope that the Department of Defense would feel obliged to dedicate sufficient resources, the country would be better served to have required it.

The bill's changes to the Marine Mammal Protection Act for military readiness and federally funded scientific research activities were not part of the Senate's bill. Quite simply, they may have disastrous consequences for whales and other species living off our Nation's coasts. For example, the Marine Mammal Protection Act's core prohibition against taking actions with the potential to injure or disturb marine mammals has been severely weakened. Now, only acts that injure or have the significant potential to injure marine mammals, or that are likely to disturb their behavioral patterns to the point of abandonment or significant alteration, are prohibited. And these changes also are an unnecessary intervention into the work of the committee with expertise. They come just as the Senate and House committees with jurisdiction over these questions have begun their work of reauthorizing the Marine Mammal Protection Act. I only hope the committees will revisit these provisions in the reauthorization of that legislation.

In closing, let me express my concerns about how the conference was managed. It is unfortunate, in my view, that on an issue as important as this—the very essence of our Nation's ability to wage the current war against terrorism and at the same time prepare for unknown challenges in the future—that it took months to reach a consensus on this bill and that the final conference report was presented to all members with inadequate time to review the final product prior to filing. Such an important bill should not be handled in this manner.

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

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

Mr. WARNER. Madam President, between now and the hour of 2:45, I yield such time as I have to the distinguished Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, I rise today to make some brief comments about the Defense authorization bill.

First, I compliment the chairman and ranking member for working hard on this legislation. I also thank the professional staff, both on the committee as well as the personal staffs. It was my first year on the committee, and it was an incredible process. There were many controversial and complex issues on which we worked together.

In the end, we have done a lot for the members of our military, our Armed Forces serving in this country and around the world. With the global war on terrorism, these issues have become more important than ever: To make sure they have the resources to fight the global war on terrorism and to ensure a quality of life so we can maintain the all-volunteer professional armed services we have.

Several issues covered in my subcommittee, the Readiness Subcommittee, were very important. We have a problem with our ranges. Dealing with readiness, we have to have the proper training facilities. This bill helps us address some of those issues. The military does such a fabulous job protecting the environment on its training ranges that the use of those ranges almost became threatened. This bill makes sure that the training ranges and the environment are protected, while the military can still use the training ranges. That was a very important part of this Defense authorization bill.

I also think about what we have done for military families. That cannot be overemphasized because of the sacrifices they make for this country. It is not just the people in uniform, but it is the families and the sacrifices they make for the country. It is important that we take care of their quality of life. I am very proud of the work we have done in this Defense authorization bill.

I hope next year we can complete this bill earlier in the year, before Defense appropriations is done, because it is a better way to do it. The issues are complex. Many times they are controversial. But we have to be willing to put our personal interests, our party's interests behind the interests of our

Nation and the interests of our military.

The Defense authorization bill is one place where we can join hands across the aisle, as we have done on so many issues this year, and continue to work to make sure our military is so far superior to any other military in the world that if there is ever a question whether we go into battle, we know we have the upper hand.

Madam President, I thank the chairman for all the great work he has done.

I yield the floor.

Mr. WARNER. Madam President, I thank my distinguished colleague for his remarks and, more importantly, his active participation in our committee's work throughout this year.

Mr. LEVIN. Madam President, I ask unanimous consent that the Senator from Arkansas be recognized for 2 minutes immediately prior to the vote.

ORDER OF PROCEDURE

Mr. REID. Reserving the right to object, Madam President, we have the military construction conference report coming up right after the vote, and there is no time set for the two managers to speak.

I ask unanimous consent that there be 4 minutes equally divided for the two managers of the bill to speak prior to that vote.

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

Is there objection to the extra 2 minutes? Without objection, it is so ordered.

The Senator from Arkansas.

Mr. PRYOR. I thank the Chair.

Madam President, I rise today in support of the 2004 Defense authorization conference report. Even though there are some provisions I am disappointed in—some of the environmental matters and how those issues got worked out, and a few other issues, and I don't want to dwell on the negative—there are two reasons I signed on to the conference report and why I encourage my colleagues to vote for this conference report.

Those two reasons are sitting right in the front, Senator JOHN WARNER and Senator CARL LEVIN. They have demonstrated a true spirit of bipartisanship. It has been a great model for me as a new Senator to sit on this committee and watch these two Senators fight for their causes but do it in a very fair and open manner and deal with each other in such a constructive way. I thank them for their leadership.

They worked through dozens and dozens of very difficult issues. Nobody got their way completely. But they showed great leadership and great stewardship. I want to publicly acknowledge them and thank them, especially Chairman WARNER because he has been extremely fair to the minority.

Again, we don't always get our way, but I think he has demonstrated the camaraderie and the comity that we should have in the Senate.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I thank our colleague for his kind remarks. I simply say, spoken like the true son of a great United States Senator, with whom I was privileged to serve and who emulated all of the characteristics the Senator from Arkansas has bestowed on me, undeserving as they may be, one David Pryor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I thank our dear friend, MARK PRYOR. Senator WARNER and I came together and we came with his father at the same time. His dad and his mother, Barbara, have been dear friends of ours. MARK PRYOR has made an extraordinary contribution as a new Senator to this body and to our Armed Services Committee. He has made a great contribution. We are grateful for that and for his remarks this afternoon.

Mr. President, I rise once again to join with Senator WARNER in urging the Senate to adopt the conference report on H.R. 1588, the National Defense Authorization Act for fiscal year 2004.

As we stand on the floor of the Senate today, America's armed forces are engaged in military operations around the world on a scale unknown since the end of the Vietnam war nearly three decades ago. According to the latest reports, we have 132,000 troops deployed in Iraq with an additional 87,000 serving in support roles outside of Iraq. We have 9,000 troops in Afghanistan, with an additional 35,000 serving in support roles. Tens of thousands more soldiers, sailors airmen and marines are deployed elsewhere around the world.

In the last 2 years, we have also seen the largest sustained callups of National Guard and Reserve components since the Vietnam war. We have seen units deployed for extended periods, and repeated deployments of the same units. Throughout this period, our men and women in uniform have shown extraordinary ability, professionalism, and dedication, conclusively demonstrating once again that they are by far the best trained, best equipped, best disciplined, most highly skilled and motivated military force in the world. Nonetheless, there are indications that the unprecedented demands we have been placing on our Armed Forces are starting to have an impact on morale.

I will vote for this conference report because it contains so many important provisions for our national security and for our men and women in uniform.

It includes an across-the-board military pay increase, along with a series of other increased pays and benefits for our men and women in uniform and their families. The conference report includes Senator HARRY REID's amendment on concurrent receipt; Senator DASCHLE's amendment on TRICARE; Senator KENNEDY's amendment on expedited citizenship for lawful immigrants serving in the military; and an increase in Army troop strength on which Senator JACK REED played a leading role. It includes important Senate provisions that authorize an expansion of our cooperative threat reduction programs to countries outside the former Soviet Union.

The provision authorizing the establishment of a new National Security Personnel System did not come out entirely the way I would have liked, but the Senate was able to include a number of important protections for civilian employees at the Department of Defense. Senator COLLINS' strong commitment to a bipartisan, fair, and balanced approach to this issue made this a far better provision than it would otherwise have been.

The conference report contains a number of other provisions that concern me. For example, I believe that provisions addressing the Endangered Species Act and the Marine Mammal Protection Act go beyond what is needed to address the legitimate needs of the Department of Defense. I am also disappointed by the outcome of the conference on nuclear weapons issues, which take the United States in a dangerous new direction.

Despite my concerns about these issues, I will vote for this conference report because it contains so many other provisions that are so important for our national defense and for our men and women in uniform. I urge my colleagues to join me in supporting this conference report, which will help provide our military the training and equipment that they need and the compensation and benefits that they deserve.

Thanks again to Senator WARNER and both our staffs, who we specifically thanked last night for all their work which made this conference report possible.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the conference report.

Mr. WARNER. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

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

The result was announced—yeas 95, nays 3, as follows:

[Rollcall Vote No. 447 Leg.]

YEAS—95

Alexander	Biden	Bunning
Allard	Bingaman	Burns
Allen	Bond	Campbell
Baucus	Boxer	Cantwell
Bayh	Breaux	Carper
Bennett	Brownback	Chafee

Chambliss	Grassley	Murray
Clinton	Gregg	Nelson (FL)
Cochran	Hagel	Nelson (NE)
Coleman	Harkin	Nickles
Collins	Hatch	Pryor
Conrad	Hollings	Reed
Cornyn	Hutchison	Reid
Corzine	Inhofe	Roberts
Craig	Inouye	Rockefeller
Crapo	Johnson	Santorum
Daschle	Kennedy	Sarbanes
Dayton	Kohl	Schumer
DeWine	Kyl	Sessions
Dodd	Landrieu	Shelby
Dole	Lautenberg	Smith
Domenici	Leahy	Snowe
Dorgan	Levin	Specter
Durbin	Lieberman	Stabenow
Ensign	Lincoln	Stevens
Enzi	Lott	Sununu
Feingold	Lugar	Talent
Feinstein	McCain	Thomas
Fitzgerald	McConnell	Voinovich
Frist	Mikulski	Warner
Graham (FL)	Miller	Wyden
Graham (SC)	Murkowski	

NAYS—3

Akaka	Byrd	Jeffords

NOT VOTING—2

Edwards	Kerry

The conference report was agreed to.

Mr. WARNER. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

APPROPRIATIONS ACT, 2004—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 2559, which the clerk will report.

The bill clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2559) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes, having met have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by all of the conferees on the part of both Houses.

(The conference report is printed in the proceedings of the House in the RECORD of November 4, 2003.)

The PRESIDING OFFICER. There are now 4 minutes, equally divided.

Mrs. HUTCHISON. Madam President, I am pleased to present the fiscal year 2004 military construction appropriations conference report for the Senate's consideration. This bill provides $9.316 billion for military construction, family housing, and base realignment and closure activities for the Department of Defense for fiscal year 2004.

The negotiations over this conference report were uncharacteristically long and difficult for a military construction bill. This difficulty stemmed from two sources. First, and quite simply, there is less money this year for military construction. The administration's request was $1.6 billion below the amount appropriated last year. Even with an allocation slightly above the President's request, this conference agreement provides $1.4 billion less than last year.

Compounding this difficulty were two very different points of view about military construction on the part of the Senate and House this year. The administration is in the midst of the most sweeping restructuring of our overseas basing structure since the end of World War II. This restructuring will involve the closure of hundreds of installations, the construction or expansion of perhaps dozens more, the return of significant numbers of U.S. troops to the continental United States, and major changes to the way our Nation stations and deploys its armed forces. This plan is still very much a work in progress. In testimony and briefings by Defense Department officials and military commanders this year—at this time—the scope, timing, and cost are not yet determined.

In the face of this uncertainty, the Senate was unwilling to commit prematurely to all of the new construction proposed for U.S. facilities in Europe and Korea, and instead chose to shore up badly needed investment in U.S. military facilities in the United States.

The House chose a different approach, voicing many of the same concerns as the Senate but agreeing nevertheless to fund most of the overseas construction. To pay for that construction the House made significant cuts to the President's priorities for domestic military construction spending, including nearly $50 million from already underfunded programs for the National Guard. These different priorities set the stage for the difficult conference we have just concluded.

Fortunately, I believe we have crafted a conference agreement that accommodates the most pressing authorities of both chambers and the administration within the funding we were allocated. The Senate agreed to reinstate a number of projects in Europe for which our commander there, General Jones, made personal appeals. After hearing from General LaPorte, we also provided funding for two additional barracks projects in Korea on the condition that a facilities master plan and cost-sharing arrangements with the Korean government are completed before construction on these projects begins. Funding for domestic projects was decreased somewhat but we were successful in reinstating $108 million in cuts made by the House to the President's budget request, including over $42 million for sorely needed Guard projects. The conferees also agreed to create a commission that will study the structure of our overseas bases in light of changing political and military circumstances and provide Congress an independent assessment of our future basing requirements overseas.

In short, the conference agreement represents what conference agreements usually do—a respectable compromise among competing priorities.

I would like to express my deepest appreciation to the ranking member on the military construction appropriations subcommittee, Senator DIANNE FEINSTEIN of California. We have worked extraordinarily closely throughout this process—and through two supplemental appropriations bills passed this year—and I have appreciated her counsel as we have faced these difficult issues. Her staff, Christina Evans and B.G. Wright, worked hand in hand with my staff, Dennis Ward and his assistant, Sean Knowles. I don't think a better cross-party working relationship exists in the Senate. This truly has been bipartisan effort. They have worked together to make the very best military construction bill that could possibly be made.

I thank Senator FEINSTEIN for her engagement and willingness to work together for our military.

I am pleased to present the fiscal year 2004 Military Construction appropriations conference report and recommend its adoption by the Senate.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I thank the chairman of the committee with whom I have had the pleasure of working now for a number of years. I want to say this: She has done a fine job. There was a very difficult conference situation. The House and the Senate bills were very different. In the first place, we received $1 billion less in allotment to work from; that is, 14 percent less. In the second place, the House bill went in one direction and our bill went in another. It is really thanks to the chairman for her very shrewd bargaining with the House that we have a bill and that we have a bill as good as this bill is.

This is a difficult time. We try to do the most we can with barracks and schools and centers for our troops both in this country and abroad.

I want to say to those Members who had adds and had to have those adds cut that I am very sorry. We had to reconcile the two bills, and that was very difficult.

But Senator HUTCHISON did a super job. I thank her very much.

At a time when American troops are continuing to fight the enemy in Iraq and Afghanistan, it is imperative that Congress do its part and provide the funds necessary to support the infrastructure requirements of our service members and their families.

I wish we could do more. The 2004 military construction conference report provides $9.3 billion for a myriad of mission-critical and quality-of-life construction projects in the United States and overseas, including barracks, schools, hospitals, and family housing units. That is the good news. The bad news is that this conference report is more than $1 billion below the amount Congress appropriated for military construction last year. And yet, as

old infrastructure continues to deteriorate and new missions require new facilities, the military's infrastructure requirements are growing, not declining.

In the process of completing this bill, the Senate conferees had to balance a number of meritorious projects against available funds and military priorities, and we had to make some tough cuts. Because of the scarcity of resources made available by the administration for military construction, and the differing philosophies between the House and Senate military construction subcommittees, this has been an especially difficult year. However, the House and Senate conferees were able to bridge most of their differences and provide the best package possible under the circumstances, and I commend Senator HUTCHISON for her perseverance in achieving that goal.

There are many good items in this legislation. The conference report provides more than $5 billion for military construction, including $730 million for the Guard and Reserve components, nearly double what the President had requested. The bill includes $1.2 billion for barracks, $176 million for hospitals and medical facilities, and $3.8 billion for family housing construction and maintenance.

The legislation also establishes an Overseas Basing Commission to assess the adequacy of U.S. military installations overseas and to review the Defense Department's planned restructuring of the deployment of U.S. forces overseas. This could not be a more timely initiative, given the Defense Department's plans to make sweeping changes in the U.S. military footprint in Europe and Korea.

Overseas basing issues were among the most difficult that the conference had to deal with this year. In the middle of the budget cycle, the Defense Department announced a sweeping restructuring of U.S. installations in Europe and Korea. I support the Defense Department's review of our overseas installation requirements—it is probably long overdue—but there are many, many elements to a restructuring of the magnitude envisioned by the Secretary of Defense, and it is not something that should be rushed. Senator HUTCHISON and I have discussed this issue at length, and I believe we both have strong reservations about committing billions of U.S. taxpayer dollars to a new overseas basing structure that is a radical departure from the existing footprint without first seeing a comprehensive plan for the redeployment of U.S. troops, and the impact it will have on installations here at home.

Given the current precarious state of America's diplomatic relations with a number of our traditional allies, I also think the administration should redouble its efforts to work with governments in Europe and Korea to gain their support—both political and financial—for such a massive reshuffling of U.S. bases before embarking on this effort.

Even with those reservations, this conference report includes $354 million for projects at enduring installations in Europe, $169 million for the NATO Security Investment Program, which provides the U.S. share of funding for NATO construction projects, and $89 million for U.S. military projects in Korea.

As I said before, I wish we had more resources to devote to infrastructure requirements for our military. The need is real, and I hope that the administration will request more money for military construction next year, so that we do not have to continue to juggle priorities and postpone funding urgently needed facilities.

Again, I thank Senator HUTCHISON for her leadership on this subcommittee, and I also thank the subcommittee staff, including Christina Evans and B.G. Wright of the minority staff, Dennis Ward and Sean Knowles of the majority staff, and Chris Thompson of my staff.

I urge my colleagues to support this measure, and I yield the floor.

Mr. NICKLES. Mr. President, the conference report to accompany H.R. 2559, the 2004 Military Construction appropriations bill, provides $9.4 billion in discretionary budget authority and $10.3 billion in discretionary outlays in fiscal year 2004 for Military Construction and Family Housing appropriations. The $10.3 billion in outlays includes outlays from previously enacted legislation.

The bill is $112 million in budget authority and $38 million in outlays above the Subcommittee's 302(b) allocation. These totals result from the $112 million in non-emergency funds enacted in P.L. 108–106, the 2004 Iraq supplemental, that count against the bill's 302(b) allocation. The bill provides $193 million more in budget authority and $15 million more in outlays than the President's budget request. The bill provides $1.3 billion in budget authority less and $226 million in outlays more than the 2003 enacted level.

I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be printed in the RECORD.

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

H.R. 2559, MILITARY CONSTRUCTION APPROPRIATIONS, 2004.—SPENDING TOTALS—CONFERENCE REPORT

[Fiscal Year 2004, $ millions]

Category	General purpose	Mandatory	Total
Conference report: [1]			
Budget authority	9,428	0	9,428
Outlays	10,285	0	10,285
Senate 302(b) allocation:			
Budget authority	9,316	0	9,316
Outlays	10,247	0	10,247
2003 level:			
Budget authority	10,751	0	10,751
Outlays	10,059	0	10,059
President's request:			
Budget authority	9,235	0	9,235
Outlays	10,270	0	10,270
House-passed bill: [1]			
Budget authority	9,308	0	9,308
Outlays	10,320	0	10,320
Senate-passed bill: [1]			
Budget authority	9,308	0	9,308
Outlays	10,311	0	10,311
CONFERENCE REPORT COMPARED TO			
Senate 302(b) allocation:			
Budget authority	112	0	112
Outlays	38	0	38
2003 level:			
Budget authority	−1,323	0	−1,323
Outlays	226	0	226
President's request:			
Budget authority	193	0	193
Outlays	15	0	15
House-passed bill:			
Budget authority	120	0	120
Outlays	−35	0	−35
Senate-passed bill:			
Budget authority	120	0	120
Outlays	−26	0	−26

[1] Includes $112 million in BA and $38 million in outlays of non-emergency spending (provided by the Emergency Supplemental for Iraq and Afghanistan, PL 108–106) that the President did not request and the Congress did not designate as a contingent emergency as is required by section 502(c) of H. Con. Res. 95, the 2004 Budget Resolution.

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

Mrs. HUTCHISON. Madam President, I call the question and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the conference report.

The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 448 Leg.]

YEAS—98

Akaka	Daschle	Landrieu
Alexander	Dayton	Lautenberg
Allard	DeWine	Leahy
Allen	Dodd	Levin
Baucus	Dole	Lieberman
Bayh	Domenici	Lincoln
Bennett	Dorgan	Lott
Biden	Durbin	Lugar
Bingaman	Ensign	McCain
Bond	Enzi	McConnell
Boxer	Feingold	Mikulski
Breaux	Feinstein	Miller
Brownback	Fitzgerald	Murkowski
Bunning	Frist	Murray
Burns	Graham (FL)	Nelson (FL)
Byrd	Graham (SC)	Nelson (NE)
Campbell	Grassley	Nickles
Cantwell	Gregg	Pryor
Carper	Hagel	Reed
Chafee	Harkin	Reid
Chambliss	Hatch	Roberts
Clinton	Hollings	Rockefeller
Cochran	Hutchison	Santorum
Coleman	Inhofe	Sarbanes
Collins	Inouye	Schumer
Conrad	Jeffords	Sessions
Cornyn	Johnson	Shelby
Corzine	Kennedy	Smith
Craig	Kohl	Snowe
Crapo	Kyl	Specter

Stabenow	Talent	Warner
Stevens	Thomas	Wyden
Sununu	Voinovich	

NOT VOTING—2

Edwards	Kerry

The conference report was agreed to.

Mr. BOND. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Missouri.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004—Continued

Mr. BOND. Madam President, is the pending business now the VA-HUD appropriations bill?

The PRESIDING OFFICER. Yes.

Mr. BOND. Madam President, there are about 45 seconds worth of things that we need to clear up, pending amendments. Then I intend to turn to the distinguished minority whip for the offering of an amendment, on which we will have a very short time limit.

I see my colleague, Senator MIKULSKI, is in the Chamber.

AMENDMENT NO. 2156

Madam President, I believe we have had a full debate on the Bond amendment. I call up the Bond amendment and ask for its adoption.

The PRESIDING OFFICER. There are two Bond amendments pending.

Mr. BOND. This is the Bond amendment on small engines.

The PRESIDING OFFICER. Amendment No. 2156 is now pending.

Mr. BOND. Madam President, I ask for its adoption.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The amendment is agreed to.

The amendment (No. 2156) was agreed to.

Mr. BOND. Madam President, I ask unanimous consent to add, as cosponsors, Senators MCCONNELL, TALENT, and CHAMBLISS.

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

AMENDMENT NO. 2158

Mr. BOND. Next, Madam President, I call up the Craig amendment on pesticides.

The PRESIDING OFFICER. Amendment No. 2158 is now pending.

Is there further debate?

Mr. BOND. Madam President, I think we have had a full debate on that amendment. I know of no other debate.

The PRESIDING OFFICER. If not, without objection, the amendment is agreed to.

The amendment (No. 2158) was agreed to.

Mr. HARKIN. Madam President, I am pleased to have joined Mr. CRAIG in offering this amendment to add the Pesticide Maintenance Fees Reauthorization Act of 2003 to the VA–HUD appropriations bill.

The authority for the Environmental Protection Agency to collect these maintenance fees for the reregistration of pesticides expired 2 years ago. Since that time, authority has been extended through riders on the VA–HUD appropriations bill. This amendment would provide a long-term authorization that has been agreed to by the Senate and House Agriculture Committees and a broad array of stakeholders, including environmental and agricultural groups.

This proposal ensures that EPA continues to collect fees from the industry of an estimated $20 million per year. This will cover the costs of reevaluating chemicals first registered prior to 1984, including the cost of 200 EPA employees engaged in this important work. The EPA has no alternative but to collect these fees or sharply reduce their commitment to oversight of these chemicals. A slowdown in consideration of these applications is neither in the interest of the environment, nor of the farmers or chemical manufacturers.

This is a bill that has broad support, and it is important to get this done this year, so that it is in place for next year's budget. Adoption of this amendment will ensure that EPA has resources to evaluate and approve safer, more effective chemicals, and that older pesticides are reviewed for safety in accordance with the Food Quality Protection Act of 1996. I urge my colleagues to support this amendment.

AMENDMENT NO. 2167

Mr. BOND. Madam President, I am going to send a very brief amendment to the desk that removes the emergency designation. The committee has reallocated funds to us so that our bill now comes within the allocation offered by our committee.

Madam President, the amendment was with us in the cloakroom. I apologize to my colleague in the chair. Here it is. This is it.

Madam President, I send this amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND] proposes an amendment numbered 2167.

The amendment is as follows:

(Purpose: To remove the emergency designation on VA Medical Care)

Beginning on page 9, line 20, strike ": *Provided*, That" and all that follows through "Congress" on line 5, page 10.

Mr. BOND. Madam President, it simply strikes the emergency clause. I think there is no debate on that. I ask for its immediate adoption.

The PRESIDING OFFICER. Is there further debate?

The Senator from Maryland.

Ms. MIKULSKI. Madam President, I thank Senator BOND and Senator STEVENS for working very closely with us to ensure that promises made to veterans are promises kept. This $1.3 billion is a dire need. I am ready to give my consent to this amendment, and the veterans of America will be happy because of it.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 2167) was agreed to.

Ms. MIKULSKI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BOND. Madam President, I thank my colleagues.

Madam President, I also ask unanimous consent to add Senator MILLER of Georgia as a cosponsor to amendment No. 2156.

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

Mr. REID. Madam President, I have spoken to the two managers of the bill. The distinguished Senator from New Jersey, Mr. LAUTENBERG, has agreed to allow the Senators from New York and Wyoming to go forward. Senators CLINTON and ENZI have an amendment to offer. They have agreed to 20 minutes equally divided, followed by a vote on or in relation to that amendment, with no second-degree amendments in order. I ask unanimous consent that be the case.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New York.

AMENDMENT NO. 2152

Mrs. CLINTON. Madam President, I thank the minority whip and the chairman and ranking member of the subcommittee for an opportunity to discuss this very important amendment.

I call up amendment No. 2152.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mrs. CLINTON], for herself, Mr. ENZI, Ms. CANTWELL, Mr. GRASSLEY, Mrs. MURRAY, Mr. SMITH, Mr. SCHUMER, Mr. WYDEN, Mr. HARKIN, Ms. STABENOW, Mr. KERRY, Mr. DODD, and Mr. LIEBERMAN, proposes an amendment numbered 2152.

Mrs. CLINTON. Madam 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 permit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative of the Department of Veterans Affairs for purposes of enhanced services while limiting the use of funds for the initiative for purposes of the closure or reduction of services pending a modification of the initiative to take into account long-term care, domiciliary care, and mental health services and other matters)

At the end of title I, add the following:

SEC. 116. (a) LIMITATION ON USE OF FUNDS FOR CARES INITIATIVE.—No funds appropriated or otherwise made available for the Department of Veterans Affairs for a fiscal year before fiscal year 2005 may be obligated or expended to take any actions proposed under the Capital Asset Realignment for Enhanced Services (CARES) initiative that would result in the closure of a Department of Veterans Affairs health care facility, or reduction in services at such a facility, until the Secretary of Veterans Affairs—

(1) modifies the Capital Asset Realignment for Enhanced Services initiative national planning procedures to require that no changes be made in long-term care, domiciliary care, or mental health services without a completed and separate Capital Asset Realignment for Enhanced Services planning process intended to assess the future demand for such services;

(2) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to take into account the impact that any transfer of health care services under the initiative will have on the access of veterans to primary outpatient care, inpatient hospital care, and tertiary hospital care in rural and frontier population areas, as defined by the Census Bureau, taking into consideration such travel matters as road conditions, numbers of lanes on roads, and seasonal changes in and other factors relating to the weather;

(3) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to permit veterans to testify at hearings of the Capital Asset Realignment for Enhanced Services Commission and reconvenes the Commission for further hearings on the initiative in regions where the Commission has held hearings without permitting veterans to testify;

(4) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to hold at least one hearing regarding the realignment of services under the initiative within 30 miles of each Department of Veterans Affairs facility that would experience a realignment of services under the national plan for the initiative; and

(5) submits to Congress a report on the Capital Asset Realignment for Enhanced Services initiative national planning process that sets forth the results of the modifications under paragraphs (1), (2), (3), and (4).

(b) AVAILABILITY OF CARES INITIATIVE FUNDS FOR ENHANCED SERVICES.—Notwithstanding any other provision of law, neither subsection (a) nor any other provision of law shall be construed to limit the obligation or expenditure of funds under the Capital Asset Realignment for Enhanced Services initiative for the provision of enhanced services as long as the provision of such services does not involve the closure of a Department health care facility or a reduction in services as such a facility.

Mrs. CLINTON. Madam President, my cosponsor and I, Senator ENZI of Wyoming, are offering this amendment today, which is a bipartisan amendment. The sponsors include Senators MURRAY, GRASSLEY, CANTWELL, SMITH, WYDEN, SCHUMER, HARKIN, STABENOW, KERRY, DODD, LIEBERMAN, and LEVIN.

Our amendment would prevent any spending directed toward closing or reducing services under the so-called CARES plan until this plan considers long-term care, domiciliary care, and mental health care, as well as rural health care issues.

It would also offer veterans, many of whom have not been able to offer their views, a meaningful opportunity to participate in the CARES process.

This amendment is supported by the American Legion, the Eastern Paralyzed Veterans, the Vietnam Veterans of America, and the American Federation of Government Employees.

I want to be absolutely clear, this amendment does not affect, in any way, the CARES Commission or the VA moving forward on enhancing or increasing services for our veterans. It contains explicit language that allows enhancements under CARES to go forward.

I know the Secretary of the Veterans' Administration, a very distinguished gentleman, certainly has made the case strongly to veterans service organizations and to my colleagues that this amendment would stop enhancements.

It absolutely does not. The clear language makes it absolutely positive that we are not stopping enhancements. But what we are doing is saying: Wait a minute. The process that has ended up with recommending the closure of many of our VA hospitals, three of them in the State of New York alone, and the fact that in testifying, as my colleague Senator SCHUMER and I did before the CARES commission in Canandaigua, one of the hospitals that is on the target list to be closed, the commissioners had to admit they did not take into account mental health services, domiciliary services, and long-term services.

I am hoping this amendment will help us get a handle on some of these decisions that appear to be ill-advised and not part of a larger plan aimed at helping our veterans and that, in fact, the Department would go back to the drawing board to develop a plan through a fair process that would explicitly take into account mental health, domiciliary, and long-term care.

There is much to be said about this important amendment.

I ask unanimous consent to print in the RECORD a letter of support from the American Legion.

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

THE AMERICAN LEGION,
Washington, DC, November 10, 2003.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: The American Legion supports your proposed amendment to S. 1584, to limit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative of the Department of Veterans Affairs, pending a modification to take into account long-term care, domiciliary care, mental health care and other issues.

As for the CARES initiative in general, The American Legion supports the program. However, in doing so we continue to monitor the process, share dialogue with the CARES Commission, and have several times expressed concern over the very issues set forth in the amendment.

We appreciate the fact that you and your colleague, Senator Mike Enzi, share the Legion's concerns on these important matters.

Sincerely,

JOHN A. BRIEDEN III,
National Commander.

Mrs. CLINTON. The bottom line is that this process, which holds such promise to make sure we have the right mix of services for our veterans, is seriously flawed.

On Sunday, I was with a group of veterans served by the Manhattan VA. Their concerns range from the blinded veteran who suffered a service-connected loss of hearing and sight in the Vietnam war, who cannot possibly get to any other VA because of transportation problems, to the closure of important research that is being done on that campus in conjunction with the New York University Medical School, to the very serious problems raised by veterans who are getting superb mental health services and cannot get them anywhere else if these facilities are closed or the services reduced.

I wish the VA would hear us on this. I know they are opposed to it. I know they are concerned about it. But the exclusion of factors affecting mental health and long-term care is absolutely unacceptable. In fact, the VA has told us that next year in the strategic plan, they will get to those important services. How can we be closing facilities and not having taken into account those services?

I ask unanimous consent to print in the RECORD a letter of support from the Vietnam Veterans of America and the American Federation of Government Employees.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

VIETNAM VETERANS OF AMERICA,
Silver Spring, MD, November 12, 2003.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: On behalf of Vietnam Veterans of America (VVA), I wish to thank you and Senator Michael B. Enzi for your bi-partisan efforts to ensure that vitally needed veterans health care facilities are not closed in a precipitous manner. Your amendment to be offered to the FY04 VA–HUD Appropriations bill is a much needed modification of the Capital Asset Realignment for Enhanced Services (CARES) process that will provide for a cooling off period and full public consideration before any Department of Veterans Affairs (VA) medical facility is closed or services further reduced. As long as the needed enhancements and new construction contained in the CARES plan can proceed, VVA strongly supports this amendment.

The process of devising a mathematical formula for CARES had been underway for several years before anyone in the veterans service organization community knew about this effort. The CARES process is ostensibly designed as a data-driven system. VVA has objected for more than a year to the data used, and to the civilian formula that is being inappropriately applied to veterans health care needs using that data. The data is not a needs assessment, but rather a snapshot of what services are left after six to seven years of reductions in staff in the core

VA area of specialized services, most particularly in mental health. The original civilian formula still in use does not address the special medical needs of the veterans' community.

All who served in the military practiced a very dangerous occupation. Our wounds, toxic exposures, and even mental health needs are dramatically different in prevalence and in kind from those of the general civilian populace. The VA was created to be a veterans' health care system that addresses those special needs of veterans, and not just general health care that happens to be for veterans. The formula that VA is using estimates one to three presentations (illnesses, medical conditions, or maladies) per individual, whereas veterans using the VA system average five to seven presentations per person. As a result, the current formula will always underestimate the resources needed to properly care for veterans. Although there were some adjustments made, separate from the formula, to increase facilities for Spinal Cord Injury (SCI) and for Blind and Visually Impaired Rehabilitation, no such adjustment was made for mental health.

The formula simply does not properly address mental health care needs of veterans, nor long-term care, nor the needs of veterans returning from Iraq and Afghanistan. It is not surprising that a disproportionate number of the targeted facilities are psychiatric facilities. VVA believes that what is needed is development of a veterans health care formula, and a true needs assessment of the entire veterans' community by geographic area.

VVA believes in the concept of stewardship, that it is the task of each of us to leave things better than we found them. VVA understands and supports the impetus of Senators Bond and Mikulski to force the VA to plan for future needs before providing any further construction funds for facilities that might be abandoned in just a few years. This is what led to the CARES process.

VVA also is grateful to Secretary of Veterans Affairs Anthony J. Principi for his response to the concerns of the veterans' community about CARES. VVA is also grateful to CARES Commission Chair Everett Alvarez and the other distinguished members of that body for their work in trying to ameliorate the results of the inappropriate formula and bad data. We also recognize that the process is not yet over.

However, even though the CARES process is not yet finished, the fact that mental health facilities have been so prominently and inappropriately targeted for closure is ample cause for alarm. It is important to note that the chair of VA Advisory Committee on Serious Mental Illness testified before the CARES Commission hearing held in the Russell Senate Office Building in September 2003 that 65 percent of the organizational capacity that VA possessed in 1996 for mental health care is now gone.

It is also important to note that the dire shortage of funding of the veterans health care system, which has become a structural shortfall that is widening with each passing year, is contributing to the distortions of plans for proper care for all eligible and much deserving veterans in the nation, both rural and urban residents. After adding additional funds to the VA–HUD Appropriations bill for 2004, currently under consideration, we urge that the Senate work with the President to move to address this gross and growing scarcity of resources at VA medical facilities.

In summary, VVA supports the amendment you plan to propose, along with Senators Enzi, Kerry, Dodd, Lieberman, Cantwell, Grassley, Murray, Smith, Schumer, Wyden, Harkin, Stabenow, Kerry, Levin, and others that would have the effect of preventing any closures until further consideration can be given as to whether these proposed closures or diminishment of staff are indeed in the best interest of our nation's veterans. It is our understanding that this amendment does not mean that any of the enhancements, remodeling, or construction in the proposed CARES plan will be delayed or stopped.

Again, thank you and Senator Enzi for your strong leadership on this issue.

Sincerely,

THOMAS H. COREY,
National President.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO,
Washington, DC, November 12, 2003.

DEAR SENATOR: On behalf of the American Federation of Government Employees, AFL–CIO, which represents 600,000 government employees, including 150,000 employees in the Department of Veterans' Affairs (VA), I strongly urge you to support the bipartisan amendments on CARES offered by Senator Hillary Rodham Clinton (D–NY) and Senator Michael Enzi (R–WY).

Under VA's planning process—Capital Assets Realignment for Enhanced Services—known as CARES, the VA is proposing to close VA nursing homes, domiciliaries, and inpatient mental health care beds without fully considering how the VA will meet the surging long-term care needs of elderly veterans or the needs of homeless veterans. The Clinton-Enzi amendment would allow the VA to spend funds to improve and repair facilities but would hold in abeyance the expenditure of funds to close or reduce services at VA facilities until the CARES process addresses VA's needs for nursing home care facilities, domiciliaries and mental health care delivery.

VA's own data projections indicate that in order to meet the current and future health care needs of elderly veterans the VA will need roughly 17,000 additional nursing home beds by 2022. The current CARES proposals target nursing home beds for closure without considering how the VA will meet the surging demand for veterans' nursing home and adult day care.

Veterans deserve access to quality care. Congress must make sure that VA plans for current and future veterans' demand for nursing home care, mental health services and supportive environments like domiciliaries.

AFGE strongly urges you to vote yes for the Clinton-Enzi amendment on CARES. If you have any questions, please contact Linda Bennett at 202–639–6456.

Sincerely yours,

BETH MOTEN,
Director,
Legislative and Political Action Department.

Mrs. CLINTON. In summary, I am offering this amendment because I believe that the Draft National CARES Plan and the process used to develop it are deeply flawed. The Plan has not adequately taken into account the impact of these proposals on long term care, domiciliary care and mental health services. The Development of Veterans Affairs needs to go back to the drawing board and develop its plan through a fair process that takes into account all relevant factors and allows veterans to fully participate in the plan's development.

At this time in our nation's history, with U.S. troops bravely serving in Iraq, Afghanistan and elsewhere, it sends exactly the wrong message to propose such drastic changes in veterans' health care without proper throught and deliberation. Our troops are fighting overseas to defend our values and way of life. We owe it to our current and future veterans to make sure that we provide the best health care possible for them and not rush to implement recommendations that provide our veterans with less adequate health care.

As a starting point, our bottom-line goal should be the delivery of high quality health care services to our veterans, delivered as efficiently as possible. Unfortunately, the hasty procedures that the Department of Veterans Affairs followed to develop these recommendations are fundamentally flawed.

Veterans' health care is too important an issue to require an adherence to artificial deadlines and hasty recommendations. With literally the lives of veterans at stake, the Commission should not engage in a rush to judgment over closing VA facilities.

FAILURE TO CONSIDER LONG TERM, DOMICILIARY AND MENTAL HEALTH NEEDS

As a result of the flawed CARES process, several important factors that are critical to veterans' health care have been neglected. In this rushed process, the impact of the proposed changes to long-term care, domiciliary care and mental health needs were not considered. The exclusion of these important factors taints the recommendations of the draft national plan. For example, the Draft National CARES Plan states that its mental health outpatient psychiatric provisions are ''undergoing revision'' and ''should be available for next year's strategic planning cycle.'' As you can see from this panel, we found a speech on the VA web site in which then-Deputy Secretary Mackay admitted in April that ''As you are also aware, there have been aspects of care that have been left out of his CARES plan. Long-term care, domiciliary care, and outpatient mental health care were all determined to need more work before reliable forecasts could be made.''

Incredibly, despite this admission, the Draft National CARES Plan proposes reductions in beds in facilities that provide mental health services. Similarly, there is widely expected to be an increase in the demand for long term beds for veterans over the next 20 years. However, the Draft National Plan does not contain any analysis of how many long-term beds are needed in the coming decades and yet still recommends closing facilities with long-term beds.

During a meeting between members of the New York delegation and VA Secretary Anthony Principi a few weeks ago, Secretary Principi acknowledged that a plan for long-term psychiatric needs has not yet been developed. With all due respect to Secretary Principi and the Commission, it

seems to me that developing a Draft National Plan before developing a plan for mental health needs is getting it exactly backwards. A plan for addressing mental health care should have been developed before the Draft National Plan was released, not after.

The Draft National Plan's failure to consider long-term mental health care has disastrous implications for veterans around the country, including thousands in New York. One of the facilities targeted by the CARES plan is the VA hospital in Canandaigua. I have visited the VA Hospital at Canandaigua and was greatly impressed by the quality of care provided at the facility as well as the overwhelming support that the VA hospital has in the community. And indeed, it is a cruel irony that Canandaigua has been recommended for closure in the same year that it received the highest facility rating in patient satisfaction in the country.

The omission of mental health care needs from the Draft National Plan is particularly striking because of the effect that the closure of the Canandaigua VA will have on the veterans with mental health care needs who are currently receiving care at the facility. Veterans at Canandaigua receive a specialized level of treatment for mental health illness that is not readily available at other facilities. Further, if the Canandaigua VA were to close, many veterans would be forced to drive long distances for care. As my colleague Senator ENZI has pointed out, the CARES national plan has not adequately taken into account the impact of the recommendations on rural health care.

The Draft National CARES Plan for VISN 3 recommends eliminating all inpatient services at Montrose VA hospital and transferring most of these services to the Castle Point VA hospital. A decision to follow through on this recommendation would be a serious blow to veterans who currently rely on the Montrose VA hospital for their care.

As I mentioned previously, the need for long term beds has not been properly assessed and current projections forecast that there will be a significant increase in the need for psychiatry beds through 2012. In order to ensure adequate capacity to handle the projected case load, local veterans organizations support retaining all services at Montrose and Castle Point.

Moving inpatient services from Montrose to Castle Point will require, by VA's own admission between $85 and $100 million and take at least 5 and maybe as many as 10 years to accomplish. However, the Draft National CARES plan provides no explanation for what will happen to services at Montrose in the meantime. Further, there is no analysis of how veterans will get services if future budgets do not include enough funds for the transition. The often substantial waiting periods that veterans living in this region already experience at the Montrose and Castle Point Campuses and their satellite facilities underline the strain the system is experiencing.

The Draft National CARES Plan will also have a significant impact on the Castle Point VA. Wait times at Castle Point are already too long. With the closure of Montrose and the shifting of veterans to Castle Point, the wait times are likely to get even worse. In addition, many area veterans have questioned the adequacy of space available for expansion at Castle Point.

The CARES Draft National Plan recommends developing ''a plan to consider the feasibility of consolidating inpatient care [from Manhattan] at Brooklyn.'' Yet, once again there is no requirement that the development of this ''plan'' solicit the input of veterans. Further, the proposal does not properly take into account how the consolidation of inpatient care in Brooklyn will impact the relationship between the New York University School of Medicine (NYU) and the Manhattan VA. The NYU-Manhattan VA relationship, and the high quality of care for veterans it produces, would be imperiled by the potential closure of the Manhattan VA.

Finally, the practical matter of transportation deserves an important role in your deliberations. The high quality tertiary services at the Manhattan VA attract veterans from New York, and other states including New Jersey and Pennsylvania. One of the reasons the Manhattan VA is able to serve these veterans is its amazing accessibility, located, as it is, in the heart of Manhattan, at the center of a mass transit system that is unmatched anywhere else in the Nation.

Since the release of the CARES Draft National Plan, a frequent complaint that I have heard from area veterans has been that the VA has not been listening to their concerns. Veterans who contributed to the VISN 2 market plan, which called for no closures in VISN 2, feel betrayed by the decision to overrule the market plan and call for this facility's closure.

Further, the VA did not hold hearings near many facilities on the closure list around the nation. Our amendment would require new hearings within 30 miles of a facility where a reduction in services is proposed and require that veterans be allowed to testify.

In meeting with the veterans of New York, I have learned a tremendous amount about the value of the New York VA facilities and the quality of health care that is delivered there. And as letters to my office from veterans who use the facility demonstrate, the veterans' community in New York is united behind keeping these facilities open.

One veteran who wrote to me explained that he suffered a massive blow to the head while serving in the Marines and suffers from Organic Brain Syndrome and Organic Affective Disorder. He currently uses the Canandaigua VA's day treatment program. He wrote to me that ''I have a lot of difficulty with my short term memory and the thought of losing one of the places that I am most familiar with bother me. . . . [I]t has taken a long time but I have finally reached a little bit of independence. By losing this hospital, I will be losing that independence. Also, the place that I live is very rural and there are no other facilities in my area. The idea of sitting around the house day after day depresses me.''

Another veteran from Rockland County wrote to me about the potential closure in Montrose stating that ''I was wounded in 1944 during World War II by shrapnel in the mouth causing the loss of several teeth. In early 1945, I was captured by German soldiers and held as a POW until the end of World War II. . . if [Montrose] were to close, I would have to travel an additional 45 minutes to one hour depending on weather for treatment at Castle Point VA Hospital. I am 84 years old and transportation is getting more difficult for me. As you know there is no public transportation to this facility.''

Our Nation's veterans have served their country with distinction. Our nation made a pact with those who serve their country in the Armed Forces—a commitment that those who served would have access to quality health care through the VA hospital system. Yet this ill-considered and rushed Draft National CARES Plan threatens to undermine our commitment to our nation's veterans. That is we are this offering legislation in the Senate to halt any spending towards closure or reduction in services until long-term, domiciliary, mental health care and rural care are adequately considered and veterans are allowed to fully participate in the CARES process. If this amendment passes, the Department of Veterans Affairs and the CARES Commission can begin anew by taking into account the proper factors and input from veterans. I urge my colleagues to support the Clinton-Enzi amendment.

I also ask unanimous consent to print the letter from the Eastern Paralyzed Veterans Association.

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

EASTERN PARALYZED
VETERANS ASSOCIATION,
November 10, 2003.

HON. HILLARY RODHAM CLINTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR CLINTON: The Eastern Paralyzed Veterans Association strongly supports your proposed amendment to S. 1584, the FY 2004 VA–HUD Appropriations Bill to prohibit the Department of Veterans Affairs (VA) use of appropriated funds for the implementation of the VA's Capital Asset Realignment for Enhanced Services (CARES) initiative until CARES addresses such vitally important issues as mental health care, long term care, domiciliary care, and other outstanding issues. We have closely monitored the CARES process since its inception and, while we agree with VA that infrastructure analysis is necessary, we cannot support the

National plan currently being considered for implementation until these concerns are addressed, as would be required by your legislation.

From the outset, VA has claimed that CARES would be a data driven process with sound and justifiable conclusions and proposals. Unfortunately this has not been the case. VA has refused to run data on its mental health programs and has maintained that CARES would not impact on this population. Despite these claims, 12 of the 14 VA facilities slated for closure or discontinuation of in-patient services have a major psychiatric service component. Additionally, the CARES National plan includes nothing with regard to long term and domiciliary care; two services that VA is Congressionally mandated to provide over the next twenty years. Finally, the data that was used to formulate the National plan completely excluded veterans in Priority Groups 7 and 8 from the twenty-year projected usage data. By excluding Priority 7 and 8 veterans from the CARES projections, VA is creating a system that will be unable to treat these veterans. This cannot be allowed to occur.

While CARES was well intentioned, the fact that this process has so many flaws on so many levels forces us to oppose it until these issues are addressed. Your amendment would require just that. Eastern Paralyzed Veterans Association is grateful that you, together with Senator Mike Enzi, will introduce this amendment to insure that these issues are dealt with before allowing the process to advance. Thank you.

Sincerely,

GERARD M. KELLY,
Executive Director.

Mrs. CLINTON. I see my colleague and partner Senator SCHUMER. I yield to him such time as he needs.

Mr. SCHUMER. I thank my colleague from New York and all of those who have worked so hard. I plead to my colleagues, the CARES Commission had a good idea. Let's study and see how we can make health services better for veterans. But looking at what they recommended in New York State, something went amuck; to close the Canandaigua Hospital makes no sense whatsoever. It is desperately needed by so many veterans. It is a fountain point of the community, and it does special work in mental health and psychological services that no hospital within miles and miles and miles around, tens of miles, hundreds of miles around, can do.

All we are asking is a chance. Let the CARES Commission go back to the drawing board and figure out what they did wrong. Let them look at what they have done wrong in New York in terms particularly of Canandaigua but also of Montrose and the Manhattan VA hospital where anyone who looks at it up close sort of scratches their head in wonderment and says: How did they come up with these recommendations? This is a bipartisan bill. It does not stop any kind of restructuring except for the fact that it says: Go back and look at other factors they seem to have missed.

It is desperately needed in many parts of the country. The veterans groups of America are totally for this amendment.

This Chamber and the other just voted for $87 billion for Iraq. Whatever one's opinion of that was, how can we at the same time turn our backs on so many of those veterans who fought in other wars? I know the intentions of the commission may have been good, but the effect, at least in our State, is to do just that. It is to turn its back on tens of thousands of veterans who served their country, many of whom were wounded in the course of battle.

This is a pro-veteran amendment, supported by veterans throughout the country. I urge my colleagues to support it.

I thank my colleague from New York for the great job she has done. We have worked as a team to try to prevent this from happening. This amendment gives us a good opportunity to go back and reargue. We hope our colleagues will support it.

Mrs. CLINTON. Madam President, this is an issue that affects veterans across our country. My cosponsor, Senator ENZI, is concerned particularly about the impact on his veterans who live in rural areas and are not going to be able to travel the long distances that will be required if services are reduced, if facilities are closed. I know my colleagues from Iowa, Michigan, Washington, Oregon, Texas, in addition to Wyoming, have asked for similar relief.

I hope my colleagues who are in States that, under this process, are in line to get enhancements and increases will vote for this because it doesn't affect your enhancements. It does not affect your increase, but it gives those of us who have mental health needs, who have rural health needs, who have domiciliary and long-term health needs the opportunity to get this process right and to fix the problems that would lead to the closure and reduction of services that are so needed in so many States for so many veterans.

I hope this amendment will find favor with my colleagues and will give those of us who are particularly on shaky ground because of the recommendations of this commission a chance to have a more rational process that really takes into account the needs of our veterans.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. ENZI. Mr. President, I am pleased to be a cosponsor of this amendment and I hope to clarify some of the reasons I believe every Senator should support our efforts.

I think everyone in this Chamber agrees on the importance of our national veterans community. Just yesterday ceremonies throughout the Nation and speeches here on the Senate floor paid tribute to those who have been willing to sacrifice so much. When young men and women volunteer their lives for the fight for freedom and democracy we, as a nation, promise to take care of them.

The amendment Senator CLINTON introduced today addresses the Capital Asset Realignment for Enhanced Services or CARES process from the Department of Veteran's Affairs.

I believe the intent of the CARES process is good. If we can clear up some of the unused space in the VA health care system and remove redundancy in services, we can save money and put it towards effective health care for our veterans. I do not believe, however, that rushing into changes for the sake of making changes is a good policy. How can we expect good changes to come from a broken system?

There is no doubt in my mind that the CARES Commissioners have the best interests of veterans at heart. I believe that given enough time and proper information, they will be able to make changes in veterans health care that will fully benefit current and future veterans for years to come. I must admit, however, that they currently have neither the time nor the proper information to make good changes.

Now, let's be clear about what this amendment does and does not do. It does not prevent the CARES process from moving forward. It does not prevent improvements from being made or new hospitals from being built. It does not kill the CARES initiative.

It does require the VA to commit to a separate process for long-term care, domiciliary care, and mental health care needs. It does require the VA to confirm that they have examined local travel factors such as road and weather conditions. It does require the CARES Commission to hold hearings within 30 miles of each facility targeted for a closure or a reduction of services and it requires veteran participation in these hearings.

Let me touch on a couple of these requirements. One is that there be a CARES Commission hearing within 30 miles of every facility facing a realignment of services under the national plan.

We recently had a CARES hearing in Cheyenne, WY near the Cheyenne VA Medical Center. I think the hearing went extraordinarily well. The veterans who attended where given an opportunity to understand more about the future of their health care. Likewise, the CARES Commissioners were able to hear the veteran's concerns through the veterans service organizations. Just holding a hearing in Denver about reducing services in Cheyenne—a town more than 100 miles away—would have sent a strong statement to Wyoming veterans that the VA cared neither for their health nor their opinions.

I believe each facility and community should have the opportunity to have this same interaction. Each community should be able to understand what the changes will mean for them and what differences in services the veterans will face. I now the burden falls to the CARES Commissioners to attend and consider the testimony at these additional hearings, but I believe

they will then be better informed about the decisions they will need to make.

I also want to point out the travel issue in the amendment. I think we all realize the difficult nature of taking weather into consideration nationally. After all, northern Wyoming's winter and southern Florida's winter are hardly the same. What this part of the amendment intends to do is ensure that the local factors were considered when drafting the national plan. Distance cannot be the only factor considered—we all know that even in Washington, DC, 30 miles travel distance doesn't mean 30 minutes travel time.

Let me say again, this amendment does not stop the CARES process. It merely requires the VA to consider a couple of factors that we believe should have been considered from the very beginning.

I know letters from some veterans service organizations may have raised concerns for my colleagues about our amendment. these organizations were able to meet with the Secretary of Veterans Affairs and had many of their worries addressed. the Secretary told them that no services would be reduced until replacement services are fully available. He also stressed that no net changes would be made in long-term care, domiciliary care, or mental health care.

I think this meeting was a great idea. It is, however, a shame that it took news of this amendment to get the VA, moving. I am very glad that the veterans organizations had the opportunity to meet with the Secretary. Through this amendment we are trying to make sure the VA addresses the concerns of Congress. We are just trying to make sure that the promises made are promises kept.

Again, I want to reiterate my support for the CARES Commissioners themselves. They are doing their best to make good decisions in a broken system. I appreciate their patience and most of all their willingness to serve America's veterans. I urge my colleagues to support the amendment.

Mr. REID. Madam President, I rise to speak against this amendment, and in support of the CARES process.

As many Senators are aware, Nevada has experienced unprecedented growth over the last decade. In Clark County alone, the home of Las Vegas, 14 new schools are constructed each year to keep up with the approximately 8,000 people that move to the county each month.

The growth in our veterans population has been just as rapid. With approximately 245,000 veterans, Nevada has the second highest concentration of veterans in the country. Only Alaska ranks higher.

About 176,000 of Nevada's veterans have served in a war: 18 percent in the Gulf War, 49 percent in Vietnam, 21 percent in Korea, and 21 percent in World War II. Many of our veterans even served in multiple wars.

Therefore, Nevada's veterans have been combat-tested. And regrettably, the average age of our veterans' population is growing older each year. The rising average age, coupled with the many years of often very harsh service to defend our Nation's freedom, has placed a tremendous strain and great demand on the veterans health care system in Nevada.

More than 70,000 veterans are enrolled in the Reno and southern Nevada VA health care facilities, with more coming in each day. We have an excellent VA hospital in Reno, but other parts of northern Nevada are underserved. And the Las Vegas area continues to be one of the most densely populated regions of the country for veterans seeking quality health care and one of the most severely underserved.

In the past several years, the VA has not kept pace with the demand and growth in our State. Long lines, prolonged waiting times, old and crowded facilities: this is no way to provide health care to our courageous veterans, and it is no way to deal with the population explosion in Nevada.

So when this subcommittee called for a new plan and independent commission to examine the VA's resources and reallocate resources based on the greatest demand, I applauded that action. I also welcomed VA Secretary Tony Principi's active role and interest in supporting Nevada. He has been an honest advocate for our Nation's veterans, and a bright spot in the President's cabinet.

It came as no surprise to me that the CARES plan, which is the subject of this debate, found Nevada to be dramatically underserved by the VA.

The draft CARES plan contains $130 million in upgrades to improve health care facilities for the veterans who live in Nevada.

The plan also calls for the construction of a major medical center, clinic and nursing home in the Las Vegas area. This new hospital is only one of two hospitals recommended in the entire VA plan. I credit our hardworking VA staff in Nevada and the thousands of veterans themselves for making sure that the CARES Commission got the message about Nevada's desperate needs.

Therefore, I must oppose any effort to delay, derail or diminish the CARES process and the money and resources that would flow to the veterans in my State under the draft plan.

I have the greatest respect and admiration for the Senator from New York. I understand her concerns, and the concerns of other senators, about certain CARES recommendations that will impact other States. But these concerns should be addressed directly with the VA, and not by cutting off appropriations to the VA for the CARES process to continue.

The veterans of Nevada can't wait much longer for the upgrades and new facilities that they desperately need and deserve.

I therefore will vote against this amendment, and I would urge my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, how much time remains?

The PRESIDING OFFICER. There are 10 minutes in opposition.

Mr. BOND. Madam President, I yield myself 7 minutes, and I reserve time for my colleague.

I rise in strong opposition to the Clinton-Enzi amendment. It would deny up to $1 billion in funds to support our Nation's veterans. I especially object to the amendment because it would likely extend waiting lines for veterans already waiting for medical care.

Before I go into further explanation, I ask unanimous consent to print in the RECORD letters from the Veterans of Foreign Wars, Amvets, Disabled American Veterans, and the Paralyzed Veterans of America.

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

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, DC, November 6, 2003.

To: All Members of the U.S. Senate.
From: Robert E. Wallace, Executive Director, VFW Washington Office.
Re: Clinton/Enzi amendment to H.R. 2861.

On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I would like to take this opportunity to urge you to oppose the Clinton/Enzi Amendment to H.R. 2861, the FY 2004 VA/HUD Appropriations bill.

This amendment would limit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative. The VFW is concerned that if this amendment passes, the CARES process will essentially be put on indefinite hold.

We share Senators Clinton's and Enzi's concerns regarding long-term care, domiciliary care, and mental health services; however, it is our understanding that the CARES Commission is currently reviewing the data to include these services. Therefore, at this stage, we believe it is important to move ahead as the location and mission of some VA facilities need to change to improve veterans' access; to allow more resources to be devoted to medical care, rather than the upkeep of inefficient buildings; and to adjust to modern methods of health care service delivery. Our nation's veterans deserve no less.

Again, I urge you not to support the Clinton/Enzi Amendment regarding the limiting of funds for the VA CARES initiative.

AMVETS,
Lanham, MD, November 7, 2003.

To: All Members of the U.S. Senate.
From: S. John Sisler, National Commander.
Re: Consideration of CARES amendment in VA/HUD appropriations bill.

It is our understanding that Sen. Hillary Rodham Clinton may offer an amendment to S. 1584, the VA/HUD appropriations bill, that would block the Department of Veterans Affairs from spending any money to enact the CARES Commission recommendations.

On behalf of the nationwide membership of AMVETS (American Veterans), I write to express our strong opposition to Sen. Clinton's

proposed amendment aimed to stop progress of the Department of Veterans Affairs National Capital Asset Realignment for Enhanced Services (CARES) Plan.

The CARES initiative is clearly needed to assess what facilities will best meet the healthcare needs of America's veterans. AMVETS believes that adoption of the amendment would further delay moving forward with construction projects that are obviously essential to patient safety and that will eventually pay for themselves as a result of modernization.

AMVETS agrees with the Department of Veterans Affairs that many of their facilities need to be upgraded or replaced. We also agree with the Department that part of the solution for providing high quality health care to America's veterans is upgrading some facilities and replacing others with new and modern medical care treatment facilities.

AMVETS and I ask that you oppose any amendment that would cause the VA National CARES process to be used as an excuse to defer vital infrastructure maintenance and construction projects.

DISABLED AMERICAN VETERANS,
Washington, DC, November 7, 2003.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR CLINTON: On behalf of the more than one million members of the Disabled American Veterans (DAV), we write to express our concern over your proposed amendment to limit the use of funds for the Department of Veterans Affairs (VA) Capital Asset Realignment for Enhanced Services (CARES) initiative, pending modification of the initiative to include long-term care, domiciliary care, and mental health services in addition to reconvening the Commission for further hearings.

Intially, please know that preservation of the integrity of the VA health care system is of the utmost importance to the DAV and our members, and we greatly appreciate your efforts and insistence that long-term care, domiciliary care, and mental health services are included in the CARES initiative. These specialized programs are an integral part of providing sick and disabled veterans comprehensive health care. However, we are concerned your amendment may completely stall the CARES process and prohibit VA from making the necessary changes to improve its health care system and enhance access and services for veteran patients.

As you are aware, over the past seven years, following national trends, VA's Veterans Health Administration converted from a primarily hospital-based system to an outpatient focused health care delivery model. With these sweeping changes, there clearly came a need to reassess VA's physical structures and the need to realign, renovate, and modernize VA facilities to meet the changing health care needs of veterans today and well into the future. Many VA medical facilities have an average age of 54 years and are in critical need of repair. Unfortunately, VA's construction budget has decreased sharply over the last several years with political resistance to fund any major projects before a formal plan was developed. VA responded with the CARES initiative. However, many desperately needed construction and maintenance projects, including seismic repairs that could potentially compromise patient safety, have been unnecessarily delayed. DAV strongly believes that CARES should not distract VA or Congress from its obligation to protect its physical assets whether they are to be used for current capacity or realigned.

On a national level, DAV firmly believes that realignment of capital assets is critical to the long-term health and viability of the entire VA health care system. We do not believe that restructuring is inherently detrimental to the VA health care system. However, we will remain vigilant and press VA to focus on the most important element in the process, enhancement of services and timely delivery of high quality health care services to our nation's sick and disabled veterans.

VA Secretary Anthony J. Principi met with DAV and other veterans service organizations this morning and gave us his personal commitment that there would be no realignment or reduction in services as a result of CARES for mental health or long-term care until a definitive plan is developed and in place to absorb the workload for these specialized services. His promise to us satisfies our over-arching concern about the inclusion of these essential programs. Therefore, we believe the CARES process should be allowed to proceed at this critical juncture.

Again, we want to thank you for your efforts on CARES and for your strong leadership and support of veterans' issues. We very much look forward to continuing a positive and meaningful working relationship with you regarding matters of great importance to veterans. We hope that you will reconsider your position on this issue based on these new developments.

Sincerely,

DAVID W. GORMAN,
Executive Director,
Washington Headquarters.

PARALYZED VETERANS OF AMERICA,
Washington, DC, November 7, 2003.

MEMBERS,
U.S. Senate,
Washington, DC.

DEAR SENATORS: On behalf of the Paralyzed Veterans of America (PVA) I am writing to express our concerns regarding an amendment we understand will be offered by Senator Hillary Rodham Clinton to the VA, HUD, Independent Agencies Appropriation bill. As we understand, this amendment addresses the Department of Veterans Affairs' Capital Asset Realignment for Enhanced Services (CARES) process and, if passed, will limit the expenditure of funds for the process greatly delaying necessary improvements to the VA's medical care system.

While PVA concurs with Senator Clinton that the CARES process inadequately addresses issues of long-term care, mental health services and rural health care we believe that the amendment will so severely restrain the process that the many beneficial aspects of CARES will be seriously harmed. Delay of CARES projects that will benefit veterans, and in particular veterans with spinal cord injury or dysfunction, can only serve to weaken the VA health care system upon which our members and millions of other veterans rely.

Veterans' service organizations have received assurances from Secretary of Veterans Affairs Anthony Principi that no VA beds will be closed or capacity reduced until appropriate alternative health care resources have been identified and put in place. Additionally, the Secretary has assured us that long term care and mental health services will be included in the planning process with specificity to be provided as to who will be involved, how the process will operate and what timelines will be put in place. Finally the Secretary has indicated that the issue of inter-VISN (Veterans Integrated Service Network) planning and cooperation will be addressed.

In light of these assurances and the need to proceed with the positive findings, to date, of the CARES process, PVA believes any restrictions on funding for the CARES process can only serve to delay improvements in capacity and access of VA health care. We request that no limitation be placed on appropriated dollars for the Department of Veterans Affairs and that the CARES process be allowed to expeditiously move forward.

Sincerely,

DELATORRO L. MCNEAL,
Executive Director.

Mr. BOND. These organizations all oppose the Clinton-Enzi amendment because they understand the problem the VA has.

In 1999, the General Accounting Office found that VA could spend billions of dollars operating hundreds of unneeded buildings over the next 5 years. The GAO reported that the VA wastes more than $1 million per day on medical care funds for unneeded infrastructure instead of direct patient care. This money could be used to provide medical care to over 100,000 veterans.

Our committee, the VA–HUD committee, after the GAO report, directed the VA to do something about it, to develop a comprehensive strategy. Thus, in 1999, under the Clinton administration, the VA created the CARES Commission to address this concern.

I have traveled around the State of Missouri. I have seen firsthand the need for construction funds to update surgical and intensive care units. By the way, I gave at the office. One of the first closures the VA instituted was of a surgery center in the State of Missouri because they weren't doing enough surgeries to be proficient. I believed our veterans needed the best care. So now we have a primary care facility and we send them to a surgical hospital where they do enough surgeries to be proficient and safe.

We know we have different needs from veterans than when the VA was set up many years ago. The Clinton-Enzi amendment would deny over $600 million in construction funds to build new hospitals in States such as Nevada, Florida, and Colorado. It would deny funds to address safety, seismic and other deficiencies for facilities in Kentucky, California, Colorado, Ohio, Pennsylvania, and others. It would deny construction of 48 new community-based outpatient clinics.

It would deny funding for 37 nursing home investments, such as construction of new nursing homes in West Virginia and Pennsylvania. This is not a fatally flawed process. I cannot agree with the assertion of the Senator from New York. In an October 27 letter to all Senators, this year Secretary Principi outlines the great extent to which he has gone to ensure that the process and review be thorough at every stage. Local veterans groups, union officials, as well as affiliate representatives participated directly in the development of these plans.

The CARES Commission received more than 169,000 public comments. I take exception to the characterization of the plan as a ''cost cutting'' plan. The draft proposes to spend $4.6 billion in construction funds to expand services. It preserves more than 97 percent of the current bed capacity. Further,

the draft plan provides for no reduction in VA capacity to provide domiciliary or long-term care, including long-term mental health care. Let me repeat that. The draft plan provides for no reduction in VA capacity to provide domiciliary or long-term care, including long-term mental health care.

In some areas, the draft plan would increase overall bed capacity. In New York State, the realignment would increase overall bed capacity by about 10 percent. The CARES Commission has held field hearings, and the Senator from New York has attended two of them. The CARES Commission held 38 field hearings with over 700 witnesses and made 68 site visits. Clearly, Secretary Principi and the CARES Commission have been thorough, responsive, fair, and open.

This is a process that still is in its development stage. The Senate authorizing committee, chaired by Senator SPECTER, is working on legislation to establish funding for CARES, which will provide Congress an opportunity to review the final CARES plan before it can be implemented. The VA Committee held a hearing with Secretary Principi and the CARES Commission chair, Everett Alvarez, to provide oversight on the process.

I am committed to and fully supportive of CARES because we need to support veterans' medical care over unneeded buildings. To keep unneeded or excess buildings in operation deprives veterans of the care they need. There has been much opposition to this.

Mr. President, to reiterate, I oppose vigorously the Clinton-Enzi amendment to stop the VA's Capital Asset Realignment for Enhanced Services or CARES process. The amendment would deny up to $1 billion in funds to support our Nation's veterans. I object to this amendment because I believe in putting the needs of veterans ahead of the costs of keeping open unneeded buildings. I especially object to this amendment because it would likely extend the waiting lines for veterans already waiting for medical care. It is imperative that the CARES process moves forward so that the VA can move its outdated medical care infrastructure into the 21st Century.

Before I explain my reasons for opposing this amendment, I ask that letters from the Veterans of Foreign Wars, AMVETS, Disabled American Veterans, and the Paralyzed Veterans of America be added to the RECORD. As the largest veterans' service organizations in the Nation, they all oppose the Clinton-Enzi amendment because of its negative impact on veterans.

Why does the amendment hurt veterans? In 1999, the General Accounting Office (GAO) performed a study of the VA's medical care infrastructure and found that the VA ''could spend billions of dollars operating hundreds of unneeded buildings over the next five years.'' The GAO reported that the VA wastes $1 million per day in medical care funds on unneeded infrastructure, instead of direct patient care. Therefore, instead of wasting some $400 million annually on unneeded buildings, the VA could use these funds to provide medical care to over 100,000 needy veterans.

In response to the GAO's report, our committee directed VA to develop a comprehensive strategy to realign its medical care facilities so that it can deliver health care in a more accessible and effective manner. Thus, in 1999, the VA created the CARES initiative during the Clinton Administration to address this concern.

The amendment also hurts veterans by denying much-needed construction funds to areas that need modernized facilities to serve its veteran population. In my travels around my own home State of Missouri, I have seen firsthand the need for construction funds to update surgical suites and intensive care units, among other things. For those Senators who have veterans in rural areas, they know that there is a critical need for outpatient clinics so veterans do not have to travel hundreds of miles to the nearest hospital. With an aging veteran population, there is a significant need to build nursing homes and long-term care facilities. The Clinton-Enzi amendment will deny over $600 million in construction funds to these places. It will deny funds to build new hospitals in States such as Nevada, Florida, and Colorado. It will deny funds to address safety, seismic, and other deficiencies for facilities in States such as Kentucky, California, Colorado, Ohio, and Pennsylvania. It will deny the construction of 48 new community based outpatient clinics throughout the country. It will deny funding for 37 nursing home investments, such as the construction of new nursing homes in States such as West Virginia and Pennsylvania.

Another reason why I oppose the Clinton-Enzi amendment is that the CARES process is still in its developmental stage and it is premature to pull the plug. Yet, Senator CLINTON has already concluded that the CARES process is ''fundamentally flawed'' and the CARES Commission has ''neglected'' the important health care issues facing our veterans. Further, she characterizes CARES as a ''cost-cutting'' plan.

I do not agree with the Senator's assertions and I think it is unfortunate that she has been so critical of Secretary Principi who has been extremely responsive to the Congress's concerns. To Secretary Principi's credit, he has made the CARES process open and fair for all affected parties, including veterans to participate.

In an October 27, 2003 letter sent to all Senators, Secretary Principi outlines the great extent he has gone through to ensure that ''the process and review be thorough at every stage.'' Local veterans groups, local officials, union officials as well as affiliate representatives participated directly in the development of local plans. Since the announcement of the Draft National CARES Plan, the CARES Commission has received more than 169,000 public comments. According to the VA, all comments will be made a part of the official record and will be considered by the CARES Commission during its deliberations.

I take great exception to Senator CLINTON's characterization of CARES as a ''cost-cutting plan.'' The Draft plan proposes to spend $4.6 billion in construction funds to expand services. It preserves more than 97 percent of VA's current bed capacity. Ninety-seven percent. It increases outpatient capacity by more than 12 million visits a year. It creates 48 new community-based outpatient clinics and at least 2 new hospitals. Further, the Draft plan provides for no reduction in VA capacity to provide domiciliary or long-term care, including long-term mental health care. Let me repeat that last sentence. The Draft plan provides for no reduction in VA capacity to provide domiciliary or long-term care, including long-term mental health care. Moreover, in some areas, the Draft plan's realignment would increase overall bed capacity. For example, in New York State, the realignment would increase overall bed capacity by about 10 percent. The Draft plan provides for all of these enhanced services and additional facilities despite the VA's projections that the veteran population is expected to decline by more than 25 percent over the next 20 years. I ask my Senate colleagues, does this sound like a cost-cutting plan?

Further, the CARES Commission has held a number of field hearings and site visits across the Nation to listen firsthand to the concerns of interested parties. In fact, Senator CLINTON participated in two CARES hearings. In total, the CARES Commission held 38 field hearings that included over 700 witnesses and made 68 site visits. In some instances, the Commission altered its schedule to respond to local interests such as in New York.

Clearly, Secretary Principi and the CARES Commission have been thorough, responsive, fair, and open in moving the process. For example, at Senator SCHUMER's request, Secretary Principi agreed to visit the Canandaigua VA hospital before making any final decision.

I also stress again that the CARES process is still in its developmental stage. The Commission has not completed its work. No final decisions have been made. The current plan is only a draft and is an interim step to the overall process. Delaying or stopping this process is premature and ends up hurting more than helping our veterans. The CARES Commission must complete the plan and the Secretary and the Congress must approve it.

The Senate authorizing committee, chaired by Senator SPECTER, is working on legislation that establishes criteria for funding CARES projects,

which will provide the Congress an opportunity to review the final CARES plans before it can be implemented. In fact, the Veterans Affairs Committee held a hearing with Secretary Principi and the CARES Commission Chair Everett Alvarez to provide oversight on the process and to ensure that the process was moving in a public and deliberative manner. The Committee also recently passed legislation that was originally sponsored by Senator BOB GRAHAM and co-sponsored by nine other senators, including Senator CLINTON that would give the Congress 60 days to approve before any VA facility could be closed. If enacted, this legislation ensures that the Congress is involved in the implementation of the CARES plan.

I am committed and fully supportive of CARES because I believe in supporting veterans medical care needs over unneeded buildings. I believe that CARES is the most important initiative in the VA and it must be done. We cannot afford any more delays. For too long, the VA was unable to rationalize its infrastructure and millions of medical care dollars were wasted on empty, obsolete, or redundant buildings instead of focusing those dollars on medical care for our veterans. Now, after nearly 4 years of work on CARES, the VA is developing a national plan that will ensure that the medical care needs of our Nation's veterans come first and they will receive the best care in modernized 21st Century facilities. We owe it to our veterans to move away from the old medical model of hospital-centered medicine to the contemporary, modern patient-centered medicine model.

The veterans also agree with my view and oppose this amendment. The VFW's November 6, 2003 letter states, ''we believe it is important to move ahead as the location and mission of some VA facilities need to change to improve veterans' access; to allow more resources to be devoted to medical care, rather than the upkeep of inefficient buildings and to adjust to modern methods of health care service delivery. Our Nation's veterans deserve no less.''

The sponsors of this amendment have tried to assuage the concerns of Senators who expect to receive new medical facilities in their State by limiting the amendment to facilities where closures may occur. However, I tell my colleagues, do not be fooled. This amendment would still prevent new hospitals, clinics, and nursing homes to be constructed because the VA cannot break up its CARES plan into separate pieces. There is only one plan for the Nation. It is a National Plan and it cannot be separated into pieces. In addition, many new construction projects under CARES cannot be financed unless some obsolete facilities are closed. In some areas, such as Chicago and Pennsylvania, construction for new facilities will be financed by the proceeds of leases of the closed facilities. Finally, this amendment continues the wasteful practice of spending medical care funds on unnecessary and empty buildings. Under CARES, these funds would be re-focused on direct patient care, the construction of new outpatient clinics, and operating costs for new hospitals, such as the proposed facilities in Las Vegas and Orlando. Implementing CARES will allow the VA to serve more veterans and especially ensure that our most vulnerable veterans will not be forced to wait for several months or years to obtain medical care.

I urge my colleagues to place the needs of veterans ahead of unneeded facilities. Efforts to delay the CARES process will cause significant harm to our veterans. Outside of funding for VA medical care, CARES is my highest priority for VA. I have supported CARES from its inception in 1999, including the implementation of the pilot program in VISN 12. I strongly urge my colleagues to oppose the Clinton-Enzi amendment and allow the VA to move the CARES process forward.

The PRESIDING OFFICER (Mr. CORNYN). Who yields time?

Ms. MIKULSKI. Mr. President, first, I compliment our two colleagues from New York on their advocacy for veterans and the attempt to work to form a bipartisan coalition and for being concerned about mental health services and long-term care, as well as the rural needs.

I say to my two colleagues, we on the VA Committee have to be concerned that we are in the veterans health care business and not in the veterans health real estate business. So we want to advocate for services, not for buildings.

I think the Senator is also aware that we just had to work very hard to forage to come up with the $1.3 billion to meet the compelling needs for our veterans. I ask the Senator from New York, with her very strong advocacy and the support of a bipartisan list of cosponsors, would she consider a different approach—that, perhaps, report language be in the bill acknowledging the validity of the concerns raised by her, Senator ENZI, and others, talking about the need for long-term care, and pay attention to this as well as the rural health care?

I say to my dear and esteemed colleague, the CARES project or process is due December 3. To make these recommendations, some of which are quite excellent—inclusion, participation, et cetera—would derail CARES. It could affect our spinal injury programs or more outpatient clinics. I know it could have unintended consequences.

Would the Senator consider an alternative other than having the vote on the amendment?

Mrs. CLINTON. Mr. President, I appreciate greatly the understanding of my friend and colleague. I am somewhat concerned, however. We have many charts, but I will not go into them, under the circumstances. They are very clear that there has not been adequate conversation on mental health and the other needs. I respect what the Senator from Missouri said. If you look overall, there may not be a loss of services defined in a certain way, but that is not necessarily tied to where the veterans need the services, or where the high-quality services have historically been given.

I also add that Senator ENZI, my esteemed cosponsor, is at this moment chairing a hearing. We were, obviously, unprepared to get this up and get it out. But he told us to go ahead. I would like the opportunity to discuss this with my cosponsor. I don't want to make a decision without his awareness of what the Senator's idea is.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that this colloquy be extended for another 5 minutes.

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

Mrs. CLINTON. Mr. President, I suggest that we at least have an opportunity to discuss this with not only the prime cosponsor, but all the other cosponsors because many of us feel very strongly about the way this CARES process proceeds.

Could the managers of the bill tell us what the plan is, and whether we are going to have votes on this bill when we finish the 30 hours? Where do we stand in the process? That would give me a better idea as to how to respond to the offer of the Senator from Maryland.

Mr. BOND. Mr. President, in order to get this bill completed, we are going to have to wrap it up one way or the other by 6 o'clock tonight. It can either walk out or go out feet first. I will join my colleague from Maryland in saying if she wants to withdraw the amendment, I understand her concerns. I am sympathetic to the concerns. We would be delighted to put it in report language and work with the Secretary of the VA to make sure her concerns are fully addressed.

But in the meantime, unless the Senator is ready to acquiesce, I ask unanimous consent that this amendment and the yeas and nays be set aside temporarily until we can have further discussions with the Senator from New York and the other sponsors.

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

BASIC PILOT PROGRAM EXTENSION AND EXPANSION ACT

Mr. BOND. Mr. President, I have been asked by the leadership to bring up Calendar No. 374, S. 1685, the Immigrant Pilot Program. I believe it has been cleared on both sides.

I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1685) to extend and expand the basic pilot program for employment eligibility verification, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, 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. 1685

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

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Basic Pilot Program Extension and Expansion Act of 2003''.

[SEC. 2. EXTENSION OF PROGRAMS.

[Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''6-year period'' and inserting ''11-year period''.

[SEC. 3. EXPANSION OF THE BASIC PILOT PROGRAM.

[(a) IN GENERAL.—Section 401(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''in,'' and all that follows through the semicolon and inserting ''in all States;''.

[(b) CONFORMING AMENDMENTS.—Section 402(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

[(1) in paragraph (2)(B), by striking ''or entity electing—'' and all that follows through ''(ii) the citizen attestation pilot program'' and inserting ''or entity electing the citizen attestation pilot program'';

[(2) by striking paragraph (3); and

[(3) by redesignating paragraph (4) as paragraph (3).]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Basic Pilot Program Extension and Expansion Act of 2003''.

SEC. 2. EXTENSION OF PROGRAMS.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''6-year period'' and inserting ''11-year period''.

SEC. 3. EXPANSION OF THE BASIC PILOT PROGRAM.

(a) IN GENERAL.—Section 401(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by inserting after ''United States'' the following: '', and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004''.

(b) REPORT.—Section 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) by striking ''The'' and inserting:

''(a) IN GENERAL.—The'', and

(2) by adding at the end the following new subsection:

''(b) REPORT ON EXPANSION.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

''(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

''(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the basic pilot program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a).''

(c) CONFORMING AMENDMENTS.—Section 402(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) in paragraph (2)(B), by striking ''or entity electing—'' and all that follows through ''(ii) the citizen attestation pilot program'' and inserting ''or entity electing the citizen attestation pilot program'';

(2) by striking paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(d) ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.—Title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''.

Mr. BOND. Mr. President, I ask unanimous consent that the Leahy-Brownback amendment at the desk be agreed to; the committee substitute, as amended, be agreed to; the bill, as amended, be read the third time and passed; the motions to reconsider be laid upon the table en bloc; and any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2170) was agreed to, as follows:

AMENDMENT NO. 2170

(Purpose: To extend the duration of the immigrant investor regional center pilot program for 5 additional years, and for other purposes)

At the end, add the following:

SEC. 4. PILOT IMMIGRATION PROGRAM.

(a) PROCESSING PRIORITY UNDER PILOT IMMIGRATION PROGRAM FOR REGIONAL CENTERS TO PROMOTE ECONOMIC GROWTH.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following:

''(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.''.

(b) EXTENSION.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking ''10 years'' and inserting ''15 years''.

SEC. 5. GAO STUDY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall report to Congress on the immigrant investor program created under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

(b) CONTENTS.—The report described in subsection (a) shall include information regarding—

(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;

(2) the country of origin of the immigrant investors;

(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;

(4) the number of immigrant investors that have sought to become citizens of the United States;

(5) the types of commercial enterprises that the immigrant investors have established; and

(6) the types and number of jobs created by the immigrant investors.

The committee amendment, as amended, was agreed to.

The bill was read the third time and passed, as follows:

S. 1685

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Basic Pilot Program Extension and Expansion Act of 2003''.

SEC. 2. EXTENSION OF PROGRAMS.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''6-year period'' and inserting ''11-year period''.

SEC. 3. EXPANSION OF THE BASIC PILOT PROGRAM.

(a) IN GENERAL.—Section 401(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by inserting after ''United States'' the following: '', and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004''.

(b) REPORT.—Section 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) by striking ''The'' and inserting:

''(a) IN GENERAL.—The'', and

(2) by adding at the end the following new subsection:

''(b) REPORT ON EXPANSION.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

''(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

''(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the basic pilot program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a).''

(c) CONFORMING AMENDMENTS.—Section 402(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) in paragraph (2)(B), by striking ''or entity electing—'' and all that follows through ''(ii) the citizen attestation pilot program'' and inserting ''or entity electing the citizen attestation pilot program'';

(2) by striking paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(d) ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.—Title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''.

SEC. 4. PILOT IMMIGRATION PROGRAM.

(a) PROCESSING PRIORITY UNDER PILOT IMMIGRATION PROGRAM FOR REGIONAL CENTERS

TO PROMOTE ECONOMIC GROWTH.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following:

''(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.''.

(b) EXTENSION.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking ''10 years'' and inserting ''15 years''.

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(b) CONTENTS.—The report described in subsection (a) shall include information regarding—

(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;

(2) the country of origin of the immigrant investors;

(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;

(4) the number of immigrant investors that have sought to become citizens of the United States;

(5) the types of commercial enterprises that the immigrant investors have established; and

(6) the types and number of jobs created by the immigrant investors.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004—Continued

Mr. BOND. Mr. President, I see the distinguished Senator from New Jersey in the Chamber. I believe he has an amendment, and if the pricetag is reasonable, we may be able to accept it.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I appreciate the manager's interest in permitting me to offer this amendment. I will try to do it as quickly as I can.

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

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

AMENDMENT NO. 2171 TO AMENDMENT NO. 2150

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself, Ms. MIKULSKI, Mr. JEFFORDS, Mrs. BOXER, Mr. CORZINE, Mr. SCHUMER, Mr. LEAHY, Mr. LIEBERMAN, Mr. KERRY, Mr. KENNEDY, Mr. EDWARDS, Ms. CANTWELL, and Mr. DURBIN, proposes an amendment numbered 2171.

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

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

The amendment is as follows:

(Purpose: To maintain enforcement personnel for the Environmental Protection Agency at the fiscal year 2003 level)

On page 98, line 5, before the period at the end, insert the following: '', of which, in addition to any other amounts provided under this heading for the Office of Enforcement and Compliance Assurance, $5,400,000 shall be made available for that office''.

Mr. LAUTENBERG. Mr. President, I rise to offer this amendment on behalf of myself and Senator MIKULSKI. We are pleased to have as cosponsors Senators JEFFORDS, KERRY, LIEBERMAN, BOXER, SCHUMER, LEAHY, CORZINE, DURBIN, CANTWELL, KENNEDY, and EDWARDS.

This appropriations bill cuts the number of enforcement officers in EPA's Office of Enforcement and Compliance Assurance by 54 positions. The amendment I am offering would restore those 54 positions so that EPA would have the same number of enforcement officers in fiscal year 2004 that the agency had in 2003.

Maintaining the current level of enforcement capacity is the least we ought to do in view of the reductions in enforcement staffing we have seen made in recent years.

An EPA report that was released earlier this year on the Nation's enforcement of the Clean Water Act paints a disheartening picture. It shows additional officers are critically needed. Without this amendment, the total staffing reductions made since fiscal year 2001 will equal 100 enforcement positions. That is equivalent to eliminating all of EPA's enforcement personnel for both the Northeast and Southeast regions.

The cost of the 54 positions my amendment would retain would be approximately $5.4 million. This cost, as the Senator from Missouri noted, will be offset by a tiny reduction of .003, or three one-thousandths of a percent, in EPA's $22.2 billion environmental programs and management account. Again, these positions are only going to keep the level of enforcement staffing where it presently is.

Our colleagues in the House have already approved a similar amendment. In July, they voted to add 54 enforcement positions back into the bill at the same cost using the same offset as the amendment before us.

The cuts in enforcement are taking a heavy toll, and the facts are these: Between 1999 and 2001, 76 percent of the country's major facilities with significant environmental violations received no formal enforcement action whatsoever. Inspections are down. There has been a 45-percent decrease in enforcement actions, and the penalties that are levied averaged a paltry $6,000. We have practically hung out a sign that tells polluters it is all right to flaunt the law, and the fines are hardly a deterrent to businesses generally.

The damage they do, however, is not free, and society will pay the price for the mounting violations, additional fish advisories, higher asthma rates, more trips to the hospital, and worse.

An internal EPA survey that was leaked to the press in January painted a dismal and frightening picture of what is happening at some of the largest facilities across the country. Fifty percent of major facilities are exceeding their permitted toxic release limits by 100 percent, 21 percent of the facilities are exceeding their toxic release limits by 500 percent, and 13 are exceeding toxic limits by an alarming 1,000 percent.

These are alarming statistics, and they portray a terrible picture.

I am pleased my colleagues will be considering what it means to these families who live downriver or downwind from these plants. None of us in this Chamber would ever knowingly subject our families to concentrations of mercury, dioxins, or other deadly toxins in our lakes and rivers that are 10 times the safe level. But we are doing that. If we don't stop companies from violating our environmental laws, we will continue to do that.

To my colleagues, I say we are not powerless; we can stop these dangerous violations, or at least keep them contained to a no larger level, which is an important first step this amendment takes care of.

I submit this amendment for consideration by the ranking member, the distinguished Senator from Maryland, and the chairman, the distinguished Senator from Missouri. I understand there has been a review of my amendment.

Ms. MIKULSKI. Mr. President, there has been a review of the Senator's amendment.

Mr. BOND. Mr. President, I believe we can accept this amendment. This is an increase, obviously. Our budget has been short in every area. We share the concern of the author of this amendment in ensuring EPA enforcement is strong enough.

There is no objection on this side.

Ms. MIKULSKI. Mr. President, I am an enthusiastic cosponsor of the Lautenberg amendment. He is absolutely right. This money is needed because it essentially restores funding for the environmental cops on the beat. We wanted to do this in our bill, but circumstances shackled us from doing so.

This is a good amendment. We are happy to accept it. I thank the Senator for his longstanding advocacy in this area.

The PRESIDING OFFICER. Is there further debate on this amendment?

Mr. BOND. Mr. President, a request has been made by the distinguished ranking member of the Appropriations Committee that we have a voice vote and not just accept these amendments without objection. It would be in order to ask for a voice vote.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 2171.

The amendment (No. 2171) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOND. Mr. President, Senator ENSIGN has a statement he wishes to make, but in the meantime we have a number of amendments that have been cleared on both sides.

AMENDMENT NO. 2172 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I send an amendment to the desk on behalf of Senator HOLLINGS and Senator GRAHAM of South Carolina. This is an amendment permitting the Secretary of VA to enter into an enhanced-use lease for the Medical University Hospital Authority in Charleston.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Mr. GRAHAM of South Carolina, for himself and Mr. HOLLINGS, proposes an amendment numbered 2172 to amendment No. 2150.

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

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

The amendment is as follows:

(Purpose: To authorize the Secretary of Veterans Affairs to enter into an enhanced-use lease at the Charleston Department of Veterans Affairs Medical Center, Charleston, South Carolina)

At the end of title I, add the following:

SEC. 116. Notwithstanding paragraph (2) of section 8163(c) of title 38, United States Code, the Secretary of Veterans Affairs may enter into an enhanced-use lease with the Medical University Hospital Authority, a public authority of the State of South Carolina, for approximately 0.48 acres of underutilized property at the Charleston Department of Veterans Affairs Medical Center, Charleston, South Carolina, at any time after 30 days after the date of the submittal of the notice required by paragraph (1) of that section with respect to such property. The Secretary is not required to submit a report on the lease as otherwise required by paragraph (4) of that section.

Mr. BOND. Mr. President, I believe this amendment has been cleared on both sides.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2173.

The amendment (No. 2173) was agreed to.

Mr. BOND. I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2173 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I send to the desk an amendment by Senator MIKULSKI which provides for the Corporation National Service to refrain from disclosing any information. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Ms. MIKULSKI, for herself and Mr. BOND, proposes an amendment numbered 2173 to amendment No. 2150.

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

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

The amendment is as follows:

(Purpose: To require notice and comment rulemaking, and prohibit disclosure of selection information, by the Corporation for National and Community Service)

On page 92, line 22, strike the period and insert the following: ": *Provided further,* That, for fiscal year 2004 and every year thereafter, the Corporation shall make any significant changes to program requirements or policy only through public notice and comment rulemaking: *Provided further,* That, for fiscal year 2004 and every year thereafter, during any grant selection process, no officer or employee of the Corporation shall knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of the Corporation that is authorized by the Corporation to receive such information.".

Ms. MIKULSKI. Mr. President, this amendment is simple and straightforward. It does two things. It says the Corporation for National Community Service must change the rules. It protects the integrity of the grant process by preventing corporation officials from disclosing sensitive grant information and insists that any changes for rules for volunteer programs must have public comment.

One of my guiding principles is that people have a right to know, to be heard and to be represented. The Mikulski-Bond amendment upholds this principle. It ensures that the public gets a meaningful chance to comment on decisions that affect their communities and the volunteers who serve them.

Recently, National Service tried to change the rules for AmeriCorps. I was very troubled by the corporation's actions for two reasons: the process and the policy. My first concern was the process or actually the lack of a process. The corporation acted behind closed doors without input from Congress, volunteer advocates, or the communities they serve. States, communities, and advocates were told they had just 1 business day to review sweeping new rules, to ask questions about them, and to offer suggested changes. The corporation "jackpotted" advocates, volunteers, States, and local communities.

My second concern is policy. The AmeriCorps rules changes would hurt communities who depend on volunteers by eliminating support for long-standing, successful volunteer programs and by increasing financial and administrative burdens on communities and volunteer organizations.

I commend the board of directors for stepping in to stop the corporation. But it is clear that the corporation needs specific direction to ensure that the public has a right to be heard. The corporation doesn't have a Senate-confirmed CEO. We are working on a bipartisan basis to get David Eisner confirmed as the new CEO, but the staff must not make rule changes without leadership and public comment.

This amendment is good process, and good policy. It makes sure that the public has an opportunity to comment on any changes to National Service programs. And the amendment protects the integrity of the National Service grant process.

I thank Senator BOND for working with me on this amendment. I urge my colleagues to support it.

I thank the Senator from Missouri for his strong efforts to reform the fiscal and sloppy practices that are at the corporation. The volunteers are terrific, and now with the new CEO, I think we will be able to move ahead.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank my colleague from Maryland for her very thoughtful and well-crafted amendment. She has been regarded as really one of the greatest defenders of the concept of AmeriCorps national service. Nobody has been a stronger champion of volunteer service. I have been pleased to be a junior partner to her in this effort. She has it just right. The volunteers are wonderful. The purpose is wonderful. We have had more than a few bumps in the road in terms of how the program has been administered, but we have high hopes that the new administration in that agency, with the new head, the financial officer, the chairman, will be on the right track.

I urge my colleagues to adopt this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 2173.

The amendment (No. 2173) was agreed to.

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

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOND. Mr. President, I now see my distinguished colleague from Nevada is in the Chamber. I yield the floor to him for such comments as he wishes to make.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 2152

Mr. ENSIGN. Mr. President, I rise in opposition to the Clinton-Enzi amendment.

First, I ask unanimous consent that letters from the Disabled American Veterans, Veterans of Foreign Wars, AMVETS, and the Paralyzed Veterans of America, all expressing their opposition to the Clinton-Enzi amendment, be printed in the RECORD.

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

DISABLED AMERICAN VETERANS,
Washington, DC, November 7, 2003.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CLINTON: On behalf of the more than one million members of the Disabled American Veterans (DAV), we write to express our concern over your proposed amendment to limit the use of funds for the Department of Veterans Affairs (VA) Capital Asset Realignment for Enhanced Services (CARES) initiative, pending modification of the initiative to include long-term care, domiciliary care, and mental health services in addition to reconvening the Commission for further hearings.

Initially, please know that preservation of the integrity of the VA health care system is of the utmost importance to the DAV and our members, and we greatly appreciate your efforts and insistence that long-term care, domiciliary care, and mental health services are included in the CARES initiative. These specialized programs are an integral part of providing sick and disabled veterans comprehensive health care. However, we are concerned your amendment may completely stall the CARES process and prohibit VA from making the necessary changes to improve its health care system and enhance access and services for veteran patients.

As you are aware, over the past 7 years, following national trends, VA's Veterans Health Administration converted from a primarily hospital-based system to an outpatient focused health care delivery model. With these sweeping changes, there clearly came a need to reassess VA's physical structures and the need to realign, renovate, and modernize VA facilities to meet the changing health care needs of veterans today and well into the future. Many VA medical facilities have an average age of 54 years and are in critical need of repair. Unfortunately, VA's construction budget has decreased sharply over the last several years with political resistance to fund any major projects before a formal plan was developed. VA responded with the CARES initiative. However, many desperately needed construction and maintenance projects, including seismic repairs that could potentially compromise patient safety, have been unnecessarily delayed. DAV strongly believes that CARES should not distract VA or Congress from its obligation to protect its physical assets whether they are to be used for current capacity or realigned.

On a national level, DAV firmly believes that realignment of capital assets is critical to the long-term health and viability of the entire VA health care system. We do not believe that restructuring is inherently detrimental to the VA health care system. However, we will remain vigilant and press VA to focus on the most important element in the process, enhancement of services and timely delivery of high quality health care services to our nation's sick and disabled veterans.

VA Secretary Anthony J. Principi met with DAV and other veterans service organizations this morning and gave us his personal commitment that there would be no realignment or reduction in services as a result of CARES for mental health or long-term care until a definitive plan is developed and in place to absorb the workload for these specialized services. His promise to us satisfies our over-arching concern about the inclusion of these essential programs. Therefore, we believe the CARES process should be allowed to proceed at this critical juncture.

Again, we want to thank you for your efforts on CARES and for your strong leadership and support of veterans' issues. We very much look forward to continuing a positive and meaningful working relationship with you regarding matters of great importance to veterans. We hope that you will reconsider your position on this issue based on these new developments.

Sincerely,

DAVID W. GORMAN,
Executive Director, Washington Headquarters.

AMERICAN VETERANS,
Lanham, MD, November 7, 2003.

MEMORANDUM

To: All Members of the U.S. Senate.
From: S. John Sisler, National Commander.
Re: Consideration of CARES amendment in VA/HUD appropriations bill.

It is our understanding that Sen. Hillary Rodham Clinton may offer an amendment to S. 1584, the VA/HUD appropriations bill, that would block the Department of Veterans Affairs from spending any money to enact the CARES Commission recommendations.

On behalf of the nationwide membership of AMVETS (American Veterans), I write to express our strong opposition to Sen. Clinton's proposed amendment aimed to stop progress of the Department of Veterans Affairs National Capital Asset Realignment for Enhanced Services (CARES) Plan.

The CARES initiative is clearly needed to assess what facilities will best meet the healthcare needs of America's veterans. AMVETS believes that adoption of the amendment would further delay moving forward with construction projects that are obviously essential to patient safety and that will eventually pay for themselves as a result of modernization.

AMVETS agrees with the Department of Veterans Affairs that many of their facilities need to be upgraded or replaced. We also agree with the Department that part of the solution for providing high quality health care to America's veterans is upgrading some facilities and replacing others with new and modern medical care treatment facilities.

AMVETS and I ask that you oppose any amendment that would cause the VA National CARES process to be used as an excuse to defer vital infrastructure maintenance and construction projects.

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, DC, November 6, 2003.

To: All Members of the U.S. Senate.
From: Robert E. Wallace, Executive Director, VFW Washington Office
Re: Clinton/Enzi Amendment to H.R. 2861.

On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I would like to take this opportunity to urge you to oppose the Clinton/Enzi Amendments to H.R. 2861, the FY 2004 VA/HUD Appropriations bill.

This amendment would limit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative. The VFW is concerned that if this amendment passes, the CARES process will essentially be put on indefinite hold.

We share Senators CLINTON's and ENZI's concerns regarding long-term care, domiciliary care, and mental health services; however, it is our understanding that the CARES Commission is currently reviewing the data to include these services. Therefore, at this stage, we believe it is important to move ahead as the location and mission of some VA facilities need to change to improve veterans' access; to allow more resources to be devoted to medical care, rather than the upkeep of inefficient buildings; and to adjust to modern methods of health care service delivery. Our Nation's veterans deserve no less.

Again, I urge you not to support the Clinton/Enzi Amendment regarding the limiting of funds for the VA CARES initiative.

PARALYZED VETERANS OF AMERICA,
Washington, DC, November 7, 2003.

MEMBERS,
U.S. Senate,
Washington, DC.

DEAR SENATOR: On behalf of the Paralyzed Veterans of America (PVA) I am writing to express our concerns regarding an amendment we understand will be offered by Senator Hillary Rodham Clinton to the VA, HUD, Independent Agencies Appropriation bill. As we understand, this amendment addresses the Department of Veterans Affairs' Capital Asset Realignment for Enhanced Services (CARES) process and, if passed, will limit the expenditure of funds for the process greatly delaying necessary improvements to the VA's medical care system.

While PVA concurs with Senator CLINTON that the CARES process inadequately addresses issues of long-term care, mental health services and rural health care we believe that the amendment will so severely restrain in the process that the many beneficial aspects of CARES will be seriously harmed. Delay of CARES projects that will benefit veterans, and in particular veterans with spinal cord injury or dysfunction, can only serve to weaken the VA health care system upon which our members and millions of other veterans rely.

Veterans' service organizations have received assurance from Secretary of Veterans Affairs Anthony Principal that no VA beds will be closed or capacity reduced until appropriate alternative health care resources have been identified and put in place. Additionally, the Secretary has assured us that long term care and mental health services will be included in the planning process with specificity to be provided as to who will be involved, how the process will operate and what timelines will be put in place. Finally the Secretary has indicated that the issue of inter-VISN (Veterans Integrated Service Network) planning and cooperation will be addressed.

In light of these assurance and the need to proceed with the positive findings, to date of the CARES process, PVA believes any restrictions on funding for the CARES process can only serve to delay improvements in capacity and access of VA health care. We request that no limitation be place on appropriated dollars for the Department of Veterans Affairs and that the CARES process be allowed to expeditiously move forward.

Sincerely,

DELATORRO L. MCNEAL,
Executive Director.

Mr. ENZI. As we observed Veterans Day yesterday, and remembered the sacrifices each and every veteran has made to grant us our current freedoms, Congress should be doing all it can to help modernize and improve the VA

healthcare system at the earliest possible time. This amendment would derail this effort.

Congress should be finding new and innovative ways to get healthcare services delivered in a more timely and convenient way to our former servicemen and women. This amendment would postpone this effort.

Finally, Congress needs to ensure that the foundation and future of the VA healthcare system is stable and secure, giving our veterans the peace of mind that they will receive high quality and accessible healthcare whenever it is required. This amendment would hinder this effort.

The VA will soon finalize its 20-year Capital Asset Realignment for Enhanced Services initiative, better known as the CARES plan, for updating medical facilities. Starting in the last administration and continuing in the present one, VA evaluated its future need for healthcare facilities, matched projected needs against current facilities, and developed a plan to match resources to needs.

The amendment being proposed would impose unnecessary conditions before VA could go forward with this vital plan.

Through CARES, VA is examining where its facilities are located, where veterans are projected to be living in the next 20 years, and what their health needs will be. Nationwide, VA provides medical care to almost 5 million veterans.

VA's legacy facilities are old, with the average age over 50 years, many dating back all the way to World War I or even earlier. These initial facilities were designed to provide medicine as it was practiced a half century ago, and in most cases, are poorly located to serve veterans where they live today or are expected to live in the future.

CARES will enable VA to leverage scarce resources by directing funding from the maintenance of obsolete facilities and applying that funding to the direct provision of healthcare services and staffing. It calls for construction of new facilities where the veteran population is growing, such as the southeastern and western United States. Additionally, it provides for the realignment of facilities that are redundant, out of date, or poorly located.

The Draft National CARES Plan contains over $4.6 billion in capital investments, including 11 million square feet of renovation, 9 million square feet of new construction, 2 new hospitals, 48 new high priority community based outpatient clinics, 2 new blind rehabilitation centers, and 4 new spinal cord injury units.

The Draft National CARES Plan, completed in August in this year, is a comprehensive integrated national proposal. The CARES process has been thorough and inclusive, combining a set of national assessment standards with planning at the local and regional levels.

This plan is now under review by the independent CARES commission, established by Secretary Principi to objectively examine the plan, to obtain comments and conduct public hearings to ensure stakeholder views are considered. The CARES commission conducted 38 hearings, heard from over 700 witnesses; including employees, local government officials and veterans; and took over 180,000 comments.

The bottom line is that the Draft National CARES Plan has been exposed to lengthy and close public analysis, and those observations will be included within the final plan. Next month, the CARES commission will submit their independent and comprehensive plan recommendations to the Secretary, which he will accept or reject as a whole.

Placing further conditions on an already well-detailed plan, which this amendment would do, would hold up, and even disrupt, VA's long delayed modernization process.

For example, the House and Senate Appropriations Committees have declined to provide more than minimal funding for VA medical constructions until VA provides a nationwide plan for managing its medical facilities. CARES is that plan.

Further, this amendment would inherently prevent VA from implementing many critical components of the CARES plan. Anything less than full implementation of the CARES plan recommendations will lead to inequitable access to care. It cannot go forward with only parts of the plan. CARES is a comprehensive national plan, and it must be accepted in its totality to be effective.

Knowing this to be true, four of the major national veterans' service organizations: the Disabled American Veterans, the Veterans of Foreign Wars, the Paralyzed Veterans of America, and AMVETS, have come out in either strong opposition or have raised serious concerns about the Clinton-Enzi amendment.

I believe it is critically important that we consider the red flags raised by these organizations that represent almost 4 million veterans nationwide.

Let us consider the actions taken by the committee of jurisdiction over the CARES initiative, the Senate Veterans' Affairs Committee. As a member of this committee, I have been intimately involved in the step-by-step process of analyzing this initiative, and I believe the VA committee has dedicated more than ample time and resources to the study of this plan.

The committee held an extensive hearing on the CARES initiative just this past September, receiving updates from top VA officials and the Secretary himself, on the progress of the plan.

Ultimately more important, the VA committee in September voted unanimously to give the Secretary the authority to implement the Draft National CARES plan once it is completed. In doing so, the committee outlined very specific priorities for the implementation of this plan.

First, and what is paramount for the CARES process to be viable, any medical facility that is closed must be replaced with a facility that adequately serves the healthcare needs of the region. Second, any locality that is in need of a full-service hospital must receive one. And third, any region that is in need of an outpatient clinic to provide basic care services must receive one.

These priorities, as agreed to by every member of the VA committee, emphasize, in my belief, that we support the CARES initiative and want it to move forward as quickly as possible. This amendment, without question, would not allow this to happen

In my opposition to this amendment, I do understand the concerns of the sponsors. However, I believe that they have been more than adequately addressed.

The sponsors believe that the CARES process has neglected to address the areas of long-term care, domiciliary care and mental health, mainly in rural areas. I strongly disagree with these assertions.

By design, the VA seeks to provide long-term care services in the least restrictive setting that is compatible with a veteran's medical condition and personal circumstances. This allows VA to reserve nursing home care for veterans who can no longer be safely cared for in home- and community-based settings.

VA expects to meet most of the future growth for long-term care services through non-institutional settings that keep veterans close to spouse, home and friends.

Since there are critical renovation and replacement nursing home needs that have been recognized, the plan includes several needed nursing home renovations and replacements that are believed to be within the projected outcomes of the new model.

In planning for CARES, the networks were to develop options taking care to preserve current bed levels for nursing home and inpatient long-term mental health programs.

More recent data is now available and suggest that both disability among the elderly and nursing home utilization rates have diminished. The discrepancy between projected needs from the current planning model and actual current demand prompted VA, earlier this year to commence in an intensive review and refinement of the long-term care planning model.

However, because the new data could not be incorporated into a new planning model for the current cycle of the CARES process, VA chose to treat the long-term care issues neutrally; that is, there will be no major changes or negative impact on care or capacity in long-term care. Once the data from the new model is available and analyzed, it will be used for future strategic planning activities.

On the issue of rural coverage, VA is, in fact, very sensitive to the healthcare

needs of rural and frontier veterans. It was a principal factor for several of the CARES commission hearings to be located in rural locales. Additionally, the Draft National CARES plan calls for the designation of critical access hospitals, recognizing the vital role that many of VA's small facilities fulfill in providing access to acute hospital care in rural or less densely populated areas. Moreover, it recommends 48 new sites for community-based outpatient clinics, many of those in rural areas.

The amendment before us is really nothing more than a solution in search of a problem. The VA has gone to great lengths to incorporate every stakeholder, especially our veterans, in the CARES process throughout.

I believe they have done an excellent job in creating a realistic and practical vision for the future of VA healthcare services, and we in the United States Senate should help them make that vision a reality.

What this all boils down to is how do we best serve the immediate and growing needs of our Nation's veterans. No one here is saying that the draft plan is perfect. However, we need to possess the wisdom and foresight to say we have all the necessary components in place to make a positive change and we should move forward.

Many injured or ill Vietnam veterans were disillusioned and critical when treated at VA medical facilities designed and built to treat their World War II fathers or even World War I grandfathers. Veterans of Iraq and Afghanistan are now returning to many of those same facilities.

It is time to take the first step toward bringing the level of care for all our veterans into the 21st century. They have waited long enough, and we need to act now to improve the lives of each and every veteran in America.

In summary, we all have made commitments to our veterans that we should take care of them. These are the men and women who have donned the uniform of the United States and have made incredible sacrifices so that we can live in freedom. We live in the greatest country, I believe, in the history of the world, with the most freedoms of any people in the history of the world. This country of ours has only remained free because people have been willing to lay their lives down to ensure those freedoms for us, our children, and our grandchildren.

The amendment that has been proposed today would violate the commitment to our U.S. veterans. I say that because the veterans are moving away from the old rust belt. We should be taking the health care, which is their primary issue, to our veterans. Services, need to follow where the veterans are moving. We should not be trying to prop up institutions, instead, we should be moving the healthcare services where those veterans are relocating.

Secretary Principi is doing a wonderful job of trying to put the priorities of the veterans over process, over other constituencies, and maybe over a congressional district. He is trying to reform the system, recognizing that veterans are moving and that the money should follow so that the services are provided to those veterans.

I live in the fastest growing State and the fastest growing metropolitan area in the United States. It must have the kind of quality of lifestyle that veterans like because they are moving there in droves. Per capita, our State now has the most veterans in the United States. Yet, for instance, the Las Vegas metropolitan area that has 1.6 million people does not have a VA hospital. There are a couple hundred thousand veterans living in the area and we have no VA hospital. We have VA clinics but no VA hospital. So when our veterans need surgery or have complicated procedures, they have to travel away from their families down to southern California to get those services.

We can understand it in smaller population areas, maybe, but in a major metropolitan area, where veterans are choosing to live, that is not keeping the commitment we have made to our veterans.

So I rise in strong opposition to this amendment and will fight against its passage. If there is a vote on it, we will fight against the votes to pass it, or if it is tried to be snuck in the omnibus bill, if this bill does not actually get passed today, we will fight against putting it in the omnibus bill. The reason why is because it is so important that we look the men and women in the face who are serving in our military today and say we are going to keep the commitment we are making to them today.

They already made the sacrifices, and now we need to keep our commitment to them. In the future, we will keep our commitment to them and they can count on that.

Secretary Principi and the administration, I believe, are trying to do the right thing. They are trying to say that as the veterans are moving, we recognize that. For a long time the VA has needed updating and changing, and they finally have the courage to start doing that. As a legislative body, let us not stop that process.

My colleague Senator REID and I have worked very hard on improving the services for veterans in our State, both in northern and southern Nevada, as all Senators try to do for their State. The bottom line is we should not hurt the services in the fastest growing areas of our country where the waits are so long, where people have to travel out of State to get the proper medical services. Let us look at our veterans and say no matter where they move in the United States, they are going to get the kind of services they have earned. And make no mistake about it, they have earned those services.

Anybody who has taken a look at what I believe is this ill-conceived amendment will say this would, in effect, do harm to many veterans in this country and they deserve better than that.

I thank the manager of the bill and the ranking member for the time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 2174 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I thank the Senator from Nevada. We are working on some possible amendments from the Senator from Illinois. Also, Senator MIKULSKI has a major amendment. I would like to move very quickly to do some amendments that I believe will not require any extended discussion. First for myself, I send an amendment to the desk and ask for its immediate consideration

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. BOND) proposes an amendment numbered 2174.

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

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

The amendment is as follows:

(Purpose: Increase funds for the Office of Federal Housing Enterprise Oversight to conduct audits, investigations and examinations and to provide for additional emergency)

On page 61, beginning on line 7, strike out ''$32,415,000,'' and all that follows through the period on line 16 and insert in lieu thereof ''$39,915,000, to remain available until expended, to be derived from the Federal Housing Enterprise Oversight Fund: Provided, That not less than 60 percent of total amount made available under this heading shall be used for licensed audit personnel and audit support: Provided further, That an additional $10,000,000 shall be made available until expended, to be derived from the Federal Housing Enterprise Oversight Fund only upon a certification by the Secretary of the Treasury that these funds are necessary to meet an emergency need: Provided further, That not to exceed such amounts shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: Provided further, That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $0.''.

Mr. BOND. At the request of the administration, this amendment would increase funding for the Office of Federal Housing Enterprise Oversight, OFHEO, for this year by $7.5 million. These funds are intended to strengthen OFHEO's examination, legal and human resources functions, and the fund's special investigation. The amendment includes an additional $10 million that is available only upon certification by the Secretary of the Treasury that there is an emergency need for additional funds.

There is, I believe, a compelling need to reform the regulatory structure governing Fannie Mae and Freddie Mac. At a minimum, the senior management

of OFHEO must be replaced, and replaced now.

Senior management, in my view, has repeatedly failed to meet the most basic requirements of OFHEO's missions. For example, it took over 10 years for OFHEO to issue its risk-based capital standards, despite the fact that this is OFHEO's primary mission and key to its regulatory oversight of the GSEs.

This failing became even more evident when OFHEO publicly praised Freddie Mac's management just days before Freddie Mac's management was removed for accounting irregularities.

I applaud the work of the Banking Committee in the Senate and in the House, Senator SHELBY, Congressman BAKER, and the ranking members for making regulatory reform of OFHEO a priority. I look forward to working with them next year to help develop the right regulatory system.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. I concur with my colleague.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2174) was agreed to.

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

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2175 TO AMENDMENT NO. 2150

Mr. BOND. I send to the desk an amendment on behalf of Senator STEVENS relating to the Native American Housing Assistance and Determination Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Mr. STEVENS, proposes an amendment numbered 2175 to amendment No. 2150.

The amendment follows:

(Purpose: To provide an allocation of funding under the Native American Housing Assistance and Self-Determination Act of 1996 for the State of Alaska)

On page 86, between lines 11 and 12, insert the following:

SEC. 2___. NATIVE AMERICAN HOUSING.

ALLOCATION OF FUNDING.—Of the amounts made available to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) for fiscal year 2004, there shall be made available to each grant recipient the same percentage of funding as each recipient received for fiscal year 2003.

Mr. BOND. This is an amendment dealing with Native American housing. It is a simple amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Ms. MIKULSKI. Mr. President, I have no objection. This has been a longstanding issue raised by our colleague from Alaska. It is a very compelling situation.

The PRESIDING OFFICER. If there is no further debate on the amendment, the amendment is agreed to.

The amendment (No. 2175) was agreed to.

AMENDMENT NO. 2176 TO AMENDMENT NO. 2150

Mr. BOND. On behalf of the Senators from Illinois, Mr. DURBIN and Mr. FITZGERALD, I send an amendment to the desk dealing with the North Chicago VA Medical Center, making it available to the maximum extent feasible. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Mr. DURBIN, for himself and Mr. FITZGERALD, proposes an amendment numbered 2176 to amendment No. 2150.

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

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

The amendment is as follows:

(Purpose: To insert a provision relating to VA-Navy sharing of facilities at North Chicago VA Medical Center)

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall make the North Chicago VA Medical Center available to the Navy to the maximum extent feasible. The Secretary shall report to the Senate Appropriations Committee by June 30, 2004, regarding the progress in modifying North Chicago VA Medical Center's surgical suite and emergency and urgent care centers for use by veterans and Department of Defense beneficiaries. Further, the Secretary shall consider having the new joint VA/Navy ambulatory care center to serve both veterans and Department of Defense beneficiaries sited on or adjacent to the North Chicago VA Medical Center and shall consult with the Secretary of the Navy to select the site for the center. The Secretary of Veterans Affairs shall report to the Senate Appropriations Committee on the site selection by June 30, 2004.

Mr. BOND. I yield for any statement by the Senator from Illinois.

Mr. DURBIN. I thank the chairman and the ranking Democrat for accepting this amendment on behalf of Senator FITZGERALD and myself. We are trying to encourage the cooperation of the North Chicago Veterans Hospital and the Great Lakes Training base for the benefit of the veterans, the sailors, and the taxpayers.

Ms. MIKULSKI. This is an excellent amendment. We concur.

Mr. BOND. This is something we need to do throughout the system, and we need to have a better integration of the health care facilities of the active military and the Veterans Affairs. I commend the Senators from Illinois and hope this model can be adopted elsewhere.

Mr. DURBIN. Mr. President, I want to thank the bill managers for accepting the amendment that I am offering today, along with Senator FITZGERALD, to encourage further sharing of health care facilities between the Department of Veterans Affairs and the Navy in North Chicago, IL.

The Illinois delegation has worked in a bipartisan manner for four years to encourage sharing between the North Chicago VA Medical Center and the Great Lakes Naval Training Center (NTC) because of the proximity of the medical facilities. The Navy's hospital is 1½ miles from the North Chicago VA Medical Center, and the VA property adjoins Great Lakes NTC. The aim of the delegation was to keep the North Chicago VA Medical Center open, improve options for medical care for the Navy, improve training options for VA and Navy medical personnel, reduce costs, and improve access to health care for veterans and Department of Defense beneficiaries.

The VA's process to consolidate veteran's health care facilities in the Chicago area allowed the North Chicago VA Medical Center to stay open, but with the proviso that more sharing between the VA and the Navy would take place.

The Navy agreed to use the North Chicago VA Medical Center facilities as much as possible, in lieu of the Navy's outdated hospital, but renovation of a currently closed ward at the North Chicago VA Medical Center is required for a surgery suite, and the emergency and urgent care centers must be upgraded. The VA is planning to award a design contract for this work at the end of this year.

For its part, the Navy has agreed to build a new ambulatory care center that could be used for active duty military personnel as well as for veterans. It will be paid for out of the Navy's budget, but I believe that the VA should have input into the site selection. Having the ambulatory care center on or adjacent to the North Chicago VA Medical Center would make sense. The center will be used by both veterans and military personnel, and having it on or adjacent to the VA facility would ease veterans' access to it. The North Chicago VA Medical Center sits on a large tract of land, and, while the Naval base is accessible, it still requires gaining entry through the enhanced security procedures of a military base, making it more difficult for veterans if the center were physically on the base.

The amendment that Senator FITZGERALD and I offer today requires a report regarding the progress in modifying North Chicago VA Medical Center's surgical suite and emergency and urgent care centers for use by veterans and Department of Defense beneficiaries, demonstrating continued Congressional interest that these plans stay on track and on schedule. The amendment also requires that the Secretary of Veterans Affairs consult with the Secretary of the Navy to select the site for the ambulatory care center, in order to ensure a role for the Secretary of Veterans Affairs in negotiations with the Secretary of the Navy on site selection.

I appreciate the efforts of the bill managers to work with us on this amendment and to include it in the managers' package.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2176) was agreed to.

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

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2177 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, I send another amendment to the desk on behalf of Senator MURKOWSKI relating to rural teacher housing, amending the Denali Commission Act to provide the ability of the Commission to make grants and loans to public school districts serving remote incorporated cities and unincorporated communities in Alaska.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for Ms. MURKOWSKI, proposes an amendment numbered 2177 to amendment No. 2150.

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

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

The amendment is as follows:

(Purpose: To provide housing for teachers, administrators, and other school staff in remote areas of Alaska since such housing is often extremely substandard, if it is even available at all, and rural school districts in Alaska are facing increased challenges, including meeting the mandates of the No Child Left Behind Act, and in recruiting and retaining employees due to a lack of housing units)

At the appropriate place, insert the following:

SEC. ___. RURAL TEACHER HOUSING.

Section 307 of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended by adding at the end the following:

''(e) RURAL TEACHER HOUSING.—The Commission may make grants and loans to public school districts serving remote incorporated cities and unincorporated communities in Alaska (including Alaska Native Villages) with a population of 6,500 or fewer persons for expenses associated with the construction, purchase, lease, and rehabilitation of housing units in such cities and communities. Unless otherwise authorized by the Commission, such units may be occupied only by teachers, school administrators, and other school staff (including members of their households).''.

Mr. BOND. This is carrying on our efforts to provide the best possible services to people in underserved areas of Alaska. I urge its adoption.

The PRESIDING OFFICER. Is there further debate?

Ms. MIKULSKI. I concur with the amendment.

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

The amendment (No. 2177) was agreed to.

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

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2178 TO AMENDMENT NO. 2150

Ms. MIKULSKI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI] proposes an amendment numbered 2178 to amendment No. 2150.

Ms. MIKULSKI. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for certain capitalization grants)

On page 104, between lines 14 and 15, insert the following:

For an additional amount for capitalization grants for State revolving funds, $3,000,000,000, to remain available until expended, of which $1,850,000,000 shall be for capitalization grants from State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and $1,150,000,000 shall be for capitalization grants from State drinking water treatment revolving loan funds under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12): *Provided*, That the entire amount made available under this paragraph is designated by Congress as an emergency requirement under section 502(c) of H. Con. Res. 95 (108th Cong.).

Ms. MIKULSKI. Mr. President, I rise to offer an amendment to increase funding for our communities for our Nation's waste system. My amendment is simple and straightforward. It adds $3 billion to the VA–HUD bill for a total of $5.2 billion for water and sewer infrastructure. My amendment increases funding in the EPA clean water State revolving loan fund to $3 billion, over $1.3 billion. My amendment also increases funding in the EPA drinking water revolving fund from $850 million to $2 billion.

When I offer this amendment, I want to be very clear. I am in no way critical of the effort the committee has made. I have been part of the effort. I congratulate Senator BOND for his robust funding for water and sewer systems. I thank him for his hard work on this issue. But we simply did not have enough money in our allocation. The budget cut $500 million from the President's budget from the clean water State revolving loan fund. Senator BOND and I worked together to restore that $500 million, and we are very grateful for that. But the Nation calls out for more.

Our Nation's communities are facing enormous needs in their effort to provide clean water and safe water and to comply with Federal environmental mandates. The need for better water and sewer systems is much greater than the amount that we now have in the Federal checkbook.

There have been studies, and studies after that, and the needs have been real and valid and have been validated by independent research.

The Federal Government must do more to help meet these needs. Failure to do so places a great burden on the local taxpayers because it shifts the responsibility to them. We have created an unfunded Federal mandate. At the same time, the lack of proper water and sewer threatens public health and environmental safety. Our State and local governments are also revenue-starved to meet these mandates.

Let me tell you about some of the studies.

In fiscal year 2000, the Water Infrastructure Network said our water and sewer systems will face a funding gap of $12 billion over the next 20 years. GAO said the cost to really do our water and sewer systems the way they need to meet not only environmental but public health concerns will be $300 billion over 20 years. There is study after study after study that validates this.

In my own State of Maryland, there is $4 billion in unmet needs. This isn't Senator BARBARA MIKULSKI talking; this is the State of Maryland speaking. Our Eastern Shore and rural communities are trying hard to reduce harmful nutrients that pollute the Chesapeake Bay. Every time they increase their bonding authority to pay for unfunded mandates, it means one less school or one less highway. But the needs of Maryland are a cameo of the needs of the Nation. We are simply not putting enough money in the Federal checkbook for water and sewer systems.

In my own hometown of Baltimore, our sewer system was built over 100 years ago. We are under a court order instituted by the EPA to rebuild it. It will cost $1 billion to do this. In order to be able to do this, ratepayers will pay the bill.

This is an issue where growing green also generates jobs.

The second reason this amendment is necessary is that it creates jobs. It is estimated for every $1 billion we spend on water infrastructure, 40,000 jobs are created, from the civil engineers and architect who design on it, to construction contractors, to heavy equipment manufacturers, and even those who run the lunch wagons at the job site. This creates jobs, but it has value for the taxpayer. It will give the State a much needed breather as they themselves are trying to meet this need.

My amendment is temporary and it is targeted. It is a one-time $3 billion increase. This isn't $3 billion every year; it is $3 billion this year. The State loan funds have widespread support and would go a long way in helping this.

The President requested $3.7 billion for water and sewer projects in Iraq. The President requested this funding as an emergency.

I respect what the President said, but we have an emergency here. We have crumbling water systems that threaten

public health. We need billions of dollars. We have rising rates for our citizens, and at the same time the local ratepayer is going to shoulder the responsibility. If there is an emergency in Iraq, there is surely a water and sewer emergency in this country.

My amendment has widespread support—from the Water Infrastructure Network, a coalition of 47 nationally organized recognized organizations, to local officials, water and sewer service providers, engineers, construction contractors, labor unions, and environmentalists. This is the place where it all comes together—mayors, Governors, workers, private sector.

These will not be government jobs. These will be jobs in the private sector, in the local community, meeting local needs. Groups such as the League of Cities and the Association of Counties and others do that.

I ask unanimous consent that two letters of support for my amendment be printed in the RECORD. They are from the Water Infrastructure Network, the Coalition of the American Rivers and Ocean Conservatory, and others.

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

WATER INFRASTRUCTURE NETWORK,
Washington, DC, October 24, 2003.

Hon. BARBARA MIKULSKI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Re support for $5.2 billion for Clean & Safe Water SRFs.

DEAR SENATOR MIKULSKI: The Water Infrastructure Network (WIN) strongly supports your $5.2 billion amendment for the Clean Water and Safe Drinking Water State Revolving Funds (SRFs) in the Fiscal Year (FY) 2004 Veterans, Housing and Independent Agencies Appropriations bill. WIN is a broad-based coalition of 47 nationally-recognized organizations that represent local elected officials, drinking water and wastewater service providers, environmental and health administrators, engineers, labor unions, construction contractors, and environmentalists. WIN is dedicated to preserving and protecting the health, environmental, and economic gains that America's drinking water and wastewater infrastructure provides.

The SRFs help local communities meet water quality standards, repair and replace old and decaying pipelines and plants, protect public health, and ensure continued progress in restoring the health and safety of America's water bodies. This investment is a much-needed down payment to improve our nation's water and wastewater treatment plants. Your support for additional funding for the SRFs would help stimulate the economy, create jobs and provide funds for securing our water infrastructure for generations to come. WIN supports your proposed increase in federal funding in FY 2004 for the Clean Water SRF from its current level of $1.35 billion to $3.2 billion and for the Drinking Water SRF from $850 million to $2 billion. WIN believes this is an important first step toward developing a long-term, sustainable solution to close our country's infrastructure funding gap.

Safeguarding clean and safe water must remain one of our nation's highest priorities even though funding its continued improvement is one of our greatest challenges. Thank you for supporting clean and safe water in America.

Sincerely,

American Concrete Pipe Association (ACPA); American Concrete Pressure Pipe Association (ACPPA); American Council of Engineering Companies (ACEC); American Public Works Association (APWA); American Society of Civil Engineers (ASCE); American Water Works Association (AWWA); Associated Equipment Distributors, Inc. (AED); Association of Equipment Manufacturers (AEM).

Associated General Contractors of America (AGC); Association of California Water Agencies (ACWA); Association of Metropolitan Sewerage Agencies (AMSA); Association of Metropolitan Water Agencies (AMWA); California Rebuild America Coalition (CalRAC); Construction Management Association of America (CMAA); Chesapeake Bay Foundation (CBF); Design-Build Institute of America (DBIA).

Environmental and Energy Study Institute (EESI); International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; International Brotherhood of Teamsters; International Union of Bricklayers and Allied Craftworkers (BAC); International Union of Operating Engineers, AFL-CIO (IUOE); Laborers' International Union of North America (LIUNA); National Association of Counties (NACo).

National Association of Flood and Stormwater Management Agencies (NAFSMA); National Association of Regional Councils (NARC); National Association of Sewer Service Companies (NAASCO); National Association of Towns and Townships (NATaT); National Heavy & Highway Alliance; National League of Cities (NLC); National Precast Concrete Association (NPCA); National Ready Mixed Concrete Association (NRMCA).

National Rural Water Association (NRWA); National Society of Professional Engineers (NSPE); National Urban Agriculture Council (NUAC); Operative Plasters' and Cement Masons' International Association; Pipe Rehabilitation Council (PRC); Plastics Pipe Institute, Inc. (PPI); Portland Cement Association (PCA); Rural Community Assistance Program, Inc. (RCAP).

SAVE International (SAVE); Uni-Bell PVC Pipe Association (Uni-Bell); The Vinyl Institute; Underground Contractors Association of Illinois (UCA); United Brotherhood of Carpenters and Joiners of America (UBC); Water Environment Federation (WEF); WaterReuse Association (WasteReuse); Western Coalition of Arid States (WESTCAS).

October 27, 2003.

Support Mikulski amendment to fight water pollution on VA/HUD 2004 appropriation bill.

DEAR SENATOR: We ask you to vote in favor of Senator Mikulski's floor amendment to the VA–HUD appropriations bill appropriating $3 billion this year to fund critical drinking water and wastewater infrastructure needs. Our nation's perpetual failure to invest in maintaining our drinking water and sewer systems is endangering public heath and safety. The gap between our needs and our spending is on the order of $15 billion each year according to EPA.

The current funding is grossly insufficient to meet our nation's water quality needs, including addressing drinking water security issues, removing arsenic and other toxins from our tap water, rehabilitating aging sewer plants, controlling raw sewer overflows, decontaminating stormwater discharges, and minimizing polluted runoff. The cumulative impact of our society's failure to invest in clean water year after year has begun to cause very serious harm to public health, to the environment, and to our economy.

Experts estimate 7.1 million cases of mild to moderate and 560,000 cases of moderate to sever infectious waterborne disease in the United States each year, costing untold billions of dollars in health care and other expenses.

The CDC found that in 1999–2000 there were 39 disease outbreaks associated with drinking water and 59 associated with recreational water. Experts say approximately 1 in 10 waterborne disease outbreaks are detected.

There are over 200,000 water main breaks/yr. in the U.S.

The loss of swimming opportunities (beach closings) due to pathogen contamination is valued at $1–2 billion annually in the U.S. (EPA, 1995).

Economic losses due to swimming-related illnesses estimated at $28 billion annually (EPA, 1995).

There are estimated to be at least 40,000 discharges of raw sewage each year from ''sanitary'' sewer systems into streets, playgrounds, and waterways and 400,000 basement backups (U.S. EPA 2001).

Raw sewage discharges from combined sewer systems dump 1.2 trillion gallons of raw sewage into waterways each year in more than 700 U.S. cities.

Over 90% of U.S. city water supplies continue to use pre-WWI era technology to treat drinking water.

Earlier this year the Senate in its Budget Resolution approved a $3 billion increase in funding for the SRFs above last year's level, but unfortunately this proposal did not survive conference with the House. The Mikulski amendment would make this critical funding available through an emergency designation. Since inadequate drinking water and wastewater treatment results in raw sewage discharges, contaminated drinking water, beach closings, and waterborne disease outbreaks, this national problem clearly qualifies as a public health emergency.

We strongly urge you to support investing now in a clean water future for our nation. We also ask you to support any other amendments that improve environmental protection and to keep the bill free of anti-environmental riders.

Sincerely,

S. Elizabeth Birnbaum, Director of Government Affairs, American Rivers, Bob Perciasepe, Chief Operating Officer, National Audubon Society; Paul Schwartz, National Campaigns Director, Clean Water Action; Dawn Hamilton, Executive Director, Coast Alliance; Diana Neidle, Public Policy Advocate, Consumer Federation of America; Michele Merkel, Counsel, Environmental Integrity Project; Sara Zdeb, Legislative Director, Friends of the Earth.

Lisa Ragain, GWU Medical Center, Center for Risk Science and Public Health, National Association of People with AIDS; Olivia B. Wein, Staff Attorney, National Consumer Law Center; Nancy Stoner, Senior Attorney, Natural Resources Defense Council; Catherine Hazlewood, Clean Oceans Programs Manager, The Ocean Conservancy; Kyle Kinner, Legislative Director, Physicians for Social Responsibility; Anna Aurilio, Legislative Director, U.S. Public Interest Research Group; Michele Boyd, Legislative Representative, Public Citizen; Debbie Boger, Deputy Legislative Director, Sierra Club.

Ms. MIKULSKI. Mr. President, in conclusion, my amendment helps our communities by providing more funding to meet immediate water and sewer

needs so our communities can have clean and safe water. Water and sewer funding provides dual value for the taxpayers. It helps public health, it helps the environment. We will have clean water and safe water, and it creates jobs.

I urge my colleagues to support my amendment to provide $3 billion more for our communities because I know every single State could use at least $1 billion more and I wish we could do it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I rise to speak on the underlying bill as well as to make some general comments about the Defense authorization bill we just passed and a few comments about the veterans provisions generally.

I thank the Chair and the ranking member for their good work on the underlying bill. I understand we hope to pass this very important appropriations bill before 6 o'clock this evening.

I was unable to be here earlier today. I want to make a couple of comments regarding veterans generally.

There are 400,000 veterans in Louisiana, and 12,000 of them are directly affected in a very positive way by the underlying bill.

Before I speak about that, I wish to say that the chairman of the Armed Services Committee, Senator WARNER from Virginia, and our ranking member, Senator LEVIN, should be commended for crafting a very good Defense authorization bill at a very difficult time.

I was formerly a member of the Armed Services Committee and worked for many years to fashion a bill, and I know how difficult it is even in times that are not stressful, much less in a time when we are in a war against terror in Iraq, here at home and other places around the world. It seems to me, as a former member of the committee, that the conference could have imploded many different times. But to Senator WARNER's and Senator LEVIN's credit and very good bipartisan working relationship, that bill was passed earlier today.

While I don't agree with all the provisions of it, there are a couple which are very important to our troops in Louisiana: No. 1, the 4.1 percent pay raise for all of our troops. And, No. 2, we moved closer to completely eliminating the disability tax on veterans in Louisiana with 20 years of service; that is, 12,000 men and women who now, when they retire, do not get their full retirement and disability benefits but basically have to give up 50 percent of that benefit. This bill we passed earlier today corrects that. For those families and their loved ones, that will mean immediate help.

In addition, the TRICARE eligibility expansion for guardsmen and reservists, if they are unemployed or cannot acquire health insurance from their employers, is a tremendous gesture to the Guard and Reserve who we are counting on and depending on to help defend us at this time. We literally could not win this war or even begin this endeavor without their commitment.

We must remain committed to the quality of life of our veterans and to letting our Guard and Reserve men and women know how much we appreciate them. We must keep ever vigilant, particularly when it comes to the Guard and Reserve. We are getting ready to send another 43,000.

I wish to make a couple of comments about the tax treatment of our Guard and Reserve and speak about some disappointment in that area.

Yesterday, with some fanfare, the Military Family Tax Relief Act was passed. It is a help, but in my mind it is an insufficient gesture. It is too modest for what our men and women in uniform deserve. The bill provided $1.1 billion in tax relief, which was asked for and which is most certainly deserved. It doubles the amount of payments to survivors of soldiers killed in action from $6,000 to $12,000—not a lot of money, but it helps the families better than the $6,000 that was in the previous law. It allows guards and reservists to deduct travel expenses, it allows troops to deduct the cost of equipment they buy themselves, and it reduces the residency requirement so our troops can take full benefit of the capital gains provision in the law as do other Americans who are not in the service.

But this bill did not go far enough. I wish to speak for a minute about this and my strong objection to moving forward with it without additional help and support.

The bill that was signed, Tax Relief for Families in the Military, represented .006 percent of the $1.75 trillion in tax relief that has been passed by this Congress at the urging of this administration. Let me repeat. The bill that was signed on Tuesday for the military only represented .006 percent of the tax cuts that have been provided by this administration to Americans generally. Yet the military, the men and women in uniform today, the over 1 million men and women in uniform, are providing 100 percent of our security, one could argue. That is not to diminish the role of our men and women in uniform, police and fire on the home front, but protecting our borders, fighting the battles overseas, they are providing 100 percent of the protection. Yet they only receive in this bill .006 percent of the tax cut.

We asked, Republicans and Democrats alike, to please include a provision that would have allowed the Guard and Reserve who are leaving their jobs and leaving their businesses to go fight in Iraq, to please have the Federal Government recognize that many of these families are losing income, sometimes as much as 60, 70, or 80 percent. We are asking them not just to go and put their life on the line, but we are asking them to put their livelihood on the line.

When some Members petitioned this administration, and particularly the House Republican leadership, to give some relief, to provide some tax relief to these businesses to encourage them to maintain those salaries for our Guard and Reserve, we were told: We do not have enough money.

We had 1.75 trillion to give tax cuts generally to people not in the military, but we could not find a few pennies to help our businesses in this country, to help their employees meet their salaries for the benefit of their families. I know the Senator wants to get back to the HUD bill, and I will in a minute, but I want to make this point and then get to the underlying bill, VA–HUD.

What we have to do in every way we can, whether it is this veterans bill we are debating now, whether it is in Defense authorization, or whether it is in our tax bills, to recognize our first priority should be to our men and women in uniform, overseas and here on our home front. When we design tax packages and tax benefits, they should be the first, not the last, to receive the help. They should be getting the lion's share or the essence or the core, not the crumbs that fall from the table.

Unfortunately, still, despite the lives that are being given, despite the effort that is being made, they still are receiving crumbs when they deserve the whole loaf of bread.

I will submit for the RECORD an article about a reservist reward for MSG Rodriguez: His reward was bankruptcy. When MSG Rodriquez and his company were activated for 1 year, they were given an 8-hour notice. He had to leave behind his wife to run the couple's construction company. He comes home and his daughter, of course, is crying and in tears, his wife is upset because they lost their business. Their income was cut by 80 percent. I ask unanimous consent to have this article printed in the RECORD.

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

[From CBS Evening News, Nov. 11, 2003]

A RESERVIST'S REWARD—BANKRUPTCY

On a sun soaked street in northern California, Air Force reservist Oscar Rodriguez is finally back home from active duty, where, as CBS News Correspondent Byron Pitts reports, the high and unexpected cost of war has taken a toll.

''They ain't giving us a loan cause I got bad credit,'' says Rodriguez.

''It was hard seeing my mom,'' says his daughter Desiree. ''I mean seeing her stressed and seeing her cry—it hurts a lot.''

When Master Sgt. Rodriguez and his company were activated for one year—on eight hours notice—he left behind his wife to run the couple's construction company.

''My dad was away and so she's pretty much was doing this on her own cause he can't do anything about it when he's gone, and I can't really do anything about it, but I try,'' says Desiree.

They all tried, but with Rodriguez at war, repairing Air Force cargo planes, the family income was cut by 80 percent.

''I lost the bids for my construction projects,'' says Rodriguez. ''I lost my savings. I lost my credit. My credit history—it's in shambles.''

Despite federal laws protecting active duty reservists from creditors during wartime, the creditors kept calling. Their home is now in foreclosure.

''You do everything that you're supposed to do without asking for help,'' says his wife Kathy. ''All you want is for everyone to do the right thing.''

The Rodriguez family aren't the only ones who've sacrificed. Of the nearly 200,000 reservists on active duty in Afghanistan, Iraq and around the world, one-third have taken a pay cut in order to serve their country.

Rodriguez is now trying to rebuild his business one step at a time. He's gone from building hotels to kitchen counters. He's suing his creditors as much for the principle as the money.

''It's about every soldier, sailor, airman or marine,'' says Rodriguez. ''Anybody who's serving our country has a right to at least not be concerned about the wolves knocking at the door.''

Asked if they're going to recover, Rodriguez and his wife say they aren't sure.

''We're separated,'' said Kathy Rodriguez, as her husband sat silently beside her.

The strain of duty and debt may have cost this couple their marriage. Yet, Rodriguez has re-enlisted.

He's a member of an Air Force Honor Guard.

For him, sacrifice isn't a slogan. In war there are casualties, both overseas and at home.

Ms. LANDRIEU. The efforts some Members made to get this issue dealt with were rejected because we did not have enough money to help this reservist or the thousands and hundreds of thousands who are fighting for us, taking the cut in pay and losing their companies in the process.

Also I ask unanimous consent to have printed in the RECORD an article printed regarding 120,000 Federal employees who serve in the National Guard and Reserve. Nearly 14,000 have been called to active duty to help fight the war in Iraq. Senator DURBIN and I wanted to get in the tax bill that was passed a provision that would allow them to maintain their salaries, their Federal salaries, so as not to fall down, basically, to receive the lower salary they receive in the Guard and Reserve. The sad thing is it would not have cost the Government anything because we had already budgeted to pay them their full salaries. This was rejected.

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

[From Government Executive Magazine, Apr. 2, 2003]

BILL WOULD CLOSE PAY GAP FOR ACTIVE DUTY FEDS

(By Tanya N. Ballard)

Three Senate lawmakers introduced a bill Wednesday that would require the government to pay the difference between civilian and military wages for federal employees called to active duty.

More than 120,000 federal employees serve in the National Guard and Reserves, and nearly 14,000 of them have been called to active duty to help fight the war in Iraq. But most of those employees earn less as active duty reservists than as civilian workers, according to Sen. Richard Durbin, D–Ill. Durbin joined with Sens. Mary Landrieu, D–La., and Barbara Mikulski, D–Md. to introduce legislation that would close the gap between military and civilian pay for those workers.

''We cannot simultaneously encourage Americans to serve their country in the National Guard and Reserves and then punish those who enlist by taking away a large portion of their income,'' Durbin said.

The Illinois senator described the case of one Air Force reservist who took a $45,000 cut in pay when he was called to duty and left his job as an air traffic controller in Chicago.

''This was a severe blow to his family,'' Durbin said.

According to Landrieu, several local and state governments, as well as private companies, have a pay gap plan in place to address this issue and the federal government needs to do the same.

''Reserve and guard employees—whether working in the public or private sector—should not have to take a pay cut when called to active duty, and that's exactly what's happening now,'' Landrieu said. ''These men and women are not getting a tax cut, they are taking a pay cut to serve. It does not make sense.''

According to Durbin, the gap in salary can range from 2 percent to 48 percent.

''We must provide our reservist employees with financial support so they can leave their civilian lives to serve our country without the added burden of worrying whether their loved ones back home can make the monthly mortgage payment or provide new shoes for their kids.'' Durbin said. ''They are doing so much for us, we should do no less for them.''

Ms. LANDRIEU. I say for the benefit of the people in Louisiana, we do not understand how we can give our tax credits to everybody but the Guard and Reserve. We can give out help to everybody except those Federal employees who take off one uniform and put on another, leave their homes for 6 months to a year, sometimes longer, and we expect them to take a cut in pay when we are giving tax credits to people who are not fighting.

If I could conclude on this one issue which really pours salt into the wound, when people say, Senator, we could not afford it, we actually found a way to pay for it. We said we should pay for it by making people who are right now evading U.S. taxes because they have made so much money in America because our troops have put their life on the line to protect the way of life which allows business people to make a lot of money in America, these business people who have made a lot of money because of what these men and women are doing in the Armed Forces, these business people are now deciding they are paying too much in tax, so they go to another country. They do not want to pay their taxes.

So we said let's make those folks pay their taxes and use those proceeds to pay for tax relief for the men and women in the military. We were told we cannot do that. We cannot possibly make people who owe taxes to America pay their taxes so that we can pay the men and women in uniform and give them a tax cut. I hope we will change our policy because it is wrong. We have missed an opportunity to help these families.

I conclude by thanking Senator MIKULSKI and Senator BOND for their hard work on behalf of veterans. They have restored a lot of the cuts that were proposed by this administration. I am proud to be part of helping to pass a veterans bill. But let's not forget it is not just about appropriations bills where we can help our men and women in uniform. Tax bills can help them. Other direct spending bills can help them. No one deserves our help more than people who put on a uniform every day and actually put their life on the line.

This Senator does not think we are doing enough and can afford to do more when we found an offset to make regular people pay the taxes they owe. If they do not want to put on a uniform and fight, that is fine, but at least give the benefits to the people who are protecting their ability to make a living.

I yield the floor.

Mr. JEFFORDS. Mr. President, I am a cosponsor of the Lautenberg-Mikulski amendment increasing funding for the enforcement activities of the Environmental Protection Agency, EPA. I would like to voice my strong support for this amendment. Without effective enforcement, our environmental laws will never succeed in reducing pollution and improving environmental quality. Simply put, the best environmental laws in the world mean nothing without vigorous enforcement.

Unfortunately, this administration does not share this sentiment. Just last week, the administration directed the EPA to abandon ongoing investigations of some 50 different facilities for violations of the Clean Air Act's New Source Review provisions. Apparently, gutting the rule itself was not enough. Pardons for big polluters—many of them large political contributors—seem to be the administration's preferred approach to environmental enforcement.

Lack of enforcement is hardly confined to the Clean Air Act. Indeed, a recent report from the EPA inspector general reveals an Agency failing to keep up with its enforcement duties across a number of different programs. According to the report, a majority of special agents-in-charge of environmental crimes states that they will not open a new case if they lack the resources necessary to pursue the case. In addition, formal enforcement actions under several key Clean Water Act programs have declined dramatically over the last 3 years. Specifically, the number of formal enforcement actions brought under the National Pollution Discharge Elimination System declined by 45 percent between 1999 and 2001. Clear Water Act enforcement actions against large concentrated animal feeding operations declined by more than 90 percent between 2000 and 2002.

I ask my colleagues: What kind of message does this send to the Nation's polluters? What kind of message does it send to the American people?

On one hand, we have an administration that is openly hostile to environmental enforcement. On the other

hand, we have an EPA that is unable to initiate new environmental crimes cases and is dramatically scaling back on several major civil enforcement programs because the agency lacks adequate resources. I hope that Administrator Leavitt will work to remedy this situation, but I fear that much of the problem may ultimately lie with the White House.

Mr. President, the additional appropriation contained in this amendment represents a modest increase in the Agency's enforcement budget. But it is crucial one given the Agency's inability to keep up with its obligations to enforce this country's environmental laws. This amendment also sends a signal to the EPA and to the administration that the Senate takes environmental enforcement seriously. At the end of the day, the answer is not, as the administration would have it, to abandon existing enforcement actions.

Rather, the answer is to provide adequate resources and to demand more oversight to ensure that our environmental laws will not be empty words in the statute books.

Mr. JEFFORDS. Mr. President, I rise before you today to join my colleague, Senator MIKULSKI, in offering this amendment to increase the funds available for water infrastructure spending.

Since assuming the chairmanship of the Environment and Public Works Committee in 2001, I have spent many hours in the committee and here on the Senate floor discussing the pressing need for investment in our Nation's water infrastructure.

In the 107th Congress, the committee passed S. 1961, the Water Investment Act, which I introduced with Senators GRAHAM, CRAPO, and SMITH of New Hampshire, which would have increased water infrastructure spending by $35 billion, providing $3.2 billion for clean water in the first year, and $2 billion for drinking water in the first year

The Bush administration opposed the bill, stating, ''. . . the administration does not support the funding levels contained in S. 1961.''

In December 2002, Senators SARBANES and VOINOVICH and I, along with 38 Members of the Senate from both sides of the aisle, sent a letter to the President asking him to provide $3.2 billion for clean water spending, and $2 billion for drinking water spending.

Instead, President Bush responded by proposing a 40 percent cut in water infrastructure spending to Congress in his fiscal year 2004 budget.

In March 2003, I cosponsored an amendment with Senators MIKULSKI, SARBANES, GRAHAM and CRAPO to increase the allocation for water infrastructure spending in the budget resolution to $3.2 billion for clean water, and $2 billion for drinking water.

It was accepted by the Senate and dropped in conference with the House.

I do appreciate the work that the Senate VA–HUD Subcommittee did to restore clean water infrastructure spending to $1.35 billion, up from the President's request of $800 million—a significant step in the right direction.

The ironic thing about this issue, the actions we have taken over the last 2 years, and the lack of major progress is that there appears to be bipartisan consensus that water infrastructure spending has significant need, is critical to our Nation's water quality, leads to job growth, and enjoys broad support among the American people.

First—the needs are substantial. The EPA's own estimates show a $535 billion gap between current spending and projected needs for water and wastewater infrastructure over the next 20 years if additional investments are not made.

According to the Congressional Budget Office, the spending gap for clean water needs is estimated to be between $132 billion and $388 billion over 20 years, and the spending gap for drinking water needs at between $70 billion and $362 billion over 20 years.

It is not solely the Federal Government's responsibility to fill this gap. However, it is the Federal Government's responsibility to provide a reasonable investment in water infrastructure, given the size of the anticipated needs.

Second—repair of a quickly deteriorating water infrastructure is critical to our Nation's water quality.

Our towns and cities, along with the Federal Government, have invested billions of dollars over the last 30 years to build the infrastructure to treat our wastewater and drinking water. It is with this infrastructure that the country has been able to return about 60 percent of our waters to swimming and fishing standards.

Even with those investments, we continue to fail to fully protect our waters from pollution, with over 40 percent of our Nation's waters still impaired.

Now, the progress we have made over the last 30 years stands on the brink of evaporation as the extensive water and wastewater infrastructure we have built nears the end of its useful life, and we are failing to reinvest

Third, estimates show that for every billion dollars invested in water infrastructure spending, approximately 40,000 jobs would be created. We must take action to prevent our economy from faltering. We are proposing to invest $5.2 billion in the State revolving funds.

The States will provide a 20-percent match of just over $1 billion. This could create over 200,000 jobs.

Yet despite the apparent consensus that there are significant needs, that healthy water infrastructure is in need of repair, that investment will increase job growth, and that Americans support investing in water infrastructure, we fail to act. Why? I cannot answer that question.

Just last month, the President recognized the importance of water infrastructure needs in Iraq with his request for an $87 billion supplemental spending package that provided about $4 billion for water infrastructure improvements.

It is appalling to me that the President is willing to support water infrastructure investment overseas while failing to recognize that Americans have the same needs here at home.

However, the fact that the President failed to recognize our water infrastructure needs, requested a 40-percent drop in water infrastructure spending, and sought emergency spending for water infrastructure in Iraq that was four times the amount he requested for domestic water infrastructure spending, does not justify the same failure by this Senate.

The amendment that I offer today with Senator MILKULSKI provides a downpayment on our water infrastructure needs. It provides an additional $3 billion for domestic water infrastructure improvements. This increase is $1.3 billion less than the amount this Senate approved for Iraq less than 2 weeks ago.

By voting aye on the amendment offered by the Senator from Maryland, each of you can take direct action to improve both the state of our Nation's waters and the state of our Nation's economy.

Today could be the day that the Senate finally changes the course of water infrastructure spending and votes decisively to live up to our responsibility and improve the quality of our Nation's waters.

The outcome is up to us. I urge you to support the amendment proposed by the Senator from Maryland.

Mr. SARBANES. Mr. President, I rise in strong support of this amendment, by my colleague Senator MIKULSKI to boost federal funding for the clean water and safe drinking water state revolving funds (SRF) by an additional $3 billion. I spoke earlier this year on a similar amendment which I offered to the Senate budget resolution and I just want to underscore some of the key reasons this amendment is needed.

The President's Fiscal 2004 budget severely short changes the funds needed by State and local governments to upgrade their aging wastewater and drinking water infrastructure. The President's budget provided only $1.7 billion for both State Revolving Funds, split equally. The Committee-approved bill provided an additional $500 million, restoring the President's budget cut to the Fiscal 2003 enacted level of funding of $2.2 million—but is still short of what is needed.

Despite important progress over the last three decades, EPA reports that more than 40 percent of our nation's lakes, rivers and streams are still too impaired for fishing or swimming. Discharges from aging and failing seweage systems, urban storm water and other sources, continue to pose serious threats to our nation's waters, endangering not only public health, but fishing and recreation industries. Population growth and development are

placing additional stress on the nation's water infrastructure and its ability to sustain hard-won water quality gains.

Combined sewer systems or so-called CSOs can be found in more than 750 communities in 32 States and the District of Columbia. EPA estimates that annual combined sewer systems discharge nearly 1,300 billion gallons of untreated or under-treated wastewater. To eliminate sewer overflows, the City of Baltimore alone must invest more than $900 million to upgrade its sewer system and comply with a consent decree with the Department of Justice and the Environmental Protection Agency. Many other cities across the nation face similar challenges. In fact, three years ago, in 2000, Congress amended the Clean Water Act to authorize a $1.5 billion grant program to help cities reduce these wet weather flows, but funds have not been available to implement the program.

Nearly 20,000 municipalities have separate sewer systems or SSOs, serving a population of 150 million. Unlike CSOs, these separate sanitary collection systems are not intended to carry significant volumes of extraneous water, such as storm water runoff, but frequently do because of infiltration and inflow, aging systems, and other factors. EPA acknowledges that sanitary sewer overflows pose a severe problem to the environment and public health.

Across the nation, our wastewater and drinking water systems are aging. In some cases, systems currently in use were built more than a century ago and have outlived their useful life. For many communities, current treatment is not sufficient to meet water quality goals. Recent modeling of the EPA's Bay Program has found that the 304 major municipal wastewater treatment facilities in the watershed will have to reduce nitrogen discharges by nearly 75 percent to restore the Chesapeake Bay and its major tributaries to health. Achieving this goal is estimated to cost $4.4 billion.

In April 2000, the Water Infrastructure Network (WIN), a broad coalition of local elected officials, drinking water and wastewater service providers, state environmental and health administrators, engineers and environmentalists released a report, Clean & Safe Water for the 21st Century. The report documented a $23 billion a year shortfall in funding needed to meet national environmental and public health priorities in the Clean Water Act and Safe Drinking Water Act and to replace aging and failing infrastructure.

In May 2002, the Congressional Budget Office released a report that estimated the spending gap for Clean Water needs between $132 billion and $388 billion over 20 years and the spending gap for drinking water needs at between $70 billion and $362 billion over 20 years.

In September 2002, the EPA released a Clean Water and Drinking Water Infrastructure Gap Analysis which found that there will be a $535 billion gap between current spending and projected needs for water and wastewater infrastructure over the next 20 years if additional investments are not made. This figure does not even account for investments necessary to meet water quality goals in nutrient impaired waters, like Chesapeake Bay.

The need for additional investment in wastewater and drinking water infrastructure is clearly documented.

But, States, localities and private sources can't meet the funding gap alone.

Local communities already pay almost 90 percent of the total cost or about $60 billion a year to build, operate, and maintain their water and wastewater systems. But as former Administrator Whitman pointed out, ''(t)he magnitude of the challenge America faces is clearly beyond the ability of any one entity to address.''

Water pollution is an interstate problem. The Congress understood the interstate dynamic of pollution in 1972 when a bi-partisan majority passed the Clean Water Act and began funding waste treatment infrastructure. In 1979 and 1980, the Congress provided $5 billion in Clean Water construction grants alone to assist states and municipalities with wastewater infrastructure needs. Over the years, budgetary pressures and other factors have reduced that funding level, and in Fiscal 2003, we provided only $1.34 billion in Clean Water State Revolving loan funds.

It is vital that the Federal government maintain a strong partnership with states and local governments in averting the massive projected funding gap and share in the burden of maintaining and improving the nation's water infrastructure. Municipalities need significant resources to comply with Federal clean water and drinking water standards. In the 107th Congress, House and Senate committees approved bills to authorize $20 billion over 5 years for the Clean Water Act SRF, underscoring the recognition that something must be done to address this funding gap.

An increase in funding for the Clean Water SRF to $3.2 billion and for the Drinking Water SRF to $2 billion in fiscal 2004 is the first step necessary to meet the Federal government's longstanding commitment in this regard.

This isn't a make-work public works project. It is an investment in the health of Americans and in a clean environment. It is an investment that will pay substantial dividends.

Wastewater treatment plants not only prevent billions of tons of pollutants each year from reaching our rivers, lakes, streams, and coasts they also help prevent water-borne diseases and make waters safe for swimming and fishing.

According to the Water Infrastructure Network, ''Clean water supports a $50 billion a year water-based recreation industry, at least $300 billion a year in coastal tourism, a $45 billion annual commercial fishing and shell fishing industry, and hundreds of billions of dollars a year in basic manufacturing that relies on clean water. Clean rivers, lakes, and coastlines attract investment in local communities and increase land values on or near the water, which in turn, create jobs, add incremental tax base, and increase income and property tax revenue to local, state, and federal government. Some 54,000 community drinking water systems provide drinking water to more than 250 million Americans. By keeping water supplies free of contaminants that cause disease, these systems reduce sickness and related health care costs and absenteeism in the workforce.''

They also create jobs—indeed tens of thousands of jobs and provide stimulus to the economy.

Each $1 billion in sewer and water improvements creates an estimated 40,000 jobs. With more than $5 billion in water infrastructure projects ready for construction, these jobs would be created immediately with Federal assistance. According to OMB, every federal dollar invested in water infrastructure generates up to $4 for project loans, so the potential for job creation from this amendment is tremendous.

The case for this amendment is compelling. Today, maintaining clear, safe water remains one of our greatest national and global challenges.

I urge my colleagues to support this amendment and help address the massive funding gap that looms on the horizon. Failure to act now risks undermining thirty years of progress in cleaning up our nation's waters.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, we are on the amendment, the emergency designation by my friend and colleague from Maryland. She seeks to add $3 billion to the vitally important State revolving funds that are so important to cleaning up our environment. I could not agree with her from my heart more strongly because this is an area of need. We have fought very hard to get our funding up to where it is. That is not enough. We have not been able to fund the National Science Foundation as we should. We had a major effort by the leadership of the full committee to get us the money that we need to get an additional $1.3 billion for veterans health care.

Having said that, this, unfortunately, is far beyond the budget allocated to the committee. It is in conflict with the stated position of the OMB with respect to emergency designations. Therefore, it is with regret that out of necessity I note that section 502, House Concurrent Resolution 95, the fiscal year 2004 concurrent resolution on the budget, created a point of order against an emergency designation on nondefense spending.

The amendment contains nondefense spending with an emergency designation; therefore, pursuant to section 502

of H. Con. Res. 95, the fiscal year 2004 concurrent resolution on the budget, I make a point of order against the emergency designation contained in the amendment.

Ms. MIKULSKI. Mr. President, pursuant to section 502(c)(6) of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2004, I move to waive the 502(c) of that concurrent resolution for purposes of the pending amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Georgia (Mr. CHAMBLISS), and the Senator from Montana (Mr. BURNS) are necessarily absent.

Mr. REID. I announce that the Senator from New York (Mrs. CLINTON), the Senator from South Dakota (Mr. DASCHLE), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

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

The yeas and nays resulted—yeas 44, nays 49, as follows:

The result was announced—yeas 44, nays 49, as follows:

[Rollcall Vote No. 449 Leg.]

YEAS—44

Akaka	Ensign	Lincoln
Baucus	Feinstein	Mikulski
Bayh	Graham (FL)	Murray
Biden	Harkin	Nelson (FL)
Boxer	Hollings	Nelson (NE)
Breaux	Inouye	Pryor
Byrd	Jeffords	Reed
Campbell	Johnson	Reid
Cantwell	Kennedy	Rockefeller
Carper	Kohl	Sarbanes
Corzine	Landrieu	Schumer
Dayton	Lautenberg	Smith
Dodd	Leahy	Stabenow
Dorgan	Levin	Wyden
Durbin	Lieberman	

NAYS—49

Alexander	Dole	Miller
Allard	Enzi	Murkowski
Allen	Feingold	Nickles
Bennett	Fitzgerald	Roberts
Bingaman	Frist	Santorum
Bond	Graham (SC)	Sessions
Brownback	Grassley	Shelby
Bunning	Gregg	Snowe
Chafee	Hagel	Specter
Cochran	Hatch	Stevens
Coleman	Hutchison	Sununu
Collins	Inhofe	Talent
Conrad	Kyl	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	McCain	
DeWine	McConnell	

NOT VOTING—7

Burns	Daschle	Kerry
Chambliss	Domenici	
Clinton	Edwards	

The PRESIDING OFFICER. On this vote, the yeas are 44, the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the emergency designation is stricken.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Parliamentary inquiry: Does the amendment fall without the emergency designation?

The PRESIDING OFFICER. The Senator needs to make a point of order.

Mr. BOND. I make a point of order that this exceeds the budget allocation and, therefore, must fall.

The PRESIDING OFFICER. The point of order is well taken, and the amendment falls.

The Senator from Missouri.

Mr. BOND. Madam President, I have six amendments to offer.

Mr. REID. Without the Senator losing his right to the floor, I direct a question through the Chair to the distinguished Senator from Missouri. We are wondering, how much longer do the managers believe it would take to finish this bill?

Mr. BOND. Madam President, I have now heard from about five Members on the other side who have amendments on which we would have to have votes. If that is 20 minutes a vote, that would be 100 minutes at least.

Ms. MIKULSKI. I say to the distinguished Democratic whip, I think we can do this in 2 hours. I think there are amendments that require more conversation and modification, that might not require votes.

Mr. REID. If the Senator will continue yielding, I believe with five Democratic amendments the Senator has spoken about and the persuasive nature of the Democratic manager of this bill, some of them would not require votes, and I believe we could finish this in 2 hours.

I suggest to the leadership on the other side—I know everyone is chomping at the bit to go to 6 o'clock, but if we could have another couple hours, we could finish this bill. On this side, that would cut the marathon down to 28 hours. Although I have no authority to do this and this is not in the form of a unanimous consent request, I think we would be willing to give up part of our time in those 2 hours to finish this bill.

Mr. BOND. Madam President, I am truly overwhelmed by the generosity of my good friend from Nevada, but regrettably I am not driving this bus. I believe there is a unanimous consent order that cannot be altered without talking to the leadership. I apologize to my friends. I would love to finish the bill, but now that I have the floor, I do have a number of amendments that have been cleared on both sides.

AMENDMENT NO. 2180 TO AMENDMENT NO. 2150

Mr. BOND. Madam President, I send an amendment to the desk on behalf of myself to direct the Secretary of Housing and Urban Development to conduct and negotiate a rulemaking for purposes of changes to the formula governing the public housing operating fund. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND] proposes an amendment numbered 2180 to amendment No. 2150.

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

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

The amendment is as follows:

(Purpose: To require HUD to make any changes to the operating fund formula by negotiated rulemaking)

On page 86, after line 11, insert the following new section:

SEC. 226. The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 31, 2004.

Mr. BYRD addressed the Chair.

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

Mr. BOND. Madam President, there are no objections on the other side.

Ms. MIKULSKI. No, I do not have an objection.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BYRD. Madam President, may I be recognized? May I be recognized for debate?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Madam President, I have sought the floor at this moment to urge the leadership to extend the time on this bill for 2 hours. I have heard the distinguished Democratic whip say it, I believe I have heard the Senator from Maryland, the manager of the bill, and the ranking member on this side, Senator MIKULSKI, say it, and I believe I have heard the manager indicate we might be able to finish this bill with an additional 2 hours.

We have completed 10 appropriations bills for floor action. There are only 13. That means there are three more. If we could finish this bill in 2 hours, that would leave only two appropriations bills that have not had floor action: CJS and District of Columbia.

So I urge, Madam President, that the leadership extend the time on this measure that is before the Senate just 2 hours.

Let us finish this bill before going to other matters.

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

Mr. BYRD. Yes, I yield.

Mr. REID. I say to the Senator, who is the most experienced person in the Senate as far as moving matters on the floor, I mentioned to the two managers that we have momentum on this bill now. If we come back some other time with 2 hours, it just is not the same. All of us who are in the Senate, we know these measures develop momentum and that is what we have now.

As I indicated to the two managers earlier and through the Chair to my distinguished friend, the Senator from West Virginia, we could finish this bill in 2 hours. It would not be easy, but if we made a commitment to do that, we would, and I think we should. It will not take anything away from the 6 show. It would just put it over for a couple of hours. Would the Senator agree with that?

Mr. BYRD. Yes, I do.

Mr. DURBIN. Will the Senator from West Virginia yield for a question?

Mr. BYRD. Yes, I yield for a question without losing my right to the floor.

Mr. DURBIN. I thank the Senator from West Virginia. Through the Chair, I ask the Senator, who is more familiar with the rules than anyone, if the Senator from West Virginia made a unanimous consent request now that we went until 8 p.m., for example, and finish this bill for the veterans, the Veterans' Administration, would that be in order?

Mr. BYRD. It certainly would be in order.

Mr. DURBIN. In order to bring us to closure on this important legislation before we begin the long debate?

Mr. BYRD. It certainly would.

Mr. DURBIN. Through the Chair, I would ask the Senator from West Virginia to seriously consider that.

Mr. BYRD. Well, I will not only consider it, I will make the request. I would like for the leadership to be here and let the leadership consider making the request. I am talking about the majority leader. I do not want to try to impose myself in his stead in a matter of this nature, but I do think the Senate ought to go for a couple more hours, if that would do it, and let us finish this bill.

We have finished 10 appropriations bills. I am the ranking member on the Appropriations Committee. It certainly is in order for me to attempt to try to get this bill acted on. We are so close. This is a veterans bill, the VA–HUD bill, that is so important. We have soldiers, men and women, dying in Iraq. Why not pass this bill within 2 hours? We are within 2 hours, and if we work hard we might complete it before that 2 hours. Maybe some of the amendments could be peeled off so we could cut the time.

I ask, Is there anyone who would get the majority leader to come to the floor and let us consider this?

Mr. BOND. Madam President——

Mr. BYRD. I have the floor.

Mr. BOND. I was going to respond.

Mr. BYRD. Yes. Let me protect myself, though. I ask unanimous consent that I may yield to the distinguished Senator from Missouri so that he can propound a question to the Chair and that I retain my right to the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, we are coming up on a 6 p.m. deadline, I say to my friend from West Virginia, that has been long announced and been planned for. I say to the distinguished Senator that unless and until we are able to get concurrence from the leadership, the work on this bill tonight will stop. I further ask the Senator from West Virginia if he would permit us to continue with the cleared amendment that is at the desk. There are five more cleared amendments, four of them by Members from his side of the aisle, that we would like to be able to clear if he would allow me to do so.

Also, I announce to my colleagues there are visiting dignitaries from the European Parliament. My colleagues may wish to greet them.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I am going to propound a request. That request will include—did the Senator from Missouri say there were four amendments that were cleared?

Mr. BOND. Madam President, there is one measure pending at the desk, and there are five more amendments that have been cleared on both sides. Excuse me. Coming in over the transom, there are now two more. So that makes a grand total of seven amendments, five of them from Members on the other side of the aisle.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, before I make a request, let me congratulate the Senator from Missouri. He is a good member of the Appropriations Committee. He works hard. He is a productive member. I have a great deal of admiration for him and for the work he does. I say the same about my friend, the Senator from Maryland. She has done tremendous work on this bill. It is the VA–HUD bill. She always applies her total energies and talents to working on this measure. With her good work and cooperation, the manager of the bill, Mr. BOND, has been able to bring the bill to the floor. He has done great work. I do not want to take away from his work. I want to add to it, and so I compliment him.

As I understand it, there are seven amendments at the desk that have been cleared on both sides?

Mr. BOND. Madam President, these are not at the desk, only submitted.

Mr. BYRD. I yield only if I may retain my right to the floor.

I yield to the Senator that he may make that statement, and ask that I may retain my right to the floor.

Mr. BOND. Madam President, as I said, there are seven amendments that are to be offered. There is one at the desk and there are seven more now that have been cleared on both sides.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. May I say again, we have finished 10 of the 13 appropriations bills on this floor. We lack three: CJS, District of Columbia, and VA–HUD. VA–HUD is before the Senate. We are within reach of completing floor action on that bill. We ought to do that. If we fail, having come this close, what is the Senate going to look like? We have to complete action on appropriations bills one way or another before we can adjourn sine die. I hope we could finish floor action on this bill.

Think of all the time that has gone into the consideration of this bill in the committee. The chairman and ranking member have held hearings. They have had a markup of this bill. They have worked hard over a period of many months. They have heard witnesses. All of this ought not to be for naught.

I hope Senators will agree. I had hoped the distinguished majority leader would be on the Senate floor so that I could urge him to propound this request. We are only 11 minutes away from 6. Now, a unanimous consent request entered into at this point will prevail over any previous unanimous consent request dealing with that same matter. So I have the floor. I know what my rights are, and I know what my duties are, also, as the ranking member of the Appropriations Committee.

May I ask the Chair, am I wrong in anything I have said? Am I correct?

The PRESIDING OFFICER. The Senator has the floor.

Mr. BYRD. Yes. And am I correct that a unanimous consent request agreed to at this moment to extend the hour of 6, which was in a previous request, would be the prevailing motion?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I thank the Chair.

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

Mr. BYRD. Madam President, I yield for a question without giving up the floor.

Mr. DURBIN. Through the Presiding Officer, I would like to ask the Senator from West Virginia, could you not make part of your unanimous consent request an agreement that the pending amendments will be considered in a timely fashion?

Mr. BYRD. That would be part.

Mr. DURBIN. So there is no effort to extend this beyond a reasonable period, but an effort to complete this bill for our veterans, for the Veterans Administration, before we begin the 30-hour debate. Could you not include that in your unanimous consent request?

Mr. BYRD. Yes, indeed.

So, Madam President, I really hesitate to make this request. I had hoped the majority leader would be in the Chamber because he is the person to be

recognized at 6 o'clock, under the previous order. I don't want to appear to be discourteous. That is not my intention.

Why do you think I am doing this? I am the ranking member of the Senate Appropriations Committee. In the 7 years, I believe it was, that I was chairman of the Appropriations Committee, we never had—I don't think we ever had—I think we finished all 13 appropriations bills every year. We could finish another one. I know Senator STEVENS has worked hard. I asked Senator STEVENS during the last rollcall if he was agreeable to extending this time, since we are so close. He indicated he would work to do that.

Madam President, I ask unanimous consent that——

The PRESIDING OFFICER. The Presiding Officer apologizes to the Senator from West Virginia for being temporarily distracted.

Mr. BYRD. I didn't understand the Chair.

The PRESIDING OFFICER. The Presiding Officer apologizes to the Senator from West Virginia for being temporarily distracted.

Mr. BYRD. I thank the distinguished Presiding Officer.

I am trying to avoid appearing to intrude on the majority leader's previous request and his time. I don't want to appear to be discourteous. I want to make the request when the majority leader is here.

The PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. I ask unanimous consent that I be permitted to make a unanimous consent request and that, if it is agreed to—or whether or not it is agreed to, that I be recognized for another unanimous consent request, with the understanding that in any event I will be recognized 1 minute before 6 p.m. today to make such request.

Mr. BOND. I object on behalf of the leadership, Mr. President, and I seek recognition.

Mr. BYRD. Mr. President, I don't lose the floor by virtue of having made a unanimous consent request, even though it is objected to. I don't lose the floor.

The PRESIDENT pro tempore. The Senator does not lose the floor by making a unanimous consent request.

Mr. SARBANES. Will the Senator from West Virginia yield for a question, reserving his right to the floor?

Mr. BYRD. I yield to the distinguished Senator from Maryland with the understanding I do not lose my right to the floor, and I yield for a question only.

Mr. SARBANES. If I could have the attention of the Senator from Missouri as I pose this question? Would the Senator entertain a unanimous consent request that allowed the amendments that are lined up here to be offered and to be accepted? I understand they are all going to be taken by voice.

Mr. BYRD. Mr. President, I don't yield the floor for that purpose.

Mr. SARBANES. I am not asking. I am just inquiring of the Senator's view of that.

Mr. BYRD. Mr. President, I ask unanimous consent that the seven amendments at the desk, to which the distinguished Senator from Missouri alluded, be considered agreed to, the motion to reconsider be laid on the table, and that the Senate immediately proceed to the further consideration of the VA–HUD appropriations bill with the understanding that time on that bill would end no later than 8 o'clock—or would end at 8 o'clock this evening, and that there would be a vote on the VA–HUD bill.

The PRESIDENT pro tempore. Is there objection to the request?

Mr. BOND. On behalf of the leadership, I object.

Mr. BYRD. Senators will understand I used to propound these requests without their being in writing. I am carefully trying to approach this, so I will start over.

Mr. President, I ask unanimous consent that the seven amendments that have been referred to by the distinguished Senator from Missouri, Mr. BOND, and are at the desk, that have been cleared, be considered agreed to and adopted to the bill. I further ask that the time originally set for recognition of the majority leader, at 1 minute until 6, be delayed 2 hours, that in the meantime the Senate consider action and complete action on the VA–HUD appropriations bill, and that the motions to reconsider be laid on the table.

The PRESIDENT pro tempore. Is there objection?

Mr. BOND. On behalf of the leadership, I object.

The PRESIDENT pro tempore. Objection is heard.

The Senator from Missouri.

AMENDMENTS NOS. 2151, 2180, 2181, 2182, 2183, 2184, 2185, 2186 TO AMENDMENT NO. 2150

Mr. BOND. Mr. President, we do have these six measures—seven—eight measures, now, at the desk, that I propounded? We have one from Senator MURKOWSKI on pioneer homes in the State of Alaska; we have one from Senators DORGAN, ROCKEFELLER, and LANDRIEU on access to primary health care for veterans in rural areas; we have one from Senator SNOWE—Senator SARBANES, Senators COLLINS, BYRD, SANTORUM, and others, a sense of the Senate with respect to section 8 vouchers; an amendment by Senator CLINTON and others relating to the Corporation for National Service volunteers; another from Senator LANDRIEU with respect to the States' deduction for administrative expenses in the Housing and Community Development Act; an amendment by Senator LEVIN and others relating to Federal water pollution control; a sense-of-the-Senate amendment by Senator BOXER about human dosing studies of pesticides.

I ask unanimous consent that the aforementioned amendments be sent to the desk, the titles read, that they be approved, and that a motion to reconsider be laid upon the table.

The PRESIDENT pro tempore. Is there objection?

Ms. MIKULSKI. Mr. President, I have no objection except I am sorry we can't finish this bill.

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

The amendments were agreed to, as follows:

AMENDMENT NO. 2151 TO AMENDMENT NO. 2150

(Purpose: To increase the amount of funds that may be used by States for technical assistance and administrative costs under the community development block grant program)

On page 125, between lines 7 and 8, insert the following:

SEC. 418. Section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)) is amended—

(1) in paragraph (3)(A), by striking ''shall not exceed 2 percent'' and inserting ''shall not, subject to paragraph (6), exceed 3 percent'';

(2) in paragraph (5), by striking ''not to exceed 1 percent'' and inserting ''subject to paragraph (6), not to exceed 3 percent'';

(3) by redesignating the second paragraph (5) and paragraph (6) as paragraphs (7) and (8), respectively; and

(4) by inserting after paragraph (5) the following:

''(6) Of the amounts received under paragraph (1), the State may deduct not more than an aggregate total of 3 percent of such amounts for—

''(A) administrative expenses under paragraph (3)(A); and

''(B) technical assistance under paragraph (5).''.

AMENDMENT NO. 2180 TO AMENDMENT NO. 2150

(Purpose: To require HUD to make any changes to the operating fund formula by negotiated rulemaking)

On page 86, after line 11, insert the following new section:

SEC. 226. The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 31, 2004.

AMENDMENT NO. 2181 TO AMENDMENT NO. 2150

(Purpose: To provide for the treatment of the Pioneer Homes in Alaska as a State home for veterans)

At the end of title I, add the following:

SEC. 116. (a) TREATMENT OF PIONEER HOMES IN ALASKA AS STATE HOME FOR VETERANS.—The Secretary of Veterans Affairs may—

(1) treat the Pioneer Homes in the State of Alaska collectively as a single State home for veterans for purposes of section 1741 of title 38, United States Code; and

(2) make per diem payments to the State of Alaska for care provided to veterans in the Pioneer Homes in accordance with the provisions of that section.

(b) TREATMENT NOTWITHSTANDING NON-VETERAN RESIDENCY.—The Secretary shall treat the Pioneer Homes as a State home under subsection (a) notwithstanding the residency of non-veterans in one or more of the Pioneer Homes.

(c) PIONEER HOMES DEFINED.—In this section, the term ''Pioneer Homes'' means the six regional homes in the State of Alaska known as Pioneer Homes, which are located in the following:

(1) Anchorage, Alaska.

(2) Fairbanks, Alaska.

(3) Juneau, Alaska.
(4) Ketchikan, Alaska.
(5) Palmer, Alaska.
(6) Sitka, Alaska.

AMENDMENT NO. 2182 TO AMENDMENT NO. 2150

(Purpose: To express the sense of the Senate on the access to primary health care of veterans living in rural and highly rural areas)

At the end of title I, add the following:

SEC. 116. (a) FINDINGS ON ACCESS TO PRIMARY HEALTH CARE OF VETERANS IN RURAL AREAS.—The Senate makes the following findings:

(1) The Secretary of Veterans Affairs has appointed a commission, called the Capital Asset Realignment for Enhanced Services (CARES) Commission, and directed it to make specific recommendations regarding the realignment and allocation of capital assets necessary to meet the demand for veterans health care services over the next 20 years.

(2) The Department of Veterans Affairs accessibility standard for primary health care provides that at least 70 percent of the veterans enrolled in each of the regional ''markets'' of the Department should live within a specified driving time of a Department primary care facility. That driving time is 30 minutes for veterans living in urban and rural areas and 60 minutes for veterans living in highly rural areas.

(3) The Draft National CARES Plan issued by the Under Secretary for Health would place veterans in 18 rural and highly rural regional markets outside the Department accessibility standard for primary health care until at least fiscal year 2022, which means that thousands of veterans will have to continuing traveling up to 3–4 hours each way to visit a Department primary care facility.

(4) The 18 rural and highly rural markets that will remain outside the Department accessibility standard for primary health care comprise all or parts of Arkansas, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Washington, and West Virginia.

(5) Health care facilities for veterans are disproportionately needed in rural and highly rural areas because the residents of such areas are generally older, poorer, and sicker than their urban counterparts.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) the CARES Commission should give as much attention to solving the special needs of veterans who live in rural areas as it does to providing for the health care needs of veterans living in more highly populated areas;

(2) the CARES Commission should reject the portions of the Draft National CARES Plan that would prevent any regional market of the Department from complying with the Department accessibility standard for primary health care, which provides that at least 70 percent of the veterans residing in each market be within specified driving times of a Department primary care facility; and

(3) the CARES Commission should recommend to the Secretary the investments and initiatives that are necessary to achieve the Department accessibility standard for primary health care in each of the rural and highly rural health care markets of the Department.

AMENDMENT NO. 2183 TO AMENDMENT NO. 2150

(Purpose: To express the sense of the Senate that housing vouchers are a critical resource and that the Department of Housing and Urban Development should ensure that all vouchers can be used by low-income families)

On page 125, between lines 7 and 8, insert the following:

SEC. 4___. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) 30 percent of American families have housing affordability problems, with 14,300,000 families paying more than half of their income for housing costs, and 17,300,000 families paying 30 to 50 percent of their income towards housing costs;

(2) 9,300,000 American families live in housing that is overcrowded or distressed;

(3) 3,500,000 households in the United States will experience homelessness at some point this year, including 1,350,000 children;

(4) the number of working families who are unable to afford adequate housing is increasing, as the gap between wages and housing costs grows;

(5) there is no county or metropolitan area in the country where a minimum wage earner can afford to rent a modest 2-bedroom apartment, and on average, a family must earn over $15 an hour to afford modest rental housing, which is almost 3 times the minimum wage;

(6) section 8 housing vouchers help approximately 2,000,000 families with children, senior citizens, and disabled individuals afford a safe and decent place to live;

(7) utilization of vouchers is at a high of 96 percent, and is on course to rise to 97 percent in fiscal year 2004, according to data provided by the Department of Housing and Urban Development;

(8) the average cost per voucher has also steadily increased from just over $6400 in August of 2002, to $6,756 in April, 2003, due largely to rising rents in the private market, and the Congressional Budget Office estimates that the cost per voucher in fiscal year 2004 will be $7,028, $560 more per voucher than the estimate contained in the fiscal year 2004 budget request; and

(9) the congressionally appointed, bipartisan Millennial Housing Commission found that housing vouchers are ''the linchpin of a national housing policy providing very low-income renters access to privately-owned housing stock''.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) housing vouchers are a critical resource in ensuring that families in America can afford safe, decent, and adequate housing;

(2) public housing agencies must retain the ability to use 100 percent of their authorized vouchers to help house low-income families; and

(3) the Senate expects the Department of Housing and Urban Development to take all necessary actions to encourage full utilization of vouchers, and to use all legally available resources as needed to support full funding for housing vouchers in fiscal year 2004, so that every voucher can be used by a family in need.

AMENDMENT NO. 2184 TO AMENDMENT NO. 2150

(Purpose: To provide VISTA volunteers the option of receiving a national service educational award)

On page 92, line 22, insert '': *Provided further*, That the Corporation shall offer any individual selected after October 31, 2002, for initial enrollment or reenrollment as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) the option of receiving a national service educational award under subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.)'' after ''programs''.

AMENDMENT NO. 2185 TO AMENDMENT NO. 2150

(Purpose: To authorize appropriations for sewer overflow control grants.

On page 125, between lines 7 and 8, insert the following:

SEC. 4___. SEWER OVERFLOW CONTROL GRANTS.

Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) in subsection (f), by striking ''2002 and 2003'' and inserting ''2005 and 2006'';

(2) in subsection (g)(1)—

(A) in the paragraph heading, by striking ''2002'' and inserting ''2005''; and

(B) by striking ''2002'' and inserting ''2005'';

(3) in subsection (g)(2)—

(A) in the paragraph heading, by striking ''2003'' and inserting ''2006''; and

(B) by striking ''2003'' and inserting ''2006''; and

(4) in subsection (i), by striking ''2003'' and inserting ''2006''.

AMENDMENT NO. 2186 TO AMENDMENT NO. 2150

It is the sense of the Senate that human dosing studies a pesticides raises ethical and health questions.

AMENDMENT NO. 2183

Ms. COLLINS. Mr. President, I rise today to speak on behalf of a Sense of the Senate amendment that Senator SARBANES and I are offering with respect to the section 8 housing voucher program. This amendment states that section 8 housing vouchers are a critical housing resource, that public housing authorities must be able to use all of their authorized vouchers, and that the Senate expects the Department of Housing and Urban Development to take all necessary steps to encourage full voucher utilization.

Our Nation is facing a critical shortage of affordable housing. A recent study by the Joint Center on Housing Studies at Harvard University indicates that approximately 30 percent of American families have housing affordability problems, with as many as 14.3 million families paying more than half of their income for housing costs and 17.3 million families paying 30 to 50 percent of their income toward housing costs. The same study indicates that 9.3 million families live in housing that is overcrowded or distressed, and 3.5 million households in the United States will experience homelessness at some point this year. That last number includes more than 1.3 million children.

As the gap between wages and housing costs grows, the number of working families who are unable to afford adequate housing continues to increase. On average, a family must earn over $15 per hour to afford modest rental housing, and in many cases, rising costs have led to families simply being priced out of the housing market. In my home state of Maine, the City of Portland offers a prime example of this phenomenon. The National Housing Conference reports that, in 1999, the median home price in Portland was $12,500. By 2001, that median price had increased to $158,000. During this period, Fair Market Rent for a two-bedroom apartment jumped from $641 to

$817 per month, and this trend of increasing disparity between wages and housing costs shows little sign of abating.

Section 8 housing vouchers help approximately 2 million families with children, senior citizens, and disabled individuals afford a safe and decent place to live. The congressionally appointed, bipartisan Millennial Housing Commission found that housing vouchers are ''the linchpin of a national housing policy providing very low-income renters access to privately owned housing stock. Currently, utilization of vouchers is at a high of 96 percent, and is on course to rise to 97 percent in fiscal year 2004, according to data provided by HUD. The average cost per voucher has also steadily increased from just over $6,400 in August of 2002, to $6,756 in April, 2003, and the Congressional Budget Office estimates that the cost per voucher in FY 2004 will be $7,028.

Our amendment states that it is the sense of the Senate that: 1. housing voucher are a critical resource in ensuring that families in America can afford safe, decent, and adequate housing; 2. public housing agencies must retain the ability to use 100 percent of their authorized vouchers to help house low-income families; and 3. the Senate expects the Department of Housing and Urban Development to take all necessary actions to encourage full utilization of vouchers, and to use all legally available resources as needed to support full funding for housing vouchers in fiscal year 2004, so that every voucher can be used by a family in need.

To many families, older, and disabled individuals, section 8 housing vouchers are the difference between having a safe, decent place to live and homelessness. it should be the sense of the Senate that HUD use all legally available funds to support every authorized voucher, and I encourage my colleagues to support this amendment.

Mrs. CLINTON. Mr. President, today I rise in support of Senator SARBANE's resolution, which expressed the sense of the Senate that Section 8 housing vouchers are a critical resource and that the Department of Housing and Urban Development should ensure that all vouchers can be used by low-income families. I have joined many of my colleagues as an original cosponsor of this amendment and would like to thank both Senator BOND and Senator MIKULSKI for including it in the pending VA/HUD Appropriations bill. I would like to commend the Senators for their commitment to balancing the competing housing priorities we face given the constraints they were working under. The Senate provisions are a big improvement over the House bill and would greatly reduce the chances of cuts to this program.

Earlier this year, I joined my colleagues in sending a letter to Secretary Martinez expressing our reservations and concerns about the President's proposal to block grant this critical program. Experience with block grants tells us that this plan could have actually undermined the program and reduced the number of families being served, so I was pleased that both the House and the Senate Committee rejected it.

The fact is the gap between wages and housing costs is growing and is pushing affordable housing beyond the reach of an increasing number of working families. On average, a family in this country must earn $15.21 an hour to afford a modest two-bedroom apartment, which is almost three times the minimum wage. In my home State of New York, a minimum wage worker would have to work 147 hours a week to afford a two-bedroom apartment at fair market rent. Section 8 vouchers make housing affordable and are making a real difference in the lives of approximately 2 million elderly and disabled individuals as well as families with children across the Nation. We should expand the program so that more families can receive assistance they so desperately need, but if we cannot expand it we should preserve it to ensure that families receiving vouchers can continue to depend on the support they have been promised.

New York's housing crisis is particularly alarming. In my State more than 500,000 renter households, roughly one-fourth of all renters, continue to pay more than half of their income in rent. These rents impose enormous pressures on them and add on to the financial burdens they already face. Many severely disadvantaged households find themselves unable to pay rent and meet their other basic needs. Some are forced to live on the street or in shelters. More than 38,000 homeless people sleep in New York City's shelter system each night, almost double the number of just 5 years ago and the largest annual increase since the Great Depression. The largest and fastest-growing segment of this homeless population is families with children. Section 8 housing vouchers provide a lifeline that helps these individuals make ends meet. We must help America afford safe and decent housing so that parents are not forced to choose between finding the money to pay for rent and putting food on the table.

The Housing Choice Voucher program is more than just a housing program. We know that affordable housing helps families increase their employability, earnings, educational outcomes, and children's well being.

In New York, Section 8 housing vouchers are assisting approximately 200,000 seniors, people with disabilities, and families with children. Under the House VA–HUD appropriations bill, New York could lose 6,020 vouchers, of which approximately 1,840 would go to working families, 1,020 to elderly households, 1,320 to disabled households, and 1,840 to other households. If the final VA–HUD conference report retains the Senate provisions referenced in the Sense of the Senate—directing HUD to fund these vouchers—then none of these vouchers would be lost and all of these families would be helped.

As this bill moves forward during conference, I urge my colleagues to support this language. It sends a message to HUD that America is depending on housing vouchers to ensure that all of our families can afford a safe, decent and adequate place to live.

AMENDMENT NO. 2184

Mr. REED. Mr. President, I rise as a cosponsor of Senator CLINTON's amendment relating to VISTA.

Since its creation in 1965, as part of the War on Poverty, over 120,000 Americans have performed national service as VISTA volunteers.

VISTA, Volunteers In Service To America, members serve in hundreds of nonprofit organizations and public agencies across the country, helping to find solutions to the problems caused by urban and rural poverty. VISTA volunteers fight illiteracy, improve health services, increase housing opportunities, bridge the digital divide, create businesses, and so much more.

Unfortunately, VISTA volunteers have been shortchanged for more than a year.

Since the creation of education awards in 1994, VISTA volunteers, upon completion of their service, have been eligible to receive either a $4,725 education award or end-of-service stipend of $1,200. Education awards can be used to pay education costs at qualified institutions of higher education or to repay qualified student loans.

However, the Corporation for National and Community Service has refused to offer education awards to last year's and this year's volunteers.

This summer, I was alerted to this unfortunate change in policy by several Rhode Islanders.

Section 129(b) of the National and Community Service Trust Act of 1993 contains the following language:

> Reservation of Approved Positions—The Corporation shall ensure that each individual selected during a fiscal year for assignment as a VISTA Volunteer under title I of the Domestic Volunteer Service Act of 1973 . . . shall receive the national service educational award described in subtitle D if the individual satisfies the eligibility requirements for the award. Funds for approved national service positions required by this paragraph for a fiscal year shall be deducted from the total funding for approved national service positions to be available for distribution under subsectons (a) and (d) for that fiscal year.

Given this clear language in the statute, I wrote to the Corporation seeking its rationale for denying the opportunity for VISTA volunteers to elect education awards. In his response, the General Counsel for the Corporation argued that the Corporation, not this language, determines whether a VISTA volunteer is in an ''approved national service position'', and only if that is the case, is the volunteer entitled to the opportunity to elect to receive an education award. The General Counsel

has ruled that all VISTA slots are not ''approved national service positions.'' Moreover, the General Counsel states that the Corporation has the authority to modify program rules based on funding levels.

As a result, 3,200 volunteers in fiscal year 2003 have been denied the option of an education award that has been of great benefit to countless volunteers. In Rhode Island, this has affected nearly 20 VISTA volunteers at City Arts, AS220, Providence Public Library, Family Life Center, RI Training School, RI Free Clinic, Southside Community Land Trust, New Urban Arts, and RI Coalition for Domestic Violence.

In order to continue to attract high quality and talented individuals willing to serve as VISTA volunteers, the Clinton amendment requires the Corporation to offer individuals, selected after October 31, 2002, for initial enrollment or reenrollment as a VISTA volunteer the option of receiving a national service education award.

This is an important amendment as we look to revitalize service in our country after months of mishaps at the Corporation for National and Community Service, and I urge its passage.

AMENDMENT NO. 2183

Mr. SARBANES. Mr. President, I come to the floor today to offer an amendment to the VA/HUD appropriations bill to ensure that the U.S. Department of Housing and Urban Development does all it can to make sure that the section 8 housing voucher program is fully funded and fully operational. I want to thank the cosponsors of this amendment, including Senators REED, KENNEDY, ALLEN, SANTORUM, and BYRD. In addition, I want to thank Senator COLLINS, who is a cosponsor, and was instrumental in drafting and gaining support for the amendment.

This amendment expresses the sense of the Senate that housing vouchers, which now assist almost 2 million low-income families around the country, are a critical housing resource and should receive full funding. This amendment reaffirms our commitment to the voucher program by reiterating that public housing agencies can lease all of their authorized vouchers, and that HUD must use all available funds to support these needed vouchers.

Unfortunately, too many families in America find it difficult to afford decent and safe places to call home. In fact, the number of working families who are paying over half of their income in rent is steadily rising, as the gap between wages and housing costs continues to widen.

According to a recent study conducted by the National Low Income Housing Coalition, on average, a family in the United States must earn over $15 an hour to afford a modest apartment without forgoing other necessities. This is almost 3 times the minimum wage. In my home State of Maryland, this number is almost $19 an hour.

These numbers make clear that there is a pressing need for housing assistance. The section 8 housing voucher program is a market-based housing program that has had strong bipartisan support since the program's inception. The housing voucher program has long been regarded as a successful way to help families in need find and afford rental housing.

Housing vouchers enable low-income families to go out into the private rental market and rent housing of their choice subject to a cap on the rental amount. Housing vouchers help families move closer to employment and educational opportunities, while providing stability so that families can better retain employment and children can succeed in school. Every study that has looked at the impact of vouchers has found a positive effect on employment and earnings, in addition to finding that housing vouchers help make the transition from welfare to work a successful one.

It is evident that the voucher program is one that works, and this has been recognized by past administrations and by Members of Congress on both sides of the aisle. Unfortunately, this administration simply did not ask for adequate funding for this program. According to recent HUD data, the budget request submitted this year by the administration underfunds this critical program by nearly $1.25 billion.

This $1.25 billion shortfall could have easily been avoided had the Department used updated data for its budget estimate, and I thank Senators BOND and MIKULSKI for calling on HUD to do just that. Recent HUD data show that a greater percentage of vouchers are being used now than ever before. According to this data, utilization is at a high of 96 percent, and is expected to rise to 97 percent in fiscal year 2004. In addition, due to rising rents, the actual cost per voucher is much higher than estimated by the administration. As rents rise, HUD must seek adequate funding to meet the needs in ever-changing housing markets.

While the bill before us today does not contain enough newly appropriated funds for the voucher program, we have reason to believe that HUD has enough available funding to meet the needs in the program in fiscal year 2004. I appreciate the efforts of Senators BOND and MIKULSKI to address this issue in the bill by directing HUD to ensure that public housing agencies can continue to issue turnover vouchers, and by calling on HUD to request supplemental funds if necessary.

The amendment I am offering today, along with Senator COLLINS and others, is a companion to this important language. It expresses the sense of the Senate that we expect HUD to do all it can to ensure that housing agencies can lease up to their authorized level of vouchers. The ability to lease 100 percent of authorized vouchers is critical and we fought hard last year to make sure that this right was retained. This bill reiterates this right and directs HUD to make sure all vouchers, including turnover vouchers, can be used by low-income families. In addition, this amendment calls on HUD to live up to its obligations by using all legally available funds to renew housing vouchers. Without using this additional funding, the $1.25 billion shortfall could translate into over 100,000 families losing their voucher assistance and their homes.

The amendment we are offering sends a message to HUD that this would be unacceptable, and that we expect it to do everything possible to ensure that families with vouchers do not lose their housing assistance and that low-income families on waiting lists can gain access to vouchers. These vouchers are being used in every community across the country, providing not only housing, but economic opportunities to low-income families. I urge my colleagues to support this amendment which reaffirms our commitment to housing low-income people in this Nation.

AMENDMENT NO. 2184

Mrs. CLINTON. Mr. President, I rise to offer an amendment that would provide education awards to all volunteers who are part of the VISTA—Volunteers in Service to America—program, which is administered by the Corporation for National and Community Service.

Before I begin, I want to thank Senator BOND and Senator MIKULSKI for all the hard work they have done to support national and community service. They have been real champions of this program. I would also like to thank Senators SNOWE, KENNEDY, CHAFEE, HARKIN, REED, MURRAY, and DODD for co-sponsoring this amendment. This amendment that I rise to offer today is not a partisan amendment—I know that I have support on both sides of the aisle because the VISTA program has such deep, strong roots among many political leaders on both sides of the aisle.

The VISTA program was first envisioned by President Kennedy soon after the Peace Corps was created. And in 1965, as part of President Johnson's War on Poverty, President Kennedy's dream was realized.

VISTA, like Head Start and so many other lasting anti-poverty programs, was created to serve the needs of the poorest Americans. On December 12, 1964, just four months after the legislation was enacted, President and Lady Bird Johnson welcomed the first group of twenty VISTA volunteers with these remarks:

> Your pay will be low; the conditions of your labor often will be difficult. But you will have the satisfaction of leading a great national effort and you will have the ultimate reward which comes to those who serve their fellow man.

When my husband championed the effort to dramatically expand national service and create AmeriCorps, he wanted to preserve this important part of President Kennedy and President Johnson's legacy. The VISTA program was authorized within the National and

Community Service Trust Act and today it is administered by the Corporation for National and Community Service.

A staple of the program since its inclusion within the National and Community Service Trust Act is that every member who signs up shall receive a choice—a scholarship toward their education or a cash stipend. In recent years, more than two-thirds of the individuals participating in the VISTA program have opted for the education scholarship instead of the cash stipend.

In November of 2002, the Corporation for National and Community Service began denying new volunteers the option of receiving education awards. They were provided cash stipends, regardless of their preference.

I began hearing from New Yorkers who were frustrated by the decision. They felt like they had been duped—given a bait and switch. Their morale dropped dramatically and some have resigned as a result. Many saw a fundamental problem of equity. Members were passed over for education and awards while those who enrolled just two months later received them. I'm sure we all agree that this is unfair.

New Yorkers described to me the difference that VISTA has made in their life and in the lives of people they serve and expressed their frustration about what has happened to the program. Two New York VISTA members serving in West Seneca, New York developed a pilot program for ex-offenders, and I want to tell you a little bit about the first graduate: ''he got his driver's license and was getting things in order for this first apartment ever—he had been incarcerated for 28 years, since his youth. The joy on the guy's face was unbelievable and I was proud to know that two VISTA members had made it possible,'' said one of them.

Across the country, at least 1,766 volunteers who were affected by this decision, according to the Corporation for National and Community Service. The organization established to support the VISTA program—called Friends of Vista—estimates the impact at 3,200.

I do not want to haggle over the numbers or argue about who's to blame. I simply want the problem addressed.

This amendment is straightforward and simple. It says that VISTA volunteers shall be provided the option of receiving an education award or a cash stipend, consistent with the law and current practice. It does not have a cost associated with it, and I urge my colleagues to support this amendment and rectify this injustice.

Mr. SARBANES. Mr. President, have the amendments been adopted?

Ms. MIKULSKI. Mr. President, what time——

Mr. SARBANES. Have the amendments been adopted?

The PRESIDENT pro tempore. The amendments were adopted by unanimous consent, as requested.

Ms. MIKULSKI. I move to reconsider and lay the motion on the table.

The motion to lay on the table was agreed to.

NSF EPSCOR PROGRAM

Mr. BURNS. Mr. President, I rise to speak on the National Science Foundation's (NSF) Experimental Program to Stimulate Competitive Research program or EPSCoR. First, I would like to thank the distinguished chair of the subcommittee for including $100 million in the EPSCoR program. This is a very important program in my State of Montana—and very important for the other 22 EPSCoR states that are trying to develop a competitive research program.

I would also like to mention that I have talked with the EPSCoR project director and other participants in the program from Montana and that they have told me that the infrastructure improvement components of the program is critical to all other efforts to develop research capacity and to compete successfully for other NSF funding. I would like it to be clear that the research infrastructure component is central to the program and that we have provided funds to ensure that states can be fully funded.

Mr. BOND. I, too, have heard about the importance of the research infrastructure program and I want to assure the Senator that we have sought to provide sufficient funding to cover existing commitments and states that are currently under review.

Mr. BURNS. That is very important. Finally, I would just add that I hope NSF will make every effort to include the EPSCoR states in its new cyber infrastructure activities. NSF did a very fine job a few years ago in helping secure high-speed connections for research institutions in EPSCoR states. The new NSF cyberinfrastructure program is evolving and I hope that they will include states like Montana in these efforts since networking and advanced computing are essential to keeping our research universities connected to cutting-edge research and allow them to collaborate and use equipment at remote locations.

Mr. BOND. I understand the Senator's interest.

CARES INITIATIVE

Mr. SCHUMER. It is my understanding that the managers of this legislation have agreed to work to address the concerns shared by Sen. CLINTON, Sen. ENZI, myself and others through the inclusion of language in the conference report on the FY04 VA–HUD Appropriations Act. It is my further understanding that this language will specifically address our concerns regarding the CARES Initiative's impact on long-term care, domiciliary care and mental health care as well as the ability of veterans to attend and participate in hearings regarding facility closings and the special needs of rural veterans in the process. I also understand that the managers have agreed to send a letter to Secretary Principi on these matters. In addition I understand that I will join my colleagues and the managers in submitting a longer colloquy for the record with the specific language to be included.

Mr. BOND. That understanding is correct and I look forward to working with my colleagues on this issue.

Ms. MIKULSKI. I share that understanding as well and thank my colleagues.

NON-ELDERLY DISABLED INCREMENTAL VOUCHERS

Mr. DOMENICI. Mr. President, I rise to join my friend and colleague, Senator BOND, in a colloquy on the Department of Housing and Urban Development's (HUD) Section 8 program. Senator BOND, it is my understanding that the section of the bill allocating funding for the Section 8 Housing Certificate Fund includes language that allows HUD to target up to $36 million for incremental vouchers to non-elderly people with disabilities that are adversely affected by the designation of public and assisted housing as ''elderly only.'' Is this correct?

Mr. BOND. The Senator is correct. The bill includes more than $461 million for the HUD Secretary to support a range of activities related to the Section 8 program including contract amendments and other measures to ensure that housing authorities are able to lease up to their authorized unit levels. In addition, the bill allows HUD to allocate up to $36 million for new vouchers tied to the designation and occupancy restrictions imposed in public and assisted housing developments for the elderly. This continues a policy established by Congress in 1996 to ensure alternative resources for non-elderly people with disabilities who are being excluded from certain public and assisted housing properties.

It is important to note that the bill requires the HUD Secretary to ensure that there are adequate funds to renew all existing rental vouchers before allocating additional funds for disability vouchers for Fiscal Year 2004. It is the expectation of both Senator Mikulski and myself that HUD will be able to make a mid-year assessment in Fiscal Year 2004 to determine if the amounts appropriated for voucher renewals and contract amendments exceed the expected requests from housing authorities for authorized voucher renewals. In our view, such an assessment can be made as part of the periodic measurements HUD routinely makes regarding the pace of voucher renewals. It should also be part of the requirement set forth in S. Rpt. 108–143 by the Appropriations Committee for development of a real-time data model to identify the actual use of vouchers.

Further, it is our view that every effort should be made to ensure that public housing designation plans for elderly-only housing are linked to the vouchers, should they become available in Fiscal Year 2004. I do not believe that HUD should be prevented from including these disability vouchers in its annual consolidated Notice of Funding Availability or SuperNOFA. This would

allow the agency to allocate expeditiously these vouchers before the end of Fiscal Year 2004 to housing authorities that are able to target them effectively to non-elderly people with disabilities who have been adversely affected by the designation of public and assisted housing as elderly only.

Mr. DOMENICI. I thank the Senator from Missouri for his support on this important issue.

NSF ASTRONOMICAL RESEARCH

Mr. INOUYE. Mr. President, I rise to speak on the issue of funding for astronomy within the National Science Foundation. I would like to engage in a colloquy with Senators BOND and MIKULSKI, the distinguished chairman and ranking member of the Subcommittee on VA, HUD and Independent Agencies.

Mr. BOND. I would be happy to engage in such a discussion with the Senator from Hawaii, a member of the Committee and the ranking member on the Subcommittee on Defense.

Mr. INOUYE. The committee's bill recognizes that the budget request provided inadequate funding for NSF's astronomical facilities. In response, the committee bill provided additional funding for radio astronomy facilities, but the funding level in other areas remains inadequate. For example, the National Optical Astronomy Observatory would be reduced below last year's level.

Ms. MIKULSKI. The Senator is correct. We were unable to provide additional funds for the NOAO due to our tight 302(b) allocation.

Mr. INOUYE. One specific high priority area for investment in optical astronomy that will be needed to develop the next generation of ground-based telescopes is in the area of adaptive optics. This will enable a major advance in astronomy that will have far-reaching effects in other areas, including national security. The National Academy of Sciences Decadal Survey in Astronomy has identified this as the enabling breakthrough that will be needed for the Giant Segmented Mirror Telescope, the top priority for optical astronomy.

For fiscal year 2004, about $5 million in additional funding for adaptive optics development is needed in order to develop the future generation of ground based telescopes, particularly for the GSMT. Would the chairman and ranking member be willing to join me in examining this possibility during conference on this bill?

Mr. BOND. We face a very tough conference with the House with our tight allocation and other competing funding priority areas such as veterans' health care, affordable housing, and other science and space programs. Nevertheless, I will look at this issue in conference.

Mr. MIKULSKI. I would be happy to support the Senator.

Mr. INOUYE. I would like to raise another issue. The Advanced Technology Solar Telescope was identified as the highest priority solar astronomy initiative for the coming decade. Presently, the National Solar Observatory is leading a national effort to identify a site for this future telescope and to make the overall project a success by addressing the long lead technologies. Progress on these is essential in order for the Advanced Technology Solar Telescope to achieve operations by 2007–2008 when NASA's complimentary space mission, the Solar Dynamics Observer, is launched. The combination of these two observatories will provide an unprecedented synergy between space- and ground-based solar observations that we believe will be of great scientific benefit. Unfortunately, the budget request does not provide the necessary funding to accommodate these needs.

One specific area that has emerged as critical is to begin the preparatory work on the mirror for this telescope and to develop fully the fabrication and polishing techniques that will be necessary. Would the chairman and ranking member join me in helping to identify $2 million in additional funding during conference to address this issue?

Mr. BOND. Speaking for Senator MIKULSKI and myself, we would be happy to look at this issue in conference.

Mr. INOUYE. I thank both Senators for their leadership in helping the U.S. remain scientifically and technologically competitive by providing critical investments in research.

Mr. BYRD. Mr. President, I am very interested in the need to provide funding through the Environmental Protection Agency (EPA) for the National Research Council to study whether the use of coal combustion wastes, otherwise known as coal fly ash, poses health and/or safety threats to the public or to the environment when used for reclamation purposes in both active and abandoned coal mines.

For more than twenty years, the EPA has been grappling with the issue of whether and how the use of these power plant combustion wastes should be regulated and the manner in which they should be regulated, if at all, under the Resources Conservation and Recovery Act or the Surface Mining Control and Reclamation Act. With this amendment, the National Research Council will be able to provide much-needed research assistance to the EPA as the agency continues to consider the development of national regulations in this area.

This study serves an important purpose and will help answer important questions about the impact of disposing coal combustion wastes in coal mines. Further, this study would offer timely information to EPA policy makers as these experts continue to assess the need for regulations governing this practice.

In summary, there is a great need for this study. It could be funded within existing resources and under existing authorizations. I hope that my colleagues will be able to consider this important request during the VA/HUD conference. I thank them for their consideration of this issue.

Mr. BOND. I thank the Senator from West Virginia for his remarks, and I will be working to ensure that this important study will be included in the conference report.

Ms. MIKULSKI. I also thank the senior Senator from West Virginia, and I, too, will support his request for such a study during the conference negotiations. This is an important matter for the State of West Virginia and other coal-producing States.

NASA

Mr. COCHRAN. Mr. President, I commend the chairman and the subcommittee staff for their outstanding work in bringing this legislation to the Senate for consideration.

Mr. BOND. I thank the Senator for his kind comments.

Mr. COCHRAN. As the chairman knows, I have had a longstanding interest in NASA's research partnerships with universities and industry, particularly in the area of developing commercial applications in remote sensing. I am pleased that the committee report includes the following language, which directs NASA to continue these partnerships:

> The Committee also expects NASA to continue its work on long-term plans to partner with U.S. universities and industry in a variety of NASA-related science research, including research related to nanotechnology, information technology and remote sensing. These are all areas of investment that have a commercial application that will have an increasing impact on society, the economy, and quality of life.

Mr. BOND. I share and strongly support the Senator's view that NASA should continue to work with universities and industry on NASA-related scientific research.

Mr. COCHRAN. I appreciate the Senator's response and would make the point that, while the Committee is supportive of these partnerships, the committee report proposes to decrease funding for the Earth Science Applications by $15,000,000 below the President's Budget request. I am concerned that this reduction will not only limit NASA's ability to partner with universities in the future, but may put at risk several current and on-going NASA contracts with universities for remote sensing research.

I am particularly concerned that NASA has sufficient funds in fiscal year 2004 to continue, at the fiscal year 2003 contracted amounts, three important NASA-university partnerships—the Enterprise for Innovative Geospatial Solutions, the Institute for Advanced Education in Geospatial Sciences, and the GeoResources Institute. I would inquire whether the Chairman would agree that it is not the Committee's intention that this Bill's proposed reduction in the Earth Sciences account will be applied by NASA to reduce the fiscal year 2004 funding for these three partnerships.

Mr. BOND. I appreciate the Senator bringing his concerns to my attention. He has my assurance that the Committee's proposed reduction in the Earth

Sciences account is not intended to reduce the funding for the three university partnership programs he has described. I also share your concerns that this reduction could curtail some of the valuable research which we expect and which needs to be accomplished, and therefore intend to work in conference to increase the funding for Earth Science Applications to prevent any unintended shortfalls to existing programs as well as to needed new investments. As NASA continues to implement full cost accounting, we will confront a number of funding issues which will need additional scrutiny as we seek to understand NASA's new requirements with regard to what costs apply to programs under full cost accounting.

Mr. COCHRAN. I appreciate the Senator's assurance and look forward to working with him to ensure Earth Science Applications and these important NASA-university partnerships will be fully funded in fiscal year 2004.

Mr. SANTORUM. Mr. President, today I rise to speak to an amendment to the VA–HUD, and Independent Agencies appropriations bill which increases the bill's funding for AmeriCorps up to the funding level requested by President Bush in this year's budget. The bill currently includes $340 million in a combined account for AmeriCorps grants, national and state grants, and education awards. My amendment would add $93 million to increase the total to $433 million, the President's budget request. The amendment is paid for by the necessary across-the-board reduction in the bill as a whole. As a part of the USA Freedom Corps initiative, President Bush is committed to providing resources for 75,000 AmeriCorps participants this coming year. Earlier this year, in July, the Senate supported an increase of $100 million in Fiscal Year 2003 funding. Unfortunately, the funding was not ultimately included in the supplemental spending bill to the detriment of many committed community service programs around the country and in Pennsylvania.

Major community service and volunteer programs funded by the Federal Government are authorized under two laws: the National and Community Service Act of 1990, NCSA, and the Domestic Volunteer Service Act of 1973, DVSA. The Corporation for National and Community Service, CNCS, an independent Federal agency, generally administers the programs authorized under these laws.

The NCSA and DVSA have not been reauthorized since 1993, with the passage of the National and Community Service Trust Act of 1993, P.L. 103–82). This measure established: No. 1, the AmeriCorps program; No. 2, CNCS to administer NCSA and DVSA programs; No. 3, a National Service Trust to fund educational awards to AmeriCorps and other community service participants; and No. 4, State commissions on national and community service to receive funding under NCSA. Although authorization for the appropriation of funds for NCSA and DVSA programs expired at the end of fiscal year 1996, funding for the programs has been maintained through annual appropriations legislation. Specifically, NCSA programs are funded through the Veterans Affairs, VA, and Housing and Urban Development, HUD, appropriations bill, while DVSA programs are funded through the Labor, Health and Human Services, HHS, and Education appropriations bill.

AmeriCorps funds are distributed through the following channels: State formula programs, State competitive programs, national grants, and set-asides for Indian tribes. One of the benefits eligible AmeriCorps participants receive is an education award of $4,725 at the end of their service term. As a result of accounting and management complications and reduced funding, the AmeriCorps program expects to fall short of funding the 50,000 available volunteer slots for 2003.

Significant progress continues to be made to improve and reform the AmeriCorps program. Under the leadership of former Senator Harris Wofford and some States, significant steps were taken to improve the management of the AmeriCorps program of the Corporation for National Service, CNS. Les Lenkowsky had a vision to continue that progress and a commitment to community service. I recognize the dedication and contributions of AmeriCorps participants. I also believe that more can be done to improve the effectiveness of AmeriCorps by expanding the opportunities for service and I have previously introduced legislation intended to further that effort. In August 2001, I introduced S. 1352, the AmeriCorps Reform and Charitable Expansion Act. The goal of this legislation was to expand service opportunities through the AmeriCorps program and better equip AmeriCorps volunteers to reach out and serve Americans in low-income communities. We must continue to focus our efforts on serving Americans in our society who are most in need of a helping hand. My bill would have enabled participants to focus their efforts on helping Americans who are often overlooked in our society and help bring about renewal in our low-income communities. The bill would have dramatically increased service opportunities in low-income communities through a voucher system, which would have encouraged AmeriCorps volunteers to choose locations predominantly serving low-income individuals. In addition to increasing the funding, I believe it is important to reauthorize the Corporation for National Service this Congress.

As a significant additional step, on June 18, 2003, Senator KIT BOND of Missouri introduced S. 1276, the Strengthen AmeriCorps Program Act. I cosponsored this bipartisan legislation, which allowed the CNCS to fund education award grants using ''conservative estimates'' of AmeriCorps volunteer awards. CNCS is expected to enroll nearly 50,000 volunteers in 2003. The bill also provides safeguards for the program by establishing a central reserve fund to guard the Corporation against overenrollment; requiring the Chief Executive Officer to certify that the National Service Trust Fund contains sufficient resources to meet education award liabilities; and requiring an independent audit of the corporation's funding formula. S. 1276 was passed unanimously by the Senate, with my strong support, and was subsequently passed by the House of Representatives the following day. Passage of this legislation was a positive step towards addressing the needs of the AmeriCorps program.

I am disappointed that additional AmeriCorps funds were not ultimately included in the supplemental this year. However, I am pleased that increased funding has been included in both the Senate and House fiscal year 2004 VA–HUD, and Independent Agencies appropriations bill. The House passed this legislation on July 21, and it contains $244 million for the aforementioned grants and education awards. President Bush requested $313.2 million for fiscal year 2004; the amount provided in fiscal year 2003 was $173.9 million.

Mr. President, I urge my colleagues to support this amendment to expand the number of AmeriCorps participants and fully fund the President's request. I also believe that Congress should refocus the program on poverty alleviation efforts, expanded service location options for participants, and placing a greater emphasis on serving charities and the needy communities they serve to enable an even more strategic contribution from this federally supported program for Americans in need.

Mr. BOND. Mr. President, I would like to thank the Senator from Pennsylvania, Mr. SANTORUM, for agreeing to withdraw his amendment to further increase funds for the AmeriCorps program. I look forward to working with the Senator from Pennsylvania in the effort in conference to fully fund the President's request for AmeriCorps.

Mr. NICKLES. Mr. President, today the Senate is considering H.R. 2861, the Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations bill for Fiscal Year 2004, as reported by the Senate Committee on Appropriations.

The pending bill provides $91.334 billion in total budget authority and $96.549 billion in total outlays for Fiscal Year 2004 and within the Subcommittee's 302(b) allocation. For discretionary spending the Senate bill is at the Subcommittee's 302(b) allocation for budget authority and below the allocation by $.018 billion or .02 percent in outlays. The Senate bill is $1.699 billion or 1.8 percent in BA and $.708 billion or .7 percent in outlays above the President's budget request.

The pending bill funds the programs of the Department of Veterans Affairs,

the Department of Housing and Urban Development, the Environmental Protection Agency, Corporation for National and Community Service, National Aeronautics and Space Administration, National Science Foundation and several other agencies.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be printed in the RECORD.

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

S. 1584, VA–HUD APPROPRIATIONS, 2004.—SPENDING COMPARISONS—SENATE-REPORTED BILL

[Fiscal Year 2004, $ millions]

	General purpose [1]	Mandatory	Total
Senate-reported bill: [2]			
Budget authority	91,334	32,911	124,245
Outlays	96,549	32,685	129,234
Senate Committee allocation:			
Budget authority	91,334	32,911	124,245
Outlays	96,567	32,685	129,252
2003 enacted:			
Budget authority	86,817	30,318	117,135
Outlays	93,061	29,859	122,920
President's request:			
Budget authority	89,635	32,911	122,546
Outlays	95,841	32,685	128,526
House-passed bill:			
Budget authority	90,033	32,482	122,515
Outlays	95,478	32,266	127,744
Senate-Reported Bill Compared To			
Senate 302(b) allocation:			
Budget authority	0	0	0
Outlays	−18	0	−18
2003 enacted:			
Budget authority	4,517	2,593	7,110
Outlays	3,488	2,826	6,314
President's request			
Budget authority	1,699	0	1,699
Outlays	708	0	708
House-passed bill:			
Budget authority	1,301	429	1,730
Outlays	1,071	419	1,490

[1] Adjusted for floor amendment striking contingent emergency designation.
[2] This bill contains $25 million in lost revenue in FY 2004 due to a provision that blocks pesticide fees.
Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

Mr. SARBANES. Mr. President, I come to the floor today to voice my support for the HUD/VA fiscal year 2004 appropriations bill currently before us. This bill is a great improvement over the administration's budget which sought to terminate a number of important housing programs. Under the leadership of Senators BOND and MIKULSKI, the Appropriations Committee was able to restore cuts contained in the administration's budget.

I first want to underscore the importance of the housing programs funded under this bill. These programs meet a critical need in communities around this country. Thirty percent of American families have housing affordability problems, with over 14 million families paying more than half of their income for rent. Many working families are unable to afford housing costs and this problem is growing as housing costs rise.

The importance of housing programs is clear. Unfortunately, each year we must fight to ensure that these programs are adequately funded. While I support the overall bill that we are considering, it does not contain adequate funding to meet the needs of low-income people around this country. What this bill does, however, is improve upon the administration's budget request.

I thank Senators BOND and MIKULSKI for including language in this bill which will help to ensure that thousands of families do not lose their homes. Under the administration's budget, the section 8 housing voucher program, which assists almost 2 million families across the country, would be underfunded by over $1 billion.

Fortunately, we have reason to believe that HUD has funds from prior years to use on voucher renewals, and the bill before us directs HUD to use all legally available funds for this purpose. The bill contains important provisions that preserve a housing agency's right to lease up to its authorized level of vouchers, and to overlease in a given month where necessary to achieve full utilization. It is my hope that these provisions avert any problems that could be caused by the low level of appropriations for this program. However, I fully support language in the report directing HUD to seek additional funding through a supplemental if necessary.

The bill before us restores funding for a number of small, but important programs that the President's budget sought to terminate. This bill continues the Rural Housing and Economic Development program, a $25 million program to help address the unique housing needs in rural communities, and provides $25 million for brownfields development.

Fortunately, homeless programs in this bill are provided with $108 million more than in fiscal year 2003. Over 1 million children will experience homelessness at some point this year, and each extra dollar for homeless programs is clearly needed to ensure that no child has to live on the street.

While there are many positive aspects to this appropriations bill, the public housing program, which houses approximately 1.5 million families, is underfunded yet again. each year, the administration has cut the Public Housing Capital Fund, which is used for maintenance and repairs. There is already a backlog of over $20 billion in needed capital repairs, yet, the administration's budget, as well as this bill, cuts the Capital Fund by $69 million. Without adequate funding, this backlog will continue to grow, threatening the homes of 1.5 million American families and the Federal Government's substantial investment in this housing.

The Public Housing Operating Fund is level funded; however, even that level is not adequate. Under last year's appropriations, HUD was unable to provide housing authorities with 100 percent of their needed subsidies. In addition to these cuts, in the past few years, housing authorities have lost the ability to run youth programs and provide for safety patrols as a result of the termination of the Public Housing Drug Elimination Program.

Despite these cuts, public housing agencies, in general, provide decent and safe housing for millions of low-income Americans. However, there are some public housing developments that do not provide adequate housing and contribute to neighborhood blight and deterioration. These developments are being transformed through the HOPE VI program, which provides grants to demolish and rebuild the deteriorated housing, helping to revitalize communities. I can tell you that in Baltimore City, the HOPE VI program has been an integral part of our revitalization efforts and its effects are felt throughout the city. I commend Senators BOND and MIKULSKI for continuing to fund this important program in the face of the administration's efforts to terminate HOPE VI.

The appropriations bill before us also contains a number of changes to existing programs. I want to raise a concern about the adoption in this bill of language authorizing HUD to move forward with a proposal to allow for subprime FHA lending. I do not believe that HUD is prepared for such a program. FHA has been an important tool for creating first time homebuyers, particularly new minority homebuyers. However, in some areas, as the committee report recognizes, FHA has been misused so as to lead to neighborhood disinvestment. The potential for abuse is too large to allow HUD to move forward with this new product. I urge members of the committee to ask HUD to provide a detailed plan on how it would implement a subprime FHA product prior to empowering HUD to do so.

I also thank Senator BOND and Senator MIKULSKI for their strong and ongoing support of the Asset Control Area, ACA, program. This program was established by the appropriators with the goal of turning distressed neighborhoods with high foreclosure rates, low homeownership rates, and disinvestment into areas of hope and growth. HUD has not administered this program effectively, as the Senate report points out. The Congress gave HUD considerable flexibility to run this program and I strongly agree with the views expressed in the report that HUD has not used this flexibility to effectively work with the local governments and nonprofits to make this program useful. I agree with my colleagues that HUD ought to work with these groups to ensure that they possess the necessary tools to invest in and rehabilitate these communities.

Restoring neighborhoods that have fallen victim to disinvestment is important; however, it is more cost effective to prevent the disinvestment from happening in the first place. That is why we must do more to prevent FHA foreclosures in troubled neighborhoods. I applaud Senator MIKULSKI and Senator BOND for their continued efforts to find ways to stop the foreclosure and flipping problems that plague many neighborhoods. I support the requirement contained in the committee report that HUD explore ways to protect both these communities and FHA homebuyers from bad loans that lead

to foreclosures. The idea that FHA homebuyers in these specific areas would have someone who is responsible for watching out for their interests could help reduce flipping, predatory lending, and other abusive practices that undermine a community's stability and I thank my colleagues for including this in the bill before us.

Again, I thank Senators BOND and MIKULSKI for ensuring that low-income families continue to have access to decent and safe housing and for helping to address some of the tough issues that affect many neighborhoods around the country—vacant homes, predatory lending, and revitalization efforts.

Ms. MIKULSKI. Mr. President, what time is it?

The PRESIDENT pro tempore. It is 5:58.

Ms. MIKULSKI. Mr. President, in the 2 minutes that are left I just want to thank my colleague for the spirited way he has tried to move this bill. We worked with energy. We had momentum. We had bipartisan support. With the 2 minutes left on this bill, I really must express my very keen disappointment that we were not allowed at least another hour or two to finish. I know the other side has the issues they want to raise on Federal judgeships, but this bill stands up for what America stands for—veterans, empowerment of communities, and housing. And for 2 hours, in a show of respect to them, we could finish this bill.

The PRESIDENT pro tempore. The hour of 6 o'clock having arrived, the majority leader is recognized.

JUDICIAL NOMINATIONS

The PRESIDENT pro tempore. The hour of 6 o'clock having arrived, the majority leader is recognized.

Mr. FRIST. Mr. President, tonight we embark upon an extraordinary session for the next 30 hours. Republicans and Democrats will debate the merits of three judicial nominees. We will be considering the meaning of our constitutional responsibility to advise and consent on nominations. We will discuss whether there is a need to enact filibuster reform so that nominations taken to the floor can get a vote.

At the end of this time, the Senate will either vote on the nominees or we will try to break the minority's filibusters through cloture votes. Our goal is very simple: It is an up-or-down vote on these nominees. People can vote them up or they can vote them down. Just give us a vote.

We hold this extraordinary session for truly extraordinary reasons. In the history of this Senate, through 107 Congresses, the filibuster was never used to block confirmation of judicial nominees enjoying majority support. When the Senate has refused to confirm a nominee brought to the floor, it has done so on an up-or-down vote. Permitting a vote was fair to the nominees and fair to the President who sent them to us. In theory, the filibuster has always been available as a tool to derail a nomination, but until this Congress it has not been successfully used.

On rare occasions, confirmation filibusters were attempted, but the Senate always thwarted them. Up until now, no judicial nominee has ever failed on a filibuster. For the past 200 years, no judicial nominee has ever failed on a filibuster.

This year, in this Congress, those norms have been shattered. A partisan filibuster destroyed the nomination of Miguel Estrada, an immigrant from Honduras. Mr. Estrada is a superb lawyer, a great American success story. He served with distinction in both the Clinton administration and the Bush administration. The American Bar Association gave him its highest rating. Senate confirmation by an ample majority was assured. But a filibuster blocked action and the Senate was denied the opportunity for an up-or-down vote.

The remedy for the filibuster is a cloture vote. Before filing a cloture motion on the Estrada nomination, we waited several weeks. During that time, the nomination was debated on the floor for many hours. On more than 20 occasions we asked unanimous consent for a time certain to vote. Every time we did, the minority objected. They obstructed a simple up-or-down vote. From their standpoint, Mr. Estrada would never get a vote, not in a week, not in a month, not in a month or two, and not even for the whole Congress.

When it became clear that consent was impossible and the filibuster would not voluntarily end, cloture was the only resource left. Until this Congress, the record number of cloture votes on a single judicial nomination was two. On the few occasions a filibuster had gotten that far, bipartisan majorities in both invoked cloture, shut it down, and immediately thereafter those nominees were confirmed. Not so for Miguel Estrada. Seven times—not two, seven times—we initiated cloture; seven times cloture failed. Each time more than a majority in this body voted to end the filibuster but never did we get 60 votes. The minority obstruction did prevail, but Mr. Estrada would never get an up-or-down vote. This body never gave Miguel Estrada an up-or-down vote.

Finally, Mr. Estrada asked the President to withdraw his nomination. Who could blame him? He left the field with dignity. Meanwhile, the Federal courts—indeed, I would argue, therefore, the American people—were denied the service of a brilliant intellect, and the Senate's confirmation process was tarnished with unfairness.

Sad to say, Miguel Estrada was not an isolated case. Filibusters have also been mounted against Priscilla Owen, William Pryor, and Charles Pickering. In each of these instances, a majority of the Senate will confirm, a majority will confirm, but we cannot get 60 votes for cloture to allow the vote. Under Senate rules, the Presiding Officer cannot put the question to a vote if any Senator holds the floor or seeks to speak. If debate does not end, we cannot vote. To conclude debate, we must secure cloture, but cloture requires 60 votes. If a minority determines to obstruct, they never permit the Chair to put the question, and they withhold the votes for cloture to stop the filibuster.

On Miguel Estrada, on Priscilla Owen, on William Pryor, and on Charles Pickering, the full Senate has been denied the right to vote on confirmation. And no amount of debate and no amount of time is sufficient so the opponents' obstruction thus far has prevailed.

This week, I fear yet two more nominees may fall victim to the filibuster. Carolyn Kuhl and Janice Rogers Brown are able and talented candidates for the Federal bench. Either could be confirmed if they were ever given a vote. Will Senators be able to take those votes or will disciplined obstruction prevail yet again? I would like to be proven wrong, but I am not optimistic.

We will hear in this debate over the next several hours that the Senate has confirmed over 168 Bush nominees, and only 4 have thus far been blocked. Some Senators will argue these numbers demonstrate fairness to the nominees overall and to the President. We hear again and again the Senate is not a rubber stamp.

I am unimpressed with that argument. It uses a scorecard of a sort to mask the real issues. Can Senators vote up or down on a nominee? Or will obstruction by filibuster deny them that right to vote? Will Senators be held accountable for their vote? Will all nominees brought to the floor be treated fairly and get a vote? Will we be denied our right to give advice and consent? If Senators wish to oppose a nominee, that is their right. They may vote against him or her if they wish. If they can command a majority, the nominee simply will not be confirmed. That is how things should be. But that simple logic seems no longer to apply. Because of the filibuster, the majority is allowed to vote only if the minority consents.

Filibustering judicial nominations breaks dangerous new ground. It is unprecedented. These filibusters are not business as usual. Obstructionists have eroded two centuries of Senate tradition. Those who obstruct have changed the ground rules by which the Senate votes on confirmations. Some contend the minority has no choice. These left-wing activists and special interests claim the minority must use every available tool to oppose even if it changes forever how the Senate does business. Only then, they say, can the separation of powers be vindicated.

But let's look to history because history shows us a very different and a better path. For 70 percent of the 20th century the same party controlled the

White House and the Senate. Franklin Roosevelt sent liberal nominees to a Senate dominated by Democrats. So did John Kennedy, Lyndon Johnson, and Jimmy Carter. Ronald Reagan sent conservative nominees to a Senate controlled by Republicans. The Senate confirmed most of those nominees and rejected some others. But nominations brought to the floor got a vote and never died due to a filibuster.

All during those times the Senate had vigorous debate, effective debate. They had vigorous and effective minorities who sometimes filibustered legislation but never filibustered judges. Was Senator Dirksen's minority derelict in some way in not using the filibuster against Kennedy's and Johnson's nominees? What about the minority that served with Senator Baker but did not filibuster Carter judges, the minority that served with Senator BYRD but did not filibuster Reagan judges, or the minority that served with Senator DOLE but did not obstruct Clinton judges? Because they did not filibuster judges, did those minorities abdicate their confirmation responsibilities? I think not.

But now a different tradition has been launched. It is the obstruction of judges by a minority. This obstruction sets a novel threshold for confirmation: Nominees who are singled out because they fail someone's ideological test or because they showed general promise must have 60 votes to break a filibuster. The Constitution says that a simple majority is enough to confirm, but somehow that majority is no longer sufficient. Confronted with a filibuster and disciplined obstruction, the majority cannot vote at all. They are being denied a simple up-or-down vote on those nominees.

Under the Constitution, the Senate has a confirmation veto; a majority can vote a nominee down but obstruction by filibuster is veto by a minority. Never did the framers envision that anti-democratic outcome.

The American people are going to learn a lot about cloture over the next 30 hours. Cloture has applied to nominations since 1949 when the rule was expanded to address every debatable question except for motions to proceed to rules changes. The inclusion of cloture was merely incidental to a broader reform. In 1949, the change was controversial. It was well debated but not a word in all of that debate in 1949 was about nominations. The omission is not surprising because nominations simply were not filibustered then.

For three decades thereafter many proposals surfaced to change the cloture rule, and in 1959, 1975, and 1979 major amendments were, in fact, adopted. In all those debates not a word was said about nominations.

Mr. GREGG. Will the majority yield for a parliamentary inquiry? Isn't the sign across the aisle in violation of rule XVII?

The PRESIDENT pro tempore. The Parliamentarian will make a report to the Chair.

The majority leader is recognized.

Mr. FRIST. Many proposals surfaced to change the cloture rule. Major amendments were adopted. In all those debates, not a word was mentioned about nominations. Why should the debate have focused there? Nominations were not filibustered.

What is happening now breaks sharply with Senate tradition in ways that are corrosive for this institution. To restore those traditions, I have proposed filibuster reform. Along with Senators ZELL MILLER and nine additional cosponsors, I introduced S. Res. 138 in May. Our proposal was heard, reported by the Rules Committee in June, and now awaits Senate action.

The Frist-Miller proposal will alter the way the Senate concludes debate on nominations. By progressively declining cloture requirements of 60 votes, then 57 votes, then 54 votes, then 51, and finally, with a simple majority of Senators present and voting, we can end the practice of filibustering nominations if the Senate has the will to do so.

Every effort to reform the cloture rule, whether successful or not, has been debated in its entirety. Frist-Miller is different. It reforms the cloture process only for nominations and leaves cloture for the remainder of Senate debate alone. We fix only what is broken.

Mr. GREGG. Mr. President, I am sorry to interfere, but that sign is clearly in violation of rule XVII and should be removed.

The PRESIDENT pro tempore. The Chair has asked for a review of that, and the Chair will report to the Senate when we get that report.

The majority leader is recognized.

Mr. FRIST. Mr. President, a nomination filibuster by a minority whenever it may coalesce is different from legislative filibusters. On legislation, there is a potential safety valve that a troubled measure may be offered elsewhere as a nongermane amendment or somehow be addressed by the House or in conference. No such possibility exists on a nomination. There is no safety valve on a nomination. Filibustering nominations is obstruction in its most potent and virulent form. Even if a majority of Senators stand ready to confirm, nomination filibusters are fatal.

Frist-Miller is a narrow remedy that addresses a real problem. It permits substantial debate but allows the full Senate to work its will. The Senate must halt the emerging and unwelcome practice of obstructing nominations. No change in the rules is needed if those who have filibustered will relent and permit the nominations to have a vote. If they do not, then amending the rules is imperative. We have sought consent for a time certain to vote on each of the nominees. Met with objection, we filed for cloture. Without either consent or cloture, the obstruction will continue and incessant demands for reform will grow louder.

These demands will include the exercise of the Senate's constitutional rulemaking power to amend rules or precedents to end filibusters on nominees.

Various proposals go far beyond the Frist-Miller filibuster reform. I would not support these efforts now but I reserve the right to support them later.

During these recent days, the majority has come under vocal criticism from our colleagues on the other side for scheduling this executive session tonight and these cloture votes. The debate is a waste of time, they contend, because the Senate has many urgent matters to address, and we are short on time to address them. Indeed, our agenda is crowded. But the question of how this Senate discharges its constitutional responsibility on nominations is among the most important issues we can discuss. It affects how we relate to two coordinate branches of government. It concerns whether Senate traditions will be upheld or discarded. It involves the meaning and future of the confirmation process. Such deliberations are plainly worth the Senate's time and the close attention of the American people.

In closing, by unanimous consent, time during these 30 hours has been equally divided between the two parties. This will allow for balanced arguments, good debate, a chance to focus on these issues without distraction. We have entered this consent agreement in good faith to foster a serious dialog on a serious subject. This means sticking to the subject and not undermining or trivializing this session by wasting time through meaningless quorum calls and other obstructionist tactics. The debate we launch tonight is fundamental to restoring fairness to our confirmation process and reaffirming two centuries of Senate tradition.

The majority is here, prepared to do business. We want to meet our constitutional responsibility to advise and consent. Whenever the opposition ceases to obstruct, we are ready to vote. What we ask for is to be able to vote, up or down. Just give us a vote.

The PRESIDENT pro tempore. The Chair will make a report on the suggestion of the Senator from New Hampshire. Rule XVII of the Rules for Regulation of the Senate wing of The United States Capitol and Senate Office Buildings provides that:

> Graphic displays in the Senate Chamber are limited to the following:
> Charts, photographs, or renderings:
> Size—No larger than 36 inches by 48 inches.
> Where—On an easel stand next to the Senator's desk or at the rear of the Chamber.
> When—Only at the time the Senator is engaged in debate.
> Number—No more than two may be displayed at a time.

This sign was on display prior to the time the Senator has been recognized. I would ask that the Senator be prepared to use his sign when he is recognized and the signs not be displayed until the Senator is recognized.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The majority leader still has the floor.

Mr. FRIST. Mr. President, once I run through these unanimous consent requests, I will yield the floor.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. President, I now ask unanimous consent that the Senate proceed to executive session for the consideration of Calendar No. 86, the nomination of Priscilla Richman Owen to be a United States Circuit Judge for the Fifth Circuit.

The PRESIDENT pro tempore. Is there objection?

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

The PRESIDENT pro tempore. The Senator reserves the right to object.

Mr. BYRD. I shall not object, but I ask for this recognition for the purpose of asking the distinguished majority leader a question.

Before I do that, may I say to the distinguished majority leader that I have no intention to become involved in this game back and forth. And I do not say it is a game just indulged in by one side. I have nothing to do with it. I have had nothing to say in it thus far. And at the moment, I do not anticipate having anything to say.

My interest is this: I am the ranking member of the Appropriations Committee of the Senate. I have been on that Appropriations Committee longer than any Senator in history. I have been on it 45 years. I would like to see us get one more appropriations bill passed.

When I was chairman of the Appropriations Committee for 7 years, I do not believe there was a year in which we did not get all 13 regular appropriations bills passed. We have passed 10 appropriations bills already this year.

The distinguished chairman of the Appropriations Committee, Mr. STEVENS, who is the President pro tempore of the Senate, and who now presides, has worked hard and has worked with me, but he has done most of the work in getting those 10 appropriations bills passed. I discussed this matter with him during the vote just preceding the hour of 6 o'clock, and I indicated to him I would like to see us try to finish this appropriations bill, the VA–HUD appropriations bill. And he indicated to me—he is in the chair—he indicated to me he would be glad to work toward that.

So here we are. We have finished floor action on 10 of the 13 regular appropriations bills. Only three are left. Those three are VA–HUD; DC appropriations; and CJS, Commerce-Justice-State—three appropriations bills. We are almost finished on VA–HUD.

When I came to the floor, my interest was in trying to get that bill finished, making it 11 appropriations bills. So I came to the floor, and I asked the manager on this side, Senator MIKULSKI, if we could finish it, and how long it would take, in her judgment. She thought it would take perhaps 2 more hours. And I believe, in discussions with Senator BOND, it was also indicated that we might finish that bill in 2 hours.

Now, I hoped the majority leader would be in the Chamber prior to the hour of 6 o'clock. I was made aware of his request that he be recognized 2 minutes before 6—5:58 or some such. I was hoping that—and it was with considerable trepidation, certainly reluctance, that I sought to impose a unanimous consent request that would, for 2 hours, have delayed action on the then-pending unanimous consent—Senate request—the unanimous consent request. I get my tongue a little twisted at age 86. That is my problem.

But I waited, hoping the majority leader would come to the floor. I know the demands on him, and I understand that. But I hoped he would be here so that I could make this request prior to this, what I call a game that is going on.

Please forgive me if—I am interested in getting the appropriations bills passed. I am not interested in participating in this other matter at all—right now. I have some ideas. I do not thoroughly agree—I do not completely agree with the distinguished majority leader on his interpretation of the Constitution with respect to nominees, but that is for another time.

But I have taken the floor now in the hope that we might, on this one day after Veterans Day—and my mother died on Armistice Day, 1918. I was 1 year old back then, lacking a week or something.

We have men and women dying in Iraq now. We have veterans by the scores coming back to this country who are injured and who will carry for life the signs of their service in Iraq.

I wanted to ask the distinguished majority leader—and I did not want to interrupt his speech, but I want to ask him, with great respect, if he would be willing to let the Senate go, let's say, until 8 o'clock, and then renew the previous order, with the understanding that we finish action on the VA-HUD bill by 8 o'clock, that the time intervening be equally divided between Mr. BOND and Senator MIKULSKI, and that we enter the order to complete that bill at 8 o'clock.

That is all I am asking, that we go another hour and a half, complete that bill, which would make us have 11 bills finished as far as floor action is concerned, with only 2 remaining. Let's get that bill passed. That is important.

I was a participant in the filibuster against Abe Fortas. I know something about filibusters. And I just am not willing to enter into one personally right now. But I would like to get this appropriations bill finished.

Mr. FRIST. Mr. President, responding, through the Chair, there is nobody on the floor of the Senate now—and I do appreciate this many people being here to debate the issue of our judicial nominations and the process, the process that the distinguished Senator from West Virginia probably understands better than anybody; that is cloture and the history of cloture—nobody understands better the challenges to me as majority leader than the distinguished Senator from West Virginia on the scheduling of this body.

I know there are people questioning why we are working tonight, and even through the night. We tried to spend a full day this Monday on the floor of the Senate, which was not a Federal holiday—never has been a Federal holiday—but when I made it clear we were here to do appropriations, a specific appropriations bill, and then, yes, on Veterans Day had us here—and I know the distinguished Senator had wished we were not here on that day, but being here on Veterans Day, and talking about the Department of Defense authorization and military construction and preparing for the bill that we addressed today, we made it very clear we would be using this time from 6 o'clock tonight, a long time ago, weeks ago, to your side and my side—not weeks ago, probably last week—after we try to finish up our business.

I put a huge priority on appropriations, a huge priority. We are going to kill ourselves to finish all these bills. I pledge to you by the end of next week is my goal to fully address all of the appropriations bills because I respect the process, and I have tried to bring every bill out. And as of today, we have brought every single bill to the floor. And for various reasons—not pointing fingers too much to either side—we have not been able to finish several of them.

Thus, I am going to respectfully say that no, I am going to stick with the schedule because we have people here to talk about an issue that many believe equally important, some more important; that is, our responsibility to handle these judicial nominations responsibly, respectfully, and that is what people are here to debate.

Then I would be happy to discuss how we complete this appropriations process with you and with the distinguished Presiding Officer because I am going to need your help to finish these in an orderly way.

But for now, I think we need to progress with addressing another important issue that is the schedule I set out. I would ask your consideration for setting that schedule out and that we can figure out how to do these appropriations bills.

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

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I say, through the Chair to the distinguished majority leader, we started at 6 o'clock, and he spoke for 22 minutes or something. We have not gone into executive session yet. I would ask consent that your time be counted in the first hour so that we do not get behind in the 30 hours.

Does the leader understand my request?

Mr. FRIST. I do. And then we are going to subtract the time from the questions.

Mr. REID. Yes, I understand.

Mr. FRIST. That is fine, my 22 minutes apply, or whatever the time was I was actually speaking, to our first-hour agreement.

I still have some unanimous consent requests.

Mr. REID. I certainly understand.

Mr. FRIST. But for the length of my speech, it would be fine to apply that time to the first hour since we will be splitting the hours.

The PRESIDENT pro tempore. Is there objection to the request?

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

The PRESIDENT pro tempore. The Senator is recognized for a question.

Mr. BYRD. And I do not intend to object, Mr. President.

May I say to the distinguished majority leader, 4 million veterans receive health care through the veterans health care system funded by the VA-HUD bill. How should we explain to these veterans that the bill is being set aside?

Mr. FRIST. Mr. President, through the Chair, I have had the wonderful opportunity of working in veterans hospitals myself for the last—until I got to this body—for 15 years, every day operating, giving care to veterans in medicine. So I appreciate veterans hospitals. I worked in veterans hospitals. I have probably spent more time than anybody in this Chamber in veterans hospitals—from early in the morning through many nights, just as we are going tonight. I care about hospitals. We are going to address them.

What I would ask, in response, is if the Senator from West Virginia would agree to a 2-hour unanimous consent to finish this bill, VA–HUD, on Friday—on Friday—so we can answer your question. If we can do that, we will be able to do exactly what you want to accomplish, to finish that bill, and it allows me to keep a commitment to a packed Chamber right now where we can debate the issues that people are here to debate. And then, within 48 hours, we have accomplished my objective and your objective. Two hours, we will do it Friday, as soon as we finish the cloture votes?

Mr. BYRD. Will the Senator yield for me to respond?

Mr. FRIST. Yes, sir.

Mr. BYRD. Mr. President, I have long admired the distinguished Senator from Tennessee.

[Disturbance in the Galleries.]

Mr. FRIST. Thank you, sir.

Mr. BYRD. I do not say that facetiously.

The PRESIDENT pro tempore. The Gallery will be warned, no response from the Gallery is permitted in the Senate.

Mr. BYRD. Some people are serious when they say things. But I have admired the Senator as a great physician. He speaks of his long service to veterans. I speak of a long service to veterans—more than 51 years in this Congress. I was here when the Veterans Administration was created. About Friday—Friday——

Mr. FRIST. Yes, sir.

Mr. BYRD. I am the recipient of the Franklin Delano and Eleanor Roosevelt Award for Freedom from Fear. I will receive that award on Saturday. I am not in a position to drive up on Saturday morning and receive that award. My wife is invited also with me. She cannot go. So I have to go on Friday, and the train leaves at 1 o'clock. As far as I am personally concerned, I would be happy to come in and finish those 2 hours and get the—I believe there are four votes that are going to be scheduled on clotures that morning.

Well, I have cast more rollcall votes than any living Senator, any deceased Senator, any Senator in the history of this Republic, any other Senator. I have 16,627 or 8 or 9—somewhere along there.

I say all that to say this: I do not want to miss any rollcall votes on Saturday. I take great pride in my rollcall record extending over 45 years in the Senate. It is 98.7 percent. So I missed less than 2 percent of the votes.

Could we agree then—I do not want to put myself in the position of my own leaders, as I did not want to put myself in the position of the distinguished majority leader on the other side. I would like to be able to make the four votes on Friday, catch my train at 1 o'clock, and go up and receive this very prestigious award.

Could we work something out to that effect?

Mr. FRIST. Mr. President, what I would like to do, because it is going to affect everybody's schedule, is to address this. If we can go through the remainder of the unanimous consent request, then try to address it.

I just want to restate I would love to finish this bill, the appropriations bill on VA–HUD, and I would love to be able to work it out if we can on Friday.

The PRESIDENT pro tempore. Is there objection to the request?

The regular order is to report the nomination at this time. The clerk——

Mr. BYRD. No. I reserved the right to object. May I have another minute? I am not participating in this whatever you call it—marathon, talkathon, blame-athon, or whatever it is. That is not of my interest right now. I am interested in the appropriations bill. It can be passed in 2 hours or less. As far as I am concerned, we could pass it now, just have a rollcall vote on it, the VA–HUD, but that would depend upon the two managers.

I am not going to impose on the time of the Senate and the majority leader, but I ask the majority leader, would he please put the request in some form to finish this bill within the next hour, have a vote up or down within the next hour?

Mr. FRIST. Responding, once again through the Chair, I will not be making that request tonight. Tonight we are going to stay on the judicial nominees. But I would like to discuss with you and the managers of the bill, and the Presiding Officer, the chairman of the Appropriations Committee, how we can best resolve that as quickly as we possibly can.

Mr. BYRD. Thank you, Mr. President. I remove my reservation and thank the majority leader.

The PRESIDENT pro tempore. Did the majority leader submit a unanimous consent request?

Mr. REID. Yes, he did. He did.

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

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be a United States Circuit Judge for the Fifth Circuit.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, I would inquire of the Democratic side if they would be prepared to grant a time limitation on this nomination of 2 hours?

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Thank you very much, Mr. President.

Through you to the distinguished majority leader, first of all, let me really say we could finish this bill quickly tonight. The decision has been made not to do that. We will be happy to come back Friday and cooperate with the majority. We could not agree to a time, but I think as to how we worked before, if we go to that bill Friday, within a very reasonable period of time we could finish it on Friday. But as far as a specific time agreement is concerned, it would be very difficult to do that. But I stand ready and willing to come back to this bill on Friday and finish it on Friday; that is, VA–HUD. It is too bad we could not do it tonight.

In direct response to the majority leader, we would not be in a position to grant a time on Priscilla Owen. We have already voted on this matter on at least two or three separate occasions, as I recall. So in response to the distinguished majority leader's request, we would not agree to a time agreement on Priscilla Owen of any duration.

CLOTURE MOTION

Mr. FRIST. Given the objection, I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit:

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

NOMINATION OF CAROLYN B. KUHL TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 169, the nomination of Carolyn B. Kuhl, to be a United States Circuit Judge for the Ninth Circuit.

The PRESIDENT pro tempore. The nomination will be stated.

The assistant legislative clerk read the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Mr. FRIST. Mr. President, again I ask the other side if they would be prepared to set a time certain for an up-or-down vote on this nominee after whatever debate they may need.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, in an effort to understand what is going on here, everyone should understand, these requests require a simple majority vote, and it would be senseless to take a vote on this. That is why we did not object.

I would say with this nominee, Carolyn Kuhl, we have reviewed this in very deep detail and would not be in agreement at this time to set any time limit on the debate. I ask the distinguished majority leader to advise us when we finish this woman and the following nominee, if you would be good enough to tell us when you anticipate voting. We are waiving the request for the requirement of a quorum. So if the majority leader can give us some indication when he desires to vote on this, whether it is 12:01 on Friday morning or later in the day.

Mr. FRIST. Mr. President, in response, we plan on voting Friday morning at a reasonable hour to be defined. That means sometime after 8:30 Friday morning. I will be more specific.

Mr. REID. I appreciate that very much. I object.

The PRESIDENT pro tempore. Objection is heard.

CLOTURE MOTION

Mr. FRIST. I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 169, the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

NOMINATION OF JANICE R. BROWN, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 455, the nomination of Janice R. Brown, of California, to be a United States Circuit Judge for the District of Columbia Circuit.

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

The assistant legislative clerk read the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. FRIST. Mr. President, once again, I ask if we would be able to limit the time for debate on this nominee to 8 hours or 10 hours.

Mr. REID. We object, Mr. President.

The PRESIDENT pro tempore. Objection is heard.

CLOTURE MOTION

Mr. FRIST. With that answer, Mr. President, I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 455, the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

Mr. FRIST. Mr. President, I now ask unanimous consent that the three live quorums required under rule XXII be waived en bloc.

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

Mr. FRIST. Mr. President, parliamentary inquiry: In terms of the time we used on our side, how much time, in terms of my initial speech, was used by this side?

The PRESIDENT pro tempore. The majority has 4 minutes 47 seconds. The minority has 11 minutes 22 seconds.

Mr. REID. If I can make an inquiry through the Chair, Mr. President, the unanimous consent request, as I have heard the ruling of the Chair, is not counted against anybody; is that the way it is?

The PRESIDENT pro tempore. The time to object or reserving the right to object has been charged to the side making such a reservation.

Mr. FRIST. Mr. President, I suggest the general agreement is to spend an hour, 30 minutes to a side, and if they are not using the time, it will be yielded back to the other side. I ask unanimous consent that I use 15 minutes, 15 minutes for Senator HATCH, and we go to the other side.

Mr. REID. And we would have an hour?

Mr. FRIST. You would have 30 minutes.

Mr. REID. I say to the distinguished majority leader, we have had no time agreement the first hour other than listening to me object.

The PRESIDENT pro tempore. Reserving the right to object and statements made under such objection or reservation has been charged against the side making that reservation.

Mr. REID. I understand. So the Chair has ruled that the statement by Senator BYRD ran against us; is that true?

The PRESIDENT pro tempore. That is correct.

Mr. REID. So the next half hour will be used by Senators FRIST and HATCH, and then we will use our half hour.

Mr. FRIST. Again, I think it is time for us to move forward. Conceptually, we are going to have an hour, 30 minutes either side. Say I used 15 minutes—it may be more—Senator HATCH will speak about 15 minutes, and 30 minutes will be to your side, and we will be going back and forth.

Mr. REID. Fine. My only concern is we have had Senators we have scheduled to speak to use our half hour. Some of them have been champing at the bit here. If they don't speak now, they lose their time, their day in the sun.

Mr. FRIST. I thought I had a pretty good 20-minute speech. I was ready to start, but because of questions directed to me, again, about scheduling—we get things well set and then because of questions—if we can just start now and do as I requested, have 15 minutes and you take 30 minutes, we will be able to get started.

Mr. REID. I am wondering, I ask if we could use the next 15 minutes so my people who have been here, Senators waiting could take the time. I would divide whatever by 3 until the time until 7 o'clock.

Mr. FRIST. Would you please repeat that?

Mr. REID. Then we can start fresh at 7 o'clock with you and Senator HATCH giving us your statements, and we will take the next half hour.

Mr. FRIST. Mr. President, you mean I have Senator HATCH speak?

Mr. REID. We would take approximately 4 minutes each until 7.

Mr. FRIST. No, Mr. President, Senator HATCH is going to follow me, and then we will go into going back and

forth. Senator HATCH has also been waiting 30 minutes. If it hadn't been for these questions, we would have been done 15 or 20 minutes ago.

Mr. REID. I say through the Chair, I am trying to be peaceful and calm here. The Chair ruled we have 4 minutes left.

Mr. FRIST. Would the Chair clarify how much time we have available on either side?

The PRESIDENT pro tempore. The majority has 4 minutes 37 seconds. The minority has 10 minutes 47 seconds.

Mr. HATCH. I ask unanimous consent that immediately after the half hour taken by the Democrats, I be given an additional 11 minutes. I will take 4 right now.

Mr. SCHUMER. I could not hear the Senator from Utah.

Mr. REID. The Senator from Utah said we would go until 7 o'clock and then they would do the next half hour; is that right? Is that what you said?

The PRESIDENT pro tempore. Is there objection?

Mr. HATCH. No, I said I would take the 4 minutes now and then take the 11 minutes after you had half an hour. How is that?

Mr. REID. Out of their time, that is absolutely fine.

The PRESIDENT pro tempore. The Senator is recognized for 4 minutes.

Mr. HATCH. Mr. President, I think it is appropriate to have the chairman of the Judiciary Committee who has had to go through all this rigmarole to say a few words before we get into this debate. I know the distinguished majority leader wanted me to do so.

To be honest with you, Mr. President, just think about it. All we want to do is what the Senate has always done. Once a nominee comes to the calendar, that nominee deserves a vote up or down under the advise and consent clause which is clearly a majority vote.

Never in the history of this Congress have we had what has been happening over the last number of years caused by the Democrats on the other side.

We should be voting on judges tonight, not debating judges. Frankly, there is a vocal minority of Senators preventing us from doing our constitutional duty to vote on judicial nominees. The American people need to know this, and although some of these folks have been moaning and groaning on the other side that we are taking this time, I suggest to them that there is hardly anything more important in a President's life, whoever that President may be, than getting his or her judicial nominations through.

Frankly, it is extremely important because this involves one-third of the coequal branches of Government. We found a continual filibuster on a number of these nominees.

Let me say this. Democrats seem to be very fond of saying: We passed 168 and we only filibustered 4. The fact is, that raw number of 168 we have had to fight pretty hard to get as well. But we have. Never in the history of this country have we had four stopped. That is only part of it.

I can name at least 15 that I have had various Democrats tell me they are going to filibuster. Most of them are circuit court of appeals nominees for the very important circuit courts in this country, people who have the ABA imprimatur, people such as Miguel Estrada; Priscilla Owen, who broke through the glass ceiling for women; Bill Pryor—even though he is conservative, he has always upheld the law even when he disagreed with the law; Charles Pickering, unanimously confirmed to the district court in 1990 and treated like dirt in the Senate—a racial reconciling. Yet he has been treated just like dirt. Carolyn Kuhl—we are going to have her first cloture vote on Friday because they are going to filibuster. Janice Brown—they are filibustering her; Claude Allen, I am told they are going to filibuster Claude Allen. How about Terrence Boyle of the Fourth Circuit? It looks as if they are going to filibuster him. James Deavers is being held up. Bob Conrad is being held up.

Four Circuit Court of Appeals judges for the Sixth Circuit out of Michigan are being held up by our colleagues on the other side; two district court nominees, and I could name some others.

The fact is, for the first time in history, they are treating a President of the United States in a ridiculous, unconstitutional fashion and not allowing him to have an up-or-down vote on his nominees. If they can defeat these nominees, that is their right, but they should not be dragging their feet and making it very difficult for these nominees to come up.

I heard some of the comments about how important the appropriations process is. It is important, but I can tell you we have had foot dragging almost all year by our colleagues on the other side, and it is important, but there is nothing more important than making sure that our courts are well staffed with competent judges who are going to enforce the law for the benefit of the American citizens.

There is nothing more important than that. Frankly, it is the one legacy that any President can leave. When Bill Clinton was President, we helped him put through 377 judges, the second all-time record. I might add Ronald Reagan was the all-time record holder at 382, 5 more than President Clinton. President Reagan had 6 years of a Republican Senate to help him and President Clinton had only 2 years of a Democratic Senate, and he was treated abundantly fair.

There were 47 holdovers at the end. Contrast that to when Democrats controlled the committee and Bush 1 was President. There were 54 holdovers.

Mr. President, this is really wrong what they are doing. It has the potential of exploding this body. Frankly, we can't allow it to continue. It is time for the American people to understand this. I understand my time is up.

Mr. REID. Mr. President, I yield 2½ minutes to the Senator from New York, Mr. SCHUMER; 2½ minutes to the Senator from California, Mrs. FEINSTEIN; and 2½ minutes to the Senator from Wisconsin, Mr. FEINGOLD; in that order.

The PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, they say one picture says a thousand words; one sign will equal 30 hours of palaver. The bottom line is very simple, we have supported and confirmed 168 judges whom President Bush has sent us. We have blocked 4.

All the rhetoric, all the splitting of hairs, all the talking about angels on the head of a pin don't equal that. This debate will boomerang on my colleagues from the other side of the aisle because all the American people have to do is look at that sign and they say: Gee, you're right.

The bottom line is the President, the majority leader, and the chairman of the Judiciary Committee will not be content unless every single judge the President nominates is rubberstamped by this body. That is what they want. We all know it. We have been very careful and very judicious in whom we have opposed.

People who are getting life appointments should not be extremists, should not be out of the mainstream, should not be asked to roll back 30 or 60 years of jurisprudence, and the four we have blocked fall in that category.

The bottom line is very simple: If you want agreement, then read the Constitution and tell the President, in all due respect, to read the Constitution. It says advise and consent. Advise means consult. We get no consultation. Consent means the Senate does its own independent review. That is what we have done.

So I understand why early on this sign vexed my colleagues from the other side. The bottom line is simple: We have been reasonable; we have been careful; we have been moderate; we have been judicious. The other side and the President simply say my way or the highway. That will not stand.

The PRESIDENT pro tempore. The Senator's time has expired. The Senator from California is recognized 2½ minutes.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, I have served as a member of the Judiciary Committee since I came to the Senate. I take the job very seriously. I try to do my homework in looking at these judges. I very deeply believe that this election provided no mandate to skew the courts to the right. I deeply believe that judges should be in the mainstream of American legal thinking, that they should have the temperament and the wisdom and the intellect to represent us well on the highest courts of our land.

What I wanted to use my time for—and the 2½ minutes will not be enough to do it—is to indicate that during the

time I have been on the Judiciary Committee how I have seen the rules and the procedures of the committee change. Those changes have not been good. They have served to divide the committee more. They begin with changing the American Bar Association's 50-year tradition of rating the qualifications of potential nominees before the President nominates them, to after the President nominates them. I would like to say why I think that is important.

There have been changes made in the so-called blue slip policy so that concerns Senators from a nominee's home State are no longer given any consideration whatsoever. There has been a reinterpretation of a longstanding committee rule, rule 4, prohibiting the majority from prematurely cutting off debate over a nominee in committee. There has been the elimination of the tradition of holding a hearing on only one controversial nominee for appellate vacancies at one time. There have been changes to committee practice——

The PRESIDENT pro tempore. The Senator's time has expired.

Mrs. FEINSTEIN. I hope in the next hour perhaps I might have more time. I yield the floor.

The PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I think we ought to be spending 30 hours on the manufacturing crisis in our country. Since January 31, we have lost 2.5 million manufacturing jobs and over 70,000 of them are from Wisconsin alone.

These jobs are more than numbers on a page. They are all too real. The thousands of Wisconsin residents who have petitioned their Government know this firsthand.

In their letters to me—and, Mr. President, I have with me over 2,000 letters that were sent recently to my home by manufacturers, not labor union members but manufacturers from the State of Wisconsin that are desperate about this problem. Thousands of people from all around Wisconsin, from places such as Sparta and Trempeleau and West Bend and Muskego, write that the first and foremost reason behind these lost jobs is our trade policy.

These letters say: Our elected officials say workers will benefit from this free trade policy and the free trade agreements that come with it, but the opposite has occurred. Our trade deficit is increasing at a pace of $1.5 billion per day. That is how many more products we are importing than we are making. As you can see, these trade agreements are not working to the benefit of U.S. workers.

These letters go on to talk about how manufacturing in America is dying a slow death. That is a much higher priority than spending 30 hours talking about four judicial nominations, and we should respond to the desperate situation that the American people are facing with manufacturing job loss.

I yield the floor.

The PRESIDENT pro tempore. Under the previous order, the next hour is equally divided between the two parties, 30 minutes to each side. Who yields time? The Senator from Utah.

Mr. HATCH. As I understand it, I have 11 minutes left; is that correct?

The PRESIDENT pro tempore. The Senator has a half hour.

Mr. HATCH. Mr. President, we should be voting on judges tonight. Instead we are debating judges tonight because a vocal minority of Senators is preventing us from doing our constitutional duty to vote on judicial nominees.

The American people need to know that. That is why we are here. If you stop and think about this sudden new set of arguments or at least arguments they have used for a long time, the Democratic leadership has been blocking all kinds of passage of bills that are America's priorities for the whole year.

Now they are complaining because we want to let the American people know how bad they have been about Federal judges, which, after all, is one of the most important things we do around here. Just think about it. The long overdue fiscal year 2003 appropriations bills were finally enacted on February 20, 2003. For the first time in history, there were filibusters to defeat the President's circuit court nominees, now up to six who are actually filibustered, and at least another nine whom, I have been told, they will filibuster. The sign they have is an absolute outright falsehood.

We needed legal reforms to stop lawsuit abuse against doctors, businesses, and industries that have been virtually banned by the tactics of the minority. Medical liability, class action reform, gun liability, and asbestos reform: they have all been subject to delays or filibuster by the minority.

Similar delays led to a record number of days spent on the budget resolution and the near record number of rollcall votes on amendments, many of which were virtually identical. The distinguished Senator from Alaska understands that as chairman of the Appropriations Committee.

The most innovative waste of time came on the Energy bill. After spending 22 days on the Energy bill last year, we spent 18 days on the Energy bill this year, only to pass the same version of the Energy bill that passed the Senate last year.

Bioshield legislation necessary to ensure proper vaccines in medicine to counter bioterrorism attacks has still not cleared.

The State Department reauthorization has been stalled by Democrats insisting upon unrelated poison pill amendments be voted on prior to passage. I could go on and on.

The fact is, there has been a steady slowdown, steady slow walk around here, ever since we became the majority.

Now, the issues we are highlighting tonight could not be more fundamental to our country, to democracy, to the rule of law: separation of powers. All are at stake in this ongoing debate. Among the constitutional Framers' conceptual breakthroughs was that the judicial branch would receive equal status to that of the executive and legislative branches. An independent judiciary is the thread that binds the country together and ensures law and order. It is important. It is indispensable to the survival of a civilized society.

If it had not been for the restraining force of an independent judicial branch, either the executive or the legislative branches would have usurped incredible power and destroyed the checks and balances that are at the very foundation of our constitutional form of government. So we all have a stake in this debate tonight, and it is my hope that our opponents across the aisle will act to restore the constitutionally required up-or-down vote for judicial nominees. Ultimately, through the ballot box, the people in my home State of Utah and across America will decide who nominates and who confirms judges.

Let me repeat that our Nation's founding document requires that every judicial nominee who reaches the Senate floor receive an up-or-down vote. It is a simple, clear, and fair fact that lies at the heart of this debate. Once they hit the floor, they have always gotten a vote.

Every one of President Clinton's judges who hit the floor got a vote up or down, and only 1 out of 377 was defeated. But a minority of the Senate is rigging the system by engaging in an unfair set of unprecedented filibusters which are the culmination of an outright assault on the independence of the Federal judiciary.

When our colleagues across the aisle controlled the Senate, we saw nominees with the full support of their home State Senators denied hearings and votes for months and months. We saw nominees stalled by demands for unpublished opinions and volumes of written questions. We saw this become more and more serious since the beginning of this year.

We have continued to see ideology used to threaten the independence of our Federal judiciary by essentially requiring nominees to announce their views on issues that may come before them as Federal judges, something that has not happened in the past. But that is what they are requiring of President Bush's nominees, at least some of them.

They treated Miguel Estrada like dirt, while they allowed John Roberts to go through. Roberts was also in the Solicitor General's office. They did not ask for the highly privileged confidential matters for Roberts, but they did for Miguel Estrada.

By the way, most all of these people have high ratings from their gold standard, the American Bar Association.

We have seen for the first time in American history true filibusters of judicial nominees which are preventing the Senate from exercising its constitutional right and duty of advice and consent. This is harmful to the Nation, it is harmful to the judiciary, and it is certainly harmful to our institution. It is harmful to the President. It is harmful to these people who are willing to put their names up and to do this.

Article II of the Constitution of the United States invests in the President alone the power to nominate judges. There is no room for interpretation. The words are explicit. Yet we have seen efforts to usurp the President's constitutional authority not by constitutional amendment but through various proposals on how nominations should be made and demands on who should be nominated that exceed any reasonable interpretation of consultation.

We have also seen the filibusters of judicial nominees that brought us here tonight and prevent us from exercising our constitutional obligation of an up-or-down vote.

This assault on the judiciary is not without victims. There is no question that it is harmful to the Federal judiciary. More than half of its existing vacancies are considered judicial emergencies. So it is harmful to the President. He is not being treated fairly compared to all Presidents before him. And it is harmful to the Senate, whose constitutional roles are turned on their heads. It is perhaps most harmful to the individual lives of the nominees who have been denied a simple up-or-down vote, which they have always gotten before when they have been brought to the floor on the Executive Calendar.

Now let me talk about some of these nominees because I think it is important to remember that they are very real people who want to get on with their very real lives instead of hanging in the limbo of what has become the Senate's confirmation stall.

Let me turn to this particular picture. Former DC Circuit nominee Miguel Estrada, who is an American success story, unanimously gets the highest rating from the American Bar Association, the Democrats' gold standard. He was stopped for over 2 years—actually 3 years. Priscilla Owen broke through the glass ceiling for women and made it so women could become partners in major law firms, one of the most brilliant people in our society. She was an excellent witness, but they just do not want her.

William Pryor, of course, in my opinion, the outside groups tried to smear Pryor, and they did so with regard to his strongly held personal beliefs on abortion.

I might add that Charles Pickering, who I mentioned before, was passed by this body unanimously in 1990. Yet all of a sudden in the next 13 years he is unworthy to be on the circuit court of appeals?

No. It all comes down to abortion. We can go further. We can go further than just these nominees. I have mentioned a whole raft of others. I could name at least 15 colleagues on the other side who have indicated they are going to filibuster. Now that is abominable. All four of those nominees have been waiting years, and in some cases many years, for confirmation. All of them have been denied up-or-down votes.

On Friday, the Senate will consider the nomination of two more outstanding jurists, and let me just put up this second chart. Carolyn Kuhl served in the Reagan administration. She was only 28 years old at the time and they have tried to act like she had all kinds of authority to do things with which they disagree. She has virtually unanimous support from her fellow judges in California, many of whom are Democrats, who say she will make a terrific addition to the Ninth Circuit Court of Appeals.

Take Janice Rogers Brown, this African American woman who was the daughter of sharecroppers. She put herself through college and law school as a single mother—just think about that—and yet she is being treated in a very improper fashion.

I might add that nearly 100 of her fellow judges on the Los Angeles County Superior Court are in support of Carolyn Kuhl. She is a terrific nominee, but they suspect that she is probably pro-life. I do not know what she is. I do not know what Janice Rogers Brown is. They may be right on that, but so what?

I think if a person is otherwise qualified, no single issue should stop them from being able to serve their country on the Federal bench, and if we had taken the attitude they are taking, my gosh, President Clinton would have got very few judges. Instead he got 377, the second all-time record for confirmations.

DC Circuit Court nominee Janice Brown has spent nearly a quarter century in public service, including nearly a decade as a judge in the California State courts. This daughter of a sharecropper became the first African American woman to sit on the California Supreme Court in 1996. Why are they against her? Because they know she is conservative, and they want just one way of thinking among African Americans. She does not qualify because she happens to be conservative. No matter that she won 76 percent of the vote in the last election, more than any other nominee for the California Supreme Court, and wrote most of the majority opinions in the last year.

On Friday, we will have the opportunity to give these two nominees the up-or-down vote they deserve, but it is apparent the minority whip has said they are going to filibuster them.

I am proud to say in my 27 years in the Senate, some of my Democratic colleagues expressed similar views when a different President was in the White House. For example, the distinguished minority leader stated:

> As Chief Justice Rehnquist has recognized: The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down. An up-or-down vote, that is all we ask.

That was their philosophy when they had the Presidency and they had the Senate Judiciary Committee and were the leaders in the Senate.

On this point, I agree with Senator DASCHLE. All we ask for is an up-or-down vote. If they want to vote against these people, that is their right, but they need to have an up-or-down vote. Why are they afraid of allowing simple up-or-down votes in the cases of these excellent nominees? Well, because we think—I think—there is more than adequate evidence that on a bipartisan set of votes these nominees would be confirmed by the Senate. If not, let the chips fall where they may. But these nominees deserve a vote. Vote them up or vote them down, but just vote.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, my Democratic colleagues try to justify their unprecedented filibusters of President Bush's nominees by arguing that they want mainstream judges and that President Bush's nominees do not fit that criteria. Mainstream judges—I am a little puzzled by that assertion. I would think, for example, that Priscilla Owen is in the mainstream. She was rated unanimously well qualified by the ABA. She was endorsed by the past 16 Texas Bar Association presidents, both Democrats and Republicans. She has been twice elected to statewide judicial office in Texas, one of the States where they elect judges, and the last time, interestingly enough, she got 84 percent of the vote—unanimously well qualified by the ABA; supported by 16 presidents of the State bar of Texas, Democrats and Republicans, and gets 84 percent of the vote. Sounds like mainstream to me. Yet Democrats filibustered her nomination because of her interpretation of a Texas law saying minor girls could not have an abortion without their parents being notified—not consent but merely notified.

After all, school nurses need a parent's consent to dispense an aspirin to a child. Should not a parent be entitled to a simple notification when their child seeks an abortion? Over 80 percent of Americans think they should. That is a very mainstream notion.

So I was astonished that Democrats would say she was not ''in the mainstream,'' and, frankly, I think the American public would be astonished by such a conclusion that a person so ruling would not be in the mainstream. But ''mainstream,'' of course, is a relative term.

To help the American people understand the Democrats' view, we should look at some of the Clinton judges my Democratic colleagues have supported. Upon doing so, it should be pretty clear

that the Democrats' view of mainstream is colored by the fact that they are sitting on the far left bank.

Clinton class of 1994, Judge Shira Scheindlin, a get-out-of-jail-free card for terrorist sympathizers. In the days after 9/11, Federal agents did their job by detaining a material witness to the 9/11 attacks, a Jordanian named Osama Awadallah. Osama knew two of the 9/11 hijackers and met with one at least 40 times. His name was found in the car parked at the Dulles Airport by one of the hijackers of American Airlines Flight 77, and photos of his better known name's sake, Osama bin Laden, were found in Osama Awadallah's apartment.

Under the law, a material witness may be detained if he or she has relevant information and is a flight risk. The Justice Department thought Osama met both of those tests. While detained, he was indicted for perjury. But Judge Shira Scheindlin, a 1994 Clinton nominee, dismissed the perjury charges and released this man on the street. Her reason? She ruled that the convening of a Federal grand jury investigating a crime was not a criminal proceeding, and therefore it was unconstitutional to detain this Mr. Awadallah.

This was quite a surprise to Federal prosecutors who, for decades, had used the material witness law in the context of grand jury proceedings for everyone from mobsters to mass murderer Timothy McVeigh. So much for following well-settled law.

If anyone wants to read a good article about this case, I recommend the Wall Street Journal editorial from last year entitled ''Osama's Favorite Judge.'' It notes that thanks to Judge Scheindlin, this fellow is out on bail. We wonder how he is spending his time.

Just last Friday, the Second Circuit reversed Judge Scheindlin. The appellate court seemed quite puzzled that she would release this man given his obvious connection to terrorists. The Second Circuit held that his detention as a material witness was a scrupulous and constitutional use of the Federal material witness statute.

It is too bad Judge Scheindlin did not act in a similarly scrupulous fashion. Nevertheless, to Democrats she is probably ''in the mainstream.''

Let us take a look at the Clinton class of 1995, Judge Jed Rakoff. One of Judge Scheindlin's colleagues, a 1995 Clinton nominee, has ruled that the Federal death penalty is unconstitutional in all instances.

Now, some of my colleagues may share this position, but their views differ from the majority of Americans. When Judge Rakoff acts on his personal views, it is a very clear failure to follow Supreme Court precedent. Indeed, Judge Rakoff's rulings so brazenly violated precedent that even the Washington Post, which is against the death penalty as a policy matter, came out against his decision as gross judicial activism.

In an editorial entitled ''Right Answer, Wrong Branch,'' the Post noted that the fifth amendment specifically contemplates capital punishment three separate times. The Post noted:

> [T]he Supreme Court has been clear that it regards the death penalty as constitutional. . . . The High Court has, in fact, rejected far stronger arguments against capital punishment. . . . Individual district judges may not like this jurisprudence, but it is not their place to find ways around it. The arguments Judge Rakoff makes should, rather, be embraced and acted upon in the legislative arena. The death penalty must be abolished, but not because judges beat a false confession out of the Fifth Amendment.

Another editorial, this one from the Wall Street Journal entitled ''Run for Office, Judge,'' said as follows:

> It hardly advances th[e] highly-charged debate [on capital punishment] to have a Federal judge allude to Members of Congress who support capital punishment as murderers. If Judge Rakoff wants to vote against the death penalty, he ought to resign from the bench and run for Congress or the state legislature, where the Founders thought such debates belonged.

Judge Rakoff's ruling would prevent the application of the death penalty against mass murderers like Timothy McVeigh or Osama bin Laden. I guess Judge Rakoff is the kind of mainstream judge the Democrats would like to see on the bench.

There have also been some interesting rulings from the Ninth Circuit, finding the right to long distance procreation for prisoners. My friends on the other side believe very strongly in a living and breathing constitution. They also believe that the rule of law should not be confined to the mere words of the document and the Framers' intent. To them, those are anachronistic concepts. I was truly surprised, however, to read what a panel of the Ninth Circuit had tried to breath into the Constitution.

Three-time felon William Geber is serving a life sentence for, among other things, making terroristic threats. Unhappy with how prison life was interfering with his social life, Mr. Gerber alleged he had a constitutional right to procreate via artificial insemination.

A California district court rejected Mr. Gerber's claim. A split-decision of the Ninth circuit, though, reversed. Infamous Carter-appointee Stephen Rhinehardt joined President Johnson's appointee, Myron Bright, to conclude that yes, the farmers had indeed intended for ''the right to procreate to survive incarceration.''

In his dissent, Judge Barry Silverman—a Clinton appointee who was recommended by Senator KYL—wrote that ''This is a seminal case in more ways in one'' because ''the majority simply does not accept the fact that there are certain downsides to being confined in prison.'' One of them is ''the interference with a normal family life.''

Judge Silverman noted that while the Constitution protects against forced sterilization, that hardly establishes ''a constitutional right to procreate from prison via FedEx.'' The Ninth Circuit, en banc, reversed this decision, but only barely. And it did so against the wishes of Clinton appointees Tashima, Hawkins, Paez and Berzon, who dissented from the en banc ruling.

If anyone wants to read more about this case, I'd recommend George Will's piece entitled, ''Inmates and Proud Parents.'' If there ever was a circuit in need of some moderation, balance, and ideological diversity, it is the Ninth Circuit. It is made up of 17 Democrat appointees, but only 10 Republican appointees.

It is the Nation's largest circuit, covering nine states and 51 million people. It is also reversed far and away more than any other circuit. Indeed, it is reversed so often—from 1996–2000, the Supreme court reversed it 77 out of 90 times—it is known as a ''rogue'' circuit. This has forced its representatives to introduce legislation to allow their States to secede from the Ninth Circuit.

But my Democrat colleagues probably won't give Ninth Circuit nominee Carolyn Kuhl the simple dignity of an up or down vote. Evidently she is not as ''mainstream'' as all these Democrat judges.

If these Democrat judges represent the ''mainstream,'' then quite frankly, I am glad the Democrats think that Priscilla Owen, Carolyn Kuhl, and Janis Rogers Brown aren't in it. Unlike these Democrat judges, I am confident these women will follow precedent and act with commonsense.

The Senate should, as it did with Judge Paez, Judge Berzon, and other controversial Democrat nominees, give these women the simple dignity of an up or down vote.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Thank you very much, Mr. President.

I talked quite a bit on Monday about this matter dealing with jobs. We should be talking about jobs. We should be talking about unemployment, not four people who have jobs.

What I am talking about, what we are talking about on this side is absolutely valid. One needs only to go to the Web site of the majority leader, Senator FRIST, prior to his pulling from his Web site the information to the following question: Should the President's nominees to the Federal bench be allowed an up-or-down vote on confirmation as specified in the Constitution? Sixty percent, no.

Even the majority leader's Web site indicates that what is going on here is absolutely wrong. The majority of the people who responded, almost 10,000 people, said this is the wrong approach. This is from the majority leader's own Web site.

I also say that this has been referred to as a carnival—I don't know if that is an exact term. But as an indication that it is circus-like, one need only get

an e-mail that was sent to various Senators on the majority side saying:

It is important to double your efforts to get your boss to S–230 on time. Fox News channel is really excited about the marathon. Britt Hume at 6 would love to open the door to all our 51 Senators walking on to the floor. The producer wants to know, will we walk in exactly at 6:02 when the show starts so we can get it live to open Britt Hume's show? Or, if not, can we give them an exact time for the walk-in start?

Mr. President, we have said this should be about jobs, about unemployment. Even Senator FRIST's people who respond to him on his Web site say yes. Is it a circus? Absolutely. You can see from this it is a circus.

Mr. DURBIN. Will the Senator yield?

Mr. REID. I am happy to yield.

Mr. DURBIN. Is it possible for us to get an update during the course of the evening on what Fox News is going to be looking for during this marathon? This opening about the march into the Chamber clearly was priority for the ''fair and balanced'' network. Will we get updates from time to time how Fox News would like to orchestrate the rest of this?

Mr. REID. I say to my friend, perhaps so. If not, maybe we could check with the Federalist Society, which, coincidentally, is starting their convention tomorrow.

The PRESIDENT pro tempore. The Senator is warned to speak through the Chair and not risk the probability of being interrupted and losing the floor.

Mr. REID. Mr. President, I don't understand. I was speaking through the Chair, answering the Senator's question.

The PRESIDENT pro tempore. The Senator from North Dakota must address the Chair and ask for permission.

Mr. DURBIN. There is no Senator from North Dakota.

Mr. REID. I respond through the Chair to the distinguished Senator from Illinois.

The PRESIDENT pro tempore. It protects the Senator's right to the floor.

Mr. REID. I say to my friend that the Federalist Society, as we know, is not mainstream dealing with judicial issues, but extreme, and indicate that may be the case. One of the lead speakers, of course, is Mr. Bork. To even compound the political nature of the operation, Attorney General William Pryor of Alabama is speaking there.

For everyone within the sound of my voice, it sounds to me rather unusual that someone who has the nomination and is trying to get confirmed to be a member of a very high Federal court—I cannot imagine it would be appropriate for that person to appear at an organization that is not in the mainstream, but extreme.

So what we have here, even by Senator FRIST's standards, looking at his Web site, we have the facts as I have indicated previously.

Mr. SESSIONS. Will the Senator yield?

Mr. REID. Not right now. I will not.

We have here from Senator FRIST's own Web site the fact that 60 percent of the people—about 10,000 responded before it was pulled from the Web site—say that the procedure being sought here is wrong.

I also say it is very clear this is a carnival-type atmosphere as indicated by the e-mail setting up the various presentations to satisfy Fox News.

Finally, the Federalist Society, coincidentally, is the typeset for this matter.

I yield 12 minutes to the Senator from California, Mrs. FEINSTEIN.

The PRESIDENT pro tempore. The Senator from California is recognized for 12 minutes.

Mrs. FEINSTEIN. Mr. President, what I was trying to do was essentially trace changes in committee procedure with the difficulties the Judiciary Committee seems to be countenancing in present days. A good deal of it has to do with blue slip policy because it was the second tradition to fall by the wayside when President Bush took office.

Under the Clinton administration, nominees were often blocked not only by home State Senators but by any single Republican Senator. At the very least throughout the years preceding the Bush administration, a home State Senator's objection to a nominee would effectively stop that nominee from moving forward.

Let me show a copy of a blue slip used during the Clinton administration, starting in January of 1999, and sent to each home State Senator. The document itself specifically states that no proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home State Senators.

That policy was followed without fail and without question. Even before 1999, during the Clinton Presidency, the blue slip said ''unless a reply is received from you within a week from this date, it will be assumed that you have no objection to this nomination.''

But still, if there was an objection from a home State Senator, that nominee simply did not move, did not get a hearing, did not get a vote, did not get confirmed. It was, in fact, a filibuster of one.

Today, there is a new blue slip policy, one in which the objections of one or even both of the home State Senators is no longer dispositive. That is part of the problem. This keeps changing, dependent on who is President. This latest policy puts Democrats on the committee and in the Senate in a difficult position.

In the past, if a home State Senator objected to a nominee, that nominee did not proceed; there would be no committee vote and no filibuster on the floor. Fifty-five Clinton nominees did not receive a hearing. This well could have been a filibuster of one. The blue slip is secret; nobody knows.

Let me name some of the Clinton nominees who were filibustered by one or two members of the Judiciary Committee. Elena Kagen, nominated to the District of Columbia Circuit, nominated by Clinton, June 17, 1999. The nomination was returned December 15, 2000. She waited 547 days without getting a hearing or a vote in the Judiciary Committee. She is currently the dean of Harvard Law School.

Lynette Norton, nominated for the District Court for the Western District of Pennsylvania. Nominated by President Clinton on April 28, 1998, in the 105th Congress. Her nomination, which was submitted to the 105th and 106th Congresses, was returned both times without a hearing. She waited 961 days without a hearing or a vote in the Judiciary Committee. Again, a successful filibuster by one or two Senators, in secret.

Barry Goode, nominated for the Ninth Circuit. Goode was nominated by President Clinton on June 24, 1998. After 3 years of inaction, President Bush withdrew his nomination, on March 19, 2001. Mr. Goode waited 998 days without ever getting either a hearing or a vote in the Judiciary Committee. A filibuster of one or two, in secret—no hearing, no opportunity to read a transcript, no opportunity to go back and read writings, speeches, or look into a nominee's background. Just because of one or two Senators, a hearing is denied; the filibuster is complete.

H. Alston Johnson, nominated for the Fifth Circuit, a Louisiana slot. President Clinton nominated Johnson on April 22, 1999. His nomination was returned December 15, 2000. He waited almost 697 days without getting a hearing or a vote in the Judiciary Committee.

This goes on and on and on.

Now, the nominees before us today had hearings. There was debate. There was a markup. There was a debate. There was a vote. We did read their background. And based on knowledge, the minority of this body made a decision that we do not wish to proceed to affirm them. We have over 40 votes to do so. This is not the vote of one person in secret preventing a hearing from taking place. Now that is as much a filibuster as this is.

You are looking at me strangely, Mr. President?

The PRESIDING OFFICER (Mr. TALENT). There is no reason for that. I am just inquiring of the Parliamentarian about the time remaining.

Mrs. FEINSTEIN. And I don't want to use the time because I know Senator DURBIN—how much time do we have remaining?

The PRESIDING OFFICER. The minority has 18 minutes, of which 5½ minutes, approximately, still remain for the Senator from California.

Mrs. FEINSTEIN. Thank you.

So my point is that much of what has been happening in the Judiciary Committee has been to make it more confrontational. The blue slips are an excellent case in point. Changing when the American Bar Association ratings are known is a good point.

I remember during the Clinton administration when the ratings were

done earlier and I had to call a nominee and tell them that because they had been out of the practice of law for a period of time, they were deemed unqualified by the American Bar Association and the President was not going to move their nomination. So without embarrassment to the individual, that nomination was withdrawn.

Today, you do not get the American Bar Association's qualified or partially qualified or unqualified rating until after the nominee is on the Hill.

Now there are those who do not think the American Bar Association's evaluation is worth anything. There are those on the committee who believe it is. So there is a difference in point of view. But at least have the qualification or nonqualification done early enough so that it can save the individual humiliation and also play a major role.

Let me talk for a minute about rule IV because I think rule IV again divided our committee in a way that it did not have to be. Rule IV has been a Senate tradition. It is a rule. It is a hard and fast rule. It prevents closing off debate on a nominee unless at least one member of the minority agrees to do so. Twice this rule has been reinterpreted, really violated, and votes have been forced on nominees well before debate has ended. The committee's rule in question contains the following language:

The chairman shall entertain a nondebatable motion to bring a matter before the committee to a vote. If there is objection to bringing the matter to a vote without further debate, a rollcall of the committee shall be taken and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 10 votes in the affirmative, 1 of which must be cast by the minority.

That enables the minority to delay a matter. It is in the rules of the committee to give it more time. This rule is not being followed.

This is one of the only protections the minority party has in the Judiciary Committee. Without it, there might never be debate at all. A chairman could convene a markup, demand a vote, and the entire process would take 2 minutes. This is not how a deliberative body should function. More importantly, it is contrary to our rules. That is one of the reasons we are where we are today.

This rule was first instituted in 1979 when Senator KENNEDY was chairman of the Judiciary Committee. It has been followed to the letter until very recently.

This is a nation of laws. We expect these laws to be obeyed even if they are just Judiciary Committee rules.

Let me give another situation, and that is ignoring traditional State vacancies. There is also a willingness by this administration to simply change the playing field if they do not like a result. Fourth Circuit nominee Claude Allen is one such instance. He is from Virginia. He has been nominated for a position that has traditionally been filled from Maryland. Why? Because President Bush became frustrated that Maryland's two Democratic Senators would not sign off on the nominees he wanted for that position. So he decided to simply go where he could find more friendly company—Virginia's two Republican Senators.

This stark determination to simply fill the bench with conservative jurists at all costs is what gives the minority in the Senate pause when considering whether to simply approve every Bush judge who comes our way or make a stand on some. We have chosen to make a stand on some. There are other attempts to ignore the minority. There are little things as well, things that add up over time to give the clear impression that the majority does not care about the needs or the will of the minority. That simply serves to create, increasingly, a bunker mentality among Democrats in today's Senate.

For instance, earlier this session, the Judiciary Committee scheduled a hearing with three very controversial circuit court nominees on a single panel for an appellate court.

The PRESIDING OFFICER. The Chair needs to inform the Senator from California she has used her 12 minutes.

Mrs. FEINSTEIN. May I finish my statement?

Mr. REID. I yield the Senator 2 more minutes.

Mrs. FEINSTEIN. The point is, these were all controversial nominees. A controversial nominee's hearing can run 8 hours. If you schedule three, you truncate the hearing for each, and you do not allow the minority to do their due diligence in terms of their homework.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I yield the remainder of our time to the distinguished Senator from Illinois, Mr. DURBIN.

The PRESIDING OFFICER. The Senator from Illinois is recognized, and he has 11 minutes 45 seconds.

Mr. DURBIN. Thank you, Mr. President, and I thank the minority whip.

First, for those who are following this debate, if it can be characterized as such, you should understand we had an opportunity to finish the appropriations bill for the Veterans' Administration, a $62 billion bill to fund veterans hospitals, clinics, and health care across the United States. We tried.

Senator BYRD of West Virginia came to the floor and said: Can we postpone what we are doing tonight here to finish this important appropriations bill so we can go to conference and get ready to adjourn this session in a timely fashion? Sadly, the Republican side objected to finishing the appropriations bill for the Veterans' Administration. It is their belief what we are doing now took precedence, is more important. It will be up to the voters and the public to make a judgment as to whether they were right.

I would also say that instead of addressing some issues families across America might tune in to follow, such as the unemployment in this country, and what we are doing about it, we are here debating a situation where 4 judges have been held out of 172 submitted by President Bush.

I would think, frankly, we ought to spend a little time really addressing the problem of unemployment in this country. This President has witnessed, in his administration, a loss of more than 3 million private-sector jobs. That is a record. Unless something changes dramatically, this President will be the first President since Herbert Hoover to have lost jobs during the course of his administration. Over 3 million Americans unemployed. Sadly, we have 9 million unemployed across the country today and their unemployment benefits are running out.

UNANIMOUS CONSENT REQUEST—S. 1853

In the interest of at least trying to do something constructive and legislative this evening, rather than just exchanging our comments back and forth, I am about to make a unanimous consent request that the Senate proceed to legislative session, and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers, that the Senate proceed to its immediate consideration, and that this bill be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DURBIN. I am not surprised because what we are about tonight is not the issues families care about. We are about a political script. Senator REID of Nevada read to us this all-points bulletin that was sent out to the Senators saying: Be sure and get over here exactly at 6 o'clock. It said: The Fox News channel is really excited about this marathon. Britt Hume at 6 would love to open with all of our 51 Senators walking on to the floor. The producer wants to know, will we walk in exactly at 6:02 when the show starts so they can get it live to open Britt Hume's show, or, if not, can we give them an exact time for the walk-in?

That is what this is about: It is about theater. The theater we are witnessing tonight is one where, frankly, the curtain should come down. We ought to start talking about things people really care about across America. I can tell you, it is not about 4 judges out of 172. We have approved for this President 168 of his nominees. I think it is a new record. I do not think any President in that brief a period of time has had 168 nominees approved. Lest you believe the Democrats dragged their feet, we approved 100 of these judges during the 17 months PAT LEAHY was chairman of the Senate Judiciary Committee. The remaining 68 came through under Republican Chairman HATCH. I think there has been a concerted and conscientious effort to give the President

his nominees. Then, of course, there were 4 who were not approved—168 to 4. So 98 percent of this President's nominees have been approved. By any reasonable standard, this President is doing very well. Most people would agree, except for the 51 Senators on the other side of the aisle. They believe unless the President gets every nominee, this is a miscarriage of justice.

Sadly, though, they are ignoring the obvious. The obvious is the Constitution of the United States gives this Senate the authority to say yes or no, to advise and consent. Article II, section 2: Advice and consent of the Senate. Some of these Republican Senators would like to see this phrase go away and make their argument at least a little plausible, but it is a fact. We have the authority under the Constitution we swear to uphold to make these decisions; and we have made them.

Of course, not only is the Constitution on our side, but the rules of the Senate are on our side. It reminds me in law school, they told you early in a trial advocacy course—and this a cliche, I know—they used to say: If you have the law on your side in your trial, beat on the law. If you have the facts on your side, beat on the facts. But if you do not have the law or the facts on your side, beat on the table. That is what is happening in this 30-hour marathon. Our Republican colleagues are beating on the table. The law is not on their side.

The Constitution says we have the authority to say no. We have said no 4 times out of 172 opportunities. It is constitutional to do so. Are the facts on our side? Are we being unfair to stop 4 judges, approving 168 and stopping 4? I do not think so.

Frankly, if you look at the record of the Republicans in control of this same committee with a Democratic President, you will find some 63 nominees were never given the decency of a hearing. They never had a chance to even appear and introduce themselves to the committee. The decision was made by the Republican leadership, with a Democratic President, not to even let them in the building.

I have been through this. Three of my nominees that happened to. Do you know what it consisted of? If any one Republican Senator objected to any nominee, end of story. They effectively had a filibuster by one Senator. They stopped these nominees in their tracks.

I can recall going to Senator John Ashcroft, our Attorney General, with one extraordinarily talented nominee, and pleading with him, after the man had waited for a year for a hearing, pleading with him to at least meet the man. Let him come before the committee. No way. The answer was no. End of story. End of nomination.

That was the treatment accorded to three judges from my State during the short period of time when I was here and President Clinton was President, as the Republicans ruled the Senate Judiciary Committee.

I lost 3 nominees. Did I rally my Democratic colleagues: ''Let's all get together and hold our breath and turn blue for 30 hours because I have lost 3 nominees''? No. Maybe I could have. Maybe I should have. But I did not. I understood it. I thought it was fundamentally unfair, and I still do.

What we have done to these four nominees is not unfair. Each and every single one of them has had a hearing. Each and every one of them has been able to come to the committee and present their credentials. That never happened to 63 nominees offered by President Clinton.

This President has a pretty good batting average when it comes to the Senate: 98 percent of his nominees have gotten through. But for the 2 percent, we are meeting this evening.

I might add here, if you take a look at the issues at hand, the Senator from Nevada raised an interesting one. Almost without fail, the majority of the 168 nominees were all members of this Federalist Society. It sounds like a secret handshake society. It is something else. I am not sure exactly what it is. I will tell you why I am not sure.

I do know this. If you are an aspiring law student who one day wants to be a Republican nominee for a judgeship, my recommendation to you is to join the Federalist Society today and do not miss a meeting because, frankly, that is a requirement if you are going to make it into the ranks of judges in the future.

What is it about this society? I don't know. But if you scratch the DNA of all these Republican nominees, you are going to find that Federalist Society chromosome. It is in every one of them. Time and again, I have said to these nominees: What is the Federalist Society? What does it mean to you? Some people say it is a rather extreme organization that views the law and the Constitution in a manner that most Americans do not. But when I ask these nominees—I can remember a Professor Viet Dinh of Georgetown Law School where I went to school many years ago. I said: You belong to the Federalist Society. Why? He said: Because I get a free lunch in Chinatown once a month.

Well, I think it is more than that. If you go to their Web site and ask the Federalist Society what they believe, what they put on their Web site is they talk about how we have lost control of the law and the liberals are taking over—all the stuff you expect. Then when you ask each of these nominees: Well, do you agree with that? ''Oh, no,''—with one exception: Mr. Pryor. William Pryor of Alabama says, yes, he does agree with it. If you got to know Mr. Pryor, you would understand he is rather unabashed in his political beliefs.

The fact of the matter is, the nominees we are receiving from the White House are not mainstream nominees. Sadly, of the 168 we have approved, many could be challenged as outside the mainstream, and that is not what America is looking for.

President Clinton knew if he sent up a real liberal, someone who, frankly, had the credentials of the left, he did not stand a chance before Senator ORRIN HATCH's Judiciary Committee. We would strive to find people with extraordinary legal credentials, people who really have made a difference in terms of their practice of law and what they have done; and they, too, suffered before that same committee.

This President has no qualms. The people he sends to us, whether it is Miguel Estrada or whether it is William Pryor or Priscilla Owen, each and every one of them have come back—Charles Pickering—with credentials that just do not pass the middle-of-the-road test.

Why are we doing this for 30 hours? Let's lay it on the line. This memo from Fox News tells you why we are here. We are here to grind raw meat for the Republican rightwing, so television networks like the fair and balanced Fox News network can rail on for days and weeks about this 30-hour tribute to the Republican point of view, so the radio talk show hosts, who blather on every single day from the right, will have much more to talk about. And instead of dealing with real issues, paying for the Veterans' Administration, so we can get that done, and meet our obligations, taking care of the unemployed across America, so they can feed their families and avoid bankruptcy, we do not have time for that. Our time has to be focused and dedicated to this debate.

I will say to my colleagues in the Senate, I think my friends on the Republican side will have to agree with this: Though they do not like the outcome of the four judges we have talked about here, we have given the nominees, even when Senator LEAHY was chairman, ample opportunity to explain who they are and what they stand for. I think what we have asked for is reasonable.

What we ask of every judicial nominee, from a Democrat or Republican President, is really basic. They have to be people who are honest, of high integrity. They have to understand the law. They should be people who do not come to this job with an ax to grind. That is not too much to ask. Four have failed that test; 168 have been approved.

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

The Senator from Alabama.

Mr. SESSIONS. Mr. President, how much time is left in the first section for the majority?

The PRESIDING OFFICER. Five minutes 45 seconds.

Mr. SESSIONS. Mr. President, in response to a number of things that have been said, first of all, I want to correct Senator DURBIN. I think he misspoke when he said the Senate has said no to these nominees. What the Senate has said no to is an up-or-down vote. They have denied these nominees a vote. In

each case, these nominees have proven they have a majority of the Senators in this body ready and willing to confirm them, if they are given the up-and-down vote. The systematic use of the filibuster that is occurring now has never before occurred in the history of this Senate.

As to the Constitution, I will just point out article II, section 2, quoted by the Senator—this is what it says—the President ''shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors [and] judges. . . .''

Historically, this body has felt that constitutional language meant treaties required a supermajority, two-thirds vote, and judges would be confirmed by a majority vote, and that is what we have done.

I would just like to ask—I was going to ask Senator REID early, the distinguished assistant Democratic leader—name one position taken by the Federalist Society that is extreme. He will not be able to give you one of those, and neither would Senator DURBIN. This is a society of people who meet and discuss ideas. For example, they have had, in recent weeks, Senator SCHUMER's chief counsel speaking to the Federalist Society, as has Cass Sunstein, Marcia Greenberger, Laurence Tribe—three of the architects of the Democratic strategy for changing the ground rules of nominating judges.

This is really odd for me. I know Senator DURBIN said he has some legislation he would like to offer. Maybe he should have offered it Monday when the assistant majority leader was talking 10 hours down here about rabbits and cactus in Nevada and his book. That was all very interesting, but why weren't we doing any work then? I did not hear any complaints then when we were not passing legislation. That would have been an outstanding opportunity, I submit, to move forward.

Let me just say one thing about where we are on nominations. President Clinton had 377 judges confirmed. One judge was voted down on an up-or-down vote on this floor, a majority voted no—only one. When he left office, there were 41 judges pending and unconfirmed—only 41. President Clinton personally withdrew the nominations of 18. That is how they get 60.

When former President Bush left office, under Democrat control of the Senate, as Republicans were under Clinton, he had 54 nominees left unconfirmed. The record of the Republican Senate under President Clinton was superior under any standard of confirmations to that of the Democrats.

I believe we need to remember those numbers. We need to remember the Republicans rejected consistently the use of the filibuster. It was discussed by people. They said: Why don't we filibuster? Senator HATCH and others would say: We do not filibuster judges. This is why you do not filibuster judges. We never filibustered judges. In fact, one nominee I felt strongly about, whom I voted against, I voted for cloture to bring that nominee up for a vote to overcome a hold that was on the nominee.

My colleagues complain about the Federalist Society. They say they are extreme. They take no extreme positions whatsoever. They are a society that believes in the rule of law and they discuss those issues in free and open debate. But they have moved forward here such as Marsha Berzon and Ruth Bader Ginsburg on the Supreme Court.

ACLU members, American Civil Liberties Union members—do you want to know what their stated positions are on a lot of issues? They oppose steadfastly the death penalty. They openly support partial-birth abortion. They are consistently hostile to law enforcement. They oppose pornography laws, all pornography laws, in fact, even child pornography laws. They favor legalization of drugs.

We have confirmed a lot of ACLU members, as the Senator knows. They have stated positions that are contrary to the mainstream of American thought—no doubt whatsoever.

Somebody such as Attorney General Bill Pryor, who has a record of following the law to the letter, whether he agrees with it or not, is castigated because he makes a talk to the Federalist Society. It is suggested that is an extreme thing for him to do and it is not correct.

Mr. President, I yield back the time.

The PRESIDING OFFICER. The Senator from Alabama has 15 seconds.

Mr. SESSIONS. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, parliamentary inquiry: Are we now starting 30 minutes of time on this side of the aisle?

The PRESIDING OFFICER. That is correct.

Mr. SPECTER. I thank the Chair.

Tonight the Senate is engaging in a proceeding to call the attention of the American people to a very serious matter which exists on the confirmation of Federal judges. It is not a matter which occurs just when there has been a Republican President, but it has occurred also when there has been a President of the Democratic party, when the Republicans controlled the Senate. It has gone back at least to 1987, during the second 2 years of President Reagan's administration.

When the Senator from Illinois calls this theater, he may be right, but it is factual theater, and it is worth the time of the Senate for the American people to focus on this important issue.

It is now a little after 8 o'clock Eastern standard time. Frequently, the Senate Chamber is dark at this time. It is true we could be conducting other business, but there are many days when the Senate has tarried. For example, on Monday, the day before yesterday, when there had been a long-standing expectation that the Senate would not be in session because Veterans Day is traditionally not a day in session, but we came back specially to try to finish our work by the projected date of November 21, unexpectedly we were greeted with a 10-hour filibuster by Senator REID on the other side of the aisle. He has a right to do that—he is a Senator—under our rules.

It doesn't lie in the mouth of somebody to say we are spending time where we could have been working very hard on the appropriations process. I do hope we finish that process. I have been an appropriator for my 23 years in the Senate, and we should move to complete that work as promptly as possible.

But the subject matter tonight is the confirmation process, and it is a very serious subject. When President Reagan was in office, during the first 6 years where the Republican Party controlled the Senate, President Reagan secured confirmation of 82 percent of his district and circuit court nominees. In 1987 and 1988, when the Democrats were in control, that percentage dropped from 82 percent to slightly above 63 percent. When President George H.W. Bush was in office, all 4 years had the Senate in the control of the Democrats. The Senate confirmed slightly more than 62 percent of President Bush's nominees, and 54 percent of his nominees to both circuit and district courts were still pending in the Senate when his term ended.

President Clinton had about the same experience. In 1993 and 1994, there was an average of 79 percent of his district and circuit court nominees confirmed when his party controlled the Senate. For President Clinton's remaining 6 years, the percentage dropped to 54½ percent. So that the business of having the President of one party stymied or reduced in effectiveness on confirmation when the Senate is controlled by the other party has been really an apportionment of blame pretty much equally between Democrats and Republicans during the course of the Reagan, first Bush, and Clinton administrations.

The matter has come to a substantial decline, when, for the first time in the history of the Republic, some 216 years, there has been a filibuster of circuit court nominees.

I think it is important to note that we are not seeking tonight to break a filibuster. That would occur when we would seek to have those who were objecting to the judges continue to talk and talk until they ran out of energy or effort and stopped talking so that we could come to a vote. That was what happened in the filibusters on civil rights legislation in the 1960s.

The last time there was a filibuster in the Senate was 1987 when the subject was campaign finance reform. Senator

BYRD was the leader of the Democrats. Senator DOLE, the leader of the Republicans, called all of us into the cloakroom behind us in the Senate Chamber at about 2 o'clock one morning and said: I would like all Republican Senators to stay off the floor. The reason Senator DOLE asked everyone to stay off the floor was to compel the party in power, the Democrats, to maintain a quorum of 51 Senators because if there are not 51 Senators present, then any Senator may suggest the absence of a quorum, and the Senate conducts no further business.

When Republican Senators, including ARLEN SPECTER, absented ourselves from the floor at Senator DOLE's request, Senator BYRD, the leader of the Democrats, countered with a motion to arrest absent Senators. Sergeant at Arms Henry Giugni was then armed with warrants of arrest and started to patrol the halls, and the first Senator he found was Senator Lowell Weicker.

Sergeant at Arms Henry Giugni was a little fellow, about 5 foot 6 inches, 150 pounds. Senator Weicker was a big guy—still is—about 6 foot 4 inches, 240 pounds. This was at about 3:30 in the morning. Sergeant at Arms Giugni decided not to arrest Senator Weicker. I think he made a good judgment. Then he started to go around and knock on Senators' doors.

Senator Packwood foolishly answered his door. Senator Packwood was then carried feet first into the Senate Chamber. This is a true story. You don't get many out of Washington, but this is a true story. That incident attracted a great deal of attention. CSPAN became the channel of choice instead of Jay Leno.

In having this proceeding, it is more accurately called a marathon than a filibuster because it is not a filibuster. Republicans are doing most of the talking. We seek to attract the attention of the American people to what is going on in the judicial system.

We have at the present time judicial emergencies in four of the circuit courts of appeals in the United States: the Fourth Circuit, the Fifth Circuit, the Sixth Circuit, and the Ninth Circuit. When these judicial emergencies occur, people are denied their day in court, cases languish, the matters are not decided, and the fact of life is that justice delayed is justice denied.

Without burdening the record unduly, it is worth noting that in the Sixth Circuit where there is a judicial emergency, a 50-percent vacancy rate on that court, a death penalty case has been pending for more than 8 years. A plaintiff in a civil case on a job discrimination suit trying to get a job had to wait some 15 months before the case came up. That individual died before the case was ever heard.

The ultimate answer, I suggest, is that cooler heads are going to have to prevail, and we are going to have to establish a principle where it applies regardless of what party controls the White House or what party controls the Senate.

Three years ago, I proposed a judicial protocol to establish a timetable that 60 days after the President submitted a nomination to the Judiciary Committee, there had to be a hearing; 30 days thereafter, there had to be action by the Judiciary Committee on the nomination; 30 days later, the matter had to be brought to the floor of the Senate. Those times could be extended on cause shown by the chairman of the committee with notice to the ranking member or by the majority leader with notice to the minority leader. But those time parameters should be established.

If there were to be a strictly party-line vote in the Judiciary Committee, then that matter ought to be advanced to the Senate floor even without having the customary majority vote to bring it to the floor.

One of the grave problems which may confront the Senate is what is going to happen next when there is a Supreme Court vacancy. The filibusters conducted up until the present time constitute an effort to elevate the confirmation process which under the Senate rules calls for 51 votes, or a majority, to 60 votes which it takes to end a filibuster.

For those who may not know what a filibuster is, that is when one party keeps talking and talking and talking endlessly. But that may be brought to a close under the rules of the Senate with 60 Senators voting to cut off debate. That then leaves 100 more hours to debate, plenty of time even after cloture, even after debate is ended or limited, before the matter comes to a vote.

It does not require a Nostradamus to predict or to understand that the current approach on imposing an ideological test is a precursor for the Supreme Court of the United States. When the Senate is constituted as it is at the present time, it is easy to project that we will find a Supreme Court nominee, who does not satisfy the standards of the other party, subjected to a filibuster and to have a vacancy on the Court. What we are moving toward is deadlock.

Right now, there still remains an aura of some civility in this Chamber, notwithstanding our disagreements on the tactics that one side or the other may use in the Senate. We know that the next vote is the most important vote. Notwithstanding the rancor of the arguments, we do understand that we are here to conduct the business of the people of the United States. The judicial system is limping along—still in motion but limping along.

We face a grave potential problem. If the current course of conduct continues so that when we have a nominee for the Supreme Court of the United States, we have this deadlock, and then with so many 5-to-4 decisions by the Supreme Court deciding the cutting-edge questions in our society, we may look to 4-to-4 decisions, and that means no ruling by the Supreme Court of the United States.

One additional thought. Senator SANTORUM and I use in Pennsylvania a judicial nominating panel under an arrangement where the President has three nominees and the Democrats have one nominee. During the 24-year period from the time President Nixon was elected until the time President Reagan was elected, Republicans controlled the White House for 20 of those 24 years. It seemed to me it was an undue balance of judicial nominees without having the Democrats with any nominees in the district courts, so an arrangement was made when Senator Heinz and I were the Senators, carried on by Senator SANTORUM and myself, to allow the party out of power, the Democrats, to have one nominee out of three for the President—one for the party out of power. That has had a very salutary effect in bringing a little bipartisanship into the process.

I do not suggest that for the Supreme Court. I do not press it for the court of appeals. But I think it is an idea worth considering for the U.S. district courts.

In conclusion—the two most popular words of any speech—it is my hope that something constructive will come out of this marathon. It is my hope that there will be some attention attracted to it. When the Senator from Illinois characterizes this as theater, I don't think that is especially derogatory because it is fact theater. The American people would be well advised to watch this theater than some of that which is on the national networks tonight. This is real. Those sitcoms go on and on and are repetitious. More important than the factual theater is that we are on a vital issue.

I hope the Senators hear from the American people. I hope the American people tell us what they would like to have done: Whether you would like to have this kind of projected stalemate where nominees wait endlessly and where it takes 60 votes, a supermajority, to cut off debate and bring it to a vote, or whether you would like us to follow the constitutional mandate of 51 votes in confirmation so that these judges may be confirmed, may take their places to see that justice is done in an equitable way within a reasonable time period.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I want to focus on a chart that was displayed earlier by the Senator from New York where he proudly displayed the numbers 168 to 4. I think it is important we ask the question: what is that chart designed to prove?

On one hand, our colleagues on the other side of the aisle in the Judiciary Committee and here in the Chamber rail against the President's judicial nominees, calling them out of the mainstream and, even worse, mean-spirited, right wing. But if, in fact, our colleagues on the other side of the aisle have voted to confirm 168 of President

Bush's nominees, it refutes that allegation because they have to agree that at least 168 of those nominees met their definition of mainstream.

I would like to associate myself with the outstanding comments of the Senator from Kentucky, the assistant majority leader, Mr. MCCONNELL. I wonder what their definition of mainstream truly is.

The second number of 4 is a number they want to be congratulated for blocking. I submit that just because you observe a stop sign 168 times and comply with the law, you are not to be rewarded for running that stop sign four times. It is still a violation of law, and you are still likely to get a ticket from the police officer.

This is more than just about breaking the law. This is about violating our Constitution, the fundamental law of this Nation.

We know really, rather than 168 to 4, the true number we ought to be focusing on is 0 to 4, and let me explain.

From 1789 to 2002—that is, for all of our Nation's history up until this year—the number of filibusters against judicial nominees of a President was—you guessed it—zero. But this year alone, because of this tactic that our colleagues have devised, to deny a bipartisan majority of this body its right under the Constitution to vote up or down on a judicial nominee, this number is 4.

So rather than 168 to 4—and as I explained, I think that repudiates and flies in the face of some of their arguments about President Bush's judicial nominees, and I deny that they are to be congratulated for unconstitutionally obstructing only 4. The real number we ought to be focusing on, and I hope the American people are focusing on, is zero to four because never, ever, in the history of this Republic has a minority in the Senate denied the right of the majority the vote up or down on judicial nominees. It is just not right. It is not fair. It has resulted in a degradation and a downward spiral in the judicial confirmation process of which no one should be proud.

I submit that four unconstitutional filibusters of these distinguished nominees is four filibusters too many. If we want to look at maybe a little bit of a history lesson, as this chart demonstrates, when Franklin Delano Roosevelt was President of the United States, 4,473 laws were enacted, 4 civil rights laws were filibustered—hardly something to be proud of. But I guess if our colleagues across the aisle are proud of their four, the argument would be that the people who filibustered these civil rights laws during FDR's term ought to be proud of that number.

When President Truman was in office, 3,414 laws were passed, 3 civil rights laws were filibustered. Is that something to be proud of? What our colleagues across the aisle say, because 3,414 laws were passed and only 3 were filibustered, that these folks who filibustered those three civil rights laws ought to be congratulated. I think not.

Then when President Lyndon Baines Johnson was in office, 1,931 laws were enacted, 3 civil rights laws were filibustered. To this hall of shame, I would add the 168 to 4, which is nothing to be proud of; it is something to be ashamed of.

Unfortunately, some people have lost their sense of shame in this process, which has become so degraded and so destructive. Indeed, I submit that the filibusters we have of the President's nominees are an abuse of the process. How can they justly claim that a 60-vote requirement to close off debate can somehow trump the Constitution?

As we have heard before on this floor, everyone knows, who has studied the Constitution, that there are supermajority requirements for certain things, and they are stated in the Constitution: To ratify a treaty or to pass a constitutional amendment, the Constitution is very clear that it requires a supermajority. Everything else requires majority rule.

Indeed, majority rule is fundamental to the democratic form of government. Majority rules: We fight our best fight; we make our best argument. Then we have a vote up or down. If we lose, well, we come back to fight another day. We try to persuade others that we were right and the majority was wrong. That is what our form of government is all about; not denying a majority their right, as stated in the Constitution, to let majority rule.

Believe it or not, that is what is happening and that is the reason we are standing here tonight trying to let the American people know that a terrible abuse of this process is occurring and an abuse of the Constitution, indeed a violation of the Constitution, is occurring. It is a disgrace. It is nothing to be proud of.

The other thing I would point out in the few minutes I have remaining, before I turn the floor over to the senior Senator from Texas, is this process is not only abusing the Constitution and creating a downward spiral in the judicial confirmation process that is very destructive of relationships in this institution, of our ability to get things done, it has made it too partisan, too bitter, too angry, and it is destructive.

I would also point out that the tactics that are being used against some of these nominees are despicable. Unless we stand up and repudiate the tactics of some of those who are opposing the fine nominees of President Bush, such as Janice Rogers Brown, I believe those who have joined cause with them in opposing this fine nominee ought to examine their conscience. I think they ought to reconsider their tactics. I think they ought to reconsider whom they associate with, whom they are joining cause with to tear down some of the fine nominees of this President, such as Janice Rogers Brown.

This is a cartoon that was posted on The Black Commentator on September 4, 2003, with President Bush, a racist caricature of Janice Rogers Brown with Justice Clarence Thomas, Colin Powell, Secretary of State, and Condoleezza Rice standing there. The caption says: ''Welcome to the Federal bench, Ms. Clarence—I mean, Ms. Rogers Brown. You'll fit right in.''

It is easy to see why this process has gone downhill and needs a wake-up call from all of us, because we need a fresh start. We need to disavow tactics such as this. Those who are opposing Justice Brown and other nominees should not be proud of that association any more than they claim to be proud of an unconstitutional filibuster of four of these nominees, including Justice Brown, because if, in fact, we do not get a fresh start, we do not have a clean break with this destructive process, if we do not quit tearing down people who want nothing more than to offer themselves to the American people by serving in positions of honor, such as Federal judges, who will answer the call? If they know that answering the call of public service means that they are going to have their reputation destroyed, they are going to be besmirched, they are going to be painted into a caricature that bears no resemblance to who they really are, who will answer the call? We will all be poorer for it.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Texas is recognized. The Chair informs the Senator from Texas that there are 2 minutes 20 seconds remaining on the Republican side.

Mrs. HUTCHISON. Mr. President, just to get an understanding, after that 2 minutes 20 seconds, then it goes to the Democratic side for 30 minutes and then back to the Republican side? Is that the way it is?

The PRESIDING OFFICER. The Senator is correct.

Mrs. HUTCHISON. Mr. President, in the 2 minutes that I have, I say I think the junior Senator from Texas made a very important point and that is the importance of the delicate balance of powers that was put in our Constitution. I think it is important that we do not say, well, 98 percent of the time we adhere to the Constitution. We need to adhere to the Constitution 100 percent of the time.

The Constitution has always said, from its beginning, that we would have a majority required to confirm the judicial nominees of the President. Now, this is by implication, because when the Constitution meant to have a supermajority, it so stated. We have always had a majority, and that is what, by its silence, the advise and consent part of the Constitution has required for judicial nominees, until last year.

In fact, I think the President is losing his constitutional right to appoint Federal judges. I think this whole situation is going to deter good people from offering themselves for the bench,

and the judiciary must have good people if we are going to keep that very strong separation of powers with three separate but equal branches of Government.

In his first 2 years of office, President Bush was able to get 53 percent of his circuit court judges confirmed. The previous three Presidents each had 91 percent in the first 2 years of their office in the very important circuit court judge appointments.

Now, the circuit court, of course, is the next step below the Supreme Court. So a 53 percent record in the first 2 years is something that I think should not be accepted. It is very important that we try to get votes on these judges.

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

The Senator from Nevada.

Mr. REID. Mr. President, I yield 15 minutes to the Senator from Indiana and 15 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Indiana.

UNANIMOUS CONSENT REQUEST—S. 1853

Mr. BAYH. Mr. President, I ask unanimous consent that the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration; the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mrs. HUTCHISON. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator is recognized.

Mr. BAYH. Mr. President, this is an unfortunate debate, and I regret that all of us are here this evening. This debate will do nothing to speed the confirmation of judges about which this session has been called to consider. It will do nothing for the economy, for health care, for education, to protect the environment, or to advance the interests of our Nation's security.

It will, however, at least in small part, bring this august body, about which we care so much, to additional disrepute with the American people, making us look ineffectual and irrelevant.

In some respects, the Senate is being reduced to something close to a farce. It is becoming rapidly not the world's greatest deliberative body but instead the world's greatest Kabuki theater, a place where speeches are given to which very few people listen, no minds are changed, and votes are then held with complete predictability of results.

The search for principled compromise, which has always been a long and honorable part, distinguishing this body from other legislative bodies, has been abandoned in favor of sterile, ideological warfare, satisfying to only the most fervent of partisans. After this debate, I suspect that the far right will be satisfied, I suspect that the far left will be satisfied, and that the rest of the American people will be left scratching their heads, wondering, what on Earth are they doing?

I am reminded of nothing quite so much as some lines from Shakespeare when he characterized another instance as: Great sound and fury that signifyeth nothing.

That is tonight's debate: Sterile, empty, barren of results.

This debate, unfortunately, is a microcosm of everything the American people have come to not like about both the Congress and Washington, DC, something that is all too often all process and partisanship, with no progress on matters of substance and importance to the American people.

Too often the American people view Washington as totally self-absorbed, indifferent to their real concerns, and ineffectual in accomplishing much of value on the things that do matter in their daily lives: Health care, jobs, education for our children and grandchildren.

We must stop this cycle of constant recrimination, a process in which the minority obstructs to gain power and then turns around and complains about obstruction once power has been obtained. It makes us all look bad.

If hypocrisy had a monetary value, we could easily erase the Federal deficit because of debates such as the one we are engaged in tonight.

What is this all about? What are the facts that the American people deserve to know? Is it true that judges are being obstructed solely because of their partisan affiliation? That obviously cannot be the case. One hundred and sixty-eight of President Bush's judicial nominees have been confirmed. I assume that all of them, if not almost all of them, are good card-carrying Republicans or he would not have nominated them. Obviously, there cannot be some stonewall to object to Republicans being appointed to the Federal judiciary. This simply is not the case.

Are judges being rejected up to a point based solely upon ideological concerns? This also cannot possibly be the case. Of these 168 judges who have been confirmed, I assume that all, if not almost all, are in fact fairly conservative jurists, or hold out the prospect of being fairly conservative jurists. Otherwise, they would not have been nominated by this President.

So up to a point, it is obvious that conservatives are not being denied their place upon the Federal judiciary. This is all about power, the balance of power between the executive and legislative branches and whether the advise and consent function should be abolished whenever the Senate is controlled by the party of the President. It is all about the balance of power between the minority and the majority caucuses in this Senate and whether the right to debate should be limited in the case of judicial nominees, unlike any other business taken up by this body.

It is also about tipping the balance of power within the Federal judiciary and setting the stage for a Supreme Court vacancy to be filled by someone of even the most extreme ideological conviction and views.

Is that possibly what the Constitution had in mind when it established the right of advise and consent in this Senate? Is that something for which we should abrogate the right to unlimited debate in this Senate, selecting judicial nominees in exclusion to all other topics in this regard? Of course it is not.

We are ignoring the issues this evening that are of most importance to the balance of the American people. When I go home, I hear great talk about the economy and job losses. In the last 3 years, we in the State of Indiana have lost approximately one out of every six of our manufacturing jobs. One hundred fifty-nine thousand jobs, nonfarm jobs, have been lost during this period of time. That is what I hear people talking about. Small business men wonder how they are going to compete in the global economy today. Large business men and women wonder how they are going to make ends meet, particularly with the skyrocketing cost of health care. Many people ask how we are going to compete with China, India, and other countries that all too often seek to abuse the rules of international trade to seek unfair economic advantage. Those are the subjects we should be debating tonight.

Those are the topics that are on the minds of Hoosiers to whom I talk. Very rarely am I asked about vacancies in the Federal judiciary.

When I was returning from Indiana just last evening, one of the security guards, a gentleman who looked somewhat advanced in his years, called out to me as I was going through security, saying: Senator, what about the Medicare drug benefit? Is something going to get passed?

I said: I hope so.

He said: Well, it probably will not be structured the way it ought to be anyway.

I said: Well, I hope not. We are going to go back and see if we cannot hammer out a reasonable compromise.

I see some of my colleagues, including Senator GRASSLEY, who are laboring mightily toward that very end, and I salute him for that. That is what we should be debating tonight, how to reconcile our differences on providing drug coverage to senior citizens who are asking about it; how to make health care available to the American people in a way that is accessible and affordable. That is what is on the minds of Hoosiers to whom I talk. That is what we should be debating this evening in this body.

What about our education standards and what about providing our children and grandchildren with access to quality affordable education? When I think about the economy of the future, more than anything else it is going to require advanced levels of education,

skill, and know-how. We are going to prepare my young sons and the rest of our children and grandchildren to have a better standard of living in a prosperous economy. It is going to be based not upon how strong they are but upon how knowledgeable they are, how well trained they are, how skilled they are. That is going to enable us to build a better economy. We are not debating that tonight.

At no point, in my recollection, have we set aside 30 hours to debate quality health care. At no point, in my recollection, have we set aside 30 hours to debate the economy or what we are going to do to create quality jobs. At no point, in my experience in the Senate, have we set aside 30 hours to talk about what we can do to debate quality education in the way we are setting aside these 30 uninterrupted hours in the wee hours of the morning. This is a clear example of misplaced priorities.

I hope this Senate will extricate itself from the morass into which we have sunk and begin to rehabilitate ourselves in the eyes of our countrymen and women. I hope we can once again begin to address the great issues that are of concern to the American people, that press all around us—what our country can do to be more prosperous, more just and more free. Above all, I hope that we as Senators can remember why we are here, and that is not to wage war upon one another but instead to once again renew the struggle against the ancient enemies of man: Ignorance, poverty, disease. That is why we are here, not sterile ideological debates.

I hope we can learn from this experience so that we will not have to repeat it. I hope we can focus on making progress, not dividing this body over the country. This aisle that separates the chairs, Republicans on one side and Democrats upon the other, gives us the opportunity to build bridges of reconciliation and understanding, forging principled compromise which has always been the hallmark of this institution. We have strayed from this heritage for too long. It is a tradition to which we must return if we are to once again recapture the confidence of the American people.

The final thing I will say is that we had an election in Indiana for our mayors this last Tuesday, a week ago yesterday. Something on the order of 20 percent of the people of my State turned out to vote for our mayors. When I had the privilege of being elected to this body in 1998, about 36 percent of the eligible voters in my State took the time to go to the polls. That is barely one out of three. In the closest Presidential election in the history of our country 2 years ago, decided finally by the Supreme Court, barely half of the American people felt connected enough to their institutions of self-governance to take even the most elementary step of citizenship—going to the polls to register their preference.

What has happened to our democracy? What has happened when 20 percent or 36 percent or a bare majority feel invested enough in the cause of shaping their own destiny to take the time to participate in our elections? If we are going to renew our democracy, if we are going to lead this country to meet the great challenges of our time, if there is one thing I am absolutely certain, it is that it will take all of us, each and every one of us from every ethnic group, racial group, gender, and walk of life.

Too many people have become disillusioned. Too many cynical, too many skeptical whether this body and their government can make a difference anymore. Events such as this debate tonight do not help.

We need to get back to the business at hand, putting before the American people an agenda of hope and opportunity so we can once again reenlist them in the cause of making this the greatest democracy known to man. That, at the end of the day, is what has brought us here. I suggest that is the business to which we must once again return.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized. There are 16 minutes 54 seconds remaining.

Mr. DURBIN. I begin by commending my colleague from Indiana. That was an extraordinary speech. I hope that for a moment Senators on both sides of the aisle will stop and reflect on what he just said. I think it was a challenge to everyone, as strongly as we feel about what we are debating tonight, the appointment of Federal judges; the Senator from Indiana is right. The people across America wonder why we are wasting the time of the Senate on issues that have no importance or relevance to their lives, and because they cannot understand us, they are estranged from us. They do not feel invested in this process, they do not feel a responsibility to vote; they, frankly, think we spend too much time in partisan posturing. The 30 hours of this debate are a classic example of that kind of partisan posture. That is unfortunate.

What the Senator hears in Indiana and I hear in Illinois and I daresay every Senator hears in their State—I have been going back to Illinois for 4 straight years in the month of August trying to tour the State, meeting with business and labor leaders and community leaders, to ask what is going on. For 4 straight years they told me the same thing: Senator, can you do anything about the cost of health insurance? It is killing us. It is killing my small business. It is killing my large business. My family is worried about coverage. What are you going to do in Washington about the cost of health insurance? I have to basically shrug my shoulder and say: I am sorry, that is not on our agenda. We have other things we debate in Washington, not the things you and your family worry about, that keep you up at night. This is a good example.

Would it not have been inspiring if we came together as Democrats and Republicans on the floor to talk for 30 hours about the future of health care in America, to speak to it in honest, nonpartisan fashion, to try to address some of the most controversial parts of it in a responsible, gentlemanly way?

That is what we are expected to do. That is not what this is about. This is about alerting FOX News to grind out their cameras at the entrance of the Senate to watch a parade of Senators come in—Senators who have now disappeared. This is about charts being made, night and day by Democrats and Republicans, to argue their case.

My people living back home in Springfield, IL, and Chicago, IL, I am sure, turned off CSPAN a long, long time ago, if this is the best we can offer them. Sadly, that is all we are offering them.

We left the Veterans Administration appropriations bill—we could have finished it—for veterans hospitals and the millions of veterans across America because we did not have time; we had to start this never-ending 30-hour debate. We cannot entertain a motion made by the Senator from Indiana, a motion I made, as well, to try to do something about the 9 million unemployed Americans whose benefits are running out. We do not have time for that. We have time for this political debate.

That is unfortunate. It is distressing. I have given 21 years of my adult life to public service. I have never regretted a moment of it. I walked away from a law practice and never looked back. This is the most exciting and interesting thing I can think of to do with your life, to be involved in public service. I encourage everyone, regardless of your political stripe, to get involved. You will love the opportunity it gives you to help people. But, frankly, we are not seizing that opportunity or we would not be here tonight. We would not be here discussing a question about whether 168 or 172 judges is the right number.

Is this the best we can do? I think not. I think we can rise to a greater challenge but we have to put aside the partisanship.

I readily concede I have struck a few partisan blows and a few have been thrown my way. That is part of life in the Senate, I am sure, and life in the big leagues. But at the end of the day when it is all over, at the end of the year or end of the session, each of us would like to point back to something we did to improve the lives of the people we represent. What have we done to make the schools better? What have we done to deal with the economic uncertainty of middle-income families? What have we done to deal with the trade laws that are killing us in the Midwest and across the Nation?

I have been a proponent of free trade. It is almost impossible to defend at this moment in time. We are not enforcing our trade agreements. We have lost five or six manufacturers in Indiana and the same is true in Illinois. We

lost 3 million jobs across America. Frankly, many of those jobs will never come back. When we read headlines that say there are 120,000 new jobs in America, that is good news. But ask the hard question, are the jobs we created paying as much as the jobs we lost? If they were manufacturing jobs, the answer is pretty obvious. The answer is no, they are not. We are losing more and more good jobs. Instead of focusing on that as we should, on the things that people care about, we are spending our time in 30 hours of debate over four judges.

The senior Senator from Texas said earlier that the President has a constitutional right to appoint judges. I don't want to correct the Senator from Texas, but she is wrong. The President does not have a constitutional right to appoint judges. The President has a constitutional right to nominate judges. The judges are appointed through the advice and consent of the Senate. Therein lies the difference in our points of view. From the Republican side of the aisle, the President has a constitutional right to name the judges he wants. End of story. But the Constitution says otherwise. And it always has.

Even the most powerful and beloved President has to be held accountable to the people of America through the Senate, through the House, and that is why we are here tonight. At one moment in history when President Roosevelt had been reelected with the largest majority in the history of the United States, Franklin Roosevelt, he decided he had had his fill with the U.S. Supreme Court across the street and they were not treating him well and he came up with a scheme to pack the court, to add more Supreme Court Justices because they just were not ruling on his laws the way he wanted them to. He proposed that to an overwhelmingly Democratic Congress in the House and the Senate and ran into a firestorm of opposition from his own party.

President Franklin Roosevelt, as popular as he was, with the mandate he brought to office—and I will not reflect on this President's mandate in this discussion, but President FDR's mandate was substantial. He felt that he had a moment in history when he could change the Supreme Court. And this Senate, the Democrats in the Senate, said: No, we have to draw the line; this executive branch cannot control the judicial branch and we will stand in the path of a popular and beloved President. And they did. They stopped him.

That, to me, was an important moment in history—when Senators of the same political party said to a President, this Constitution created three branches of Government for good reason.

So tonight we are in a position where many are arguing that this Senate should step back and not assert its constitutional right to speak to the qualifications of judges. It will be a sad day if we allow that to occur.

Let me try to synthesize this into what it is about. It is not about the four judges or two more who might be added on Friday. It is about the next appointment to the Supreme Court across the street. That is the real story. There are a lot of good reasons we are here tonight but the real reason is the next Supreme Court vacancy and the belief on the Republican side of the aisle that if we can hold fast with our approach in stopping people unqualified, unfit, to serve on a Federal court, they will have a difficult time passing through a controversial nominee to the U.S. Supreme Court.

I think, in my heart of hearts, that is why we are here this evening. They are trying to smooth the road, prepare the way for that Supreme Court nominee from this President.

Now, let me give advice to my friends—and they are not likely to take it—on the Republican side. There is a way to avoid all that. Pick a man or a woman who is of such impeccable legal background, great credentials, the kind of person with the integrity that they will be above this kind of political debate. It can happen and it has happened.

In my State of Illinois, a State with two Senators from opposite political parties, we have not had one problem in filling the Federal judicial vacancies. We have done so, Democrat and Republican, with good men and women whom I am certain will serve this country well. I just gave the green light to a nominee who sits on our calendar, and I hope we will move quickly, Mark Philip, who was a clerk to Justice Antonin Scalia. I am a Democrat, approving a former clerk to Justice Scalia. I met him and trust him and I think he will be a great Federal district court judge.

That can happen again. But we have to move away from those who are ideological extremes. We have to move away from those who are lightning rods. We have to move to a center path, which most Americans expect of us.

Sadly, tonight, we are being told this Senate should not even ask questions of these nominees. That is wrong. We have a constitutional responsibility, a responsibility that must be met.

Some have said, incidentally, that ours are the first to ever filibuster nominees. In fact, the Senator from Pennsylvania said it is the first time in the history of the United States anyone has ever filibustered a judicial nominee. Well, this chart shows that is not correct. Abe Fortas of the Supreme Court, subject to cloture motion, filibuster; Stephen Breyer, First Circuit—I am going through the list—Rosemary Barkett, Eleventh Circuit; Lee Sarokin, Third Circuit; Marsha Berzon, Ninth Circuit; and Richard Paez, Ninth Circuit.

The fact is, there have been judges brought to the Senate floor who have been filibustered in the past. The fact is, most of those filibusters failed. The motion for cloture prevailed but the filibuster was on. On the four who are under contention this evening, the filibuster has succeeded. The motion for cloture has not been filed successfully. That is the difference. To say it has never happened before in our history is to defy the obvious. It certainly has happened before.

The point we are trying to make is it is not unreasonable to have 4 nominees out of 172 questioned, to be found lacking.

Let me close by saying, again I commend my colleague from Indiana because I think he put it in perspective. We all know it is true. We could be spending our time doing a lot more important things for America and a lot more important things for the people we represent than squabbling over four judges.

Mr. REID. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. REID. I ask the Senator, through the Chair, there have been statements made by the majority, for weeks, months, that never ever in the history of the country has there been a filibuster conducted regarding a Federal judge. Would the Senator again state whether or not those statements regarding filibusters of Federal judges having never been held is true or false?

Mr. DURBIN. It is false. It is clearly false. Justice Abe Fortas, 1968; Judge Stephen Breyer, 1990; Judge Rosemary Barkett, 1994; Judge Marsha Berzon, 2000; Judge Paez, 2000. And many others.

The fact is, for those who say there have never been filibusters by nominees, that is clearly not right.

Mr. REID. Another question I ask my friend from Illinois, through the Chair, what I have heard the Senator state tonight is that on numerous occasions—in fact, the chart that is behind you indicates this—that there would be numerous occasions going back to at least 1968, there have been filibuster after filibuster, and sometimes they have tried to invoke cloture on more than one occasion; is that true?

Mr. DURBIN. That is accurate. As noted here, for Judge Breyer, twice. That is a clear example. On some of the others, there could have been more than one time, as well.

The point I would like to make to my friend from Nevada, we also know that under President Clinton, 63 of his nominees never got a hearing. They were never given a chance to come to the floor for this vote because the Republican-controlled Senate Judiciary Committee would not even give them a hearing.

Mr. REID. Will the Senator yield for a question that I ask through the Chair?

Mr. DURBIN. I am happy to yield.

Mr. REID. The Senator from Illinois is a member of the Judiciary Committee. Would you explain to the people watching this—whatever it is—would you explain to the people how a person gets to the Senate floor to be nominated for a judge? How do they

get here? What is the process? Explain to the people of the country what you mean when you say someone never had a hearing.

Mr. DURBIN. It is customary for a Senator of a State, depending on the President's party, to be able to suggest to the White House a nominee to fill a vacancy on the Federal district judge and the Federal circuit court. That nominee is then given to the White House for approval and investigation, FBI background checks, the normal things. If the White House then clears that nominee, the name is sent to the Senate Judiciary Committee. A hearing is scheduled in the normal course where the person is brought before the committee. After the committee has done its investigation, questions are asked and then the person is brought for a vote and eventually finds their way to the floor.

Under the Clinton administration, after the nominee came out of the White House, 63 times, 20 percent of the President's nominees were stopped at that point and never brought to a hearing before the Senate Judiciary Committee. So the argument that we have stopped four belies the reality that when we looked at the numbers from the Clinton administration, 20 percent, not 2 percent but 20 percent, of the judges never got their chance before the Judiciary Committee to even present their credentials and argue for their nomination.

I say to the Senator from Nevada, that is a sad reality. Frankly, this President is being treated far better than President Clinton. This Senate Judiciary Committee, under the leadership of Senator PATRICK LEAHY, a Democrat, approved 100 of President Bush's nominees, gave them hearings and moved them forward.

We tried in a bipartisan fashion to meet our constitutional responsibility. Only 4 times out of 172 have we said no. Only four. It is reasonable for us to stop and ask hard questions of nominees who are asking for lifetime appointments to some of the highest courts of the land.

Mr. REID. Will the Senator yield?

The PRESIDING OFFICER. The time of the Senator from Illinois has expired. However, there is a minute and a half left on the Democratic side.

Mr. REID. Will the Senator answer this question?

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. I direct the question through the Chair to my friend from Illinois. The number 168 on the chart behind you, does that represent 168 people who have been nominated by President Bush who are now serving in the Federal judiciary who have lifetime appointments?

Mr. DURBIN. That is correct. I say to the Senator from Nevada that there are some among those 168 about whom I have had misgivings. Many of them I voted for anyway, understanding this is the President's prerogative to nominate people for the Federal courts.

Going back to the point I made earlier, the President does not have a constitutional right to appoint Federal judges. He has the right to nominate them. Only with the advice and consent can they be appointed to the Federal judicial vacancies. Therein lies the real difference in the argument we brought forward this evening.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada has the floor with 27 seconds.

Mr. REID. When the majority uses their time, the half hour will be divided in whichever way the Senator from Michigan, Mr. LEVIN, and the Senator on the other side wishes to divide 30 minutes.

The PRESIDING OFFICER. The Senator from Texas is recognized.

N O T I C E

Incomplete record of Senate proceedings.

Today's Senate proceedings will be continued in the next issue of the Record.