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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable CHUCK HAGEL, a Senator from the State of Nebraska.

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain from Omaha, NE, the pastor of Countryside Community Church, the Reverend Donald Longbottom.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

Creator God, give us insight to see the things our eyes overlook: Your infinite stars hanging low over the prairie on a winter's night, the rhythms of the tides as they ebb and flow like history itself.

Open our hearts to feel the things our hands cannot touch: The continuing presence of the pioneering spirits who came before us, who are no more, yet remain with us still. Open our ears to hear Your still small voice echoing quietly on the evening breeze. Teach us, O God, to seek presence in the flash and thunder of a springtime storm, in the gentle pattern of a summertime rain. Remind us, O God, that though fall may turn our beloved land dormant brown, Your care and concern remain vital and alive throughout the seasons.

Although You are called by many names, You remain beyond our naming and our taming. Rich, poor, powerful, weak, young or old, courageous or meek, famous or infamous, we are all Your creation. No matter our color, creed, sexual orientation, or nation of origin—we are all Your children, just people seeking to make a life.

O God, we pray for peace and justice in America and throughout our world. Inspire our leaders, make them wise and compassionate. Bless them as they guide our Nation through fearful and chaotic times. Empower them to bring human history into a wondrous era of joy and harmony.

In these things and in all things, Lord, we humble ourselves before You and seek Your guidance. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CHUCK HAGEL led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 14, 2004.

To the Senate:

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

TED STEVENS,
President pro tempore.

Mr. HAGEL thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. STEVENS. Mr. President, this morning there will be a period for morning business for up to 30 minutes with the majority leader or his designee in control of the first 15 minutes and the Democratic leader or his designee in control of the final 15 minutes.

Following morning business, we will resume consideration of the motion to proceed to the marriage amendment. The time until 12 noon will be equally divided for debate on the motion. At noon, the Senate will proceed to a cloture vote on the motion to proceed to the joint resolution. The cloture vote will be the first vote of the day.

The leader has mentioned the Australian free trade legislation and the desire to finish that bill this week. In addition, as mentioned last night, the Senate needs to move forward with respect to the FSC/ETI JOBS measure and appoint conferees. Therefore, Senators should anticipate additional votes during the session.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senate minority leader is recognized.

ORDER OF BUSINESS

Mr. DASCHLE. If I may ask the acting majority leader a question, there was some lack of clarity with regard to the schedule. It appears as if the next order of business will be the Australian free trade agreement. Is it the expectation of the majority that we would take up the Australian free trade agreement this afternoon?

Mr. STEVENS. Mr. President, that is my understanding. However, there was also mention that the leader desires to discuss moving to the JOBS measure. That discussion may take place between the two leaders prior to the cloture vote.

Mr. DASCHLE. I thank the acting majority leader.

RESERVATION OF LEADER TIME

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

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



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MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 30 minutes, with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Democratic leader or his designee.

The Senator from Nevada.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that both sides, Republicans and Democrats, have their full 15 minutes for morning business.

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

Mr. REID. Mr. President, that would mean the vote for 12 o'clock may slip a little bit because of the time that is already indicated. I ask unanimous consent that the full hour also be given to each side on the time set for debate on the motion for cloture.

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

The Senator from Nebraska.

THE GUEST CHAPLAIN

Mr. HAGEL. Mr. President, I want to briefly recognize the distinguished guest Chaplain this morning from Omaha, NE. Reverend Longbottom is a very important part of our community in Nebraska. His spiritual guidance, his involvement in so many civic activities has set him apart over the years, in part because he is one of those individuals who actually gets down into the universe of areas of concern and applies the spiritual to the practical. For that, our State has benefited greatly. I also wish to recognize Reverend Longbottom's wife Lori who accompanied him to Washington as well. We in Nebraska are very proud of the Longbottoms. I am very proud to say a few words about him. I particularly appreciated the President pro tempore allowing me to open the Senate to recognize my constituent and friend, Reverend Longbottom.

I yield the floor.

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

IRAQ

Mr. BOND. Mr. President, I rise to talk about the intelligence we had prior to going into Iraq and the decision that was made overwhelmingly—by I believe 77 votes in this body—to authorize the use of force against Iraq. Today we have received the copy of the Butler report in Great Britain talking about their intelligence failures as well. Lord Butler examined the intelligence the British Government had and found there were problems in their intelligence as well. But they did an in-depth assessment of what they knew then and what they know now.

I thought it was very interesting, since yesterday on this floor a question had been raised about the statement President Bush made in his address to a joint session of both Houses of Congress that Saddam Hussein had sought uranium from Africa.

Conclusion No. 499 in the Butler report is as follows:

We conclude that, on the basis of intelligence assessments at the time, covering both Niger and the Democratic Republic of Congo, the statements on Iraqi attempts to buy uranium from Africa in the Government's dossier and by the Prime Minister in the House of Commons, were well-founded.

By extension, we also conclude that the statement in President Bush's State of the Union Address of 28 January, 2003, that the British Government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa was well-founded.

In other words, an examination by the committee, headed by Lord Butler, to examine intelligence produced by the British Intelligence Service was accurate, that Iraq was seeking uranium from Africa as part of its nuclear weapons program. So much for the charges by many—some in this body—that there was no basis for this statement that President Bush made, based on British intelligence that Iraq was seeking uranium from Africa and that it was not well-founded. It was. And on that, we now have a conclusion from Lord Butler that was the case.

I think the issue was more fully discussed, obviously, in the conclusions of the Senate Select Committee on Intelligence and in the separate opinion, separate findings produced by Chairman ROBERTS, to which I and other members of the committee signed off.

Today, as I came to work, I heard on the radio a very regrettable and unfortunate opinion piece by a writer from the Washington Post, saying that, obviously, President Bush should not have gone into Iraq, saying in effect that taking down Saddam Hussein was wrong. He was telling our troops, who are on the ground risking their lives—and too many who have given up their lives—we are fighting in vain. That is absolute nonsense. It is regrettable that we have forgotten during a time of war that, generally, politics stops at the water's edge.

As I have mentioned before on the floor, there seems to be a concerted effort by our friends in the other party to contend that, because the intelligence was not as good as it should have been, we should not have gone in and deposed the murderous tyrant who had not only slaughtered tens of thousands of his own people, the Kurds, invaded Kuwait, and threatened Saudi Arabia, but also provided a harbor for terrorists such as al-Qaida and Abu al-Zarqawi's group.

I have had the opportunity to talk to some of the young men and women who have put their lives on the line in Iraq. I would trust their judgment far more than I would trust a political hatchet job by a writer who is trying to score

political points against the President and the Vice President.

Let me go back to a couple of conclusions from the Senate Select Committee on Intelligence.

Conclusion 92, on page 345, says:

The CIA's examination of contacts, training, and safe haven and operational cooperation as indicators of a possible Iraq/al-Qaida relationship was a reasonable and objective approach to the question.

Conclusion 95, on page 347, says:

The CIA's assessment on safe haven—that al-Qaida or associated operatives were present in Baghdad and northeastern Iraq in an area under Kurdish control—was reasonable.

In other words, judgments were reasonable that this was a country harboring terrorists. Thinking back, do you know what the President said? He said that we are going to carry the war to the terrorists. We are going to go after them where they hide, where they take refuge. We wiped them out in Afghanistan and we had to go into Iraq where they were also gaining safe haven.

To say we are not significantly safer in the United States, or people around the world, our allies, and free people are not safer as a result of deposing Saddam Hussein is pure nonsense. Unfortunately, we are at war with the terrorists. The terrorists were in Iraq. They had access to the weapons of mass destruction that Saddam Hussein had produced in the past and was willing to produce in the future.

Over the last few days, we all have heard briefings on recent increased threats in the United States. Today, had we not acted in Iraq, we would be even more at risk to the possibility of terror, and the likelihood that those terrorist attacks would have included chemical or biological weapons would have been far greater.

Our examination of what happened, what was going on in Iraq, conducted after the war found there were significant production capabilities for chemical and biological weapons in Iraq. There were terrorists there who were seeking to gain access to these weapons. Did we find large stockpiles? No. Did we expect to find large stockpiles? No. At best, they said the amount of chemical and biological weapons would be less than would fill a swimming pool.

But the problem with these chemical and biological weapons, whether they be ricin, sarin gas, anthrax, or smallpox, very small amounts can cause significant death, damage, and destruction to the United States. The potential to kill people with these deadly biological and chemical weapons was terrific, and we are safer because we took him out.

Do we know if we have captured all of the weapons of mass destruction that he produced? No. We cannot know that. We will find out more, I believe, as the Iraqi Government takes steps, through its own security forces, to go after the known and suspected terrorists, to find where they are. We have

heard reports about chemical and biological weapons being dispersed. We cannot confirm where they are. We only hope and pray they are not in the hands of terrorists who have made their way to the United States. But only time will tell.

Conclusion 97, which is on page 348 of the Intelligence Committee report, concluded:

The CIA's judgment that Saddam Hussein, if sufficiently desperate, might employ terrorists with global reach—al-Qaida—to conduct terrorist attacks in the event of war, was reasonable.

And of course it was reasonable; after all, we already knew Saddam Hussein was supporting terrorists such as the Arab Liberation Front, and he was offering money to the families of suicide bombers, particularly Hamas. We know he had the ability to turn his manufacturing capabilities, with the scientists he had, into the production of chemical and biological weapons.

We know how tragic the terrorist attack of 9/11 was on our soil. We lost over 3,000 people. They used unconventional weapons—airplanes loaded with fuel—to cause those deaths. I tremor to think about what could happen if chemical or biological weapons were used in large areas where unsuspecting civilians are gathered in the United States.

After what happened on 9/11, we had many investigations saying why didn't we put all of those elements together? They were very fragmentary. We had walls that prevented us from sharing that information among our intelligence agencies. It would have been almost impossible, even in hindsight, to connect all the dots and know what was going to happen on 9/11.

After that, intelligence analysts were under great pressure to try to identify potential attacks on the United States, or the potential use by terrorists of weapons of mass destruction and they overstated many of those conclusions. But what we know from our own experience is that Saddam Hussein consistently engaged in a pattern of denial and deception. He made it very difficult to find out what he was doing. We know from his actions what a deadly, murderous terrorist he was. By removing the Saddam Hussein regime, we eliminated yet another front from which terrorists could operate safely; most importantly, we eliminated the possibility that Saddam's weapons programs in the future could be leveraged by terrorists who seek to destroy us.

Finding huge stockpiles of weapons was not the objective of going into Iraq. The failure to do so should not be taken as a measure of the lack of success in Iraq. Prime Minister Tony Blair today said, on receiving the Butler report, that we were right to go into Iraq. He has been a steadfast ally, and we commend him.

We also have the interim report of the Iraqi Survey Group. We spent a long time listening to Dr. David Kay in our closed sessions, but he has issued

an interim report that we can quote. That interim report noted finding "dozens of WMD-related program activities and significant amounts of equipment that Iraq concealed from the United Nations during the inspections that began in late 2002."

Some of these included, for example:

A clandestine network of laboratories and safehouses within the Iraqi Intelligence Service that contained equipment subject to U.N. monitoring and suitable for continuing CBW research.

That is chemical and biological weapons research.

A prison laboratory complex, possibly used in human testing of BW agents, that Iraqi officials working to prepare for U.N. inspections were explicitly ordered not to declare to the U.N.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. BOND. Mr. President, is there any time remaining on our side?

The PRESIDENT pro tempore. No.

Mr. BOND. Mr. President, I ask for 1 more minute to conclude.

The PRESIDENT pro tempore. I believe the Senator has 49 seconds remaining.

Mr. BOND. Mr. President, I will do the best I can with the time remaining to conclude.

Dr. David Kay said he thought "it was absolutely prudent" going into Iraq. He went on to say:

In fact, I think at the end of the inspection process, we'll paint a picture of Iraq that was far more dangerous than even we thought it was before the war. It was a system collapsing. It was a country that had the capability in weapons of mass destruction areas and in which terrorists, like ants to honey, were going after it.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I will use my leader time and reserve the time left under morning business for my colleagues.

INCREASING NUMBER OF UNINSURED FAMILIES IN AMERICA

Mr. DASCHLE. Mr. President, this morning we were again reminded of how much remains to be done in addressing the health care crisis in America. Today's paper has this headline: "Medicare Law Is Seen Leading to Cuts in Drug Benefits for Retirees." According to the article, the government is now estimating that 3.8 million retirees who currently receive prescription drug benefits through their employers will see their coverage reduced or eliminated as a result of the Republican drug law passed last fall.

That is simply unacceptable, and it is only one of the many problems we are facing when it comes to health care. Over the past several years, the cost of health insurance has skyrocketed, and millions more Americans have found themselves uninsured.

A while back, I held a "living room meeting" on health care costs in Sioux Falls. An older, married couple came to that meeting. He's a veteran, 68 years old, with diabetes and congenital heart failure. She's 62, with cerebral palsy. Last year, shortly after the husband retired, this couple learned that the wife's bladder cancer had come back. This couple pays \$418 a month in health insurance premiums through COBRA, plus another \$400 a month for prescriptions, and more on top of that in co-pays for doctor visits. Soon, their COBRA eligibility will expire.

The husband is on a waiting list—a waiting list—to see a VA doctor. But they don't know how they will pay for the wife's health care after they lose their current insurance coverage. Individual coverage for a 62-year-old woman with cerebral palsy and cancer would be prohibitively expensive—if they could get it at all. So, after nearly 20 years of marriage, this couple is contemplating divorce as the only option for getting essential health care for the wife.

If this Senate wants to protect American families, let's discuss what we can do to make health care more affordable and accessible so that spouses don't have to consider divorcing each other in order to get essential health care.

Forty-four million Americans were uninsured in 2002—the most recent year for which figures are available. That's 2.4 million more Americans without health insurance than the year before—the largest 1-year increase in a decade. Eight-and-a-half-million of those 44 million Americans are children. Sixteen million are women, many in their child-bearing years.

As shocking as those figures are, they tell only half the story—literally. A new study conducted for Families USA, using census data, shows that almost 82 million Americans—one in three Americans younger than 65—were uninsured at some point in the last two years. Two thirds were uninsured for at least six months. Half were uninsured for 9 months or longer.

Who are these people? They're working people, mostly. Eighty percent of uninsured Americans live in families in which at least one adult works. But their employers don't offer health insurance, or their pay is so low they can't afford to buy it. A growing number are middle class. One in four had family incomes between \$55,000 and \$75,000.

In South Dakota, more than 27 percent of people younger than 65 were uninsured for at least some part of the last 2 years. That's 180,000 people living with the fear that they are just one serious illness or accident away from financial disaster.

In 14 States, according to the Families USA study, more than one-third of all people younger than 65 were uninsured for at least part of the last two years. One in three people. The State with the highest percentage of uninsured was Texas: 43.4 percent.

We have the highest per capita health care spending of any nation on Earth. Yet, in comparison with other developed, high-income nations, the United States consistently scores at or near the bottom on infant mortality, life expectancy, and the proportion of the population with health insurance.

We hear a lot today about who is more optimistic about America's economy and our future. I believe it is pessimistic to look at the state of health care in America today and conclude that we really can't do much better. I believe it is pessimistic to watch the cost of health care increase sharply every year; to watch the number of uninsured Americans grow every year; and to watch more businesses be forced to reduce or eliminate employee and retiree health benefits every year—year after year—and conclude there isn't really much of anything we can do about it. And I believe it is deeply irresponsible for this Senate to spend almost no time on serious discussions of responsible proposals to address this crisis. People all across America are looking to us for help on health care.

Lowell and Pauline Larson are two of those people. I've known the Larsons for years. Lowell is 68, almost 69. Pauline turned 64 on the Fourth of July. They live in Chester, SD. Lowell Larson has worked hard all his life. He started work in a furniture mill in Sioux Falls just out of high school and stayed there for 20 years before he finally got the chance—about 30 years ago—to do what he'd wanted all his life: own his own farm.

It's a small farm—160 acres. The Larsons raised corn and beans and kept a few cows. It's hard work. I don't think Mr. Larson would mind me telling you, he and Pauline don't have much money. Small family farmers don't make much money. Some years, if the weather's bad, or the market is weak, they don't make any money.

What Lowell Larson does have, in abundance, is a strong sense of personal and family responsibility. It's part of the South Dakota ethic. It's what we're taught, and what we teach our children: If someone you love needs help, you help them. And if you owe someone money, you do everything you can to pay them.

When Lowell Larson was a young man, his mother had a stroke. He postponed marriage and spent 20 years caring for her. After his mother died, Lowell met Pauline. At 45, he finally married. A few years later, Pauline began having trouble walking, and she was diagnosed with MS. Over the next few years, she progressed from a cane to a wheelchair.

In early November 2002, Pauline had a serious stroke. She spent a few weeks in the hospital, followed by a few months in a nursing home. Then she had to have her gall bladder removed—more time in the hospital. In less than 2 years, the Larsons ended up with \$40,000 in medical bills from Pauline's stroke and surgery. On top of that,

they spend more than \$200 a month on muscle relaxants and other medications Pauline needs for her MS.

The Larsons used to have private health insurance. But it got so expensive, they gave it up about 5 years ago. "We didn't know she was going to have a stroke," Lowell says.

Today, Lowell Larson gets Medicare. Pauline has a very bare-bones health policy that pays \$75 a day for hospital care and \$50 a day for nursing home care—nothing else. Last year, the Larsons held a sale. They sold many of their personal possessions and much of their farm equipment to raise money to pay their medical bills. The sale brought in about \$30,000. Lowell Larson talked with doctors and hospitals and got them to forgive another few thousand dollars of their debt.

Lowell Larson brought Pauline home from the nursing home about 18 months ago because they couldn't afford the \$4,000 a month it cost and because they were both too lonely living apart. These days, Pauline spends most of her time in a hospital bed set up in their home. She has difficulty speaking. She also has trouble using her right arm, which makes it hard for her to feed herself.

It can wear you down, living with the fear that your family is just one more medical emergency away from financial disaster. Lowell Larson says, "A lot of mornings, I wake up around 4:30 or 5 o'clock and I just start worrying about things." The Larsons are counting the days until Pauline turns 65 and can get Medicare.

Since President Bush took office, family health care premiums have increased by more than \$2,700 a year. The average cost for a family health plan is now \$9,000 a year. Workers pay about \$2,400 of that amount out of their own pockets. That's just for premiums. It doesn't include copayments and deductibles. And these are the people in the best situations; they have access to group plans through their employers. This is just one more example of how the middle class is being squeezed in America. Families are paying more for skimpier coverage every year. Unless we act, the number of families without health insurance will continue to grow.

And the consequences of un-insurance are staggering. People without insurance use one-third less health care. They skip preventive care and regular check-ups. They don't fill prescriptions. They postpone surgeries if they can. They live with pain. When they get sick, they crowd emergency rooms where the care they get is often too little, and too late.

In a new survey by the American College of Emergency Physicians and the Robert Wood Johnson Foundation, two-thirds of ER doctors said the uninsured patients they see are sicker than those with insurance, and nearly all—94 percent—said it was harder to schedule needed followup care with uninsured patients.

People without insurance pay more for health care. Hospitals routinely charge uninsured patients up to four times as much as patients with insurance for the same services. Too often, people who are already battling illness find themselves having to fight off aggressive debt collectors, too.

And 18,000 Americans die prematurely every year because they do not have health insurance. Forty-nine people every day.

Our economy also suffers. The Institute of Medicine estimates that lack of health insurance costs America between \$65 billion and \$130 billion a year in lost productivity and other costs.

Democrats have been leading the fight for universal health coverage in America for decades. We want to work with our Republican colleagues to reduce the number of uninsured Americans and make health care more affordable and accessible.

But the few proposals offered so far by the President and congressional Republicans will not work. Independent studies of these proposals show that they would do little to address soaring health care costs and the growing insurance gap, and, in some cases, they would actually make matters worse.

There are better ideas. Democrats have proposed that, within 2 years, all Americans have access to affordable health care that is as good as the health care members of Congress have—at the same rates, or lower. We ask our Republican colleagues to work with us to make that a reality.

In addition, we should adequately fund the Children's Health Insurance Program. We should also adequately fund the VA and the Indian Health Service—we must keep our promises to America's veterans and honor our treaty obligations to American Indians.

We can reduce the cost of prescription drugs—one of the driving forces behind medical inflation—by letting Medicare negotiate the best prices for American seniors, and by allowing Americans to re-import safe prescription drugs from Canada and other industrialized nations.

I introduced a bill recently that could significantly reduce the number of uninsured Americans and help small business owners create new jobs at the same time. The Small Business Health Tax Credit—S. 2245—would provide small businesses with tax credits to cover up to 50 percent of the cost of their employees' health insurance. These health care tax credits would help businesses save money, which means they will have more money to invest in new equipment, hire new workers, and give their employees raises.

If our Republican colleagues have additional ideas that will actually reduce the cost of health care and increase the number of Americans with insurance, we welcome the chance to work with them on those ideas as well.

What we cannot do is to continue to ignore this urgent problem. Lowell and

Pauline Larson sold much of what they owned to pay their medical bills because they take their responsibilities seriously. It's time for this Senate to take seriously its responsibility—to find solutions to reduce the cost of health care and the number of Americans without health insurance.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

ORDER OF PROCEDURE

Mr. REID. I ask unanimous consent that the time allotted under the previous unanimous consent agreement for the Democrats be divided 10 minutes to the Senator from Iowa, Mr. HARKIN, 5 minutes to the Senator from New York, Mr. SCHUMER. Under the previous unanimous consent agreement that had been entered into we have time set aside for Senator LEVIN of 10 minutes. Senator LEVIN will not come. I ask unanimous consent that Senator REED of Rhode Island be inserted in his place.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. Reserving the right to object, I am sorry, I was otherwise distracted.

Mr. REID. The Senator does not need to worry. Everything is under control.

Mr. CORNYN. That is what I was afraid of. I want to make sure, are we pushing back morning business?

Mr. REID. No. Morning business is going to proceed, but because of leader time and the prayer and the pledge, morning business did not start until a few minutes later. So the Democrats will now have 15 minutes for morning business and following that we will go into the 2 hours of debate.

Mr. CORNYN. I thank the Senator very much.

Mr. REID. All I was doing is stating that Senator LEVIN will not be here. Senator JACK REED is going to take his place.

Mr. CORNYN. No objection.

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

The Senator from Iowa.

Mr. HARKIN. I understand I have 10 minutes.

The PRESIDING OFFICER. That is correct.

CLASSIFIED LEAK INVESTIGATION

Mr. HARKIN. Mr. President, today we observe a sad milestone in the scandal and tragedy that some have labeled "leakgate." It has been exactly 1 year, July 14, since two senior White House officials leaked Valerie Plame's identity as a covert operative at the Central Intelligence Agency.

Last July 14, 2003, 8 days after Ms. Plame's husband published an op-ed in the New York Times which questioned information in the President's 2003 State of the Union message regarding a supposed effort by Iraq to purchase uranium from Africa, her identity was

revealed in print by columnist Robert Novak. This illegal act should have outraged everyone at the White House. It should have moved President Bush immediately to demand the identity of the perpetrators.

Instead, in his only public statement about this act of betrayal, Mr. Bush smiled—yes, he smiled—and said:

This is a town that likes to leak. I don't know if we are going to find out the senior administration official. Now, this is a large administration, and there's a lot of senior officials. I don't have any idea.

Again, he said it with kind of a smirk and a wry smile on his face.

I consider that statement to be disingenuous. The number of senior White House officials with the appropriate clearances and access to knowledge about Ms. Plame's identity can probably be counted on one hand, two at the most. If Mr. Bush was serious about identifying the perpetrators, those officials could have been summoned to the Oval Office and this matter would have been resolved in 24 hours.

Now, we are not talking about some little thing happening. This is an illegal action under the law.

Mr. Bush did not question his staff in the Oval Office. There was no outrage at the White House. There were no internal investigations. There was no angry President Bush demanding answers from his senior aides. There was only a cavalier dismissal, followed by a year of virtual silence.

Three decades ago, a previous occupant of the Oval Office, President Nixon, was recorded on audiotape saying to a senior White House official:

I don't give an [expletive] what happens. I want you to stonewall it, let them plead the Fifth Amendment, cover up or anything else, if it'll save it, save this plan. That's the whole point. We're going to protect our people if we can.

That was Richard Nixon almost 30 years ago. This White House has now delayed any accountability for this damaging and illegal leak for a full year. White House officials who committed this act of treachery presumably are still exercising decision-making power.

Who is the White House protecting? Why? Do we now have a modern day Richard Nixon back in the White House?

And what was the cost of exposing Ms. Plame? Not only her job. As Vincent Cannistraro, former Chief of Operations and Analysis at the CIA Counterterrorism Center, told us:

The consequences are much greater than Valerie Plame's job as a clandestine CIA employee. They include damage to the lives and livelihoods of many foreign nationals with whom she was connected, and it has destroyed a clandestine cover mechanism that may have been used to protect other CIA nonofficial cover officers.

Valerie Plame's cover was blown to discredit and retaliate against her husband Joseph Wilson. The recent report by the Senate Intelligence Committee provides some insight. It states that back in 2002 when the CIA was search-

ing for someone with connections to Niger to find out about a possible purchase or attempt to purchase uranium by Iraq, she suggested that her husband, former Ambassador Wilson, go as a factfinder. Mr. WILSON was sent there. He reported the claim's lack of credibility to the CIA.

Later that year, the President was to give a speech in Cincinnati mentioning the claim. On October 6, CIA Director Tenet personally called Deputy National Security Adviser Stephen Hadley to outline the CIA's concerns that this claim was not real. And it was then deleted from the President's Cincinnati speech.

Between October 2002 and January 2003, concerns about the claim increased. In January, the State Department sent an e-mail to the CIA outlining "the reasoning why the uranium purchase agreement is probably a hoax."

Here is the troubling aspect: The same official, Stephen Hadley, who spoke with George Tenet and took the claim out of the October speech in Cincinnati, was also in charge of vetting the State of the Union Address. Amazing. If he knew it was a problem and took it out in October, why was it put in for the State of the Union message?

A lot of questions need to be answered. Mr. Bush seemingly does not want to know the identity of the leakers. The White House occupies a small area. The number of employees who are suspect in this matter is small. This should not be like trying to find nonexistent weapons of mass destruction in Iraq.

One year has passed. Perhaps the President and others have already told Special Prosecutor Fitzgerald who is responsible. Perhaps that has happened. If not, I believe it is clear that the President and the Vice President should be put under oath. They need to tell the special prosecutor and the American public who committed these acts. They should be put under oath, questioned, and filmed. Remember, this happened just a few years ago when another President, President Clinton, was put under oath and questioned by the special prosecutor, on film, which we witnessed right here on the Senate floor.

Also, by putting the President and the Vice President under oath and questioning them as they should be questioned, it sends another powerful message to the people of this country: No President, no Vice President, is above the law. President Clinton was not above the law. This President should not be above the law.

I call upon the special prosecutor: Put the President under oath. Put the Vice President under oath. Question them about their knowledge of this incident and let's get this matter cleared up. Find those responsible and prosecute them to the full extent of the law.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I want to follow up on what my colleague from Iowa has had to say. I thank him for his strength and leadership on this issue.

As was mentioned, it is a year ago that Robert Novak published a column outing a covert CIA agent. The next day I called for an investigation.

For about a month not much happened. Then, and I think the record should underscore this, George Tenet, head of the CIA, publicly and privately asked for an investigation, and one began.

I don't have any complaints with the investigation. I think both Mr. Comey and Prosecutor Fitzgerald have done a fine job. I have faith in what they are doing, at least from everything I have heard. But the bottom line is very simple. First, this was a dastardly crime. This is a crime of a serious nature committed by someone in the White House. We know that much. Unfortunately, the attitude of the White House has not been what it should be. There ought to be an attitude there that says this was a terrible crime. To reveal the name of an agent jeopardizes that agent's life and the lives of many others with whom they came in contact. There ought to be every effort to turn over every stone to find out who did this.

There is a lot of speculation it was done for vengeance, to get at Ambassador Wilson. It doesn't matter what the reason is, the bottom line is there is a rule of law in America, and this crime is a lot worse than a lot of crimes that we get prosecutions for. The bottom line is simple. I believe if the President wanted it to come out, and said, it doesn't matter where the chips fall, we are going to find out who did it and bring them to justice, it would have come out already as to who did it.

Instead, we first had stonewalling—no investigation. Now we have an investigation, but everyone is hiding behind the shield laws and other types of things that say this gets in the way of the sanctity of freedom of the press.

That is not true. If the President insisted that every person in the White House sign a statement—not just asked them to do it, insisted—under oath, that they did or did not, and then released the journalists they might have talked to, we would know who did it.

Ultimately, as Harry Truman always reminded us, the buck stops with the President. This is lawbreaking. This is not just political intrigue, this is not just payback, this is lawbreaking of a serious crime. Right now, as we speak, we are trying to build up human intelligence, which fell too far in the CIA. Right now, as we speak, there are American men and women risking their lives in these undercover activities. They know that somebody who did the same has been put at risk, and there is no strong rush to find out who did it and punish them.

That hurts our intelligence gathering. It hurts our soldiers. It hurts the

rule of law. On this first anniversary we make a plea to the President: It is not too late. Make every person who worked in the White House during the time of the leak sign a statement under oath either that they did or did not talk to them. If they will not sign it, they should not be in the White House anymore. This is too serious to treat as everyday politics.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have spoken with the manager of the bill, the Senator from Texas. He has agreed to allow Senator KENNEDY to speak for 5 minutes, and Senator REED to go next.

The PRESIDING OFFICER. The Senator from Massachusetts.

FEDERAL MARRIAGE ACT

Mr. KENNEDY. Mr. President, it speaks volumes that the Senate Republican leadership has taken this disgraceful detour into right-wing campaign politics when so much genuine Senate business is still unfinished, and so little time is left to get it done.

We can't pass a budget. We are far behind in meeting our appropriations responsibilities. So far, in fact, we have passed only 1 of the 13 appropriations bills for the next fiscal year that begins on October 1. We may not see any of these bills acted on, on or before the August recess. Even in the wake of the al-Qaida terrorist threat announced last week by Secretary Ridge, the Senate leadership refuses to proceed with debate and votes on the Homeland Security appropriations bills.

We know many higher priorities should be worked on. Since President Bush took office in 2001, health insurance premiums have soared 43 percent. Tuition at public colleges has risen 28 percent. Drug costs have shot up 52 percent. Corporate profits have risen by over 50 percent. Yet private sector wages are down six-tenths of 1 percent since President Bush took office, and there are 3 million more Americans in poverty.

The Senate Republican leadership has consistently failed to address these and many other urgent priorities. It has taken no action to fix America's broken health care system. It has blocked passage of the Patients' Bill of Rights. It has refused to allow a vote on raising the minimum wage. It has still not scheduled a vote on renewing the existing ban on assault weapons, which will expire September 13.

Rather than deal with these urgent priorities, the leadership is engaging in the politics of mass distraction by bringing up a discriminatory marriage amendment to the U.S. Constitution that a majority of Americans do not support.

Conservative activist Paul Weyrich explained the partisan GOP strategy in a recent e-mail newspaper. President Bush has "bet the farm on Iraq" he wrote, and the best solution to his de-

clining poll numbers is to "change the subject" to the Federal marriage constitutional amendment. Weyrich acknowledged that doing so might cost the President votes from gay and lesbian Republicans, but he is not troubled about it. "Good riddance," he wrote.

We all know what this issue is about. It is not about how to protect the sanctity of marriage or how to deal with activist judges. It is about politics. I might say, of the activist judges, of the seven judges who drew the decision in Massachusetts, six of them were appointed by Republicans.

This is about politics, an attempt to drive a wedge between one group of citizens and the rest of the country, solely for partisan advantage. We have rejected that tactic before, and I am hopeful we will do so again.

I am also hopeful that many of our Republican colleagues, those with whom we have worked over the years in a bipartisan effort to expand and defend the civil rights of gay and straight Americans alike, will join us in rejecting this divisive effort. There is absolutely no need to amend the Constitution on this issue. As news reports from across the country make clear, Massachusetts and other States are already dealing with the issue and doing it effectively and doing it according to the wishes of the citizens of their State. No State has been bound or will be bound by the rulings and laws on same-sex marriages in any other State.

The Federal statute enacted in 1996, the Defense of Marriage Act, makes the possibility of nationwide enforceability even more remote. Not a single State or Federal court has called the constitutionality of that act into question.

Furthermore, not a single church, mosque, or synagogue has been required or ever will be required to recognize same-sex marriages. As the First Amendment makes clear, no court, no State, no Congress can tell any church or any religious group how to conduct its own affairs. The true threat to religious freedom is posed by the Federal marriage amendment itself, which would tell churches they cannot consecrate a same-sex marriage, even though some churches are now doing so.

Given these indisputable facts, the proponents of the Federal marriage amendment have built their case upon a tower of speculation and conjecture—an attempt to conjure up a national crisis where none exists.

This is a wholly insufficient basis for even considering a proposed constitutional amendment on the Senate floor, much less voting for it. If it is not necessary to amend the Constitution, it is necessary not to amend it.

I urge my colleagues to show respect for our country's Constitution and its principles and traditions, and not play partisan campaign politics with the foundation of our democracy. I urge them to reject this discriminatory and unnecessary proposal.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I don't believe the Chair has announced the resolution is before the Senate. Is that right?

The PRESIDING OFFICER. That is correct.

Mr. REID. I ask the Chair to do that and I ask unanimous consent that Senator KENNEDY's time be counted against the unanimous consent agreement.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FEDERAL MARRIAGE AMENDMENT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S.J. Res. 40, which the clerk will report.

The assistant legislative clerk read as follows:

A motion to proceed to the consideration of Senate Joint Resolution 40, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

The PRESIDING OFFICER. Under the previous order, the time until 11:45 shall be equally divided between the chairman and ranking member or their designees.

The Senator from Rhode Island.

Mr. REED. Mr. President, I rise today in opposition to the amendment that is before us. First, Congress has already addressed this issue in a statute that has yet to be effectively legally challenged. Second, amending the Constitution should be the last resort and not the first response when it comes to an issue of this type. Third, issues involving family law matters are and have been historically the purview of State legislatures and State courts. Finally, while there is great interest on the part of some in this Constitutional amendment, our Nation faces the far more pressing threat of terrorists committed to attacking us here on U.S. soil. There is so much more we can and should do with respect to that looming threat.

Several years ago in response to developments in Hawaii and elsewhere, Congress, along with then-President Clinton's support, enacted the Defense of Marriage Act, known as DOMA. DOMA put into Federal law a clear and precise definition of marriage as follows:

... the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex, who is a husband or a wife.

In the face of this clear language in the statute, it is amazing to me we

would disregard the wisdom of our Founding Fathers and attempt to enshrine in the Constitution this principle without testing the constitutionality of this statute. Since it was first written and with the addition of the Bill of Rights in 1791, our Constitution has only been amended 16 times. The vast majority of these amendments dealt with the separation of powers and structure of our Government, the right to vote, power to tax, and other issues that, frankly, are only issues that can be decided through Constitutional amendment. The amendment that is before us today has not yet risen to this level of interest and concern.

First, as I indicated, Congress has already addressed the issue of what marriage is, and that law to date has not been challenged in a meaningful way. So there is no definitive finding of the constitutionality of DOMA. Indeed, typically the first step when one seeks to pursue a constitutional remedy is to determine whether the statutes are adequate. That has not been done.

Second, only one State in our Nation has recognized same-sex marriage, and that decision has yet to impact other States.

I would suggest to my colleagues that now is not the time to play politics in an election year with the Constitution of the United States.

I believe it is also important to note that the Founding Fathers in their wisdom established a Federal system of Government that intentionally left many critical issues to the control of State legislatures and State courts. This system has served our Nation extremely well, and I fear this amendment, if adopted, would lead to a succession of proposals to federalize family law and to federalize other issues that have been the purview of States since the beginning of our country.

Also, it strikes me as a misplaced priority when it comes to all the other issues that face us today—issues of funding homeland security, issues pertaining to health care, issues that are affecting the lives of every family in the country—to be here today and debating a proposal that does not have the majority support of the American public. In an ordinary time, debating any issue might be justified, but this is not an ordinary time.

As we were reminded last week by Governor Ridge and Mr. Mueller of the FBI, there are those who are plotting today to attack us in our homeland, and yet here we are talking about the issue of a relationship between two consenting adults.

We have 30 days left on the majority leader's schedule, and apparently we are going to spend our time on these types of divisive issues. That is not how I think we should properly spend our time. I think we should commit ourselves to dealing with the issues that pertain to every American family—issues of health care, issues of security, both economic and international.

Today we are spending time on an amendment which will not pass, which is not supported by the majority of Americans, and which defers us and deflects us from concentrating on the issues I think can help Americans.

Finally, I know many of my constituents are gays and lesbians in long-term relationships. While I myself believe civil unions are perhaps the best place to begin to publicly acknowledge these relationships, I want to recognize that the impetus behind the push for gay marriage comes from a desire for security and serious, committed relationships by many adult Americans.

In closing, let us heed the wisdom of our Founding Fathers. The States are simply the correct place for the regulation of marriage, and this kind of election-year politicking, which suggests an intolerance toward many of our constituents and neighbors, is plain wrong.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, when I came to the Senate I learned a new aphorism, referring to the debates and sometimes repetitive arguments you tend to hear by Members of Congress. Someone told me: "Well, everything has been said; it is just not that everyone has had an opportunity to say it yet."

Sometimes I wonder if that reflects the fact when we are debating important issues like this, people aren't listening or maybe they made up their minds and they are not open to the facts or persuasion or perhaps some preconceived notion they have about the motivation for legislation is flat wrong, but they have already locked in, they have already gone public, they have taken a position and then it becomes two contending adversaries across some demilitarized zone and we try to fight it out the best we can and then count the votes.

But I think two things are most important about this debate. Despite some of the repetition of erroneous arguments, we have had an important debate. I think two things will come out of this that have been very positive, regardless of what happens in the vote today.

First, we have had a debate on the importance of traditional marriage, the importance of the American family and steps we should be taking in order to preserve the traditional marriage and American family and to work in the best interests of children. That is a debate that has been long overdue. I am told it has been perhaps at least 8 years, since the passage of the Defense of Marriage Act, since this body has even talked about the most basic building block in our society. I think that has been very positive.

I also think it has been positive that we have been able to direct the American people's attention to the erosion of our most fundamental institutions by judges who seek to enforce their personal political agendas under the guise of interpreting the Constitution.

Now I come to the Senate and hear some of my colleagues, including the Senator from Massachusetts, say this is all part of a right-wing conspiracy, or words to that effect. Surely, when the Defense of Marriage Act passed in 1996 by a vote of 85 Senators, an overwhelming bipartisan consensus which defined marriage as a union of a man and a woman, that was not the product of a vast right-wing conspiracy. Indeed, that was the Senate and Congress functioning at its best, coming together to protect the fundamental institution, one we have fought hard and should continue to fight hard to preserve and protect against all challenges.

We have heard and I have read in the press that this side of the aisle has been castigated for not accepting the Democratic leader's offer to go to an up-or-down vote on this amendment. The problem is, of course, that they only tell half of the offer. The other part of the offer was banning consideration of any further amendments that might be offered in the Senate—in other words, constraining the debate, stifling the debate, and limiting the right of any Senator on any piece of legislation, whether it is a constitutional amendment or an ordinary bill, to offer alternatives for the body to consider as a means of advancing the debate.

My understanding is the majority leader countered by saying, okay, we will go to an up-or-down vote, but we are not going to limit our right to offer amendments. The amendment most talked about is the so-called Smith amendment, which is, lo and behold, the first sentence of the amendment offered by Senator ALLARD hardly a surprise to anybody—which merely defines marriage as a union between one man and one woman. Our colleagues on the other side of the aisle were apparently afraid to allow the Senate to consider alternatives as a way of advancing the debate because they were afraid an alternative, perhaps along the lines of Senator SMITH's amendment, the one-sentence amendment, would garner more votes. I am advised it would garner perhaps as many as ten new votes.

Mr. CARPER. Will the Senator yield?

Mr. CORNYN. I will gladly yield after I complete my remarks.

It is a bogus offer. It is a bogus argument that somehow by refusing their attempt to stifle the debate and stifle the amendment process that this has somehow become nothing but bare partisan politics.

There are those who would raise their voices, those who would call Members names, Members who believe it is important to defend the traditional institution of marriage, in hopes we would lose the courage of our convictions. In hopes that we would simply be silent while we see the ongoing march of litigation as part of a national strategy to undermine the traditional institution of marriage that we know is the most important stabilizing influence in our society and one that

functions in the best interests of our children. But we are not going to lose the courage of our convictions. We are not going to sit on the sidelines. We are not going to be quiet. We are not going to give up. In fact, regardless of how this vote turns out at noon today, I know of no important piece of legislation considered by Congress that has been successful the first time it has been introduced into the Senate.

What I have learned is probably the most important characteristic of a Member of the Senate is someone who is willing to persevere over weeks and months and even years until ultimately they are able to see the fruit of their labor and the legislation they have sponsored be accepted by the Senate. It is part of a building process, it is part of an awareness process that is very important.

Part of the awareness process is also to knock down some of the unfounded statements that are made during the course of the debate. It was, I believe, the Senator from Massachusetts who said that no court has called the Defense of Marriage Act into question. Perhaps he was not able to listen yesterday when I read a paragraph out of the Massachusetts Supreme Court decision in *Goodridge*, relying on the case of *Lawrence v. Texas*, that plainly calls the constitutionality of the Federal Defense of Marriage Act into question. As a matter of fact, you cannot really believe, as the court did, that the marriage laws of Massachusetts were unconstitutional and believe that the Defense of Marriage Act is constitutional as well.

To be fair, the unconstitutionality of the Defense of Marriage Act is an argument the Senator from Massachusetts made back in 1996 when he voted against the Defense of Marriage Act, as did the other Senator from Massachusetts, Senator KERRY, who voted against the Defense of Marriage Act then and who stated that if passed, it would be unconstitutional. This has been a consistent theme, although they have some of their facts wrong. I hope that helps clarify.

The question before the Senate today is simple: Do you believe traditional marriage is important enough that it deserves full legal protection? As I said, an overwhelming bipartisan consensus in 1996 voted that it did by passing that statute. President Clinton said as much by signing that legislation into law in 1996.

This debate is important. It is long overdue because we have, in essence, a stealth operation going on today. It is an effort where a handful of courts around the country, as well as those who have engaged in a nationwide litigation strategy, are basically operating off the radar screen of most Americans. The only time the American people know very much about it is when a blockbuster decision is handed down, such as the Massachusetts Supreme Court in May of this year, or when they happen to see local officials

engaged in civil disobedience, for example, in San Francisco, issuing same-sex marriage licenses and same-sex marriages in that location.

This is not, despite the wishes of some of the people who are opposed to this amendment, something that can be solved at the State level. I believe in the principle of federalism. I believe people at the local level, closest to the problem, are best prepared and are in the best position to try to address that problem. But we have seen how, with one State recognizing same-sex marriage, people have moved now, we know, to 46 different States and how there are lawsuits pending in at least 10 of those States—and no one knows how many there will be in the future—seeking to compel those States, in violation of their current State law, to recognize those same-sex marriages.

Some people have said, don't worry. The Senator from New York, Senator CLINTON said, don't worry, we do not have to amend right now, we can wait until after the Federal Defense of Marriage Act is held unconstitutional. In fact, she said no one had challenged it, and I have attempted to clarify that by my earlier statements.

In the interest of completeness, let me ask unanimous consent to have printed in the RECORD the cover sheet from a lengthy petition in both cases, one filed in the Western District of Washington, in re Lee Kandu and Ann C. Kandu, and another complaint, *Sullivan v. Bush*, filed in Federal court, the Southern District of Florida, Miami Division, seeking to hold the Federal Defense of Marriage Act unconstitutional as a matter of Federal law.

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

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

In re Lee Kandu and Ann C. Kandu, Debtors; No. 03-51312; reply of petitioner Kandu to show cause order.

Petitioner Lee Kandu submits this reply to the United States Trustee's Response to the order to show cause why the joint petition should not be dismissed. As explained below, the government has failed to respond directly to the legal issues presented by this case—issues never before considered by this or (to the best of petitioner's knowledge) any other court as to the proper construction and constitutionality of the federal Defense of Marriage Act ("DOMA"). To the extent that the government does touch on the issues presented by this case, the government's arguments are based on outdated case law and lack merit.

ARGUMENT

I. Applying DOMA to Section 302 of the Bankruptcy Code Would Violate the Tenth Amendment

It is well settled that the Tenth Amendment prohibits Congress from usurping the powers not delegated to it by the Constitution. It is also well settled that "the regulation of domestic relations has been left with the States and not given to the national authority." *Williams v. North* . . .

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

Civil Action No. 04-21118: F.D.R. "Fluffy" Sullivan and Pedro "Rock" Barrios; Cynthia Pasco and Erika Van der Dijks; Michael Solis and Jesus M. Carabeo; and Jason Hay-Southwell and William Hay-Southwell, Plaintiffs, v. John Ellis Bush, in his official capacity as Governor of the State of Florida, and Charles J. Crist, Jr., in his official capacity as Attorney General of the State of Florida; and Harvey Ruvin, in his official capacity as Clerk of the Circuit and County Courts, Miami-Dade County, Florida; and John Ashcroft, in his official capacity as Attorney General of the United States, Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT
CLAIM OF UNCONSTITUTIONALITY

1. This Court has jurisdiction pursuant to 28 U.S. Code 1331. This is a civil action arising under the Constitution and laws of the United States presenting a substantial Federal question.

2. Venue is properly in the Southern District of Florida, Miami Division, pursuant to 23 United States Code 1391. All of the Defendants reside in Florida and all have offices for the conduct of official business in Miami-Dade County, Florida; also a substantial part of . . .

Mr. CORNYN. Some have said there are more important issues to debate. Certainly, the Senate has debated and I hope and trust we have passed legislation that has done a lot of good on behalf of the people who sent us here. If we haven't, we have not been doing our job. I believe we have a record we can be proud of when it comes to defending America and the war on terrorism, when it comes to rejuvenating our economy to see it come roaring back the way it has, indeed, providing a prescription drug benefit to senior citizens.

We have done a lot of which we can be very proud. And for someone to stand up and say that preservation of traditional marriage is not important enough for us to talk about, to me, is breathtaking in its audacity and its sense of obliviousness to what the concerns are of moms and dads and families all across this country.

We know for years, for a variety of reasons, the American family has been increasingly marginalized. We know we have a crisis in this country of too many children being born outside of wedlock, too many marriages ending in divorce, and too many children being raised in less than optimal circumstances, putting them at risk for a whole host of social ills for which ultimately the American taxpayer has to pick up the tab. And I have not even mentioned the human tragedy involved, as some child fails to live up to their God-given potential.

I do not believe that we can remain neutral or to remain merely spectators in this further marginalization of the American family. We cannot allow for a process that puts more and more children at risk through a radical social experiment. And if we want to look for the only evidence that we know is available, we can look to Scandinavia, where less people get married, more

children are born out of wedlock, and more children become, thereby, the responsibility of the State.

It is not good for them, it is not good for us, and we should not, without letting the American people have a voice in the process, merely sit back while judges radically redefine our most basic societal institution.

Now, let me click through a number of other arguments that have been made.

I know Senator DURBIN has said we should not talk about constitutional amendments during an election year. My question to him is: Isn't Congress still in session? Aren't the American taxpayers still paying us to do our job? As a matter of fact, six times Congress has successfully proposed amendments in an election year.

Some have claimed that the text that is before us—Senator ALLARD's amendment—prevents States from enacting civil unions if they should wish to do so through their elected representatives. Yet the Democrats' own legal expert, Professor Cass Sunstein, answered this very question: Of course not. This amendment does not prevent the States from enacting civil unions should they decide to do so.

Some have even gone so far as to claim that the Allard text would regulate private corporations, churches, and other private organizations. As the Presiding Officer well knows, and as virtually everybody in this body should know, the Constitution regulates State actors, not private actors. These arguments do not hold water. But they do not have to work for our opponents on this issue to say them because that is not the point. The point is, if you cannot convince them, confuse them. Their aim is to distract the American people away from the real question, which is, as I said at the outset: Do you believe that traditional marriage is important enough that it deserves full protection under law?

I would ask the opponents of this amendment, if you believe in traditional marriage—as some of you but certainly not all of you have said you do—but you do not support this amendment, what is your plan? What do you think the American people should do when courts run red lights and act in excess of their authority by legislating from the bench, redefining our most basic institutions? What are you going to do to stand up on behalf of the American family to prevent the increasing marginalization of the American family?

But I am confused by the arguments that are made by some on the other side of this issue. When some of their very own leaders say the Defense of Marriage Act is unconstitutional—such as Senator KENNEDY, Senator KERRY—when your very own leaders say, as the senior Senator from Massachusetts did yesterday, that traditional marriage is a "stain on our laws"—repeating the language of the Massachusetts Supreme Court in saying that traditional

marriage is a "stain that must be eradicated" because it, in essence, represented discrimination—what do the opponents of this amendment think we should do? Do you want the courts to strike down traditional marriage? What you are saying is that you do not want the American people to know about it, much less have a voice in correcting this radical social experiment.

Of course, everyone has a right to file lawsuits. But the American people have rights, too, rights preserved by Article V of the U.S. Constitution, which provides a process of amendment, particularly when courts engage in a radical redefinition of our most basic institution under the guise of interpreting the Constitution. Indeed, the only way the American people have of responding is through a constitutional amendment. So we have no choice but to offer this amendment by way of response.

I think no one should be fooled into thinking that on this side of the aisle we are afraid of a full and fair debate and a vote on the various proposals that may come to the floor. But, indeed, under the offer made by the Democratic leader last Friday, it would have cut off any amendments, would have stifled a full debate, which I think has been on the whole very positive.

I appreciate my colleague for letting me finish my prepared remarks. I do not know if he still has a question, but I would be glad to respond if he does.

Mr. CARPER. I do. I thank my colleague for yielding. There is a question I want to ask. But let my just say, first of all, I think you know how much I respect you and the high regard I have for you and how much I enjoy working with you. We agree on a lot of things. And there are one or two things we do not agree on, and that is, I think, to be expected.

The issue that you raised early in your remarks is one I want to come back to; and that is, the question of whether we should in some way have an up-or-down vote on the amendment that is before us, or if there should be opportunities for other colleagues, Republicans and Democrats, to offer their own amendments to this underlying amendment.

I think the concern for our side is that we are mindful of the possibility of this not being just a debate, an opportunity to address whether there should be a constitutional amendment as marriage being between a man and a woman, but an opportunity to consider other issues of a constitutional nature.

There are people on our side interested in amendments that deal with campaign finance, in restricting money spent on campaigns. That is one example.

As a Member of the House, when I served with Senator SANTORUM over there, we were great proponents of something called a balanced budget amendment to the Constitution, not one that mandated a balanced budget, but one that said: Shouldn't the President be required to propose a balanced

budget? And shouldn't we make it a little more difficult for the Congress to unbalance that budget?

There are a number of constitutional amendments that are floating out there on your side and on our side. Here is my question.

Mr. CORNYN. Mr. President, I would be glad to respond to my colleague's question, but I first ask unanimous consent that the time engaged in question and answer be charged to the other side, in fairness.

The PRESIDING OFFICER. Is there objection?

Mr. CARPER. I will not object.

Mr. CORNYN. I thank the Senator.

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

Mr. CARPER. I just ask that the response come out of your time.

Mr. CORNYN. I would be glad to respond to that because I think that is an important issue. No one has suggested we should not make this discussion about preserving traditional marriage. I would say there was no attempt to try to limit any debate, any amendments that might be offered—for example, the single-sentence amendment, which is the first sentence of Senator ALLARD's amendment—to amendments that are germane to the preservation of traditional marriage.

So I must say that while I respect my colleague—and he knows that, and, as he said, there are many things we agree on—I simply disagree that our refusal to take the offer that would allow no amendments, whether or not they are germane to the issue of traditional marriage, in no way opens this matter up to non-germane or extraneous amendments.

I would be pleased—at least speaking personally; of course, any Senator could lodge an objection to the unanimous consent request—for us to stay on the subject because I think this has been a very helpful debate.

I would also ask unanimous consent that a letter to Ms. Margaret A. Gallagher dated July 11, 2004, and a letter from the Liberty Counsel dated July 10, 2004, be printed into the RECORD.

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

THE BECKET FUND
FOR RELIGIOUS LIBERTY,
Washington, DC, July 11, 2004.

Ms. MARGARET A. GALLAGHER,
President, Institute for Marriage and Public
Policy, Washington, DC.

DEAR Ms. GALLAGHER: Your Institute and others have asked us to examine whether the proposed Federal Marriage Amendment ("FMA") would violate the principle of religious liberty. In particular, you have first asked whether the FMA would reach private action in light of the fact that the FMA contains no express provision limiting its reach to state action only. Second, you have asked us to consider what the practical consequences for religious liberty would be should the FMA become law. That is, you have asked us whether it will trigger a "witch hunt" against religious organizations and individuals that choose to conduct or participate in religious ceremonies which they refer to as weddings.

You have provided us with an opinion letter by David Remes (the "Remes Letter") which answers both questions in the affirmative. Our strong belief is that the Remes Letter is mistaken on both counts. The FMA would not reach private action, and the parade of horrors it posits is unlikely in the extreme.¹

At the outset we wish to emphasize that the Becket Fund is a nonpartisan, interfaith, public-interest law firm that protects the free expression of all religious traditions. We have represented religious congregations that have come down on both sides of the debate over the FMA. We have for example represented Unitarians, who do not support the FMA, and more conservative congregations who do. We have represented a wide assortment of faiths, including a variety of Jewish and Christian congregations, Buddhists, Muslims, Native Americans, Sikhs, Hindus, and Zoroastrians, whose views on the FMA are unknown to us. We have also represented religious congregations who take opposing positions on the moral issue of homosexual behavior itself. We have on the one hand represented congregations that condemn not only gay marriage but also gay sex, and on the other, at least one congregation (the Come As You Are Fellowship in Reidsville, Georgia) that openly welcomes gays. Had we concluded that the FMA would violate the principle of religious liberty we would have been at the forefront of the effort against it. We have, however, concluded otherwise.

THE FEDERAL MARRIAGE AMENDMENT WILL NOT REACH PRIVATE ACTION

The Remes Letter argues that the FMA "by its own terms" reaches private action. The Remes Letter concludes this simply from the fact that the FMA does not state otherwise. But more than 100 years ago the Supreme Court settled the point that constitutional provisions that do not facially restrict themselves to state action cannot be assumed to reach private action. In *United States v. Cruikshank*, 92 U.S. 542 (1875), the United States attempted to prosecute one group of private citizens for "banding and conspiring" together to deprive another group of citizens of, among other things, the "right to keep and bear arms for a lawful purpose." Id., 92 U.S. at 545. The government's indictment was based on the argument made by the Remes Letter—because the Second Amendment did not limit itself facially to state action, but simply stated that "[a] well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed[.]" private actors could be indicted for attempting to deprive others of those rights. U.S. CONST. amend. II; *Cruikshank* at 548. The Supreme Court rejected that reasoning out of hand: "The second amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look [to the state police power] for their protection against any violation by their fellow-citizens of the rights it recognizes."—*United States v. Cruikshank*, 92 U.S. at 553. Had the Court ruled otherwise and applied to the Second Amendment the strained interpretation that the Remes Letter applies to the FMA, much mischief would have resulted. Churches, synagogues, and mosques for example, could not prevent persons from wearing firearms on the premises without thereby violating the Constitution.

The Remes Letter theory, if true, would lead to equally strange interpretations of other Amendments. The Third Amendment, which prohibits the quartering of troops in

private homes during time of peace without the consent of the owner—but which does not explicitly limit its scope to state action—would make it unconstitutional for a tenant to sublease his apartment to a military officer whom his landlord found objectionable. Every petty theft would constitute a violation of the Fourth Amendment because that Amendment does not explicitly limit its condemnation of unreasonable seizures to state actors. Excessive spanking would arguably violate not only child abuse laws but the constitution itself, because it might be construed to be cruel and unusual punishment under the Eighth Amendment, which also does not expressly limit its scope to state action. None of these examples are the law, precisely because it has long been settled that constitutional provisions that do not expressly limit themselves to state action nevertheless do not ordinarily reach private action.²

The sole exception—and curiously the only example the Remes Letter cites—is the Thirteenth Amendment, which bans slavery. To remove that evil root and branch, it was necessary to take the extraordinary step of a constitutional provision that reached both public and private action. See, e.g., *United States v. Nelson*, 277 F.3d 164, 175 (2d. Cir. 2002) (history shows that unlike other amendments, the Thirteenth Amendment "eliminates slavery and involuntary servitude generally, and without any reference to the source of the imposition of slavery or servitude" and therefore "reaches purely private conduct." (emphasis added)).³

By contrast, to achieve the FMA's objective, it is not necessary to reach private action. The FMA is occasioned by the interplay among state court decisions requiring that civil marriage be available to same-sex couples and the Full Faith and Credit Clause of the federal constitution. That Clause requires in general that civil marriages performed in one state be recognized in all other states. Thus, without the FMA, the argument goes, same-sex couples civilly married in Massachusetts must be considered civilly married in Alaska as well. However, the Full Faith and Credit Clause simply does not apply to purely religious ceremonies. Unlike uprooting slavery, therefore, preventing civil same-sex marriage from spreading via the Full Faith and Credit Clause does not require reaching private action. The general rule of the Second, Third, Fourth, and Eighth Amendments therefore applies, and not the exception of the Thirteenth.

Put differently, the historical context of the FMA informs its construction, just as the historical context of the adoption of the Bill of Rights informs construction of the Second, Third, Fourth, and Eighth Amendments, and the Civil War and Reconstruction provide the historical context that informs construction of the Thirteenth Amendment. Indeed, the FMA refers in its second sentence to state and federal constitutions—an unmistakable allusion to the actions of the Massachusetts Supreme Judicial Court in *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003) and other courts which have engendered the confusion to which the FMA is addressed.

In sum, it strikes us as past fanciful that courts construing the FMA would abandon the general rule adhered to in the Second, Third, Fourth and Eighth Amendments, and grasp at the exception of the Thirteenth. The FMA thus causes us no anxiety for the religious liberty of those of our clients who might wish to conduct ceremonies for gay couples.

THE FMA WILL PROTECT RELIGIOUS LIBERTY MORE THAN IT WILL THREATEN IT

We next examine the Remes Letter's suggestion that should the FMA become law, it

would occasion a witch hunt against those congregations and individuals who might seek to hold or participate in religious ceremonies for gay couples. The short answer to this fear is that the FMA does nothing but restore the status quo that has until very recently obtained in all 50 states since the Founding. We are aware of no such witch hunt ever being conducted against Unitarians or other groups who support same-sex marriage, whose tax exemptions seem to us as secure today as they ever have been. In those instances (overlooked by the Remes Letter) where same-sex marriage ceremonies have become the subject of litigation, the prosecutors have been clear that the crucial distinction lies between a purely religious ceremony, which the law will not disturb, and those ceremonies that purport to invoke state law and confer state benefits ("By the authority vested in me . . ."), which would be illegal. See Thomas Crampton, Two Ministers are Charged in Gay Nuptials, N.Y. Times, March 16, 2004, at B1 (charges based on fact that ministers "have publicly proclaimed their intent to perform civil marriages under the authority vested in them by New York state law, rather than performing purely religious ceremonies.")⁴ That seems to us to be the appropriate line to draw.

By contrast, in the short time since the Massachusetts Supreme Judicial Court handed down *Goodridge*, ordering gay marriage in the Commonwealth, a large number of serious questions have emerged about the rights of religious organizations who are conscientious objectors to that ruling. For example, Catholic colleges and universities there have started examining whether the schools must now provide married student housing to legally married gay couples.⁵ Similarly, religious employers that provide health and retirement benefits to the spouses of married employees may risk liability for withholding those benefits from same-sex spouses.

On top of these liability risks, resisting churches are more likely to face selective exclusion from public facilities, public funding streams, and other government benefits. The Boy Scouts, whose right to exclude openly gay scouts from leadership was confirmed in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), have been the target of state and local governments who have sought to exclude the Scouts from public benefits they have long enjoyed. Throughout Connecticut, for example, the Boy Scouts were denied participation in the state's payroll deduction charitable giving program. See *Boy Scouts v. Wyman*, 335 F.3d 80 (2d Cir. 2003). Similarly, the New York City Council recently passed a law to exclude any contractor from doing more than \$100,000 worth of business with the City, if the contractor refuses to extend health benefits to same-sex domestic partners. As a result of their religious convictions, groups like the Salvation Army—which has provided the City with millions of dollars in contract services for the needy—will be excluded from participation in government contracts. Such sanctions can only be expected to increase under a regime of same-sex marriage.

Moreover, the *Goodridge* decision is having an impact on individuals as well. One Massachusetts Justice of the Peace has already resigned, because she could not perform same-sex marriages in good conscience and Massachusetts refuses to provide an opt-out for conscientious objectors. Thus we are concerned that, whatever religious liberty problems there might be at the margins should the FMA become law, there will be far more problems if it does not.

CONCLUSION

For the reasons set forth above, it is our opinion that the FMA would not reach pri-

vate action and would sufficiently protect religious liberty from unwarranted state intrusion.

Very truly yours,

KEVIN J. HASSON,
Chairman.

END NOTES

¹The Remes Letter raises an assortment of other objections to the FMA that are beyond the scope of this letter.

²See, e.g., *Katz v. United States*, 389 U.S. 347, 350 n.5 (1967) ("The Third Amendment's prohibition against the unconsented peacetime quartering of soldiers protects another aspect of privacy from governmental intrusion." (emphasis added)); *Terry v. Ohio*, 392 U.S. 1, 9 (1968) ("wherever an individual may harbor a reasonable expectation of privacy, he is entitled to be free from unreasonable governmental intrusion" (emphasis added)); *Ingraham v. Wright*, 430 U.S. 651, 664 (1977) (Eighth Amendment designed "to limit the power of those entrusted with the criminal-law function of government" (emphasis added)).

³The same was true of Prohibition, enacted by the Eighteenth Amendment, until it was repealed by the Twenty-first Amendment.

⁴The case the Remes Letter does cite is idiosyncratic. *Shahar v. Bowers*, 114 F.3d 1097 (11th Cir. 1997) involved a lawyer recruited to join the office of Georgia Attorney General Michael J. Bowers (of *Bowers v. Hardwick* fame) who publicly championed her lesbian relationship at a time that sodomy was still illegal in Georgia. In its essence this was not a case about religious ceremony, so much as it was a case about demonstrated poor judgment. *Id.* at 1106, 1110. The outcome in *Shahar* would in any event have not been affected by the FMA becoming law.

⁵Rhonda Stewart, "Catholic Schools Studying Gay Unions," *The Boston Globe* (May 16, 2004).

LIBERTY COUNSEL,

Orlando, FL, July 10, 2004.

THE FEDERAL MARRIAGE AMENDMENT PRESERVES MARRIAGE AS THE UNION OF ONE MAN AND ONE WOMAN AND IS CONSISTENT WITH CONSTITUTIONAL JURISPRUDENCE AND FEDERALISM

We write this letter on behalf of a broad coalition of policy, religious and legal organizations and individuals to address several issues raised in a June 24, 2004 Covington & Burling memorandum (the "Covington Memo"). When read in conjunction with a July 2, 2004 letter we prepared concerning the legal attacks being waged against marriage in the courtrooms, it becomes clear that the federal marriage amendment must pass.¹

In an effort to provide a ready reference to the arguments raised in the Covington Memo, we will address each of their arguments in order. Contrary to the conclusions reached in the Covington Memo, the Federal Marriage Amendment ("FMA") preserves marriage as the union of one man and one woman in a way that is consistent with constitutional jurisprudence and federalism. Accordingly, in the first section of this letter, we rebut the argument that "The FMA is Ambiguous and Self-Contradictory." The second section exposes the intellectual dishonesty in the argument that "The FMA Would Threaten Private Recognition of Marriage of Same-Sex Couples, Even By Religious Bodies." The third and fourth sections reveal the analytical error in the arguments that "The FMA Displaces Democratic Decision-making" and the "The FMA is Inconsistent with Principles of Federalism." The fifth section addresses the argument that "The FMA Would Constrain All Three Branches of Government." The final section discusses the current legal battles taking

place, which undermines the argument, that "The FMA Would Precipitate Continuing Struggle."

I. THE TWO SENTENCES IN THE CURRENT FMA ARE CONSISTENT

The two sentences in the current FMA are consistent with each other. The current FMA provides that "Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman."

The first sentence is a broad declaration that marriage throughout the country is limited to a union of one man and one woman. It also acts as a broad prohibition on conferring the legal status of marriage on any relationship other than that of a man and a woman. The second sentence reinforces the first sentence. It reinforces the first by expressly stating that neither the U.S. Constitution nor a state constitution may be construed to require same-sex marriage. The decision in *Goodridge v. Department of Health*, 440 Mass. 309, 798 N.E.2d 941 (Mass. 2003), exemplifies the necessity of that portion of the second sentence.

In *Goodridge*, the Massachusetts Supreme Judicial Court ("SJC") stated that "[t]he everyday meaning of 'marriage' is 'the legal union of a man and woman as husband and wife,' and the plaintiffs do not argue that the term 'marriage' has ever had a different meaning under Massachusetts law." *Id.* at 319.² However, the SJC reformulated "marriage" to mean the "union of two persons." Significantly, under the Massachusetts constitution, the SJC was without authority to redefine the indisputable understanding of marriage from the "union of a man and a woman" to the "union of two persons." See Opinion of the Justices to the Senate, 324 Mass. 746, 85 N.E.2d 761 (1949) (unambiguous words in the constitution must be interpreted according to their meaning at the time they were added to the constitution). Nevertheless, four of the seven judges held that it would "construe civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of marriage." *Goodridge*, 440 Mass. at 343.³

The second sentence of FMA makes clear, for those looking for wiggle room in the language of the first sentence, that the FMA prohibits a repeat of the *Goodridge* decision. While the Covington Memo describes the first part of the second sentence as inconsistent with the first sentence, the level of judicial activism currently taking place across the country mandates a clear expression that marriage at the state and federal level is limited to the union of a man and a woman. The second sentence closes the door to any argument that the first sentence applies only to rights arising under the federal constitution, and therefore allows courts and legislatures to permit same-sex marriage under their state constitutions. This is particularly necessary given the fact that in the state marriage cases, those challenging the marriage laws as unconstitutional rely heavily on the argument that state constitutions grant broader individual rights than the federal constitution. See Covington Memo at 5 ("state courts are absolutely free to interpret state constitutional provisions to afford greater protections to individual rights than do similar provisions of the United States Constitution"). Whether or not a state constitution affords broader individual rights, the FMA reserves marriage in all fifty states as the union of one man and one woman.

The second sentence also prohibits a repeat the *Baker v. State*, 744 A.2d 864 (Vt. 1999) decision by the Vermont Supreme Court. In

that case, the court construed the state constitution to require the state to grant the same legal incidents of marriage to same-sex couples as are granted to marriages entered into by a man and a woman. After passage of the FMA, no court could render such a decision.⁴ The two sentences of the FMA accomplish the same purpose—to reserve marriage for a union of a man and a woman. The two sentences are consistent.

II. THE FMA DOES NOT REACH PRIVATE CONDUCT NOR DOES IT THREATEN PRIVATE RECOGNITION OF SAME-SEX RELATIONSHIPS

The FMA does not reach private action nor does it prohibit private recognition of same-sex relationships. Marriage is a unique institution with a distinct definition and with distinct requirements for entry into the relationship. Two individuals may not simply declare themselves married and thus obtain the legal status of marriage. In all fifty states, a marriage may only be entered into with state sanction and approval.

A private religious group may conduct a religious ceremony to “unite” two persons of the same-sex, but such a union is not a marriage for legal purposes. Marriage is a public legal status. See *Maynard v. Hill*, 125 U.S. 190, 205 (1888) (marriage is the “most important union in life, having more to do with morals and civilization of a people than any other institution” and its status is conferred by the legislature); see also *Loving v. Virginia*, 388 U.S. 1, 7 (1967) (stating, “[M]arriage is a social relation subject to the State’s police power.”).

The Covington Memo argues that the FMA would be interpreted as the Thirteenth Amendment (regarding slavery) has been interpreted to prohibit private conduct. The Thirteenth Amendment is distinguishable from the FMA. Unlike marriage slavery does not require a state sanction—it is a purely private relationship. Because slavery may exist without state sanction or recognition, the Thirteenth Amendment applies to private conduct. Marriage, in contrast, cannot exist without government sanction. The FMA does not reach private conduct, nor would it regulate private ceremonies. A ceremony conducted by a private group is merely ceremonial or symbolic, not legal. The Second, Fourth, Fifth and Eighth Amendments are not limited by their text to state action, but it is clear they apply only to state action.

A thirteen-year-old child may not make a “driver’s license” on a home computer and then protest when stopped by the police for driving without a license. Because the thirteen-year-old may not legally drive does not mean that private acts of playing driver off the public highways or creating a “license” for non-legal purposes are prohibited. However, if this person used the fake license to obtain access to a bar, then that action would come within the law. In the same way, it is impossible for a same-sex couple to conduct a private religious ceremony that legally results in marriage, and therefore, the FMA doesn’t apply to the private action or ceremonies.

The FMA cannot “punish” religious organization; that conduct ceremonies recognizing same-sex relationships. Nor would the FMA deny government funds to religious groups or deny charitable tax status to those organizations. The FMA also does not apply to private employment agreements providing health insurance to same-sex couples or other private contractual rights.⁵ The FMA simply does not apply to private conduct.

III. THE FMA REPRESENTS THE VERY ESSENCE OF DEMOCRATIC DECISION-MAKING

The Covington Memo argues that the FMA would displace democratic decision-making. The argument seems to be that the FMA

would usurp the power of the people to decide for themselves whether to allow same-sex marriage. In fact, the FMA, and the amendment process, represents the very essence of democratic decision-making. The people of the United States have the right to amend their Constitution. Once the FMA is passed through the Senate and the House, 38 states must ratify the amendment. It is the people, acting through their elected representatives, who have the right to amend the United States Constitution. This act represents the democratic process at its apex.

The Covington Memo also cites Justice Scalia’s dissent in *United States v. Virginia*, 518 U.S. 515, 566 (1996) for the proposition that amending the Constitution prohibits the people from changing their perceptions and opinions. This argument demonstrates a lack of understanding of the democratic process. Moreover, the statement by Justice Scalia is taken out of context and twisted to mean something he did not say.⁶ Justice Scalia dissented from the Supreme Court removing of the debate from the public over whether women should be admitted to military schools.

Instead of supporting the position of the opponents of the FMA, Justice Scalia’s dissent supports the position of the FMA’s supporters. The FMA puts the debate right where it should be—with the people and their elected representatives. The FMA represents the highest and best of the democratic decision-making process.⁷

IV. THE FMA IS CONSISTENT WITH THE PRINCIPLES OF FEDERALISM

Marriage has always been a national policy between one man and one woman. Utah’s battle over polygamy is instructive. In 1862, the United States Congress passed the Morrill Act, which prohibited polygamy in the territories, disincorporated the Mormon church, and restricted the church’s ownership of property. See *Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1, 19 (1890). In *Reynolds v. United States*, 98 U.S. 145 (1878), the Supreme Court upheld the Morrill Act, stating that polygamy has always been “odious” among the Northern and Western nations of Europe, and from “the earliest history of England polygamy has been treated as an offense against society.” *Id.* at 164. The court noted “it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.” *Id.* at 166. To further the national policy of one man and one woman, Congress passed the Edmunds Act in 1882, and later passed the Edmunds-Tucker Bill in 1887. See *Late Corporation of the Church*, 136 U.S. at 19. See also *Davis v. Beason*, 133 U.S. 333 (1890).

As a condition to be admitted to the Union, Congress required the inclusion of anti-polygamy provisions in the constitutions of Arizona, New Mexico, Oklahoma, and Utah. See *Arizona Enabling Act*, 36 Stat. 569; *New Mexico Enabling Act*, 36 Stat. 558; *Oklahoma Enabling Act*, 34 Stat. 269; *Utah Enabling Act*, 28 Stat. 108. See also *Murphy v. Ramsey*, 114 U.S. 15 (1885). For Arizona, New Mexico and Utah, the Enabling Acts permitting these states to be admitted to the Union required that the anti-polygamy provisions be “irrevocable,” and that in order to change their laws to allow polygamy, each state would have to persuade the entire country to change the marriage laws. See *Romer v. Evans*, 517 U.S. 620, 648–49 (1996) (Scalia, J., dissenting). Idaho adopted the constitutional provision on its own, and the 51st Congress, which admitted Idaho into the Union, found its constitution to be “republican in form and . . . in conformity with the Constitution of the United States.” Act of

Admission of Idaho, 26 Stat. 21.5. To this day, Arizona, Idaho, New Mexico, Oklahoma and Utah state in their constitutions that polygamy is “forever prohibited.” See *Ariz. Const. art. XX, §2*; *Idaho Const. art. I, §4*; *N.M. Const. art. XXI, §1*; *Okl. Const. art. I, §2*; *Utah Const. art. III, §1*.

When commenting on the national policy of marriage as the union of one man and one woman, the Supreme Court declared the following: “[C]ertainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the coordinate States of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.”—Murphy, 114 U.S. at 45.

The national ban on polygamy, or put another way, the national policy of marriage between one man and one woman, is enforced in many ways. A juror who has a conscientious belief that polygamy is right may be challenged for cause in a trial for polygamy, and anyone who practices polygamy is ineligible to immigrate to the United States. See *Witherspoon v. Illinois*, 391 U.S. 510, 536 (1968) (citing *Reynolds*, 98 U.S. at 147, 157); 8 U.S.C. §1182(A). That is to say, a polygamous relationship recognized in a foreign jurisdiction will not be legally recognized in the United States.⁸

Although states have traditionally regulated the edges of marriage (divorce, alimony, support, custody and visitation), they have historically never regulated or altered the essence of marriage (the union of one man and one woman). The recent exception is Massachusetts, and the act by that court now threatens the rest of the nation on this central issue of marriage. The FMA merely carries forward the longstanding national policy that marriage is the union of one man and one woman, and thus is consistent with the history of marriage in this country.

V. THE FMA CONTINUES THE NATIONAL POLICY OF MARRIAGE AS ONE MAN AND ONE WOMAN AMONG ALL BRANCHES OF GOVERNMENT

The FMA is designed to maintain the historic status quo regarding marriage as the union of one man and one woman. This core marriage policy therefore applies to all branches of government. If the Executive, Legislative or Judicial branch sought to order, enact or decree same-sex marriage, the FMA would prohibit such action. However, the FMA does not prohibit the legislature from extending legal protection or benefits to same-sex couples.

The argument in the Covington Memo that opines the FMA would tell a state court how to interpret its constitution is undercut by the admission contained in the same paragraph. The memo concedes that “a state constitution may not permit something that an otherwise valid federal law forbids. . . .” Our constitutional form of government has never permitted states to interpret their constitutions in a manner that conflicts with the federal constitution. The United States Constitution obviously preempts any state law to the contrary. See *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 107 n.2 (2001) (contrary state law must yield to the United States Constitution); *Romer v. Evans*, 517 U.S. 620 (1996) (contrary state constitutional provision must yield to the United States Constitution); *Falwell v. Miller*, 203 F. Supp. 2d 624 (W.D. Va. 2002) (same). The FMA is consistent with constitutional jurisprudence.

VI. THE FMA WOULD DECREASE LITIGATION OVER MARRIAGE

The FMA would limit the judicial chaos that is currently escalating throughout the country.⁹ There are currently about 40 separate court challenges over same-sex marriage pending, most of which began since February 12, 2004, the day San Francisco Mayor Gavin Newsom issued licenses to same-sex couples. This number increases daily. Two more suits were filed July 12 in Florida, where three other suits were filed within the past several weeks. The suits throughout the country have one thing in common—a claim that the state and federal constitution require a state to permit two people of the same sex to marry.¹⁰ The FMA would ensure the maintenance of the longstanding national policy of marriage as the union of one man and one woman. The FMA is designed to bring order and stability to the marriage union and thus to halt the current litigation frenzy.

VII. CONCLUSION

The FMA preserves marriage as the union of one man and one woman, and places the decision on this important matter with the people. Passage of the FMA is the only way to protect marriage and it is entirely consistent with constitutional jurisprudence and federalism.

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FOOTNOTES

¹The July 2 letter discusses in great detail the 33 lawsuits taking place in 12 states—with lawsuits in 9 of those states commenced since February 12, 2004, when San Francisco Mayor Gavin Newsom began issuing certificates to same-sex couples. In many cases, the most shocking aspect is the willingness of some judges to abdicate their role as judge to become legislator, and the willingness of some state attorney generals to abdicate their role as law enforcement officials to become political activists. Without question, there is a culture-changing debate taking place in this country, but it is not taking place in the state legislatures where elected representatives can debate the issue. Instead, the battle is in the courtrooms of America. Although the fact that courts, and not legislators, have been the ones making the laws granting same-sex couples legal benefits is itself shocking. The disturbing reality is that those who believe marriage should be limited to the union of one man and one woman are frequently not allowed to participate in the courtroom battles. Instead, those who support traditional marriage are often kept out of the litigation by courts, state attorney generals, and the homosexual advocacy organizations on the erroneous theory that same-sex marriage does not concern them and will not harm marriage or the country. Thus, some courts are rushing ahead without the opportunity for debate, dialogue, and with absolutely no evidence concerning the impact same-sex marriage would have on the culture.

²The word "marriage" appears in the Massachusetts constitution in the only section that places an express restriction on the authority of the judiciary.

³A federal lawsuit challenging the Goodridge decision as violating the federal guarantee of a republican form of government—i.e., the court usurped the powers of the legislature—was unsuccessful before the First Circuit Court of Appeals. The Court of Appeals held that absent extreme cases, such as abolishing the Legislature or creating a monarchy, there is no violation of the federal Guarantee Clause. See *Largess v. Supreme Judicial Court for State of Massachusetts*, 2004 WL 1453033, 1st Cir. (Mass.).

⁴That which a legislative body "may" enact on its own is far different than being "required" to act pursuant to a court mandate.

⁵The Covington Memo cites the case of *Shahar v. Bowers*, 114 F. 3d 1097 (11th Cir. 1997) in support of its argument that the FMA would apply to private conduct. This case suggests nothing of the sort. In *Shahar*, the Attorney General of Georgia withdrew a job offer from an attorney who had participated in a same-sex "marriage" ceremony. Absent the FMA, an Attorney General would prevail when choosing to hire or retain staff attorneys. The government as an employer is given great deference in hiring/firing under the application of the Pickering balancing test used in *Shahar*. The FMA would change nothing with regard to how employees are treated. The statement that people could be "punished" under the FMA for private ceremonies cannot be supported by the facts of *Shahar*—the fact is that the employee was not "punished" for entering into a "same-sex" marriage. It was a well-publicized, controversial ceremony that was attended by people in the department. *Id.* at 1101. The revelation that she was "marrying" a woman "caused quite a stir" in the office, causing staff attorneys to wonder about the employee's decision-making ability under the facts of the case. *Id.* at 1105-06.

⁶In fact, one need look no further than the Constitution itself to recognize the absurdity of this argument. The Eighteenth Amendment was ratified in 1919 to prohibit the "manufacture, sale, or transportation of intoxicating liquors. . . ." However, fourteen years later, the people ratified the Twenty-first Amendment that repealed the ban on liquor. Even a Constitutional Amendment may be changed over time by another Constitutional Amendment.

⁷To the extent that the Thirteenth, Fourteenth and Fifteenth Amendments violated federalism, the states consented to this act by the passage of these amendments.

⁸If same-sex marriage were sanctioned it would be virtually impossible to ban polygamy. When Tom Green was put on trial for polygamy in Utah in 2001, several articles and editorials appeared in various newspapers supporting the practice of polygamy (*The Village Voice*, *Washington Times*, *Chicago Tribune*, and the *New York Times*). Although the ACLU initially tried to minimize the idea of the slippery slope between gay marriage and polygamy, the ACLU itself defended Tom Green during his trial and declared its support for the repeal of all "laws prohibiting or penalizing the practice of plural marriage." Polyamory (group marriage) is also an inevitable consequence of sanctioning gender-blind marriage. See Deborah Anapol, Polyamory: The New Love Without Limits. Paula Ettelbrick, former legal director for Lambda Legal Defense and Education Fund, supports same-sex marriage and state-sanctioned polyamory. Ettelbrick teaches law at the University of Michigan, New York University, Barnard and Columbia. A number of other law professors similarly promote polyamory, including Nancy Polikoff at American University, Martha Fineman at Cornell University, Martha Ertman at the University of Utah, Judith Stacey, the Barbara Streisand Professor of Contemporary Gender Studies at the University of Southern California, and David Chambers at the University of Michigan.

⁹The Civil Rights Act of 1964 began an explosion of litigation. A current search on Westlaw for only the employment provision section of the Act (Title VII) reveals 10,000 federal cases, which is the maximum number of cases Westlaw can retrieve. All of the federal and state cases would amount to several tens of thousands of cases. However, the fact that the Civil Rights Act spawned litigation is not sufficient reason to refrain from passing the Act. In the case of the FMA, the litigation is sure to decrease.

¹⁰One Utah case argues that polygamous marriage should be permitted.

Mr. CORNYN. At this point, I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, on the Fourth of July, as many of my colleagues, I covered my State, and, as I have done for many years on the Fourth of July, I ended up in Dover, DE. Dover, DE, on the evening of July 4 is a politician's dream. People have had a full day of parades and family gatherings, community gatherings. We are there to await the fireworks when dusk finally comes. Roughly 10,000 people gathered in front of Legislative

Hall, a huge American flag that almost masked Legislative Hall in its majesty, a C-5 aircraft soon to fly overhead, and then the fireworks themselves.

I work the crowd at that gathering, and it is a lot of fun. People are in a good mood, a lot of good-natured kidding going on: Are you running for anything this year? No, I am not, I am just here because I love being in Dover on the evening of the Fourth of July.

There was one serious question, at least one that was raised to me that evening. The question was: How are you going to vote on that amendment on gay marriage? In responding to that question, I pointed to Legislative Hall and I said to the questioner: When I was Governor of this State in 1996, I signed into law our own Defense of Marriage Act that said marriage is between a man and a woman. I believed that then. I believe it now.

Later that evening I addressed the crowd, and I alluded to the Declaration of Independence. But I spoke more about the Constitution, a copy of which I hold. The Constitution of the United States was first ratified in Delaware. I told the crowd that night that the Constitution was ratified in the Golden Fleece Tavern about 300 or 400 yards from where we gathered.

We all know the Constitution does a number of things. It establishes a framework of government. It says, this is how our Government is going to work. We will have three branches of Government: a legislative, executive, and a judicial branch. It says, there are certain things the Federal Government should be doing and certain responsibilities that are left to the States.

Among the responsibilities left to the States in this Constitution are matters of family law: Who can marry, how do we divorce, how do we end those marriages, who gains custody of the children, how about visitation rights, matters of alimony, property settlement, and the like. Those are matters that we have left to the States for over 200 years.

Senator CORNYN mentioned the concern he has over the state of marriage. I share it. Half the marriages in our country today end in divorce. Too many kids grow up in families where nobody ever marries, and families are not invested enough in their children.

I also acknowledge the concern over efforts in some parts to recognize same-sex marriage. That concern has led many States to enact laws such as my State's Defense of Marriage Act and to enact here in this Congress the Defense of Marriage Act as well. That concern over proposals for same-sex marriage has led some States to actually consider constitutional amendments.

With respect to same-sex marriages, let me offer this: There are a lot of views, but two of those views are basic when you cut to the chase. View No. 1: marriage is between a man and a woman. The alternative view is marriage is between two people. I think the

view of most Americans today—not all but most Americans today—is that marriage is between a man and a woman.

The question for us to consider here today is this: Is there a clear need to amend the Constitution of our country to ensure that the view I have just stated, the majority view, prevails in States such as Delaware and others? It is a legitimate question. As we seek to answer it, let's consider a couple of examples of State laws spelling out how marriage is supposed to operate and whether those laws have been sustained over the years. Let me mention three examples.

A number of States have prohibitions against first cousins marrying. If two people live in a State where you have a man and woman who are first cousins and they want to get married, they go to another State to get married and return to their State. Their State does not have to acknowledge the validity of the marriage.

Some States have restrictions with respect to divorce. If you get a divorce, you have to wait a while before you can remarry. If you live in a State with that restriction and you go to another State that doesn't have those restrictions, you return to your State, your State does not have to recognize that marriage.

We have all seen movies about May-December marriages and how they can be interesting and entertaining, but a lot of States have a law that says a 57-year-old man can't marry a 13-year-old girl, and if you try to do that in a State where maybe you could get away with it, and you move back to your State, that marriage will not be recognized. Those State laws have been sustained whether we have a constitutional amendment.

I believe that my law in Delaware will also be sustained without a constitutional amendment. If it isn't, then this is an issue that we can revisit, and I think we will.

This Constitution that I hold in my hand is the work of man. I think it was divinely inspired. The folks who met at the Golden Fleece Tavern and the people in Constitution Hall in Philadelphia a long time ago largely got it right the first time—not entirely, but they largely got it right. This Constitution has been rarely changed. It is not easy to do. That is purposeful. Over 11,000 amendments have been proposed to this Constitution. To date, since the adoption of the Bill of Rights, 17 have actually been incorporated as amendments to this Constitution.

On the issue of marriage and divorce alone, 129 amendments have been proposed to the Constitution. None have come close to passage. All of us today and all of us who will vote today realize this proposed constitutional amendment is not going to be enacted either.

It is an important issue that has been raised. As some have said, it is one that, frankly, divides us and divides us deeply.

When the last speech is given today, when the final vote is cast around 12:15

or 12:30, my fervent hope is that we will turn to some issues that unite us and, frankly, need to be addressed. They are closely related to what we are talking about today. We need to look no further than the 1996 Welfare Act that was adopted in this Chamber which has expired and been continued with short-term extensions time and again. It needs to be reauthorized. We need a vote on it and, frankly, to improve it. It is not perfect. We can make it better. We can strengthen marriage through the provisions of that law. We can strengthen families. We can increase the likelihood that more of America's children are going to grow up in homes where both parents are deeply committed to them and to their future, that they have decent childcare. We can do that.

I hope when we finish today and this issue is behind us for a while, that we will turn to another closely related issue that will truly strengthen America's families. That is, to return to the issue of welfare reform and pass the legislation out of committee and send it to the House. Let's get on with the Nation's business.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Connecticut.

Mr. CORNYN. Could I ask for a brief unanimous consent request?

Mr. LIEBERMAN. I yield to the Senator for a request.

Mr. CORNYN. I believe we have been going back and forth to each side. I certainly want to accommodate the Senator so everyone will be able to be heard, but we also have some folks on our side.

Mr. LIEBERMAN. Go right ahead.

Mr. CORNYN. I ask unanimous consent that Senator ALLARD be recognized for 5 minutes out of the 25 minutes remaining on our side until the chairman comes to the floor and the leadership time is reserved under a previous consent, and then Senator SANTORUM be recognized as our next Republican speaker for 10 minutes on our side, and then finally the last 5 minutes of that 25-minute segment, that Senator SESSIONS be recognized.

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

The Senator from Colorado.

Mr. ALLARD. Mr. President, I thank the Senator from Texas for allowing me the opportunity to speak. Just to get some business out of the way, I have some materials I have submitted at the desk. I ask unanimous consent to print them in the RECORD.

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

JULY 12, 2004.

To: Senator Orrin Hatch, Chair, United States Senate Judiciary Committee.

From: Professor Teresa S. Collett.

Re: Response to recent concerns regarding the meaning, reach, and consistency of the Federal Marriage Amendment with constitutional principles.

Having served as a witness in favor of the Federal Marriage Amendment, SRJ 40, (hereinafter "FMA") before the Senate Judiciary Committee on March 23, 2004, which was chaired by Senator Cornyn, I have been

asked to respond to various objections regarding its passage.

There are four common objections to the FMA. Opponents claim that the FMA is self-contradictory, with the first sentence prohibiting what the second permits in certain cases. Second, they claim that the amendment prohibits private recognition of same-sex unions as marriages. Third, they argue that the amendment is anti-democratic because it removes the definition of marriage from the arena of state law and creates a uniform federal definition. Finally, and in contradiction to the last point, they argue that the amendment will increase litigation over the meaning of marriage. None of these objections have merit.

THE AMENDMENT IS NOT INTERNALLY CONTRADICTORY

The starting point for any analysis of a constitutional amendment is the text, with an intention to give effect to every word. *Marbury v. Madison*, 5 U.S. 137 (1803). See also *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835 (1990). As proposed, the FMA provides:

"Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman."

The meaning of the first sentence of the FMA is clear. Opponents typically do not dispute this. Rather they assert the confusion arises because it is possible to read the second sentence of the FMA as allowing legislatures to create that which the first sentence clearly prohibits—same-sex marriage (at least insofar as it is done, not due to constitutional imperative, but rather due to some alternative legitimate legislative motivation). While such a reading is theoretically possible, it violates one of the most basic canons of construction: "The plain meaning of a statute's text must be given effect 'unless it would produce an absurd result or one manifestly at odds with the statute's intended effect.'" *Arnold v. United Parcel Service, Inc.*, 136 F.3d 854, 858 (1st Cir. 1998) (quoting *Parisi by Cooney v. Chater*, 69 F.3d 614, 617 (1st Cir. 1995)). Since such an interpretation would render the FMA "self-contradictory" and ineffectual, it should be rejected under ordinary principles of construction.

Opponents also argue that the phrase "legal incidents" of marriage is unclear and will require extensive judicial interpretation. Yet this is a phrase that has been used routinely in the discussion of marital rights. Justice Brennan used it in his concurring opinion in *Boddie v. Connecticut*, 401 U.S. 371 at 387 (1971). "Legal incidents of marriage" is also found in various state appellate opinions that have been rendered over the past sixty years. See, e.g., *Sanders v. Altmeyer*, 58 F.Supp. 67, 68 (D.C. Tenn. 1944); *Adler v. Adler*, 81 N.Y.S.2d 797, 800 (N.Y. Dom. Rel. Ct. 1948); *Ramsay v. Ramsay*, 90 A.2d 433, 435 (R.I. 1952); *Shipp v. Shipp*, 383 P.2d 30, 32 (Okla. 1963); *Rosenstiel v. Rosenstiel*, 209 N.E.2d 709, 712 (N.Y. 1965); *Perrin v. Perrin*, 408 F.2d 107, 110 (3rd Cir. 1969); *Merenoff v. Merenoff*, 388 A.2d 951, 953 (N.J. 1978); In re *Marriage of Epstein*, 592 P.2d 1165, 1169 (Cal. 1979); *Baker v. Baker*, 468 A.2d 944, 947 (Conn. Super. 1983); *Koppelman v. O'Keefe*, 535 N.Y.S.2d 871, 873 (N.Y. Sup. App. Term, 1988); *Baehr v. Lewin*, 852 P.2d 44, 74 (Hawaii 1993) (Heen J. dissenting); and In re *Opinions of the Justices to the Senate*, 802 N.E.2d 565, 572 (Mass. 2004).

The proper interpretation of the amendment is that offered by the sponsors and

drafters: to preserve marriage as the union of a man and a woman, while leaving to states the question of whether to legislatively create alternative legal arrangements such as civil unions or reciprocal beneficiary status for individuals who are not eligible to marry. See Senator Wayne Allard, Federal Marriage Amendment Testimony, United States Senate Judiciary Committee (March 23, 2004), at http://allard.senate.gov/issues/item.cfm?id=219463&rand_type=4; Representative Marilyn Musgrave, Federal Marriage Amendment Testimony, United States House of Representatives Judiciary Subcommittee on the Constitution (May 13, 2004) at <http://www.house.gov/judiciary/musgrave051304.htm>, and Robert Bork, The Musgrave Federal Marriage Amendment, United States House of Representatives Judiciary Subcommittee on the Constitution (May 13, 2004) at <http://www.house.gov/judiciary/bork051304.htm>. See also Rahul Mehra, Professor Helps Draft Amendment, The Daily Princetonian (Feb 18, 2004) at <http://www.dailyprincetonian.com/archives/2004/02/18/news/9652.shtml>.

Fair-minded opponents of the FMA have acknowledged that the current language is clear in its prohibition of same-sex marriage, and its recognition of the legislative ability to create alternative legal relationships such as civil unions. On March 22, 2004, Professor Eugene Volokh, who opposes the FMA, noted on his weblog that the amended language "clearly lets state voters and legislatures enact civil unions by statute". The Volokh Conspiracy at http://volokh.com/archives/archive_2004_03_21.shtml. Professor Cass Sunstein, another opponent to the FMA also agreed that the state legislature could pass a law to establish civil unions. Response to written questions propounded by Senator Dick Durbin (March 23, 2004).

THE AMENDMENT DOES NOT PROHIBIT PRIVATE RECOGNITION OF SAME-SEX UNIONS

Perhaps the most creative argument of opponents is that the FMA would allow states and other governmental bodies to "punish religious organizations and individuals for performing or participating in religious marriages of same-sex couples. . . ." This argument is crafted by analogizing the FMA to the Thirteenth Amendment which provides in pertinent part, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." The Thirteenth Amendment is the exception to the general rule that constitutional provisions are limitations on state action, rather than private action. Compare *Jones v. Alfred H. Mayer Co.*, 392 U.S. 408, 438 (1968) (Congress has power under Thirteenth Amendment to enact legislation to prohibit private acts that erect racial barriers to the acquisition of property) with *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 278 (1993) (no violation of constitutional right to privacy occurs absent state interference with woman's right to abortion) and *United Brotherhood of Carpenters and Joiners of America v. Scott*, 463 U.S. 825, 831–32 (1983) (state action is necessary to establish conspiracy to violate First Amendment). Based upon this fact, and the absence of any language in the FMA expressly limiting the amendment to state action, opponents claim that any private recognition of same-sex marriages would become punishable at law.

This ignores important differences in the language of the two amendments, however. Section (a) of the Thirteenth Amendment is written as a prohibition, with a narrow exception. In contrast, the first sentence of the FMA is written as an affirmation of the nature of marriage, with the second sentence

limiting the ability of courts to redefine marriage in the guise of constitutional adjudication. Rather than a distinct provision, the first clause functions as an introduction to the second. There is nothing in the language of the FMA or the legislative history to date that suggests any intent to disrupt the current ability of religious communities to determine their understanding of marriage and divorce. See *Hames v. Hames*, 163 Conn. 588 (Conn. 1972) (religious ceremony insufficient to constitute civil marriage); *Marazita v. Marazita*, 27 Conn. Supp. 190 (Conn. Super. Ct. 1967) (wife's religious belief in indissolubility of marriage not sufficient to deprive court of jurisdiction in divorce proceeding); *Knibb v. Knibb*, 94 N.J. Eq. 747, 748 (N.J. 1923) (suit for divorce due to refusal to marry in Church); *Victor v. Victor*, 177 Ariz. 231 (Ariz. Ct. App. 1993) (court without authority to order Jewish divorce); *In re Marriage of Dajani*, 204 Cal. App. 3d 1387 (Cal. Ct. App. 1988) (American court could not enforce Islamic law).

Given the long history of détente between Church and State in this country regarding the regulation of marriage and divorce, the reasonable assumption is that the FMA will control governmental actions related to civil marriage, and religious bodies will continue to define their own entry and exit requirements for marriage. To the extent there is any merit in opponents' analogy to the Thirteenth Amendment, its interpretation supports this conclusion. In *Robertson v. Baldwin*, 165 U.S. 275 (1897) two deserting seamen argued that they could not be forced to fulfill their commitment in light of the constitutional prohibition of involuntary servitude. The Court disposed of this argument opining:

"It is clear, however, that the amendment was not intended to introduce any novel doctrine with respect to certain descriptions of service which have always been treated as exceptional, such as military and naval enlistments, or to disturb the right of parents and guardians to the custody of their minor children or wards. The amendment, however, makes no distinction between a public and a private service. To say that persons engaged in a public service are not within the amendment is to admit that there are exceptions to its general language, and the further question is at once presented, where shall the line be drawn? We know of no better answer to make than to say that services which have from time immemorial been treated as exceptional shall not be regarded as within its purview." 165 U.S. at 282.

The continuing viability of this case is evidenced by the Court's reliance on it in *United States v. Kozminski*, 487 U.S. 931, 942–44 (1988) (adopting a narrow construction of coercion sufficient to constitute involuntary servitude).

While opponents raise the specter of organized persecution of religious communities that perform same-sex marriage rituals, the international experience suggests quite the opposite. It is defenders of traditional marriage that have cause to worry. Last month a pastor in Sweden was sentenced to one month in jail based on a sermon opposing homosexual conduct. In Canada there have been criminal convictions under hate speech laws for publication of an advertisement opposing same-sex marriage that merely cited Bible verses without quoting them. The Irish Council on Civil Liberties publicly threatened priests and bishops who distribute a Vatican publication regarding homosexual activity with prosecution under incitement to hatred legislation." In Spain, Madrid's Cardinal Varela gave a sermon condemning gay marriage. He has been sued by the Popular Gay Platform for "slander and an incitement to discrimination on the basis of sexual orientation." In England, self defense

was denied to a pastor who defended himself when assaulted by several attackers while carrying a sign citing Bible verses regarding homosexual conduct. Last fall, an Anglican Bishop in England was investigated under hate crimes legislation and reprimanded by the local Chief Constable for observing that some people can overcome homosexual inclinations and "reorientate" themselves. In Belgium, an 80-year old Cardinal was sued over his comments regarding homosexuality. In each of these countries what began with demands for "tolerance" has transformed into demands for acceptance at the price of religious liberty.

A similar transformation seems plausible in light of the continuing attacks on the integrity of the proponents and supporters of the FMA. Opponents of the FMA consistently seek to associate the effort of those who seek to protect the institution of marriage with those who sought to stabilize the institution of racial segregation. This charge is both insulting and inaccurate. While leadership of the African-American community may be divided over whether to support the FMA at this time, they are not divided over whether racial segregation is desirable. Although they differ in their positions on the merits of the amendment itself, Rev. Jesse Jackson, Rev. Walter Fauntroy, and Hilary Shelton of the NAACP are all unwilling to equate defense of traditional marriage with racial discrimination, as are other prominent civil rights leaders. Similarly, the willingness of a substantial majority of both chambers of Congress just a few short years ago to vote for the federal Defense of Marriage Act does not equate with bigotry, and any attempts to do so are merely activists' attempts to cut off public debate regarding the need of a child to be raised by his or her mother and father.

THE FMA IS A DEMOCRATIC SOLUTION TO THE PROBLEM OF JUDICIAL USURPATION OF THE POLITICAL DEBATE REGARDING SAME-SEX UNIONS

The FMA is the only method available to preserve the ability of the people and their elected representatives to speak on the issue. This is because of the very real possibility that the United States Supreme Court will impose an obligation on states to recognize same-sex unions as marriages in the guise of constitutional adjudication. Building on the Court's statements in *Lawrence v. Texas* equating heterosexual and homosexual experiences, and its statements in *Romer v. Evans* attributing animus to those who would make any distinctions, many constitutional law scholars have opined that the Court appears poised to mandate same-sex marriage in the upcoming years.

In commenting on the *Lawrence* opinion's relationship to judicial recognition of same-sex marriage, Professor Laurence Tribe of Harvard said, "I think it's only a matter of time". Professor Erwin Chemerinsky of USC has observed, "Justice Scalia likely is correct in his dissent in saying that laws that prohibit same-sex marriage cannot, in the long term, survive the reasoning of the majority in *Lawrence*." Prudence demands that the matter be addressed by the people, before the Court takes the issue away from them.

THE AMENDMENT IS UNLIKELY TO INCREASE LITIGATION

Marriage has become a question of constitutional law through gay activists' unrelenting attacks on marriage statutes in the courts. Judges in Hawaii, Alaska, Vermont, and Massachusetts have already mandated recognition of same-sex marriage. The citizens of Hawaii and Alaska responded to the actions of their courts by amending their state constitutions to correct what was largely perceived as judicial overreaching.

Vermont legislators did not afford their citizens the opportunity to correct this judicial interpretation, instead passing Act 91, An Act Relating to Civil Unions.

The most recent and troubling ruling, however, is *Goodridge v. Dept. of Public Health*, an opinion of the Massachusetts Supreme Judicial Court declaring that state's marriage laws unconstitutional. Chief Justice Margaret Marshall opens her opinion with a review of the recent United States Supreme Court opinion, *Lawrence v. Texas*. Finding there was no rational reason supporting traditional marriage, she gave the legislature 180 days to "take appropriate action" in light of the opinion, which was widely interpreted as an "order" to create a "gay marriage". Although a Massachusetts statute prohibits the issuance of a marriage license to non-residents whose home state would not recognize the unions, hundreds of out of state couples flocked to Massachusetts to be married. One of the first Massachusetts marriage licenses was issued to a Minnesota same-sex couple, who describe their relationship as an "open marriage," saying the concept of permanence in marriage is "overrated." The Massachusetts Legislature is moving forward with a state constitutional amendment, but the people of that state will not be allowed to vote on it until fall of 2006.

Unfortunately Massachusetts is not the only state where activists are currently demanding that judges redefine marriage. At this time California, Florida, Indiana, Maryland, Nebraska, New Jersey, New York, North Carolina, Oregon, Utah, Washington, and West Virginia are defending their marriage laws in the courts. Based on news reports, it is likely that Pennsylvania, South Carolina, and Tennessee may soon be defending their statutes in the courts as well. Add to these fifteen states, the three states of Hawaii, Alaska and Vermont that have already responded to judicial overreaching on this issue, and Massachusetts which remains embroiled in a political fight to return the issue to the people, as well as the states of Arizona, Connecticut, Iowa, and Texas where courts have resolved the issue—and almost half the country's laws are, or have been, under attack by a small group who want to force their will on the people in the guise of constitutional adjudication.

It seems unlikely that the passage of the FMA, which removes the definition of marriage from further judicial redefinition, could increase litigation beyond the present level.

CONCLUSION

Activists have been unable to succeed in changing the definition of marriage legislatively so they have turned to the courts. Unfortunately some judges are increasingly willing to disregard the text of the laws—as well as the political will of the people—in judicial efforts to remake the institution of marriage to suit their own particular political views. This is not the proper process to be followed in a democratic republic. It is the people and their elected representatives who should determine the meaning and structure to marriage through the process of political debate and voting.

The Federal Marriage Amendment, with its requirements of passage by two-thirds of each house of Congress and ratification by three-quarters of the states, follows the Founders' model for open, yet orderly change in our governing document. The text of the Amendment is clear and preserves the understanding of marriage that has existed throughout this nation's history, while allowing for individual states to experiment with alternative legal structures as their citizens deem appropriate. Unlike the hypo-

thetical threats that opponents attempt to manufacture, the FMA addresses real cases and real problems that the people of this nation are encountering with the judicial usurpation of the political process.

[From iMAPP, July 12, 2004]

IS DOMA ENOUGH? AN ANALYSIS

(By Joshua K. Baker)

INTRODUCTION

Do we need a constitutional amendment to protect marriage? Some influential elites question the need for a constitutional amendment. As Senator Susan Collins (R-Maine) told the Boston Globe earlier this year, "I don't at this point see the need for a constitutional amendment as long as the Defense of Marriage Act remains on the books."

For people who define the problem as the involuntary spread of same-sex marriage from one state to others, a key question becomes: Are federal DOMA laws enough?

DEFINING DOMA

The federal DOMA law contains two sections, stating:

Section 1. In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife."

Section 2. No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession or tribe, respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state, territory, possession or tribe, or a right or claim arising from such relationship.

The first part creates a federal definition of marriage for the purposes of federal marriage law. Considerable litigation is likely to arise from conflicts between federal law and laws in states in which courts mandate recognition of same-sex marriage, or marriage equivalents. Such cases will increase the temptation for the Supreme Court to create a national definition of marriage on equal protection grounds, as otherwise, legally married couples in different states will be treated substantially differently under federal law.

The second part of DOMA restates general conflict of laws principles: no state is required to recognize a marriage that violates its own public policy. However, it provides no additional legal protection for the people of a state whose judicial elites create a right of same-sex marriage in the state constitution or choose to recognize same-sex marriages performed elsewhere.

I. Is Federal DOMA Enough?

DOMA laws are unlikely to prevent the spread of same-sex marriage from one judiciary to the other, for the following reasons:

A. The groundwork for DOMA's demise has already been laid in the scholarly literature. Legal experts argue DOMA can be struck down in federal court because it violates principles of equal protection, liberty/due process and full faith and credit.

B. The legal threat to federal DOMA laws is now imminent, because Massachusetts has, for the first time, given plaintiffs standing to challenge the federal law. Previously, courts held that absent a legal state marriage, persons have no standing to challenge the federal DOMA law. Newspaper reports indicate that there are now thousands of couples in at least 46 states who have received

marriage licenses in Massachusetts, California or Oregon, and now have standing to challenge DOMA in federal courts.

C. DOMA won't keep legal elites from creating same-sex marriage in many states. Already, in just eight months since the *Goodridge* decision, activists have filed cases across the country seeking to strike down state marriage laws. Today such cases are pending in at least 11 states, including six states which have adopted state DOMA legislation in recent years. Attorneys general and local officials in California, New York and elsewhere are refusing to defend state marriage laws, or are insisting that their state recognize same-sex marriages performed elsewhere.

The New York Attorney General, following the lead of a 2003 trial court judgment, has already indicated that New York law "presumptively requires" recognition of same-sex marriages from Massachusetts. When San Francisco Mayor Gavin Anderson and his counterparts in a handful of other cities across the country began issuing same-sex marriage licenses, the California attorney general chose to simply petition the California Supreme Court for "resolution of these important issues," rather than present an affirmative defense of the state's marriage law. Shortly thereafter, the mayor of Seattle in March declared that his city (and all private groups that contract with the city) must recognize as valid the same-sex marriages of employees, wherever performed.

D. There will be a national definition of marriage, ultimately. The question is whose? Radically different marriage laws in different states are difficult to sustain over time. A federal definition of marriage that is different from state definitions of marriage produces immediate conflicts in many areas of law that the Supreme Court will be tempted to harmonize by ordering recognition of same-sex marriage on equal protection grounds. One way or the other, we will soon have a national definition of marriage. If we pass a marriage amendment, we will retain our shared understanding of marriage as the union of husband and wife, ratified by the people of the United States. If we accept judicial supremacy on the marriage question, we will probably end up with a judicially created and approved national marriage definition that redefines marriage in unisex terms.

E. Legal scholars from both sides agree: Federal courts are now poised to strike down state marriage laws. Speaking about the recent Supreme Court decision *Lawrence v. Texas*, Harvard Law Professor Lawrence Tribe commented, "You'd have to be tone deaf not to get the message from *Lawrence* that anything that invites people to give same-sex couples less than full respect is constitutionally suspect." Georgetown Law Professor Chai Feldblum agreed, stating, "[A]s a matter of logic and principle, there is no reason not to provide the institution of marriage for gay people. The court is leaving that open for the future." Professor William Eskridge of Yale Law School stated "Justice Scalia is right" that *Lawrence* signals the end of traditional marriage laws. Jon Bruning, Attorney General of Nebraska, testified before the Senate in March that a federal judge is likely to soon declare Nebraska's state constitutional marriage amendment unconstitutional: "This is the first federal court challenge to a state's DOMA law. My office moved to dismiss the suit, but last November, the Court denied our motion to dismiss. The language in the Court's order signals that Nebraska will very likely lose the case at trial."

F. Federal lawsuits attacking marriage laws have already been filed in four states. While most marriage litigation has historically been based on state constitutional provisions, in just the past year, cases in three

states (Florida, Arizona, and Nebraska) have brought federal constitutional challenges to both state and federal DOMA laws on equal protection, due process and full faith and credit grounds. In June, the same lawyers that filed the *Goodridge* case in Massachusetts also filed suit alleging that a state law which prevents out-of-state same-sex couples from marrying in Massachusetts violates the Privileges and Immunities Clause of the 14th Amendment.

G. It's not the full faith and credit clause, it's the 14th amendment. Scholars who have testified that DOMA is constitutional under the Full Faith and Credit Clause of Article IV of the Constitution miss the primary threat to DOMA. DOMA's greatest threat springs not from the relatively settled world of Full Faith & Credit jurisprudence, but from the Supreme Court's evolving view of equal protection and personal liberty, as evidenced by such recent cases as *Lawrence v. Texas*, 539 U.S. 558 (2003) and *Romer v. Evans*, 517 U.S. 620 (1996). As Justice Scalia noted in his *Lawrence* dissent, this evolving jurisprudence not only threatens DOMA, but also poses a substantive threat to individual state marriage laws.

H. A federal injunction to strike down DOMA will take only minutes. A Constitutional amendment takes months or years to pass. If we want to protect marriage as the union of husband and wife, the time to act is now.

II. Does a marriage amendment violate principles of federalism?

Many legal analysts argue that a constitutional amendment that creates a national definition of marriage violates fundamental principles of federalism. In a letter to Senate Constitution Subcommittee Chairman John Cornyn last September, six law professors including Eugene Volokh of UCLA and Dale Carpenter of the University of Minnesota wrote "[T]here is no need to federalize the definition of marriage. . . . if marriage is federalized, this will set a precedent for additional federal intrusions into state power." Are they correct?

No, for the following reasons:

A. Many fundamental institutions are national in scope. The Constitution already contains such fundamental institutions as representative government (through the guarantee clause, art. IV, §4) and private property (through the takings clause, Fifth Amendment). A marriage amendment would acknowledge marriage as a fundamental institution, while still leaving the states significant regulatory discretion (procedures, age, consanguinity, etc.).

B. Marriage law has always been subject to federal legal oversight. This is not unlike the federalist model which permits states to experiment with term limits, elected judiciaries, or unicameral legislatures, subject to the underlying guarantee of representative government; or varying state policies on eminent domain, taxation, and rights of way, subject to the underlying premise that government cannot take property without compensation. A marriage amendment would simply clarify that husbands and wives are an essential part of our fundamental, shared American understanding of marriage.

C. The basic definition of marriage has long been considered a national question. The Supreme Court has already affirmed the right of Congress to sustain a national definition of marriage that excludes polygamy. Without Congress' decisive intervention, upheld by the Supreme Court, we would today have polygamy in some states and not in others. Today, it is federal and state courts that threaten our common definition of marriage. As former Attorney General Ed Meese argued in favor of a constitutional

amendment creating a national definition of marriage, "If marriage is a fundamental social institution, then it's fundamental for all of society." As the Supreme Court stated in *Reynolds v. United States*, "there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion."

III. Why not wait until DOMA has been struck down?

A. Waiting until the problem gets worse will not make it easier to solve. A patchwork of different state and local laws will sow confusion for couples, for businesses, for state and local governments. If we intend to protect marriage as the union of husband and wife, the time to settle the question is now.

B. There will never be a magic moment in which to amend the Constitution. Today opponents argue it is too early, because DOMA still exists. Three years from now, DOMA may be struck down and others will say it is too late—tens of thousands of same-sex couples will have already married.

C. The best time for affirming a common definition of marriage is before SSM becomes widespread. If it could be ratified today, a marriage amendment would merely reaffirm the law of 49 states, while undoing eight weeks of change in Massachusetts. Looking ahead, it is difficult to foresee a time where a constitutional amendment defining marriage could be adopted with less legal and personal disruption.

D. The amendment process takes time. A federal judge could enjoin DOMA tomorrow, yet it would take months and perhaps years to propose and ratify the federal marriage amendment.

E. A constitutional amendment is not a constitutional crisis. In the last century, we amended our constitution twelve times, including twice in the 1930's, three times in the 1960's, and again in 1971 and 1992. The amendment process is, by design, not a sign of constitutional crisis, but rather a great democratic and federalist process for reaching national consensus on questions of great importance. Marriage is worth it.

Mr. ALLARD. I thank some 19 cosponsors who are now on this amendment. I thank the majority leader for stepping forward and helping this particular issue. I thank the President of the United States for stepping forward early on and articulating the principles which are embodied in this constitutional amendment. I particularly thank my colleagues, Senators BROWNBACK, SANTORUM, and SESSIONS, for joining me in the late-night session last night and for Senators CORNYN and HATCH for helping manage the bill on the floor, as well as Congresswoman MUSGRAVE in the House for her leadership.

I didn't come to the decision to introduce this legislation easily. I went through a process of evaluating the issue.

I don't think it is unlike what many Members of the Senate are going through right now, or at some point in time went through, because as the initial sponsor of this legislation, I had an opportunity to talk to many Members and I think their response was very much what mine was to start with: Why do we need to amend the Constitution?

We all recognize how precious that document is. When anybody comes to you with an issue, to start with, you always wonder why do we need to do that. That is a high standard and we all recognize that.

I also remember the debate with the Defense of Marriage Act, DOMA, which was carried by Senator NICKLES on this side, and how important most Members of the Senate—85 Members—felt in that vote that we define marriage as between a man and a woman.

In this debate, I wanted to protect traditional marriage. I also had some skepticism about amending the Constitution. But after sitting down with colleagues and scholars and people who were following the courts, I came to the realization that there was a process going on in the courts that I wasn't aware of, that I just had become aware of.

I understood the potential of what was going to happen in those courts. It was, when I first got involved, that the courts were going to change the definition of marriage, which we passed by 85 votes in the Senate, and on which close to 48 States passed legislation somehow or other supporting traditional marriage. I thought this should be brought into the legislative branch—that is where the debate should occur—where we have elected representatives having an opportunity to reflect their views and the views of their constituents, whether it is in the Congress or the State legislature.

So in visiting with the constitutional scholars, academicians, professors, and whatnot, we began to put together some language for the Constitution, very carefully crafted, and the language has had an opportunity to be changed a couple of times. We brought it back into the Senate and had the staff within the Judiciary Committee reflect their views and the Senators would reflect views, always working toward a consensus. We began to realize more and more clearly what was happening in the courts.

As we move through it this year, I think it becomes blatantly evident to us that there is a process going on in the courts that will exclude the American citizens. We need to get them involved. We need to recognize that the Constitution requires a two-thirds vote in the House and Senate and three-quarters of the States to ratify.

Our forefathers realized that during an issue such as marriage, where a large percentage of Americans of all faiths, all ethnic backgrounds, support the idea of traditional marriage—the effort to change the definition of traditional marriage being between a man and a woman is certainly only being pushed by a minority of the population in this country—the way we can express our views is through a constitutional amendment. That is what we have before us today.

In this amendment I have proposed, we define marriage as a union between a man and a woman.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. ALLARD. I ask unanimous consent for 30 more seconds to bring my comments to a close.

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

Mr. ALLARD. Marriage matters to our children; it matters in America. Marriage is the foundation of a free society. The courts are redefining marriage and that will make it impossible for State legislators to address marriage. This amendment puts the issue back in the hands of the people. A vote not to move forward means the court will be the sole voice in this matter. The people will not have a voice. We need to move forward.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I rise to express my opposition to the Federal marriage amendment because I believe this effort to amend the Constitution is premature, unnecessarily divisive, and denies our States rights that they have long had.

My opposition to this constitutional amendment is, in effect, quite similar to the views stated by Vice President DICK CHENEY in our debate during the 2000 campaign. Mr. CHENEY said then, when it comes to gay marriage:

I think different States are likely to come to different conclusions, and that is appropriate. I don't think there should necessarily be a Federal policy in this area. I try to be open minded about it as much as I can and tolerant of those relationships.

He was widely applauded for those remarks, and rightly so. His wife Lynne Cheney said this just this past Sunday:

The formulation he used in 2000 was very good.

She is right.

Marriage is an issue best left to the States in our constitutional and legal frameworks.

Unfortunately, in its pursuit of this amendment, the administration has abandoned the openminded and tolerant position Vice President CHENEY took in 2000 and, apparently, he, too, has done so. That is unfortunate and it is divisive.

The Constitution is, after all, our Nation's most sacred secular document. That is a combination of words that may surprise some, to call something secular sacred. But we all know intuitively that is what the Constitution is.

In a literal way, the Constitution was adopted by its own words, to "secure the blessings" of liberty, which the Declaration of Independence says are the people's endowment from their Creator.

For well over 200 years, this document has provided our Government with its guiding hand, its blueprint for governing, and, equally important, a clear and enforceable articulation of the limits of Federal Government power.

Part of the genius of the Constitution lies in the fact that, as it unites us, it also stands above us and our

elected representatives, articulating enduring governing principles, rather than providing a quick answer for every new day's question. The brilliance of our Nation's Founders was that they drafted a Constitution but left it to succeeding generations of legislators, both in Washington and in the States, to decide the issues of the day, with the recognition that statutes can be changed with relative ease, while a Constitution endures for the long term.

Those who wish to elevate an issue to the constitutional level, therefore, in my opinion, bear a heavy burden of showing it is absolutely necessary to do so. That is not just my view; it is the clear consensus of our Nation throughout its history. Only 27 times over the past 217 years has the Constitution been amended, and the first 10 of those amendments constitute our revered Bill of Rights, passed almost as part of the Constitution itself.

So I have concluded that we should accept the proposed amendment before us today only if we are absolutely convinced not just of its rightness but of its necessity. After looking at the laws of the land today regarding marriage and closely examining the text of the proposed amendment before us, I conclude that burden has not been met.

Let me be clear. I believe marriage is a legal status that should be granted only to the union of one man and one woman. I believe that because I also believe the marriage of a man and a woman is the best way to sustain the human race, through the procreation and rearing of children. Therefore, it is in the interest of our society to attach special benefits to the relationship of a man and a woman joined together in marriage. That is why I voted for DOMA, the Defense of Marriage Act, in 1996, and that is why I still support that law today.

DOMA makes absolutely clear that marriage, under Federal law, which is our area of jurisdiction, is a status that should be attainable only by one man and one woman, and that any State's decision to define marriage otherwise has no effect on marriage under Federal law or the laws of other States.

In other words, we already have a Federal law on the books that precludes any couple other than an opposite-sex one from claiming Federal marriage benefits and that prevents one State from seeking to impose its view of marriage on its sister States. A constitutional amendment to that effect is therefore unnecessary at this time.

There is a contemporary reality, however, that this amendment does not allow us the flexibility to recognize. Gay and lesbian couples exist. They are not going away. They also enjoy the rights promised in the Declaration as the endowment of their Creator. To say these couples and their children should be denied any legal protections or relieved of all legal responsibilities would, in my opinion, be unfair and in-

consistent with the principles that were at the basis of the founding of our country.

I presume most all of us would agree, for example, that someone should not be excluded from his dying life-partner's hospital room on the ground that their decades-long relationship has no legal status. Probably many of us who have thought about it would not want to see someone who raised her partner's biological children as her own and provided the family's principal means of support be able to simply walk away without any financial obligations to the child if the couple ends their relationship.

I do not profess to know exactly how and in what form these rights and responsibilities should be extended to gay and lesbian couples. Different States are already providing different answers to those difficult and important questions. But I do know this is a discussion and a debate that will and should continue to the benefit of our country.

I understand that some argue that the Constitution's full faith and credit clause makes inevitable that one State's decision to allow gay marriage will lead to gay marriage across the Nation. I respectfully disagree. I believe that DOMA is constitutional, a view I hope is shared by the overwhelming majority of my colleagues who voted for it. If DOMA is declared unconstitutional in the future and the full faith and credit clause found to mandate national recognition of one State's definition of marriage, there will be enough time for those of us who oppose gay marriage to act statutorily or constitutionally.

In sum, this is an unnecessary amendment that wrongly and certainly prematurely deprives States of their traditional ability to define marriage. I plan to cast my vote against it and urge my colleagues to do the same.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I believe under the unanimous consent agreement Senator SANTORUM is to be recognized next. We discussed that. I ask unanimous consent that I be allowed to speak at this time for 5 minutes.

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

Mr. SESSIONS. Mr. President, I ask the question: Why are we here? The reason we are here is because of court rulings. The Massachusetts decision took effect May 17, just a few weeks ago. That is why we are here today. This is not a matter I had any intention of being engaged in 2 years ago or 6 years ago when I came to the Senate. We are here to protect the rights of legislative bodies in all 50 States to define marriage as they always have. I believe that is appropriate.

Some suggest there is not a real threat to marriage and the courts will

not strike down the traditional definition of marriage. I do not think that is something we can say. As a matter of fact, marriage, as we have traditionally known it, is without any doubt in great jeopardy by the rulings of the courts in America. It has already occurred in Massachusetts.

I would like to show the language of one of the opinions that is relevant in this situation. In the *Lawrence v. Texas* case, just last year, the U.S. Supreme Court ruled and said this:

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the court reaffirmed the substantive force of the liberty protected by the Due Process Clause.

That is vague language but dangerous language, in my view. They go on to say:

The *Casey* decision again confirmed that our laws and tradition afford constitutional protection to personal decisions relating to marriage. . . .

And then a little further on in the opinion, they say:

Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.

"For these purposes" clearly refers back to marriage in the above paragraph.

That is the U.S. Supreme Court. That decision was cited by the Massachusetts Supreme Judicial Court to justify their decision under the equal protection clause. Justice Scalia, in his comments in dissent in this case, said about *Lawrence*:

Today's opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned. . . .

He made clear his view of what that opinion was, and he was in the conference when the judges discussed the opinion when it was decided 6 to 3. They can even lose one judge on the issue and still come down against traditional marriage when a challenge comes before them.

Second, marriage is good, Mr. President. I had a hearing in the Health, Education, Labor, and Pensions Committee. We had a host of excellent witnesses who testified about the strength and importance of marriage. The numbers and science are indisputable.

Barbara Dafoe Whitehead, who wrote one of the most important articles in the second half of the 20th century called "Dan Quayle was Right," testified. She has become an expert on the subject. She said she was at first criticized, and now everybody agrees with her statistics. She gathered them from independent studies around the country. She found this:

On average, married people are happier, healthier, wealthier, enjoy longer lives, and report greater sexual satisfaction than single, divorced or cohabitating individuals.

Married people are less likely to take moral or mortal risks, and are even less inclined to risk-taking when they have children. They have better health habits and receive more regular health

care. They are less likely to attempt or to commit suicide. They are also more likely to enjoy close and supportive relationships with their close relatives and to have a wide social support network. They are better equipped to cope with major life crises, such as severe illness, job loss, and extraordinary care needs of sick children or aging parents.

Children experience an estimated 70 percent drop in their household income in the immediate aftermath of divorce and, unless there is a remarriage, their income is still 40 to 45 percent lower 6 years later than for children in intact families.

She goes on and on to discuss those issues.

No reputable scientist today would dispute the fact that although single parents do heroic jobs, and many of them overcome all the statistical numbers.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. SESSIONS. Mr. President, I ask unanimous consent for 1 additional minute.

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

Mr. SESSIONS. Mr. President, I think it is important for us to know that marriage is good, that it is in jeopardy by the courts. The American people have a right to a legitimate constitutional amendment process—not the illegitimate process of courts amending the Constitution—but a legitimate process to amend this Constitution by allowing the States to vote. A constitutional amendment will not become law unless the States vote on it. Why is that not empowering States? Three-fourths of them must do so. I believe this is the right thing.

It has been a good debate, a good discussion. It is not going away. We will be back again and again. This issue will be discussed more. It will become law. We will protect marriage because it is critical to the culture of this country.

I thank the President and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CORNYN. Mr. President, we have additional speakers on our side who are ready, but the practice has been to go back and forth, so we would be glad to allow time for our Democratic colleagues.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I will share a few thoughts on the subject matter at hand. We are shortly going to vote, I believe, on the motion to proceed on the constitutional amendment banning same-sex marriage. I intend to oppose the cloture motion and oppose the underlying constitutional amendment, and I will lay out the reasons why.

First, I believe this constitutional amendment has no place in our founding document because it runs counter to our most sacred constitutional traditions. According to University of Chi-

cago law professor Cass Sunstein, who testified before the Judiciary Committee:

Our constitutional traditions demonstrate that change in the founding document is appropriate on only the most rare occasions—most notably, to correct problems in governmental structure or to expand the category of individual rights. The proposed amendment does not fall into either of these categories.

For example, the first 10 amendments of the Bill of Rights guaranteed such liberties as freedom of speech, assembly, and religion, the protection of private property, and freedom from cruel and unusual punishment.

Other amendments corrected problems in the structure of Government such as limiting the number of terms a President could serve or providing for the direct election of Senators.

In fact, the only time the Federal Constitution was amended not to expand an individual right or to respond to structural concerns was to establish prohibition and then repeal it. That is the only example in the last 228 years.

If the proposed Federal marriage amendment is adopted and we are to deny rather than confer rights upon individuals, I believe it will be a step backward for all Americans concerned with the Constitution and the intended purpose of it. It would be difficult to imagine what our Federal Constitution would look like today if we had adopted constitutional amendments at the rate they are being currently proposed.

I point out that as of June 15, 2004, 61 constitutional amendments have been introduced in this Congress alone. In the last decade, 460 constitutional amendments have been offered. Even more startling is that 11,000 have been offered since the first Congress convened in 1789. That is the bad news. The good news is only 27 of those constitutional amendments have actually been adopted since 1789.

Some of these proposed constitutional amendments were controversial and divisive when proposed, and clearly discredited when viewed through the prism of historical perspective. There have been constitutional amendments to divide the country into four Presidential districts with a President elected from each, renaming the country "the United States of the World," and even allow for the continuance of slavery.

If all of the proposed constitutional amendments were adopted, our founding document would resemble a Christmas tree—a civil and criminal code rather than a constitution—and the United States would be a very different nation indeed.

The Framers therefore had it right when they made the Constitution extremely difficult to amend. It is a process that ought to be very well thought out and extremely deliberate. That is why of the more than 11,000 proposals to amend the Constitution, only 27 have been adopted.

The Constitution was not intended to be subject to the passions and whims of

the moment. It dilutes the meaning of having a constitution in the first place if it is easy to amend, not to mention the fact that a lengthy constitution would be exceedingly difficult to interpret and enforce.

The Federal Constitution was constructed to withstand incessant meddling and provide a stable framework of Government in the future. Certainly there must be a major crisis at hand. At the very least, the hurdle must be passed that we face a crisis.

Certainly I am willing to listen to those who say the crisis we face on this issue of same-sex marriage is so compelling that we must do something about it, and the only way we can address this crisis is by amending the Constitution of the United States. In my view, however, there is no crisis. It is a sham argument.

First, there has been no successful challenge to the Defense of Marriage Act, or DOMA. I want to direct the attention of my colleagues to this chart. Courts that have upheld Federal right to same-sex marriage, zero; States forced to recognize out-of-state same-sex marriages, zero; churches forced to perform same-sex marriages, zero; discriminatory amendments to the U.S. Constitution, zero.

Where is the crisis? There is no crisis. This is merely a political issue for some in the majority party who want to raise a question where frankly the problem is nonexistent.

Therefore, I think the issue of a Federal Marriage Amendment is certainly not ripe at all, nor is there a "crisis" as some of my colleagues would have us believe.

It is unfortunate that the majority party of the Senate does not share James Madison's view that the Constitution is to be amended "only for certain great and extraordinary occasions." What is "the great and extraordinary occasion" that warrants taking this radical action today? The majority party has scheduled votes on two constitutional amendments prior to the August recess. Neither of these amendments, which concern same-sex marriage and the burning of the American flag, falls within our constitutional traditions. They have absolutely nothing to do with expanding individual rights or responding to structural concerns. They have absolutely everything to do with scoring political points before an election.

In addition, there has not been a markup or any consideration of these amendments by the full Judiciary Committee. It is extraordinary that the entire Senate would be considering amending the Constitution without the amendments having gone through the normal legislative process. In fact, of the 19 constitutional amendments considered by the Senate Judiciary Committee since 1978, all but two have been fully debated by the Judiciary Committee. The Senate considered the two that did not go through the Judiciary Committee only by unanimous consent.

Here we are taking the exceptional route of avoiding that process. Most surprisingly, the majority party is paying lip service to its cherished principle of federalism. Since the founding of our Nation, marriage has been the province of the States, and in my view it should continue to be a State issue. Yet the Federal Marriage Amendment would deprive States of their traditional power to define marriage and impose a national definition of marriage on the entire country.

According to Yale professor Lea Brilmayer, States now have wide latitude to refuse recognition of marriages entered into in other States without offending the Full Faith and Credit Clause of the Constitution. She argues that "entering into a marriage is legally more akin to signing a marriage contract or taking out a driver's license" as opposed to a judicial judgment, the latter of which is entitled to Full Faith and Credit. Courts have therefore not hesitated to apply local public policy to refuse to recognize marriages entered into in other States.

In addition, 49 out of 50 States allow marriage only between a man and a woman. The one holdout, Massachusetts, is currently working its way through this contentious issue in its State constitutional amendment process. For Congress to step in and dictate to 49 States how they ought to proceed in this matter runs counter to the States rights principles that many hold so dear.

I am hopeful cooler heads will prevail on this issue and the Senate will turn its attention to more pressing concerns. Having been through the process last week of trying to reform the class action system, which we spent only some 48 hours on, we have some 8.2 million out-of-work Americans; 4.5 million Americans working part time because they cannot find a full-time; almost 2 million private sector jobs lost since January of 2001; 35 million Americans living in poverty; 12 million children living in poverty; 25 million Americans who are hungry or on the verge of hunger; 43 million Americans without health insurance.

How about spending a couple of days trying to address one of these issues? And yet here we are consuming the remaining days of this session of Congress on an issue where there is absolutely no crisis.

As I pointed out earlier, looking at this chart once again very quickly, there have been no successful challenges to the Defense of Marriage Act. No court has upheld the Federal right to same-sex marriage. No state is forced to recognize out-of-state same-sex marriages. And no church is forced to perform same-sex marriages.

This issue is not ripe. It is not needed. It is a waste of our time. We ought to be dealing with far more serious issues.

My hope is that my colleagues, when a vote occurs in a few short minutes on cloture, will vote no on cloture. Let's

get back to the business of what the Senate ought to be dealing with—namely, the pressing issues that our country needs to address on a daily basis. This is not one of them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, there is no problem. We are just here because we are playing politics. We are alarmists. There is no problem out there. The Massachusetts Supreme Court didn't rule that the legislature had to change the definition of marriage. The Supreme Court didn't rule last year, for the first time, that we have fundamentally changed how we are going to construe rights with respect to homosexuals and lesbians. No, there is no problem. America, look somewhere else. Don't pay attention to what is going on. Everything will be fine. Just leave it up to us.

Us? Judges. Just leave it up to the judges. The Constitution should not be amended, said the Senator from Connecticut, on the passions and whims of the moment. That is right. What would others like to see happen? They would like to see it amended on the passions and whims of judges because that is what does happen. That is what is happening.

What has changed? The courts have changed. The courts have decided it is now their role to take over the responsibility of passing laws. What has changed? What has changed is that they now create rights and change the Constitution without having to go through this rather cumbersome process known as article V. We actually have to amend it, have to get two-thirds votes, have to get three-quarters of the States. That is what has changed.

We can sit back and deny it. No, everything is fine, zero, zero, zero—I say one, Massachusetts; two courts right now considering whether to overturn the Defense of Marriage Act. None have done it, but the cases were just filed. Why were they just filed? Because the decision was just last year.

Oh, we can wait. We can wait until more and more people enter into these unions in more and more States, after they become adopted. Then we can wait. Then, when we wait long enough, we say: Now we can't take these rights away from people. How can we be discriminatory? People have already invested in these rights.

Let's wait. Let the courts do it for us. Let's go out here and protest that we are for traditional marriage, and then do absolutely nothing, absolutely nothing to make sure it is preserved.

In fact, all but one—Senator KENNEDY said he is for the Massachusetts decision, but I don't know of any other Senator who has come out here and said they are against the traditional definition of marriage. Every other Senator to my knowledge has said they are for the traditional definition of marriage. Yet those of us who are proposing this amendment have been

called divisive, mean-spirited, gay bashing, shameful, notorious, intolerant—I could go on. Wait a minute, don't we all agree on this? Don't we all agree on the definition of marriage? If we all agree on the definition of marriage, and we just have different approaches to solving it, then why, if we all agree on the substance, are those of us proposing the marriage amendment divisive, mean-spirited, gay bashing, et cetera? Why?

Maybe we have to question whether there really is a desire to protect traditional marriage and whether we are just sort of laying back, hoping this issue is taken from us, that the courts will do our dirty work, that the courts will go about the process, which they have been now for the past couple of decades, and simply change the Constitution without the public being heard. That is what this amendment is all about.

Article V says Congress shall propose. We are proposing. We are not passing anything. We are not forcing anything on the States. As to this idea that somehow or another this is against States rights, 38 State legislatures have to approve this amendment for it to become part of the Constitution. This is not forcing anything on the States. This is not an abdication of States rights. This is allowing the States a fighting chance to preserve what every State in the Union says they would like to preserve, and that is the institution of marriage.

The idea, somehow or another, and I know others have talked about this, that James Madison would be against this because "this is not a great or extraordinary occasion"—I would say the fundamental building block of any society is marriage and the family, and the destruction of that building block is a fairly extraordinary occasion. But even if some do not believe it is, let me refer you to the last amendment to the Constitution, the 27th amendment, which states:

No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened.

Members of the Senate and House cannot get pay raises until their election. That was the 27th amendment. That was the great and extraordinary occasion that we amended the Constitution.

By the way, for those who say Madison would surely have opposed that because it is not a great and extraordinary occasion, what was the name of this amendment? The Madison amendment. James Madison proposed this amendment. This is a great and extraordinary occasion.

I would argue, the future of our country hangs in the balance because the future of the American family hangs in the balance. What we are about today is to try to protect something that civilizations for 5,000 years have understood to be the public good. It is a good not just for the men and women in-

involved in the relationship and the forming of that union, which is certainly a positive thing for both men and women, as the Senator from Alabama laid out, but even more important to provide moms and dads for the next generation of our children. Isn't that important? Isn't that the ultimate homeland security, standing up and defending marriage, defending the right for children to have moms and dads, to be raised in a nurturing and loving environment? That is what this debate is all about.

I ask my colleagues who come here and rail against those of us who would simply like to protect children, those of us who would simply like to give them the best chance to survive in a very ugly, hostile, polluted world that we live in—with respect to culture—I would ask them this question: What harm would this amendment do? What harm would it do?

We don't need it; it is not ripe; it is not ready; it is divisive. What harm would an amendment which simply restates the law of every State in the country and protects them from judicial tyranny, what harm would it do? What harm will it do to do something that we know will actually protect the family? This idea that it is not ripe, this idea that it is unnecessary, this idea that it is divisive when all but at least one Member, that I am aware of, only one Member disagrees with the substance of the amendment, that is divisive? I can't think of very many things that happen around here that pass 99 to 1. It is not divisive. It is simply a restatement of what we have held true in this country since its inception and in every civilization in the history of man. What is the reluctance? Is it because this Constitution is so great and so lofty that we dare not amend it? Obviously not.

Then, what is it? Why do we hold back? Why aren't we willing to stand up and say children deserve moms and dads? The people have a right to define for themselves what the family is in America. Let the people speak. Let the people participate in this document. This is the Constitution, and judges should not be rewriting it without the people's consent. That is what article V is all about. That is what this amendment is all about. It is not about hate. It is not about gay bashing. It is not about any of those things. It is simply about doing the right thing for the basic glue that holds society together.

I plead with my colleagues. I know they have given speeches. I know there are lots of pressures out there. Certainly, the popular culture is not supporting those of us who have stood and supported this amendment. But just think about what America will look like, as we have seen in other countries around the world that have changed the definition of marriage, what America will look like with growing numbers of people simply not getting married; growing numbers of children growing up in nonmarried households.

I suggest you look at the neighbors of America where marriage is no longer a social convention, where marriage is no longer something that is expected, particularly of males, and see what the result is in those subcultures, see what the result is, see the role that government and community organizations have to play to save the lives of children, to give them some shred of hope because mom and dad aren't there.

That is the world we are looking at. That is the world that is simply around the corner if we choose to do nothing.

I said last night and I will repeat today—I ask for an additional 1 minute.

Mr. REID. Mr. President, that will be taken off the Republican time; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. SANTORUM. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. SANTORUM. Christopher Lasch says we get up every morning and we tell ourselves little lies so we can live. Today, we have gotten up and we have told ourselves a little lie. Oh, the family is OK. Oh, this isn't right. Oh, whatever the lie is—but sometime or another we are just not going to come around to doing what we say we believe. Somehow or another we will deny what we know is true. We know that marriage between a man and a woman is true and right. It is not discriminatory and divisive. It is simply a fact. It is common sense. Yet somehow, just so we can move on to homeland security or to the next bill, we are going to deceive ourselves into believing that everything will be OK if we just do nothing. Nothing doesn't cut it. Let the people speak.

The PRESIDING OFFICER. Under the previous order, the remaining 30 minutes shall be allocated in the following order: Senator LEAHY, 10 minutes; Senator HATCH, 10 minutes; the Democratic leader, 5 minutes; and the majority leader, 5 minutes.

Mr. REID. Mr. President, Senator DODD has time remaining—5 or 6 minutes. We yield that to Senator LEAHY.

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

Mr. LEAHY. Mr. President, I am privileged to represent a State that values families and the tradition of this country as much or more than any State in our Nation. We are the 14th State in the Union. We are a State that values and respects not only our families, but our duties to the rest of the country. In fact, during the current war in Iraq, Vermont has lost on a per capita basis more soldiers than any other State in the country. We are a very special State.

We also have a wonderful constitution, the shortest constitution, I believe, of any State in the Nation. We hold to it as we do the U.S. Constitution. We have provisions in our Vermont State Constitution which

make it very difficult to change, for a reason. It has guided us for well over 200 years, just as our U.S. Constitution has guided the nation as a whole.

When you change the fundamental role of the Federal Government to have it intrude into the lives of our people and into our separate religious institutions, that is wrong. Doing so preemptively, based on the false premise that the U.S. Supreme Court, the Supreme Court of Chief Justice Rehnquist and Justice O'Connor, is going to reach out and require States to approve same-sex marriages, is ill founded. Doing so in order to write discrimination into the Constitution is abhorrent.

Instead of a respectful and deliberative process with respect to the U.S. Constitution, we have something else going on here, something that Senator DURBIN and Senator FEINGOLD and others spoke of yesterday. None of the various proposed constitutional amendments have gone through the traditional process to help the Senate determine whether a proposed amendment is "necessary," as, of course, the Constitution requires. Changing the fundamental charter of our Nation should not be proposed in this haphazard manner.

Everybody here knows that this is a political exercise being carried out on the fly. It shows little respect for the Constitution or the priorities of the American people.

Instead of taking action against terrorism, providing access to prescription drugs at lower prices, improving the criminal justice system, engaging in oversight to get to the bottom of the Iraq prison abuse scandal, providing a real Patients' Bill of Rights against the HMOs, or just fulfilling the basic requirements of the Senate by passing a budget and determining the 12 remaining appropriations bills on which the Senate has yet to act, the Republican leadership in the Senate has frittered away another week, with only 5 weeks left in the session. We have lost another week, but they know on the vote they will not win.

The American people have felt the need to amend the Constitution only 17 times since the adoption of the Bill of Rights. You would not recognize that tradition of restraint in looking at this Congress, in which dozens of proposed amendments to the Constitution have been introduced. The Senate has voted to increase the democratic rights of our citizens on several occasions, but we have only voted once to limit the rights of the American people. That was prohibition. We know that failed, and we had to come back in an embarrassed way and vote to repeal it.

This is a motion to proceed to the third version of the Federal Marriage Amendment that has been introduced in this Congress. Senator DASCHLE and the Democratic leadership offered a fair up-or-down vote on this amendment, but the Republican leaders refused. Instead, they want to have a constitutional convention on the Sen-

ate floor, with multiple votes on a variety of versions of constitutional amendments.

Yesterday, the distinguished Senator from Oregon, Mr. SMITH, indicated he was not insisting on a vote on his version of a constitutional amendment. I have not heard the distinguished senior Senator from Utah insist on a separate vote on an alternative version. I really do not understand why the Republican leadership wouldn't agree to an up-or-down vote at a certain time on this amendment, as Senator DASCHLE offered. It almost seems as if the Republican leadership can't take yes for an answer on this procedural matter.

Are we facing crises here in the United States? I suppose that we are, but they are not constitutional crises. They are real-world problems. They have more to do with international terrorism and difficult economic times for America's working families than how the people of the State of Massachusetts will determine how to work out a State constitutional amendment or other approaches to the question of marriage in their State.

No constitutional crisis exists demanding constitutional changes. Look at two of our largest States, California and New York. They have Republican Governors. Their Republican Governors are not asking us to change the Constitution. Many of the Republican Senators in this Chamber know there is not a constitutional crisis, and I commend their courage in opposing this amendment.

I compliment the Log Cabin Republicans for their forthrightness and courage. They are right that marriage is an issue for the States and for our religious institutions within their separate spheres. In fact, they are right that Vice President CHENEY and I agree on this, even though the Vice President is uncharacteristically silent at this moment.

I began this debate last Friday by urging that our Constitution not be politicized. I am saddened to see the proponents of this amendment and those trying to make this an election year issue see nothing as off limits or out of bounds, not even the Constitution. They propose turning the Constitution of the United States from the fundamental charter preserving our freedoms into a kiosk for political bumper stickers. They would reduce it to a device—in their words—to "stand up against the culture."

The real conservatives, the conservatives of Vermont and other States—know that conserving the Constitution is among the most important responsibilities we have. Our oath as Senators—an oath I have taken five times, and I can remember each one of them as though it was yesterday—is to "support and defend the Constitution of the United States."

Where is the respect for our States here? The Republican-appointed judges in Massachusetts changed their rules

on marriage. But Massachusetts can decide for Massachusetts. They can change their constitution. But, of course, what we do here is going to force other States to ignore their own constitution or their own laws. Whether they like it or not, we will tell them what they have to do.

I hear many say Republicans and others on the Massachusetts Supreme Court endangered marriages. If I may be personal for a moment, I have been married for 42 years, to the most wonderful person I have ever known. In my mind, she is the most wonderful wife anyone could have. I sometimes ask myself why she has put up with me for 42 years, but she has. We have three beautiful children, two wonderful daughters-in-law, a wonderful son-in-law, all of whom we love. We were blessed this past weekend with our third grandchild. How wonderful it was to hold her literally minutes after she was born.

Like the former senior Senator from my State, Senator Stafford, I could say that everything I have accomplished in my life that has been worthwhile has been with the help of my wife Marcelle. We do not find our marriage endangered.

I do find a Constitution endangered if we start using it for bumper sticker slogans. That is what we are doing, and we must stop. The Constitution is too great a part of our heritage and our freedoms and our diversity and the democracy we love to tarnish it in this fashion.

When we vote today, we will not be voting to preserve the 42-year marriage of PATRICK and Marcelle Leahy. She and I will not be affected by this vote, but millions of Americans will be. Remember those gay and lesbian Americans across the Nation who are looking to the Senate today to see whether this body is going to brand them as inferiors in our society. Those who vote against cloture recognize the fullness of their worth and their citizenship. I will not vote to diminish other Americans in the Constitution. I urge all Senators to vote "no."

I have to wonder what Americans are thinking as they watch the Senate devote its limited time to debate the Federal marriage amendment. Do they think the Nation is in a midst of a crisis that only a constitutional amendment can resolve? Are they pleased that the Senate has turned away from legislation that could improve their daily lives to engage in this debate? I doubt it.

Let me review the current legal landscape in America. Massachusetts is the only State in the Union providing marriage licenses to same-sex couples, and its citizens are in the midst of the State constitutional process to overturn that policy. In addition, Massachusetts has limited same-sex marriage to couples who reside or intend to reside there. Meanwhile, none of the other 49 States has moved to legalize gay marriage during the many months

that have followed the Goodridge decision in Massachusetts.

I think most Americans would agree with me that the sky has not fallen during the 2 months during which same-sex couples have married in Massachusetts. They may support gay marriage, or like me, they may believe that civil unions are the appropriate way to recognize the seriousness of gay and lesbian relationships. Or they may oppose any recognition at all for same-sex couples. But at a fundamental level, they understand that States should have the authority to decide who can marry, and that the relationships being formed between consenting adults in Massachusetts have not harmed their own marriages or their own families.

The Rutland Herald, a Pulitzer Prize-winning newspaper in my State, wrote the following in an editorial last month:

[A] remarkable thing has happened since gay marriages began legally in Massachusetts last month: nothing. Gay and lesbian couples who have trooped to their town clerks or church altars have joined in the most significant relationship of their lives, and it has not been nothing to them. But no cataclysmic shock to society has occurred. Marriages happen as a matter of course, and though they are one of the most significant events in the life of the individual, they are a routine matter in the life of a community. Now gay marriage, too, has become routine, at least in Massachusetts.

As The Rutland Herald suggests, most Americans have not felt any effects from developments in Massachusetts, and many are surely mystified and dismayed by the Senate's fascination with the topic.

So why are we here today? We are certainly not here to legislate. Everyone in this chamber knows the Senate will not adopt this amendment. If you listen to Senator SANTORUM or Senator HATCH, you know they say we are here to "put people on record," apparently including the many Republicans who have expressed reservations about the FMA or oppose it outright.

Obviously, the Senate leadership has decided that forcing a vote in relation to the FMA will benefit the Republican Party politically, from the race for the White House to the Senate races that will determine which party controls the agenda for the 109th Congress.

Ever since President Bush publicly embraced amending the Constitution to ban same-sex marriage, it has been obvious that he considered the issue of gay marriage crucial to his re-election campaign. The President's plan was clear: his right-wing base may have been alienated by his calls for immigration reform or a mission to Mars, but he would win them back by aggressively promoting a marriage amendment. And since the President's opponent is a Member of this body, it was only a matter of time before this amendment reached the floor, regardless of what procedural traditions had to be sidestepped to do it.

Of course, the President has never said what words he wants to be in-

cluded in the Constitution. His Department of Justice has never testified before the Judiciary Committee of the House or Senate, and has never said what words it believes would be appropriate to include in the Constitution. The President and his administration want the benefit of supporting this discriminatory amendment without getting their hands dirty by delving into the specific and ugly words. This lack of concern about the language of the amendment is of course not limited to the White House. As I stressed in my opening statement, the language of this amendment is rather beside the point for its congressional supporters, too.

The President addressed the issue of gay marriage in his State of the Union address in January. He said, "If judges insist on forcing their arbitrary will upon the people, the only alternative left to the people would be the constitutional process." Yet, on February 24—barely a month after the State of the Union address—and without any additional court anywhere in the country ruling on gay marriage, the President flip-flopped and endorsed putting a ban on gay marriage in the Constitution. I can only assume that something turned up in the White House's polling to prompt such a dramatic about-face. Or perhaps Karl Rove's phone simply would not stop ringing with calls from the hard-right groups that compose the core of the President's support.

In any event, the day after the President endorsed the concept of a constitutional amendment, I wrote him and asked what specific language he wanted us to add to the Constitution. After all, we have only amended the Constitution 17 times since the Bill of Rights. If the President was calling on Congress to amend it for an 18th time, I thought the least he could do is make clear what language he seeks. I have waited in vain for a response.

I am not surprised by the President's conduct in this matter. He has proven himself willing over the last 3½ years to take whatever measures he finds politically expedient. He has also shown that he is more than willing to play political games with the Constitution, as we see with today's debate and we will see again in the upcoming debate on a constitutional amendment to ban flag desecration an issue that Vice President CHENEY has been campaigning on recently. The President, the Vice President, and the rest of the administration have withheld information from Congress and the public whenever it suits them. And facts have proven to be awfully malleable things when they have stood in the way of the President's political priorities. For this administration, it is all politics all the time regardless of the truth or the consequences. Let me provide three of the many possible examples.

When the facts got in the way of the President's prewar statements about Iraq, and Joseph Wilson pointed out the flaws in the President's 2003 State

of the Union address concerning Iraq's alleged efforts to obtain uranium in Niger, someone in the Administration apparently told the press that Wilson's wife was an undercover agent at the CIA. The President promised that the perpetrator would be discovered and punished. But if he has made any efforts to discover the leaker's identity, we are unaware of them. Instead, he has retained counsel and allowed the investigation to grind on, perhaps in the hope that the issue will not be resolved until after election day.

When the facts got in the way of the President's proposal to expand Medicare to provide prescription drug benefits, his Department of Health and Human Services simply withheld those facts from Congress. When Congress considered the prescription drugs bill last fall, it received an estimate from the Congressional Budget Office that the cost of implementing the new program would be about \$395 billion. It has since come to light that Richard Foster, the chief Medicare actuary, completed a cost estimate for the Bush administration last fall that showed the new prescription drug benefit would cost \$550 billion, drastically more than the CBO estimate. In testimony before Congress, Mr. Foster explained that he was told that if he made his cost analysis public, he would be fired. The Congressional Research Service recently reported that it believes the Bush administration violated the law by withholding Mr. Foster's report and stated that it is clear that Congress has the right to receive truthful information from Federal agencies to assist in its legislative functions. It was a breach of trust with this Congress and with the American people.

And in today's papers we learn that there are administration estimates that when the purported prescription drug benefits are supposed to finally kick in around 2006, what is likely to happen is that almost 4 million retirees will, in fact, lose prescription drug benefits. That means that the Bush administration is now withholding its own estimates that one-third of all retirees with employer-sponsored drug coverage will, in fact, suffer more rather than be helped by the bill they forced through the Congress to benefit large insurance and pharmaceutical companies at the expense of our seniors.

Finally, when we in Congress raised legitimate concerns about the administration's policies on the abuse of prisoners abroad and requested documents that would shed light on the administration's policies regarding the treatment and interrogation of detainees, the White House released a small number of self-serving documents and chose to hide the rest. Then it "disavowed" the Office of Legal Counsel memo that laid out a strategy for evading the limits of the Torture Convention as if that document, which is legally binding on

the Executive Branch, had been nothing more than the doodling of an overly imaginative young lawyer at the Department of Justice. The administration obviously does not want the Congress or the American people to know the facts about its actions abroad or its slippery commitment to upholding American values.

Let there be no mistake: We are here today because the President wants to distract the American people from the facts of the weakened economy and reduced standing abroad that his administration has produced. He and the Senate Republican leadership prefer a political circus and seek to whip the American people into a frenzy based on the actions of a single State.

I am not so sure their political calculations are correct. I believe the American people regardless of their position on gay marriage—will be disappointed by the majority's overreaching. They will see this debate for what it is—a show produced to benefit Republicans politically while doing nothing to enhance or protect the sanctity of marriage. Senator CHAFEE predicted months ago that his leadership might bring the amendment up “just for political posturing.” He has proved prescient.

As I said at the fourth and final hearing the Judiciary Committee held on gay marriage, this debate is not about preserving the sanctity of marriage. It is about preserving a Republican White House and Senate and about doing so by scapegoating gay and lesbian Americans. I oppose this amendment, and I again urge my colleagues to oppose it as well.

This debate perfectly illustrates the Senate's priorities. We are spending days on a Federal marriage amendment that we all know does not have the votes to pass the Senate and that the House may never even put to a vote. I have spoken before about the divisiveness of this debate and the contempt that it shows for our constitutional traditions. This debate, however, also demonstrates the Senate Republican leadership's disregard for the needs of the American people and the institutional responsibilities of this body.

The Senate has been unable to get its own house in order. It is mid-July and we have still not passed a budget. The Senate has passed only one of 13 appropriations bills, and the leadership has suggested they may not be able to find the time to pass the others as individual bills. I do not believe we have ever passed only one appropriations bill in the Senate before the August recess, but we certainly seem to be headed in that direction.

A July 7 editorial in Roll Call lamented what it called the “Big Mess Ahead.” We are now stuck in that big mess. Roll Call noted that “July should be appropriations month in the Senate.” I agree. July has traditionally been when we got our work done and made sure that funding for the various functions of the Federal Government

would be appropriated by the Congress as it exercised its responsibilities and the power of the purse. Not this year.

We have not done our part to help American employers create jobs. We have not completed work on a highway bill that could create 830,000 jobs, or on the FSC-ETI bill, subjecting American businesses to retaliatory tariffs that are increasing monthly. At the same time we have dallied on measures to expand the economy, and we have refused to extend unemployment benefits, even as 2 million Americans have exhausted their unemployment insurance.

We have not addressed the health care needs of our citizens. The majority has refused to take up either a drug reimportation bill that has the support of a majority of Senators, or mental health parity legislation that has 68 sponsors. Meanwhile, the Senate has done nothing to address the fact that 43 million Americans have not had health insurance for more than a year.

We have failed those hardworking Americans who struggle every day to make ends meet on wages that barely reach the poverty line. We have not increased a minimum wage that has remained unchanged since 1996. As inflation has risen and the economy has worsened, the working poor must struggle to live on the same wage Congress passed 8 years ago. The core inflation rate rose 2 percent in the first quarter of this year alone. In addition to allowing the minimum wage to stagnate, the majority has abandoned efforts to reauthorize the welfare reform law, leaving thousands of families in desperate need of quality childcare behind.

We have also failed our veterans. This failure begins at the top. The President has consistently proposed underfunding veterans' programs. His budget request for this year failed to maintain even the current level of services. Secretary of Veterans Affairs Principi recently testified that his department asked the White House for an additional \$1.2 billion, but that request was denied. Forced to choose between our veterans and the President, the majority has sided against our veterans.

During consideration of this year's budget resolution, Senator DASCHLE offered an amendment to fund veterans programs at the level recommended by veterans' groups in the Independent Budget. Unfortunately, only one Republican voted in favor of this amendment, and it was defeated. A second amendment, offered by Senator BILL NELSON, would have increased funding for veterans by \$1.8 billion. It too was defeated. Not a single Republican supported the Nelson amendment. My friends on the other side of the aisle then offered a “smoke and mirrors” amendment on veterans' care. Although this amendment made it seem that the Senate was voting to provide more money for veterans, we all know that this amendment did not add one

red cent. The main purpose of this amendment was to provide political cover for the November election.

While the administration is short-changing VA funding, out-of-pocket expenses for veterans are skyrocketing. Under the Bush administration, these expenses are projected to rise by an incredible 478 percent. Certain Priority 8 veterans are blocked from VA health care altogether, while others cannot receive treatment unless they pay a ridiculously high co-payment. Instead of debating polarizing issues like the Federal marriage amendment, we should be acting to provide real resources for the men and women who served this country with honor.

Unlike in 2000, the Republican majority has not even made the pretense of addressing the priorities of our Nation's immigrants. The majority leader engaged in parliamentary tricks last week to avoid a vote on Senator CRAIG's immigration reform bill and has found no time for the bipartisan DREAM Act, which would help thousands of immigrant students in our Nation. The prospect of comprehensive immigration reform is even more remote.

Sadly, the list of what we are not accomplishing goes on and on. Roll Call observed in its editorial last week that “the second session of the 108th Congress is poised to accomplish nothing.” The way things are going, under Republican leadership this session will make the “do nothing” Congress against which President Harry Truman ran seem like a legislative juggernaut.

The days we spend on this amendment could be spent more productively on any of the matters I just mentioned, but instead we are debating the FMA. We have followed this course even though there are only 6 weeks remaining in the Senate's scheduled work year.

I fear that at this point in an election year, floor time is only available for matters that advance the majority's narrow political agenda. This is a sad contrast from 1996, when we passed a minimum wage increase, a welfare reform bill, and other matters in a productive summer during which we occasionally put the election aside and took care of business for the American people. I supported some of those initiatives and opposed others, but I believed they were important matters that deserved the Senate's extended attention.

This summer, the Senate seems content to act as an extension of the President's reelection campaign. Why else would we be considering an amendment prompted by gay marriages in Massachusetts, 2 weeks before Democrats convene in Boston for their national convention? In light of all the talk about potential terrorist activity at the political conventions, we should be spending time passing appropriations bills for the Departments of Justice and Homeland Security. Instead,

this Senate will grind to a halt and ignore its pressing duties to conduct a debate whose outcome we all know.

I am not naive. I know that politics has always influenced Congress. It could not be otherwise. I fear, however, that the Republican leadership has taken the politicization of the Senate to new heights. Have we ever taken up a constitutional amendment that did not have the support even of a firm majority of this body, over the objection of the minority party, without even having the Judiciary Committee consider it?

We should reject this amendment and move on to the matters that make a difference in the daily lives of our constituents.

Mr. CORZINE. Mr. President. I wish to discuss, regrettably, the so-called Federal marriage amendment.

Regret is a key word when it comes to this amendment, for several reasons.

It is regrettable that, in this case, the United States Senate is debating an amendment that intends to turn a revered, sacred document into a political weapon.

It is unfortunate that a misinformation campaign about the consequences of this amendment has been waged upon the American public by organizations that want to play politics at the expense of gay and lesbian Americans.

Furthermore, it is regrettable that at a time of challenge and difficulty for our country—when soldiers are at risk abroad, we face threats to face our domestic security, and middle class families continue to get squeezed financially—the United States Senate is not discussing the issues that really affect American families.

The American people are a diverse lot. As I have traveled around this country, I have come to notice the vast differences that mark our Union of States.

I have always seen this diversity as one of our country's strongest points. The Constitution recognizes this as well. The political system in this country has survived for well over 200 years, because it appreciates diversity, and in fact celebrates the variety of cultures, ethnicities and lifestyles that make up America.

Our Constitution guarantees the right to celebrate and vocalize those differences. It enumerates, protects and expands the inalienable rights to life, liberty and pursuit of happiness that Thomas Jefferson had in mind when he penned the Declaration of Independence.

However, the spirit of the Constitution is threatened today by the amendment that is before the United States Senate.

As you know, some people are portraying what is happening on this issue in Massachusetts as a crisis. This is a blatantly political tactic that is used to energize political bases. In an election year, we find such a tactic being used far too often.

Unfortunately, when politics is at play—as it is in this case—good public

policy often suffers. That is what we are witnessing today.

Many are trying to set off the crisis alarm by falsely claiming that the entire country will have to recognize gay marriages conducted in Massachusetts. Let me be clear, this assertion is wholly untrue.

The Defense of Marriage Act, passed by Congress in 1996, clearly affirms the individual states' rights to their particular definition of marriage.

Unfortunately, many of my colleagues have come to the floor to "predict" that this law will be overturned on constitutional grounds.

This is a hypothetical argument—and a disingenuous one at that—because several of the individuals who are now claiming that DOMA will be found unconstitutional are some of the same people who actively supported the passage of DOMA, and endorsed its constitutionality, almost a decade ago.

The exaggeration of the situation in Massachusetts and empty predictions about DOMA being overturned, are all part of a misinformation campaign being waged on behalf of this amendment.

Another example of this misinformation campaign is the argument that this amendment does not threaten states' rights to recognize gay and lesbian couples through other legal mechanisms, such as civil unions and domestic partnerships.

In reality, it is far from clear that this amendment will not restrict gay and lesbian couples' rights as its supporters claim.

In fact, according to the National League of Cities, the plain language of this amendment will result in the elimination of several rights and benefits that are guaranteed by states and municipalities across the country.

The second sentence of this amendment, as it sits in front of me, reads "Neither this Constitution nor the constitution of any state, nor state or federal law, shall be construed to require that the marital status or legal incidents thereof be conferred upon unmarried couples or groups."

What, precisely, is a "legal incident?" It doesn't take a legal scholar to understand that this sentence threatens gays' and lesbians' rights to visit each other in the hospital, share health insurance, or inherit each other's property.

To this amendment's drafters, "legal incident" may just be empty words. However, we know that every word in the Constitution has meaning.

I am reminded of a couple from New Jersey, to whom a so-called "legal incident" is more than just empty words.

This couple was together for 6½ devoted years.

However, their partnership came to a tragic end 6 years ago when one woman, who was pregnant, was killed by a drunk driver.

As their relationship was not legal, the hospital did not contact her partner. They instead contacted the injured

woman's parents. However, the injured woman's parents did not approve of the relationship, so they did not call her partner to tell her that her companion was critically injured.

It took a long time before anyone finally called to inform her of her partner's failing condition. She finally arrived at the hospital fifteen minutes before her partner passed away. Because her visitation rights were not protected by law, however, she had no right to see her partner.

This woman was not allowed to see her partner before her untimely death. In fact, she was prevented from moving past the waiting area.

In addition, the injured woman's parents did not inform the doctor that their daughter wanted to be an organ donor, something their daughter had shared with her partner.

They also took all her belongings from the couple's house, some of which had been accumulated together by the couple.

This couple had done all they could under current law to formalize their relationship. They had formalized health care proxies and powers of attorney, but the hospital chose instead to recognize the injured woman's parents and ignore the couple's long term partnership.

These are "legal incidents" that are under threat: the right to see one's dying partner in the hospital, the right to make medical decisions for one another, the right to inherit property.

I am proud to note that in my home State of New Jersey, the Governor signed a domestic partnership bill that went into effect this past weekend.

The new law in New Jersey will make sure that such a situation never happens again.

It will ensure that committed gay and lesbian couples will never be stopped from spending their last moments together.

It will ensure that committed couples can make joint financial and health decisions. And committed couples will be able to own and inherit joint property.

However, the constitutional amendment we are considering this week can and will take away the rights protected by New Jersey's domestic partnership laws. Any statements to the contrary represent a fundamental misunderstanding of the vote that members of this body will be making.

If the Senate is to consider the legal status of gay and lesbian Americans, let's have that debate. This body should consider the unique challenges faced by gay and lesbian Americans, rather than toss them around like a political football.

If we are going to talk about strengthening American families, let's have that debate as well. While I have heard a lot of posturing about how this amendment strengthens families, I don't understand how beating up on gay couples accomplishes that.

I do know that families are stronger when our homeland is secure, health

care is affordable and well-paying jobs are plentiful.

New homeland security threats are becoming clearer by the day. Just last week, all Americans were reminded that we are still squarely in the crosshairs of a hidden enemy. A sobering statement from the Department of Homeland Security acknowledged that members of al-Qaida have the intention and capability to carry out a devastating attack within the borders of the United States.

All the while, the homeland security appropriations bill sits and waits. A bill I drafted that would bolster security at chemical plants sits and waits. The assault weapons ban sits and waits.

Health care and tuition costs are going through the roof, but we are not considering meaningful legislation to address these pressing needs for middle class families.

These are the priorities of the American people. Unfortunately, they do not seem to be the priorities of the United States Senate.

Why are we considering this amendment when we all know it is destined to fail? Why are America's economic and security priorities being shelved in favor of empty rhetoric on this amendment?

I wish I had a better response. However, it seems the answer is rooted in the politics of an election year.

This amendment undermines the Constitution, discriminates against gay and lesbian Americans, tramples States' rights, and is distracting this body from the important priorities that our country should be addressing.

I encourage all my colleagues to join me in voting against this amendment so that we may put the United States Senate on the record as resoundingly opposed to using our Nation's constitution as a political weapon.

Mr. CONRAD. Mr. President, over the past several months there has been much debate about the issue of gay marriage. My record as a steadfast supporter of traditional marriage and strong family values is clear and consistent. I believe marriage should be reserved to relationships between a man and a woman.

That is why I voted for the Defense of Marriage Act which became Federal law in 1996. This law gives States the authority to refuse to recognize same-sex marriages performed in other states. North Dakota has already passed laws to make it clear that North Dakota will not recognize same-sex marriages. So have 37 other States.

I strongly support these efforts by States to protect the important institution of marriage. States have historically regulated marriage, and I agree with Vice President CHENEY's statement during the 2000 election that marriage should continue to be left up to the States.

The question before us is not whether we support traditional marriage, as I do. It is not whether we support fami-

lies and family values, as I do. The question before us is whether an amendment to the Constitution of the United States is necessary and appropriate to address the issue of gay marriage.

I believe the Constitution of the United States is one of the greatest documents in human history. It is the framework and the foundation upon which all of our freedoms as Americans are based. The Founding Fathers deliberately made amending the Constitution a difficult and lengthy process to preserve the integrity of the document and the freedoms it embodies. Congress has amended the Constitution only 27 times in more than 200 years, although more than 10,000 amendments have been proposed.

Throughout my career, I have held the principled position that the Constitution should be amended only when all other legislative and judicial remedies have been exhausted. Because the Defense of Marriage Act is the law of the land and has never been found to have any constitutional problems, I do not believe a constitutional amendment is needed. For that reason, despite my strong support for marriage, I will vote against the proposed constitutional amendment.

Mrs. MURRAY. Mr. President, we are less than 2 weeks away from our summer recess, and we will soon attend our respective parties' conventions. It is important to ask what we have accomplished so far this year. Very little.

We have hundreds of thousands of troops getting shot at in Iraq with no plan in place to stabilize that country.

We have sky-rocketing healthcare costs with no plan in place to help Americans get the healthcare they deserve.

And we have not done our work around the Senate: we have no budget, we have not done our appropriations, and instead of dealing with these real threats to the American people we are taking up the Senate's time on an issue that is not going to create one job, bring one soldier home, educate another child, or get a senior affordable prescription drugs.

So what are we doing? A constitutional amendment to ban States and local governments from extending legal marriage rights, responsibilities and obligations to same-sex couples.

With all the challenges we as a country currently face, this is one of the last things on which the Senate should be working. This is election-year politics pure and simple, in its crassest and worst form.

The proponents of this amendment are trying to rally those who adamantly oppose gay marriage before the fall elections and distract from an inability to deliver on the priorities of the American people.

It takes 67 votes in favor of a constitutional amendment for it to pass the Senate.

There is no expectation it will pass, yet they are stealing valuable work

time from the Senate to play election-year politics.

Since this side of the aisle is not in control, we have to take what the majority brings to this floor, so we should address the basic question in this debate, which is, Should we amend the Constitution on this matter?

I say we should not. Our Founding fathers made the constitutional amendment process a difficult one. Two-thirds of both Houses of Congress, along with three-quarters of the State legislatures, must approve an amendment. Although it has never occurred, a convention can also be called by the States to amend the Constitution.

Since adoption of the Bill of Rights in 1791, the Constitution has only been amended 17 times. Our Founders wanted to use this process only in pressing matters that were serious crises impacting our Republic. As a result, in the 203 years since the passage of the Bill of Rights, amending the Constitution has always been used to protect and expand rights, not limit them. One exception was prohibition, but we repealed that amendment 14 years after it was ratified.

So we have used the constitutional amendment process to address real concerns: to establish our Bill of Rights; to end slavery; to grant women the right to vote; and to establish Presidential succession. These were real-world problems. These were issues that needed to be addressed.

The amendment we have in front of us would break with tradition—215 years worth of it—and would restrict liberties and would actually write discrimination into the Constitution. This amendment would restrict the rights not of all Americans but of one specific group. A group to whom this Senate 3 weeks ago extended hate crimes protection to as part of the Department of Defense Authorization bill.

Furthermore, unlike the pressing reasons why we have amended the Constitution in the past, invoking the process in this case is based on a hypothetical. One State—Massachusetts—had a State judicial ruling that their State constitution must allow same-sex marriage.

Again, despite the rhetoric on the other side, these are State judges interpreting state law.

Currently 38 States, including Washington State, prohibit marriage between people of the same sex.

Congress passed, and President Clinton also signed, the Defense of Marriage Act, DOMA, in 1996, which made it clear that on the Federal level marriage is defined between a man and a woman.

At least seven States will also decide this year whether to approve State constitutional amendments banning same-sex marriage.

The national conversation on this issue is still evolving, and we should not move forward with a constitutional change that would stop this discussion dead in its tracks. This is an issue that should be left to the States to decide.

States can choose how they want to define marriage, something they have traditionally done, and DOMA allows one State to reject another State's recognition of same-sex marriage.

There is a law on the books that allows States to do as they see fit. Marriage has always been within a State's jurisdiction. There is no good reason, other than politics, to try to change that.

I thought the proponents of this amendment claim to be strong State's rights advocates.

The hypothetical they have invoked in this process, the supposed constitutional crisis, is that the Supreme Court or a Federal court may rule these State laws or DOMA unconstitutional. That has not happened, nor is there any indication it will happen in the near future.

So here we are, using precious floor time, on a hypothetical. Something on which we have never used the amendment process.

This is no crisis. There is no constitutional problem. So I reject this amendment. We should not be using the amendment process on this issue. We should not be using the Constitution to restrict rights.

What we should be doing is addressing the real issues that impact the lives of Americans.

I urge my colleagues to not support this amendment.

Mr. DORGAN. Mr. President, today the Senate is deciding whether to add an amendment to our United States Constitution that would prohibit same-sex marriages.

I agree that the subject of marriage is an important matter. So, too, is the prospect of amending the United States Constitution.

I also agree with those who say that marriage is an institution that should be reserved for a man and a woman living as a husband and wife. I voted for that position when I supported the Defense of Marriage Act passed by the U.S. Congress in 1996. That is now Federal law and it clearly defines the institution of marriage for our country.

In recent months, there have been some challenges to State laws prohibiting same-sex marriages. In Massachusetts, the State Supreme Court has ruled that the prohibition of same-sex marriages violates that State's constitution. In California, New York, and New Mexico, some have tried to perform same-sex marriages in violation of State law, and authorities have taken legal action to stop same-sex marriages.

As a result, the only State in our country where same-sex marriages are now being performed is Massachusetts. But that State's legislature has begun a process to amend the State's constitution to prohibit same-sex marriages. When that is done, there will be no jurisdiction in America where same-sex marriages will be legal. I believe that the State governments, as has been the case for over two centuries,

are resolving this issue in a manner that protects the institution of marriage as one that applies only to men and women united as husband and wife. Because of that, there is no need at this time to amend the United States Constitution.

The U.S. Constitution is the basic framework for the greatest democracy on Earth. Some of my colleagues find it easy to amend it. I don't. There have been over 11,000 proposals to change it over the years, 67 of them introduced in this Congress alone. But in almost 220 years we have only approved seven amendments to the Constitution outside of the Bill of Rights.

I am very conservative when it applies to altering our U.S. Constitution. I believe it should be amended only as a last resort. And in this case, the goal of prohibiting same-sex marriage is being achieved without the requirement to amend the U.S. Constitution.

I respect those who differ with my judgment, but I simply cannot believe it is in our country's interest to amend the United States Constitution unless it is the only alternative available to solve a problem that is urgent. The work of Washington, Jefferson, Franklin, Mason, Madison, and others is a document that has given life to the most wonderful place in the world to live. "We the people" should dedicate ourselves to protecting that Constitution and the things it stands for. We should not rush to alter the foundation of our democracy.

Mr. ENZI. Mr. President, when the Supreme Court in Massachusetts issued its ruling on marriage it did what no court ought to do. It set itself apart from and above the State and Federal legislatures, and went so far as to order the Massachusetts Legislature to produce a remedy in a time period it knew was unworkable and unfair. Even if the legislature is able to draft a change in the law that is acceptable to the court it will be impossible to bring the issue before the voters to obtain their consent and approval of the legislature's intrusion on the important tradition of marriage.

Regardless of what we may believe about the institution of marriage, the process of amending the Constitution, or the rights of same-sex couples to marry, there is no question that this is not what the Founding Fathers intended when they originally drafted the Constitution and established the principles of separation of powers and the right of the governed to have a voice in the laws that are written to govern them. The amendment we have before us is an attempt to remedy that situation and provide guidance and direction from the people of the States to the courts on this matter.

As we begin our consideration of this issue, we cannot help but frame the argument in terms of our own experience of marriage and our memories of the marriage of our own mother and father.

I was fortunate to have a pair of remarkable parents who worked hard and

did everything they could to raise their family with a strong awareness of the principles and values of the time. One of those principles was undoubtedly the bonds that tied them together as man and wife. I know I am not the only one with such memories of growing up, or later, repeating much of the same modeling when we had families of our own. Now, as a grandfather, I am watching the traditions repeat themselves as my son and his wife raise the next generation of our family.

Simply put, that is what this legislation means to me—providing the generations to come with the same kind of advantages I had in my own life. It is not about denying rights to any group—it is about ensuring marriage, and its importance in our society continues to be encouraged and promoted.

As I have listened to the debate, I have heard it said that this is an issue that the States, not Congress, ought to be deciding. I could not agree more that the States need to be heard on this issue. That is why we are pursuing the remedy of a constitutional amendment in this matter. Even if we were to pass this legislation, however, it would still require the consent of three-fourths of the States.

In other words, the debate we begin here will be finished by the States. That way we will ensure that such a radical departure from our traditions and the norm of the institution of marriage will not be changed by the ruling of a court, but by the will of the people who will make their will known through their State legislatures.

One argument that has been raised in opposition to the legislation before us has to do with the rights of same-sex unions as defined by those States that have established civil unions. This bill will do nothing to change or alter that process. The States can continue to establish these programs as determined by the will of the people of the States that produce them.

This line of reasoning tries to obscure the point that a marriage is quite different from a civil union. Marriage is the union of a man and a woman in a partnership aimed at producing children and nurturing their growth and development. It is not about social acceptance, or about economic benefits, or an exercise in civil rights, as some would try to lead us to believe. A civil union, on the other hand, is a legal agreement that establishes a partnership between two people of the same sex to ensure their rights as "partners" are preserved in the eyes of the law. A civil union is concerned with matters like the right to an inheritance, retirement, death benefits, health insurance and the like. Marriage is concerned with matters involving the birth and raising of children. That is the main difference between the two. Simply put, life comes from the marriage of a man and a woman. No life can come from a civil union.

Society clearly has an interest in promoting and encouraging marriage

and the life it produces because it is the cornerstone upon which all our institutions are based. The family is also the main building block that helps form the very structure of our society. If all politics is local, you cannot get any more local than protecting and preserving the institution of marriage and the family unit it creates. The family is the basic unit from which neighborhoods are developed and strong communities are created. That is why society must continue to promote marriage and to afford it all the protections it can. Again, marriage is more than just a bond between a man and a woman, it is the basis from which life is created and children become a part of our world.

I have often heard it said that if we do not do a good job of raising our children, nothing else we accomplish during our lives will matter very much. Studies have shown that a child is better prepared for life if that child is raised in a loving, caring environment, with a father and a mother. The bonds that are formed, and the lessons learned about life from mom and dad help a child to understand his or her role in the world. It also helps a child begin to develop relationships with members of the opposite sex. A mother and father serve as role models for a child that help children understand their own role in the world as it shapes their relationships with their peers as they grow up and become adults.

Some may try to respond to those points by promoting the cause of same-sex parents. That argument tries to change the subject because that is not what this legislation is about. It is about protecting the definition of marriage as it was developed and handed down to us for more generations than any of us could count.

If we abandon marriage, we abandon the family. And when we convert marriage into a civil right for the sole purpose of indulging a perceived "protected sphere of individual sexual autonomy," as some courts have tried to do, we abandon hope, not just for ourselves, but especially for future generations. If we lose our connection across the generations that have held marriage dear for so long and, as a result, the hearts of fathers and mothers are no longer turned to their children, and the hearts of children are no longer turned to their fathers and mothers, we will have suffered a great and terrible loss, indeed.

It was just over 10 months ago that I came to the Senate floor to announce the birth of my latest hope for the future, my grandson Trey. I shared my dream of his future and welcomed him into this world of promise and hope and love.

A number of my colleagues, from both sides of the aisle, came to me after that speech and shared with me their own hopes for the future as seen in the pictures of their grandchildren. My conclusion from those conversations is that all moms and dads,

grampas and grampas know what it means to have that connection—the ties that bind each generation of each family together.

From where did that connection come? It was taught to us as we learned about families from our own parents and grandparents who took us under their wing and taught us what it means to be a part of a family. Simply put, they led the best way, by example, and what they taught us continues to guide us and direct us today. As I look back on those days I can see that I was their hope for the future, and they were willing to sacrifice today so that I might have a better tomorrow. It would be a tragedy for the courts to take that same opportunity away from me and my grandchildren.

The legislation we are considering today has one goal in mind—to protect the definition of marriage as it was developed and handed down to us from generation to generation. The enactment of this amendment will ensure that we pass that gift on to our children and our children's children, just as we received it.

Mr. NELSON of Nebraska. Mr. President, I address the issue that has been before the Senate for the past several days, the proposed amendment to the U.S. Constitution with regard to marriage.

Let me be clear. I support the definition of marriage as a union between a man and a woman. I fully support the concept of marriage as a sacred and solemn social institution. I support the Nebraska constitutional amendment on marriage and I support the Federal law defending marriage. But, I am not convinced we need a Federal constitutional amendment on this issue at this time.

As a former Governor, I am intimately familiar with instances where the Federal Government, Congress in particular, has interfered with the rights of States to govern. There are countless unfunded and underfunded federal mandates passed along to the States without the dollars to back them. There are tax laws and regulations that supersede state law. This is not what our Founding Fathers intended.

Thomas Jefferson, Founding Father and American President, fiercely defended the rights of States and believed that the States had the right to govern themselves on matters that were not directly authorized as the jurisdiction of the Federal Government by the U.S. Constitution.

I was pleased to see the good Senator from Arizona, Mr. MCCAIN, come to the floor to express his concerns about this amendment. I echo his sentiments by also quoting from the Federalist Paper 45, in which James Madison wrote "the powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on exter-

nal objects, as war, peace, negotiation and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement and prosperity of the State."

I agree. Amending the U.S. Constitution, the document most sacred to those who love freedom and liberty, is a delicate endeavor and should be done only on the basis of the most clear and convincing evidence that a proposed amendment is necessary.

Proponents of this amendment predict activism in the Federal courts will result in the overturning of State constitutional amendments like Nebraska. I share that concern, but at this time there has been no court action overturning a State law on this matter and I remain unconvinced that this threat meets the level of urgency required for a Federal constitutional amendment at this time.

However, I plan to closely monitor the Federal courts and if evidence of judicial activism on this issue arises, I reserve the right to revisit this issue and reconsider a Federal constitutional amendment.

To the supporters of the amendment I say that I am in agreement with you; I am on your side of this issue. I have been contacted by several thousand Nebraskans over recent days, on both sides of the issue. I know that this issue sparks an emotional reaction in most. I appreciate hearing from constituents on this issue.

Senators are pressured by many and on various issues. Since coming to the Senate I have only felt the pressure to do what is right. In this case, the infringement on States rights is paramount. Until the rights of States are overruled by the courts, I believe that opposing this constitutional amendment at this time is the right thing to do.

Mr. DOMENICI. Mr. President. I rise today in strong support of S.J. Res. 40, the Federal marriage amendment. Unfortunately, because some are unwilling to address the actual amendment, we are instead holding a cloture vote on the motion to proceed to the amendment.

I have said it many times before, but I believe it is worth repeating: I do not take amending the United States Constitution lightly. This issue was forced upon the United States Congress, however, by a number of recent events.

The most visible, and disturbing event, was the decision by the activist Massachusetts Supreme Court in which they created a right not found in the State constitution or in State law. This is not the only event that has forced us to consider the drastic step of amending the Constitution. As you may know, we recently had a situation in my home State of New Mexico in which who defines marriage was made very real.

A county clerk in New Mexico decided that she would take matters into her own hands by issuing marriage licenses to same-sex couples. She did this despite the fact that neither the New Mexico Constitution nor New Mexico statutes recognize same-sex marriage. Put another way, the people of New Mexico, as represented by the New Mexico State Legislature, have not chosen to recognize same-sex marriage.

Instead, we risk a situation like that which took place in Massachusetts, where an activist court legislated from the bench. I am hopeful that the New Mexico courts will not follow the activist Massachusetts court, but it is not a certainty.

The Federal marriage amendment that we are considering today would ensure that the state legislatures, as elected representatives of the people entrusted with the legislative powers, get to decide. It is also important to remember: from a procedural standpoint, passage of a constitutional amendment by the Senate and the House of Representatives is only the first step.

When an amendment passes both Chambers with at least two-thirds of the membership present voting for passage, it is sent to the States for ratification. Then three-fourths of the State legislatures must ratify an amendment before it becomes part of the United States Constitution. This means that the States, through the elected representatives of the people, get two different chances to decide the issue.

I believe our Founding Fathers were particularly brilliant both in providing a mechanism by which the Constitution can be amended and in ensuring that it is difficult to do. Unfortunately, I am convinced the actions of a few nonlegislators have put us in the position where we must use the process of amending the Constitution.

Therefore, I will vote in favor of cloture so the Senate can have the opportunity to vote to send this amendment to the States so the State legislatures can act on behalf of the American people in deciding whether to ratify this amendment.

Mr. LEVIN. Mr. President, the Constitution is a document that should only be amended with great caution. This is one of those moments when we would be wise to submit the strong feelings on this issue to careful deliberation.

Unfortunately, proponents have chosen to do otherwise. The language we are debating was introduced less than 4 months ago. It is not clear what text we would even be voting on. The proposed language changes almost daily, like the weather. The amendment was not voted on by the committee of jurisdiction and we do not have the benefit of a committee report laying out the pros and cons of the amendment.

For purposes of comparison, the Congressional Research Service looked at constitutional amendments originating in the Senate over the last 40 years.

Since 1963, 691 constitutional amendments have originated in the Senate. Including cloture votes, only 19 of these measures were voted on in the Senate. According to CRS, only four times in those 40 years has a constitutional amendment that originated in the Senate been debated in the Senate without first being reported by the Judiciary Committee. And of those four times, only the amendment providing Congress the power to limit campaign expenditures, versions of which were considered by the full Senate in the 100th, 105th, and 107th Congresses, came to the floor without earlier amendments on the same subject having been reported by the Senate Judiciary Committee. And that amendment was not adopted. The amendment we are currently debating has received less consideration than any constitutional amendment originating in and voted on in the Senate in at least the last 40 years, with the possible exception of one which was defeated.

In 1979, a constitutional amendment providing for the direct election of the President and Vice President was brought directly to the Senate floor. Senator Thurmond, then ranking member of the Judiciary Committee, protested the tactic, saying "The Judiciary Committee is the proper machinery for referral of this resolution. It is set up under our rules for considering a measure of this kind. It should be utilized and should not be sidestepped as it attempted to do here with this procedure." He was joined by the then ranking member of the Subcommittee on the Constitution, Senator HATCH, who said "To bypass the committee is, I think, to denigrate the committee process, especially when an amendment to the Constitution of the United States of America, the most important document in the history of the Nation, is involved."

Senators Thurmond and HATCH's efforts to encourage thoughtful consideration were successful and the amendment was referred with unanimous consent to the Judiciary Committee for its consideration. Our consideration of the pending amendment would also benefit from such a process.

One purpose of the pending amendment is stated to be to protect one State from imposing its view of marriage on other States. But this debate is taking place before the courts have even had the chance to determine the constitutionality of the Defense of Marriage Act, which almost all of us voted for, which says that "No State . . . shall be required to give effect to any public act, record, or judicial proceeding or any other State . . . respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State . . . or a right or claim arising from such relationship." Defense of Marriage Act defines "marriage" as "only a legal union between one man and one woman as husband and wife."

Even though the Defense of Marriage Act has yet to be tested in court, some

proponents of the pending amendment have claimed the act will be ruled unconstitutional and that the full faith and credit clause of the Constitution will force States opposed to same-sex marriages to recognize same-sex marriages established in other States. However, many experts disagree.

In her testimony before the Senate Judiciary Committee in March, Professor R. Lea Brilmayer, a Yale Law School expert on the full faith and credit clause, cited the Supreme Court in *Pacific Employers Insurance Company v. Industrial Accident Commission*, 1939: "We think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment . . ." Professor Brilmayer testified that less formal legal instruments, such as marriage licenses, have been "entitled to less recognition even than legislation" and that "marriages entered into in one state have never been constitutionally entitled to automatic recognition in other states."

Amending the Constitution should be a measure of last resort. The Defense of Marriage Act should be tested in court before a constitutional amendment is considered, the purpose of which is to achieve the purpose of the statute.

In addition, the language of S.J. Res. 40 itself contains a host of problems. The amendment reads, "Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman."

Not surprisingly, given the lack of deliberation, there appear to be differences of opinion on what the amendment provides.

Some have argued that the amendment's language relative to "legal incidents" of marriage does not ban civil unions or the extension of other rights to same-sex couples. But here is what Professor Cass Sunstein, a leading constitutional scholar at the University of Chicago Law School, has to say:

What is meant by "the legal incidents thereof"? Does this provision ban civil unions? Does it forbid States from allowing people in same-sex relationships to have the (spousal) right to visit their partners in hospitals? Does it bear on rules governing insurance? At first glance, the term "legal incidents thereof" appears to forbid States from making cautious steps in the direction of permitting civil unions. And does the word "require" include "permit"? Or consider the recent Allard amendment, which says that neither the federal Constitution nor any state Constitution shall be construed to require that marriage or "the legal incidents thereof" must be "conferred" on same-sex marriages. The most serious difficulty is that the words "legal incidents thereof" raise the same questions about civil unions and spousal benefits and privileges.

For all these reasons, I will vote no.

Mr. BYRD. Mr. President, today the Senate faces a cloture vote which we should never have faced. We have been put in this position by a majority leadership that is toying with the faith and the trust of people across this country. I share their faith, and I share their belief in the sanctity of marriage. I am very disappointed that we have a procedural vote, instead of a vote in direct consideration of a constitutional amendment. What these people want is a vote, up or down; what they are going to get is more rigamarole in this Senate. The majority party is manipulating the faith of many Americans, with the unwitting aid of many well-meaning religious leaders, which is one of the most disappointing aspects of this issue.

The majority party does not expect to win this cloture vote. In fact, the majority party likely does not want to win this cloture vote. The White House and the Republican leadership want to campaign on the fact that Democrats blocked this amendment, that Democrats somehow oppose marriage. How ludicrous. Yet, the Republican leadership will try to capitalize on this procedural vote with fundraising letters, campaign stops, and election-day votes. It is an abomination, an absolute failure of trust, to hatch such calculated political schemes on those Americans who genuinely believe in this issue.

The majority party wants this cloture motion to fail. I, for one, will not help in that effort. I will not help to manipulate the churches and the pulpits across this country. I will call that bluff, and vote for cloture on the motion to proceed.

While I strongly support, and will continue to staunchly defend, efforts to strengthen and preserve marriage in our society, I oppose amending the U.S. Constitution based on the resolution that is before this Senate. The resolution is rife with contradictions and ambiguities that would, with certainty, lead to nothing but confusion and endless litigation in the future. I had hoped that the Senate would have been given the opportunity to debate and to vote clearly, yes or no, on that proposal, and not cloud the debate with procedural votes that few outside of this Capitol understand.

We are in a phase in this country's history that seems to tend toward the belief that cultural conflict, deep wrenching questions about right and wrong, should be fodder for political games. That view is high folly when the legislative vehicle is the Constitution of these United States. As much as I sympathize with the deep personal and religious convictions of those who revere the institution of marriage, we must not start down the road of using our national charter to win political or culture wars. Such a course could lead to the unraveling of individual freedoms and eventually could leave our Constitution in tatters and disrepute—

making our beloved Federal charter the most tragic and dramatic victim of the fierce, unprincipled, political conflicts that rage in our land today.

Mr. JOHNSON. Mr. President, I rise today to join the bipartisan majority in this Senate in opposition to the motion to proceed to S.J. Res. 40, the Federal marriage amendment, to the United States Constitution. I strongly support, and have voted for, Federal legislation that defines marriage as a union between a man and a woman; however, there is no need at this time to take the extraordinary step of amending our Constitution. Since 1996, Federal law has allowed the respective States to refuse to recognize another State's gay marriage laws, and it also expresses the congressional view that the institution of marriage should be limited to a union between a man and a woman.

I have recently been contacted by a great many religious organizations, including the Evangelical Lutheran Church of America, ELCA, my own denomination, as well as the Alliance of Baptists, the Episcopal Church, the Presbyterian Church, and the United Church of Christ, among others, asking me to oppose this proposed constitutional amendment. While I do not "take orders" from any religious group, including my own, this does confirm that my opposition to this amendment is consistent with the views of millions of devout Christians throughout South Dakota and America.

Further, because Senate Majority Leader BILL FRIST was unable to secure any consensus behind the specific language of any one marriage amendment, he will not allow the Senate to take a direct up-or-down vote on a marriage amendment. I commend Senator TOM DASCHLE for asking for a direct vote on this matter. However, Senator FRIST objected, and now we find ourselves in an incredible situation where Senator FRIST wants the Senate to vote on a wide range of possible amendments which could profoundly impact the Constitution. If this motion to proceed prevails, we would have endless amendments offered to the Constitution on any topic under the sun. That is utterly irresponsible, and I will have nothing to do with helping to pass Senator FRIST's motion to proceed.

Lastly, I take issue with the timing of this debate. After this vote we will have a mere 26 legislative days left in the 108th Congress. Currently, 9 of the 13 appropriations bills have not even received committee approval. Only two of those bills have passed the full Appropriations Committee and only one has passed the full Senate. Time is short. Knowing that this amendment will not even be voted on, and that the motion to proceed will be defeated by bipartisan opposition, there are significantly more important matters this body should be attending to. I am enclosing a relevant editorial on this issue from the highly respected New York Times.

There are real problems facing our Nation—job losses, health care, education, senior citizen challenges and agricultural issues among them. Yet the Senate has spent days debating an amendment that even Senator FRIST concedes will not come even close to passage. This is a politically inspired amendment—one that has not even been considered by the Senate Judiciary Committee. The American people deserve better than this mockery of a legislative process.

I ask unanimous consent to print the above-referenced editorial in the RECORD.

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

[From the New York Times, July 14, 2004]

POLITICKING ON MARRIAGE

It is heartening to see that the Republicans who had hoped to score political points today by holding a Senate vote on adding a ban on same-sex marriage to the Constitution have run into unexpectedly broad resistance across the ideological spectrum. Liberals and moderates opposed to writing bigotry into the Constitution are being joined by a growing number of conservatives who see nothing conservative about federalizing marriage law or turning America's most essential legal document into an election-year football. With support for the amendment now well below the necessary 67 senators, the calls to put it to a vote just before the Democratic National Convention are nothing more than divisive politics. The Senate should let the Federal Marriage Amendment die a quiet death.

Early in the election season, Republicans seized on gay marriage as a promising cultural issue to use against Democrats. Republicans have been working hard to put referendums against gay marriage on individual state ballots to draw religious conservatives to the polls in November. In Washington, Congressional Republicans have been eager to schedule a vote on the Federal Marriage Amendment to force Democrats—particularly Senators John Kerry and John Edwards, who oppose both gay marriage and the amendment—to take a public stand.

One great surprise of this campaign, however, has been just how little traction the issue is getting. Polls show that even many voters who oppose gay marriage do not favor the drastic step of amending the Constitution to prohibit it. And most Americans have the good sense to realize that, whatever their feelings about same-sex marriage, issues like the economy and the war in Iraq matter much more. When President Bush campaigned recently in Ohio, where conservatives are trying to put a gay-marriage ban on the ballot, he was greeted by a newspaper advertisement taken out by a gay-rights group that said: "Jobs lost in Ohio since 2001: 255,000; gay marriages in Ohio: 0. Focus on Americans' real priorities, Mr. President."

Even many conservative Republicans, it turns out, do not favor a constitutional amendment. In Washington State, George Nethercutt, the conservative Republican congressman running against Senator Patty Murray, has joined Ms. Murray in opposing it. Lynne Cheney, the vice president's wife and a leading cultural conservative in her own right, said recently that states should take the lead in deciding issues relating to marriage.

Now it appears that the Federal Marriage Amendment may not have the support of a Senate majority, much less the two-thirds that constitutional amendments need. Since

the effort appears futile, backers of the amendment seem to be trifling with the issue simply to rally their base. The Constitution, the embodiment of American democracy, deserves better than that.

Mr. LAUTENBERG. Mr. President, I rise to ensure that all voices are heard in the debate over the proposed amendment to the U.S. Constitution on the issue of marriage. I have received compelling correspondence from Gay, Lesbian and Bisexual Local Officials, GLBLO—a caucus of the National League of Cities—the full text of which deserves to be included in Senate consideration of this issue.

Mr. President, I ask unanimous consent that a copy of the letter from the Gay, Lesbian and Bisexual Local Officials, GLBLO, board of directors be printed in the RECORD.

JULY 14, 2004.

DEAR UNITED STATES SENATOR: On behalf of the Gay, Lesbian and Bisexual Local Officials (GLBLO) Board of Directors and members, a caucus of the National League of Cities working to influence federal policy and municipal relations, we are writing to urge you to vote "NO" on S.J. Res. 30 and S.J. Res. 40, respectively, a proposed constitutional amendment to ban same-sex marriage. We are also asking for a vote against "closure" so that the Senate may engage in a full debate of the issue.

The first sentence of the "Federal Marriage Amendment" provides, "Marriage in the United States shall consist only of the union of a man and woman." GLBLO is opposed to the federal preemption of states to determine marriage. The 10th Amendment of the Constitution clearly confers upon states the authority to determine marriage. The federal intrusion into the state's authority to define marriage is unnecessary. Unfortunately, this proposed preemptive language would also reverse the constitutional tradition of expanding and protecting individual liberties.

Second, GLBLO is opposed to the wording of the second sentence of the proposed amendment which would prohibit the federal government and states from conferring "the legal incidents" of marriage on unmarried couples. The proposed language could have the far-reaching negative effect preempting state and local laws, as well as private businesses that provide benefits to the partners of their employees. This is particularly troubling given the fact that neither the Senate Subcommittee on the Constitution nor the Senate Judiciary Committee vetted the impact of the language. The Constitution of the United States deserves more careful consideration by the Senate, especially when the proposed amendment would break from the traditional historical civil rights practice of allowing stronger state laws.

In closing, we ask the Senate to redirect its energies to address the priorities of the nation's cities—such as homeland security, transportation reauthorization, and full funding of social service programs, before taking this historical step of eroding the role of state governments in protecting same-sex and unmarried couples in their states.

Sincerely,

GREG PETTIS,
Mayor Pro Tem, Cathedral City, California,
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Ms. COLLINS. Mr. President, I rise to speak on S.J. Res. 40, the Federal Marriage Amendment to the Constitution. Let me begin my remarks by plainly stating my position on the issues raised by this amendment.

First, it is my strong personal belief that marriage is between a man and a woman. Second, principles of federalism dictate that the right and the responsibility to define marriage belong to the States. Third, the proper role of the Federal Government is to ensure that each State can exercise that right and responsibility by preventing, as the Defense of Marriage Act does, one State from imposing its view on others.

The amendment under consideration would potentially affect two types of relationships that are fundamental to our society. The first is the union between a man and a woman. The second is the compact between the States and the Federal Government. In our zeal to protect the former, we must not do unnecessary violence to the latter, as it is the bedrock of our country's unique and highly successful Federal system.

We also must not overreact to the decision of a single court in a single State by rushing to amend the Constitution and stripping away from our states a power they have exercised, wisely for the most part, for more than 200 years. Let us remember that no State legislature has sanctioned same-sex marriage. Nor has there been a popular referendum to that effect in any State. Indeed, this amendment is a response to a single court decision—and a 4-3 decision at that. If just one judge on the Massachusetts court had a different view of this issue, we would not be contemplating the dramatic action of amending the Constitution.

Put differently, where is the evidence that we cannot trust the States in this area? More than 40 States have enacted laws or Constitutional amendments that expressly limit marriage to the union of one man and one woman. Maine law explicitly states that "[p]ersons of the same sex may not contract marriage," and further provides that Maine will not recognize marriages performed in other jurisdictions that would violate the legal requirements in Maine. Thus, even if lawfully performed in another State, a same-sex marriage will not be valid in Maine.

In short, I respect the right of the people of Maine and the citizens of other States to define marriage within their boundaries. Were I a member of the Maine legislature, I would vote in favor of a law limiting marriage to the union of one man and one woman.

This does not mean that Congress can play no role in this area. To the contrary, Congress has two very impor-

tant roles. The first is to protect the right of each State to define marriage within its own borders, and the second is to define marriage for Federal purposes.

To its credit, Congress did both of these when it enacted the Defense of Marriage Act, or DOMA, in 1996. Signed into law by President Clinton, DOMA enjoyed broad, bipartisan support in both chambers of Congress, passing by a margin of 85-14 in the Senate and 342-67 in the House. The statute grants individual states autonomy in deciding how to recognize marriages and other unions within their borders, and ensures that no State can compel another to recognize marriages of same-sex couples. Of equal importance, DOMA defines marriage for Federal purposes as "the legal union between one man and one woman as husband and wife." I strongly endorse both of the principles codified by DOMA, and should legislation come before the Senate reaffirming DOMA, I would vote without reservation to support it.

Even though DOMA has not been successfully challenged during the 8 years since its enactment, many supporters of the Federal marriage amendment point to the Supreme Court's recent decision in *Lawrence v. Texas* as presaging DOMA's ultimate demise on Constitutional grounds. They argue that DOMA's vulnerability necessitates approving the amendment under consideration.

I reject that argument for two reasons. First, the conclusion that DOMA is inevitably destined to die a Constitutional death is inconsistent with language in the *Lawrence* decision. In striking down a Texas statute criminalizing certain private sexual acts between consenting adult homosexuals, the majority opinion written by Justice Kennedy was careful to note that the case before the Court:

... does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.

In her concurring opinion, Justice O'Connor was even more explicit when she observed that the invalidation of the Texas statute:

... does not mean that other laws distinguishing between heterosexuals and homosexuals would similarly fail. ... Unlike the moral disapproval of same-sex relations—the asserted state interest in this case—other reasons exist to promote the institution of marriage beyond mere moral disapproval of an excluded group.

These statements persuade me that the Supreme Court is, in fact, unlikely to strike down DOMA.

Second, even if DOMA is eventually invalidated, the answer is not to abandon our principles of federalism but rather to enshrine them in the Constitution. Thus, if we ultimately have to address this matter as a Constitutional issue, and we should do so only as a last resort, it should not be to strip the States of the right to define marriage but rather to expressly validate a role they have been playing for more than 2 centuries.

Let me end where I began. This amendment is not just about relationships between men and women but also about the relationship between the States and the Federal Government. I would not let a one-vote majority opinion of a single state court lead us to ascribe to Washington a power that rightfully belongs to the states. To the contrary, our role should be to safeguard the ability of each State to exercise that power within its own borders.

Mr. CRAIG. Mr. President, I rise in support of Senate Joint Resolution 40, the Federal Marriage Amendment. The Judiciary Committee, on which I serve, has held four hearings on the Federal Marriage Amendment. In addition, other committees have held three more hearings on the FMA. We have heard substantial and compelling testimony on the importance of traditional marriage. The time has come for this body to act. Marriage is an institution cultures have endorsed and promoted for thousands of years. It is important for us to stand up now and protect traditional marriage which is under attack by a few unelected judges and litigious activists.

Last year, the Supreme Judicial Court in Massachusetts announced the Massachusetts State Constitution requires the state to grant marriage licenses to same-sex couples. Through their activism, the court ignored the will of the people and created a new state constitutional right. This violation of the democratic process calls for a response.

I have special sympathy for the plight of the people of Massachusetts, because I see courts deciding cases wrongly on an all-too-frequent basis. Of the cases appealed and decided from the Ninth Circuit Court of Appeals this term, the circuit with jurisdiction over Idaho, the U.S. Supreme Court has overturned 15 while affirming 9. Judicial activism of the type we see in Massachusetts is not new, but this is a uniquely deep cut to the heart of society. We need to pass the Federal Marriage Amendment to restore the people to their proper and constitutional role as the only sovereign in our great nation.

I am cautious about amending the U.S. Constitution. It has served us well for more than two centuries, and I expect it to last for centuries to come. One reason it endures is its resilience in the face of changing times, thanks in large part to its amendability. We have seen fit to amend our Constitution 27 times on 17 different occasions. Each of these has addressed an issue of importance to the people. Marriage too, is an important issue to the people.

Some opponents speak of this proposed amendment as an attempt to take rights away. That is neither the purpose nor effect of S.J. Res. 40. Amending our Constitution is the way the people can correct the courts when the courts get an issue wrong. For instance, the states ratified the Thir-

teenth Amendment 7 short years after the Dred Scott v. Sanford decision by the U.S. Supreme Court, righting the wrong of slavery that had been perpetuated by the courts.

The amendments to our Constitution blaze a clear trail extending the people's right of self determination. The Fifteenth, Nineteenth, and Twenty-Sixth Amendments all extended the franchise to new groups. Yet what good is the franchise, if that voice falls on deaf ears because a few activist judges choose to replace the will of the people with their own? Though I am cautious about amending our Constitution, preserving the sovereign right of the people warrants an amendment and our support.

My colleagues have eloquently set forth many good reasons to support the FMA and I will reiterate only one. We need to pass this amendment for the sake of children. Marriage encourages people to organize in the way that is best for those who may issue from, or enter into, that relationship, according to researchers studying family structures for raising children. This amendment does not criticize or undermine other kinds of families, but it acknowledges society's interest in promoting traditional marriage as the environment for child rearing.

There are several reasons I support this amendment at this time. No fewer than 42 States have defined marriage as being between one man and one woman. This amendment to the U.S. Constitution is the only way to keep this issue in the hands of the people and their elected representatives. This amendment allows the citizens of each state to establish systems to recognize same-sex relationships if they so choose, walking the appropriate line through federalism and separation of powers.

My colleagues and I did not choose the time for this debate. The judicial activists of the Massachusetts Supreme Judicial Court have brought this issue to a head. Passing S.J. Res. 40 will give the people and the states the ability to protect children, bolster traditional marriage as a social building block, and preserve the role of the people as the sovereign in our political system. I encourage my colleagues to also support S.J. Res. 40.

Mr. SPECTER. Mr. President, I seek recognition today to discuss my vote and views on the Federal marriage amendment. I am voting in favor of cloture on the motion to proceed to this amendment. I do so primarily to ensure that our debate on this matter be concluded and that we return our attention to the other pressing issues of the day, including the announcement by Homeland Security Secretary Tom Ridge that it is anticipated that al-Qaida will attack the U.S. again before the next election. We in this Chamber must grapple with many very serious issues including national security, terrorism, the economy, and our appropriations bills. It is time to return to this important work.

Voting for cloture to cut off debate means only that we take up the substance of the amendment to conclude the Senate's consideration of the matter. While the cloture vote is only procedural, I do want to address the merits of the amendment.

When the Supreme Judicial Court of Massachusetts upheld same-sex marriage earlier this year, I stated that I believed marriage was a sacred institution between a man and a woman, as evidenced by my vote in favor of the Defense of Marriage Act in 1996. At that time, I further stated that I thought that Massachusetts would amend its State constitution, which was the basis for the Massachusetts decision, that the full faith and credit clause did not apply, and that the Federal Defense of Marriage Act trumped State court decisions. I added that if the States could not uphold the sanctity of marriage between a man and a woman, I would consider a U.S. constitutional amendment. That continues to be my position today.

Both the Federal Defense of Marriage Act and the Federal marriage amendment seek to preserve the traditional definition of marriage as the union between one man and one woman. Yet amending the Constitution raises a number of issues that were not raised by legislation. All of us in this body must pause and ask ourselves whether the problem before us necessitates this extra and most serious step.

As a matter of traditional and sound constitutional doctrine, an amendment to the Constitution should be the last resort when all other measures have proved inadequate. In Federalist No. 43, James Madison warned "against the extreme facility" of constitutional amendment "which would render the Constitution too mutable." In Federalist No. 49, Madison returned to this theme, noting that amendments to the Constitution should be reserved for "certain great and extraordinary occasions."

Madison's caution has been carefully followed throughout American history. To date, 11,212 resolutions to amend the Constitution have been introduced in Congress. Yet the Constitution has been amended only 27 times.

In testimony before the Senate Judiciary Committee last March, Professor Cass Sunstein of the University of Chicago Law School noted that all but two of these 27 amendments fall into two traditional categories. Most amendments to the Constitution have expanded individual rights. In this category fall the first 10 amendments—the Bill of Rights—as well as the post-Civil War amendments and the amendments extending the right to vote to women and lowering the voting age to 18. The rest of the amendments have remedied problems in the structure of government itself, such as clarifying the functioning of the Electoral College, establishing the popular election of Senators, creating the income tax, and placing term limits on our Presidents.

To date, only two amendments have fallen outside of these two categories of expanding individual rights and fixing structural problems. The first such amendment was the eighteenth amendment, which prohibited the manufacture or sale of "intoxicating liquors" in America. The second amendment to fall outside of the two traditional categories was the twenty-first amendment, which repealed the eighteenth amendment and ended prohibition.

As this history illustrates, when the Constitution is amended to incorporate the majority's position on the controversial issues of the day—and not to expand rights or fix a structural problem—the results do not withstand the test of time. We all must bear this in mind whenever we contemplate amending our Constitution. The Senate, after all, is intended to be the saucer that cools the tea, the necessary fence between the passions of the day and our Constitution and laws. We must pause where others would rush in.

We are having this debate on the Federal marriage amendment today because on November 18, 2003, Massachusetts' Supreme Judicial Court decided in the case of *Goodridge v. Department of Public Health* that same sex couples have the right to marry. In determining whether this court's recognition of same-sex marriage is one of the "great and extraordinary occasions" that warrants an amendment to our Constitution, we must at the outset consider whether there are other, lesser alternatives to deal with the issue. If lesser alternatives will work, then we clearly should not tinker with our Constitution. If, however, we cannot preserve the sanctity of marriage between a man and a woman by other means, then an amendment to the U.S. Constitution may very well be necessary.

Before we even look to the Federal Government for a solution, we must first evaluate whether the States themselves have the power to stop same-sex marriages. The fact is that those States in which there have been same-sex marriages have already mobilized to stop them. The Massachusetts legislature has already passed an amendment to the Massachusetts State Constitution prohibiting same-sex marriage. This amendment must be passed a second time in 2006, and then approved by the voters, before it is finally ratified. But few doubt the eventual outcome.

Some may argue that waiting until 2006 to stop same-sex marriage in Massachusetts is simply too long. Yet it is clearly simpler, more direct, and faster to deal with this issue by amending one State constitution than by amending the U.S. Constitution. To enact an amendment to the U.S. Constitution, three-quarters of the States—38 States—must ratify the amendment after two-thirds passage by the Senate and the House of Representatives. The average time of ratification is approximately 2 years, with some amendments

taking as long as 3 years until ratification.

When a couple of cities outside of Massachusetts recently sought to recognize same-sex marriages, the State courts have moved in quickly and effectively to stop them. In February, 2004, Gavin Newsom, the mayor of San Francisco, permitted his city to issue marriage licenses to same-sex couples. The California Supreme Court issued an injunction ordering San Francisco to stop issuing these marriage licenses. Also in February, 2004, Jason West, the mayor of New Paltz, NY, conducted a number of same-sex marriages without licenses. The New York State Supreme Court issued an injunction ordering Mayor West to stop performing these ceremonies.

The fact is that most States in the Union have already taken some action to prevent same-sex marriage. Even before the *Goodridge* decision in Massachusetts, 38 States had passed laws similar to DOMA which define marriage as a union between a man and a woman and refuse to honor same-sex marriages from other States. Three States—Alaska, Nebraska and Nevada—had ratified constitutional amendments banning same-sex marriage.

Since the *Goodridge* decision, 21 States have taken additional action to prohibit same-sex marriage, by strengthening prior prohibitions or enacting new ones: Seven State legislatures have adopted legislation that, if approved by the people in a referendum, would amend the State constitution to prohibit same-sex marriages; three State legislatures have adopted similar constitutional language which must be re-approved in a subsequent legislative session before being placed on the ballot; six States have citizen-initiated ballot measures to change the State constitution to prohibit same-sex marriage; and five States have adopted legislation that declares or reaffirms that same-sex marriages will not be honored in the State.

Thus the States are moving effectively to preclude same-sex marriages. Even if a state fails to stop same-sex marriage, however, it is important to remember that there is a second line of defense: the remaining States of the Union would not have to recognize such marriages. In 1996, Congress enacted, and President Clinton signed, the Defense of Marriage Act, DOMA. DOMA defines marriage as a legal union between one man and one woman and specifically provides that:

No State. . . shall be required to give effect to any public act, record or judicial proceeding of any other State. . . respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State. . . or a right or claim arising from such relationship.

DOMA is good law. In fact, to date no significant challenge to the constitutionality of DOMA has been filed. No civil rights group or national advocate

of same-sex marriage has sought to challenge this law in court. Those challenges that have been filed to date have been localized, individual efforts. It has been reported that a private practitioner in Florida has recently filed a case challenging the constitutionality of DOMA in the District Court in Miami. It has also been reported that DOMA has been challenged in connection with a case in bankruptcy court in Washington State where the defendant is representing herself.

Thus DOMA appears poised to remain the law of the land. Even if DOMA were one day found to be unconstitutional, however, the full faith and credit clause would not obligate States to recognize out-of-State same-sex marriages. The full faith and credit clause applies to "public Acts, Records, and judicial Proceedings." 28 USC 1738, which elaborates on the items to be accorded full faith and credit, specifies "acts of the legislature," and "the records and judicial proceedings of any court." Marriage is neither an act of the legislature nor a "judicial proceeding."

Traditionally, States have not been bound to recognize marriages if, a, they have a significant relationship with the people being married, and, b, the marriage at issue violates a strongly held public policy. For example, section 283 of the Second Restatement of Conflict of Laws provides that a marriage will be valid everywhere so long as it is valid in the State where it was performed, "unless it violates the strong public policy of another State which had the most significant relationship to the spouses and the marriage at the time of the marriage."

On this basis, States have refused to recognize the marriage of a person who has recently divorced without an intervening waiting period when such marriage violates their public policy. Other States have refused to recognize marriages between certain types of relatives, even though they were legal in the State in which they were performed. There is no Supreme Court ruling to the effect that the refusal to recognize marriages from other States on public policy grounds violates the full faith and credit clause.

On this state of the record, it is premature to consider altering the Constitution, the most successful organic document in history which has preserved and enshrined the values of our Nation. If the States cannot preserve the sanctity of marriage between a man and a woman, I would consider an amendment to the U.S. Constitution.

Mr. MCCONNELL. Mr. President, I support S.J. Res. 40, the Federal marriage amendment. The Constitution provides the basic framework under which our society will function. With its profound implications for the ordering of society, and especially the upbringing of children, the proper meaning of marriage is no less important and deserving of protection than other basic principles protected by the Constitution.

Two decades of modern social science have arrived at the conclusion borne out by at least two millennia of human experience: that family structure matters for children and hence for society, and the family structure that helps children the most is a family headed by a mom and a dad. There is thus value for children in promoting strong, stable marriages between biological parents.

A bare majority of judges in one State, however, recently ignored the sincere and well-formed beliefs of their fellow citizens on this issue and have redefined the ages-old meaning of marriage for their State. In the process, these judges gave short shrift to the State's rational interest in wanting to encourage traditional marriage to ensure the optimum environment for children, terming the people's belief in traditional marriage as "rooted in persistent prejudices."

In our highly mobile and inter-connected society, these judges' redefinition of marriage risks the reordering of that institution for the rest of us. And these judges are not alone. There are currently more than 35 lawsuits in 11 States challenging State and Federal Defense of Marriage Acts and State constitutional provisions that protect the institution of marriage as it has always been known. By comparison, just a year ago, there were only five such cases.

The question, then, is whether the American people, through the democratic process, will be allowed to continue to encourage and formally sanction this ideal family structure—the union of one man and one woman—to the exclusion of other relationships that adults may choose to enter into. The issue of whether our Nation will continue under this time-tested societal order is thus before us. It is an issue not of our own making, and its timing is not of our choosing.

Just a few years ago, it was beyond dispute that the American people had both the right and the capacity to define marriage. Our constitutional structure does not leave all the important questions to the courts with the people and their elected representatives relegated to dealing with the mundane and the trivial.

Nor is this question—"What is marriage?"—something only judges are smart enough to decide. As lawyers, jurists are not experts in theology or religion or sociology. While they are entitled to express their wishes on matters like the meaning of marriage, they should do so at the ballot box, just like everyone else. Their failure to do so shows both a disdain and a distrust for the views of the people.

Opponents of this measure show a similar distrust, although they articulate other reasons for opposing it. First, they say the issue of marriage does not rise to a level of importance worthy of amending the Constitution. Really? We last amended the Constitution in 1992 with the 27th amendment,

which had to do with pay raises for Members of Congress. Are we saying that pay raises for Representatives and Senators is more important than our most basic societal institution?

The experience of the countries that have departed from the marriage tradition, like Sweden, Norway, and Denmark, demonstrates the risks in failing to protect traditional marriage. According to Stanley Kurtz, a research fellow at the Hoover Institution, the onset of gay marriage in these countries has not simply accelerated a decline in the number of traditional marriages; rather, it has accelerated an abandonment of the institution itself, with the attendant problems of increased family dissolution rates and out-of-wedlock births.

Norway and Sweden instituted de facto gay marriage in 1993 and 1994, respectively. Between 1990 and 2000, Norway's out-of-wedlock birthrate rose from 39 to 50 percent, while Sweden's rose from 47 to 55 percent. Thus, most children in Norway and Sweden are now born out-of-wedlock. In addition, Denmark has seen a 25 percent increase in cohabiting couples with children since the advent of de facto gay marriage in 1989. In fact, 60 percent of first-born children in Denmark now have unmarried parents. Mr. Kurtz reports that the Netherlands has also had a steady increase in out-of-wedlock births since its adoption of registered partnerships and then gay marriage within the last 7 years.

If these statistics were not troubling enough, studies show that cohabiting couples with children break up at two to three times the rate of married parents. Thus, since the marital union is a bulwark against family dissolution, an increase in cohabitation and unmarried parenting will result in increased family dissolution.

The ultimate victims when that occurs are children, who suffer deep emotional pain, ill health, depression, anxiety, even shortened life spans. More of these children drop out of school, less go to college, and they earn less income, develop more addictions to alcohol and drugs, and engage in increased violence—or suffer it—within their homes.

The problems posed by a reordering of marriage are grave. So opponents of this measure are sorely mistaken when they assert that preserving traditional marriage is a subject that is not worthy of our time.

Second, opponents of the proposal contend that this issue is not ripe for our consideration. But the amendment process takes time, and with the onset of gay marriage in Massachusetts and the flurry of legal challenges to traditional marriage laws across the country, those who seek to protect the institution need not wait until the last possible moment to do so.

Lastly, opponents of S.J. Res. 40 argue that the meaning of marriage is a matter left to the several States. But if the past predilections of judges on

important social issues are any guide, the people of the States won't be given this chance, just as they were denied it in Massachusetts. And even if they were allowed to decide, would we really want a country with a patchwork of meanings on so fundamental an institution as marriage?

The best process for answering this question is the constitutional amendment process. It is the closest thing we have to a national referendum, as any proposed amendment ultimately must be approved by three-fourths of State legislatures—the democratic institutions that are closest to the people.

In closing, Mr. President, to let four lawyers on the Massachusetts Supreme Court decide the meaning of marriage for the rest of the Nation is profoundly undemocratic. The Allard amendment allows the people to decide if they want to continue with our long-standing understanding of marriage, while allowing the States, as they often are, to be the laboratories of experiment in deciding whether and how to officially sanction other relationships. I believe the lessons from Scandinavia counsel against experimenting with marriage though. I believe the American people will agree with me. But if nothing else, they deserve a chance to be heard.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Utah has 10 minutes, the Senator from Vermont has 4 minutes 46 seconds, and each of the leaders has 5 minutes.

Mr. HATCH. Mr. President, we have heard that this amendment has been compared to prohibition, kiosks, and bumper stickers. We have heard some eloquent and passionate speeches in the Senate these past few days. It is obviously an issue many feel strongly about. I make a couple of things clear before we vote on whether we can even debate this amendment postcloture.

First, the proponents of this amendment are not seeking a policy change. We are simply trying to preserve more than a 5,000-year-old institution, the most fundamental in all of our society, that a few unelected, activist judges are trying to radically change.

Some of my colleagues suggest we do not need a national policy on marriage. Guess what. We have always had one. When my home State of Utah wanted to enter into this great Union, the Federal Government conditioned such acceptance on our adoption of a one-man, one-woman marriage policy. The Federal Government understood then what we still know today, that children are best off having a mother and a father.

Most of my colleagues agree. Some argue it does not belong in the Constitution. The Constitution properly deals with foundational questions of how our Nation should be organized.

Traditional male-female marriage is the universal arrangement for the ordering of society and ensuring future

generations. If a foundational institution such as this is not deserving of our protection in our Constitution, then I don't know what is.

There are others who agree on preserving traditional marriage and agree an amendment may be necessary at some point in the future. We do not need to wait. Judges have already sanctioned marriage licenses for same-gender couples and those couples have spread to 46 States. Folks, marriage has already been amended by the Massachusetts Supreme Court.

Some of my colleagues say the Defense of Marriage Act will contain the spread to other States, but we know this is a flimsy shield, at best. There are multiple actions pending against it now and legal scholars across the political spectrum agree it is only a matter of time—not if, or when—the Defense of Marriage Act will be struck down.

We should be wary of those who argued back in 1996 that the Defense of Marriage Act was unconstitutional and now are hiding behind this act to argue against the need for a constitutional amendment. Members simply cannot have it both ways. If Members believe a marriage should be between a man and a woman and Members believe the Federal Defense of Marriage Act is unconstitutional, then they should support the Federal marriage amendment.

We know from other countries that have undermined marriage the way the Massachusetts Supreme Court did that a message is sent to everyone that marriage is not important. Fewer couples get married, out-of-wedlock births skyrocket. We do not need to wait for these disastrous results to happen to our country.

We have the chance to send the message here that marriage and family do matter. This is not an irrational fear derived from an extreme religious agenda, as my colleague from Vermont, Senator JEFFORDS, suggested yesterday. We know from the benefit of experience in Scandinavia, Denmark, and elsewhere, what happens. Everyone in society benefits when we strengthen the family.

As far as I am concerned, this debate has been a triumph for democracy. We have debated these issues. I, for one, have learned quite a bit from listening to my colleagues. I hope the American people have, as well.

I urge my colleagues to vote yes on the motion to proceed. If there is a way to improve the language, the only way we can do so is to vote for cloture and have a real debate rather than the filibuster we are putting up with.

I make it clear nobody wants to discriminate against gays. Simply put, we want to preserve traditional marriage. Gays have a right to live the way they want. But they should not have the right to change the definition of traditional marriage. That is where we draw the line.

I compliment people on both sides of the debate for at least debating as much as we can, but it would be far

better to vote cloture and have a full-fledged debate on this amendment. If it needs to be changed or modified, or if it can be made better, both sides then will have an opportunity to try and amend it.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oregon.

Who yields time?

Mr. HATCH. I yield the remainder of my time to the distinguished Senator from Oregon.

Mr. SMITH. Mr. President, the majority leader asked I take a few moments perhaps even of his time to offer some closing remarks on this important debate.

I believe he asked me to do this because I have been a Republican Senator since the beginning of my service in this Chamber who has been an advocate for gay rights. I have been an advocate for gay rights while still believing the right to defend traditional marriage.

Because of that, I was drawn with interest to an editorial of the New York Times back on April 2, 2004. It frankly reflected many of my feelings. It noted in the editorial:

The American Enterprise Institute, a conservative research and advocacy group, has been collecting poll results on gay issues going back three decades. The numbers document a profound change in attitudes, most strikingly on employment issues but also in areas like adoption rights, legal benefits and acceptance of gay relations.

The Times goes on to note, however:

There are lots of theories to explain these more tolerant attitudes. Our own guess is that as more and more gays have acknowledged their sexual orientation, straight Americans have come to see that gays are not deviants to be feared, but valued friends, neighbors, and colleagues, who are not much different from anyone else.

I believe that, too. The Times then notes:

Sadly, the poll data shows little easing of opposition to gay marriages in recent years, with roughly three-fifths or more of the public still opposed.

Everyone has their own theory as to why the American people remain opposed.

I would offer my theory as this: In the inner recesses of the American conscience, I think the American people understand that when we tinker with the most basic institution that governs relationships of men and women, we are tinkering with the foundations of our culture, our civilization, our Nation, and our future.

I think the American people understand what the great Roman Senator Cicero, a pagan, once described to the Roman Senate: that marriage is the first bond of society.

I think many of my colleagues have come with very interesting reasons for their positions on these votes. One of them is States rights. I say this respectfully—and I include myself in the accusation—we all invoke States rights when it serves our political ends.

My concern, however, is this: that by standing behind States rights on this

issue, they are just standing aside while their States rights get rolled.

Make no mistake, our Constitution is being amended. The question is, by whom? Should it be done by a few liberal elites? Should it be done by four judges in Massachusetts? Should it be done by a few rogue mayors around the country, or by clandestine county commissioners, without public notice or public meeting, changing hundreds of years of State law and centuries of human practice?

I think many would argue reasonably that ripeness is an issue. Is it time for us to begin this debate and have this vote? I would suggest, whether it is ripe now, if I am right as to what the Federal courts will do—specifically, the Ninth Circuit that governs my State—I believe it will eventually come to every Senator to answer this basic question, and it is this: Shall marriage in the United States consist only of the union of a man and a woman? Today, I answer yes. It is just on a procedural vote, but the substance of my vote is yes. It is yes because I believe marriage, as traditionally practiced, is an ideal worth preserving. However imperfectly practiced, it is perfect in principle. And it is perfect in principle because it involves more than just consenting adults. It involves the creation of children and their natural nurture and rearing.

I believe in the United States, boys and girls still need the ideals of moms and dads.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator's time has expired.

The minority leader is recognized.

Mr. DASCHLE. Madam President, as so many of my colleagues have stated on the floor over the course of the last couple of days, marriage is a sacred union between a man and a woman. That is what the vast majority of Americans believe. It is what South Dakotans believe. It is what I believe.

In South Dakota, we have never had a same-sex marriage, and won't have any. It is prohibited by South Dakota law, as it is now in 38 other States. There is no confusion. There is no ambiguity. As others have noted, in 1996, Congress passed the Defense of Marriage Act. It defines marriage as a union between a man and a woman. It protects States from any actions taken by another State that could in any way undermine the law of their State.

What is overlooked by many is that it has never been challenged in court successfully—not once. It is the law of the land. It has been now for 8 years, and it has not once been challenged successfully.

The question then is, Is there some urgent need now, absent even one successful challenge to the Defense of Marriage Act, for us to amend the U.S. Constitution?

We have differences of opinion about the legal necessity, but there can be no difference of opinion with regard to how extraordinary a step that is. In 217

years, we have amended that sacred document only 17 times, although there have been 11,000 separate attempts. Madam President, 11,000 amendments have been offered; and 67 amendments are pending right now here in the 108th Congress to amend the Constitution of the United States.

Given all the facts, given the reality of the constitutional strength of the Defense of Marriage Act, the answer to the question, Is it now time to amend the Constitution, is no. This fundamental responsibility lies with the States. It has for two centuries.

Now, some of our Republican colleagues wish to usurp the 200-year-old power of the States to create their own laws, including those in South Dakota.

Last night, the distinguished Senator from Arizona came to the Senate floor and talked about that very issue. Here is what he said:

The constitutional amendment we are debating today strikes me as antithetical in every way to the core philosophy of Republicans. It usurps from the States a fundamental authority they have always possessed, and imposes a Federal remedy for a problem that most States do not believe confronts them, and which they feel capable of resolving should it confront them . . . according to local standards and customs.

Madam President, he is right. We are sworn, every time we are elected, to protect, uphold, and defend the Constitution. It is the backbone of our Republic. That means insulating it at times like this from political condition or motivation. It means amending it only after careful and exhaustive deliberation, not 2 days on this Senate floor with an amendment that did not even come through the Judiciary Committee. That is our solemn responsibility. We have not met that test today, not by a mile. Senator MCCAIN is right. We should oppose this amendment today.

I yield the floor and yield back all of the Democratic time.

The PRESIDING OFFICER. The majority leader is recognized for 5 minutes.

Mr. FRIST. Madam President, since Friday, we have had a good and productive debate about marriage, the bedrock of our society. I applaud my colleagues on both sides of the aisle for the civil discussion, for the judicious discussion we have had.

The issue, very appropriately, has been elevated to this body as representatives of the American people. The issue is being clearly defined. And the fundamental issue is, Do we let four activist judges from Massachusetts define marriage, the bedrock of our society, or do we let the American people? Do we listen to their voices through their elected representatives?

We come, in a few moments, to a vote. And the question before us, in terms of the vote is, Should we consider a constitutional amendment to protect marriage as the union of a husband and a wife. If 60 Senators vote yea, we will begin to debate the specifics of the constitutional amend-

ment. Not everyone is going to agree with every single word or every sentence of the amendment that is before us, but by voting yes today, you are agreeing that the amendment deserves to be debated, and possibly amended. If you vote no, you are saying the Senate should not even consider an amendment to protect marriage as the union between a man and a woman.

We did not ask for this debate, and we would gladly sort of wish it away and say other people can take care of it, but four activist judges on the Massachusetts Supreme Court legalized same-sex marriage on May 17. That is where the debate began, and that is why we act today.

It has become clear to legal scholars on the left and on the right that same-sex marriage will be exported to all 50 States. The question is no longer whether the Constitution will be amended; the only question is, who will amend it and how it will be amended. Will activist judges, not elected by the American people, destroy the institution of marriage or will the people protect marriage as the best way to raise children?

My vote is with the people, and thus, as majority leader, I felt and continue to feel that it is important that discussion and debate go on on the floor of the U.S. Senate which does represent the American people. Americans understand that children need mothers and need fathers. We would be foolish to permit a vast, untested social experiment on families and children to occur, untested on that institution of marriage, the bedrock, the cornerstone of our society.

I recognize that amending the Constitution is a serious matter. Again and again, people have asked why we are addressing marriage on the Senate floor or talking about changing the Constitution. It is a serious matter, and we should do not do it lightly. That is, indeed, why we should debate the issue. It was the 27th amendment to the Constitution that addressed regulating salaries, how much Members of Congress are paid; thus, it is not too much to ask that the 28th amendment be about protecting marriage and children. Do we let four activist judges define marriage for our society or do we let the American people decide? I implore my colleagues, let the Senate debate the best way to protect marriage. Let us proceed to a civil and substantive debate, but let the debate on the amendment begin. I urge my colleagues to vote yea.

I yield the floor and yield back all the time on our side.

The PRESIDING OFFICER. All time is yielded back.

Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the

Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 620, S. J. Res. 40, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

Bill Frist, Orrin Hatch, Jim Talent, Wayne Allard, Mike Crapo, Mitch McConnell, Jeff Sessions, Larry Craig, John Cornyn, Craig Thomas, James Inhofe, Richard Shelby, Conrad Burns, Sam Brownback, George Allen, Robert F. Bennett, Elizabeth Dole.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S.J. Res. 40, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 155 Leg.]

YEAS—48

Alexander	Dole	McConnell
Allard	Domenici	Miller
Allen	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Brownback	Frist	Roberts
Bunning	Graham (SC)	Santorum
Burns	Grassley	Sessions
Byrd	Gregg	Shelby
Chambliss	Hagel	Smith
Cochran	Hatch	Specter
Coleman	Hutchison	Stevens
Cornyn	Inhofe	Talent
Craig	Kyl	Thomas
Crapo	Lott	Voinovich
DeWine	Lugar	Warner

NAYS—50

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	McCain
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Breaux	Harkin	Pryor
Campbell	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Chafee	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Collins	Kohl	Snowe
Conrad	Landrieu	Stabenow
Corzine	Lautenberg	Sununu
Daschle	Leahy	Wyden
Dayton	Levin	

NOT VOTING—2

Edwards Kerry

The PRESIDING OFFICER. On this question, the yeas are 48, the nays are 50. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, on the last vote, as I recall, there was no motion to reconsider.

The PRESIDING OFFICER. That is correct.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Illinois is recognized.

Mr. DURBIN. I thank the Chair.

(The remarks of Mr. DURBIN pertaining to the introduction of S. 2652 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from New Hampshire.

PENDING SENATE BUSINESS

Mr. GREGG. Mr. President, I rise today to talk about some of the issues which are pending before this Senate which are not being considered because the other side of the aisle refuses to take them up. I am going to stay on narrow issues which have not received a lot of public attention.

Obviously, there have been a lot of issues such as medical malpractice, such as the just recent decision not to go forward with the debate on the constitutional amendment, that have received a fair amount of visibility as a result of the obstruction coming from the other side and the other side deciding it does not wish to address those issues, which are quite often critical to the American people. There have, however, been four items reported out of the committee which I have the good fortune to chair, the Health, Education, Labor and Pension Committee. It is a committee of fairly disparate views—to be kind, I chair it. I have as my honorable colleague on the other side of the aisle, Senator KENNEDY from Massachusetts. To say that we have a philosophical identity would be an imaginative view.

As we go down the membership of the committee, the differences of opinions relative to philosophy of governance are rather significant. We have some of the best Members of the Senate—obviously, there are many good Members

there—but we have some of our most aggressive and constructive Members serving as members of the committee, and I enjoy that. It makes the committee an interesting and challenging place in which to work. But the views are different within that committee, the views of how we approach governance.

Therefore, when we as a committee reach an agreement on something, it means it is a pretty good work product. It means there has been a consensus reached the way consensus should be reached within the Congress, which is that the different parties have sat down, they have recognized the problem, they have brought to bear their philosophies on that problem, their ideologies on that problem, and the practical nature of the way that you can resolve that problem, and they have reached what is, in most instances, a pretty good, commonsense solution to how we should move forward.

In four areas right now pending before this Senate, the committee has reached consensus. It has had a unanimous vote on a piece of legislation. Some of those have even come to the floor. We have had a unanimous vote, for example, on how we should reauthorize and restructure the special education laws of this country. It was called IDEA. It is a very complex issue, a very important issue, especially to children or parents of children who have special needs.

I can't think of anything more important than a parent who has a child who has some unfortunate issues relative to their ability to learn. For that parent and for that child, the most important event of each day is going to school and making sure that child's schooling experience is a positive one, and that it moves that child forward as that child tries to deal with the issues of learning and especially issues of life.

So the special education bill is a critical piece of legislation. It went through our committee with unanimous support. It came to the floor of the Senate. It was debated, debated aggressively, and passed. But it simply sits.

A second bill has been stopped because the other side of the aisle has refused to allow us to appoint conferees. The second bill which falls in the same area is the Work Investment Act. This is basically a bill which came out of our committee again in a unanimous way, worked on primarily by Senator ENZI of Wyoming. He did a great job on it and worked across the aisle with a number of Senators. As a result, it was unanimously passed out of our committee, came across the floor of the Senate, and again this bill has been stopped because conferees have not been appointed.

Then reported out of our committee as another very important piece of legislation relative to education is the Head Start bill. Head Start affects a lot of kids in this country today. It

gives low-income kids in our country a nurturing environment during those very formative years and allows them an environment where they get decent health care and they get decent custodial care during the daytime. They have daycare services, and it teaches them socialization patterns. We have taken that concept and we have added to it an education, academic component so the kids going to Head Start will now also come out of the Head Start program after they are 3 or 4 years old moving into kindergarten and preschool. They will hopefully be up to par with their peers academically so they know their alphabet and are ready to learn.

This is an important initiative. This bill is structured to put that new component into Head Start and make that part of that initiative.

Again, this bill came out of our committee unanimously. It came to the Senate and has stopped—stopped. We negotiated to try to get it brought up in reasonable ways, one of which would allow us to give both sides amendments if they wanted them and then move it to conference. No, it hasn't happened, so that bill has been stopped.

The fourth bill which I want to talk about is the Patients Savings Act. We know that there is a problem, unfortunately, in our health care community with mistakes—unintended mistakes, but mistakes—that end up causing people harm because health care is delivered inappropriately or incorrectly to people. In fact, the estimate is that literally tens of thousands—potentially more than 100,000 people—die each year as a result of that type of situation.

One of the ways to address that is to allow the medical community to communicate with each other as to what these problems are so they can learn from each other and so we can set up a regime where if somebody has a system in place which avoids a problem, a mistake or an error occurring, they can share that with other medical providers. If there is, on the other hand, a mistake that has occurred or error that has occurred, the information relative to the investigation of that and how it can be mitigated can be shared with other providers. This sharing of information is absolutely critical if we are going to get control over the issue of how we deliver better health care in this country. Unfortunately, there are antitrust and other laws which limit the ability of that information to be shared. So we have set up this Patients Safety Act which is essentially an attempt to give patients more protection when they are in a health care facility.

This bill again was worked on effectively and aggressively by both sides of the aisle. The thoughts and initiatives were brought together. It was passed out of committee unanimously. This is a very important piece of legislation. We need to get this piece of legislation in place. Unlike the other pieces of legislation which I mentioned—the WIA bill, the IDEA bill, and the Head Start

bill, which already have programs up and running, which are effective, but can be improved significantly by those bills—in the case of patient safety there is nothing out there today which allows these medical providers to take advantage of what this law is going to bring to bear and thus reduce injuries to people. Literally, the longer this bill is kept from passing and becoming law, the more people are harmed. There is a direct numerical relationship, direct formula, direct factor relationship where if this bill were passed today, fewer people would be harmed tomorrow. It is that simple.

This bill needs to be taken up. It needs to be passed. Yet although it came out of committee unanimously, it has disappeared into the opposition on the other side of the aisle which says we are not going to listen to that. We are not going to bring that up. If you want to pass something such as that, you will have to throw on everything else and the kitchen sink that has no relationship to it. You are not going to be allowed to pass a bill that was unanimously passed out of committee.

A couple of days ago, I was reading a pamphlet which was sent to me by an ever inquisitive and creative and very unique individual in his energy level, which is much higher than mine, the President pro tempore, Senator STEVENS. He had gone to some lecture or some meeting where they had been talking about quantum physics. He sent us a booklet on quantum physics. I have never understood even the term "quantum physics." I opened it to the first page and read the first paragraph. I quickly got lost in the theory. But the basic statement about quantum physics was that the universe is 96 percent anti-matter. Maybe it is 98 percent. The universe—and this is a shock. This is a new theory. The universe is 98 percent anti-matter or, in other words, a black hole.

I have to tell you, under the Democratic leadership in this Senate, the Senate is becoming 98 percent anti-matter, or a black hole. When bills come out of committee, they are unanimously passed by a committee which has such a diverse viewpoint philosophically, ideologically, and regionally as our committee has, when those bills come out of that committee unanimously and will significantly improve kids going to elementary school, getting ready for school, kids in their early years, kids who have problems and who have significant issues, special-needs kids going through their school systems, people who need to be retrained in a workplace that requires constant retraining or, as in the case of the patients safety bill, will actually save lives because it will allow us to do a better job of delivering medical care—when they come out of committee and are unanimously supported by the full committee, they are unanimously supported to the extent they went through the subcommittee, to the

full committee, unanimously supported, come to the floor of the Senate, and the other side of the aisle says that bill is going to be assigned to the black hole.

That bill disappears into what you might call "Daschle Land" where nothing comes back. Send the bill out and it is gone. Where did it go? I do not know. It went to "Daschle Land." This can't continue. These pieces of legislation have to be taken up. We should consider them. We should pass them. After all, if they have unanimous approval from the committee of jurisdiction when that committee has some divergent views on it, they have to be pretty well worked out as a piece of law.

I have asked that we get the IDEA bill and the special education bill to conference. It hasn't happened. I have asked that we be able to bring up the Head Start bill. It hasn't happened. I have asked that we be able to go to the WIA bill and send it to conference. It hasn't happened.

Today I would like to ask that we be able to bring up the Patients Safety Act and pass it out of this Senate under a reasonable plan, under a reasonable set of options where we will essentially say people get a right to amend it on the substance of the bill and then move to conference.

I would like to present the following unanimous consent request relative to the Patients Safety Act.

UNANIMOUS CONSENT REQUEST—H.R. 663

I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, the HELP Committee be discharged from further consideration of H.R. 663, the Patients Safety bill, and the Senate proceed to its consideration; provided that upon reporting of the bill Senator GREGG be recognized to offer a substitute amendment, the text of which is at the desk; provided further that there be one first-degree germane amendment in order to be offered by Senator KENNEDY or his designee and that that amendment be subject to a germane second-degree amendment to be offered by Senator GREGG or his designee, with no further amendments in order.

I further ask unanimous consent that there be a total of 2 hours for debate, and following the use or yielding back of the time the Senate proceed to a vote on or in relationship to the second-degree amendment, to be immediately followed by a vote on or in relationship to the first-degree amendment, as amended; provided that following disposition of the amendments, the substitute amendment, as amended, if amended, be agreed to; the bill, as amended, be read the third time, and the Senate proceed to a vote on the passage of H.R. 633, as amended, with no intervening action or debate.

Finally, I ask unanimous consent that following passage, the Senate insist upon its amendment, request a conference with the House of Rep-

resentatives on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees on behalf of the Senate with a ratio of 5 to 4.

Mr. REID. Reserving the right to object, first, I understand the frustration of the distinguished senior Senator from New Hampshire. We have spent a lot of time doing nothing. This afternoon is a good example. The Senator can add up the days as well as I can on this marriage amendment.

Prior to that, we wasted a week on class action. I have said before, the Republicans had a 5-foot jump shot. Not only were they afraid to take the shot, they walked away from it.

I understand the frustration. But also understand our frustration. The schedule is set by the majority. I make a counterproposal to my friend, for whom I have the greatest admiration.

I ask unanimous consent that the request by the Senator from New Hampshire be modified, modified to have the matter, the Patients Safety Act, H.R. 663—that the HELP Committee be discharged from further consideration of H.R. 663, the patients safety bill, and the Senate proceed to its consideration, the bill be read the third time, the Senate proceed to vote on passage of H.R. 633, with no intervening action or debate.

Before my friend responds, we think the bill we got from the House is a good bill. We don't think there needs to be any amendments. We are willing to complete that right now. It would take no further action. We would not need a conference committee. Then any other matters the Senator thinks should be tied up that are at loose ends, maybe we can add to one of the appropriations bills or something like that.

I ask consent the request by my friend from New Hampshire's; Senator GREGG's request be modified as indicated by my previous statement.

Mr. GREGG. Reserving the right to object, I simply note that I don't know whether we took the 5-foot jump shot, but I state right now, if we take up this bill, it will be a 2-foot slam dunk.

That is all we need to do. This bill came out of our committee. It came out of a Senate committee unanimously. It is reasonable that the Senate should insist on hearing its bill on the floor and that the Senate should pass its bill on the floor. That is all we are asking.

That is why I must object to the Senator's proposal to modify my amendment. I would presume that the Senator, having come from the House and knowing the vagaries of the House—which is why he came to the Senate because he so much more appreciated the intelligence and thoughtfulness of the Senate—would want to hear the Senate bill on the floor rather than to simply accept the House bill in its present form.

Therefore, although I greatly admire the Senator's attempt to be constructive in his initiative, because it is a constructive step, I am forced to object. I believe we should take up the

Senate bill under the context of what we have proposed, which would be a bill that was unanimously approved by a Senate committee of jurisdiction subject to the amendment process which is outlined.

In fact, should the Senator from Massachusetts agree with the Senator from Nevada that the House bill is better than the Senate bill—which I would find interesting since he supported the Senate bill as it came out of committee—he may offer that as his germane amendment.

The PRESIDING OFFICER. The objection to the modification is heard.

The Senator from Nevada.

Mr. REID. Mr. President, in this legislative body we rarely deal with anything that is perfect. Legislation is the art of compromise.

While the distinguished Senator from New Hampshire may have some good ideas on how to improve the bill we got from the House, we should look at what we will have if we could agree to do the House-passed bill.

Basically on our side, the bill was prepared by Senator JEFFORDS and others. As I understand it, it is S. 720 over here. It is a bill to provide for the improvement of patient safety and to reduce the incidence of events that adversely affect patient safety.

I have no doubt, with the experience my distinguished colleague from New Hampshire has had as a Member of the House, as a Governor of the State of New Hampshire, and certainly a senior Senator over, that he can figure out ways to improve what the House has done. I have no doubt that is true.

But in the interim, knowing we are not going to be able to arrive at that point, I think we would be well advised to move forward with the work the House has done. As imperfect as it may be, it is still much better than nothing. Then I would be happy to work with my friend from New Hampshire on what he thinks can be done to improve this legislation that the House passed.

I met with the distinguished President pro tempore of the Senate this afternoon. He thinks there is a program that he and Senator BYRD have come up with that we can do all the appropriations bills before we adjourn in this session. If that is the case, there would be ample opportunity—and I would be happy to work with my friend from New Hampshire on even the appropriations bills to see if we could work something out. If not, there are other matters we could go through here.

We cannot let the perfect be the enemy of the good in this instance. We would be well advised to accept what my friend from New Hampshire said we need improvement in, and accept what the 435 Members of the House of Representatives have done.

A few minutes ago there were four former House Members on the floor: Senator CARPER walked off, the distinguished Member from New Hampshire, and the Senator from Nevada have all

served in the House. They are good legislators.

I learned when I first came to the House of Representatives, House Members are usually better legislators than Senators. Why? The reason being, their jurisdiction is narrow compared to ours. We are a jack of all trades and master of none. In the House, they have a few masters. We should accept that.

As to this bill, with the considered experience we have had over here, we could probably improve what they have done. What they have come up with is certainly not that bad. In fact, it is good. It is a lot better than nothing. I hope my friend would reconsider the offer I made.

Let's pass right now this House-passed bill. It would be a step forward. Today we would have accomplished something. We would have accomplished making patients safer in America today—not as safe as my friend from New Hampshire thinks they should be but a lot safer.

I hope he will reconsider. I have always found him to be a very reasonable person, someone for whom I have great respect and admiration. I say it publicly all the time.

In this instance, I repeat, we should not let the perfect be the enemy of the good.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the Senator from New Hampshire?

Mr. REID. Yes.

The PRESIDING OFFICER. The objection is heard.

Mr. GREGG. Mr. President, I appreciate the assistant Democratic leader's constructive suggestion in an attempt to move this process along relative to offering the House amendment.

However, there really is no reason we should just take the House language as it stands. The two bodies have both propounded bills which are substantive. This proposal which I have put forward requires only 2 hours in order to put it across the floor and we can go into conference. As a result of that, we can meet in conference and, obviously, reach a conclusion—I think, fairly quickly—which will make a very good bill. There is no reason in this instance we should not have a very good bill.

I do regret we cannot move forward at this time on this bill in the regular course under regular order as it would be presented in the unanimous consent request which I presented.

I thank the Senator from Nevada. As in the past, his courtesy is always very generous. He is obviously a very effective spokesman for the Democratic membership of this Senate, and I admire his work.

I yield the floor.

UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I rise in support of the United States-Aus-

tralia Free Trade Agreement. I support the agreement because 8,000 Minnesotan manufacturers, which employ some 350,000 families in my State, list the United States-Australia Free Trade Agreement as a top priority in maintaining good-paying Minnesota jobs, and that is important.

Like the JOBS bill, the highway bill, the Energy bill, as well as class action, medical malpractice, and asbestos reform litigation, the Australia Free Trade Agreement is about jobs. I was always fond of saying, when I was a mayor—and I am fond of repeating as a Senator—it is about jobs. The best welfare program is a job. The best housing program is a job. Access to health care comes with a job. Jobs are important.

While we have seen the hopes of our Nation's manufacturers dashed time and again on these other top priorities—we are still waiting for the JOBS bill to get done; we are still waiting for asbestos reform legislation to get through; we are still waiting for class action reform legislation to get through a filibuster—the reality is, we still have an opportunity to salvage the hopes of millions of working men and women in this country, men and women who could not care less about who gets the credit for keeping the economic recovery going, just as long as it keeps going.

We have grown over 1.5 million jobs in the past 10 months and in part because of the policies of this administration: the tax cuts that put money in the pockets of moms and dads, the tax cuts that allowed businesses to invest and to reinvest, the increasing expensing operations, the bonus depreciation, those things that lowered capital gains, those things that allowed businesses to say: We are going to invest, we are going to put it back in the business.

In the end, when business grows, when moms and dads have more money in their pockets, they spend that money on a good or a service, and the person who produces that good or service has a job. And that is a good thing.

So we have seen more than 1.5 million jobs in the past 10 months, but we cannot afford to rest on our laurels or wait out the results of a Presidential election. The time to act on the jobs agenda, as laid out by President Bush, is now. It is now.

The Australia Free Trade Agreement is just one component of the President's jobs agenda. This agreement builds on the \$12 billion in manufactured U.S. exports to Australia and the 160,000 American jobs owing to our trade with that very important friend and ally in the global war on terror.

According to the National Association of Manufacturers, by tearing down Australian tariffs imposed against 99 percent of U.S. manufactured exports—which accounts for 93 percent of everything we sell to that country—our Nation's manufacturers stand to gain \$2 billion a year in increased exports to Australia, giving us a leg up on Europe, Japan, and China.

This is not pie-in-the-sky stuff. This is very real to Minnesotans. I have 6,700 exporting companies in my State. In fact, 1 out of every 5 manufacturing jobs in Minnesota is owed to exports, and Australia is our 10th largest export market.

Let me give you some real-life examples because I think the problem most often with trade is that we vividly see jobs lost or businesses shut down, sometimes due to trade, and we need to understand that, we need to see that, we need to know the impact, and then we need to do those things to lessen that impact. But rarely do we see or hear about the jobs created or the businesses born as a direct result of our trade policy.

It is kind of like talking about tax cuts. We talk about them in abstract. We sound like accountants. We talk about trade and sound like economists. But the reality is, there is a mom or a dad who has a job opportunity because of the trade opportunities we create.

Polaris is a good example. It is a Minnesota company of which I am extremely proud. It is located way up in the northwest part of the State, about 10 minutes from Canada in a town called Roseau. Roseau has about 2,756 people at last count, the most famous being the former Secretary of Agriculture under President Carter, Bob Berglund, who is a very good friend of mine. They also grow a lot of hockey players, really talented hockey players in Roseau, MN.

Talking about former Secretary of Agriculture Berglund, lots of folks, when they get through being a Congressman or a Senator or a Secretary of this department or that department, retire to some beach in Florida, but not Bob Berglund. He went home to give back to the people of Roseau all the support he had received through his years of distinguished service.

Roseau suffered from some terrible floods not too long ago, and there was former Secretary of Agriculture Bob Berglund leading a group of folks in the town, figuring out how to deal with the flooding issue on a long-term basis. So we were not literally sticking our fingers in the dike, but we were looking beyond that. That is Bob Berglund.

In any case, Roseau would not be the town it is if it were not for guys like Bob Berglund, an indomitable spirit that pervades that place and everyone I have ever met there, and a company called Polaris.

I will go back to the flooding. When the flooding happened, the folks from Polaris did not abandon them. They were there working in the community, seeking to make a difference. They have had serious flooding over the years, and we have had to work to rebuild that town. We are still at it, and so is Secretary Berglund and so is Polaris, which is celebrating, just this year, 50 years of business. Here is what the president of Polaris, Tom Tiller, had to say about the Australia Free Trade Agreement:

In 2004, Polaris will do over \$10 million in sales to Australia. While the majority of those sales will be conducted by Polaris Sales Australia, all of the machinery sold in that distribution network is manufactured in Minnesota . . . so increased sales in Australia means more jobs in Minnesota.

Polaris is especially excited about the opportunity to sell all-terrain vehicles to the Australians under the new access granted under this agreement.

I cannot mention Polaris without mentioning another very important manufacturer in the State of which I am so proud, Arctic Cat. Arctic Cat is also located in northwest Minnesota, maybe about an hour away from Canada, in a town called Thief River Falls. Chris Twomey, with Arctic Cat, points out that:

Due to high tariffs, Arctic Cat sells less than \$5 million in products to Australia. The Australia Free Trade Agreement makes it a lot easier for us to increase our sales there and increase our production here at home.

This is another top-of-the-line all-terrain vehicle coming from another top-of-the-line all-Minnesota company. I am proud of those companies. I am proud of the people they employ. And I am proud of the expanded opportunity they will have to sell, to grow jobs, to make profit, to strengthen the lives of their employees and the lives of their communities—all of which are enhanced by the Australia Free Trade Agreement.

My paper and wood products industry is also very important to my State, starting a little west of where Polaris and Arctic Cat call home and extending all the way over to northeastern Minnesota. But for this industry and all the jobs it has provided over the years, northern Minnesota—which has seen some tough times—would have been in dire straits. Minnesota's International Paper and Blandin United Paper Mill are strong supporters of the Australia Free Trade Agreement because it will open the doors of Australia and the Pacific Rim to our paper and wood products industries. Again, those industries are part of the economic lifeblood of those communities. I want them to prosper. I want them to grow. I want them to have expanded opportunity. And they will get that from this agreement.

But it is not just northern Minnesota with a stake in the passage of this agreement. Eagan, MN, a growing suburb just south of St. Paul, also has a stake, as do communities all over my State. The Lockheed Martin manufacturing facility in Eagan had \$40 million in international sales last year alone, with a part of that figure owing to the construction and sale of the P-3 Maritime Patrolter to Australia. Currently, Eagan is in the running for another contract with Australia worth over \$30 million to that community, and, according to Lockheed Martin, passage of the Australia Free Trade Agreement puts us one step closer to securing that contract.

And 3M, which not everyone knows stands for Minnesota Mining and Man-

ufacturing, a great St. Paul company—in the neighborhoods of St. Paul they call it “the mining,” but it is Minnesota Mining and Manufacturing—notes that Minnesota companies alone will save some \$5 million in Australian tariffs when they come down under this agreement.

This is not an abstract topic for Minnesota. It is very real. The Australian Free Trade Agreement has the potential to sustain and grow real, good-paying Minnesota jobs. For me, that is decisive because jobs are what it is all about. I don't want to oversell this agreement because that has been done too often with respect to trade agreements. That is important to repeat. Far too often on both sides we look at a trade agreement and we oversell it. And then if we don't reach those high expectations, people say: Well, it didn't work; it is no good.

We are talking about moving the ball forward. We are talking about moving the economy. We are talking about more progress, more economic growth, and more opportunity. We are talking about more jobs. I am not going to sell. A lot is promised under these agreements and, frankly, they usually fall somewhat short of the mark.

Let me say what I have heard from my manufacturers, what I have heard from Polaris, Arctic Cat, International Paper, and Lockheed. They have said the Australian agreement means opportunity, give us that opportunity. So today in the United States we have a chance to do just that. We ought to and, fortunately, I expect that we will. We will give them the opportunity when we consider the Australia Free Trade Agreement and get it passed.

Having said that, I would be remiss if I did not take this opportunity to underscore a very important point that I hope is not missed by my colleagues, particularly by those who are in charge of negotiating this agreement or any other trade agreement; that is, the importance of U.S. agriculture to trade. Their success is mutually and inextricably linked. I do not believe U.S. agriculture can succeed without moving forward on trade, nor do I believe that trade can move forward without U.S. agriculture.

With Minnesota in the top 10 among States for the production of nearly every commodity that can be produced in our climate, the success of my farm families is extremely important to mainstream Minnesota. It is important to me.

Let me begin with sugar. Few folks realize Minnesota is the No. 1 sugar-producing and processing State in the country. Folks sometimes think about Florida, Louisiana, and other places, but it is sugar beets which makes the same kind of sugar you buy in your local store. And more sugar is produced from sugar beets than from cane sugar. Minnesota farm families own both the production and processing sides of our

State's sugar beet industry, an industry that is directly or indirectly responsible for \$2 billion in economic activity and about 30,000 jobs. The exclusion of sugar from the Australian agreement has been much maligned by folks inside and outside the Chamber, but not by this Senator. Let me tell you why.

The fact is, the reason we are able to stand here now on the cusp of passing the Australia Free Trade Agreement is in part or in whole owing to how this administration wisely handled sugar. Today, the Australia Free Trade Agreement is on the move. The sad reality is that CAFTA is up on the blocks. CAFTA is another great opportunity. We need to work to strengthen our trade opportunities with our friends in Central America. We have seen the flourishing of democracy there. Our Central American friends and allies deserve the benefit of expanded trade opportunity. CAFTA is up on the blocks. We have to figure a way to move it forward and to deal with the sugar problem in CAFTA.

When I say "deal with," this is not about parochialism or protectionism. It is about common sense and equity. Common sense says if you have a world problem, as the distortion in the sugar market most certainly is, you handle the problem in a global context. In other words, the right place to deal with sugar is in the World Trade Organization, not in these bilateral and regional agreements. Equity requires that when our trade team rightly decided that discussions concerning the farm bill's safety net for other commodities, such as corn and soybeans, should be reserved for the WTO and excluded from bilateral or regional agreements, the same should hold true for sugar: Common sense and equity.

In regard to the farm bill, I would point out that this legislation is to our farm families in rural America what the JOBS bill we just overwhelmingly passed is to our Nation's manufacturers. To anyone who has gone to see the new World War II Memorial, you will notice all the wreaths that represent the two pillars of industry and agriculture. Those responsible for both are critical to this country. We must not unilaterally disarm against either in global competition, which today is not always free and not always fair.

As for my State's sugar farmers, they are among the most competitive in the world. In fact, America's sugar farmers are among the top one-third in the world in overall efficiency, as measured by the cost of production. But what they face is a dump market where the average world cost of production per pound is 16 cents while the average selling price per pound is only 6 cents. As the saying goes, something is rotten in Denmark. I don't want to blame the Danes on that, just an expression.

Meanwhile, the U.S. sugar policy has been good to taxpayers and consumers alike. The U.S. sugar policy costs taxpayers nothing and, in fact, the two

times in recent history where the U.S. had no sugar policy, consumer prices received the brunt of it when prices spiked to record highs. So my deepest thanks and appreciation go out to the Bush administration and its trade team for doing what is right by America's sugar farmers, right by Minnesota, and right by this Senator. You have a good model now on sugar, one that moves the trade agenda forward. We ought to stick with it.

Dairy is another important industry in Minnesota—we are fifth in the Nation—and here again our trade team deserves thanks for working with me and other interested Senators, as well as our Nation's dairy farm families, in arriving at a more workable although not perfect solution. Maintaining the second tier tariff for Minnesota dairy farmers is an absolutely essential part of this agreement. I am pleased that we have worked with our trade team on this issue. I don't want to get into discussions of the complexity of dairy policy on the floor of this body, but this issue of a second-tier tariff was important to my dairy farmers and dairy farmers throughout America. We managed to make sure that we maintained that second-tier tariff. That was a good thing.

Under the agreement, in-quota dairy imports are estimated to equal only 0.17 percent of the annual value of U.S. dairy production, and only about 2 percent of the current value of imports. Finally, assurances by our trade team that imports will not affect the operation of the milk price support program are extremely important to me and to America's dairy farmers.

Today I have 6,000 hard-working dairy farm families who milk about half a million cows every morning and night, who can breathe a little easier, thanks to the efforts of our trade team. I stress, less than 10 years ago we had about 14,000 Minnesota families. So we have lost over half the dairy farmers in our State. I presume that pattern has been shown in other parts of the country. But those 6,000 hard-working dairy farm families can sleep a little easier tonight thanks to the efforts of our trade team.

Again, it is not a slam dunk. This agreement is not perfect, but it is more workable to my dairy farmers and co-operatives at home because second-tier tariffs were maintained and in-quota imports are expected to be low.

My cattlemen are about where my dairymen are. They are relieved, but I would say our trade team had to overcome a very difficult issue. On the whole, they worked very hard to address the concerns of Minnesota's cattlemen. They phase down U.S. tariffs over an 18-year period and phase up the amount of in-quota access, all the while providing safeguards to protect against import surges that would disrupt U.S. markets. And at the end of the 18-year period, another safeguard is put in place to protect against import surges that would otherwise depress U.S. beef prices.

As a Senator representing nearly 16,000 cattlemen and a State that ranks sixth in beef production, my support for this agreement is couched in part on my reliance that these safeguards for U.S. beef will, in fact, be allowed to work as intended and that any waiver would be undertaken only in the rarest of circumstances, circumstances that I, frankly, can't conceive of now as I speak.

Steve Brake, a good friend of mine, is president of the cattlemen. Whenever I get to cattle country, I touch base with him to where things are. He understands. It is extremely important to him and his fellow cattlemen that we strictly enforce these safeguards. I know I will hear from Steve if we don't. If I hear about it from Steve, our trade team is going to hear about it, too. The safeguards are in place. I have great respect for what has been done, and I think our cattlemen can sleep easier tonight.

I am pleased that the sanitary and phytosanitary issues that stood in the way of our pork producers' access to the Australian market have been favorably resolved, leading to the endorsement of the agreement by more than 6,000 Minnesota pork producers. I will repeat that. These issues have been resolved and have led to the endorsement of the agreement by my more than 6,000 Minnesota pork producers.

I also appreciate the work of our trade team in pressing the issue of the Australian Wheat Board, a monopolistic state trading enterprise whose time has passed. While I am disappointed we were unable to do away with the board under this agreement, I am pleased the Australians have agreed to discuss this issue in the Doha Round of the WTO.

Overall, I believe this administration had a tough job to do and it did it reasonably well—job well done—something evidenced by the likely passage of this agreement. The Australia Free Trade Agreement is a good precursor to the WTO discussions that will take place in Geneva yet this month because it underscores a point: You don't have to give away the farm to negotiate a good agreement, and you may not pass one if you do.

So the Australia Free Trade Agreement that President Bush has sent to Congress is about sustaining and growing American jobs. It is about bolstering support in the economic opportunity of our rural families, our rural communities, and the incredible work they do to produce the safest, most affordable food supply in the world.

So to the President and our trade team, I say: Job well done. To our Members and colleagues in this body, I say: Let us move forward and pass the Australia Free Trade Agreement.

I yield the floor.

RECESS

Mr. COLEMAN. Mr. President, I ask unanimous consent that the Senate now stand in recess until 4 p.m. today.

There being no objection, at 3:02 p.m., the Senate recessed until 4:01 p.m., and reassembled when called to order by the Presiding Officer (Mr. CORNYN).

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MEDICARE

Ms. STABENOW. Mr. President, today I rise to discuss yet another revision by the administration to the new Medicare law. We all know the administration refused to give Congress an estimate on how much the Medicare bill would cost. We later found OMB estimated that the Medicare law would cost \$534 billion over the next 10 years, \$134 billion more than was estimated by the Congressional Budget Office.

We also know the CMS actuary, Richard Foster, said the high cost projection was actually known before the final House and Senate votes on the legislation last November. But Mr. Scully told him, "We can't let that get out."

In an e-mail to colleagues at CMS, Foster indicated he believed he might lose his job if he revealed the administration's cost estimates for the Medicare legislation.

Now we are getting another round of revised numbers. In last year's debate, Republicans repeatedly claimed the new drug benefits would be completely voluntary, that seniors happy with the current Medicare system should be able to keep their coverage the way it is. In fact, we have heard President Bush say that over and over again. He said that in the State of the Union Message in 2003.

But many of us warned at the time that because of the way the benefit was structured, employees with good retiree coverage would lose it. People who currently have coverage, currently have prescription drug assistance, actually could lose it. At the time the Congressional Budget Office estimated 2.7 million seniors and disabled could potentially lose—they indicated would lose—their retiree drug coverage because of the way this was written, in terms of the interface with the private sector retiree coverage. But once again the numbers are coming back even worse than was thought.

In today's New York Times, Health and Human Services now has estimated that not 2.7 but 3.8 million retirees will lose their prescription drug benefits when Medicare offers the coverage in 2006. HHS admitted this represents one-third of all retirees with employer-sponsored drug coverage.

I know CMS Administrator McClellan has released a press statement disputing the article.

I hope we get to the bottom of what is going on with this revision. But certainly what has happened up to date does not give us confidence in the information they have given to us. The administration certainly can't possibly think seniors will be happy to hear that up to one-third of those who have current coverage will lose it when this new Medicare law takes effect.

When you think about folks who have worked all their lives, and probably paid attention to the fact they had health insurance and retirement benefits, planned for that possibly over the life of their worktime, they took pay cuts in order to guarantee they had that retirement benefit, or wage freezes as people are being asked today, make sure in their retirement they had that coverage, and now this law is estimated to actually lose the private retiree coverage up to one-third of those who have it today.

My mother is one of those folks, a retired nurse. She followed the debate we had in great detail. One of the questions she had for me after the passage of this law was whether she would lose her benefits. I had to honestly say: Mom, I don't know.

One of the things we heard was those who may be in a situation most likely to lose may, in fact, be those who are nurses or police officers or retired firefighters or others who are in local or State government with all of the cutbacks where State and local governments are being forced to cut back.

It is amazing to me that in light of what we are seeing, point after point—information that wasn't given, information that wasn't accurate, the inability to negotiate group discounts under Medicare, the confusion on the prescription drug card—I hate to even call them discount cards because we know from AARP and from Families U.S.A. and from all of the groups that watched this that, in fact, the drug companies increased their prices very rapidly knowing they were going to be asked to give a discount through a discount card—we have seen prices go up 10, 20, 30 percent since we passed the law back in November, so they could then provide a card with a 15-percent discount or a 20-percent or a 25-percent discount. Seniors know after they watched this happen that it was not really a discount.

We have seen the confusion about how to even wade through the 40, 50, 60, or 70 different cards you may be able to choose from as a Medicare beneficiary to see if you can even begin to get a discount. We have seen the confusion of low-income seniors who actually have the most to gain because there is a \$600 credit to buy prescription drugs attached to the card, and yet there is such confusion about how to even sign up and qualify, and that those who probably need it the most will be the ones least likely to receive it.

We have seen confusion and misinformation and threats to people about losing jobs if they tell us the truth and

bad policies that over and over again have been put into place to help the industry instead of helping seniors and helping the disabled.

While all of this is going on, prices just keep going up. People need their medicine every day. Whether it is confusing or not, whether people are going to lose their coverage or not, today folks walk into the pharmacy trying to get their medicine, or maybe they didn't go in because they couldn't afford it, or maybe they went into the pharmacy but not the grocery store because they couldn't afford to do both, or maybe, as the couple I talked to not too long ago who were on the same medicine, the husband takes it one day and the wife takes it another day.

We can do better than that. This is the greatest country in the world. Shame on us for not being able to get this right and not being able to do it now.

The good news is we can do it now. We have a proposal in front of us that will allow the competition necessary in the pharmaceutical industry to bring prices down immediately. It is called reimportation of prescription drugs. We have talked about it so many times. I have been talking about it since being a House Member, and talking about taking bus trips to Canada. Now in my fourth year in the Senate, we are still talking about what ought to be done to bring down prices. But the good news is that things are beginning to move.

I was pleased to join with the AARP and with colleagues on both sides of the aisle, Senator SNOWE, Senator MCCAIN, Senator DORGAN, and I today to talk about the fact that we believe we have the votes now in the Senate to be able to pass meaningful, safe, reimportation of prescription drugs. All we need is the opportunity to vote on it. All we need is the opportunity to make the case to our colleagues.

There was a Senate Judiciary Committee hearing today. We understand that the HELP Committee will be meeting hopefully to report out a bill later this week. That bill has been introduced and hearings are scheduled, and rescheduled. Hopefully, that will happen this week.

While we are talking about it, while ineffective Medicare legislation passed with all this confusion and information, there is a sense of urgency on the part of every single person using medicine today because they are paying too much. It is not just our seniors, who certainly use the most medicine, or the disabled; it is also the family who has a child with a chronic disease, or it is a person of any age who is using medicine, or it is the businesses that have seen their premiums skyrocket in large part because of the skyrocketing prices of prescription drugs.

I come from a great State that makes automobiles. We are very proud of that. When I sit down with the Big Three automakers which are desperately concerned about the cost of

health care and what needs to be done, they show me numbers. One-half the increase in their health care costs is because of prescription drugs. I know this is also true with small businesses which, on average, have seen their premiums double at least in the last 5 years. In fact, it is more likely to be doubling every 3 years.

The opportunity we have to create more competition and to open the borders is something that not only would help our seniors, many of whom are incredibly disillusioned and, frankly, angry that a Medicare bill was passed that may not be of much help at all to them. But we can also be helping every single American from the youngest to the oldest as well as businesses if we do this and do this now.

We have 1 more week before we break for the summer. We know there are precious few weeks when we come back in the fall. This needs to get done now.

There are 31 in the Senate on both sides of the aisle from all different political beliefs who are cosponsoring this reimportation bill. Our bill provides substantial safeguards and assures quality and affordability. Our bill ensures that licensed pharmacists in the United States can do business with licensed pharmacists in Canada and in other countries with strong safety standards.

Our bill provides for inspections for anticounterfeiting technologies and chain of custody. Our bill is a well-thought-out, well-designed piece of legislation that meets and addresses every legitimate concern that has been raised.

There is no reason Americans should not have access to safe, FDA-approved drugs that come from FDA-inspected facilities in our country or other countries. We have been debating this issue far too long. I am extremely hopeful we will be able to see a debate in the Senate and a vote before we leave this summer.

Researchers at Boston University have told me that in the 1-month delay for the markup of the HELP Committee—the bill was on the agenda a month ago; now it will be on this next week—we could have saved over \$5 billion by simply allowing citizens to do business with Canadian pharmacies.

That means \$5 billion has been spent, coming out of the pockets of people choosing between food and medicine, caring for their children, worried about being able to have medicine for their disability, or a small business struggling to make it through insurance premium increases, or a large business. That is \$5 billion just by not acting this last month. I assume that means \$5 billion next month and \$5 billion the month after.

The legislation we have put together on a bipartisan basis will make a real difference. It is something we can do now.

I commend my House colleagues on both sides of the aisle who have not only passed legislation similar to the

legislation we now have worked on and developed on a bipartisan basis, but they have, once again, placed language in the Agriculture appropriations bill that would stop any enforcement against reimportation and allow it to continue. This passed the House of Representatives just yesterday.

It is time for the Senate to step up and to make this happen. In the past, there has been an effort to require certification by Health and Human Services regarding safety. That, unfortunately, has been a barrier by those who simply do not want to do this. So we have taken a different route this time. We have decided to sit down and go through all the safety standards and regulations and put it in the statute. That is what we have done.

We have also included in the bill an effort that Senator FEINSTEIN has worked on regarding Internet drug efforts and safety requirements.

There is no reason substantively not to pass our drug reimportation bill if the goal is to help lower the costs of prescription drugs through competition and to lower prices for our seniors and for our families and for our businesses. We have the tool. Let's not wait another month and another \$5 billion, or another 2 months, \$10 billion, or \$15 billion or \$20 billion, when we have the ability to join with the majority of our House colleagues and get this done now.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LAUTENBERG. 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. LAUTENBERG. Mr. President, are we presently acting as in morning business?

The PRESIDING OFFICER. The Senate is on the motion to proceed to S.J. Res. 40.

Mr. LAUTENBERG. I ask unanimous consent the pending business be put aside and that I have 15 minutes to present my speech.

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

ISRAEL-BASHING AT THE UNITED NATIONS

Mr. LAUTENBERG. Mr. President, I rise today to talk about a serious problem that faces our world, one that is reflected directly in the activities at the United Nations. It is anti-Semitism. It is what we see at the U.N., the distinctly unjust treatment of 1 of its 192 member countries, the State of Israel.

A historic moment occurred last month. For the first time in its six-decade history, the U.N. actually convened a conference to discuss the growing problem of anti-Semitism worldwide. While it is heartening to see this development, the fact remains that since its creation in 1946, the U.N. has never pro-

duced any resolutions specifically aimed at anti-Semitism. Nor have any of its ancillary bodies ever issued any report on the subject of discrimination against Jews and Israel.

At the conference I just mentioned, Columbia Law School professor Anne Bayefsky delivered a remarkable speech. I ask unanimous consent that her speech be printed in the RECORD following my remarks.

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

(See exhibit 1)

Mr. LAUTENBERG. Mr. President, Professor Bayefsky highlighted the history of the intolerance of the United Nations and outright discrimination against Israel.

Now, what does discrimination to Israel mean? It is exemplified in denying Israel and only Israel admission to the vital negotiating sessions of regional groups held daily during meetings of the U.N. Commission on Human Rights. It means devoting 6 of the 10 emergency sessions ever held by the General Assembly to repudiating Israel.

In contrast, no emergency session was ever held on the Rwanda genocide, estimated to have killed 1 million people, or on the so-called ethnic cleansing of tens of thousands of people in the former Yugoslavia, or on the atrocities committed against millions of people in Sudan in past decades.

More than one-quarter of the resolutions adopted by the Human Rights Commission over the last 40 years condemning the human rights record of various nations have been directed solely at Israel. There has not been a single resolution critical of China for suppressing the civil and political rights of its 1.3 billion people. There has not been a single resolution condemning the deadly racism in Zimbabwe that has brought 600,000 people to the brink of starvation.

It seems that anti-Israeli sentiment pervades the top levels of the U.N. hierarchy. The Secretary-General publicly condemns the tactics Israelis are forced to use to defend themselves, but he never once mentions the terrorist attacks that precipitate the response.

Because of this blatant bias, it is not surprising that last Friday the International Court of Justice—the U.N.'s court—squarely found that the barrier the Israelis are building to protect themselves violates international law. The ICJ demanded it be torn down and insisted that Palestinians be compensated for any damages.

Now, make no mistake, I believe an organization comprised of nations around the world must exist. I believe the United Nations is that organization. But it must operate fairly and be balanced. It is precisely because of my idealism regarding the role of the U.N. and the ICJ in international affairs that I am so disappointed in the court's one-sided decision last week.

The bias emanates not so much from the decision itself but from what the

judges neglected to mention. They remained absolutely silent about the suicide bombers, the terrorist attacks that have killed over 1,000 Israelis in the past 4 years. In relative terms, it would be the equivalent to over 46,000 Americans.

I think it is informative that 1 week earlier, Israel's own Supreme Court also ruled on the barrier. The Israeli Supreme Court determined that the barrier is defensible as a security measure but ordered the Israeli Army to reroute a section of it in response to Palestinian concerns and make it hew more closely to the pre-1967 Green Line.

The justices wrote:

We are aware that this decision does not make it easier to deal with that reality, [but] is the destiny of a democracy.

They added that a democracy such as Israel's:

does not see all means as acceptable, and the ways of her enemies are not always open before her. A democracy must sometimes fight [back] with one arm tied behind her back.

The Israeli Supreme Court sent the strongest message, perhaps, to Israel's enemies of its uniqueness, resilience, and fundamental goodness.

The Israeli children are never subjected to lessons in the school that say: "Learn to kill your Arab neighbors," as contrasted to textbook after textbook in surrounding countries that say: "You must learn to kill the Jews and kill the Israelis."

As a matter of fact, this morning on television, what I saw was a group of very young Palestinian children being taught military methods so they can one day give their lives carrying a suicide bomb. It is incredible, when you think about it, that the Israelis should pay attention to the rights of the Palestinians, when you never hear in any of the Arab countries surrounding Israel that they ought to pay attention to the rights of the Israelis. It is very hard to even get a condemnation from them when some mad suicide bomber comes in and takes innocent Israeli lives without provocation.

Israel's vibrant, even if imperfect, democracy is precisely the reason why the U.N. bias against her is so unjust. Israel is a country in which huge crowds often gather in Tel Aviv's Rabin Square to demand the Government quickly end its support of settlements, challenging the views of lots of Israelis who want to use these settlements. But there is a fairness, an equity in the views of the Israelis that prevents them from going ahead and supporting these activities.

Israel is a country in which domestic human rights groups, in an act of political protest, recently mounted a photo exhibit of Israeli soldiers abusing Palestinian civilians—in the lobby of its Parliament, the Knesset.

Could you ever imagine that taking place in Damascus? Or Iraq, as it was? Or even a country as friendly as Egypt seems to be?

Israel is a country in which top reservists in the army and air force have refused to serve in the West Bank because they do not support the policies of the Sharon Government.

In an ideal world, Israel could prevent suicide bombers from infiltrating its cafes and malls and buses. But the Israelis do not live in an ideal world. The security fence is a measure of last resort. Israelis felt compelled to build the security fence after Palestinian terrorists launched 50 successful suicide bombings in 2002.

The security fence, as Israel's Supreme Court rightly concluded, is a defensive measure. And as a defensive measure, it has been very effective. There were 50 suicide bombings in 2002. In 2003, there were 20. So far this year, there have been eight. That is a very positive outcome.

The most recent bombing attack in Israel occurred this past Sunday, July 11, on a Tel Aviv bus, killing one soldier and injuring a dozen civilians. One of the injured was a 29-year-old named Sammi Masrawa, an Israeli Arab who leads an Arab-Jewish friendship group in the Tel Aviv area. Mr. Masrawa told the press he had opposed the barrier. In fact, he even took part in protests against it. But the bombing on Sunday changed his mind. He said:

I will now be for [the fence] and form an organization in favor of it.

I wonder: How might the 15 judges of the United Nations' highest court justify their ruling to Sammi Masrawa, who from his hospital bed now pledges to lobby in support of the security fence.

His quest for peace underpinned by real security should be the call to which the United Nations and the international community respond. Instead, the ICJ has allowed an anti-Israel bias to cloud its vision and undermine its noble purpose.

We Americans need to wake up to the fact that the U.N. and its ancillaries are fundamentally hostile to Israel. We need to wake up to the fact that the U.N. and its ancillaries are unwilling to stanch the murderous flow of worldwide anti-Semitism. Why is this important? Because what affects Israel affects the United States as well.

Israeli nuclear physicist Haim Harari recently gave a speech in which he grimly but accurately described the virulent new strain of terrorists who are not only threatening Jerusalem, they are threatening Bali, Istanbul, Madrid, Riyadh, and New York. I urge my colleagues to read his message and reflect on what we must do to protect America and Israel, fix the U.N., and promote freedom and democracy and human rights around the world.

I hope also to remind our Arab friends in the area—be that Egypt or Kuwait or some of the other countries there—we care about these kinds of poisons that pervade the atmosphere, and we cannot tolerate that kind of an attitude, and won't, in our relationship with the U.N. or without or within these countries.

I ask unanimous consent that Dr. Harari's speech be printed in the RECORD following my remarks.

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

(See Exhibit 2.)

Mr. LAUTENBERG. I yield the floor.

EXHIBIT 1

[From On The Record, June 21, 2004]

ONE SMALL STEP: IS THE U.N. FINALLY READY TO GET SERIOUS ABOUT ANTI-SEMITISM?

(By Anne Bayefsky)

(Editor's note: Ms. Bayefsky delivered this speech at the U.N. at a conference on Confronting Anti-Semitism: Education for Tolerance and Understanding, sponsored by the United Nations Department of Information, this morning.)

I appreciate the opportunity to speak to you at this first U.N. conference on anti-Semitism, which is being convened six decades after the organization's creation. My thanks to the U.N. organizers and in particular Shashi Tharoor [the undersecretary-general for communications and public information] for their initiative and to the secretary-general for his willingness to engage.

This meeting occurs at a point when the relationship between Jews and the United Nations is at an all-time low. The U.N. took root in the ashes of the Jewish people, and according to its charter was to flower on the strength of a commitment to tolerance and equality for all men and women and of nations large and small. Today, however, the U.N. provides a platform for those who cast the victims of the Nazis as the Nazi counterparts of the 21st century. The U.N. has become the leading global purveyor of anti-Semitism—intolerance and inequality against the Jewish people and its state.

Not only have many of the U.N. members most responsible for this state of affairs rendered their own countries Judenrein, they have succeeded in almost entirely expunging concern about Jew-hatred from the U.N. docket. From 1965, when anti-Semitism was deliberately excluded from a treaty on racial discrimination, to last fall, when a proposal for a General Assembly resolution on anti-Semitism was withdrawn after Ireland capitulated to Arab and Muslim opposition, mention of anti-Semitism has continually ground the wheels of U.N.-led multilateralism to a halt.

There has never been a U.N. resolution specifically on anti-Semitism or a single report to a U.N. body dedicated to discrimination against Jews, in contrast to annual resolutions and reports focusing on the defamation of Islam and discrimination against Muslims and Arabs. Instead there was Durban—the 2001 U.N. World Conference "Against Racism," which was a breeding ground and global soapbox for anti-Semites. When it was over U.N. officials and member states turned the Durban Declaration into the centerpiece of the U.N.'s antiracism agenda—allowing Durban follow-up resolutions to become a continuing battlefield over U.N. concern with anti-Semitism.

Not atypical is the public dialogue in the U.N.'s top human rights body—the Commission on Human Rights—where this past April the Pakistani ambassador, speaking on behalf of the 56 members of the Organization of the Islamic Conference, unashamedly disputed that anti-Semitism was about Jews.

For Jews, however, ignorance is not an option. Anti-Semitism is about intolerance and discrimination directed at Jews—both individually and collectively. It concerns both individual human rights and the group right to self-determination—realized in the state of Israel.

What does discrimination against the Jewish state mean? It means refusing to admit

only Israel to the vital negotiating sessions of regional groups held daily, during U.N. Commission on Human Rights meetings. It means devoting six of the 10 emergency sessions ever held by the General Assembly to Israel. It means transforming the 10th emergency session into a permanent tribunal—which has now been reconvened 12 times since 1997. By contrast, no emergency session was ever held on the Rwandan genocide, estimated to have killed a million people, or the ethnic cleansing of tens of thousands in the former Yugoslavia, or the death of millions over the past two decades of atrocities in Sudan. That's discrimination.

The record of the Secretariat is more of the same. In November 2003, Secretary-General Kofi Annan issued a report on Israel's security fence, detailing the purported harm to Palestinians without describing one terrorist act against Israelis which preceded the fence's construction. Recently, the secretary-general strongly condemned Israel for destroying homes in southern Gaza without mentioning the arms-smuggling tunnels operating beneath them. When Israel successfully targeted Hamas terrorist Abdel Aziz Rantissi with no civilian casualties, the secretary-general denounced Israel for an "extrajudicial" killing. But when faced with the 2004 report of the U.N. special rapporteur on extrajudicial executions detailing the murder of more than 3,000 Brazilian civilians shot at close range by police, Mr. Annan chose silence. That's discrimination.

At the U.N., the language of human rights is hijacked not only to discriminate but to demonize the Jewish target. More than one quarter of the resolutions condemning a state's human rights violations adopted by the commission over 40 years have been directed at Israel. But there has never been a single resolution about the decades-long repression of the civil and political rights of 1.3 billion people in China, or the million female migrant workers in Saudi Arabia kept as virtual slaves, or the virulent racism which has brought 600,000 people to the brink of starvation in Zimbabwe. Every year, U.N. bodies are required to produce at least 25 reports on alleged human rights violations by Israel, but not one on an Iranian criminal justice system which mandates punishments such as crucifixion, stoning and cross-amputation of the right hand and left foot. This is not a legitimate critique of states with equal or worse human rights records. It is demonization of the Jewish state.

As Israelis are demonized at the U.N., so Palestinians and their cause are deified. Every year the U.N. marks Nov. 29 as the International Day of Solidarity with the Palestinian People—the day the U.N. partitioned the British Palestine mandate and which Arabs often style as the onset of al naba or the "catastrophe" of the creation of the state of Israel. In 2002, the anniversary of the vote that survivors of the concentration camps celebrated, was described by Secretary-General Annan as "a day of mourning and a day of grief."

In 2003 the representatives of over 100 member states stood along with the secretary-general, before a map predating the state of Israel, for a moment of silence "for all those who had given their lives for the Palestinian people"—which would include suicide bombers. Similarly, U.N. rapporteur John Dugard has described Palestinian terrorists as "tough" and their efforts as characterized by "determination, daring, and success." A commission resolution for the past three years has legitimized the Palestinian use of "all available means including armed struggle"—an absolution for terrorist methods which would never be applied to the self-determination claims of Chechens or Basques.

Although Palestinian self-determination is equally justified, the connection between demonizing Israelis and sanctifying Palestinians makes it clear that the core issue is not the stated cause of Palestinian suffering. For there are no U.N. resolutions deploring the practice of encouraging Palestinian children to glorify and emulate suicide bombers, or the use of the Palestinian population as human shields, or the refusal by the vast majority of Arab states to integrate Palestinian refugees into their societies and to offer them the benefits of citizenship. Palestinians are lionized at the U.N. because they are the perceived antidote to what U.N. envoy Lakhdar Brahimi called the great poison of the Middle East—the existence and resilience of the Jewish state.

Of course, anti-Semitism takes other forms at the U.N. Over the past decade at the commission, Syria announced that yeshivas train rabbis to instill racist hatred in their pupils. Palestinian representatives claimed that Israelis can happily celebrate religious holidays like Yom Kippur only by shedding Palestinian blood, and accused Israel of injecting 300 Palestinian children with HIV-positive blood.

U.N.-led anti-Semitism moves from the demonization of Jews to the disqualification of Jewish victimhood: refusing to recognize Jewish suffering by virtue of their ethnic and national identity. In 2003, a General Assembly resolution concerned with the welfare of Israeli children failed (though one on Palestinian children passed handily) because it proved impossible to gain enough support for the word Israeli appearing before the word children. The mandate of the U.N. special rapporteur on the "Palestinian territories," set over a decade ago, is to investigate only "Israel's violations of . . . international law" and not to consider human-rights violations by Palestinians in Israel.

It follows in U.N. logic that nonvictims aren't really supposed to fight back. One after another concrete Israeli response to terrorism is denounced by the secretary-general and member states as illegal. But killing members of the command-and-control structure of a terrorist organization, when there is no disproportionate use of force, and arrest is impossible, is not illegal. Homes used by terrorists in the midst of combat are legitimate military targets. A nonviolent, temporary separation of parties to a conflict on disputed territory by a security fence, which is sensitive to minimizing hardships, is a legitimate response to Israel's international legal obligations to protect its citizens from crimes against humanity. In effect, the U.N. moves to pin the arms of Jewish targets behind their backs while the terrorists take aim.

The U.N.'s preferred imagery for this phenomenon is of a cycle of violence. It is claimed that the cycle must be broken—every time Israelis raises a hand. But just as the symbol of the cycle is chosen because it has no beginning, it is devastating to the cause of peace because it denies the possibility of an end. The Nuremberg Tribunal taught us that crimes are not committed by abstract entities.

The perpetrators of anti-Semitism today are the preachers in mosques who exhort their followers to blow up Jews. They are the authors of Palestinian Authority textbooks that teach a new generation to hate Jews and admire their killers. They are the television producers and official benefactors in authoritarian regimes like Syria or Egypt who manufacture and distribute programming that depicts Jews as bloodthirsty world conspirators.

Listen, however, to the words of the secretary-general in response to two suicide bombings which took place in Jerusalem this

year, killing 19 and wounding 110: "Once again, violence and terror have claimed innocent lives in the Middle East. Once again, I condemn those who resort to such methods." "The Secretary General condemns the suicide bombing Sunday in Jerusalem. The deliberate targeting of civilians is a heinous crime and cannot be justified by any cause." Refusing to name the perpetrators, Mr. Secretary-General, Teflon terrorism, is a green light to strike again.

Perhaps more than any other, the big lie that fuels anti-Semitism today is the U.N.-promoted claim that the root cause of the Arab-Israeli conflict is the occupation of Palestinian land. According to U.N. revisionism, the occupation materialized in a vacuum. In reality, Israel occupies land taken in a war which was forced upon it by neighbors who sought to destroy it. It is a state of occupation which Israelis themselves have repeatedly sought to end through negotiations over permanent borders. It is a state in which any abuses are closely monitored by Israel's independent judiciary. But ultimately, it is a situation which is the responsibility of the rejectionists of Jewish self-determination among Palestinians and their Arab and Muslim brethren—who have rendered the Palestinian civilian population hostage to their violent and anti-Semitic ambitions.

There are those who would still deny the existence of anti-Semitism at the U.N. by pointing to a range of motivations in U.N. corridors including commercial interests, regional politics, preventing scrutiny of human rights violations closer to home, or enhancement of individual careers. U.N. actors and supporters remain almost uniformly in denial of the nature of the pathogen coursing through these halls. They ignore the infection and applaud the host, forgetting that the cancer which kills the organism will take with it both the good and the bad.

The relative distribution of naiveté, cowardice, opportunism, and anti-Semitism, however, matters little to Noam Ohayon, ages 4 and 5, shot to death through their mother's body in their home in northern Israel while she tried to shield them from a gunman of Yasser Arafat's al-Aqsa Martyrs Brigades. The terrible consequences of these combined motivations mobilized and empowered within U.N. chambers are the same.

The inability of the U.N. to confront the corruption of its agenda dooms this organization's success as an essential agent of equality or dignity or democratization.

This conference may serve as a turning point. We will only know if concrete changes occur hereafter: a General Assembly resolution on anti-Semitism adopted, an annual report on anti-Semitism forthcoming, a focal point on anti-Semitism created, a rapporteur on anti-Semitism appointed.

But I challenge the secretary-general and his organization to go further—if they are serious about eradicating anti-Semitism:

a. Start putting a name to the terrorists that kill Jews because they are Jews.

b. Start condemning human-rights violators wherever they dwell—even if they live in Riyadh or Damascus.

c. Stop condemning the Jewish people for fighting back against their killers.

d. And the next time someone asks you or your colleagues to stand for a moment of silence to honor those who would destroy the state of Israel, say no. Only then will the message be heard from these chambers that the U.N. will not tolerate anti-Semitism or its consequences against Jews and the Jewish people, whether its victims live in Tehran, Paris or Jerusalem.

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EXHIBIT 5

A VIEW FROM THE EYE OF THE STORM

(Talk delivered by Haim Harari at a meeting of the International Advisory Board of a large multi-national corporation, April, 2004)

As you know, I usually provide the scientific and technological "entertainment" in our meetings, but, on this occasion, our Chairman suggested that I present my own personal view on events in the part of the world from which I come. I have never been and I will never be a Government official and I have no privileged information. My perspective is entirely based on what I see, on what I read and on the fact that my family has lived in this region for almost 200 years. You may regard my views as those of the proverbial taxi driver, which you are supposed to question, when you visit a country.

I could have shared with you some fascinating facts and some personal thoughts about the Israeli-Arab conflict. However, I will touch upon it only in passing. I prefer to devote most of my remarks to the broader picture of the region and its place in world events. I refer to the entire area between Pakistan and Morocco, which is predominantly Arab, predominantly Moslem, but includes many non-Arab and also significant non-Moslem minorities.

Why do I put aside Israel and its own immediate neighborhood? Because Israel and any problems related to it, in spite of what you might read or hear in the world media, is not the central issue, and has never been the central issue in the upheaval in the region. Yes, there is a 100-year-old Israeli-Arab conflict, but it is not where the main show is. The millions who died in the Iran-Iraq war had nothing to do with Israel. The mass murder happening right now in Sudan, where the Arab Moslem regime is massacring its black Christian citizens, has nothing to do with Israel. The frequent reports from Algeria about the murders of hundreds of civilians in one village or another by other Algerians have nothing to do with Israel. Saddam Hussein did not invade Kuwait, endanger Saudi Arabia and butcher his own people because of Israel. Egypt did not use poison gas against Yemen in the 60's because of Israel. Assad the Father did not kill tens of thousands of his own citizens in one week in El Hama in Syria because of Israel. The Taliban control of Afghanistan and the civil war there had nothing to do with Israel. The Libyan blowing up of the Pan-Am flight had nothing to do with Israel, and I could go on and on and on.

The root of the trouble is that this entire Moslem region is totally dysfunctional, by any standard of the word, and would have been so even if Israel would have joined the Arab league and an independent Palestine would have existed for 100 years. The 22 member countries of the Arab league, from Mauritania to the Gulf States, have a total population of 300 millions, larger than the US and almost as large as the EU before its expansion. They have a land area larger than either the United States or all of Europe. These 22 countries, with all their oil and natural resources, have a combined GDP smaller than that of Netherlands plus Belgium and equal to half of the GDP of California alone. Within this meager GDP, the gaps between rich and poor are beyond belief and too many of the rich made their money not by succeeding in business, but by being corrupt rulers. The social status of women is far below what it was in the Western World 150 years ago. Human rights are below any reasonable standard, in spite of the grotesque fact that Libya was elected Chair of the U.N. Human Rights commission. According to a report prepared by a committee of Arab intellec-

tuals and published under the auspices of the U.N., the number of books translated by the entire Arab world is much smaller than what little Greece alone translates. The total number of scientific publications of 300 million Arabs is less than that of 6 million Israelis. Birth rates in the region are very high, increasing the poverty, the social gaps and the cultural decline. And all of this is happening in a region, which only 30 years ago, was believed to be the next wealthy part of the world, and in a Moslem area, which developed, at some point in history, one of the most advanced cultures in the world.

It is fair to say that this creates an unprecedented breeding ground for cruel dictators, terror networks, fanaticism, incitement, suicide murders and general decline. It is also a fact that almost everybody in the region blames this situation on the United States, on Israel, on Western Civilization, on Judaism and Christianity, on anyone and anything, except themselves.

Do I say all of this with the satisfaction of someone discussing the failings of his enemies? On the contrary, I firmly believe that the world would have been a much better place and my own neighborhood would have been much more pleasant and peaceful, if things were different.

I should also say a word about the millions of decent, honest, good people who are either devout Moslems or are not very religious but grew up in Moslem families. They are double victims of an outside world, which now develops Islamophobia and of their own environment, which breaks their heart by being totally dysfunctional. The problem is that the vast silent majority of these Moslems are not part of the terror and of the incitement but they also do not stand up against it. They become accomplices, by omission, and this applies to political leaders, intellectuals, business people and many others. Many of them can certainly tell right from wrong, but are afraid to express their views.

The events of the last few years have amplified four issues, which have always existed, but have never been as rampant as in the present upheaval in the region. These are the four main pillars of the current World Conflict, or perhaps we should already refer to it as "the undeclared World War III". I have no better name for the present situation. A few more years may pass before everybody acknowledges that it is a World War, but we are already well into it.

The first element is the suicide murder. Suicide murders are not a new invention but they have been made popular, if I may use this expression, only lately. Even after September 11, it seems that most of the Western World does not yet understand this weapon. It is a very potent psychological weapon. Its real direct impact is relatively minor. The total number of casualties from hundreds of suicide murders within Israel in the last three years is much smaller than those due to car accidents. September 11 was quantitatively much less lethal than many earthquakes. More people die from AIDS in one day in Africa than all the Russians who died in the hands of Chechnya-based Moslem suicide murderers since that conflict started. Saddam killed every month more people than all those who died from suicide murders since the Coalition occupation of Iraq.

So what is all the fuss about suicide killings? It creates headlines. It is spectacular. It is frightening. It is a very cruel death with bodies dismembered and horrible severe lifelong injuries to many of the wounded. It is always shown on television in great detail. One such murder, with the help of hysterical media coverage, can destroy the tourism industry of a country for quite a while, as it did in Bali and in Turkey.

But the real fear comes from the undisputed fact that no defense and no preventive

measures can succeed against a determined suicide murderer. This has not yet penetrated the thinking of the Western World. The U.S. and Europe are constantly improving their defense against the last murder, not the next one. We may arrange for the best airport security in the world. But if you want to murder by suicide, you do not have to board a plane in order to explode yourself and kill many people. Who could stop a suicide murder in the midst of the crowded line waiting to be checked by the airport metal detector? How about the lines to the check-in counters in a busy travel period? Put a metal detector in front of every train station in Spain and the terrorists will get the buses. Protect the buses and they will explode in movie theaters, concert halls, supermarkets, shopping malls, schools and hospitals. Put guards in front of every concert hall and there will always be a line of people to be checked by the guards and this line will be the target, not to speak of killing the guards themselves. You can somewhat reduce your vulnerability by preventive and defensive measures and by strict border controls but not eliminate it and definitely not win the war in a defensive way. And it is a war!

What is behind the suicide murders? Money, power and cold-blooded murderous incitement, nothing else. It has nothing to do with true fanatic religious beliefs. No Moslem preacher has ever blown himself up. No son of an Arab politician or religious leader has ever blown himself. No relative of anyone influential has done it. Wouldn't you expect some of the religious leaders to do it themselves, or to talk their sons into doing it, if this is truly a supreme act of religious fervor? Aren't they interested in the benefits of going to Heaven? Instead, they send out-cast women, naive children, retarded people and young incited hotheads. They promise them the delights, mostly sexual, of the next world, and pay their families handsomely after the supreme act is performed and enough innocent people are dead.

Suicide murders also have nothing to do with poverty and despair. The poorest region in the world, by far, is Africa. It never happens there. There are numerous desperate people in the world, in different cultures, countries and continents. Desperation does not provide anyone with explosives, reconnaissance and transportation. There was certainly more despair in Saddam's Iraq than in Paul Bremmer's Iraq, and no one exploded himself. A suicide murder is simply a horrible, vicious weapon of cruel, inhuman, cynical, well-funded terrorists, with no regard to human life, including the life of their fellow countrymen, but with very high regard to their own affluent well-being and their hunger for power.

The only way to fight this new "popular" weapon is identical to the only way in which you fight organized crime or pirates on the high seas: the offensive way. Like in the case of organized crime, it is crucial that the forces on the offensive be united and it is crucial to reach the top of the crime pyramid. You cannot eliminate organized crime by arresting the little drug dealer in the street corner. You must go after the head of the "Family".

If part of the public supports it, others tolerate it, many are afraid of it and some try to explain it away by poverty or by a miserable childhood, organized crime will thrive and so will terrorism. The United States understands this now, after September 11. Russia is beginning to understand it. Turkey understands it well. I am very much afraid that most of Europe still does not understand it. Unfortunately, it seems that Europe will understand it only after suicide murders will arrive in Europe in a big way. In my humble

opinion, this will definitely happen. The Spanish trains and the Istanbul bombings are only the beginning. The unity of the Civilized World in fighting this horror is absolutely indispensable. Until Europe wakes up, this unity will not be achieved.

The second ingredient is words, more precisely lies. Words can be lethal. They kill people. It is often said that politicians, diplomats and perhaps also lawyers and business people must sometimes lie, as part of their professional life. But the norms of politics and diplomacy are childish, in comparison with the level of incitement and total absolute deliberate fabrications, which have reached new heights in the region we are talking about. An incredible number of people in the Arab world believe that September 11 never happened, or was an American provocation or, even better, a Jewish plot.

You all remember the Iraqi Minister of Information, Mr. Mouhamad Said al-Sahaf and his press conferences when the US forces were already inside Baghdad. Disinformation at time of war is an accepted tactic. But to stand, day after day, and to make such preposterous statements, known to everybody to be lies, without even being ridiculed in your own milieu, can only happen in this region. Mr. Sahaf eventually became a popular icon as a court jester, but this did not stop some allegedly respectable newspapers from giving him equal time. It also does not prevent the Western press from giving credence, every day, even now, to similar liars. After all, if you want to be an anti-Semite, there are subtle ways of doing it. You do not have to claim that the holocaust never happened and that the Jewish temple in Jerusalem never existed. But millions of Moslems are told by their leaders that this is the case. When these same leaders make other statements, the Western media report them as if they could be true.

It is a daily occurrence that the same people, who finance, arm and dispatch suicide murderers, condemn the act in English in front of western TV cameras, talking to a world audience, which even partly believes them. It is a daily routine to hear the same leader making opposite statements in Arabic to his people and in English to the rest of the world. Incitement by Arab TV, accompanied by horror pictures of mutilated bodies, has become a powerful weapon of those who lie, distort and want to destroy everything. Little children are raised on deep hatred and on admiration of so-called martyrs, and the Western World does not notice it because its own TV sets are mostly tuned to soap operas and game shows. I recommend to you, even though most of you do not understand Arabic, to watch Al Jazeera, from time to time. You will not believe your own eyes.

But words also work in other ways, more subtle. A demonstration in Berlin, carrying banners supporting Saddam's regime and featuring three-year old babies dressed as suicide murderers, is defined by the press and by political leaders as a "peace demonstration". You may support or oppose the Iraq war, but to refer to fans of Saddam, Arafat or Bin Laden as peace activists is a bit too much. A woman walks into an Israeli restaurant in mid-day, eats, observes families with old people and children eating their lunch in the adjacent tables and pays the bill. She then blows herself up, killing 20 people, including many children, with heads and arms rolling around in the restaurant. She is called "martyr" by several Arab leaders and "activist" by the European press. Dignitaries condemn the act but visit her bereaved family and the money flows.

There is a new game in town: The actual murderer is called "the military wing", the one who pays him, equips him and sends him is now called "the political wing" and the

head of the operation is called the "spiritual leader". There are numerous other examples of such Orwellian nomenclature, used every day not only by terror chiefs but also by Western media. These words are much more dangerous than many people realize. They provide an emotional infrastructure for atrocities. It was Joseph Goebbels who said that if you repeat a lie often enough, people will believe it. He is now being outperformed by his successors.

The third aspect is money. Huge amounts of money, which could have solved many social problems in this dysfunctional part of the world, are channeled into three concentric spheres supporting death and murder. In the inner circle are the terrorists themselves. The money funds their travel, explosives, hideouts and permanent search for soft vulnerable targets. They are surrounded by a second wider circle of direct supporters, planners, commanders, preachers, all of whom make a living, usually a very comfortable living, by serving as terror infrastructure. Finally, we find the third circle of so-called religious, educational and welfare organizations, which actually do some good, feed the hungry and provide some schooling, but brainwash a new generation with hatred, lies and ignorance. This circle operates mostly through mosques, madrasas and other religious establishments but also through inciting electronic and printed media. It is this circle that makes sure that women remain inferior, that democracy is unthinkable and that exposure to the outside world is minimal. It is also that circle that leads the way in blaming everybody outside the Moslem world, for the miseries of the region.

Figuratively speaking, this outer circle is the guardian, which makes sure that the people look and listen inwards to the inner circle of terror and incitement, rather than to the world outside. Some parts of this same outer circle actually operate as a result of fear from, or blackmail by, the inner circles. The horrifying added factor is the high birth rate. Half of the population of the Arab world is under the age of 20, the most receptive age to incitement, guaranteeing two more generations of blind hatred.

Of the three circles described above, the inner circles are primarily financed by terrorist states like Iran and Syria, until recently also by Iraq and Libya and earlier also by some of the Communist regimes. These states, as well as the Palestinian Authority, are the safe havens of the wholesale murder vendors. The outer circle is largely financed by Saudi Arabia, but also by donations from certain Moslem communities in the United States and Europe and, to a smaller extent, by donations of European Governments to various NGO's and by certain United Nations organizations, whose goals may be noble, but they are infested and exploited by agents of the outer circle. The Saudi regime, of course, will be the next victim of major terror, when the inner circle will explode into the outer circle. The Saudis are beginning to understand it, but they fight the inner circles, while still financing the infrastructure at the outer circle.

Some of the leaders of these various circles live very comfortably on their loot. You meet their children in the best private schools in Europe, not in the training camps of suicide murderers. The Jihad "soldiers" join packaged death tours to Iraq and other hotspots, while some of their leaders ski in Switzerland. Mrs. Arafat, who lives in Paris with her daughter, receives tens of thousands dollars per month from the allegedly bankrupt Palestinian Authority while a typical local ringleader of the Al-Aksa brigade, reporting to Arafat, receives only a cash payment of a couple of hundred dollars, for performing murders at the retail level.

The fourth element of the current world conflict is the total breaking of all laws. The civilized world believes in democracy, the rule of law, including international law, human rights, free speech and free press, among other liberties. There are naive old-fashioned habits such as respecting religious sites and symbols, not using ambulances and hospitals for acts of war, avoiding the mutilation of dead bodies and not using children as human shields or human bombs. Never in history, not even in the Nazi period, was there such total disregard of all of the above as we observe now. Every student of political science debates how you prevent an anti-democratic force from winning a democratic election and abolishing democracy. Other aspects of a civilized society must also have limitations. Can a policeman open fire on someone trying to kill him? Can a government listen to phone conversations of terrorists and drug dealers? Does free speech protect you when you shout "fire" in a crowded theater? Should there be death penalty, for deliberate multiple murders? These are the old-fashioned dilemmas. But now we have an entire new set.

Do you raid a mosque, which serves as a terrorist ammunition storage? Do you return fire, if you are attacked from a hospital? Do you storm a church taken over by terrorists who took the priests hostages? Do you search every ambulance after a few suicide murderers use ambulances to reach their targets? Do you strip every woman because one pretended to be pregnant and carried a suicide bomb on her belly? Do you shoot back at someone trying to kill you, standing deliberately behind a group of children? Do you raid terrorist headquarters, hidden in a mental hospital? Do you shoot an arch-murderer who deliberately moves from one location to another, always surrounded by children? All of these happen daily in Iraq and in the Palestinian areas. What do you do? Well, you do not want to face the dilemma. But it cannot be avoided.

Suppose, for the sake of discussion, that someone would openly stay in a wellknown address in Teheran, hosted by the Iranian Government and financed by it, executing one atrocity after another in Spain or in France, killing hundreds of innocent people, accepting responsibility for the crimes, promising in public TV interviews to do more of the same, while the Government of Iran issues public condemnations of his acts but continues to host him, invite him to official functions and treat him as a great dignitary. I leave it to you as homework to figure out what Spain or France would have done, in such a situation.

The problem is that the civilized world is still having illusions about the rule of law in a totally lawless environment. It is trying to play ice hockey by sending a ballerina ice-skater into the rink or to knock out a heavyweight boxer by a chess player. In the same way that no country has a law against cannibals eating its prime minister, because such an act is unthinkable, international law does not address killers shooting from hospitals, mosques and ambulances, while being protected by their Government or society. International law does not know how to handle someone who sends children to throw stones, stands behind them and shoots with immunity and cannot be arrested because he is sheltered by a Government. International law does not know how to deal with a leader of murderers who is royally and comfortably hosted by a country, which pretends to condemn his acts or just claims to be too weak to arrest him. The amazing thing is that all of these crooks demand protection under international law and define all those who attack them as war criminals, with some Western media repeating the allegations.

The good news is that all of this is temporary, because the evolution of international law has always adapted itself to reality. The punishment for suicide murder should be death or arrest before the murder, not during and not after. After every world war, the rules of international law have changed and the same will happen after the present one. But during the twilight zone, a lot of harm can be done.

The picture I described here is not pretty. What can we do about it? In the short run, only fight and win. In the long run—only educate the next generation and open it to the world. The inner circles can and must be destroyed by force. The outer circle cannot be eliminated by force. Here we need financial starvation of the organizing elite, more power to women, more education, counter propaganda, boycott whenever feasible and access to Western media, internet and the international scene. Above all, we need a total absolute unity and determination of the civilized world against all three circles of evil.

Allow me, for a moment, to depart from my alleged role as a taxi driver and return to science. When you have a malignant tumor, you may remove the tumor itself surgically. You may also starve it by preventing new blood from reaching it from other parts of the body, thereby preventing new "supplies" from expanding the tumor. If you want to be sure, it is best to do both.

But before you fight and win, by force or otherwise, you have to realize that you are in a war, and this may take Europe a few more years. In order to win, it is necessary to first eliminate the terrorist regimes, so that no Government in the world will serve as a safe haven for these people. I do not want to comment here on whether the American-led attack on Iraq was justified from the point of view of weapons of mass destruction or any other pre-war argument, but I can look at the post-war map of Western Asia. Now that Afghanistan, Iraq and Libya are out, two and a half terrorist states remain: Iran, Syria and Lebanon, the latter being a Syrian colony. Perhaps Sudan should be added to the list. As a result of the conquest of Afghanistan and Iraq, both Iran and Syria are now totally surrounded by territories unfriendly to them. Iran is encircled by Afghanistan, by the Gulf States, Iraq and the Moslem republics of the former Soviet Union. Syria is surrounded by Turkey, Iraq, Jordan and Israel. This is a significant strategic change and it applies strong pressure on the terrorist countries. It is not surprising that Iran is so active in trying to incite a Shiite uprising in Iraq. I do not know if the American plan was actually to encircle both Iran and Syria, but that is the resulting situation.

In my humble opinion, the number one danger to the world today is Iran and its regime. It definitely has ambitions to rule vast areas and to expand in all directions. It has an ideology, which claims supremacy over Western culture. It is ruthless. It has proven that it can execute elaborate terrorist acts without leaving too many traces, using Iranian Embassies. It is clearly trying to develop Nuclear Weapons. Its so-called moderates and conservatives play their own virtuous version of the "good-cop versus bad-cop" game. Iran sponsors Syrian terrorism, it is certainly behind much of the action in Iraq, it is fully funding the Hizbulla and, through it, the Palestinian Hamas and Islamic Jihad, it performed acts of terror at least in Europe and in South America and probably also in Uzbekistan and Saudi Arabia and it truly leads a multi-national terror consortium, which includes, as minor players, Syria, Lebanon and certain Shiite elements in Iraq. Nevertheless, most European

countries still trade with Iran, try to appease it and refuse to read the clear signals.

In order to win the war it is also necessary to dry the financial resources of the terror conglomerate. It is pointless to try to understand the subtle differences between the Sunni terror of Al Qaida and Hamas and the Shiite terror of Hizbulla, Sadr and other Iranian inspired enterprises. When it serves their business needs, all of them collaborate beautifully.

It is crucial to stop Saudi and other financial support of the outer circle, which is the fertile breeding ground of terror. It is important to monitor all donations from the Western World to Islamic organizations, to monitor the finances of international relief organizations and to react with forceful economic measures to any small sign of financial aid to any of the three circles of terrorism. It is also important to act decisively against the campaign of lies and fabrications and to monitor those Western media who collaborate with it out of naivety, financial interests or ignorance.

Above all, never surrender to terror. No one will ever know whether the recent elections in Spain would have yielded a different result, if not for the train bombings a few days earlier. But it really does not matter. What matters is that the terrorists believe that they caused the result and that they won by driving Spain out of Iraq. The Spanish story will surely end up being extremely costly to other European countries, including France, who is now expelling inciting preachers and forbidding veils and including others who sent troops to Iraq. In the long run, Spain itself will pay even more.

Is the solution a democratic Arab world? If by democracy we mean free elections but also free press, free speech, a functioning judicial system, civil liberties, equality to women, free international travel, exposure to international media and ideas, laws against racial incitement and against defamation, and avoidance of lawless behavior regarding hospitals, places of worship and children, then yes, democracy is the solution. If democracy is just free elections, it is likely that the most fanatic regime will be elected, the one whose incitement and fabrications are the most inflammatory. We have seen it already in Algeria and, to a certain extent, in Turkey. It will happen again, if the ground is not prepared very carefully. On the other hand, a certain transition democracy, as in Jordan, may be a better temporary solution, paving the way for the real thing, perhaps in the same way that an immediate sudden democracy did not work in Russia and would not have worked in China.

I have no doubt that the civilized world will prevail. But the longer it takes us to understand the new landscape of this war, the more costly and painful the victory will be. Europe, more than any other region, is the key. Its understandable recoil from wars, following the horrors of World War II, may cost thousands of additional innocent lives, before the tide will turn.

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

The PRESIDING OFFICER (Ms. COLLINS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

MESSAGE TO THE AMERICAN PEOPLE

Mr. LAUTENBERG. Madam President, I, like millions of Americans, see

what is happening on television, listen to what is happening on radio, and hear campaign commercials that are being submitted on a fairly regular basis. I listen to them and wonder, what is the message to our country? What is being said? What is the message we want to give to the American people? What do we want to tell them about our concern for their needs? Do we want to talk about lower prices for prescription drugs? Do we want to talk about educating our children? Do we want to talk about health care generally? Do we want to talk about bringing the troops home? Do we say enough is enough?

When we look at the record and see what is happening, the killing continues in Iraq. Since we have gone over to an Iraqi interim government, the rate of death has not diminished from the time before we turned this government over to the Iraqi interim government.

Today, we heard news of a terrible explosion that killed a bunch of Iraqis and injured American soldiers. The toll continues to mount. I believe the American people are concerned about that. I hear it from parents who say: My son's term has been extended. He thought he would be home by now. Now he has to serve 3 more months. Or, my daughter has to stay there far longer than she expected. Not only are they emotionally torn apart, not only are there family problems from the absence of dad or the absence of mom from the household, but financially it is a disaster.

I have tried to get an amendment. I tried to put it on the Defense appropriations bill, but I couldn't get the amendment attached. They said no, we don't want to give \$2,000 a month more for these people for the 3 months more they have to serve; \$6,000 total cost; maybe \$150 million out of a budget of \$400 billion, and we couldn't get an ear to listen to it here. We couldn't get the majority to pay attention.

The job market is not robust. We are still at a loss for the number of jobs we have available since this administration took over. When do we put these people to work? When do we stop shipping jobs abroad? When do we deal with the problems that concern everyday citizens? When do we deal with the cost of gasoline, which is up 50 percent almost in the last year?

What we hear in response to those problems are campaign commercials—\$8 million of them in recent weeks. We hear that JOHN KERRY has missed two-thirds of the votes that have been taken here in the U.S. Senate. We do not hear anybody saying JOHN KERRY served bravely in Vietnam when he disagreed with the policy of his country, but he felt loyal enough and obliged enough and went ahead and got wounded three times. He got three Purple Hearts. I served in the Army 3 years. I didn't earn one, but I know what a Purple Heart means in recognition of bravery; a Silver Star, very high-ranking

medal; a Bronze Star, an important recognition of bravery on the battlefield. And we want to hear talk about how he has missed these votes.

Yes, I am a Member of the Senate and am proud of it. I am proud of my voting record. But I am also proud of the contribution JOHN KERRY is trying to make to this country.

We ought to talk about comparing service to country, President Bush's service and Senator JOHN KERRY's service. Compare the two. Start with Vietnam. See what happened there, when President Bush had an opportunity to avoid regular service by going to the Air Guard, which he didn't really do anything with. But to criticize Senator JOHN KERRY for his contribution to our country by pointing out the fact that he has missed a bunch of votes, that he found time to vote against the Laci Peterson amendment which was offered here, and that he missed other votes—talk about the platforms of these two, talk about what JOHN KERRY is saying we have to do about jobs, about getting a coalition to help us deal with Iraq to try to strengthen our resources there.

President Bush's decision, along with his Cabinet, the Secretary of Defense, and the Vice President, was that General Shinseki was all wrong when he said we have to have 300,000 people in Iraq. They fired him. They got rid of him. They don't want to hear dissent and difference. They don't want to hear it. They don't want the public to hear what JOHN KERRY has done for his country. No. They want to hear that he missed votes. It is too bad that he missed votes, but he is on a larger mission. He wants a change in the direction of this country. He is not here at times when he is out there delivering messages to which people respond.

Just look at the gatherings. We see people for Senator KERRY and Senator EDWARDS. They are thirsty for information that affects their everyday lives. They do not sit around the dinner table talking about how much time we are spending—not enough time, they might say—on gay marriage and a constitutional amendment. I don't think Mr. and Mrs. Working American are sitting around their table praying for the moment that an amendment to the Constitution will be put in place where we can challenge the rights of a particular group of people when we haven't gotten our appropriations bills in place; we haven't voted on moving homeland security resources along not funding these things. No, but we can spend days here.

By the way, we may have set a record for quorum calls. We have spent a lot of time with two lights on. That should tell the American people that there is nothing going on in here. We have had one vote this week, and the prospects for another vote are not very bright. What an exhausting schedule, two, three votes, possibly five votes in a week. Come on.

Please, Mr. President, clear your message, talk about the things the

American people are concerned about. Talk about how we get our kids home from Iraq, talk about how we get our former allies into the mix so they can help share the burden. That is what we want to hear.

We do not want to hear only critical comments about JOHN KERRY because then you force us to compare the two records. If I were President Bush, I would hide from the record. If they want to compare President Bush's record to Senator JOHN KERRY's record of service to country, we would have quite a revelation for the people in this country.

Spending millions on commercials to denigrate Senator JOHN KERRY, a war hero, a volunteer, who went to Vietnam—go there, do your duty, pull a guy out of the water whose life may be hanging in the balance, under gunfire. Pull this man out of the water.

I have campaigned with one of his former swift boat colleagues. If you heard the praise that he gave to LTG JOHN KERRY for his leadership. But we do not want to talk about that. We want to try to subdue it with sneering commentaries about how he missed a vote and flip-flopped.

I wish President Bush would look at some of the decisions he made and flip them. One of them I tried to pass was to have flag-draped coffins, the respect that they earn. People who gave their lives on behalf of the country's mission, when they come back to Dover, DE, where the coffins are deposited, and we say no, the media cannot show those coffins because that would alert people to the penalties of war, to the punishment that families endure. We do not want that. Hide it from the public. Don't let them understand what the cost of war is.

They criticize Senator JOHN KERRY, loyal American, who served his duty, served it well, served it here. Look at his voting record before he ran for President of the United States. Look at the President's tours for fundraising and political gatherings. He goes on Air Force One and the only cost—and this 747 is a beautiful airplane; most of America has seen it—all that has to be paid is the cost of the first-class transportation on a commercial airliner. Take this huge airplane, lift it into the sky and say: Well, we will reimburse it because we used it for fundraising or for political campaigns.

Mr. President, change your tune. Let's hear your view on what America has to have to satisfy the needs of our constituents. Please, you have gone too far with this character abuse, with this character assassination. You have gone too far.

Look at the American people. Look them in the eye and say, yes, I, President George Bush, approve of this message, and give a positive message about when drug prices are coming down, about how we will fund Head Start for 300,000 children who will now be dropped, or other programs that are talked about but not funded. Please,

Mr. President, speak up on behalf of the people in America so we can build strength, so we can have some harmony and not the divisive attitude we find prevailing.

It is not fair to the American people. When we deny a hero's recognition, we do something far worse. It was done in the State of Georgia in a senatorial election recently. A fellow named Max Cleland, with whom we served, and whom we all felt very close to, lost three limbs in Vietnam. They managed to paint him in a somewhat cowardly fashion, that he was soft on defense. One arm missing, half of one arm missing, two legs missing. It takes him 2 hours to get out of bed in the morning, and they made him look like he was soft on defense. What a disgrace. The American people have to look at that.

And now the game is to denigrate JOHN KERRY's record to make him look as if he is just absent and not doing anything worthwhile. He and Senator EDWARDS are trying to put this country on the right path. The voters will decide, by the way. But we ought to let the record be out there so that everybody knows what each of the parties is doing.

Enough, Mr. President. Please change the tone of your commercials. It is not fair to have an airplane in the sky saying: Senator JOHN KERRY, if he had his choice, would have voted against the interests of the troops. It is a foul lie, that is what it is, not true at all. If a vote was made, it was made in the context of an entire amendment. It was not made simply to take money away from our serving troops. President Bush knows that.

I wish he would change his tone. It does not ring properly for the President. It does not become the President of the United States to be looking at Senator JOHN KERRY's record and make jokes about his attendance, about his flip-flop. No, no, no, look at the things he has done. We can all pick out the blemishes of the other, but that is no way to run a country. That is the way to run a schoolyard fight. It does not become the President of the United States.

I yield the floor, but I hope President Bush will change his tone.

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

IN MEMORY OF CAREY LACKMAN SLEASE

Mr. SPECTER. Mr. President, I have sought recognition to inform the Senate family of the passing of Carey Anne Lackman Slease, my chief of staff, who passed this morning at 5:30 a.m.

During the course of the day, my office staff and I have been deluged with expressions of sympathy showing the very high regard and high esteem that she was held in by our Senate family.

She was afflicted with the terrible problem of breast cancer. She had a long, lingering illness. She received the very best of modern day medicine with the assistance of the National Institutes of Health. My deputy, Bettilou

Taylor, who handles the Subcommittee on Labor, Health, Human Services and Education, has had extensive contact with the National Institutes of Health. When I saw Carey last night, less than 24 hours ago, she had expressed her gratitude for the kind of care which she had received.

She said, in her own words, she had a good run and she was understanding and at peace with herself as she knew her imminent fate.

She had left the hospital shortly after being married to her sweetheart, Clyde Slease, III, on Saturday. We have a beautiful set of wedding photographs, a clear remembrance of her from just a few days ago. And she came home, setting up a hospice, in effect, in her home.

As I say, when I saw her yesterday, she was reconciled and at peace with herself, and considering the circumstances, as composed and as brave and as resolute as any human being could be. She said she was advised that it was a matter of a few days or a week or two. She was taken this morning, as I say, at 5:30.

Her life was really the U.S. Senate. She graduated from Radford University. She was the oldest daughter of a retired colonel, William F. Lackman. She is survived by three sisters and three brothers—a large family of seven children—and her mother.

She came to the Senate family at the age of 24, and she spent most of the remaining half of her life in the Senate, dying at the age of 48. She was a legislative assistant to Senator John Heinz from 1979 to 1985. She then founded her own firm in Los Angeles for a period of 6 years. She then came back to work for me in the early 1990s. Except for a very short stint, again, with her own firm in biotech in the public sector, she was on my staff, coming back to work for me some 2½ years ago in December 2001, when called to active duty.

She did an extraordinary job for me. She was beautiful in many ways: a statuesque blonde, an amiable personality. She worked well with her colleagues. She worked well with the young staff. She was a mentor. She was very accomplished, brilliant, studious, analytical, and handled the substantive problems of the office with aplomb, dignity, and efficiency.

She was one of the first women to be chief of staff in the U.S. Senate. She was acclaimed by PoliticsPA as one of Pennsylvania's most politically powerful women.

She had an extraordinary career, regrettably cut short by her untimely passing at the age of 48.

Funeral services will be held in Middleburg, VA, on Friday at 10 a.m., with a viewing tomorrow evening.

She has made quite an impact in many realms of her professional pursuits, but really most of all in the U.S. Senate, where she had made so many friends and was held in such very high regard, really beloved by the Senate family.

So it is a sad occasion for the entire Senate family, but most of all for her colleagues in my office and for me to note her passing at the very tender age of 48.

Senator SANTORUM was in the chamber and wanted to speak but could not wait until the other speakers had concluded.

I thank the Chair and, in the absence of any Senator seeking recognition, 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. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS CONSENT AGREEMENT—H.R. 4520

Mr. FRIST. Mr. President, in a few moments I will be propounding a unanimous consent request that we can comment on afterwards. It reflects a number of negotiations and back and forth between both sides of the aisle that have gone on for several weeks, but aggressively and intensively over the last 8 to 9 hours.

I ask unanimous consent that on Thursday, July 15, immediately following morning business, the pending motion to proceed be withdrawn and the majority leader or his designee be recognized in order to move to proceed to Calendar No. 591, H.R. 4520; provided further that the motion be agreed to and that Chairman GRASSLEY then be immediately recognized in order to offer S. 1637, as passed by the Senate, as a substitute amendment; provided further that Senator DEWINE be recognized in order to offer a DeWine-Kennedy first-degree amendment relating to the FDA and tobacco; further, that no other amendments be in order to the bill and that there be 3 hours for debate equally divided in the usual form; I further ask consent that following the debate, the Senate proceed to a vote in relation to the amendment at a time determined by the majority leader after consultation with the Democratic leader and that immediately following the disposition of that amendment, the substitute be agreed to, the bill then be read a third time, and the Senate proceed to a vote on passage of the bill with no intervening action or debate; I further ask consent that the Senate then insist on its amendment, request a conference with the House, and the Chair then be authorized to appoint conferees on the part of the Senate with a ratio of 12 to 11.

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

Mr. FRIST. Mr. President, what this means is we will be proceeding to conference on the FSC/ETI JOBS bill, a bill that overwhelmingly passed the

Senate and passed the House of Representatives and that prior to proceeding to conference, we will have a vote tomorrow on a combined bill that has to do with the FDA and a tobacco buyout. That vote will follow up to 3 hours tomorrow. The vote will likely be tomorrow afternoon, although we will be debating the issue in the morning.

I am pleased. We all know that the FSC/ETI JOBS bill is a very important bill for the United States, for jobs and jobs creation. There is a certain time limit involved. In fact, every month that we wait, the Euro tax goes up 1 percent every month; it is 9 percent now. It is time to take this to conference and pass this bill.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I am pleased to join with the majority leader in announcing this agreement tonight. This has not been easy for anybody involved in these discussions. We are now prepared to proceed with, I think, a very good understanding about how we as Members of the Senate will present ourselves in the conference. I am very confident that we can reach a successful conclusion.

Mr. FRIST. I want to discuss with the Democratic Leader an approach that might enable us to move forward to conference on the JOBS bill, S. 1637. The Senate JOBS bill reflects overwhelming bipartisan support, passing by a margin of 92-5. Much work remains to be done on this bill and it is important we start as soon as possible.

There are significant differences with the House bill, so this is likely going to be a challenging process. I want to make sure that all Senators know that it is unrealistic to expect that the House will agree with all our provisions and that we will likely have to make changes to S. 1637.

But as we make those changes, we should make them together. The JOBS bill we passed was a model of bipartisan cooperation that was marked by good faith on both sides. And that is the essence of the agreement I am proposing—a commitment from both sides that they will work in good faith in the conference to get the best possible result. I have spoken to Senator GRASSLEY and he has agreed that he will not pursue a conclusion to the conference—nor sign any conference report—that would alter the text of S. 1637 in a way that undermines the broad bipartisan consensus S. 1637 achieved on final passage.

Mr. DASCHLE. I thank the Majority Leader for his leadership. I have discussed this with my colleagues and can commit wholeheartedly to the good faith process you have proposed. Our side understands that changes will have to be made to S. 1637; but, as they are made, these changes will be the result of the mutual agreement of the lead Senate conferees, as well as the Majority Leader and the Democratic Leader, acting in good faith.

By moving S. 1637 through the Senate, Senators GRASSLEY and BAUCUS have already demonstrated that they can make that process work. If the process should break down due to disagreements over either corporate tax policy or extraneous provisions, then we understand that such a conference report will not be brought to the floor.

Mr. FRIST. That is correct, so long as the Democratic conferees are acting in good faith. And I have every expectation they will. I agree that it is our mutual goal to reach a conference agreement that reflects the balance and broad bipartisan consensus S. 1637 achieved. That will be the test of good faith for both sides. I think we can do that, and we will not bring a bill to the Senate floor if it does not reflect that commitment. I want to thank the Democratic Leader for his leadership and willingness to address this process.

Mr. DASCHLE. Mr. President, I appreciate the majority leader's work in reaching the agreement and the good faith that I believe we need to demonstrate on a bipartisan basis to move forward. This accommodates the concerns on both sides. We have made some real progress. We have a lot of work to do. There are a lot of differences with the House. But I am confident that Democrats and Republicans are now in a position to work very closely together to come up with the best result.

There are no predetermined conclusions as to what the result may be, but we do this with a full appreciation of the need to work together to accomplish what is clearly a real opportunity to move forward on a jobs bill, on legislation that I believe is a must-pass piece of legislation prior to the time we adjourn for the year.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, I congratulate the majority leader and the Democratic leader for what I think is an excellent agreement made in good faith. It gives us a chance to pass one of the most important pieces of legislation that Congress will consider in the second session of the 108th Congress.

It has not been easy getting to this point. I wanted to say, particularly on behalf of those of us who represent States in which tobacco farmers are slowly having their assets stripped from them, that this agreement gives the buyout a chance. It doesn't guarantee an outcome, but it certainly gives the buyout a chance to be considered in conference. Getting to conference on this bill is a significant move in the right direction from the point of view of those of us who represent tobacco growers.

I thank the leaders for what I think is an excellent agreement to move this

into conference and have a chance to pass a very important bill.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

MAKING A DIFFERENCE: DR. FRED CHOLICK

Mr. DASCHLE. Mr. President, more than 7,000 students and thousands of South Dakota farm and ranch families have been impacted through the leadership of one man: Dr. Fred Cholick.

Dr. Cholick has served South Dakota's No. 1 industry of agriculture for nearly a quarter of a century. He has been a teacher, a mentor and an advocate for expanded research. For the past 6 years, he has served as Dean of the College of Agriculture and Biological Sciences at South Dakota State University, a land grant university and South Dakota's largest educational institution.

He has earned a strong reputation nationally. Through his work, he caught the attention of Kansas State University, where he will become Dean of the College of Agriculture in Manhattan. It is a loss for my home state of South Dakota, but an incredible professional opportunity for Dr. Cholick.

When Dr. Cholick became Dean of the College of Agriculture and Biological Sciences in 1998, he instilled a motto for the college: "Making a Difference." It was a bold statement that faculty embraced and, to those students who arrived on campus, it signaled the high expectations of the University and Dr. Cholick.

Dr. Cholick is an academic, but he has never been confined to a classroom or laboratory. He has traveled extensively throughout our expansive state, engaging in a constructive dialogue with farmers, ranchers and agribusiness men and women. He understands that adapting to the changes in agriculture—brought about by a global economy, breakthroughs in technology and other factors—should be a collaborative effort.

While Dr. Cholick is a forceful spokesperson for agriculture, he is an equally good listener, taking in people's ideas and insights in a patient, thoughtful manner.

As a young professor and researcher from Oregon State University and Colorado State University, Dr. Cholick made a difference for South Dakota's

farmers with his work on spring wheat varieties that can withstand the harsh weather of the Great Plains. He continued that commitment when he headed up the Plant Science Department, continually working to improve seed genetics to create more efficient and effective corn and soybean varieties.

South Dakota State University has been enriched by Dr. Cholick's service for 23 years. Beginning next month, he will continue his good work at Kansas State University.

I ask my colleagues to join me in saluting Dr. Cholick for his distinguished career and commitment to our Nation's land grant institutions.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On September 30, 2003, in San Pablo, CA, Police Officers found a transgender hair stylist named Sindy Cuarda wearing a blouse and pants, bleeding heavily from several gunshot wounds in the driveway of a business in San Pablo. She was shot in the chest and genitals. Though police have not commented on the case, witnesses have said that it was motivated out of hate.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ENSURING AMERICA'S COMPETITIVENESS

Mr. BINGAMAN. Mr. President, I have come to this floor several times in the last few months to discuss our country's future competitiveness in the global marketplace, which I consider to be a very serious subject. As a first step in tackling the challenges we are now facing, yesterday I introduced three bills that I feel will move us in the right direction. They will ensure a strong workforce that can handle the ever-changing world around it, and create more high tech job opportunities for this workforce by encouraging the development of science parks.

We have, as a nation, a significant negative trend to reverse. The United

States currently ranks fifteenth in the percentage of 18-to-24-year-olds who earn science and engineering degrees in their respective countries. This places us behind Taiwan and South Korea, Ireland and Italy among others. Less than thirty years ago, in 1975, the United States ranked third in the world in this respect. According to a new National Science Foundation report entitled "An Emerging and Critical Problem of the Science and Engineering Labor Force", the average age of the science and engineering workforce is rising, and the children of the baby boom generation are not choosing these careers in the same numbers as their parents. The number of science and engineering doctoral degrees awarded to U.S. citizens dropped by 7 percent from 1998 to 2001, while the number of jobs requiring science and engineering skills in the U.S. labor force is growing almost 5 percent per year. In a recent survey, the National Association of Manufacturers found that more than 80 percent of manufacturers report a shortage of qualified job candidates. Equally troubling, it is estimated that as many as 3.3 million jobs may be sent overseas in the next 15 years, causing American workers to lose \$136 billion in wages.

A recent trip to Taiwan brought to my attention some of these emerging opportunities in other countries, and specifically the major benefits of a science park. Initially developed by the Taiwanese government in the early 1980s, the Hsinchu Science Park meets many of the needs of growing high tech companies, which include access to a trained work force, financing, secondary supply chain companies, and quality of life services such as schools, roads and parks. Two companies spun out from this park now control 40 percent of the world's market for chip fabrication. And China is now adopting a similar model.

What we need to take from countries like Taiwan is the role the government has to foster continued growth in key industries by supporting the necessary infrastructure, such as the science parks. It should also be pointed out that that support is not forever. While Taiwan had a very active role in chip R&D in the 70's and 80's, that is not true today. Industry, not the government, funds over 94 percent of chip R&D.

In my own State of New Mexico, the 6-year-old Sandia Science and Technology Park has already demonstrated some of the benefits of this unique model. The Sandia park now has 19 entities employing almost 1,000 people. The average annual salary is \$55,000—well above the Albuquerque average. Since the Park's inception, more than \$17 million in cooperative research and development agreements and licensing agreements have been made between Sandia National Laboratory and park tenants. In addition, Sandia has awarded more than \$50 million in procurement contracts to park tenants. Both

Sandia National Laboratory and the companies in the park have benefited immensely from the advantages of this business environment.

With the new challenges we are facing as a competitor in the international marketplace, here are four things we can do to improve our Nation's position.

First, we have to improve our high tech workforce. We need to increase the numbers of workers educated for employment in high technology industries, align the technical and vocational programs of educational institutions with the workforce needs of high growth industries, offer individuals expanded opportunities for rapid training and re-training needed to keep and change jobs in a volatile economy, and provide U.S. companies with adequate numbers of skilled technical workers. This is why I am introducing the Workforce Investment in Next Generation Technologies—WING—Act today.

Drawing from the already very successful Advanced Technology Education Program at the National Science Foundation, the legislation will establish a consultation partnership between the National Science Foundation, the Department of Labor, and the Department of Education that creates flexible high-tech, high-wage career ladders. It would do this by funding cooperative partnerships between one-stop centers, business, community colleges, universities, and vocational programs at the local and regional level. These would be directed toward creating technology-based certification programs that would solidify common skill standards for industry. Schools would create a curriculum based on current industry needs, and individuals who leave the program would have a skill-set recognized by industry. Significantly, they could be used anywhere across the country.

Over time, because individuals would be able to incrementally increase their skill set through additional training, they would be able to pursue higher level degrees in science and technology and obtain progressively higher-wage employment. Furthermore, by linking the public and private sector in a collaborative effort for high-technology workforce training, it will encourage the sharing of information and ideas, increase cooperation between entities frequently having a reputation for not working together, and enhance cluster-driven economic growth across the country. In my state of New Mexico, for example, you could easily envision a cluster being developed around key critical technologies for the future such as high temperature superconductors or next-generation lighting.

Second, we need to ensure that individuals typically trapped in low-wage jobs have a tangible chance to step onto career ladders to something better. To this end I previously introduced the Limited English Proficiency and Integrated Workforce Training Act, S. 1690. This legislation establishes a pro-

gram under the Workforce Investment Act administered jointly by Departments of Labor and Education focused on preparing and placing individuals with limited English proficiency in growing industries with tangible high wage career paths. It is also designed to bypass lengthy prerequisites to entry into the workforce and allow individuals with limited proficiency to integrate occupational and English language training. Significantly, it recognizes that immigrants constitute close to 50 percent of the growth in the civilian workforce in the last decade and that these individuals can make a significant contribution to U.S. economic competitiveness.

In combination, these bills will bring together workforce training and economic development to enhance opportunities for growth in communities around the country. Similar language was already accepted in the Workforce Investment Act legislation that passed the Senate.

Focusing on high-school to postsecondary education, an important third component to meeting the demands of a competitive, 21st century workforce is the bill I am introducing today, the Preparing Students for a High-Tech World Act.

Strong career and technical education programs are vital to addressing our shortage of highly-skilled workers and to preserving these jobs for Americans. These programs offer effective and proven links to positive educational and employment outcomes for students, including increased school attendance, reduced high school dropout rates, higher grades, increased entry into postsecondary education, and greater access to high-tech careers.

In my home State of New Mexico, we have benefited greatly from federal support for career and technical education programs, which involve over 3,000 secondary and postsecondary teachers. These programs have a distinguished record of preparing young people and adults for further education and careers. For instance, in Gadsden, we have an innovative program in a rural border area that has been struggling to keep its jobs and its industry alive. The Gadsden program has directly linked the needs of area employers to the high school and postsecondary curriculum. The employers get a customized workforce, and have more incentive to stay and grow their business in the region. The students get preferred hiring status, as well as opportunities to enhance their skills and obtain certificates as they work.

We also have an outstanding career and technical education program in Rio Rancho that was established through a unique community-business partnership with Intel Corporation. Rio Rancho High School offers a rigorous, integrated career and technical education program that was featured in *Time* magazine as one of the 10 most innovative career and technical schools in the nation.

The Preparing Students for a High-Tech World Act will extend the opportunity to benefit from exemplary programs like Rio Rancho to our nation's students by increasing the academic rigor and integration of career and technical education programs; developing pathways to postsecondary education and high-skill, high-wage careers; forging alliances among secondary schools, postsecondary institutions, and business and industry designed to address local and regional workforce needs; ensuring that teachers have the knowledge and skills to teach effectively in career and technical education programs; and encouraging the establishment of small, personalized, career-themed learning communities.

These three bills will ensure that we develop the skilled workforce that is essential to building a strong and dynamic economy and to maintaining our country's ability to compete in a global marketplace. This legislation would have substantial spill-over benefits for the communities that adopted these strategies. It would improve science and technology education at the schools in the area. It would increase the employment opportunities for the students that participated in these programs. It would establish more cooperative linkages between the business, schools, and the one-stop shops, and it would enhance economic development in the region.

Along with developing a better trained workforce, we must also create the jobs for them to fill. As I mentioned earlier, Taiwan and Sandia have done an excellent job in demonstrating the competitive advantages of a science park. Given that they act as a critical element in diffusing technology into our national industries, I think that a fourth element of our response to new S&T challenges would be for the Federal government to take a stronger and more coherent role in supporting such parks. Some science parks are locally supported by their states, while others may apply for grants from the Economic Development Administration within the Department of Commerce. These existing sources of support are helpful but it appears to me that it would make good sense to develop a more focused grant program to help jump-start the development of science parks, which is why I have introduced the Science Park Administration Act of 2004. If passed, the federal funds in this bill would be cost matched by States. A loan program to assist in land acquisition and infrastructure development for these parks would be established. And various tax incentives would be provided, including credits for employees trained locally, and adjustment of depreciation schedules for high-end equipment to reflect actual product life-cycles.

I hope that I have provided some positive steps we can take to face the increasingly competitive world we live in. Congress and the administration

need to find the will and the resolve to meet these challenges head-on. I look forward to working with my colleagues in doing so, and in helping to ensure the competitive strength of our Nation.

ESTIMATE FOR S. 894

Mr. SHELBY. Mr. President, I ask unanimous consent that the Congressional Budget Office cost estimate for S. 894, the Marine Corps 230th Anniversary Commemorative Coin Act, be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2004.

Hon. RICHARD C. SHELBY,
Chairman, Committee on Banking, Housing,
and Urban Affairs, U.S. Senate, Wash-
ington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 894, the Marine Corps 230th Anniversary Commemorative Coin Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford. Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).
Enclosure.

S. 894—*Marine Corps 230th Anniversary Commemorative Coin Act*

S. 894 would authorize the U.S. Mint to produce a \$1 silver coin in calendar year 2005 to commemorate the 230th anniversary of the United States Marine Corps. The legislation would specify a surcharge of \$10 on the sale of each coin and would designate the Marine Corps Heritage Foundation, a nonprofit entity, as the recipient of the income from the surcharge. CBO estimates that enacting S. 894 would have no significant net impact on direct spending over the 2004–2009 period.

Sales from the coins that would be authorized by S. 894 could raise as much as \$5 million in surcharges if the Mint sells the maximum number of authorized coins. However, the experience of recent commemorative coin sales suggests that receipts would be about \$3 million. Under current law, the Mint must ensure that it does not lose money producing commemorative coins before transferring any surcharges to a recipient organization. CBO expects that those receipts from such surcharges would be transferred to the heritage foundation in fiscal year 2006.

S. 894 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On March 22, 2004, CBO transmitted a cost estimate for H.R. 3277, the Marine Corps 230th Anniversary Commemorative Coin Act, as ordered reported by the House Committee on Financial Services on March 17, 2004. The two pieces of legislation are similar and our estimates of implementing each bill are the same.

The CBO staff contact for this estimate is Matthew Pickford, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COST ESTIMATE FOR S. 976

Mr. SHELBY. Mr. President, I ask unanimous consent that the Congress-

sional Budget Office cost estimate for S. 976, the Jamestown 400th Anniversary Commemorative Coin Act, be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 2004.

Hon. RICHARD C. SHELBY,
Chairman, Committee on Banking, Housing,
and Urban Affairs, U.S. Senate, Wash-
ington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 976, the Jamestown 400th Anniversary Commemorative Coin Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford. Sincerely,

ELIZABETH ROBINSON,
(For Douglas Holtz-Eakin, Director).
Enclosure.

S. 976—*Jamestown 400th Anniversary Commemorative Coin Act of 2003*

Summary: S. 976 would direct the U.S. Mint to produce a \$5 gold coin and a \$1 silver coin in calendar year 2007 to commemorate the 400th anniversary of the founding of Jamestown, Virginia. The bill would specify a surcharge on the sales price of \$35 for the gold coin and \$10 for the silver coin and would designate the Jamestown-Yorktown Foundation (an educational institution of the Commonwealth of Virginia), the National Park Service, and the Association for the Preservation of Virginia Antiquities (a private nonprofit association), as recipients of the income from those surcharges.

CBO estimates that enacting S. 976 would have no significant net impact on direct spending over the 2004–2009 period. S. 976 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), and would benefit the Commonwealth of Virginia.

Estimated cost to the Federal Government: S. 976 could raise as much as \$8.5 million in surcharges if the Mint sells the maximum number of authorized coins. Recent commemorative coin sales by the Mint suggest, however, that receipts would be about \$3 million. The legislation would require the Mint to produce the \$1 silver coin from silver available in the National Defense Stockpile. Based on information provided by the Defense Logistics Agency and the Mint, no silver is available in the stockpile. Hence, CBO estimates that receipts from only the \$5 gold coin would be about \$1.25 million.

Under current law, only two commemorative coins may be minted and issued in any calendar year and the Mint must ensure that it will not lose money on a commemorative coin program before transferring any surcharges to a designated recipient organization. CBO expects that the Mint would collect most of those surcharges in fiscal year 2007 and would transfer collections to the designated recipients in fiscal year 2008.

In addition, CBO expects that the Mint would use gold obtained from the reserves held at the Treasury to produce the gold coin. Because the budget treats the sale of gold as a means of financing governmental operations—that is, the Treasury's receipts from such sales do not affect the size of the deficit—CBO has not included such receipts in this estimate. CBO estimates that S. 976 would provide the federal government with about \$3.5 million in additional cash (in exchange for gold) for financing the federal deficit in fiscal year 2007.

Intergovernmental and private-sector impact: S. 976 contains no intergovernmental

or private-sector mandates as defined in UMR, and would benefit the Commonwealth of Virginia.

Previous CBO estimate: On March 22, 2004, CBO transmitted a cost estimate for H.R. 1914, the Jamestown 400th Anniversary Commemorative Coin Act of 2003, as ordered reported by the House Committee on Financial Services on March 17, 2004. The two pieces of legislation are similar and our cost estimates are the same; however, H.R. 1914 would not require the Mint to use silver from the National Defense Stockpile to produce the \$1 silver coin.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

NATIONAL DEFENSE AUTHORIZATION ACT FOR
FISCAL YEAR 2005

Mr. FEINGOLD. Mr. President, I supported passage of this year's defense authorization bill because it contains many provisions that our brave men and women in uniform need and deserve. But before I go into the details of why I support this legislation, I must first thank the members of the United States Armed Forces for their service to our country. They are performing admirably under difficult circumstances all over the world. Our soldiers, sailors, airmen, and Marines, along with their families, are making great sacrifices in service to our country. I am voting for this legislation to support these people who are serving the country with such courage.

I strongly support the 3.5 percent across-the-board pay raise for military personnel that this bill provides. We must make sure that our professional military is paid a fair wage. This bill also makes permanent the increase in family separation allowance and imminent danger pay, another important policy for our men and women in uniform. Once again, I was proud to support the expansion of full-time TRICARE health insurance for our National Guard and Reserve. The reserve component is being used more than at any other time since World War II. Forty percent of our troops in Iraq are reserve component troops. These citizen soldiers face additional burdens when they transition in and out of their civilian life and providing them and their families with TRICARE is one way we can ease those burdens.

Another aspect of this bill that I strongly support is the increased funding for force protection equipment. Last year, concerned Wisconsinites contacted my office telling me that they or their deployed loved ones were fighting for their country in Iraq without the equipment they needed. This situation is unconscionable. I have repeatedly pressed the Pentagon to fix this situation and I and my colleagues went a long way in addressing these shortages in the supplemental spending bill for Iraq and Afghanistan. The \$925 million for additional up-armored HUMVEES and other ballistic protection as well as the \$600 million in force

protection gear and combat clothing in this bill above what was in the President's proposed budget further ensures that our troops have the equipment they need to perform their duties on the ground.

I am pleased that the Senate approved my amendment to ensure that the Inspector General for the Coalition Provisional Authority will continue to oversee U.S. reconstruction efforts in Iraq after June 30 of this year as the Special Inspector General for Iraq Reconstruction. The American taxpayers have been asked to shoulder a tremendous burden in Iraq, and we must ensure that their dollars are spent wisely and efficiently. Today, the CPA is phasing out, but the reconstruction effort has only just begun. As of mid-May, only \$4.2 billion of the \$18.4 billion that Congress appropriated for reconstruction in November had even been obligated. With multiple agencies involved and a budget that exceeds the entire foreign operations appropriation for this fiscal year, U.S. taxpayer-funded reconstruction efforts should have a focused oversight effort. My amendment will ensure that the Inspector General's office can continue its important work even after June 30, rather than being compelled to start wrapping up and shutting down while so much remains to be done. This is good news for the reconstruction effort, and good news for American taxpayers.

I also want to thank the chairman and the ranking member of the Armed Services Committee for working with me to accept the amendment that I offered with the Senator from Maine, Ms. SNOWE, which represents a first step toward enhancing and strengthening transition services that are provided to our military personnel. This amendment will require the General Accounting Office, GAO, to undertake a comprehensive analysis of existing transition services for our military personnel that are administered by the Departments of Defense, Veterans Affairs, and Labor and to make recommendations to Congress on how these programs can be improved. This study will focus on two issues: how to achieve the uniform provision of appropriate transition services to all military personnel, and the role of post-deployment and pre-discharge health assessments as part of the larger transition program. I very much look forward to reviewing the results of this study.

The Senate version of the defense authorization bill also includes a provision finally fulfilling a goal for which I have been fighting for years—making sure that every state and territory has at least one Weapons of Mass Destruction Civil Support Team, WMD-CST. I was delighted earlier this year when Wisconsin was chosen as one of 12 States to receive a WMD-CST authorized and appropriated for in FY2004 but I was also disappointed that the President's proposed budget for FY2005 included funding for only 4 of the 11 outstanding teams. I along with 28 of my

colleagues, wrote the Senate Armed Services Committee chairman and ranking member asking them to fully fund all 11 remaining teams. The chairman and ranking member have been very supportive of my efforts in this area over the years and I thank them again this year for funding all 11 remaining WMD-CSTs.

This authorization bill addresses the grave threat our nation faces from unsecured nuclear materials. It includes \$409 million for the Cooperative Threat Reduction program and \$1.3 billion for the Department of Energy non-proliferation programs. I was also proud to cosponsor the amendment offered by Senator DOMENICI and Senator FEINSTEIN that authorizes the Department of Energy to secure the tons of fissile material scattered around the world. This bipartisan initiative aims to dramatically accelerate current efforts to secure this dangerous material so that it cannot fall into the hands of those who aim to harm us. Time is of the essence and I was pleased to hear that the administration is fully supportive of this effort through the Global Threat Reduction Initiative.

I also voted for an amendment offered by Senator REED that boosts the Army's end strength by 20,000. Mr. President I did so because it has become clear that the Army is currently overstretched, and I believe that we need to ensure readiness to handle threats in the future. A recent Brookings Institution report says that the military is being stretched so thin that if we don't expand its size, it could break the back of our all-volunteer Army. One does not have to support all of the deployment decisions that brought us to this point today to see that we need to have the capacity to handle multiple crises with sufficient manpower and strength. I do not take lightly the decision to lock in a significant increase in spending. The need is great, however, and the deliberative defense authorization process, not the emergency supplemental process, is the place to do it.

I must note that, unfortunately, this bill has many of the same problems that I've been fighting to fix for years. Once again, we are spending billions upon billions of dollars for weapons systems more suited for the Cold War than the fight against terrorism. I was very disappointed that the Senate did not agree to Senator Levin's amendment that would have used a small percentage of the over \$10 billion authorized for missile defense for critical unfunded homeland defense needs. This amendment, which I cosponsored, would have used \$515.5 million now slated for additional untested interceptors and spent it instead on the top unfunded Department of Defense homeland defense priorities, research and development programs, radiation detection equipment at seaports, and other important defenses against terrorism. Budgeting is about setting priorities and I am sad to say that when

the Senate failed to adopt Senator Levin's amendment, it missed a golden opportunity to adjust its priorities in order to face our country's most pressing threat—the threat of terrorism.

I was disappointed that the Senate failed to reduce the retirement age for those in the National Guard and Reserve from 60 to 55. Our country has placed unprecedented demands upon the Guard and Reserve since September 11, 2001, and will continue to do so for the foreseeable future. Considering the demands we are placing on them, it is time that we lower the Guard and Reserve's retirement age to the same level as civilian federal employees.

Although my support for reducing the reserve component retirement age has been unwavering, because of the significant budgetary impact of this measure I had hoped that Congress would first receive reviews of reserve compensation providing all of the information that we need to address this issue responsibly. I patiently waited for several studies on the issue, including by the Defense Department, but when the studies came out they called for further study. This matter cannot continue to languish unaddressed indefinitely. As retired U.S. Air Force Colonel Steve Strobbridge, government relations director for the Military Officers Association of America, MOAA, put it, "It is time to fish or cut bait." I agree with MOAA's analysis that, "Further delay on this important practical and emotional issue poses significant risks to long-term (Guard and Reserve) retention" and I was proud to vote for the amendment offered by the Senator from New Jersey, Mr. CORZINE.

I also believe that the Senate missed an opportunity to provide a small but needed measure of relief to military families when it failed to adopt my Military Family Leave Act amendment. This amendment would have allowed a spouse, child, or parent who already qualifies for Family and Medical Leave Act, FMLA, benefits—unpaid leave—to use those existing benefits for issues directly arising from the deployment of a family member. The Senate adopted a similar amendment by unanimous consent when I offered it to the Iraq supplemental spending bill. This amendment has the support of the Military Officers Association of America, the Enlisted Association of the National Guard of the United States, the Reserve Officers Association, the National Guard Association of the United States, the National Military Family Association, and the National Partnership for Women and Families.

I regret that a harmful second degree amendment was offered to my amendment and that I was not given the opportunity to have a straight up or down vote. Rather than taking up the Senate's time in a protracted debate about the second degree amendment, I withdrew my amendment so that this important defense authorization bill could move forward. However, the need addressed by my amendment remains

and I will continue to fight to bring some relief to military families that sacrifice so much for all of us.

I want to bring attention to another element of the Defense Authorization bill that raises concerns for me. The Defense Authorization bill includes language that raises troop caps in Colombia from 400 to 800 military personnel and from 400 civilian contractors to 600. I am disappointed that Senator BYRD's amendment was not approved by the Senate, which would have limited the increases in these caps to 500 military personnel and 500 civilian contractors. I have serious concerns about the increase in these caps to the levels established by the bill. Most importantly, I worry about placing more Americans in harm's way in Colombia. Further deployments bring greater risks to an already overstretched military. We do not want to risk being drawn further into Colombia's civil war—certainly not without a thorough debate that the American people can follow. In addition, many of my constituents and I remain concerned that by raising these caps, the U.S. devotes greater resources to the military side of the equation in Colombia without balancing our approach through greater support for democratic institutions, increasing economic development, and supporting human rights.

There are other provisions in this bill with which I disagree and the Senate rejected a number of amendments that would have made this bill better. However, on balance this legislation contains many good provisions for our men and women in uniform and their families and that is why I will vote for it.

U.S.-AUSTRALIA FREE TRADE AGREEMENT

Mr. SMITH. Mr. President, I rise today in support of an important free trade agreement that was recently signed between the United States and Australia. Earlier today, I was pleased to join an overwhelming majority of my colleagues on the Senate Finance Committee to report out this agreement favorably, and I am hopeful that within the next day, the full Senate will give its consent as well. This vote not only reaffirms our strong relationship with a close ally but marks an important step forward on our path toward economic recovery.

Since 1994, two-way trade between the United States and Australia has increased 53 percent to nearly \$29 billion. Australia purchases more goods from the United States than any other country, giving the United States a \$9 billion bilateral goods and services trade surplus. Last year alone, my homestate of Oregon exported more than \$257 million in merchandise to Australia. These exports accounted for 2.5 percent of the State total in 2003.

The elimination of trade barriers between the two countries promises to

increase these figures even more. Under the agreement, duties on almost all manufactured goods will be eliminated. This will result in first-year tariff savings of about \$300 million for U.S. manufactured goods exporters. For Western Star—a subsidiary of DaimlerChrysler—located in Portland, OR, this translates to savings of nearly \$2 million a year in eliminated tariffs and duties that currently average \$4,000 per truck exported to Australia. It is estimated that U.S.-Australia Free Trade Agreement will result in approximately \$2 billion of new U.S. exports.

This agreement will also open new doors for U.S. farmers. U.S. agricultural exports to Australia, totaling more than \$700 million last year, will receive immediate duty-free access. This means American farmers will be better poised to compete in a market of over 19 million people. Additionally, food inspection procedures that have posed barriers in the past have been addressed, and substantial safeguards have been written into the agreement to ensure a smooth and stable transition for our domestic meat and dairy industries.

As I come here today, I realize that there are those who still have reservations over the prospects of expanded trade. While the benefits of a more liberalized trade policy are vast, I know that they have not been spread evenly across all sectors. I am confident, however, that the safeguards in this agreement will ensure a stable market for domestic procedures while providing new market access and real consumer benefits. I believe this agreement is good for the United States, and I urge its passage.

REVEREND DONALD J. LONGBOTTOM

Mr. HAGEL. Mr. President, I rise today to thank Rev. Don Longbottom for accepting Senate Chaplain Barry Black's and my invitation to join us in the U.S. Senate and offer the opening prayer. I also would like to recognize his wife, Lori, who has accompanied him to Washington from Nebraska.

Reverend Longbottom is currently the Senior Minister at Countryside Community Church United Church of Christ in Omaha, NE. He ministers to more than 2,000 members of Countryside Community Church in Omaha, including my dear friends Ron and Lois Roskens and former Nebraska Congressman John Y. McCollister and his wife Nan.

In addition to his leadership in faith communities in Kansas, Ohio, and California, Reverend Longbottom continues to dedicate himself to the spiritual and community needs of many Nebraskans. He currently serves on the Board of Directors for the United Church of Christ Nebraska Conference and has taught college courses in Environmental and Business Ethics.

I again thank Reverend Longbottom for leading today's prayer for my colleagues and I in the U.S. Senate and for guiding us in reflecting upon the tremendous responsibilities we have as lawmakers.

COMMEMORATING THE 40TH ANNIVERSARY OF THE WILDERNESS ACT

Mr. FEINGOLD. Mr. President, as founder of the Senate Wilderness Caucus, I introduced a Senate resolution to commemorate the 40th anniversary of the Wilderness Act of 1964, which was signed into law on September 3, 1964, by President Lyndon B. Johnson. I thank the following colleagues for their support as cosponsors: Senator SUNUNU, Senator HAGEL, Senator DURBIN, Senator BOXER, Senator MCCAIN, Senator MURRAY, Senator LUGAR, Senator WARNER, Senator CHAFEE, Senator SNOWE, and Senator COLLINS.

The Wilderness Act became law seven years after the first wilderness bill was introduced by Senator Hubert H. Humphrey of Minnesota. The final bill, sponsored by Senator Clinton Anderson of New Mexico, passed the Senate by a vote of 73–12 on April 9, 1963, and passed the House of Representatives by a vote of 373–1 on July 30, 1964. The Wilderness Act of 1964 established a National Wilderness Preservation System “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” The law gives Congress the authority to designate wilderness areas, and directs the Federal land management agencies to review the lands under their responsibility for their wilderness potential.

Under the Wilderness Act, wilderness is defined as “an area of undeveloped federal land retaining its primeval character and influence which generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.” The creation of a national wilderness system marked an innovation in the American conservation movement—wilderness would be a place where our “management strategy” would be to leave lands essentially undeveloped.

The original Wilderness Act established 9.1 million acres of Forest Service land in 54 wilderness areas. Now, after passage of 102 pieces of legislation, the wilderness system is comprised of over 104 million acres in 625 wilderness areas, across 44 States, and administered by four Federal agencies: the Forest Service in the U.S. Department of Agriculture, and the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service in the Department of the Interior.

As we in this body know well, the passage and enactment of the Wilderness Act was a remarkable accomplishment that required steady, bipartisan commitment, institutional support,

and strong leadership. The U.S. Senate was instrumental in shaping this very important law, and this anniversary gives us the opportunity to recognize this role.

As a Senator from Wisconsin, I feel a special bond with this issue. The concept of wilderness is inextricably linked with Wisconsin. Wisconsin has produced great wilderness thinkers and leaders in the wilderness movement such as Senator Gaylord Nelson and the writer and conservationist Aldo Leopold, whose *A Sand County Almanac* helped to galvanize the environmental movement. Also notable is Sierra Club founder John Muir, whose birthday is the day before Earth Day. Wisconsin also produced Sigurd Olson, one of the founders of the Wilderness Society.

I am privileged to hold the Senate seat held by Gaylord Nelson, a man for whom I have the greatest admiration and respect. Though he is a well-known and widely respected former Senator and former two-term Governor of Wisconsin, and the founder of Earth Day, some may not be aware that he is currently devoting his time to the protection of wilderness by serving as a counselor to the Wilderness Society—an activity which is quite appropriate for someone who was also a co-sponsor, along with former Senator Proxmire, of the bill that became the Wilderness Act.

The testimony at congressional hearings and the discussion of the bill in the press of the day reveals Wisconsin's crucial role in the long and continuing American debate about our wild places, and in the development of the Wilderness Act. The names and ideas of John Muir, Sigurd Olson, and, especially, Aldo Leopold, appear time and time again in the legislative history.

Senator Clinton Anderson of New Mexico, chairman of what was then called the Committee on Interior and Insular Affairs, stated his support of the wilderness system was the direct result of discussions he had held almost 40 years before with Leopold, who was then in the Southwest with the Forest Service. It was Leopold who, while with the Forest Service, advocated the creation of a primitive area in the Gila National Forest in New Mexico in 1923. The Gila Primitive Area formally became part of the wilderness system when the Wilderness Act became law.

In a statement in favor of the Wilderness Act in the *New York Times*, then-Secretary of the Interior Stewart Udall discussed ecology and what he called “a land ethic” and referred to Leopold as the instigator of the modern wilderness movement. At a Senate hearing in 1961, David Brower of the Sierra Club went so far as to claim that “no man who reads Leopold with an open mind will ever again, with a clear conscience, be able to step up and testify against the wilderness bill.” For others, the ideas of Olson and Muir—particularly the idea that preserving wil-

derness is a way for us to better understand our country's history and the frontier experience—provided a justification for the wilderness system.

In closing, I would like to remind colleagues of the words of Aldo Leopold in his 1949 book, *A Sand County Almanac*. He said, “The outstanding scientific discovery of the twentieth century is not the television, or radio, but rather the complexity of the land organism. Only those who know the most about it can appreciate how little is known about it.” We still have much to learn, but this anniversary of the Wilderness Act reminds us how far we have come and how the commitment to public lands that the Senate and the Congress demonstrated 40 years ago continues to benefit all Americans.

COSPONSORSHIP OF S. 2603

Mr. BURNS. Mr. President, I am pleased to announce that I have signed on today as a cosponsor to S. 2603, the Junk Fax Prevention Act of 2004. This legislation is vital in preserving a valuable small business tool and empowers consumers by requiring an opt-out option on faxes.

Consumers will benefit from this act because of the provision that requires all unsolicited advertisers to provide an opt-out option on the front page of all solicitations. This notice must be clear and conspicuous, and the mechanism for opting out must be at no cost to the consumer.

The Junk Fax Prevention Act will also benefit small businesses because they will be able to continue corresponding with customers and business partners who have an established business relationship. This is especially important for businesses, like real estate companies and restaurants, which rely on faxes to do business. Faxes are beneficial because they are a low cost way to stay in touch with customers and clients. When an employee leaves a business, his or her email account is frequently shut down. Faxes allow the information to reach the new person with the correct job.

Communication is the key to successful businesses. This bill strikes the right balance between prohibiting unwanted faxes while allowing small businesses to easily stay in touch with customers.

I thank my colleague from Oregon, Senator SMITH, for sponsoring this legislation. I look forward to discussing the Junk Fax Prevention Act of 2004 in committee and urge my colleagues to adopt the necessary pro-small business and pro-consumer legislation.

THE GLOBAL FIGHT AGAINST AIDS

Mr. HARKIN. Mr. President, on July 11, the 15th Annual International AIDS Conference began in Bangkok, Thailand. The theme of this year's conference is “Access for All,” meaning access to lifesaving medications. As

many of my colleagues know, the current AIDS pandemic threatens approximately 38 million people worldwide. Last year, 5 million more became infected. Sixty percent of all cases are in sub-Saharan Africa, but the virus is spreading almost unchecked in Asia and Eastern Europe. Twenty million people world-wide have died since the first case was diagnosed in 1981.

Unfortunately, the theme of the Bangkok conference—"Access for All"—is a hope and aspiration that bears little resemblance to the harsh reality we confront today. In reality, most newly infected people will not receive anti-retroviral drugs in time to do any good.

There are many barriers to progress: developing countries lack the trained physicians, nurses, or support staff to properly distribute anti-retroviral drugs and to monitor patients' progress. In addition, contributions to the Global Fund to Fight AIDS are not sufficient. Some countries are falling far short of what is needed.

And on July 1, the Wall Street Journal reported another big reason why drug distribution has been difficult. Simply put, the United States government will not purchase effective generic drugs; it insists on brand-name pharmaceuticals. Let me give you an example of why this matters.

On April 6, The Washington Post reported on pricing agreements negotiated by the William Jefferson Clinton Foundation with pharmaceutical companies that produce generic drugs. These agreements, in cooperation with the Global Fund, the World Bank, and UNICEF, will provide access to affordable AIDS drugs in 100 developing nations around the world. As a result, as many as 3 million additional people will be tested and treated for AIDS than before.

Under negotiated pricing agreements with five generic-drug companies—four in India and one in South Africa—the Foundation will reduce the cost of fixed-dose generic AIDS drugs by as much as half. Fixed-dosage drugs combine several drugs in one pill. This makes the treatments simpler to take. Research tells us that simplified treatment programs have more successful outcomes. The cost to test and treat a patient will drop from more than \$500 per year down to \$200 per year. The drugs themselves will cost only \$140 per person, per year.

These are significant savings. And the savings have positive results. More people can be tested and treated than with existing programs. This is progress. These negotiated agreements will save lives.

In his 2003 State of the Union Address, President Bush announced a \$15 billion plan to combat HIV/AIDS worldwide. Certainly, this was an admirable initiative. Authorizing legislation passed overwhelmingly in the House and Senate.

But, the administration has taken a different approach in implementing

this plan than the Clinton Foundation has with their negotiated pricing agreements. I am concerned the \$15 billion AIDS policy the President is pursuing is not nearly as effective as these negotiated agreements. Why? Because instead of negotiating for the most effective drugs for the lowest cost, the administration purchases brand-name pharmaceuticals from western countries at twice the cost.

For example, at a hospital in Zimbabwe, the Centers for Disease Control will soon implement a program that calls for patients to take six pills per day, from a variety of brand-name manufacturers, at a cost of \$562 per patient, per year. Yet at the very same hospital, using the very same procedures, Doctors Without Borders purchases fixed-dosage retroviral drugs—two pills per day—from an Indian generic manufacturer. The treatment program costs \$244 per patient per year—\$318 less than the price the CDC pays. The programs have the same goals, at the same hospital, but the program sponsored by the U.S. Government costs more than twice as much.

This is not the most effective use of taxpayer money. The administration could use fixed-dosage, generic drugs, but won't. Instead it chooses to purchase multiple brand-name drugs, and implement a more complicated treatment regimen at more than twice the price. If the goal is to treat the AIDS epidemic, then why are we spending twice-as-much money on more complicated, less effective treatment? Where is the outrage about waste, fraud, and abuse in the Federal Government—not to mention plain old-fashioned stupidity?

Unfortunately, the answer is all too familiar. The administration has chosen to side with the brand-name pharmaceutical industry—despite the cost, and despite the efficacy. We have seen this behavior before.

This brings us back to the Clinton Foundation's negotiated agreements with generic firms. My colleagues will be interested to know the man in charge of the Bush administration's AIDS initiative is Eli Lilly's former Chief Executive Officer, Randall Tobias. Recently, Mr. Tobias told Congress he had doubts about the quality of cheaper generic AIDS drugs made in India—the same drugs which the Clinton Foundation negotiated the pricing agreements. But, the World Health Organization approved the drugs and has an approval process similar to our own Food and Drug Administration. In fact, WHO's approval process was borrowed from the FDA. In testimony before the Senate Foreign Relations Committee on April 7, Dr. LuLu Oguda of Doctors Without Borders stated that she was "bewildered by the debate" about the use of generic fixed-dosage drugs to combat AIDS in Africa. She noted that the generics used were not "substandard" as claimed by the Bush Administration. Rather, they were made in some of the same facilities as ge-

neric drugs sold every day in the United States. As a volunteer in Malawi, a country where one fifth of the population lives with HIV, she knows the value of these quality generics.

I am left to conclude that the Bush administration has made a conscious choice. Cheaper, effective drugs are put aside in order to purchase more complex treatments from domestic pharmaceutical manufacturers. Fewer HIV/AIDS patients are treated, and more inefficiently. This is no different than refusing to support negotiation authority for Medicare beneficiaries. Fewer drugs can be purchased because prices remain high.

Beyond the burden to taxpayers, these policies have grave human consequences. People's lives are at stake. Prescription drugs are not like other consumer products. They are not optional or discretionary. For people with HIV/AIDS, lack of access to drugs can mean debilitating illness and even death. It's not like buying a car—the customer can't walk away from the deal with his or her health in tact. So the choices that we make here in Washington, the choices that the pharmaceutical industry makes, are fateful choices. And let's be clear, the pricing practices favored by the administration and the pharmaceutical industry will cost countless lives in Africa and here at home.

I fully appreciate the need to preserve the pharmaceutical industry's ability to perform research and development. The Federal Government already supports this through rich tax incentives. Likewise, I certainly do not dispute the industry's right to make a profit. But we are quickly coming to the point where the pursuit of reasonable profits turns into flat out profiteering. Diseases are viewed as marketing opportunities, not as scourges to be eliminated as rapidly and as cost-effectively as possible.

There is no question in my mind that we need to reopen the issue of how we negotiate drug prices in the program to combat HIV/AIDS worldwide. If we take the Clinton Foundation's approach, we can reach roughly twice as many patients. It is also time for us to reopen the issue of negotiations with pharmaceutical companies in our own country. It is time for our choices to put people ahead of profits.

I ask unanimous consent that an article from this morning's Washington Post and a transcript of a recent radio program on the International AIDS Conference in Bangkok be printed in the RECORD.

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

[From the Washington Post, July 14, 2003]

U.S. RULE ON AIDS DRUGS CRITICIZED

(By Ellen Nakashima and David Brown)

BANGKOK, July 13.—The Bush administration's prohibition against using money from its \$15 billion global AIDS plan to buy foreign-produced generic drugs is complicating

the delivery of medicine to some of the millions of poor people who badly need it, according to AIDS experts at an international conference here.

In an effort to sidestep the policy, some countries have been using U.S. money to train AIDS clinicians and buy lab equipment, while employing money from other sources to buy the medicines.

U.S. officials at the conference said Tuesday that they would go along with such an approach. They have also said a fast-track plan announced in May would allow some of the generics to receive rapid approval from the Food and Drug Administration, which would make them eligible for U.S. funding.

Specified in the giant President's Emergency Plan for AIDS Relief, the restrictions against unapproved generics, which for now include all foreign-made generics, have added to the already long list of obstacles to bringing antiretroviral (ARV) therapy to poor countries, experts attending the 15th International AIDS Conference here say.

"It was very confusing. You're trying to figure out who can buy what with what money," said Joia Mukherjee, medical director for Partners in Health, a Boston-based organization that has run an AIDS treatment program in Haiti for seven years and is developing others in Latin America.

The policy "slows the coordination" between the Bush plan and the people running treatment programs in the countries, Mukherjee said in an interview at the conference.

The U.S. Government Accountability Office reached similar conclusions in a report issued this week.

The GAO interviewed 28 U.S. government employees involved in the plan in the 15 countries where it is starting to operate. "Twenty-one respondents indicated that they had not received adequate guidance on the procurement of ARV drugs, which makes it difficult for the U.S. missions" to support country programs.

The State Department, which runs the plan, has not specified which activities the program "can fund and support in national treatment programs that use ARV drugs not approved for purchase by the office," the authors wrote.

Partners in Health is expecting to receive at least \$1 million in fiscal 2005 from the U.S. program. Mukherjee said she first began about nine months ago to inquire about whether it could be used to buy generic drugs. She—and others—were told no several months ago. But last week, she said, she was advised unofficially to use money from another source to buy generics and use the U.S. money for such things as salaries for health care workers, lab tests and a van.

That was "a compromise that wasn't acceptable before," said a person affiliated with one of the organizations that received a large Bush administration AIDS grant last winter. "We're still in the process of working out what drugs we will buy . . . in the countries we're in," said the official, who spoke on condition of anonymity.

Randall L. Tobias, the Bush administration's global AIDS coordinator, officially ratified that view in a statement Tuesday.

"We respect local governments' decisions as to how best to manage their HIV/AIDS programs," he said. "We will, however, not use U.S. tax dollars to purchase medications that have not passed the same consumer protection standards as those we use for our own patients in the United States.

"In the event that a country elects to use non-U.S. funding to purchase copy drugs that have not been approved for quality and safety by the U.S., the president's emergency plan will support non-pharmaceutical aspects of the country's care, treatment and

prevention programs, and will do whatever is necessary to maintain integrated systems of care."

AIDS treatment that uses generic pills containing three antiretroviral drugs in one tablet—known as fixed-dose combinations—can cost as little as \$200 a year. That is less than half the cut rates at which major pharmaceutical companies are offering brand-name drugs in poor countries.

Most organizations that are providing money for AIDS drugs in those countries—notably, the two-year old Global Fund to Fight AIDS, Tuberculosis and Malaria—require that generics they purchase go through a process called pre-qualification that is run by the World Health Organization and is similar to FDA approval.

The U.S. program does not recognize pre-qualification and instead has specified that all drugs it pays for must be approved by the FDA. In May, the agency established a fast-track system by which it will rule on applications from generics makers in two to six weeks.

Anthony S. Fauci, the physician and AIDS researcher who heads the National Institute of Allergy and Infectious Diseases, acknowledged the controversy over generics at a news conference Tuesday.

"I know there's been criticism about that, but I think we should give a chance to the FDA to prove if they're able to do it or not," he said. "The only way to do that . . . is to submit the application for the approval process."

Progress in the effort to put 3 million poor AIDS patients on treatment by the end of next year has been a major topic of discussion at the conference, whose theme is "Access for All."

In Haiti, where 280,000 people are living with HIV, the virus that causes AIDS, Partners in Health had about 50 patients on antiretroviral drugs in 2001. Today, largely with Global Fund money, it is treating 1,500. The drugs are administered free through a community health clinic.

Cissy Kityo of the Joint Clinical Research Center in Uganda said that country's government cannot afford to pay for all the drugs it is providing patients, even with a price of about \$300 per person per year for generics. Consequently, about 90 percent of the 20,000 people on treatment are paying for their drugs, she said.

Uganda's policy of making people pay for their drugs has allowed it to spend funds instead to hire and train health care workers, who are critical to prevention and treatment efforts, Kityo said. "We're just a small country trying to do our best," she said.

Chief among nongovernmental organizations providing antiretroviral drugs is Medecins Sans Frontieres, whose name in English is Doctors Without Borders. Today it has 13,000 patients in 56 projects in 25 countries in Africa, Asia, Eastern Europe and Latin America. About half are on fixed-dose combinations, which spokeswoman Rachel Cohen termed a "radically simplified" treatment.

The organization is spending \$200 per person per year. The best available price worldwide for brand-name equivalents is \$562 per person per year. "If you have the option of spending \$200 per person per year or \$600 per person per year, and you're electing to spend \$600, that means you're treating one person when you could be treating three," Cohen said.

[From NPR News Morning Edition, July 13, 2004]

ANALYSIS: SMALL INDIAN FIRM CIPLA MANUFACTURES LOW-COST GENERIC AIDS DRUGS, BUT ITS PRODUCTS FACE BANS IN MANY COUNTRIES

STEVE INSKEEP (host). This is Morning Edition from NPR News. I'm Steve Inskeep.

RENEE MONTAGNE (host). And I'm Renee Montagne.

At this year's International AIDS Conference in Bangkok, most of the talk is about getting inexpensive, generic drugs to tens of millions of people. Relatively small generic drug manufacturers in four countries are at the center of the debate. One of the more aggressive of these companies is the Indian firm Cipla. In India, where five million people are infected, Cipla had trouble persuading the previous government to spend money on AIDS, even for generic drugs that cost pennies a day. NPR's Brenda Wilson recently visited Cipla.

BRENDA WILSON (reporting). Once inside Cipla's corporate headquarters in Mumbai, also known as Bombay, you're whisked off to a large room. It is surrounded on three sides by a glass wall of backlit shelves containing hundreds of samples of the company's products. You're then shown a six-minute promotional video that recounts Cipla's founding 70 years ago.

UNIDENTIFIED WOMAN No. 1. To heal and to hold, to wipe a tear, bring back a smile, to give hope, to give life. That's been Cipla's mission right from the time it started way back in 1935.

MR. AMAR LULLA (managing co-director, Cipla). Welcome to Cipla.

WILSON. Good meeting you, Mr. Lulla.

MR. LULLA. Good to see you.

WILSON. That's Amar Lulla?

MR. LULLA. That's me.

WILSON. OK, Amar.

MR. LULLA. Yeah.

WILSON. So you are—what's your title exactly?

MR. LULLA. I'm the joint managing director. I want you to see the range of products that we do here. We have over 1,200 products, exporting to 150 countries. We first start here. This is the range of our anti-infectives, antibacterials, quinolones, microlites . . .

WILSON. Some of them, products that have been approved by the U.S. Food and Drug Administration and are sold in the U.S. Indian drugmakers, not just Cipla, have been something of a thorn in the side of the big pharmaceutical companies, who see generic versions of their brand-name products as virtual rip-offs of intellectual property. They argue that the companies that make generics have not put the billions of dollars into research to develop drugs, just copied them. They also say that the copies are not always safe and may not have the same benefits.

MR. LULLA. Here is the range of AIDS drugs. This is what we're a little bit known for, if I may say so. And now we're offering the triple-drug cocktail for less than 50 cents a day now.

WILSON. And that's this drug right here.

MR. LULLA. This drug.

WILSON. Triomune, yes.

MR. LULLA. Triomune. That is a combination of lamivudine, stavudine and nevirapine.

WILSON. All three in one pill, which means it's not only cheaper but easier to take. It is this product more than any other that holds up the hope of treating millions of people in poor countries who have AIDS. The patents for the drugs are held by three different manufacturers who, until recently, could not agree to share and therefore combine the compound in one pill.

UNIDENTIFIED WOMAN No. 2. (Foreign language spoken.)

WILSON. The Y.R. Gaitonde Center, an AIDS clinic in the southern city of Chennai, which treats more than 5,000 HIV patients, is one of the few places where reduced-price drugs are available in India. Oddly enough, Cipla sells most of its AIDS drugs to other countries. Today patients have lined up outside the pharmacy to purchase medications.

A pharmacist gives a gaunt young man his change and explains just when and how to take the medicine. Patients pay what they can. They're required to pay something. It's a way of making sure that the patient wants to be part of the program and will follow treatment regimens carefully. The YRG Center gets a special discount, and Cipla assists in other ways. Lulla says it's been trying for years to sell more generic AIDS drugs in India, but the government has not until recently agreed to Cipla's terms. But Amar Lulla insists that the company's motive isn't money and it isn't publicity.

Mr. LULLA. If you've seen the face of disease and if you've seen the face of death and if you've seen people dying because they can't access medicines, and if you save one life, it is worth it. To some of us, it's very important, you know. And then I can see a lot of cynicism in the media and in the way people do ask us, what is behind all this, you know? What is the motive? What is the motive? But sometimes doing this is an immense joy and serves the need that we all have within us as human beings, you know, to help someone. That's it. There's nothing more to it.

WILSON. Still, nowhere near the two million people in India that it is estimated now need treatment get it. Vivek Divan with the Lawyers Collective AIDS Unit says it's a profound paradox.

Mr. VIVEK DIVAN (Lawyers Collective AIDS Unit). A lot of our clients are dying. They just continue to die. It's a ridiculous situation. It's absurd because, you know, Cipla and Ranbaxy make this medication in this country, and it wasn't available and still isn't more or less available. When you think about it, it is such an absurd situation, it's so starkly absurd that it shocks you sometimes. It makes you laugh also, unfortunately.

WILSON. Late last year the Indian government finally struck a deal with Cipla, and in April, just before the national elections, the government began distributing free antiretrovirals for people with AIDS.

Ms. MEENAKSHI DATTA GHOSH (Director, National AIDS Control Organization). We have treated more than 800 people so far, and we do want to very rapidly accelerate the treatment.

WILSON. Meenakshi Datta Ghosh is the director of the government's National AIDS Control Organization.

Ms. DATTA GHOSH. We have trained teams in 25 medical hospitals, and that's where we are now moving to expand. And so we do believe the numbers getting treated will rapidly pick up.

WILSON. 'Cause 800, you know, for a population this size, seems incredibly small.

Ms. DATTA GHOSH. That's very unfair. We've only been in the treatment less than four months. Since May 2003 onwards, we have concentrated on expanding and widening the availability of services for people living with HIV and for the general population. Political commitment for HIV and AIDS has grown by leaps and bounds. All of this put together has enabled us to commence treatment earlier than perhaps was originally scheduled. And therefore, I do not—it's not entirely correct to say the government has not done anything.

WILSON. By the end of this year, she says, the government aims to provide treatment for 100,000 AIDS patients. India is not alone in the caution with which it has taken on treatment, using the generic AIDS drugs. Scientists and health officials question Cipla's capacity to supply generic drugs to the millions in developing countries who need them and maintain that supply for the rest of their lives. There are also concerns that generics may contribute to the develop-

ment of a more resistant AIDS virus. Again, Cipla's Amar Lulla.

Mr. LULLA. This is such a beautiful argument, such a beautiful one when you don't want the drugs to reach the dying patients. The big pharmacy will say this argument is never advanced. Why? The same drugs, the same side effects, the same risk of developing resistance. Why is it not talked about? Why is it talked about only when you want to make them available to the patients, and you talk all this junk, I mean, such rubbish, it's not even pardonable. So don't give to anybody, right? If you can't give to 40 million, don't give to one million. Don't make these drug available to anybody. Let everybody die. What kind of argument is this? And this is such a con, such a lie, it's a crime on humanity, and everybody repeats it, you know. That's a pity.

WILSON. Some of the suspicions about generics and the quality of Cipla's three-in-one pill Triomune were answered by a recent study that was published in the British journal *Lancet*. As doctors had already noted, Triomune was just as effective at suppressing the AIDS virus as brand-name medications. Brenda Wilson, NPR News.

MONTAGNE. It's 11 minutes before the hour.

ADDITIONAL STATEMENTS

TRIBUTE TO JOHN A. FORLINES JR.

• Mrs. DOLE. Mr. President, I rise to salute a true gentleman who has just announced his retirement from the position of Chairman and CEO of the Bank of Granite based in Granite Falls, NC: Mr. John A. Forlines Jr. John is a man of great integrity and ability.

John's bank has become legendary, as it is often called "the best little bank in America." However, his achievements extend beyond his professional life, for he is also well known for an outstanding history of service to his community, state and his country.

I had the pleasure of serving with John as a trustee for Duke University, and I was continually impressed with his intelligence, his dedication and his great enthusiasm for Duke University and higher education. A native of Graham, NC and a graduate of Duke, John joined the U.S. Army finance department in 1940, and eventually rose to the rank of Major.

John's extraordinary career with the Bank of Granite began in 1954, when he assumed the position of President. Soon after, he was named chairman of the North Carolina School of Banking at the University of North Carolina-Chapel Hill, and began his lifelong relationship with the American Bankers Association. He was later named Chairman of the North Carolina Banking Association. John's work has resulted in the continued growth of stronger communities across North Carolina. Through his work he has provided the capital for many businesses to be established and grow, creating good jobs. He work also financed countless homes for families and individuals across the state.

In addition, John has furthered his commitment to the communities of

North Carolina through his dedication to service in his personal life. He serves on the Board of Elders of First Presbyterian Church in Lenoir, NC. He also holds positions on the Board of Directors for the North Carolina Citizens for Business and Industry; Caldwell County Hospice Inc.; Piedmont Venture Partners; and The Forest at Duke, a retirement community.

John's dedication to his profession and community has been recognized through the years with numerous honors and distinctions. These accolades include Financial World Magazine CEO of the Year for banks \$300-\$500 million in assets from 1992 to 1995. He received Duke University's Distinguished Alumni Award in 1994; and was inducted into the North Carolina Business Hall of Fame in 1999.

John Forlines epitomizes the American spirit through his entrepreneurial skills and his ever present commitment to family and community. He serves as an inspiration to us all. I appreciate his warm friendship and his tremendous service on behalf of all North Carolinians.●

RECOGNITION OF DR. ROBERT K. STUART

• Mr. HOLLINGS. Mr. President, I wish to recognize and congratulate Dr. Robert K. Stuart for his accomplishments in the fight against cancer. He is a long-time leader in the medical cancer community on a professional and personal level. For his devotion to make a difference in the lives of others, Dr. Stuart deserves to be honored. He has fought cancer on many levels and is a model of inspiration to his community.

I ask that a recent Post and Courier article be printed in the RECORD, so that all my colleagues can see the extraordinary accomplishments of this man.

The material follows:

[From the Post and Courier, July 10, 2004]

CANCER DOCTOR, SURVIVOR TO JOIN LANCE
ARMSTRONG ON TOUR
(By David Quick)

Cancer survival and cycling were forever linked when Texan Lance Armstrong survived testicular cancer and won not one, but five consecutive—and perhaps six—Tour de France races.

But long before Armstrong would become a household name, oncologist Dr. Robert K. Stuart was in the trenches fighting the war on one of humankind's most deadly diseases and using cycling as an escape and a way to stay strong physically and emotionally.

This October, the worlds of Armstrong and Stuart will come together for a week during the Bristol-Myers Squibb Tour of Hope, a 3,200-plus-mile relay from Los Angeles to Washington, DC. Stuart is one of 20 cyclists selected to participate in the tour from among more than 1,000 applicants.

Besides riding four hours every day, Stuart and the other cyclists, along with Armstrong, will be making stops along the way, spreading the message of hope and encouraging cancer patients to participate in new treatments, often referred to as clinical trials.

Stuart certainly has earned the honor.

In addition to being an avid cyclist, cancer doctor and researcher, he survived kidney cancer himself in 1991 and was the primary caregiver to his wife, Charlene, who recovered from leukemia after being diagnosed in 2000.

And he's been a leader in fighting cancer in South Carolina for nearly two decades—starting the hematology/oncology division at the Medical University of South Carolina in 1985, leading a surgical team in performing the state's first bone-marrow transplant in 1987, and being one of two who wrote the proposal for federal funding of what later would be called the Hollings Cancer Center.

"He's just done so much for MUSC," says Dr. Rayna Kneuper Hall, who heads the research hospital's breast cancer program. "I'd say he is a true pioneer in the fields of hematology and oncology here. He had a vision of it (the division) and was able to make it come true."

Despite his monumental resume, Hall says Stuart is humble, has deep compassion for his patients, and continues to be a good teacher and mentor to medical school students. "He has an amazing memory. He can remember every patient he's ever seen and is able to recall a specific case to demonstrate a (cancer) situation. For students, it really helps to hear it in the context of a patient."

For Stuart, his proudest accomplishment is having a hand in training 40 specialists in the fields of hematology and oncology, as well as having helped his patients.

"At this stage in my career, my legacy is more about people than it is publication. I have more than a hundred papers, but to me, the people are so much more important."

A LOUISIANA BOY

Stuart was born the second of five boys to Walter and Rita Stuart in Grosse Tete, La., a small village across the Mississippi River from Baton Rouge. One of his grandmothers was a Cajun and the other was Creole.

Walter Stuart worked for Kaiser Aluminum. Because both he and his wife were worried about the limited opportunities for their children in the village, they jumped at a job transfer to Northern California, where Robert would start elementary school.

However, when Kaiser planned to transfer Walter next to either British Guyana in South America or Ghana in Africa, the Stuarts decided to move to New Orleans, where Walter took a job as a banker.

"I consider New Orleans as home," says Stuart, "because between birth and high school graduation, it's where I spent the most time."

For the Stuarts, educating their children was paramount. All five sons received advanced degrees. In addition to Robert, another became a doctor, one a lawyer, one received a master's of business administration and the other a master of fine arts.

Robert attended Jesuit High School in New Orleans, whose most famous alums include singer Harry Connick Jr. and baseball player Rusty Staub, and got a traditional liberal arts education. He took Latin, Greek, math and physics and was urged to attend a Catholic university.

He picked Georgetown University.

Stuart says being in Washington, D.C., at the height of the turbulent 1960s—1966 through 1970—was exciting. "You just had the feeling that you were living in the center of the universe. I got at least as much education from reading *The Washington Post* every day as I did going to school and it (reading the *Post*) was a lot cheaper."

He, of course, did the hippie thing. He grew his hair out and had a mustache, which he's shaved only once since then, and believed that the Vietnam War was wrong. Stuart recalls a very moving protest he participated

in that involved marching past the White House, shouting the name of a dead soldier and then putting the name of the soldier in a casket at the Capitol.

"It took hours and hours to finish naming all those soldiers, and I think it served as a preview of the Vietnam War Memorial," he says.

"My father thinks it was unfortunate that I lived in Washington at that time because now I question government. I'm more prone to say, 'Why should we do that?' than I am, 'My country, right or wrong.' But I am an American and think I'm as patriotic as people who don't think about things."

CHOOSING A NEW FRONTIER

Stuart went from Georgetown straight into medical school at Johns Hopkins University in Baltimore.

When he was in his first year, he became acquainted with the chief resident in urology. Stuart asked why he had chosen urology, and the resident said it was because he was influenced by a urology professor in school.

"I can remember saying to myself: 'That won't happen to me.' I vowed to pick my specialty entirely on rational grounds and, of course, the exact opposite happened."

"I ran into some people in what was then a new field, oncology. I thought these guys were like trying to climb Mount Everest with no oxygen and no tools. To me, what they were trying to do was monumental because back then cancer was a death sentence. Everybody died from it. These guys were determined that things were so bad that they had to get better and that they were going to make it happen . . . I was personally inspired."

At the time—the mid-1970s—there was no standard therapy for cancer, Stuart says.

Another inspiration came as a third-year med student. He volunteered for a rotation on the oncology in-patient service. His instructor assigned him only one patient because she was so sick, suffering from acute myeloid leukemia, or AML.

"I couldn't do much as a student, but I basically stayed up all night with her. She died the next afternoon and I was shattered. . . . My instructor said to me that AML was the worst leukemia of all and 'don't take it personally.' But I did take it personally."

After doing his internal medicine residency at Johns Hopkins, the school hired him as a faculty member in 1979. Stuart focused on acute leukemia and bone-marrow transplantation, which he admits remains "the thing that challenges me most today."

About the same time, Stuart and another doctor began studying and treating patients with aplastic anemia, a rare disease where the bone marrow simply fails and stops producing red blood cells. While not a cancer, its standard therapy at the time was a bone-marrow transplant.

They also developed alternative therapies and worked on a 7-year-old, whose father later started a foundation focusing on research that has made numerous advances in treating the disease. "One of the most satisfying things about having a career in medicine is looking at the progress that's been made," Stuart says of the improving rates of survival for both AML and aplastic anemia.

MAKING A MARK AT MUSC

In 1985, a friend and "brilliant scientist," Dr. Makio Ogawa at the Veterans Administration Hospital in Charleston, asked Stuart to interview for MUSC's new hematology/oncology division. Ogawa, a bone-marrow researcher, had met Stuart on a few trips to Johns Hopkins.

"At the time, I had no interest in leaving Johns Hopkins, but there was something about Charleston and the people at MUSC

that made me change my mind," says Stuart. "On July 1, 1985, the entire program consisted of me, a lab tech and a secretary. I had to recruit physicians and create a training program."

It didn't take long to get the ball rolling.

Two years later, Stuart led a team in performing the first bone-marrow transplant surgery in the state, and in another two years, Stuart was among a group boarding a plane for Washington, DC, to make a pitch for federal funding for a new cancer center in Charleston.

U.S. Sen. Fritz Hollings, D-S.C., who did not attend those first meetings, would embrace the effort and help usher through a \$16.8 million federal grant to pay for a building to house what later would be called the Hollings Cancer Center.

"It got us in the ball game," Stuart says of the grant's ability to kick-start the cancer program in Charleston, leading to comprehensive cancer care and eventually the start of clinical trials at the center. "It was a very sophisticated undertaking."

THE CANCER PATIENT

In 1991, the doctor became the patient when Stuart was diagnosed in the early stages of kidney cancer.

Because of early detection and a rather fortunate location at the tip of the kidney, Stuart was spared losing the organ. He also didn't have to endure chemotherapy because the treatment is not useful with kidney cancer.

Still, the experience made Stuart a better doctor.

"It definitely changed me. I used to be distant from my patients. I maintained what I thought was a professional separation between doctor and patient," says Stuart. "After having cancer, I found myself thinking more about encouraging people. Now, I consider what can I say to a patient that's truthful and gives them hope."

He also started hugging patients and calling them by their first names, practices that never occurred before he was a cancer patient.

During the same year, Stuart married Charlene McCants, who had been the chief financial officer (later CEO) at MUSC and with whom he initially had a rocky professional relationship. At one point, Stuart would not return McCants' phone calls.

Yet it was she who was instrumental in having Medicaid and Medicare recognize MUSC as a transplant facility. In doing so, insurance providers would help pay for transplant procedures.

Stuart and McCants both had been married once before and had children from their first marriages.

Stuart's marriage to Gail Stuart, the current dean of the MUSC nursing school, had lasted 18 years. They have two children: Morgan, now 26 and a medical student at Georgetown; and Elaine, 24, an editorial assistant at *Child* magazine in New York. McCants had been married to Robert H. McCants for 22 years. Their son, R. Darren McCants, is business manager for the physiology/neuroscience department at MUSC.

"All three of our children turned out really well," says Stuart.

Daughter Elaine recalls her father early in her childhood as being "cerebral and quiet" and seemingly "impenetrable." She adds, "Looking back now, I realize that he may have been quiet because he lost a patient. You never knew because he made a big effort not to let what was going on at work affect us at home."

Elaine Stuart, who attended the North Carolina School of the Arts and was a ballerina with the Richmond Ballet, says that while her father was deeply involved in

work, he made sure he was there for important events, such as her dance recitals.

"He wasn't all that liberal with praise, so when you earned it, it really meant something. . . . Growing up, he never pushed us that hard. In doing so, he instilled in us a great sense of self-motivation. That was an effective way of driving us, and I attribute a lot of what drives me today to that."

CANCER STRIKES AGAIN

In 1997, the couple moved to Riyadh, Saudi Arabia, when Stuart received the opportunity to be oncology department chairman at the King Faisal Specialist Hospital and Research Centre.

Three years later, though, cancer entered the personal realm of the Stuarts' lives yet again. Charlene became desperately sick and was diagnosed with the same leukemia, AML, that had taken the life of the patient Stuart had watched over as a med student 25 years before.

"My first thought when I learned the diagnosis was that it was cosmic irony—that this almost can't be happening," says Stuart. "In Saudi Arabia, one of my colleagues came up to me, very stricken, and said, 'I just heard your wife has AML.' I remember thinking, 'No, it's the other way around. AML has my wife.'"

AML, Stuart notes, is still nearly lethal—only one-third who are diagnosed with it survive. The couple came back home to Charleston for treatment and stayed.

"The blackest time of my life was when she relapsed after three treatments," he says.

The only recourse was to use marrow from her brother, David. The transplant was successful and she is in remission.

His care for her is a testament of his love. Of the 81 nights she was in the hospital, Stuart spent all but the first night on a cot next to her in the hospital room. Then, he took four months off from work, the longest stint of not working as a doctor, to become his wife's primary caregiver.

"It was the hardest thing I've ever done," he says now.

CYCLING FOR SANITY

In the mornings of that uncertain time, Stuart took a break by riding his bike. The exercise, he said, helped him "keep my head straight."

But he first started cycling out of necessity. It was cheap transportation in his Georgetown days. For two years, 1983–1985, Stuart was a licensed bicycle racer, but "wasn't good" due to his late start. He backed off cycling after arriving in Charleston because of his career demands, but started back in earnest after his cancer diagnosis in 1991 and began participating in charity rides.

He continued cycling during the 1990s and even rode with a group of doctors in the Saudi Arabian desert.

Perhaps his first true cycling feat came last year during the first Tour of Hope. Stuart made the first cut of 50 for the inaugural tour ride across the country, but wasn't chosen for the final group. He, however, was invited to Washington, DC, for the final day's ride and a chance to meet Lance Armstrong.

Because he wasn't picked the first year and because he was unsure the sponsors would take on tour expenses again, Stuart didn't think the opportunity would come his way again. Even when the sponsors announced the tour would happen again, he applied thinking that his chances weren't good. The Stuarts even booked a vacation in the south of France at the same time as one of the tour's training camps, thinking that he wouldn't be picked.

But he was picked. When he heard the news, his feelings were mixed.

"At first, I was really fired up. Then, I was really scared. I'm not an elite cyclist, though I'm probably better than your average Joe," says Stuart, noting that the five, four-person relay teams have only a week to get from Los Angeles to Washington.

He says the organizers also changed the route and made it harder, specifically going over both the Sierras and the Rockies in a route connecting Las Vegas, Denver, Omaha, Chicago, Cleveland, Pittsburgh and Baltimore to DC.

Stuart, however, is getting some expert training advice and equipment, including a custom-fitted Trek road bike that he'll get to keep after the tour. He's already flown to Princeton, N.J., the home of Bristol-Myers Squibb, and Colorado Springs, home of Carmichael Training Systems (Chris Carmichael is Armstrong's coach), for training weekends. He's to fly back early from his family vacation in France to go to Madison, Wis., home of Trek, in August for a final meeting before the fall ride.

Meanwhile, his current regimen consists of about 11 hours of training a week, or about 200 miles. It will peak out at about 16 hours a week. That's a lot of time on those small bike seats.

Stuart is enjoying the experience. The group of riders—of whom 13 are cancer survivors, five are physicians and two are oncology nurses—already are feeling close to one another. Stuart has been getting 10–15 group e-mails per day from them.

Stuart is among the millions of Americans who are wishing Armstrong wins his sixth Tour de France, in part because it will make the Tour of Hope an even higher profile event.

LIVING, LOVING LIFE

One of Stuart's closest cycling buddies, Clark Wyly, has grown to know him well, as they regularly meet on Saturdays and Sundays for rides ranging from 30 to 60 miles.

"He is a very caring physician," says Wyly. "He takes each of his patients so seriously and so personally. When they don't make it, it's really hard on him. . . . Rob is not extroverted, but once you get to know him, he's very personable and easygoing. I have never seen him lose his temper and get out of control."

Wyly adds that Robert and Charlene live each day fully.

For those who know them, the couple have a deep, loving relationship. For a former CEO and the extrovert in the couple, she admits to truly enjoying "loving, supporting and caring for him" and describes herself as "his professional valet."

"I'm so devoted to him and I love taking care of him," she says. •

HONORING BEN MONDOR OF THE PAWTUCKET RED SOX

• Mr. CHAFEE. Mr. President, I would like to share with my colleagues a story of a man who has dedicated more than 27 years of his life to giving Rhode Island's baseball fans a team that they are proud to call their own.

If a poll were taken asking Americans to name the best that Rhode Island has to offer, it is fair to say that most would think of the Newport mansions, or the beaches of South County, or perhaps the Providence renaissance. While all of these sites are important components of our tourism business, I would say that for native Rhode Islanders, there is an attraction in the working class community of Pawtucket

that has an even more prominent place in their shared experience. Amid the tenement houses and old textile and wire mills of the Blackstone Valley stands McCoy Stadium, home to the Pawtucket Red Sox since 1973.

It is difficult for visitors to imagine now, but this minor league franchise got off to a very shaky start. In the mid-1970s, the team was struggling both on and off the field. Attendance was poor, the stadium was in terrible disrepair, and bankruptcy was looming. Players who were assigned there saw it as a necessary penance before making it to the big leagues and hoped to get out as soon as possible. It looked as if the PawSox would not last too long in AAA ball.

At that time, Ben Mondor, a man who had quit working in his late 40s after a successful career in business, was happy with retired life. Occasionally, he would catch a PawSox game, but as he has said, he didn't know a thing about baseball. When encouraged by his friend and former Boston pitcher, the late Chet Nichols, to rescue the PawSox, Ben refused. "Why would I want to buy a baseball team?" he asked. But Ben had plenty of experience stepping in to save struggling enterprises, and repeatedly had turned another person's failure into a successful venture. Finally, after much prompting from the brass of the parent club, he took over the team in 1977.

And so Ben went to work. He sought to instill pride in the team, and build an organization that would command both local and national respect. More than that, he wanted to give people of modest means a place where they could take their families for a night out. It didn't have to be fancy, but he would insist on a safe, family atmosphere, where young children could come and eat a hot dog or maybe a snow cone, shout "we want a hit!" when their favorite ballplayer came to bat, and learn to love the game of baseball.

Certainly, Ben faced an uphill climb, but he and his loyal staff embarked on a long campaign to renovate McCoy Stadium and reinvigorate the franchise. As years passed, more and more of the creaky wooden seats were replaced, the field was improved, and the concession stands and restrooms were expanded. It took time, but the attendance steadily climbed. Whole school buses filled with eager young fans poured in, not just from Rhode Island, but Cape Cod, and Connecticut, and greater Boston—even a few from New Hampshire. And Ben Mondor kept his word to the working class family: amazingly, 20 years went by without an increase in the price of a general admission ticket. Only in 1999, after a \$14 million renovation and expansion of McCoy Stadium did he finally relent and agree to charge an extra dollar for tickets to a game. Even today, a family of four can still take in a PawSox game for just \$20.

Ben Mondor's team gives back to the community in many other ways. There

are the free youth clinics, in which Pawsox players and coaches offer children instructions and tips on the game. There is also a Candy Hunt on Easter and roses for every mom on Mother's Day. The McCoy Stadium fireworks, which most recently lit up the sky for three nights on the Fourth of July weekend, are legendary.

After 27 years, Ben Mondor's dream has come true. A team that struggled to draw more than 1,000 fans to a game in the early days now fills a 10,000-seat park to nearly 90 percent of capacity, the best mark in the International League. One pitcher for the Boston Red Sox, recently called up from Pawtucket, praised McCoy Stadium as "the best minor league place that I've ever played." It has hosted high school baseball championship games, the U.S. Olympic team and the National Governors Association. Tomorrow night, McCoy Stadium will host the AAA All-Star Game, the crowning achievement of Ben's long, successful career in baseball. And yet, my guess is that Ben takes the greatest satisfaction from knowing that on any warm summer night, he can find thousands of blue collar workers and their young children enjoying a game played by past and future big leaguers, cheering with each crack of the bat.

In the movie *Field of Dreams*, there is a scene in which James Earl Jones's character, Terence Mann observes, "The one constant through all the years has been baseball." In spite of all the challenges that have come along over the course of three decades, the changes in the park, and the changes in our society, baseball has indeed been the one constant at McCoy Stadium. And in large measure, we have Ben Mondor and his love of the game and his love of people to thank for it.

Ben Mondor is a hero in Rhode Island, and when he steps down from running the Pawsox this summer, he will leave behind a remarkable legacy. I know my colleagues join me in saluting Ben on his well-deserved retirement.●

IDAHO STATE VETERANS CEMETERY

● Mr. CRAPO. Mr. President, I rise today to acknowledge a very special event happening in Idaho on July 31. For my colleagues in the Senate who have never been to Boise, ID, I will describe a little of what that part of my State looks like.

On a clear day, miles stretch out before you bounded to the south by the Snake River Valley and distant mountains, to the east and west by a vast expanse of open sky, and behind you to the north, by foothills rising to meet their less-weathered relatives.

The wind blows with reassuring regularity, and it seems that in this western meeting place of land and sky, at once comfortably familiar and awe-inspiring, it is indeed an appropriate place to rest our fallen warriors of free-

dom and pay our respects and tribute to their sacrifices.

The Idaho State Veteran's Cemetery represents the vision and hard work of many dedicated Idahoans. These men and women have focused their energy and donated their time and money to see this tremendous project to fruition. An idea that for many years was in the hearts of concerned patriots, the cemetery is the first of its kind to be built in Idaho, and its construction allows Idaho to finally join the rest in having a state veterans' cemetery.

Gazing out at this vista of the junction of earth and sky, and the visible freedom of wide open space causes us to reflect upon the freedom that our country stands for; the freedom for which the men and women who will rest here committed their lives, some ending either much too young in combat or others after fulfilling and long lives. In this time of sacrifice by yet another great generation of brave young men and women, this place gives comfort and exists as a testament to the age-old ritual of caring for those that have gone before us, in a proper and appropriate military manner that reflects their sacrifice, sense of duty and selfless devotion to the cause of liberty.

This place and the people for whom it is preserved remind us that freedom is eternal, and their and our living and dying are not in vain.●

IN MEMORY OF EDWARD F. MILES

● Mr. LEAHY. Mr. President, I memorialize the life of Edward "Ed" Miles, a decorated Vietnam veteran who heroically turned his war experience into a mission of compassion for victims of conflict around the world. Ed Miles died on January 26, 2004.

I first met Ed through his advocacy on behalf of war survivors—work that embodied the ideals of the Leahy War Victims Fund, which was established in 1989 to respond to the needs of innocent victims of conflict in developing countries. Despite painful injuries suffered during the war in Vietnam that left him a bilateral amputee, and the challenges of working in a country reeling from Pol Pot's genocidal Khmer Rouge regime, Ed persevered and set up a rehabilitation clinic for landmine survivors and other war victims that was the first of its kind in Cambodia. Today it is recognized as Cambodia's national rehabilitation center and a model for others around the world.

Ed is perhaps best remembered for this work through his involvement with Vietnam Veterans of America Foundation, VVAF, and the International Campaign to Ban Land Mines, which received the Nobel Peace Prize in 1997 for its advocacy to eliminate the scourge of landmines.

As an associate director of VVAF, Ed traveled throughout the world raising funds, generating medical research and support, and, finally, building and staffing a prosthetics clinic for amputees at Kien Khleang, outside Phnom

Penh, Cambodia in 1991. Since its inception, this project has produced 15,000 prosthetics, orthotics and wheelchairs for landmine survivors and other war victims. In addition, since Ed's initial pioneering and humanitarian efforts in Cambodia, VVAF has opened rehabilitation clinics in Vietnam, Angola, Ethiopia, Kosovo and elsewhere in Central America and Sub-Saharan Africa. Thousands of people with disabilities, many of whom had been treated as social outcasts, recovered their mobility and their dignity because of Ed Miles.

Ed's personal mission to help war survivors was undoubtedly the result of his own war experience. In April 1969, as a Captain and Military Advisor, Special Forces, United States Army, Ed was wounded in an ambush outside Cu Chi near the Cambodian border. He stepped on a landmine and lost both of his legs above the knee, suffered severe bone, nerve and muscle damage to his arm and later lost one of his eyes to infection.

As a result of his service in Vietnam, Ed received the United States Army Silver Star for Bravery, the Bronze Star, the Purple Heart, the Vietnamese Cross of Gallantry, the Vietnamese Campaign Medal, the Air Medal, the Good Conduct and the Combat Infantryman's Badge.

After returning home, Ed became an active critic of the Vietnam War, co-founding Veterans Against the War. Yet despite the severity of his injuries, years of hospital treatment and his enduring disabilities, he also completed his education, receiving his Masters of Public Administration from New York University. Ed worked as an Outreach Counselor for Vietnam veterans with Post-Traumatic Stress Disorder. In 1989, he was one of the first Americans to return to Vietnam since the war ended. In fact, he was featured on "Nightline" visiting the site where he was wounded.

Ed continued his quest for peace and reconciliation with America's former enemy through VVAF, continuously lobbying the United States Congress and the White House to normalize diplomatic and trade relations with Vietnam, which ultimately occurred in 1995. He was a featured speaker throughout the United States, and a visiting guest speaker at local schools where he described his Vietnam experience and the historical significance and lessons of the Vietnam War.

For the 35 years since being wounded and up until his life's end, Ed exhibited a selflessness, determination and compassion beyond compare. Despite the daily struggles and pain from his injuries, I never once heard Ed complain about his own misfortunes. He was soft spoken and unassuming to a degree rarely seen, but he also harbored a fiery passion for ridding the world of injustice and senseless conflict. Ed was an inspiration to me in my efforts to ban landmines, and to everyone who knew him.

Family, friends and colleagues throughout the world responded with shock and deep sadness for the loss of this true humanitarian and hero. In his gentle but powerful way, Ed touched the world one person at a time, and I consider myself very fortunate to have been one of them.

Ed was born in Brooklyn, NY, and was buried there with his parents and Irish ancestors dating from 1860. He grew up in Manhasset, NY and throughout his free-spirited life, had homes in Phnom Penh, Cambodia, Augsburg, Germany, Kinsale, Ireland, Greenwich Village, Sag Harbor, Southampton and Stamford, New York, Wyoming, Colorado, and Wilton, Connecticut. He is survived by sons Ed, of Boulder, Colorado, and Daniel of Southampton, New York; a daughter, Sarah of New York City; sisters Mary Teresa Jackson of Raleigh, North Carolina, Michele Dunn of Wilton, Connecticut, and Christine Kuhl of Southampton, New York.

The world is a better place because of Ed Miles, and his generous heart and many contributions will always be remembered.●

IN MEMORIAM OF MARY MIYASHITA

● Mrs. BOXER. Mr. President, I share with my colleagues, the memory of a remarkable woman, Mary Miyashita of Whittier, CA, who died on Sunday, April 25, 2004. Mary was 83 years old.

Mary Miyashita was born in Los Angeles. She grew up in a traditional Japanese household until she was sent as a young woman to internment camps in Santa Anita, CA and Gila, AZ during World War II. While in camp, Mary met Eleanor Roosevelt and was introduced to the work of the Quaker organization: The American Friends Service Committee. This organization helped obtain early release of college-aged persons from camp. These life-changing events later gave Mary the drive and persistence to become involved in social causes and politics.

Mary was an extraordinary woman, with great devotion to her family, her community and our Nation. Mary was a beloved wife and mother. She was admired by many for her strength and conviction. Mary was dedicated to making a difference in the world, and she did. Mary had great passion and believed in basic kindness to all humans.

Mary's work in politics helped shape our Nation. Throughout the years, she was involved in many important history changing causes, such as civil rights movements, peace demonstrations, education and literacy drives. She was a founding member of the first Asian Pacific Caucus, and a founding member of the Women and Children's Crisis Shelter in Whittier. Mary was also a member of the executive boards of the League of Women Voters, Meals on Wheels, Women for Peace, Whittier Area Fair Housing Committee and the Whittier Area Education Study Council.

Mary Miyashita is survived by her husband, Kazuo and her three children, son, David Miyashita, and daughters, Jean and Carole Miyashita, and son-in-law, John Martinez. She was an exceptional individual.

I am proud to recognize the legacy of Mary Miyashita. We can take comfort in knowing that future generations will benefit from her courage, her vision and her leadership.●

MESSAGE FROM THE HOUSE

At 2:56 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4766. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2005, and for other purposes.

The message also announced that pursuant to a request of the Senate, the bill (H.R. 1303) to amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference, together with all accompanying papers is hereby returned to the Senate.

At 5:30 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4759. An act to implement the United States-Australia Free Trade Agreement.

MEASURES REFERRED

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

H.R. 4755. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 2005, and for other purposes; to the Committee on Appropriations.

H.R. 4766. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2005, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4759. An act to implement the United States-Australia Free Trade Agreement.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 2652. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, July 14, 2004, she had

presented to the President of the United States the following enrolled bill:

S. 103. An act for the relief of Lindita Idrizi Heath.

EXECUTIVE AND OTHER COMMUNICATIONS

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

EC-8508. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act; to the Committee on Environment and Public Works.

EC-8509. A communication from the Chairman, Medicare Payment Advisory Commission, transmitting, pursuant to law, a report entitled "Report to Congress: New Approaches in Medicare"; to the Committee on Finance.

EC-8510. A communication from the Acting Chief, Regulations and Publications Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Excise Tax Relating to Structured Settlement Factoring Transactions" (RIN 1545-BB14) received on July 8, 2004; to the Committee on Finance.

EC-8511. A communication from the Acting Chief, Regulations and Publications Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Rents and Royalties" (RIN 1545-BB44) received on July 8, 2004; to the Committee on Finance.

EC-8512. A communication from the Acting Chief, Regulations and Publications Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Health Care Provider Incentive Payments" (Rev. Proc. 2004-41) received on July 8, 2004; to the Committee on Finance.

EC-8513. A communication from the Acting Chief, Regulations and Publications Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Republication of Rev. Proc. 79-61" (Rev. Proc. 2004-44) received on July 8, 2004; to the Committee on Finance.

EC-8514. A communication from the Acting Chief, Regulations and Publications Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Weighted Average Interest Rate Update Notice—Pension Funding Equity Act of 2004" (Notice 2004-51) received on July 8, 2004; to the Committee on Finance.

EC-8515. A communication from the Acting Chief, Regulations and Publications Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Debit Cards Used To Provide Qualified Transportation Fringes Described Under Section 132(f) of the Internal Revenue Code" (Notice 2004-46) received on July 8, 2004; to the Committee on Finance.

EC-8516. A communication from the Chief, Regulations Branch, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Extension of Port Limits of Memphis, Tennessee" (CBP Dec. 04-22) received on July 7, 2004; to the Committee on Finance.

EC-8517. A communication from the United States Trade Representative, Executive Office of the President, transmitting, pursuant to law, documents related to the United States-Australia Free Trade Agreement; to the Committee on Finance.

EC-8518. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to

the Arms Export Control Act, the report of a license for the export of defense articles that are firearms sold commercially under a contract in the amount of \$1,000,000 or more to the Philippines; to the Committee on Foreign Relations.

EC-8519. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC-8520. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to assistance to Eastern Europe under the Support for East European Democracy (SEED) Act; to the Committee on Foreign Relations.

EC-8521. A communication from the Chairman, Consumer Product Safety Commission, transmitting, pursuant to law, the report of the Office of Inspector General for the period from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

EC-8522. A communication from the Chairman, Board of Directors, Corporation of Public Broadcasting, transmitting, pursuant to law, the report of the Office of Inspector General for the period from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

EC-8523. A communication from the Deputy General Counsel, Department of the Treasury, transmitting, a draft of proposed legislation entitled the "Treasury Inspector General Consolidation Act of 2004"; to the Committee on Governmental Affairs.

EC-8524. A communication from the Chairman, Railroad Retirement Board, transmitting, pursuant to law, a report relative to the Board's competitive sourcing activities; to the Committee on Health, Education, Labor, and Pensions.

EC-8525. A communication from the Assistant Attorney General for Administration, Department of Justice, transmitting, pursuant to law, a report relative to the Department's commercial and inherently governmental activities; to the Committee on the Judiciary.

EC-8526. A communication from the Assistant Chief, Alcohol, Tobacco, Tax and Trade Bureau, Treasury Department, transmitting, pursuant to law, the report of a rule entitled "San Bernabe and San Lucas Viticultural Areas" (RIN1513-AA28) received on July 7, 2004; to the Committee on the Judiciary.

EC-8527. A communication from the Assistant Chief, Alcohol, Tobacco, Tax and Trade Bureau, Treasury Department, transmitting, pursuant to law, the report of a rule entitled "Establishment of Salado Creek Viticultural Area" (RIN1513-AA69) received on July 7, 2004; to the Committee on the Judiciary.

EC-8528. A communication from the Acting Under Secretary and Acting Director, Patent and Trademark Office, transmitting, pursuant to law, the report of a rule entitled "Changes to Representation of Others Before the United States Patent and Trademark Office" (RIN0651-AB55) received on July 7, 2004; to the Committee on the Judiciary.

EC-8529. A communication from the General Counsel, National Tropical Botanical Garden, transmitting, pursuant to law, the audit report for the Garden for calendar year 2003; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 894. A bill to require the Secretary of the Treasury to mint coins in commemoration of the 230th Anniversary of the United States Marine Corps, and to support construction of the Marine Corps Heritage Center.

S. 976. A bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

By Mr. GRASSLEY, from the Committee on Finance, without amendment:

S. 2610. A bill to implement the United States-Australia Free Trade Agreement.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. GREGG (for himself and Mr. SUNUNU):

S. 2651. A bill to authorize the establishment at Antietam National Battlefield of a memorial to the officers and enlisted men of the Fifth, Sixth, and Ninth New Hampshire Volunteer Infantry Regiments and the First New Hampshire Light Artillery Battery who fought in the Battle of Antietam on September 17, 1862, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DURBIN (for himself, Mr. DAYTON, and Mr. LEVIN):

S. 2652. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program; read the first time.

By Mr. BIDEN (for himself, Mr. SPECTER, Mrs. FEINSTEIN, Mr. KYL, Mr. HOLLINGS, and Mr. ALLEN):

S. 2653. A bill to make it a criminal act to willfully use a weapon with the intent to cause death or serious bodily injury to any person while on board a passenger vessel, and for other purposes; to the Committee on the Judiciary.

By Mr. DODD:

S. 2654. A bill to provide for Kindergarten Plus programs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SMITH:

S. 2655. A bill to amend the Internal Revenue Code of 1986 to provide a credit for the production of water and energy efficient appliances; to the Committee on Finance.

By Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida):

S. 2656. A bill to establish a National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon; to the Committee on Energy and Natural Resources.

By Ms. COLLINS (for herself and Mr. AKAKA):

S. 2657. A bill to amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes; to the Committee on Governmental Affairs.

By Mr. DOMENICI (for himself, Mrs. FEINSTEIN, Mr. CRAIG, Mr. BINGAMAN, and Mr. DURBIN):

S. 2658. A bill to establish a Department of Energy National Laboratories water technology research and development program, and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Ms. STABENOW (for herself, Mr. LEVIN, and Mr. HATCH):

S. Res. 405. A resolution honoring former President Gerald R. Ford on the occasion of his 91st birthday and extending the best wishes of the Senate to former President Ford and his family; considered and agreed to.

ADDITIONAL COSPONSORS

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 2335

At the request of Mr. REED, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 2335, a bill to amend part A of title II of the Higher Education Act of 1965 to enhance teacher training and teacher preparation programs, and for other purposes.

S. 2338

At the request of Mr. BOND, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 2338, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 2365

At the request of Mr. COLEMAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2365, a bill to ensure that the total amount of funds awarded to a State under part A of title I of the Elementary and Secondary Act of 1965 for fiscal year 2004 is not less than the total amount of funds awarded to the State under such part for fiscal year 2003.

S. 2417

At the request of Mr. COLEMAN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 2417, a bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to furnish care for newborn children of women veterans receiving maternity care, and for other purposes.

S. 2426

At the request of Mr. NELSON of Nebraska, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2426, a bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals.

S. 2563

At the request of Mr. KOHL, the names of the Senator from Ohio (Mr.

DEWINE) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 2563, a bill to require imported explosives to be marked in the same manner as domestically manufactured explosives.

S. 2575

At the request of Mrs. BOXER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2575, a bill to direct the Secretary of Agriculture to conduct research, monitoring, management, treatment, and outreach activities relating to sudden oak death syndrome and to convene regular meetings of, or conduct regular consultations with, Federal, State, tribal, and local government officials to provide recommendations on how to carry out those activities.

S. 2603

At the request of Mr. SMITH, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 2603, a bill to amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions.

S. 2609

At the request of Mr. KOHL, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2609, a bill to amend the Farm Security and Rural Investment Act of 2002 to extend and improve national dairy market loss payments.

S. 2628

At the request of Mr. AKAKA, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 2628, a bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

S. 2634

At the request of Mr. SMITH, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 2634, an act to amend the Public Health Service Act to support the planning, implementation, and evaluation of organized activities involving statewide youth suicide early intervention and prevention strategies, to provide funds for campus mental and behavioral health service centers, and for other purposes.

S.J. RES. 41

At the request of Mr. CAMPBELL, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S.J. Res. 41, a joint resolution commemorating the opening of the National Museum of the American Indian.

S. CON. RES. 90

At the request of Mr. LEVIN, the name of the Senator from Vermont

(Mr. LEAHY) was added as a cosponsor of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. CON. RES. 106

At the request of Mr. CAMPBELL, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from Oregon (Mr. SMITH) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. Con. Res. 106, a concurrent resolution urging the Government of Ukraine to ensure a democratic, transparent, and fair election process for the presidential election on October 31, 2004.

S. CON. RES. 110

At the request of Mr. CAMPBELL, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. Con. Res. 110, a concurrent resolution expressing the sense of Congress in support of the ongoing work of the Organization for Security and Cooperation in Europe (OSCE) in combating anti-Semitism, racism, xenophobia, discrimination, intolerance, and related violence.

S. CON. RES. 119

At the request of Mr. CAMPBELL, the names of the Senator from Oklahoma (Mr. NICKLES), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Florida (Mr. GRAHAM), the Senator from Illinois (Mr. FITZGERALD), the Senator from Idaho (Mr. CRAPO), the Senator from California (Mrs. FEINSTEIN) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. Con. Res. 119, a concurrent resolution recognizing that prevention of suicide is a compelling national priority.

S. CON. RES. 124

At the request of Mr. CORZINE, the names of the Senator from Illinois (Mr. DURBIN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Iowa (Mr. HARKIN) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. Con. Res. 124, a concurrent resolution declaring genocide in Darfur, Sudan.

At the request of Mr. BROWNBACK, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. Con. Res. 124, *supra*.

S. RES. 389

At the request of Mr. CAMPBELL, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. Res. 389, a resolution expressing the sense of the Senate with respect to prostate cancer information.

S. RES. 401

At the request of Mr. BIDEN, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. Res. 401, a resolution designating the week of November 7 through November 13, 2004, as "National Veterans Awareness Week" to emphasize the need to develop educational programs

regarding the contributions of veterans to the country.

S. RES. 403

At the request of Mr. BAYH, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from Washington (Ms. CANTWELL) and the Senator from Delaware (Mr. CARPER) were added as cosponsors of S. Res. 403, a resolution encouraging increased involvement in service activities to assist senior citizens.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself, Mr. DAYTON, and Mr. LEVIN):

S. 2652. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program; read the first time.

Mr. DURBIN. Mr. President, those who are following the business of the Senate understand that just a few moments ago, we had a vote on the floor of the Senate on the proposed constitutional amendment dealing with same-sex marriage. The final vote, I think, was indicative of the feeling of this body. There were 48 who supported going forward with the debate on this amendment and 50 Senators who opposed it. Of course, 48 Senators does not meet the threshold requirement for approving a constitutional amendment, which is 67 Senators. So that gap of 19 Senators suggests this Senate does not believe it is appropriate for us to move forward on that type of constitutional amendment.

Many of the colleagues on both sides of the aisle spoke to this issue over the last several days and expressed their heartfelt feelings of the underlying issue of same-sex marriage and about the question of whether we should amend the Constitution. The vote today is, I think, a good indication that this is an issue whose time has not come. There is no issue in controversy which requires us to amend the Constitution of the United States of America.

One might ask, if this issue fell so far short, 19 votes short, of what it needed, why did we consider it? For obvious reasons. This debate was not about changing the Constitution. This debate was about changing the subject in the Presidential campaign.

It is understood that if you ask most American families what is important to them the politicians are worried about, they will talk about the obvious things: My job, the fact that my paycheck does not cover the necessities of my family, the cost of health insurance, the availability of quality health care, whether my retirement savings are going to be protected; I am concerned as well about the situation in Iraq; I would like to know when we will stop losing our soldiers, and what do we have ahead of us in terms of Iraq and the \$1.5 billion which American

taxpayers spend each week in Iraq, how long will that go on? What could we do with \$1.5 billion every week in the United States of America for our schools, for providing health care for our children, immunizations.

These are the obvious questions with which most families identify. But if the Presidential election campaign is waged on those issues, the White House and the Republican Party believe they are at a disadvantage because many people, in fact, an amazingly large percentage of Americans, say when asked, they feel our country is going in the wrong direction in terms of its economics to help working families, in terms of creating jobs, keeping good-paying jobs in America, dealing with the fact we still continue to be dependent on the Middle East and Saudi Arabia for our oil which draws us into a terrible situation of dependency, a terrible situation which taxes our resources.

That is what most Americans will identify as the major issues, and those are not issues on which this administration wants to campaign. So they attempted today to change the subject. They wanted to change the subject by changing the Constitution to deal with same-sex marriages, an issue which has not reached a level where it should even be addressed by our Constitution.

I will not go over that whole debate again, but the vote tells the story. The Republican Party in the majority in the Senate was unable to get a majority of votes to support the President's constitutional amendment. The roll-call tells the story. But there are other issues which, frankly, we should now move to, issues about which families across America do care.

I know as I travel around my State of Illinois and talk with families, businesses, labor union leaders, time and again the issue on their minds is the cost of health care in America.

I met 2 days ago in Chicago with a good friend of mine who heads up one of the major labor unions. It is a labor union which represents people who work at grocery stores, United Food and Commercial Workers. I talked with him about his problems.

He said: Senator, virtually every strike we have, virtually every contract negotiation is over the cost of health insurance. We get our workers 50 cents more an hour, and they don't see a penny of it. It all goes into health insurance, and there is less coverage this year than last year. They are upset with their labor leaders and upset with their employers.

Then you talk with businesspeople, businesses small and large, and I hear the same story, businesses which say: We are mom and pop, and we can no longer afford health insurance for the people who work for us; it is just too expensive.

There is another element in this whole equation which we cannot overlook, and that is the cost of prescription drugs. The cost of prescription drugs is not only driving the cost of

health insurance to record levels, but it is also pushing a lot of people of limited family means into terrible choices: whether they can afford to buy the prescription drugs that will keep them healthy and, if they do, whether they will have to sacrifice the necessities of life. That is a real issue. That is an issue this campaign ought to be about. Would it not be refreshing if the debate of the week was not over same-sex marriage and its impact on families but the cost of health care and the cost of prescription drugs and their impact on families? I think that is what the voters are waiting for.

If they have any frustration with those of us in public office, it is the fact we talk past them, over them, and around them and never direct to the issues about which they care.

Today I am joining Senator LEVIN of Michigan and Senator DAYTON of Minnesota in introducing S. 2652.

We are going to work to put this bill on the Senate calendar under rule XIV so that Senator FRIST can call it up for debate. In other words, what I am trying to do is to accelerate consideration of this bill to blow past all the political issues and the political rhetoric to get into this legislation. The Democratic leader in the other body is working to discharge a companion bill so they can consider it in an expedited manner.

This bill is called the Medicare Prescription Drug Savings Act. We need to expedite this bill. We need to put it on the calendar. We need to stop wasting time on issues going nowhere because seniors and low-income individuals are facing escalating prescription drug prices that are really hurting them personally and diminishing their Medicare drug benefits. Instead of considering bills that do not have the votes to pass, like the one we just finished, we should consider something that is an urgent priority for Americans. Whether one lives in a blue State, a red State, or a purple State, whether one is in a battleground State or it is a State that is decided, they are going to find seniors concerned about the cost of prescription drugs. This is an issue that is bipartisan. It is an issue that affects virtually every family. Over the past 5 years, prescription drug prices have risen between 14 and 19 percent every single year, 5 times the rate of inflation.

One particularly egregious example of drug price inflation in the United States is Novir, an essential ingredient in the HIV cocktail to deal with the HIV/AIDS crisis. The price of an average dose of Novir went up 400 percent this year from \$1,600 a year to more than \$7,800. That is more than 10 times the cost of the same drug in Canada or in Europe. Americans are paying 10 times the cost of Novir for HIV patients in the United States as the price that is being paid in Canada and Europe.

Last month, the AARP released a study examining prescription drug prices for the 12-month period ending

in March 2004. The study revealed that the prices charged by pharmaceutical companies to wholesalers for the top brand-name drugs used by seniors increased at a rate of 7.2 percent. That is faster than the 2 previous years, which is troubling given that inflation actually fell during that same period of time.

Drug discount cards have been suggested as the answer for this problem, but they are not. A fact sheet sent out by the Department of Health and Human Services to 40 million Medicare beneficiaries said that a discount card with Medicare's seal of approval can help save 10 to 25 percent on prescription drugs.

Now, this is the administration plan, a discount card under Medicare for prescription drugs that could save 10 to 25 percent. Well, after the same Department published the drug card prices in May, the Chicago Tribune newspaper looked at what these cards would mean in a suburb of Chicago, the city of Evanston. The Tribune compared the prices at pharmacies in Evanston with what seniors will save with drug discount cards. Take a look at it.

In some cases, the people in Evanston, IL, will actually save less without the card. The drug Lipitor, with the discount card, is \$67.07. The lowest retail price, \$68.99. Savings, \$1.92, or 3-percent savings. Celebrex, 2 percent. Norvasc, in fact, costs more under the discounted card. So this so-called discount card seems to be of little value with drugs that are very popular and well used and prescribed to, such as Lipitor, Celebrex, and Norvasc.

The lack of significant savings from the discount cards that are being touted by the administration is not unique to Illinois or the city of Evanston. Since President Bush announced the idea of a drug discount card in July of 2001, top selling prescription drugs have experienced double-digit increases, eroding any savings that might come from the card.

Remember when the Bush administration said their discount cards would save seniors 10 to 25 percent? Well, price increases are eroding savings. Take a look at what happened to these drugs: Celebrex for arthritis pain went up 23 percent; Coumadin, a blood thinner, 22 percent; Lipitor, 19 percent; Zoloft, 19 percent; Zyprexa, 16 percent; Prevacid, 15 percent; and Zocor, 15 percent.

The prescription drug discount card is not even really keeping up with the inflation built into prescription drug prices.

Some of my colleagues may say it is not important that the drug card is not producing much savings because the real benefit will start in January of 2006. Unfortunately, rising drug prices will erode that benefit, too.

I will tell my colleagues about one of my constituents. Alois Kessler of Skokie, IL, has \$3,200 in drug costs, and his income, which is fixed, is \$28,500. Assuming prescription drug prices continue to rise as we have seen them rise

and Mr. Kessler stays with the same medication he is currently taking, his drug costs will be approximately \$4,800 by 2006, the first year of the new Part D benefit. His income will rise about 3 percent a year. So he will have drug prices at \$4,800 and an income of \$31,000 a year.

The new program reduces his cost by \$1,080 in the first year, so he will still have to pay out-of-pocket \$2,120. By 2015, assuming he is still taking the same medication, his drug costs will reach \$17,000, and his income will only have risen to around \$40,400. One just cannot keep up with an inflation protection in their Medicare or retirement income against drug price increases of this kind.

What can we do about it? What we can do about it is something this bill proposes, and it is something very basic. There is a lot of talk in Congress today about bringing drugs in from Canada and other places. I am open to that conversation, anything to provide relief to seniors and people on limited incomes trying to buy lifesaving drugs.

Look to the north. Canada selling American drugs made in America, inspected in America, approved in America, with research in America, for sale in Canada turn out to be a fraction of the cost of what they are in the United States. With just 2 percent of the worldwide pharmaceutical market, Canada cannot supply the United States no matter how many busloads of seniors we send there.

The United States has 53 percent of the worldwide prescription drug market. Half of it is made up of Medicare beneficiaries. Think about this for a moment. If Medicare, the program that covers seniors, were to sit down with major pharmaceutical companies and bargain for the prices of the drugs, think about their bargaining power. They have the ability to bring prices down for Americans for drugs sold in America rather than reimported in the United States.

The prescription drug benefit bill we passed expressly prohibits Medicare from negotiating for lower prices. That is something the pharmaceutical companies wanted, and they won. They won it at the expense of American consumers.

Today, the Veterans' Administration and the Department of Defense negotiate for VA drug prices and cut down the cost of drugs by almost 50 percent. Take a look at some of these popular drugs and the difference between what is paid in the drugstores of America and what the Federal Government pays for the same drug: Xalatan eyedrops, \$41 under the negotiated price of the VA, and \$101 is what is paid in the drugstore; Celebrex, the drug we talked about earlier for arthritis, \$108 on the Federal Supply Schedule and \$173 at the drugstore; Lipitor for cholesterol, \$215 in the Federal system, \$446 over the counter; Plavix, \$257 negotiated, and over-the-counter, \$593.

Once you put the bargaining power of the Federal Government behind price

negotiations, the prices come down. People can afford the drugs. Families can afford them. The cost of health insurance comes down, but the profits for the drug companies come down, too. That is why this Congress, under the thrall of that special interest group, has refused to give Medicare the power to negotiate.

I will give one specific example we have lived through on Capitol Hill. Many people rail about what happened with the anthrax scare a few years ago. There was a suggestion that the drug Cipro would be used as an antidote to any ill-effects caused by anthrax. We found out Cipro was an expensive drug, and Secretary Tommy Thompson said he would negotiate with the Bayer Company, the company that makes Cipro, to lower prices.

Look what happened when Secretary Thompson tried to do that. He said:

Everyone said I wouldn't be able to reduce the price of Cipro. I am a tough negotiator.

What was the market price when he went into it? It was \$4.67 per pill for Cipro. When it was all said and done, we were paying 75 cents. When someone sits down with the drug companies and says, You are overcharging us, we won't pay it, look what happens. Yet when the seniors of America look for the same kind of hard-nosed negotiating to bring down costs for them, this Congress says no; we don't want to give Medicare the ability to negotiate to do the same thing Secretary Thompson achieved when it came to these Cipro tablets. Through negotiation, Secretary Thompson brought down the price of Cipro by 490 percent. Good news for the people who needed Cipro; bad news for the people who need Medicare. But we can't even ask him to stand up for senior citizens in America. Out of the question. Drug companies don't want to lose their profitability.

Incidentally, they are very profitable. Let me show you some charts. This indicates the profitability of Fortune 500 drug companies versus the profits for all Fortune 500 companies in the year 2002. Look at what drug companies on the red bars have done on profitability: 17 percent as opposed to 3.1 percent; in this chart, 27.6 percent to 10.2 percent. They are making money hand over fist. They are charging seniors and families across America record high prices for drugs. They are increasing the cost of those drugs every single year and passing them along directly, raising health insurance costs, making it more difficult for seniors to keep up with the drugs they need to stay healthy.

I think the bill I have introduced with Senators LEVIN and DAYTON answers the need. I believe the bill which we will attempt to put on the Senate calendar today, so we can vote it before we leave for anybody's convention, is going to go a long way toward helping America's seniors. The Medicare Prescription Drug Savings Act instructs the Secretary of Health and Human Services to offer a nationwide Medi-

care-delivered prescription drug benefit in addition to the PDP and PPO plans available in the 10 regions. We keep in place what is in the Medicare bill passed last year, we just add a new player. The new player is Medicare providing prescription drugs with negotiated prices. We set a uniform national premium of \$35 for the first year for this prescription drug benefit, and we negotiate group purchasing agreements on behalf of beneficiaries who choose to receive their drugs through the Medicare-administered benefit. It is voluntary. Those who choose to receive their drugs will have negotiated lower prices. Those who enroll can stay enrolled as long as they want.

Not only will this bill provide seniors with lower cost drugs, it will give them a choice to enroll in a Medicare-delivered plan, cutting down on the confusion the privately delivered system has already created. Critics and the pharmaceutical industry would say my bill is about price controls and big government. How do you explain the Veterans' Administration? Aren't we saying for our veterans we want to bring down the cost of pharmaceutical drugs? Have you spoken to a veteran lately who has gone to the VA hospital to sign up for the monthly drug benefit because it is so attractive for him and his family? That tells me government can play an important role and have a voice in buying in bulk and bringing down costs.

Who supports this bill we are trying to bring to the calendar? The Alliance for Retired Americans, AFL-CIO, American Nurses Association, Campaign for America's Future, USAction, Consumers Union, the Service Employees International Union, AFSCME, the American Federation of Teachers, Families USA, the Center for Medicare Advocacy, and the National Committee to Preserve Social Security and Medicare.

If you don't think this is a timely issue, pick up this morning's New York Times and take a look at the front-page story. The bill we passed, signed by President Bush, has America running in the wrong direction. Front-page headline:

Drug Law [signed by President Bush] Is Seen Leading To Cuts in Retiree Plans.

Let me read one or two paragraphs:

New government estimates suggest that employers will reduce or eliminate prescription drug benefits for 3.8 million retirees when Medicare offers its coverage in 2006.

That is the plan we referred to earlier passed by Congress.

That represents one-third of all retirees with employer-sponsored drug coverage, according to documents from the Department of Health and Human Services.

No aspect of the new law causes more concern among retirees than the possibility they might lose benefits they already have.

That is what the administration offers us: discount cards which don't offer a real discount, the loss of prescription drug coverage already available for 3.8 million retirees, and, finally, a plan that is offered to seniors

that is almost impossible to describe and follow because it is so complicated in its minutiae and detail, and it does not include a provision that allows Medicare to bargain for the best prices, the same bargaining power which we use over and over again to help veterans and many other Americans.

Before the end of the day, we are going to ask that this bill be brought to the calendar. I don't know what else we will consider today, but if my colleagues in the Senate will go home and ask a random sample of anybody on the street corner, or in the shopping center, about the cost of prescription drugs and what it means, they will understand that whatever the next item of business might be in the Senate, it cannot really match in importance what this issue means to families across the United States of America.

I yield the floor.

Mr. BIDEN (for himself, Mr. SPECTER, Mrs. FEINSTEIN, Mr. KYL, Mr. HOLLINGS, and Mr. ALLEN):

S. 2653. A bill to make it a criminal act to willfully use a weapon with the intent to cause death or serious bodily injury to any person while on board a passenger vessel, and for other purposes; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise today to introduce the Reducing Crime and Terrorism at America's Seaports Act, along with Senators SPECTER, FEINSTEIN, KYL, HOLLINGS, and ALLEN. Today's bill is a revised version of legislation Senator SPECTER and I introduced last year, S. 1587. The bill benefits from the expertise of the Chairman and Ranking Member of the Judiciary Subcommittee on Terrorism, Senators KYL and FEINSTEIN. My colleagues have their own bill on this subject, S. 746, and I am grateful that they are original cosponsors of today's measure. The Ranking Member of the Commerce Committee, my good friend Senator HOLLINGS, has also been a leader in this area and today's bill incorporates suggestions made by him and his able staff. Senator SPECTER and I have worked long and hard on this issue, and it is my sincere hope and expectation that the bill we introduce today is a consensus measure that will swiftly pass the Senate this year.

Today, almost three years after the devastating attacks of September 11, our Nation's transportation infrastructure remains vulnerable to terrorist activity. American ports are critical to the nation's commercial well-being, and we must do all that we can to ensure that our laws keep pace with the threats that they face.

Recently, Homeland Security Secretary Ridge traveled to the Port of Los Angeles/Long Beach to announce that the United States was in full compliance with the International Ship and Port Facility Security Code, and that his department was working to meet the requirements of the Maritime

Transportation Security Act. I welcome those announcements, but there is more we should be doing to protect our ports and close existing gaps in our criminal code. The bill Senator SPECTER and I introduce today starts to close those gaps.

Our bill will double the maximum term of imprisonment for anyone who fraudulently gains access to a seaport or waterfront. The Interagency Commission on Crime and Security at U.S. Seaports concluded that "control of access to the seaport or sensitive areas within the seaports" poses one of the greatest potential threats to port security. Such unauthorized access continues and exposes the nation's seaports, and the communities that surround them, to acts of terrorism, sabotage or theft. Our bill will help deter those who seek unauthorized access to our ports by imposing stiffer penalties.

Our bill would also increase penalties for noncompliance with certain manifest reporting and record-keeping requirements, including information regarding the content of cargo containers and the country from which the shipments originated. An estimated 95 percent of the cargo shipped to the U.S. from foreign countries, other than Canada and Mexico, arrives throughout seaports. Accordingly, the Interagency Commission found that this enormous flow of goods through U.S. ports provides a tempting target for terrorists and others to smuggle illicit cargo into the country, while also making "our ports potential targets for terrorist attacks." In addition, the smuggling of non-dangerous, but illicit, cargo may be used to finance terrorism. Despite the gravity of the threat, we continue to operate in an environment in which terrorists and criminals can evade detection by underreporting and misreporting the content of cargo. Increased penalties can help here.

The legislation we introduce today would also make it a crime for a vessel operator to fail to slow or stop a ship once ordered to do so by a federal law enforcement officer; for any person on board a vessel to impede boarding or other law enforcement action authorized by federal law; or for any person on board a vessel to provide false information to a federal law enforcement officer. The Coast Guard is the main federal agency responsible for law enforcement at sea. Yet, its ability to force a vessel to stop or be boarded is limited. While the Coast Guard has the authority to use whatever force is reasonably necessary, a vessel operator's refusal to stop is not currently a crime. This bill would create that offense.

In addition, the Coast Guard maintains over 50,000 navigational aids on more than 25,000 miles of waterways. These aids, which are relied upon by all commercial, military and recreational mariners, are critical for safe navigation by commercial and military vessels. They could be inviting targets for terrorists. Our legislation would make it a crime to endanger the safe naviga-

tion of a ship by damaging any maritime navigational aid maintained by the Coast Guard; place in the waters anything which is likely to damage a vessel or its cargo, interfere with a vessel's safe navigation, or interfere with maritime commerce; or dump a hazardous substance into U.S. waters, with the intent to endanger human life or welfare.

Each year, thousands of ships enter and leave the U.S. through seaports. Smugglers and terrorists exploit this massive flow of maritime traffic to transport dangerous materials and dangerous people into this country. This legislation would make it a crime to use a vessel to smuggle into the United States either a terrorist or any explosive or other dangerous material for use in committing a terrorist act. The bill would also make it a crime to damage or destroy any part of a ship, a maritime facility, or anything used to load or unload cargo and passengers; commit a violent assault on anyone at a maritime facility; or knowingly communicate a hoax in a way which endangers the safety of a vessel. In addition, the Interagency Commission concluded that existing laws are not stiff enough to stop certain crimes, including cargo theft, at seaports. Our legislation would increase the maximum term of imprisonment for low-level thefts of interstate or foreign shipments from 1 year to 3 years and expand the statute to outlaw theft of goods from trailers, cargo containers, warehouses, and similar venues.

I thank my colleagues for their support of this measure, and I look forward to its prompt consideration by the full Senate.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2653

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

SECTION 1. SHORT TITLE.

This title may be cited as the "Reducing Crime and Terrorism at America's Seaports Act of 2004".

SEC. 2. ENTRY BY FALSE PRETENSES TO ANY SEAPORT.

(a) IN GENERAL.—Section 1036 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking "or" at the end;

(B) by redesignating paragraph (3) as paragraph (4); and

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

"(3) any secure or restricted area (as that term is defined under section 2285(c)) of any seaport; or";

(2) in subsection (b)(1), by striking "5" and inserting "10";

(3) in subsection (c)(1), by inserting ", captain of the seaport," after "airport authority"; and

(4) in the section heading, by inserting "or seaport" after "airport".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 47 of

title 18 is amended by striking the matter relating to section 1036 and inserting the following:

"1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport."

(c) DEFINITION OF SEAPORT.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following:

"§ 25. Definition of seaport.

"As used in this title, the term 'seaport' means all piers, wharves, docks, and similar structures to which a vessel may be secured, areas of land, water, or land and water under and in immediate proximity to such structures, and buildings on or contiguous to such structures, and the equipment and materials on such structures or in such buildings."

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1 of title 18 is amended by inserting after the matter relating to section 24 the following:

"25. Definition of seaport."

SEC. 3. CRIMINAL SANCTIONS FOR FAILURE TO HEAVE TO, OBSTRUCTION OF BOARDING, OR PROVIDING FALSE INFORMATION.

(a) OFFENSE.—Chapter 109 of title 18, United States Code, is amended by adding at the end the following:

"§ 2237. Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information.

"(a)(1) It shall be unlawful for the master, operator, or person in charge of a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to knowingly fail to obey an order by an authorized Federal law enforcement officer to heave to that vessel.

"(2) It shall be unlawful for any person on board a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to—

"(A) forcibly resist, oppose, prevent, impede, intimidate, or interfere with a boarding or other law enforcement action authorized by any Federal law, or to resist a lawful arrest; or

"(B) provide information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew, which that person knows is false.

"(b) This section does not limit the authority of a customs officer under section 581 of the Tariff Act of 1930 (19 U.S.C. 1581), or any other provision of law enforced or administered by the Secretary of the Treasury or the Undersecretary for Border and Transportation Security of the Department of Homeland Security, or the authority of any Federal law enforcement officer under any law of the United States, to order a vessel to stop or heave to.

"(c) A foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the designee of the Secretary of State.

"(d) In this section—

"(1) the term 'Federal law enforcement officer' has the meaning given the term in section 115(c);

"(2) the term 'heave to' means to cause a vessel to slow, come to a stop, or adjust its course or speed to account for the weather conditions and sea state to facilitate a law enforcement boarding;

"(3) the term 'vessel subject to the jurisdiction of the United States' has the mean-

ing given the term in section 2(c) of the Maritime Drug Law Enforcement Act (46 App. U.S.C. 1903(b)); and

"(4) the term 'vessel of the United States' has the meaning given the term in section 2(c) of the Maritime Drug Law Enforcement Act (46 App. U.S.C. 1903(b)).

"(e) Any person who intentionally violates the provisions of this section shall be fined under this title, imprisoned for not more than 5 years, or both."

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 109, title 18, United States Code, is amended by inserting after the item for section 2236 the following:

"2237. Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information."

SEC. 4. USE OF A DANGEROUS WEAPON OR EXPLOSIVE ON A PASSENGER VESSEL.

Section 1993 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting ", passenger vessel," after "transportation vehicle";

(B) in paragraphs (2)—

(i) by inserting ", passenger vessel," after "transportation vehicle"; and

(ii) by inserting "or owner of the passenger vessel" after "transportation provider" each place that term appears;

(C) in paragraph (3)—

(i) by inserting ", passenger vessel," after "transportation vehicle" each place that term appears; and

(ii) by inserting "or owner of the passenger vessel" after "transportation provider" each place that term appears;

(D) in paragraph (5)—

(i) by inserting ", passenger vessel," after "transportation vehicle"; and

(ii) by inserting "or owner of the passenger vessel" after "transportation provider"; and

(E) in paragraph (6), by inserting "or owner of a passenger vessel" after "transportation provider" each place that term appears;

(2) in subsection (b)(1), by inserting ", passenger vessel," after "transportation vehicle"; and

(3) in subsection (c)—

(A) by redesignating paragraph (6) through (8) as paragraphs (7) through (9); and

(B) by inserting after paragraph (5) the following:

"(6) the term 'passenger vessel' has the meaning given that term in section 2101(22) of title 46, United States Code, and includes a small passenger vessel, as that term is defined under section 2101(35) of that title."

SEC. 5. CRIMINAL SANCTIONS FOR VIOLENCE AGAINST MARITIME NAVIGATION, PLACEMENT OF DESTRUCTIVE DEVICES, AND MALICIOUS DUMPING.

(a) VIOLENCE AGAINST MARITIME NAVIGATION.—Section 2280(a) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (H), by striking "(G)" and inserting "(H)";

(B) by redesignating subparagraphs (F), (G), and (H) as subparagraphs (G), (H), and (I), respectively; and

(C) by inserting after subparagraph (E) the following:

"(F) destroys, seriously damages, alters, moves, or tampers with any aid to maritime navigation maintained by the Saint Lawrence Seaway Development Corporation under the authority of section 4 of the Act of May 13, 1954 (33 U.S.C. 984), by the Coast Guard pursuant to section 81 of title 14, United States Code, or lawfully maintained under authority granted by the Coast Guard pursuant to section 83 of title 14, United States Code, if such act endangers or is like-

ly to endanger the safe navigation of a ship;" and

(2) in paragraph (2) by striking "(C) or (E)" and inserting "(C), (E), or (F)".

(b) PLACEMENT OF DESTRUCTIVE DEVICES.—(1) IN GENERAL.—Chapter 111 of title 18, United States Code, is amended by adding after section 2280 the following:

"§ 2280A. Devices or substances in waters of the United States likely to destroy or damage ships or to interfere with maritime commerce

"(a) A person who knowingly places, or causes to be placed, in navigable waters of the United States, by any means, a device or substance which is likely to destroy or cause damage to a vessel or its cargo, or cause interference with the safe navigation of vessels, or interference with maritime commerce, such as by damaging or destroying marine terminals, facilities, and any other marine structure or entity used in maritime commerce, with the intent of causing such destruction or damage, or interference with the safe navigation of vessels or with maritime commerce, shall be fined under this title, imprisoned for any term of years or for life, or both; and if the death of any person results from conduct prohibited under this subsection, may be punished by death.

"(b) Nothing in this section shall be construed to apply to otherwise lawfully authorized and conducted activities of the United States Government."

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, is amended by adding after the item related to section 2280 the following:

"2280A. Devices or substances in waters of the United States likely to destroy or damage ships or to interfere with maritime commerce."

(c) MALICIOUS DUMPING.—

(1) IN GENERAL.—Chapter 111 of title 18, United States Code, is amended by adding at the end the following:

"§ 2282. Knowing discharge or release

"(a) ENDANGERMENT OF HUMAN LIFE.—Any person who knowingly discharges or releases oil, a hazardous material, a noxious liquid substance, or any other dangerous substance into the navigable waters of the United States or the adjoining shoreline with the intent to endanger human life, health, or welfare shall be fined under this title and imprisoned for any term of years or for life.

"(b) ENDANGERMENT OF MARINE ENVIRONMENT.—Any person who knowingly discharges or releases oil, a hazardous material, a noxious liquid substance, or any other dangerous substance into the navigable waters of the United States or the adjacent shoreline with the intent to endanger the marine environment shall be fined under this title, imprisoned not more than 30 years, or both.

"(c) DEFINITIONS.—In this section:

"(1) DISCHARGE.—The term 'discharge' means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"(2) HAZARDOUS MATERIAL.—The term 'hazardous material' has the meaning given the term in section 2101(14) of title 46, United States Code.

"(3) MARINE ENVIRONMENT.—The term 'marine environment' has the meaning given the term in section 2101(15) of title 46, United States Code.

"(4) NAVIGABLE WATERS.—The term 'navigable waters' has the meaning given the term in section 1362(7) of title 33, and also includes the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.

"(5) NOXIOUS LIQUID SUBSTANCE.—The term 'noxious liquid substance' has the meaning

given the term in the MARPOL Protocol defined in section 2(1) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)(3)).

(2) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 111 of title 18, United States Code, is amended by adding at the end the following:

“2282. Knowing discharge or release.”.

SEC. 6. TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.

(a) **TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.**—Chapter 111 of title 18, as amended by section 5 of this Act, is amended by adding at the end the following:

“§2283. Transportation of explosive, biological, chemical, or radioactive or nuclear materials.

“(a) **IN GENERAL.**—Any person who knowingly and willfully transports aboard any vessel within the United States, on the high seas, or having United States nationality, an explosive or incendiary device, biological agent, chemical weapon, or radioactive or nuclear material, knowing that any such item is intended to be used to commit an offense listed under section 2332b(g)(5)(B), shall be fined under this title, imprisoned for any term of years or for life, or both; and if the death of any person results from conduct prohibited by this subsection, may be punished by death.

“(b) **DEFINITIONS.**—In this section:

“(1) **BIOLOGICAL AGENT.**—The term ‘biological agent’ means any biological agent, toxin, or vector (as those terms are defined in section 178).

“(2) **BY-PRODUCT MATERIAL.**—The term ‘by-product material’ has the meaning given that term in section 11(e) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)).

“(3) **CHEMICAL WEAPON.**—The term ‘chemical weapon’ has the meaning given that term in section 229F.

“(4) **EXPLOSIVE OR INCENDIARY DEVICE.**—The term ‘explosive or incendiary device’ has the meaning given the term in section 232(5).

“(5) **NUCLEAR MATERIAL.**—The term ‘nuclear material’ has the meaning given that term in section 831(f)(1).

“(6) **RADIOACTIVE MATERIAL.**—The term ‘radioactive material’ means—

“(A) source material and special nuclear material, but does not include natural or depleted uranium;

“(B) nuclear by-product material;

“(C) material made radioactive by bombardment in an accelerator; or

“(D) all refined isotopes of radium.

“(8) **SOURCE MATERIAL.**—The term ‘source material’ has the meaning given that term in section 11(z) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(z)).

“(9) **SPECIAL NUCLEAR MATERIAL.**—The term ‘special nuclear material’ has the meaning given that term in section 11(aa) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

“§2284. Transportation of terrorists.

“(a) **IN GENERAL.**—Any person who knowingly and willfully transports any terrorist aboard any vessel within the United States, on the high seas, or having United States nationality, knowing that the transported person is a terrorist, shall be fined under this title, imprisoned for any term of years or for life, or both.

“(b) **DEFINED TERM.**—In this section, the term ‘terrorist’ means any person who intends to commit, or is avoiding apprehension after having committed, an offense listed under section 2332b(g)(5)(B).”.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 111 of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

“2283. Transportation of explosive, chemical, biological, or radioactive or nuclear materials.

“2284. Transportation of terrorists.”.

SEC. 7. DESTRUCTION OR INTERFERENCE WITH VESSELS OR MARITIME FACILITIES.

(a) **IN GENERAL.**—Title 18, United States Code, is amended by inserting after chapter 111 the following:

“CHAPTER 111A—DESTRUCTION OF, OR INTERFERENCE WITH, VESSELS OR MARITIME FACILITIES

“Sec.

“2290. Jurisdiction and scope.

“2291. Destruction of vessel or maritime facility.

“2292. Imparting or conveying false information.

“2293. Bar to prosecution.

“§2290. Jurisdiction and scope

“(a) **JURISDICTION.**—There is jurisdiction over an offense under this chapter if the prohibited activity takes place—

“(1) within the United States or within waters subject to the jurisdiction of the United States; or

“(2) outside United States and—

“(A) an offender or a victim is a national of the United States (as that term is defined under section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

“(B) the activity involves a vessel in which a national of the United States was on board; or

“(C) the activity involves a vessel of the United States (as that term is defined under section 2(c) of the Maritime Drug Law Enforcement Act (42 App. U.S.C. 1903(c)).

“(b) **SCOPE.**—Nothing in this chapter shall apply to otherwise lawful activities carried out by or at the direction of the United States Government.

“§2291. Destruction of vessel or maritime facility

“(a) **OFFENSE.**—Whoever willfully—

“(1) sets fire to, damages, destroys, disables, or wrecks any vessel;

“(2) places or causes to be placed a destructive device, as defined in section 921(a)(4), or destructive substance, as defined in section 13, in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any vessel, or any part or other materials used or intended to be used in connection with the operation of a vessel;

“(3) sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any maritime facility, including but not limited to, any aid to navigation, lock, canal, or vessel traffic service facility or equipment, or interferes by force or violence with the operation of such facility, if such action is likely to endanger the safety of any vessel in navigation;

“(4) sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance, structure, property, machine, or apparatus, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;

“(5) performs an act of violence against or incapacitates any individual on any vessel, if such act of violence or incapacitation is likely to endanger the safety of the vessel or those on board;

“(6) performs an act of violence against a person that causes or is likely to cause serious bodily injury, as defined in section 1365, in, upon, or in proximity to, any appliance, structure, property, machine, or apparatus,

or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;

“(7) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safety of any vessel in navigation; or

“(8) attempts or conspires to do anything prohibited under paragraphs (1) through (7): shall be fined under this title or imprisoned not more than 20 years, or both.

“(b) **LIMITATION.**—Subsection (a) shall not apply to any person that is engaging in otherwise lawful activity, such as normal repair and salvage activities, and the lawful transportation of hazardous materials.

“(c) **PENALTY.**—Whoever is fined or imprisoned under subsection (a) as a result of an act involving a vessel that, at the time of the violation, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)) or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23))), shall be fined under title 18, imprisoned for a term up to life, or both.

“(d) **PENALTY WHEN DEATH RESULTS.**—Whoever is convicted of any crime prohibited by subsection (a), which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life.

“(e) **THREATS.**—Whoever willfully imparts or conveys any threat to do an act which would violate this chapter, with an apparent determination and will to carry the threat into execution, shall be fined under this title, imprisoned not more than 5 years, or both, and is liable for all costs incurred as a result of such threat.

“§2292. Imparting or conveying false information

“(a) **IN GENERAL.**—Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or by chapter 111 of this title, shall be subject to a civil penalty of not more than \$5,000, which shall be recoverable in a civil action brought in the name of the United States.

“(b) **MALICIOUS CONDUCT.**—Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt to do any act which would be a crime prohibited by this chapter or by chapter 111 of this title, shall be fined under this title, imprisoned not more than 5 years, or both.

“(c) **JURISDICTION.**—

“(1) **IN GENERAL.**—Except as provided under paragraph (2), section 2290(a) shall not apply to any offense under this section.

“(2) **JURISDICTION.**—Jurisdiction over an offense under this section shall be determined in accordance with the provisions applicable to the crime prohibited by this chapter, or by chapter 2, 97, or 111 of this title, to which the imparted or conveyed false information relates, as applicable.

“§2293. Bar to prosecution

“(a) **IN GENERAL.**—It is a bar to prosecution under this chapter if—

“(1) the conduct in question occurred within the United States in relation to a labor dispute, and such conduct is prohibited as a

felony under the law of the State in which it was committed; or

“(2) such conduct is prohibited as a misdemeanor under the law of the State in which it was committed.

“(b) DEFINITIONS.—In this section:

“(1) LABOR DISPUTE.—The term “labor dispute” has the same meaning given that term in section 113(c) of the Norris-LaGuardia Act (29 U.S.C. 113(c)).

“(2) STATE.—The term “State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters at the beginning of title 18, United States Code, is amended by inserting after the item for chapter 111 the following:

“111A. Destruction of, or interference with, vessels or maritime facilities 2290”.

SEC. 8. THEFT OF INTERSTATE OR FOREIGN SHIPMENTS OR VESSELS.

(a) THEFT OF INTERSTATE OR FOREIGN SHIPMENTS.—Section 659 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting “trailer,” after “motortruck,”;

(B) by inserting “air cargo container,” after “aircraft,”; and

(C) by inserting “, or from any intermodal container, trailer, container freight station, warehouse, or freight consolidation facility,” after “air navigation facility”;

(2) in the fifth undesignated paragraph, by striking “one year” and inserting “3 years”;

(3) by inserting after the first sentence in the eighth undesignated paragraph the following: “For purposes of this section, goods and chattel shall be construed to be moving as an interstate or foreign shipment at all points between the point of origin and the final destination (as evidenced by the waybill or other shipping document of the shipment), regardless of any temporary stop while awaiting transshipment or otherwise.”.

(b) STOLEN VESSELS.—

(1) IN GENERAL.—Section 2311 of title 18, United States Code, is amended by adding at the end the following:

“‘Vessel’ means any watercraft or other contrivance used or designed for transportation or navigation on, under, or immediately above, water.”.

(2) TRANSPORTATION AND SALE OF STOLEN VESSELS.—Sections 2312 and 2313 of title 18, United States Code, are each amended by striking “motor vehicle or aircraft” and inserting “motor vehicle, vessel, or aircraft”.

(c) REVIEW OF SENTENCING GUIDELINES.—Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall review the Federal Sentencing Guidelines to determine whether sentencing enhancement is appropriate for any offense under section 659 or 2311 of title 18, United States Code, as amended by this Act.

(d) ANNUAL REPORT OF LAW ENFORCEMENT ACTIVITIES.—The Attorney General shall annually submit to Congress a report, which shall include an evaluation of law enforcement activities relating to the investigation and prosecution of offenses under section 659 of title 18, United States Code, as amended by this Act.

(e) REPORTING OF CARGO THEFT.—The Attorney General shall take the steps necessary to ensure that reports of cargo theft collected by Federal, State, and local officials are reflected as a separate category in the Uniform Crime Reporting System, or any successor system, by no later than December 31, 2005.

SEC. 9. INCREASED PENALTIES FOR NONCOMPLIANCE WITH MANIFEST REQUIREMENTS.

(a) REPORTING, ENTRY, CLEARANCE REQUIREMENTS.—Section 436(b) of the Tariff Act of 1930 (19 U.S.C. 1436(b)) is amended by—

(1) striking “or aircraft pilot” and inserting “, aircraft pilot, operator, owner of such vessel, vehicle or aircraft or any other responsible party (including non-vessel operating common carriers)”;

(2) striking “\$5,000” and inserting “\$10,000”; and

(3) striking “\$10,000” and inserting “\$25,000”.

(b) CRIMINAL PENALTY.—Section 436(c) of the Tariff Act of 1930 (19 U.S.C. 1436(c)) is amended by striking “\$2,000” and inserting “\$10,000”.

(c) FALSITY OR LACK OF MANIFEST.—Section 584(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1584(a)(1)) is amended by striking “\$1,000” in each place it occurs and inserting “\$10,000”.

SEC. 10. STOWAWAYS ON VESSELS OR AIRCRAFT.

Section 2199 of title 18, United States Code, is amended by striking “Shall be fined under this title or imprisoned not more than one year, or both.” and inserting the following:

“(1) shall be fined under this title, imprisoned not more than 5 years, or both;

“(2) if the person commits an act proscribed by this section, with the intent to commit serious bodily injury, and serious bodily injury occurs (as defined under section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242) to any person other than a participant as a result of a violation of this section, shall be fined under this title, imprisoned not more than 20 years, or both; and

“(3) if an individual commits an act proscribed by this section, with the intent to cause death, and if the death of any person other than a participant occurs as a result of a violation of this section, shall be fined under this title, imprisoned for any number of years or for life, or both.”.

SEC. 11. BRIBERY AFFECTING PORT SECURITY.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by adding at the end the following:

“§ 226. Bribery affecting port security

“(a) IN GENERAL.—Whoever knowingly—

“(1) directly or indirectly, corruptly gives, offers, or promises anything of value to any public or private person, with intent—

“(A) to commit international or domestic terrorism (as that term is defined under section 2331);

“(B) to influence any action or any person to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud affecting any secure or restricted area or seaport; or

“(C) to induce any official or person to do or omit to do any act in violation of the fiduciary duty of such official or person which affects any secure or restricted area or seaport; or

“(2) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for—

“(A) being influenced in the performance of any official act affecting any secure or restricted area or seaport; and

“(B) knowing that such influence will be used to commit, or plan to commit, international or domestic terrorism

“shall be fined under this title, imprisoned not more than 15 years, or both.

“(b) DEFINITION.—In this section, the term ‘secure or restricted area’ has the meaning given that term in section 2285(c).”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end the following:

“226. Bribery affecting port security.”.

Mrs. FEINSTEIN. Mr. President, I rise today, along with Senators BIDEN, SPECTER, KYL, HOLLINGS and ALLEN, to introduce the Reducing Crime and Terrorism at America's Seaports Act of 2004—legislation designed to deter, prevent and punish a terrorist attack at or through one of our Nation's seaports.

I would like to thank Senator KYL for joining me in sponsoring this bill, as well as Senators BIDEN, SPECTER, HOLLINGS and ALLEN for their leadership and hard work on this critical matter.

Last year, Senator KYL and I introduced the Anti-Terrorism and Port Security Act of 2003. That bill contained a set of comprehensive measures to enhance the security of our ports. At the same time, Senators BIDEN and SPECTER were working on legislation largely focused on the criminal law aspect of Port Security.

Since that time we have joined together to craft the bill now before us. The legislation is narrow in focus, limited primarily to criminal law provisions. It is my hope that it will enjoy strong bipartisan support.

I also hope we can continue to work towards a more comprehensive approach to seaport security in the coming months.

Our nation's seaports represent the soft underbelly of our Nation's homeland security. Our adversaries, including al-Qaida and other terrorist groups, have the plans and capabilities to launch a maritime attack. In fact, just last week six al-Qaida associates were charged with planning the 2000 attack on the U.S.S. *Cole*. In Yemen that left 19 American sailors dead.

Millions of shipping containers pass through our ports each month. A single container has room for as much as 60,000 pounds of explosives—10 to 15 times the amount in the Ryder truck used to blow up the Murrah Federal Building in Oklahoma City. When you consider that a single ship can carry as many as 8,000 containers at one time, the vulnerability of our seaports is alarming.

Worse, a suitcase-sized nuclear device or radiological “dirty bomb” could also be placed in a container and shipped into the country. With the current monitoring system, the odds are that the container would never be inspected. And, even if the container was inspected, it would be too late.

In addition to the danger such attacks present to human lives, an attack on or through a seaport could have devastating economic consequences. Excluding trade with Mexico and Canada, America's ports handle 95 percent of goods imported and exported from the U.S. That means 800 million tons of cargo valued at approximately \$600 billion. A terrorist attack would bring our port operations

to a complete standstill. To give you even a small glimpse of what such a disruption could mean, last year's West Coast labor dispute cost the U.S. economy somewhere between \$1 and \$2 billion per day—a total of \$10 to \$20 billion.

In its December 2002 report, the Hart-Rudman Terrorism Task Force described what a terrorist attack at or through one of our ports might mean in economic terms: "If an explosive device were loaded in a container and set off in a port, it would almost automatically raise concern about the integrity of the 21,000 containers that arrive in U.S. ports each day and the many thousands more that arrive by truck and rail across U.S. land borders. A three-to-four-week closure of U.S. ports would bring the global container industry to its knees. Megaports such as Rotterdam and Singapore would have to close their gates to prevent boxes from piling up on their limited pier space. Trucks, trains, and barges would be stranded outside the terminals with no way to unload their boxes. Boxes bound for the United States would have to be unloaded from their outbound ships. Service contracts would need to be renegotiated. As the system became gridlocked, so would much of global commerce."

This is a national issue, but one of particular concern to my home state because more than half of all goods imported into the U.S. pass through my home State of California.

Last year, 6.5 million imported containers—52 percent of the containers entering the United States—traveled through California. Six million of these came through two ports alone: the Port of Los Angeles and the Port of Long Beach.

That means that, if terrorists succeeded in putting a weapon of mass destruction into a container undetected, there is a one in two chance that this weapon would arrive and/or be detonated in Southern California.

And the problem is not just with containers. Nearly one-quarter of California's imported crude oil is offloaded in one area. A suicide attack on a tanker at an offloading facility could leave Southern California without refined fuels within a few days.

Since September 11, we have made significant steps in enhancing port security, but clearly, there is more to be done. This bill addresses some of those needed enhancements, particularly in the area of criminal law.

The Reducing Crime and Terrorism at America's Seaports Act of 2004 does the following: Clarifies existing law to make clear that those who would try to access our ports under false pretenses are committing a crime; makes it a crime to refuse to stop when the Coast Guard orders a ship to standby for inspection; sets clear criminal penalties for the use of a dangerous weapon or explosive on a passenger vessel such as a cruise ship; imposes criminal penalties for those who tamper with

navigational aids, such as buoys and transponders, intentionally place destructive devices in navigable waters, or intentionally dump hazardous materials in waterways; establishes a specific crime for knowingly and willfully transporting aboard any vessel an explosive, biological agent, chemical weapon, or radioactive or nuclear materials intended to be used to commit a terrorist act; the bill also makes it a crime to knowingly and willfully transport a person aboard any vessel who intends to commit, or has committed, a terrorist act; makes it a crime to damage or destroy a vessel or a maritime facility, to commit an act of violence against any individual on a vessel or near a port facility, or to knowingly communicate false information that endangers the safety of a vessel; provides sanctions to deter criminal or civil violations related to a range of offenses, including theft of interstate or foreign shipments; amends existing law to increase penalties for noncompliance with certain reporting and record-keeping requirements for incoming ships, including information regarding the content of cargo containers and the country from which the shipments originated; and finally, the bill toughens anti-stowaway laws and laws governing bribery of port security officials.

Strengthening criminal penalties is one way we can make our Nation's ports less vulnerable. The Coast Guard, the FBI, Customs and Immigration authorities—all need the appropriate crime-fighting tools to prevent a terrorist attack. Today, we are introducing legislation to provide the crime-fighting tools that will do just that.

I ask unanimous consent that an analysis of the bill be printed in the RECORD.

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

SEC. 2. ENTRY BY FALSE PRETENSES TO ANY PORT.

Section 2 would clarify that section 1036 of title 18 (fraudulent access to transport facilities) includes seaports and waterfronts within its scope, as well as increase the maximum term of imprisonment for a violation from 5 years to 10 years. *This provision was included in the originally introduced Biden-Specter Bill, but not in the Feinstein-Kyl Bill.*

SEC. 3. CRIMINAL SANCTIONS FOR FAILURE TO "HEAVE TO," OBSTRUCTION OF BOARDING, OR PROVIDING FALSE INFORMATION.

Section 3 would amend the U.S. Code to make it a crime (1) for a vessel operator knowingly to fail to slow or stop a ship once ordered to do so by a federal law enforcement officer; (2) for any person on board a vessel to impede boarding or other law enforcement action authorized by federal law; or (3) for any person on board a vessel to provide false information to a federal law enforcement officer (punishable by a fine and/or imprisonment for a maximum term of 5 years). *This provision was included in both the Biden-Specter and Feinstein-Kyl Bills, but the Feinstein-Kyl Bill included a lower penalty of 1-year maximum imprisonment.*

SEC. 4. USE OF A DANGEROUS WEAPON OR EXPLOSIVE ON A PASSENGER VESSEL.

Section 4 would amend section 1993 of title 18 (terrorist attacks and other acts of violence against mass transportation systems) to make it a crime to willfully use a dangerous weapon (including chemical, biological, radiological or nuclear materials) or explosive, with the intent to cause death or serious bodily injury to any person on board a passenger vessel (punishable by a fine and/or imprisonment for a maximum term of 20 years; and, if death results, for a term of imprisonment up to life). *Both the Biden-Specter and Feinstein-Kyl Bills, employing different language, included a provision that would achieve this aim. The substitute incorporates the Biden-Specter approach.*

SEC. 5. CRIMINAL SANCTIONS FOR VIOLENCE AGAINST MARITIME NAVIGATION, PLACEMENT OF DESTRUCTIVE DEVICES, AND MALICIOUS DUMPING.

Section 5 would amend the criminal code to make it a crime to intentionally damage or tamper with any maritime navigational aid maintained by the Coast Guard or under its authority, if such act endangers the safe navigation of a ship; or knowingly place in waters any device or substance which is likely to damage a vessel or its cargo, interfere with a vessel's safe navigation, or interfere with maritime commerce (punishable by a fine and/or a term of imprisonment up to life; if death results, by a sentence of death). This section would also make it a crime to willfully and maliciously discharge a hazardous substance into U.S. waters, with the intent to cause death, serious bodily harm, or catastrophic economic injury (punishable by a fine and/or a term of imprisonment up to life; and, where an individual engages in the prohibited conduct with an intent to cause harm to the marine environment, by a fine and/or imprisonment for a maximum term of 30 years). *Both the Biden-Specter and Feinstein-Kyl Bills included this provision, but, unlike the originally-introduced bills, the substitute measure excludes the death penalty for violations of the malicious dumping provision.*

SEC. 6. TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.

This section would make it a crime to knowingly and willfully transport aboard any vessel an explosive, biological agent, chemical weapon, or radioactive or nuclear materials, knowing that the item is intended to be used to commit a terrorist act (punishable by a fine and/or a term of imprisonment up to life; and, if death results, by a sentence of death). This section would also make it a crime to knowingly and willfully transport aboard any vessel any person who intends to commit, or is avoiding apprehension after having committed, a terrorist act (punishable by a fine and/or a term of imprisonment up to life). *This provision was included in the originally introduced Biden-Specter Bill, but not in the Feinstein-Kyl Bill.*

SEC. 7. DESTRUCTION OR INTERFERENCE WITH VESSELS OR MARITIME FACILITIES.

This section would make it a crime to (1) damage or destroy a vessel or its parts, a maritime facility, or any apparatus used to store, load or unload cargo and passengers; (2) perform an act of violence against or incapacitate any individual on a vessel or at or near a facility; or (3) knowingly communicate false information that endangers the safety of a vessel (punishable by a fine and/or imprisonment for a maximum term of 20 years; if the act involves a vessel carrying high-level radioactive waste or spent nuclear fuel, by a fine and/or a term of imprisonment up to life; and, if death results, by a sentence of death). *This provision was included in both the Biden-Specter and Feinstein-Kyl Bills. The Biden-Specter Bill also included an exception*

for otherwise lawful activities (e.g., normal repair, salvage activities, authorized transportation of hazardous materials) and a bar to federal prosecution if the conduct is *de minimus* (e.g., blown-out tire) or occurred during legitimate labor activity. The substitute measure incorporates these elements of the Biden-Specter Bill.

SEC. 8. THEFT OF INTERSTATE OR FOREIGN SHIPMENTS OR VESSELS.

Section 8 would expand the scope of section 659 of title 18 (theft of interstate or foreign shipments) to include theft of goods from additional transportation facilities or instruments, including trailers, cargo containers, and warehouses; and would increase the maximum term of imprisonment for low-level thefts from 1 year to 3 years. *This provision was included in the originally introduced Biden-Specter Bill, but not in the Feinstein-Kyl Bill.*

SEC. 9. INCREASED PENALTIES FOR NONCOMPLIANCE WITH MANIFEST REQUIREMENTS.

Section 509 would amend section 1436 of title 19 to increase the penalties for non-compliance with certain manifest reporting and record-keeping requirements, including information regarding the content of cargo containers and the country from which the shipments originated. *This provision was included in both the Biden-Specter and Feinstein-Kyl Bills, but the Biden-Specter Bill included lesser penalties. The substitute measure reflects the penalty structure set out in the Biden-Specter Bill.*

SEC. 10. STOWAWAYS ON VESSELS OR AIRCRAFT.

This section would increase the maximum penalty for a violation of section 2199 (stowaways on vessels or aircraft) of title 18 from 1 year to 5 years. If the act is committed with the intent to commit serious bodily injury and serious bodily injury does in fact occur, it would be punishable by a fine and/or a term of imprisonment up to 20 years. If the act is committed with the intent to cause death, it would be punishable by a fine and/or a term of imprisonment up to life. *This provision was not included in either the Biden-Specter or Feinstein-Kyl Bills, but is included in the substitute measure on Senator Hatch's request.*

SEC. 11. BRIBERY AFFECTING PORT SECURITY.

This section would make it a crime to knowingly bribe a public official, with the intent to commit international or domestic terrorism; or for anyone to receive a bribe in return for being influenced in his or her public duties, knowing that such influence will be used to commit, or plan to commit, an act of terrorism (punishable by a term of imprisonment up to 15 years). *This provision was not included in either the Biden-Specter or Feinstein-Kyl Bills, but is included in the substitute measure on Senator Hatch's request.*

By Mr. DODD:

S. 2654. A bill to provide for Kindergarten Plus programs; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today to introduce legislation with my colleagues Senator KENNEDY and Senator BINGAMAN to jump-start school success for low-income children. Today we are introducing the Sandy Feldman Kindergarten Plus Act of 2004.

Sandy Feldman, the President of the American Federation of Teachers, stepped down today after decades of public service. If there is one goal to which Sandy has dedicated herself over the years, it is the education of our Nation's children.

Sandy is the product of New York City's public schools. She knows what great promise public education holds for our Nation. But, she also knows that all too often, we don't give our schools the resources they need to be able to live up to that promise.

While I've worked with Sandy for many years, I've been particularly privileged to work with her in the area of early childhood education. It was Sandy who developed the concept for this Kindergarten Plus legislation and Sandy who spent countless hours developing the details to ensure that the initiative would work in a diverse array of communities.

Although Sandy is leaving the AFT, I know she will continue fighting for our Nation's children, and for mothers, fathers, and teachers across this Nation. I look forward to her continued counsel and advice on education issues and other issues of importance to families.

The Kindergarten Plus legislation we are introducing today will offer competitive grants to States to provide children below 185 percent of the poverty line with a transitional kindergarten during the summer before kindergarten formally begins and a transitional first grade during the summer between kindergarten and first grade.

Why an extra four months of kindergarten for these children? The answer is simple. Because too many low income children today enter kindergarten unprepared for the year ahead, far behind their wealthier peers in both academic and social skills.

According to a recent survey, 46 percent of kindergarten teachers report that at least half of their class or more has specific problems with entry into kindergarten. Yet, kindergarten is critical in preparing children to succeed in elementary school, especially for children at-risk of academic failure.

There is no panacea, no magic wand to erase the deficiencies that too many low income children have in entering kindergarten on par with their more economically well-off peers. It is simply not possible in a two month period before kindergarten begins or in a nine-month half day pre-kindergarten program to wipe away the advantages that wealthier children have had in their first five years of life that result in the skill set with which they enter kindergarten.

We can, however, do a better job of preparing less fortunate children for school. We can expose them to classroom practices and routines and the expectations for kindergarten behavior and protocol. We can introduce them to concepts and help them understand that classrooms have rules. We can expose them to literature, story time or circle time. We can help them understand that books are made up of printed words and that words are made up of individual letters. We can ask them questions to help develop their critical thinking skills, like what do you think will happen next in the story? Why? We can offer them "show and tell" to de-

velop their oral language skills and ability to speak out loud in sequential sentences.

Many children enter kindergarten with these skills. But, many do not. During the school year before a child is eligible to enter kindergarten, about 75 percent of children in families with more than \$75,000 in income participate in some type of center-based program, compared to 51 percent of children in families with incomes between \$10,000 and \$20,000.

The numbers are much more stark when looking at the children of mothers who dropped out of high school. Recent data shows that about 74 percent of 3, 4, and 5 year old children whose mothers graduated from college were enrolled in a center-based program compared to only 42 percent of 3, 4, and 5 year old children whose mothers did not complete high school.

How does this translate to children? Some children know how to follow directions and some children do not. Some children transition well between activities as part of a daily routine, some children do not. About 85 percent of high income children, compared to 39 percent of low income children, can recognize letters of the alphabet upon arrival in kindergarten. About half the children of college graduates can identify the beginning sounds of words, but only 9 percent of the children whose parents didn't complete high school can recognize the beginning sounds of words.

Of equal concern, kindergarten teachers report that about 80 percent of children whose mothers graduated from college persist at a task and are eager to learn whereas only about 60 percent of the children whose mothers have not graduated from high school persist at a task and are eager to learn.

What we know from the research is that children can enter kindergarten better prepared to learn. We may not be able to close the gap between low income children and their wealthier peers, but we can certainly narrow it considerably.

Our bill would provide states with resources to offer a transitional kindergarten during the summer before kindergarten begins. This would enable local school districts to offer a jumpstart on kindergarten with smaller class sizes during the summer. Before all kindergarten eligible children arrive, K+ children would have an introduction to kindergarten. The same opportunity would be part of the program for the summer between kindergarten and first grade.

The introductory period would enable school districts to target low income children who may never before have participated in a center-based program such as Head Start or state pre-k, or nursery school. They could target low income English language learners or low income children who participated in Head Start or state pre-k who could continue their progress during the summer.

About 65 percent of mothers with children under age 6 are in the workforce today. Every day, about 13 million preschoolers, including 6 million infants and toddlers, are in some type of child care arrangement. What we are trying to do with this bill is to pull out low income children who would be eligible to enter kindergarten in the fall and offer them a summer enrichment period as an introduction to kindergarten. It might be that a local Head Start or community-based organization's preschool would continue to operate their programs during the summer. However, these are local decisions made by school districts that apply for and receive K+ funding.

It should be clear that the K+ program would operate as a supplement to existing programs, most of which follow the school calendar. In fact, children who participate in a high quality early learning program during the summer before kindergarten are not eligible to participate in K+ to avoid duplication of efforts and scarce resources.

In the National Academy of Sciences report, "From Neurons to Neighborhoods: The Science of Early Childhood Development", numerous recommendations are made to improve the foundation with which children enter school. The report points out that with so many parents working today, the burden of poor quality and limited choice in child care rests most heavily on low income working families whose financial resources are too high to qualify for subsidies or Head Start yet too low to afford market prices for quality child care.

It is the children of the working poor who are very much at risk of beginning kindergarten behind their wealthier and poorer peers. Yet, it is these children in addition to poor children who are most likely to enter kindergarten behind their wealthier peers, unprepared for the year ahead.

Supporting the K+ program is the American Federation of Teachers, AFT, the Parent-Teacher Association, PTA, the Council of Great City Schools, the Society for Research in Child Development, SRCDC, the Children's Defense Fund, and Easter Seals.

We urge you to join us as cosponsors of this legislation and help give low income children a jump-start on school success.

Mr. President, I ask unanimous consent that a brief summary of the bill and the text 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. 2654

SECTION 1. SHORT TITLE.

This Act may be cited as the "Kindergarten Plus Act of 2004".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Kindergarten has proven to be a beneficial experience for children, putting children on a path that positively influences

their learning and development in later school years.

(2) Kindergarten and the years leading up to kindergarten are critical in preparing children to succeed in elementary school, especially if the children are from low-income families or have other risks of difficulty in school.

(3) Disadvantaged children, on average, lag behind other children in literacy, numeracy, and social skills, even before formal schooling begins.

(4) For many children entering kindergarten, the achievement gap between children from low-income households compared to children from high-income households is already evident.

(5) 85 percent of beginning kindergartners in the highest socioeconomic group, compared to 39 percent in the lowest socioeconomic group, can recognize letters of the alphabet. Similarly, 98 percent of beginning kindergartners in the highest socioeconomic group, compared to 84 percent of their peers in the lowest socioeconomic group, can recognize numbers and shapes.

(6) Once disadvantaged children are in school, they learn at the same rate as other children. Therefore, providing disadvantaged children with additional time in kindergarten, in the summer before such children ordinarily enter kindergarten and in the summer before first grade, will help schools close achievement gaps and accelerate the academic progress of their disadvantaged students.

(7) High quality, extended-year kindergarten that provides children with enriched learning experiences is an important factor in helping to close achievement gaps, rather than having the gaps continue to widen.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ELIGIBLE STUDENT.**—The term "eligible student" means a child who—

(A) is a 5-year old, or will be eligible to attend kindergarten at the beginning of the next school year;

(B) comes from a family with an income at or below 185 percent of the poverty line; and

(C) is not already served by a high-quality program in the summer before or the summer after the child enters kindergarten.

(2) **KINDERGARTEN PLUS.**—The term "Kindergarten Plus" means a voluntary full day of kindergarten, during the summer before and during the summer after, the traditional kindergarten school year (as determined by the State).

(3) **LOCAL EDUCATIONAL AGENCY.**—The term "local educational agency" has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(4) **PARENT.**—The term "parent" includes a legal guardian or other person standing in loco parentis (such as a grandparent or step-parent with whom the child lives, or a person who is legally responsible for the child's welfare).

(5) **PARENTAL INVOLVEMENT.**—The term "parental involvement" means the participation of parents in regular, 2-way, and meaningful communication with school personnel involving student academic learning and other school activities, including ensuring that parents—

(A) play an integral role in assisting their child's learning;

(B) are encouraged to be actively involved in their child's education at school; and

(C) are full partners in their child's education and are included, as appropriate, in decisionmaking and on advisory committees to assist in the education of their child.

(6) **POVERTY LINE.**—The term "poverty line" means the poverty line (as defined by

the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved.

(7) **ELIGIBLE PROVIDER.**—The term "eligible provider" means a local educational agency or a private not-for-profit agency or organization, with a demonstrated record in the delivery of early childhood education services to preschool-age children, that provides high-quality early learning and development experiences that—

(A) are aligned with the expectations for what children should know and be able to do when the children enter kindergarten and grade 1, as established by the State educational agency; or

(B) in the case of an entity that is not a local educational agency and that serves children who have not entered kindergarten, meet the performance standards and performance measures described in subparagraphs (A) and (B) of subsection (a)(1), and subsection (b), of section 641A of the Head Start Act (42 U.S.C. 9836a) or the prekindergarten standards of the State where the entity is located.

(8) **SCHOOL READINESS.**—The term "school readiness" means the cognitive, social, emotional, approaches to learning, and physical development of a child, including early literacy and early mathematics skills, that prepares the child to learn and succeed in elementary school.

(9) **SECRETARY.**—The term "Secretary" means the Secretary of Education.

(10) **STATE EDUCATIONAL AGENCY.**—The term "State educational agency" has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

SEC. 4. GRANTS TO STATE EDUCATIONAL AGENCIES AUTHORIZED.

(a) **IN GENERAL.**—The Secretary is authorized to award grants, on a competitive basis, to State educational agencies to enable the State educational agencies to provide Kindergarten Plus within the State.

(b) **SUFFICIENT SIZE.**—To the extent possible, the Secretary shall ensure that each grant awarded under this section is of sufficient size to enable the State educational agency receiving the grant to provide Kindergarten Plus to all eligible students served by the local educational agencies within the State with the highest concentrations of eligible students.

(c) **MINIMUM AMOUNT.**—The Secretary shall not award a grant to a State educational agency under this section in an amount that is less than \$500,000.

(d) **STATE USE OF FUNDS.**—A State educational agency shall use—

(1) not more than 3 percent of the grant funds received under this Act for administration of the Kindergarten Plus programs supported under this Act;

(2) not more than 5 percent of the grant funds received under this Act to develop professional development activities and curricula for teachers and staff of Kindergarten Plus programs in order to develop a continuum of developmentally appropriate curricula and practices for preschool, kindergarten, and grade 1 that ensures—

(A) an effective transition to kindergarten and to grade 1 for students; and

(B) appropriate expectations for the students' learning and development as the students make the transition to kindergarten and to grade 1; and

(3) the remainder of the grant funds to award subgrants to local educational agencies.

(e) **PRIORITY.**—In awarding grants under this Act the Secretary shall give priority to State educational agencies that—

(1) on their own or in combination with other government agencies, provide full day kindergarten to all kindergarten-age children who are from families with incomes below 185 percent of the poverty line within the State; or

(2) demonstrate progress toward providing full day kindergarten to all kindergarten-age children who are from families with incomes below 185 percent of the poverty line within the State by submitting a plan that shows how the State educational agency will, at a minimum, double the number of such children that were served by a full day kindergarten program in the school year preceding the school year for which assistance is first sought.

SEC. 5. SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.—Each State educational agency that receives a grant under this Act—

(1) shall reserve an amount sufficient to continue to fund multiyear subgrants awarded under this section; and

(2) shall award subgrants to local educational agencies within the State to enable the local educational agencies to pay the Federal share of the costs of carrying out Kindergarten Plus programs for eligible students.

(b) PRIORITY.—In awarding subgrants under this section the State educational agency shall give priority to local educational agencies—

(1) serving the greatest number or percentage of kindergarten-age children who are from families with incomes below 185 percent of the poverty line, based on data from the most recent school year; and

(2) that propose to significantly reduce the class size and student-to-teacher ratio of the classes in their Kindergarten Plus programs below the average class size and student-to-teacher ratios of kindergarten classes served by the local educational agencies.

(c) FEDERAL SHARE.—The Federal share of the costs of carrying out a Kindergarten Plus program shall be—

(1) 100 percent for the first, second, and third years of the program;

(2) 85 percent for the fourth year of the program; and

(3) 75 percent for the fifth year of the program.

(d) IN-KIND CONTRIBUTIONS.—The non-Federal share of the costs of carrying out a Kindergarten Plus program may be in the form of in-kind contributions.

SEC. 6. STATE APPLICATION.

(a) IN GENERAL.—In order to receive a grant under this Act, a State educational agency shall submit an application to the Secretary at such time and containing such information as the Secretary determines appropriate.

(b) CONSULTATION.—The application shall be developed by the State educational agency in consultation with representatives of early childhood education programs, early childhood education teachers, principals, pupil services personnel, administrators, paraprofessionals, other school staff, early childhood education providers (including Head Start agencies, State prekindergarten program staff, and child care providers), teacher organizations, parents, and parent organizations.

(c) CONTENTS.—At a minimum, the application shall include—

(1) a description of developmentally appropriate teaching practices and curricula for children that will be put in place to be used by local educational agencies and eligible providers offering Kindergarten Plus programs to carry out this Act;

(2) a general description of the nature of the Kindergarten Plus programs to be con-

ducted with funds received under this Act, including—

(A) the number of hours each day and the number of days each week that children in each Kindergarten Plus program will attend the program; and

(B) if a Kindergarten Plus program meets for less than 9 hours a day, how the needs of full-time working families will be addressed;

(3) goals and objectives to ensure that high-quality Kindergarten Plus programs are provided;

(4) an assurance that students enrolled in Kindergarten Plus programs funded under this Act will receive additional comprehensive services (such as nutritional services, health care, and mental health care), as needed; and

(5) a description of how—

(A) the State educational agency will coordinate and integrate services provided under this Act with other educational programs, such as Even Start, Head Start, Reading First, Early Reading First, State-funded preschool programs, preschool programs funded under section 619 or other provisions of part B of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1411 et seq.), and kindergarten programs;

(B) the State will provide professional development for teachers and staff of local educational agencies and eligible providers that receive subgrants under this Act regarding how to address the school readiness needs of children (including early literacy, early mathematics, and positive behavior) before the children enter kindergarten, throughout the school year, and into the summer after kindergarten;

(C) the State will assist Kindergarten Plus programs to provide exemplary parent education and parental involvement activities such as training and materials to assist parents in being their children's first teachers at home or home visiting;

(D) the State will conduct outreach to parents with eligible students, including parents whose native language is not English, parents of children with disabilities, and parents of migratory children; and

(E) the State educational agency will ensure that each Kindergarten Plus program uses developmentally appropriate practices, including practices and materials that are culturally and linguistically appropriate for the population of children being served in the program.

SEC. 7. LOCAL APPLICATION.

(a) IN GENERAL.—In order to receive a subgrant under this Act, a local educational agency shall submit an application to the State educational agency at such time and containing such information as the State educational agency determines appropriate.

(b) CONSULTATION.—The application shall be developed by the local educational agency in consultation with early childhood education teachers, principals, pupil services personnel, administrators, paraprofessionals, other school staff, early childhood education providers (including Head Start agencies, State prekindergarten program staff, and child care providers), teacher organizations, parents, and parent organizations.

(c) CONTENTS.—At a minimum, the application shall include a description of—

(1) the standards, research-based and developmentally appropriate curricula, teaching practices, and ongoing assessments for the purposes of improving instruction and services, to be used by the local educational agency that—

(A) are aligned with the State expectations for what children should know and be able to do when the children enter kindergarten and grade 1, as set by the State educational agency; and

(B) include—

(i) language skills, including an expanded use of vocabulary;

(ii) interest in and appreciation of books, reading, writing alone or with others, and phonological and phonemic awareness;

(iii) premathematics knowledge and skills, including aspects of classification, seriation, number sense, spatial relations, and time;

(iv) other cognitive abilities related to academic achievement;

(v) social and emotional development, including self-regulation skills;

(vi) physical development, including gross and fine motor development skills;

(vii) in the case of limited English proficiency, progress toward the acquisition of the English language; and

(viii) approaches to learning;

(2) how the local educational agency will ensure that the Kindergarten Plus program uses curricula and practices that—

(A) are developmentally, culturally, and linguistically appropriate for the population of children served in the program; and

(B) are aligned with the State learning standards and expectations for children in kindergarten and grade 1;

(3) how the Kindergarten Plus program will improve the school readiness of children served by the local educational agency under this Act, especially in mathematics and reading;

(4) how the Kindergarten Plus program will provide continuity of services and learning for children who were previously served by a different program;

(5) how the local educational agency will ensure that the Kindergarten Plus program has appropriate services and accommodations in place to serve children with disabilities and children who are limited English proficient;

(6) how the local educational agency will perform a needs assessment to avoid duplication with other programs within the geographic area served by the local educational agency;

(7) how the local educational agency will—

(A) transition Kindergarten Plus participants into local elementary school programs and services;

(B) ensure the development and use of systematic, coordinated records on the educational development of each child participating in the Kindergarten Plus program through periodic meetings and communications among—

(i) Kindergarten Plus program teachers;

(ii) elementary school staff; and

(iii) local early childhood education program providers, including Head Start agencies, State prekindergarten program staff, and center-based and family child care providers;

(C) provide parent and child orientation sessions conducted by teachers and staff; and

(D) provide a qualified staff person to be in charge of coordinating the transition services;

(8) how the local educational agency will provide instructional and environmental accommodations in the Kindergarten Plus program for children who are limited English proficient, children with disabilities, migratory children, neglected or delinquent youth, Indian children served under part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7401 et seq.), homeless children, and immigrant children;

(9) how the local educational agency will conduct outreach to parents of eligible students, including parents whose native language is not English, parents of children with disabilities, and parents of migratory children, which may include—

(A) activities to provide parents early exposure to the school environment, including meetings with teachers and staff;

(B) activities to better engage and inform parents on the benefits of Kindergarten Plus and other programs; and

(C) other efforts to ensure that parents have a level of comfort with the Kindergarten Plus program and the school environment;

(10) how the local educational agency will assist the Kindergarten Plus program to provide exemplary parent education and parental involvement activities such as training and materials to assist parents in being their children's first teachers at home or home visiting; and

(11) how the local educational agency will work with local center-based and family child care providers and Head Start agencies to ensure—

(A) the nonduplication of programs and services; and

(B) that the needs of working families are met through child care provided before and after the Kindergarten Plus program.

SEC. 8. LOCAL REQUIREMENTS AND PROVISIONS.

(a) LOCAL USES OF FUNDS.—A local educational agency that receives a subgrant under this Act shall use the subgrant funds for the following:

(1) The operational and program costs associated with the Kindergarten Plus program as described in the application to the State educational agency.

(2) Personnel services, including teachers, paraprofessionals, and other staff as needed.

(3) Additional services, as needed, including snacks and meals, mental health care, health care, linguistic assistance, special education and related services, and transportation services associated with the needs of the children in the program.

(4) Transition services to ensure children make a smooth transition into first grade and proper communication is made with the elementary school on the educational development of each child.

(5) Outreach and recruitment activities, including community forums and public service announcements in local media in various languages if necessary to ensure that all individuals in the community are aware of the availability of such program.

(6) Parental involvement programs, including materials and resources to help parents become more involved in their child's learning at home.

(7) Extended day services for the eligible students of working families, including working with existing programs in the community to coordinate services if possible.

(8) Child care services, provided through coordination with local center-based child care and family child care providers, and Head Start agencies, before and after the Kindergarten Plus program for the children participating in the program, to accommodate the schedules of working families.

(9) Enrichment activities, such as—

(A) art, music, and other creative arts;

(B) outings and field trips; and

(C) other experiences that support children's curiosity, motivation to learn, knowledge, and skills.

(b) ELIGIBLE PROVIDER GRANTS AND APPLICATIONS.—The local educational agency may use subgrant funds received under this Act to award a grant to an eligible provider to enable the eligible provider to carry out a Kindergarten Plus program for the local educational agency. Each eligible provider desiring a grant under this subsection shall submit an application to the local educational agency that contains the descriptions set forth in section 7 as applied to the eligible provider.

(c) CONTINUITY.—In carrying out a Kindergarten Plus program under this Act, a local educational agency is encouraged to explore ways to develop continuity in the education of children, for instance by keeping, if possible, the same teachers and personnel from the summer before kindergarten, through the kindergarten year, and during the summer after kindergarten.

(d) COORDINATION.—In carrying out a Kindergarten Plus program under this Act, a local educational agency shall coordinate with existing programs in the community to provide extended care and comprehensive services for children and their families in need of such care or services.

SEC. 9. TEACHER AND PERSONNEL QUALITY STANDARDS.

To be eligible for a subgrant under this Act, each local educational agency shall ensure that—

(1) each Kindergarten Plus classroom has—

(A) a highly qualified teacher, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801); or

(B) if an eligible provider who is not a local educational agency is providing the Kindergarten Plus program in accordance with section 8(b), a teacher that, at a minimum, has a bachelor's degree in early childhood education or a related field and experience in teaching children of this age;

(2) a qualified paraprofessional that meets the requirements for paraprofessionals under section 1119 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6319), is in each Kindergarten Plus classroom;

(3) Kindergarten Plus teachers and paraprofessionals are compensated on a salary scale comparable to kindergarten through grade 3 teachers and paraprofessionals in public schools served by the local educational agency; and

(4) Kindergarten Plus class sizes do not exceed the class size and ratio parameters set at the State or local level for the traditional kindergarten program.

SEC. 10. DIRECT GRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) GRANTS AUTHORIZED.—If a State educational agency does not apply for a grant under this Act or does not have an application approved under section 6, then the Secretary is authorized to award a grant to a local educational agency within the State to enable the local educational agency to pay the Federal share of the costs of carrying out a Kindergarten Plus program.

(b) ELIGIBILITY.—A local educational agency shall be eligible to receive a grant under this section if the local educational agency operates a full day kindergarten program that, at a minimum, is targeted to kindergarten-age children who are from families with incomes below 185 percent of the poverty line within the State.

(c) APPLICATION.—In order to receive a grant under subsection (a), a local educational agency shall submit to the Secretary an application that—

(1) contains the descriptions set forth in section 7; and

(2) includes an assurance that the Kindergarten Plus program funded under such grant will serve eligible students.

(d) APPLICABILITY.—Sections 8 and 9 shall apply to a local educational agency receiving a grant under this section in the same manner as the sections apply to a local educational agency receiving a subgrant under section 5(a).

SEC. 11. EVALUATION, COLLECTION, AND DISSEMINATION OF INFORMATION.

(a) IN GENERAL.—Each State educational agency that receives a grant under this Act, in cooperation with the local educational

agencies in the State that receive a subgrant under this Act, shall create an evaluation mechanism to determine the effectiveness of the Kindergarten Plus programs in the State, taking into account—

(1) information from the local needs assessment, conducted in accordance with section 7(c)(6), including—

(A) the number of eligible students in the geographic area;

(B) the number of children served by Kindergarten Plus programs, disaggregated by family income, race, ethnicity, native language, and prior enrollment in an early childhood education program; and

(C) the number of children with disabilities served by Kindergarten Plus programs;

(2) the recruitment of teachers and staff for Kindergarten Plus programs, and the retention of such personnel in the programs for more than 1 year;

(3) the provision of services for children and families served by Kindergarten Plus programs, including parent education, home visits, and comprehensive services for families who need such services;

(4) the opportunities for professional development for teachers and staff; and

(5) the curricula used in Kindergarten Plus programs.

(b) COMPARISON.—The evaluation process may include comparison groups of similar children who do not participate in a Kindergarten Plus program.

(c) INFORMATION COLLECTION AND REPORTING.—The information necessary for the evaluation shall be collected yearly by the State and reported every 2 years by the State to the Secretary.

(d) ANALYSIS OF EFFECTIVENESS.—The Secretary shall conduct an analysis of the overall effectiveness of the programs assisted under this Act and make the analysis available to Congress, and the public, biannually.

SEC. 12. SUPPLEMENT NOT SUPPLANT.

Funds made available under this Act shall be used to supplement, not supplant, other Federal, State, or local funds available to carry out activities under this Act.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized to be appropriated \$1,500,000,000 for fiscal year 2005 and such sums as may be necessary for each of the fiscal years 2006 through 2010.

SUMMARY OF THE SANDY FELDMAN KINDERGARTEN PLUS (K+) ACT OF 2004

Purpose: To provide disadvantaged children with additional time in kindergarten during the summer before and summer after the traditional kindergarten school year, and to help ensure that more children enter school ready to succeed.

Background: Kindergarten is critical in preparing children to succeed in elementary school. Many low-income children begin kindergarten lagging behind other children in literacy, math, and social skills, even before formal schooling begins.

85 percent of high-income children, compared to 39 percent of low-income children, can recognize letters of the alphabet upon arrival in kindergarten. Half the children of parents who have graduated from college can identify the beginning sounds of words, but only 9 percent of the children whose parents have not completed high school recognize the beginning sounds of words. Kindergarten teachers report that about 80 percent of the children whose mothers graduated from college persist at a task and are eager to learn whereas only about 60 percent of the children whose mothers have not graduated from high school persist at a task and are eager to learn.

Brief Bill Summary: K+ creates a competitive grant program for states to provide

local education agencies (LEAs) with funds to provide kindergarten to disadvantaged children the summer before and the summer after the traditional kindergarten school year. In awarding grants to LEAs, States shall give priority to educational agencies serving the greatest number or percentage of kindergarten-aged children who are from families with incomes below 185 percent of the poverty line and to LEAs that will significantly reduce kindergarten class sizes for their summer programs.

To be eligible for a grant, States must have in place: developmentally appropriate practices and curriculum; goals and objectives for a high quality summer program; a description of how the State will provide professional development for K+ teachers and staff; a description of how the State will assist K+ programs to reach out to, and work with, parents; and, a means to collect evaluative data to determine the effectiveness of K+ programs across their state.

To be eligible for a subgrant, LEAs must have in place: readiness standards and developmentally appropriate curricula; a plan for using classroom practices and strategies proven to be effective; a plan for notifying parents and the community regarding the availability of K+; a plan for parental involvement in any K+ program; and, a plan to demonstrate how they will accommodate the needs of working parents with "before and after" child care services.

Funds to LEAs may be used to: pay for operational and programmatic costs, including personnel and transportation; transition services to first grade; outreach and recruitment; parental involvement programs; and child care services. Each LEA shall ensure a highly qualified teacher and qualified paraprofessional or for non-school based programs a teacher that at a minimum has a Bachelor's degree in early childhood education.

The bill authorizes \$1.5 billion for fiscal year 2005, and such sums as may be necessary for years 2006-2010; the minimum State grant is \$500,000.

By Mr. SMITH:

S. 2655. A bill to amend the Internal Revenue Code of 1986 to provide a credit for the production of water and energy efficient appliances; to the Committee on Finance.

Mr. SMITH. Mr. President, water is a precious resource that we must begin to manage as efficiently as possible. In several parts of the country, development is constrained by the lack of good quality water and water infrastructure. Having dealt with the water crisis in the Klamath Basin in 2001, when 1,200 farmers and ranchers had their irrigation water cut off, I can tell you firsthand that the conflicts between competing human and environmental needs are real and are growing.

Benjamin Franklin wrote in Poor Richard's Almanack in 1746, "When the well is dry, we know the worth of water." Well, in parts of the West, the well is quickly running dry. As the Los Angeles Times reported on June 18, 2004, the Western United States may be facing the biggest drought in 500 years. The current effects in the Colorado River Basin are considerably worse than those experienced during the Dust Bowl years of the 1930s. The 10-year drought in the Colorado River Basin has produced the lowest flows on record, straining an important water supply resource for millions of people.

One immediate way to stretch available water supplies, as well as energy resources, is to provide incentives for water and energy efficient appliances. That is why I am introducing a bill to provide tax credits for the manufacture of highly efficient residential clothes washers, dishwashers and refrigerators. The bill builds on the tax credits for energy-efficient appliances pending before the Senate, which—if enacted—will expire in 2007. Under this bill, for the first time, water efficiency is included in the eligibility criteria for the tax credits, and the energy efficiency criteria are higher. This bill provides graduated credits to manufacturers. The more efficient the dishwasher, clothes washer or refrigerator, the higher the credit.

The daily per capita water use around the world varies significantly. The U.N. Population Fund cites that in the United States, we use an estimated 152 gallons per day per person, while in the United Kingdom they use 388 gallons. Africans use 12 gallons a day.

According to the Rocky Mountain Institute, 47 percent of all water supplied to communities in the United States by public and private utilities is for residential water use. Of that, clothes washers account for approximately 22 percent of residential use, while dishwashers account for about 3 percent.

I firmly believe that we can use technology to improve our environmental stewardship. Water efficiency can extend our finite water supplies, and also reduce the amount of wastewater that communities must treat.

High efficiency clothes washers use 20 to 30 gallons per load, compared to the 40 to 45 gallons top-loading machines use. The average annual household water savings is estimated to be 3,500 to 6,000 gallons. Energy savings estimates range from 68 to 70 percent compared to older, standard clothes washers. High efficiency dishwashers use 39 percent less energy to heat the water and 39 percent less water than standard models. Refrigerators must use at least 30 percent less energy than comparably sized models to receive a credit under this bill.

While plumbing fixtures such as toilets, showerheads and faucets must meet U.S. water efficiency standards, water-using appliances are not governed by any water-efficiency standards. We can, however, provide an incentive to lower the cost of these water and energy saving appliances, which are generally more costly to manufacture than standard models.

Mr. President, I would urge my colleagues to join me in cosponsoring this important bill to provide incentives for water and energy efficient residential appliances. I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 2655

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 "Water and Energy Efficient Appliances Act of 2004".

SEC. 2. CREDIT FOR WATER AND ENERGY EFFICIENT APPLIANCES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by adding at the end the following new section:

"SEC. 45G. WATER AND ENERGY EFFICIENT APPLIANCE CREDIT.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—For purposes of section 38, the water and energy efficient appliance credit determined under this section for the taxable year is an amount equal to the sum of the amounts determined under paragraph (2) for qualified water and energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

"(2) AMOUNT.—The amount determined under this paragraph for any category described in subsection (b)(2)(B) shall be the product of the applicable amount for appliances in the category and the eligible production for the category.

"(b) APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.—For purposes of subsection (a)—

"(1) APPLICABLE AMOUNT.—The applicable amount is—

"(A) \$25, in the case of a dishwasher manufactured with an EF of at least 0.65,

"(B) \$50, in the case of a dishwasher manufactured with an EF of at least 0.69,

"(C) \$75, in the case of a clothes washer which is manufactured with an MEF of at least 1.80 and a WF of no more than 7.5,

"(D) \$100, in the case of a refrigerator which consumes at least 30 percent less kilowatt hours per year than the energy conservation standards for refrigerators promulgated by the Department of Energy and effective on July 1, 2001, and

"(E) \$150, in the case of a clothes washer which is manufactured with an MEF of at least 1.80 and a WF of no more than 5.5.

"(2) ELIGIBLE PRODUCTION.—

"(A) IN GENERAL.—The eligible production of each category of qualified water and energy efficient appliances is the excess of—

"(i) the number of appliances in such category which are produced by the taxpayer during such calendar year, over

"(ii) the average number of appliances in such category which were produced by the taxpayer during calendar years 2002, 2003, and 2004.

"(B) CATEGORIES.—For purposes of subparagraph (A), the categories are—

"(i) dishwashers described in paragraph (1)(A),

"(ii) dishwashers described in paragraph (1)(B),

"(iii) clothes washers described in paragraph (1)(C),

"(iv) clothes washers described in paragraph (1)(E), and

"(v) refrigerators described in paragraph (1)(D).

"(c) LIMITATION ON MAXIMUM CREDIT.—

"(1) IN GENERAL.—The amount of credit allowed under subsection (a) with respect to a taxpayer for all taxable years shall not exceed \$65,000,000, of which not more than \$15,000,000 may be allowed with respect to the credit determined by using the applicable amount under subsections (b)(1)(A) and (b)(1)(B).

"(2) LIMITATION BASED ON GROSS RECEIPTS.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable

year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

“(3) GROSS RECEIPTS.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

“(d) DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED WATER AND ENERGY EFFICIENT APPLIANCE.—The term ‘qualified water and energy efficient appliance’ means—

“(A) a dishwasher described in subparagraph (A) or (B) or subsection (b)(1),

“(B) a clothes washer described in subparagraph (C) or (E) of subsection (b)(1), or

“(C) a refrigerator described in subparagraph (D) of subsection (b)(1).

“(2) DISHWASHER.—The term ‘dishwasher’ means a standard residential dishwasher with a capacity of 8 or more place settings plus 6 serving pieces.

“(3) CLOTHES WASHER.—The term ‘clothes washer’ means a residential clothes washer, including a residential style coin operated washer.

“(4) REFRIGERATOR.—The term ‘refrigerator’ means an automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

“(5) EF.—The term ‘EF’ means Energy Factor (as determined by the Secretary of Energy).

“(6) MEF.—The term ‘MEF’ means Modified Energy Factor (as determined by the Secretary of Energy).

“(7) WF.—The term ‘WF’ means Water Factor (as determined by the Secretary of Energy).

“(e) SPECIAL RULES.—

“(1) IN GENERAL.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.

“(2) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as 1 person for purposes of subsection (a).

“(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

“(g) TERMINATION.—This section shall not apply to water and energy efficient appliances produced after December 31, 2010.”

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of such Code (relating to current year business credit) is amended by striking “plus” at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting “, plus”, and by adding at the end the following new paragraph:

“(16) the water and energy efficient appliance credit determined under section 45G(a).”

(c) LIMITATION ON CARRYBACK.—Section 39(d) of such Code (relating to transition rules) is amended by adding at the end the following new paragraph:

“(11) NO CARRYBACK OF WATER AND ENERGY EFFICIENT APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the water and energy efficient appliance credit determined under section 45G may be carried to a taxable year ending before January 1, 2008.”

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

“Sec. 45G. Water and energy efficient appliance credit.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2007, in taxable years ending after such date.

By Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida):

S. 2656. A bill to establish a National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon; to the Committee on Energy and Natural Resources.

Mr. GRAHAM. Mr. President, in 2013, our nation will celebrate the 500th anniversary of Ponce de Leon's landing on the east coast of Florida. I am pleased to introduce a bill today that establishes a commission to determine how we can best commemorate his discovery of Florida. For a country as young as ours, a Quincentennial is a rare milestone worthy of tribute.

Juan Ponce de Leon landed on the coast of Florida, south of the present-day St. Augustine, in April of 1513. During the Easter holiday, he explored our coasts, visiting the Florida Keys and the west coast of Florida. The first European explorer to step foot on North American soil, Ponce de Leon opened Florida and the mainland of the Americas to the rest of the world. Florida owes its heritage to Ponce de Leon. Even the name Florida dates back to Ponce de Leon's discovery. When he saw the lush terrain, Ponce de Leon named the area the “land of flowers” or “Florida” in Spanish.

While there is no doubt that Ponce de Leon is a key part of Florida's history, his landing in Florida is ingrained in our entire nation's early history. Children read in their history books about the myths surrounding Ponce de Leon's voyages. His quest for the fountain of youth has become a myth symbolic of the age of exploration.

Other Europeans were encouraged to make the dangerous journey across the Atlantic toward the Americas, persuaded by the stories of Ponce de Leon's explorations of the new lands of Florida. Ultimately, his discovery opened the path for exploration and colonization of the Americas.

I have drafted this bill with the assistance of a notable scholar accomplished in the field of early Florida history—Dr. Samuel Proctor, Distinguished Service Professor Emeritus of History at the University of Florida. I would like to thank Dr. Proctor for all of his efforts in drafting this bill.

Funding authorized by this legislation would support the activities of this commission and would allow for educational activities, ceremonies, and celebrations. Fittingly, the principal office for this operation would be located in St. Augustine, FL.

With the establishment of this commission, my hope is to not only commemorate Ponce de Leon's arrival in Florida but to enhance the American public's knowledge about the impact of Florida's discovery on the history of the United States. I hope that my colleagues will recognize the importance of commemorating this historic event.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2656

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 “Ponce de Leon Discovery of Florida Quincentennial Commission Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Quincentennial of the founding of Florida by Ponce de Leon occurs in 2013, 500 years after Ponce de Leon landed on its shores and explored the Keys and the west coast of Florida;

(2) evidence supports the theory that Ponce de Leon was the first European to land on the shores of Florida;

(3) Florida means “the land of flowers” and the State owes its name to Ponce de Leon;

(4) Ponce de Leon's quest for the “fountain of youth” has become an established legend which has drawn fame and recognition to Florida and the United States;

(5) the discovery of Florida by Ponce de Leon, the myth of the “fountain of youth”, and the subsequent colonization of Florida encouraged other European countries to explore the New World and to establish settlements in the territory that is currently the United States;

(6) Florida was colonized under 5 flags; and

(7) commemoration of the arrival in Florida of Ponce de Leon and the beginning of the colonization of the Americas would—

(A) enhance public understanding of the impact of the discovery of Florida on the history of the United States; and

(B) provide lessons about the importance of exploration and discovery.

SEC. 3. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term “Commission” means the National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon established under section 4(a).

(2) QUINCENTENNIAL.—The term “Quincentennial” means the 500th anniversary of the discovery of Florida by Ponce de Leon.

SEC. 4. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the “National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon”.

(b) DUTIES.—The Commission shall plan, encourage, coordinate, and conduct the commemoration of the Quincentennial.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 12 members—

(A) of whom 5 members shall be Republicans and 5 members shall be Democrats, including—

(i) 6 members, of whom 3 members shall be Republicans and 3 members shall be Democrats, appointed by the President;

(ii) 2 members, of whom 1 member shall be a Republican and 1 member shall be a Democrat, appointed by the President, on the recommendation of the Majority Leader and the Minority Leader of the Senate; and

(iii) 2 members, of whom 1 member shall be a Republican and 1 member shall be a Democrat, appointed by the President, on the recommendation of the Speaker of the House of Representatives, in consultation with the Minority Leader of the House of Representatives; and

(B) including the Director of the National Park Service and the Secretary of the Smithsonian Institution.

(2) **CRITERIA.**—A member of the Commission shall be chosen from among individuals that have demonstrated a strong sense of public service, expertise in the appropriate professions, scholarship, and abilities likely to contribute to the fulfillment of the duties of the Commission.

(3) **INTERNATIONAL PARTICIPATION.**—Not later than 60 days after the date of enactment of this Act, the President shall invite the Government of Spain to appoint 1 individual to serve as a nonvoting member of the Commission.

(4) **DATE OF APPOINTMENTS.**—Not later than 60 days after the date of enactment of this Act, the members of the Commission described in paragraph (1) shall be appointed.

(d) **TERM; VACANCIES.**—

(1) **TERM.**—A member shall be appointed for the life of the Commission.

(2) **VACANCY.**—A vacancy on the Commission—

(A) shall not affect the powers of the Commission; and

(B) shall be filled in the same manner as the original appointment was made.

(e) **INITIAL MEETING.**—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(f) **MEETINGS.**—The Commission shall meet at the call of the co-chairpersons described under subsection (h).

(g) **QUORUM.**—A quorum of the Commission for decision making purposes shall be 7 members, except that a lesser number of members, as determined by the Commission, may conduct meetings.

(h) **CO-CHAIRPERSONS AND VICE CO-CHAIRPERSONS.**—

(1) **CO-CHAIRPERSONS.**—The President shall designate 2 of the members of the Commission, 1 of whom shall be a Republican and 1 of whom shall be a Democrat, to be co-chairpersons of the Commission.

(2) **CO-VICE-CHAIRPERSONS.**—The Commission shall select 2 co-vice-chairpersons, 1 of whom shall be a Republican and 1 of whom shall be a Democrat, from among the members of the Commission.

SEC. 5. DUTIES.

(a) **IN GENERAL.**—The Commission shall—

(1) conduct a study regarding the feasibility of creating a National Heritage Area or National Monument to commemorate the discovery of Florida;

(2) plan and develop activities appropriate to commemorate the Quincentennial including a limited number of proposed projects to be undertaken by the appropriate Federal departments and agencies that commemorate the Quincentennial by seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education;

(3) consult with and encourage appropriate Federal departments and agencies, State and local governments, elementary and secondary schools, colleges and universities, foreign governments, and private organizations to organize and participate in Quincentennial activities commemorating or examining—

(A) the history of Florida;

(B) the discovery of Florida;

(C) the life of Ponce de Leon;

(D) the myths surrounding Ponce de Leon's search for gold and for the "fountain of youth";

(E) the exploration of Florida; and

(F) the beginnings of the colonization of North America; and

(4) coordinate activities throughout the United States and internationally that re-

late to the history and influence of the discovery of Florida.

(b) **REPORTS.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the President and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a comprehensive report that includes specific recommendations for—

(A) the allocation of financial and administrative responsibility among participating entities and persons with respect to commemoration of the Quincentennial; and

(B) the commemoration of the Quincentennial and related events through programs and activities, including—

(i) the production, publication, and distribution of books, pamphlets, films, electronic publications, and other educational materials focusing on the history and impact of the discovery of Florida on the United States and the world;

(ii) bibliographical and documentary projects, publications, and electronic resources;

(iii) conferences, convocations, lectures, seminars, and other programs;

(iv) the development of programs by and for libraries, museums, parks and historic sites, including international and national traveling exhibitions;

(v) ceremonies and celebrations commemorating specific events;

(vi) the production, distribution, and performance of artistic works, and of programs and activities, focusing on the national and international significance of the discovery of Florida; and

(vii) the issuance of commemorative coins, medals, certificates of recognition, and stamps.

(2) **ANNUAL REPORT.**—The Commission shall submit an annual report that describes the activities, programs, expenditures, and donations of or received by the Commission to—

(A) the President; and

(B) the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(3) **FINAL REPORT.**—Not later than December 31, 2013, the Commission shall submit a final report that describes the activities, programs, expenditures, and donations of or received by the Commission to—

(A) the President; and

(B) the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(c) **ASSISTANCE.**—In carrying out this Act, the Commission shall consult, cooperate with, and seek advice and assistance from appropriate Federal departments and agencies, including the Department of the Interior.

SEC. 6. POWERS OF THE COMMISSION.

(a) **IN GENERAL.**—The Commission may provide for—

(1) the preparation, distribution, dissemination, exhibition, and sale of historical, commemorative, and informational materials and objects that will contribute to public awareness of, and interest in, the Quincentennial, except that any commemorative coin, medal, or postage stamp recommended to be issued by the United States shall be sold only by a Federal department or agency;

(2) competitions and awards for historical, scholarly, artistic, literary, musical, and other works, programs, and projects relating to the Quincentennial;

(3) a Quincentennial calendar or register of programs and projects;

(4) a central clearinghouse for information and coordination regarding dates, events,

places, documents, artifacts, and personalities of Quincentennial historical and commemorative significance; and

(5) the design and designation of logos, symbols, or marks for use in connection with the commemoration of the Quincentennial and shall establish procedures regarding their use.

(b) **ADVISORY COMMITTEE.**—The Commission may appoint such advisory committees as the Commission determines necessary to carry out the purposes of this Act.

SEC. 7. ADMINISTRATION.

(a) **LOCATION OF OFFICE.**—

(1) **PRINCIPAL OFFICE.**—The principal office of the Commission shall be in St. Augustine, Florida.

(2) **SATELLITE OFFICE.**—The Commission may establish a satellite office in Washington, D.C.

(b) **STAFF.**—

(1) **APPOINTMENT OF DIRECTOR AND DEPUTY DIRECTOR.**—

(A) **IN GENERAL.**—The co-chairpersons, with the advice of the Commission, may appoint and terminate a director and deputy director without regard to the civil service laws (including regulations).

(B) **DELEGATION TO DIRECTOR.**—The Commission may delegate such powers and duties to the director as may be necessary for the efficient operation and management of the Commission.

(2) **STAFF PAID FROM FEDERAL FUNDS.**—The Commission may use any available Federal funds to appoint and fix the compensation of not more than 4 additional personnel staff members, as the Commission determines necessary.

(3) **STAFF PAID FROM NON-FEDERAL FUNDS.**—The Commission may use any available non-Federal funds to appoint and fix the compensation of additional personnel.

(4) **COMPENSATION.**—

(A) **MEMBERS.**—

(i) **IN GENERAL.**—A member of the Commission shall serve without compensation.

(ii) **TRAVEL EXPENSES.**—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(B) **STAFF.**—

(i) **IN GENERAL.**—The co-chairpersons of the Commission may fix the compensation of the director, deputy director, and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) **MAXIMUM RATE OF PAY.**—

(I) **DIRECTOR.**—The rate of pay for the director shall not exceed the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(II) **DEPUTY DIRECTOR.**—The rate of pay for the deputy director shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(III) **STAFF MEMBERS.**—The rate of pay for staff members appointed under paragraph (2) shall not exceed the rate payable for grade GS-15 of the General Schedule under section 5332 of title 5, United States Code.

(c) **DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.**—

(1) **IN GENERAL.**—On request of the Commission, the head of any Federal agency or department may detail any of the personnel of the agency or department to the Commission to assist the Commission in carrying out this Act.

(2) REIMBURSEMENT.—A detail of personnel under this subsection shall be without reimbursement by the Commission to the agency from which the employee was detailed.

(3) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(d) OTHER REVENUES AND EXPENDITURES.—

(1) IN GENERAL.—The Commission may procure supplies, services, and property, enter into contracts, and expend funds appropriated, donated, or received to carry out contracts.

(2) DONATIONS.—

(A) IN GENERAL.—The Commission may solicit, accept, use, and dispose of donations of money, property, or personal services.

(B) LIMITATIONS.—Subject to subparagraph (C), the Commission shall not accept donations—

(i) the value of which exceeds \$50,000 annually, in the case of donations from an individual; or

(ii) the value of which exceeds \$250,000 annually, in the case of donations from a person other than an individual.

(C) NONPROFIT ORGANIZATION.—The limitations in subparagraph (B) shall not apply in the case of an organization that is—

(i) described in section 501(c)(3) of the Internal Revenue Code of 1986; and

(ii) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

(3) ACQUIRED ITEMS.—Any book, manuscript, miscellaneous printed matter, memorabilia, relic, and other material or property relating to the time period of the discovery of Florida acquired by the Commission may be deposited for preservation in national, State, or local libraries, museums, archives, or other agencies with the consent of the depository institution.

(e) POSTAL SERVICES.—The Commission may use the United States mail to carry out this Act in the same manner and under the same conditions as other agencies of the Federal Government.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subject to subsection (b), there are authorized to be appropriated to carry out the purposes of this Act such sums as may be necessary for each of fiscal years 2005 through 2013.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under this section for any fiscal year shall remain available until December 31, 2013.

SEC. 9. TERMINATION OF AUTHORITY.

The authority provided by this Act terminates effective December 31, 2013.

By Ms. COLLINS (for herself and Mr. AKAKA):

S. 2657. A bill to amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes; to the Committee on Governmental Affairs.

Ms. COLLINS. Mr. President. I am pleased today to introduce legislation with my friend and colleague, Senator AKAKA, that would give Federal employees, retirees, and their families greater access to comprehensive dental and vision insurance coverage. The Federal Employee Dental and Vision Benefits Enhancement Act of 2004 would establish a voluntary program

under which Federal employees and annuitants may purchase dental and vision coverage. The legislation grants the Office of Personnel Management (OPM) the authority to select the appropriate combination of nationwide and regional companies and a variety of benefit packages to meet the diverse needs of our Federal employee and annuitant population.

The National Institute of Dental and Craniofacial Research estimates that for every dollar spent on dental disease prevention, \$4 is saved in subsequent treatment costs. Improved access to dental and vision care is an essential component of any comprehensive health care strategy. Federal employees need and deserve increased access to dental and vision benefits.

Today, the Federal community has access to excellent medical coverage through the Federal Employees Health Benefits Program (FEHB). Unfortunately, the program provides reimbursement for only a small fraction of dental care. Customer surveys indicate that FEHB enrollees want more comprehensive dental and vision benefits than those that are currently being provided in the FEHB program. The increasing demand for dental and vision benefits has prompted Senator AKAKA and me to pursue legislation that would offer separate and improved coverage for Federal employees, retirees, and their families.

The stand-alone model contained in my legislation preserves the integrity of the FEHB while encouraging the purchase of additional dental and vision coverage. It is important to note that nothing in my legislation prevents the existing medical carriers from continuing to offer dental and vision coverage under the FEHBP. Further, nothing in the legislation precludes current FEHBP carriers from participating in the competitive process to offer benefits under the new voluntary dental and vision programs. The legislation simply provides a mechanism for dental and vision companies to participate in the Federal employee benefits arena.

In recognition of the enormous fiscal pressures faced by the Federal Government, the legislation is designed to provide an employee-paid dental and vision benefit, patterned after the Federal Employees Long-Term Care Insurance Program. By leveraging the purchasing power of the Federal Government, combined with market-driven competition, OPM would have the ability to provide access to more comprehensive dental and vision coverage to employees and retirees at no cost to the Federal Government. Federal employees would have the confidence that OPM has given its seal of approval to the benefit packages provided under the voluntary programs.

The legislation recognizes the geographic dispersion of the Federal workforce and the need for greater access to care through local dental and eye health professionals by requiring companies to provide coverage in under-

served areas. For example, companies selected to provide coverage to a particular region would be required to develop and maintain provider networks in all States, including States where access to care may be less available.

While the legislation lists general categories of benefits that may be offered under the new programs, the statutory model is flexible to ensure that the benefit packages can be modified over time to incorporate future advances in dental and vision products, therapies, and technologies.

Employees look to their employer to provide education about their benefits. For this reason, the legislation requires OPM to make available the educational tools necessary so that Federal employees have a clear understanding of the choices available to them. Employees will have access to information on how the voluntary plans can supplement the existing, though limited, coverage offered by their medical plan under the FEHBP, to meet their individual needs for care. OPM would also educate employees about the value of their existing Flexible Spending Accounts to help cover out-of-pocket dental and vision expenses. These options can help Federal employees and annuitants get the best value for their premium dollar.

Administration by OPM would ensure that each contract is awarded on the basis of quality and price, and that the companies understand and adapt to the needs of Federal employees, retirees, and their families. Additionally, OPM would provide participants access to a process to appeal adverse benefit determinations. Premiums can be made through payroll or annuity deductions, direct payments to the participating companies, or both. The plans would be open to all Federal civilian employees and annuitants, regardless of whether they currently participate in the FEHBP.

As with the Long-Term Care Insurance Program, our measure for the success of the dental and vision programs would be the extent to which Federal employees purchase these benefits.

My colleagues and I have recognized, through our support of legislation to assist the Federal Government with its recruitment and retention efforts, that the Federal Government's most important asset is its human capital. Employees of 48 State governments offer or provide access to dental benefit plans to employees. Surveys indicate that 95 percent of employers with 500 or more employees provide dental insurance. The opportunity to purchase enhanced dental and vision coverage will help the government with its ongoing efforts to recruit and retain a highly qualified workforce.

The legislation is supported by the American Federation of Government Employees, the National Treasury Employees Union, the National Association of Dental Plans, and the American Optometric Association. I hope my colleagues will join me in providing our

Federal employee community with greater access to dental and vision coverage.

By Mr. DOMENICI (for himself, Mrs. FEINSTEIN, Mr. CRAIG, Mr. BINGAMAN, and Mr. DURBIN):

S. 2658. A bill to establish a Department of Energy National Laboratories water technology research and development program, and for other purposes; to the Committee on Environment and Public Works.

Mr. DOMENICI. Mr. President. There is no more important or essential substance to us than water. It is the source from which life springs. It also has the potential to be the source of incredible conflict ranging from local to international levels. Fresh water supplies are coming under pressure all over the globe. By mid-century, over half of the world's population will face severe water shortages. These shortages go beyond drinking water; particularly important is the nexus of water and energy production—another flash point in global affairs. Seriously confronting this problem before it leads to tremendous burdens on this nation and the world is an endeavor as worthwhile as any I can contemplate.

Research and development in this area has long been without concerted national attention. Water and water rights have traditionally been under the purview of the States, and rightly so. But few States have the capacity and funding to adequately address this problem. Users of water resources are highly risk averse and can ill afford to take chances on unproven technology. At the Federal level, at least seventeen agencies do water research, however only three currently engage in water supply augmentation research—the Department of Agriculture, the Bureau of Reclamation, and the Department of Energy. According to the National Research Council's June 17, 2004 report entitled "Confronting the Nation's Water Problems: The Role of Research," the total Federal investment in water resources research in 2000 dollars has been level at \$700m since 1967. The Federal investment in 2000 was 5 percent less than the investment in 1973 in indexed dollars. The total Federal water research investment of \$700m represents about 0.5 percent of the Federal research budget—for the most fundamental resource need. Investment in Water supply augmentation research funding has declined from \$160m in 1970 to \$14m in 2000.

These circumstances have led to neglect in long-term, cutting edge, commercially viable research and development. This is ultimately untenable. We know what is possible, we have acted successfully before. Federal investment in the 1960's and 1970's is the basis for existing desalination technology that substantially expanded U.S. and world wide water supplies. We know that a similar investment can again achieve such results. Thus, the lack of Federal

investment is unacceptable given our prior experiences and our complete and utter dependence on this resource.

Our nation's efforts to address these problems must be fought on multiple fronts. We must provide for development and maintenance of water infrastructure, particularly in rural areas. This is the infrastructure that sustains our lives and livelihoods. We must make our management of this precious resource more rational. We must make a concerted effort to more fully understand and extend the limits of our fresh and lower quality water. We must coordinate and enhance our technology to address both water quality and quantity. We cannot fight all these fronts with one effort, but we can begin to address aspects of the problem.

To that end, I introduce today the Department of Energy National Laboratories Water Research and Development Act of 2004. This admittedly ambitious bill authorizes a substantial Federal investment of up to \$200 million per year for basic and applied research and development in water supply technologies. The emphasis of this program is developing and deploying new and affordable technology to improve water quantity and quality. Its primary goal is to facilitate and guide research, development, and deployment of affordable and cutting edge technology that increases the quantity and quality of water available for multiple uses. This will be done across the Nation, in a wide range of hydrogeographies and water situations.

The effort combines the expertise and resources of our great National Laboratories and universities across the country. The Program builds on the immense investment in new technology and basic science within the labs and universities and directs it toward this critical human need. It will also complement and strengthen the many programs and efforts underway at Federal agencies and non-governmental organizations.

The Act authorizes the Department of Energy, through the National Laboratories, to partner with universities in specified regions to work on technology for particularized areas of research. Each region will be tasked with addressing a given range of issues. These include brine removal and inland desalination to re-use and conservation technology. Furthermore, the water and energy nexus will be fully explored. Pressures created by water needed to supply energy and energy necessary to produce usable water have not, to date, been sufficiently addressed.

A grant program will be created to augment existing efforts by non-program members. Many Federal agencies and non-governmental entities have ongoing projects in this arena including the Bureau of Reclamation ("BOR"), the Department of Agriculture ("USDA"), the Department of Defense ("DOD") (through the Office of Naval Research), the Environmental Protection Agency ("EPA"), and

NASA. Additionally, the Program fully incorporates public-private partnerships such as those already working with the American Water Resources Research Foundation, the WaterReuse Foundation and many others.

Finally, this bill creates a National Water Supply Law and Policy Institute. The Policy Center's responsibilities include identifying intervention points where technological development may help alleviate real and potential water supply problems. The Policy Institute will act as a clearinghouse for relevant information on regulations, laws and codes—from municipal to national scales focused on helping to overcome obstacles of new technology that can expand water supplies.

The Program will be administered by a Program Coordinator appointed by the Secretary of Energy. The Coordinator will administer the program from facilities located at Sandia National Laboratory, our Nation's best applied engineering lab. Acting as the coordinating institution, Sandia is responsible for technology development road-mapping and assisting the Regional Centers in transferring their creations from bench-scale to commercialization. Sandia is also charged with guiding the Policy Center.

The conditions are present to necessitate the Federal government taking a lead role. We must act now. The costs of inaction will be borne by all of us. The market is skewed against development. It is a matter of personal and national security. It is a matter of human necessity. It is a matter of time.

The need is great. The goal is good. Let us begin.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2658

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 "Department of Energy National Laboratories Water Technology Research and Development Act".

SEC. 2. PURPOSE.

The purpose of this Act is to establish within the Department of Energy a program for research on and the development of economically viable technologies that would—

- (1) substantially improve access to existing water resources;
- (2) promote improved access to untapped water resources;
- (3) facilitate the widespread commercialization of newly developed water supply technologies for use in real-world applications;
- (4) provide objective analyses of, and propose changes to, current water supply laws and policies relating to the implementation and acceptance of new water supply technologies developed under the program; and
- (5) facilitate collaboration among Federal agencies in the conduct of research under this Act and otherwise provide for the integration of research on, and disclosure of information relating to, water supply technologies.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ADVISORY PANEL.**—The term “Advisory Panel” means the National Water Supply Technology Advisory Panel established under section 5(a).

(2) **INSTITUTE.**—The term “Institute” means the National Water Supply Law and Policy Institute designated by section 8(a).

(3) **PROGRAM.**—The term “program” means the National Laboratories water technology research and development program established under section 4(a).

(4) **PROGRAM COORDINATOR.**—The term “Program Coordinator” means the individual appointed to administer the program under section 4(c).

(5) **REGIONAL CENTER.**—The term “Regional Center” means a Regional Center designated under subsection (b) or (e) of section 6.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of Energy.

(7) **WATER SUPPLY TECHNOLOGY.**—The term “water supply technology” means a technology that is designed to improve water quality, make more efficient use of existing water resources, or develop potential water resources, including technologies for—

(A) reducing water consumption in the production or generation of energy;

(B) desalination and related concentrate disposal;

(C) water reuse;

(D) contaminant removal, such as toxics identified by the Environmental Protection Agency and new and emerging contaminants (including perchlorate and nitrates);

(E) agriculture, industrial, and municipal efficiency; and

(F) water monitoring and systems analysis.

SEC. 4. NATIONAL LABORATORIES WATER TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.

(a) **ESTABLISHMENT.**—The Secretary shall establish a National Laboratories water technology research and development program for research on, and the development and commercialization of, water supply technologies.

(b) **PROGRAM LEAD LABORATORY.**—The program shall be carried out by the National Laboratories, with Sandia National Laboratory designated as the lead laboratory for the program.

(c) **PROGRAM COORDINATOR.**—

(1) **IN GENERAL.**—The Secretary shall appoint an individual at Sandia National Laboratory as the Program Coordinator to administer the program.

(2) **DUTIES.**—In carrying out the program, the Program Coordinator shall—

(A) establish budgetary and contracting procedures for the program;

(B) perform administrative duties relating to the program;

(C) provide grants under section 7;

(D) conduct peer review of water supply technology proposals and research results;

(E) establish procedures to determine which water supply technologies would most improve water quality, make the most efficient use of existing water resources, and provide optimum development of potential water resources.

(F) coordinate budgets for water supply technology research at Regional Centers;

(G) coordinate research carried out under the program, including research carried out by Regional Centers;

(H) perform annual evaluations of research progress made by grant recipients and Regional Centers;

(I) establish a water supply technology transfer program to identify, and facilitate commercialization of, promising water supply technologies, including construction and implementation of demonstration facilities,

partnerships with industry consortia, and collaboration with other Federal programs;

(J) establish procedures and criteria for the Advisory Panel to use in reviewing Regional Center performance;

(K) widely distribute information on the program, including through research conferences; and

(L) implement cross-cutting research to develop sensor and monitoring systems for water and energy efficiency and management.

SEC. 5. NATIONAL WATER SUPPLY TECHNOLOGY ADVISORY PANEL.

(a) **ESTABLISHMENT.**—The Secretary shall establish an advisory panel, to be known as the “National Water Supply Technology Advisory Panel”, to advise the Program Coordinator on the direction of the program and facilitating the commercialization of the water supply technologies developed under the program.

(b) **MEMBERSHIP.**—Members of the Advisory Panel shall—

(1) have expertise in water supply technology; and

(2) be representative of educational institutions, industry, States, local government, international water technology institutions, other Federal agencies, and nongovernmental organizations.

(c) **ASSESSMENT RESPONSIBILITIES.**—In addition to other responsibilities, the Advisory Panel shall—

(1) periodically assess the performance of the National Laboratories and universities designated as Regional Centers under section 6; and

(2) make recommendations to the Secretary for renewing the designation of Regional Centers.

SEC. 6. REGIONAL CENTERS.

(a) **IN GENERAL.**—A Regional Center shall—

(1) consist of 1 National Laboratory designated under subsection (b) or (e), acting in partnership with 1 or more universities selected under subsection (c); and

(2) be eligible for a grant under section 7(a) for the conduct of research on the specific water supply technologies identified under subsection (b) or (e).

(b) **INITIAL REGIONAL CENTERS.**—There are designated as Regional Centers—

(1) the Northeast Regional Center, consisting of the Brookhaven National Laboratory and any university partners selected under subsection (c), which shall conduct research on reducing water quality impacts from power plant outfall and decentralized (soft-path) water treatment;

(2) the Central Atlantic Regional Center, consisting of the National Energy Technology Laboratory and any university partners selected under subsection (c), which shall conduct research on produced water purification and use for power production and water reuse for large cities;

(3) the Southeast Regional Center, consisting of the Oak Ridge National Laboratory and any university partners selected under subsection (c), which shall conduct research on—

(A) shallow aquifer conjunctive water use;

(B) energy reduction for sea water desalination; and

(C) membrane technology development.

(4) the Midwest Regional Center, consisting of the Argonne National Laboratory and any university partners selected under subsection (c), which shall conduct research on—

(A) water efficiency in manufacturing; and

(B) energy reduction in wastewater treatment;

(5) the Central Regional Center, consisting of the Idaho National Engineering and Environmental Laboratory and any university

partners selected under subsection (c), which shall conduct research on—

(A) cogeneration of nuclear power and water;

(B) energy systems for pumping irrigation; and

(C) watershed management;

(6) the West Regional Center, consisting of the Pacific Northwest National Laboratory and any university partners selected under subsection (c), which shall conduct research on conjunctive management of hydropower and mining water reuse, including separations processes;

(7) the Southwest Regional Center, consisting of the Los Alamos National Laboratory and any university partners selected under subsection (c), which shall conduct research on—

(A) water for power production in arid environments;

(B) energy reduction and waste disposal for brackish desalination;

(C) high water and energy efficiency in arid agriculture; and

(D) transboundary water management; and

(8) the Pacific Regional Center, consisting of the Lawrence Livermore National Laboratory and any university partners selected under subsection (c), which shall conduct research on—

(A) point of use technology, water treatment, and conveyance energy reduction;

(B) co-located energy production and water treatment; and

(C) water reuse for agriculture.

(c) **SELECTION OF UNIVERSITY PARTNERS.**—Not later than 180 days after the date on which a National Laboratory is designated under subsection (b) or (e), each National Laboratory, in consultation with the Program Coordinator and the Advisory Panel, shall select a primary university partner and may nominate additional university partners.

(d) **OPERATIONAL PROCEDURES.**—Not later than 1 year after the date of enactment of this Act, a Regional Center designated by subsection (b) shall submit to the Program Coordinator operational procedures for the Regional Center.

(e) **ADDITIONAL REGIONAL CENTERS.**—Subject to approval by the Advisory Panel, the Program Coordinator may, not sooner than 5 years after the date of enactment of this Act, designate not more than 4 additional Regional Centers if the Program Coordinator determines that there are additional water supply technologies that need to be researched.

(f) **PERIOD OF DESIGNATION.**—

(1) **IN GENERAL.**—A designation by subsection (b) or under subsection (c) shall be for a period of 5 years.

(2) **ASSESSMENT.**—A Regional Center shall be subject to periodic assessments by the Program Coordinator in accordance with procedures and criteria established under section 4(b)(2)(K)(i).

(3) **RENEWAL.**—After the initial period under paragraph (1), a designation may be renewed for subsequent 5-year periods by the Program Coordinator in accordance with procedures and criteria established under section 4(b)(2)(K)(ii).

(4) **TERMINATION OR NONRENEWAL.**—

(A) **IN GENERAL.**—Based on a periodic assessment conducted under paragraph (2), in accordance with the procedures and criteria established under section 4(b)(2)(K)(iii), and after review by the Advisory Panel, the Program Coordinator may recommend that the Secretary terminate or determine not to renew the designation of a Regional Center.

(B) **TERMINATION.**—Following a recommendation for termination or nonrenewal by the Program Coordinator, the Secretary

may terminate or choose not to renew the designation of a Regional Center.

(g) **EXECUTIVE DIRECTOR.**—A Regional Center shall be administered by an executive director, subject to approval by the Program Coordinator.

(h) **PUBLICATION OF RESEARCH RESULTS.**—A Regional Center shall periodically publish the results of any research carried out under the program in appropriate peer-reviewed journals.

SEC. 7. PROGRAM GRANTS.

(a) **BLOCK GRANTS TO REGIONAL CENTERS.**—

(1) **IN GENERAL.**—The Program Coordinator shall, subject to the availability of appropriations, provide a block grant to a Regional Center for the conduct of research in the specific area identified for the Research Center under section 6(b).

(2) **DISTRIBUTION.**—Of the amounts made available to a Regional Center under paragraph (1), 50 percent shall be distributed to the university partners selected under section 6(c), in accordance with the operational procedures for the Regional Center developed under section 6(d).

(3) **COST-SHARING REQUIREMENT.**—A National Laboratory or university partner that receives a grant provided under this subsection shall not be subject to a cost-sharing requirement.

(b) **GRANTS TO COLLABORATIVE INSTITUTIONS.**—

(1) **IN GENERAL.**—The Program Coordinator shall provide competitive grants to eligible collaborative institutions for water supply technology research, development, and demonstration projects.

(2) **ELIGIBLE COLLABORATIVE INSTITUTIONS.**—The following are eligible for grants under paragraph (1):

(A) Nongovernmental organizations.

(B) National Laboratories.

(C) Private corporations.

(D) Industry consortia.

(E) Universities or university consortia.

(F) International research consortia.

(G) Any other entity with expertise in the conduct of research on water supply technologies.

(3) **DISTRIBUTION.**—Of the amounts made available for grants under paragraph (1)—

(A) not less than 15 percent or more than 25 percent shall be provided as block grants to nongovernmental organizations, which may be redistributed by the nongovernmental organization to individual projects;

(B) not less than 20 percent or more than 30 percent shall be provided to National Laboratories;

(C) not less than 15 percent or more than 25 percent shall be provided to support individual projects that are recommended by at least 1 other Federal Agency; and

(D) any amounts remaining after the distributions under subparagraphs (A) through (C) may be provided to support individual projects, as the Program Coordinator determines to be appropriate.

(4) **COST-SHARING REQUIREMENTS.**—

(A) **GRANTS TO NONGOVERNMENTAL ORGANIZATIONS AND INDIVIDUAL PROJECTS.**—The non-Federal share of the total cost of any project assisted under subparagraphs (A) or (C) of paragraph (3) shall be 50 percent.

(B) **GRANTS TO NATIONAL LABORATORIES.**—A National Laboratory that receives a grant under paragraph (3)(B) shall not be subject to a cost-sharing requirement.

(C) **GRANTS TO OTHER ENTITIES.**—The non-Federal share of the total cost of any project assisted under paragraph (3)(D) shall be 25 percent.

(5) **TERM OF GRANT.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), a grant provided under paragraph (1) shall be for a term of 2 years.

(B) **RENEWAL.**—The Program Coordinator may renew a grant for up to 2 additional years as the Program Coordinator determines to be appropriate.

(6) **TREATMENT OF FUNDS.**—Amounts received under a grant provided to a non-Federal entity under this subsection shall be considered to be non-Federal funds when used as matching funds by the non-Federal entity toward a Federal cost-shared project conducted under another program.

(7) **CRITERIA.**—The Program Coordinator shall establish criteria for the submission and review of grant applications and the provision of grants under paragraph (1).

SEC. 8. NATIONAL WATER SUPPLY LAW AND POLICY INSTITUTE.

(a) **DESIGNATION.**—The Utton Center at the University of New Mexico Law School is designated as the National Water Supply Law and Policy Institute.

(b) **DUTIES.**—The Institute shall—

(1) establish a database of existing water laws, regulations, and policy;

(2) provide legal, regulatory, and policy alternatives to increase national and international water supplies;

(3) consult with the Regional Centers, other participants in the program (including States), and other interested persons, on water law and policy and the effect of that policy on the development and commercialization of water supply technologies; and

(4) conduct an annual water law and policy seminar to provide information on research carried out or funded by the Institute.

(c) **PARTNERSHIPS.**—The Institute may enter into partnerships with other institutions to assist in carrying out the duties of the Institute under subsection (b).

(d) **EXECUTIVE DIRECTOR.**—The Institute shall be administered by an executive director, to be appointed by the dean of the University of New Mexico Law School, in consultation with the Program Coordinator.

SEC. 9. REPORTS.

(a) **REPORTS TO PROGRAM COORDINATOR.**—Any Regional Center, National Laboratory, or collaborative institution that receives a grant under section 7 shall submit to the Program Coordinator an annual report on activities carried out using amounts made available under this Act during the preceding fiscal year.

(b) **REPORT TO CONGRESS.**—Not later than 3 years after the date of enactment of this Act and each year thereafter, the Program Coordinator shall submit to the Secretary and Congress a report that describes the activities carried out under this Act.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated to the Secretary for fiscal year 2005 and each subsequent fiscal year—

(1) for the administration of the program by the Program Coordinator and the construction of any necessary program facilities, \$25,000,000; and

(2) for research and development carried out under the program, \$200,000,000.

(b) **ALLOCATION.**—Of amounts made available under subsection (a)(2) for a fiscal year—

(1) at least 15 percent shall be made available for the water supply technology transfer program established under section 4(b)(2)(I);

(2) the lesser of \$10,000,000 or 5 percent shall be made available for grants under section 7(a);

(3) at least 30 percent shall be made available for grants to collaborative institutions under section 7(b); and

(4) the lesser of \$10,000,000 or 5 percent shall be made available for the Institute.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 405—HONORING FORMER PRESIDENT GERARD R. FORD ON THE OCCASION OF HIS 91ST BIRTHDAY AND EXTENDING THE BEST WISHES OF THE SENATE TO FORMER PRESIDENT FORD AND HIS FAMILY

Ms. STABENOW (for herself, Mr. LEVIN, and Mr. HATCH) submitted the following resolution; which was considered and agreed to:

S. RES. 405

Whereas Gerald Rudolph Ford was born on July 14, 1913;

Whereas Gerald R. Ford is the only person from the State of Michigan to have served as President of the United States;

Whereas Gerald R. Ford graduated from the University of Michigan where he was a star center on the football team and later turned down offers to play in the National Football League;

Whereas Gerald R. Ford attended Yale University Law School and graduated in the top 25 percent of his class while also working as a football coach;

Whereas in 1942, Gerald R. Ford joined the United States Navy Reserves and served valiantly on the U.S.S. Monterey in the Philippines during World War II, surviving a heavy storm during which he came within inches of being swept overboard;

Whereas the U.S.S. Monterey earned 10 battle stars, awarded for participation in battle, while Gerald R. Ford served on the ship;

Whereas Gerald R. Ford was released to inactive duty in 1946 with the rank of Lieutenant Commander;

Whereas in 1948, Gerald R. Ford was elected to the House of Representatives where he served with integrity for 25 years;

Whereas in 1963, President Lyndon Johnson appointed Gerald R. Ford to the Warren Commission investigating the assassination of President John F. Kennedy;

Whereas from 1965 to 1973, Gerald R. Ford served as minority leader of the House of Representatives;

Whereas from 1974 to 1976, Gerald R. Ford served as the 38th President of the United States, taking office at a dark hour in the history of the United States and restoring the faith of the people of the United States in the Presidency through his wisdom, courage, and integrity;

Whereas in 1975, the United States signed the Final Act of the Conference on Security and Cooperation in Europe, commonly known as the "Helsinki Agreement", which ratified post-World War II European borders and supported human rights;

Whereas since leaving the Presidency, Gerald R. Ford has been an international ambassador of American goodwill, a noted scholar and lecturer, and a strong supporter of the Gerald R. Ford School of Public Policy at the University of Michigan, which was named for the former President in 1999;

Whereas Gerald R. Ford was awarded the Congressional Gold Medal in 1999; and

Whereas on July 14, 2004, Gerald R. Ford will celebrate his 91st birthday: Now, therefore, be it

Resolved, That the Senate honors former President Gerald R. Ford on the occasion of his 91st birthday and extends its congratulations and best wishes to former President Ford and his family.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that the following resolution is added to the agenda for the Subcommittee on National Parks hearing for Thursday, July 15, 2004, at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

S. Con. Res. 121, a concurrent resolution supporting the goals and ideals of the World Year of Physics.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD-364 Dirksen Senate Office Building, Washington, DC 20510-6150.

For further information, please contact Tom Lillie at (202) 224-5161 or Sarah Creachbaum at (202) 224-6293.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 14, 2004, at 9:30 a.m. on Home Products Fire Safety.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 14, 2004, at 2:30 p.m. on Adult Stem Cell Research.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Wednesday, July 14, at 11:30 a.m. to consider pending calendar business.

Agenda Item 1: S. 203—A bill to open certain withdrawn land in Big Horn County, Wyoming, to locatable mineral development for bentonite mining.

Agenda Item 4: S. 931—A bill to direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on visitors to units of the National Park System and on other recreational users of public land.

Agenda Item 7: S. 1211—A bill to further the purposes of title XVI of the Reclamation Projects Authorization and Adjustment Act of 1992, the "Reclamation Wastewater and Groundwater Study and Facilities Act", by directing

the Secretary of the Interior to undertake a demonstration program for water reclamation in the Tularosa Basin of New Mexico, and for other purposes.

Agenda Item 14: S. 2052—A bill to amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail.

Agenda Item 16: S. 2140—A bill to expand the boundary of the Mount Rainier National Park.

Agenda Item 17: S. 2167—A bill to establish the Lewis and Clark National Historical Park in the States of Washington and Oregon, and for other purposes.

Agenda Item 18: S. 2173—A bill to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.

Agenda Item 19: S. 2285—A bill to direct the Secretary of the Interior to convey a parcel of real property to Beaver County, Utah.

Agenda Item 20: S. 2287—A bill to adjust the boundary of the Barataria Preserve Unit of Jean Lafitte National Historical Park and Preserve in the State of Louisiana, and for other purposes.

Agenda Item 21: S. 2460—A bill to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes.

Agenda Item 22: S. 2508—A bill to redesignate the Ridges Basin Reservoir, Colorado, as Lake Nighthorse.

Agenda Item 23: S. 2511—A bill to direct the Secretary of the Interior to conduct a feasibility study of a Chimayo water supply system, to provide for the planning, design, and construction of a water supply, reclamation, and filtration facility for Espanola, New Mexico, and for other purposes.

Agenda Item 24: S. 2543—A bill to establish a program and criteria for National Heritage Areas in the United States, and for other purposes.

Agenda Item 27: H.R. 1284—To amend the Reclamation Projects Authorization and Adjustment Act of 1992 to increase the Federal share of the costs of the San Gabriel Basin demonstration project.

Agenda Item 29: H.R. 1616—To authorize the exchange of certain lands within the Martin Luther King, Junior, National Historic Site for lands owned by the City of Atlanta, Georgia, and for other purposes.

Agenda Item 30: H.R. 3768—To expand the Timucuan Ecological and Historic Preserve, Florida.

In addition, the Committee may turn to any other measures that are ready for consideration.

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

COMMITTEE ON FINANCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on July 14, 2004, at 10 a.m.,

in a mock markup to consider proposed legislation implementing the U.S.-Morocco Free Trade Agreement; and to consider favorably reporting S. 2610, the U.S.-Australia Free Trade Agreement Implementation Act; and the nominations of Joey Russell George, to be Treasury Inspector General for Tax Administration, U.S. Department of Treasury; Patrick P. O'Carroll, Jr., to be Inspector General, Social Security Administration; Timothy S. Bitsberger, to be Assistant Secretary for Financial Markets, U.S. Department of Treasury; Paul B. Jones, to be Member, IRS Oversight Board; and, Charles L. Kolbe, to be Member, IRA Oversight Board.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 14, 2004, at 9:30 a.m., to hold a hearing on Pakistan: Balancing Reform and Counterterrorism.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 14, 2004, at 2:30 p.m., to hold a hearing on U.S. Policy Toward Southeast Europe: Unfinished Business in the Balkans.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, July 14, 2004, at 10 a.m., in room 485 of the Russell Senate Office Building, to conduct an oversight hearing on the American Indian Religious Freedom Act.

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

COMMITTEE ON THE JUDICIARY

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, July 14, 2004, at 10 a.m. on "Examining the Implications of Drug Importation" in the Dirksen Senate Office Building Room 226. The witness list will be delivered later today.

Witness List

Panel I: Hon. John Breaux, U.S. Senator; and Hon. Bryon Dorgan, U.S. Senator.

Panel II: William K. Hubbard, Associate Commissioner for Policy and Planning, U.S. Food and Drug Administration; John Taylor, III, Associate Commissioner for Regulatory Affairs, U.S. Food and Drug Administration; and Elizabeth G. Durant, Director of Trade Programs, Bureau of Customs and Border Protection.

Panel III: Hon. Rudolph Giuliani; Carmen Catizone, M.S., RPh, DPh, Executive Director/Secretary, National Association of Boards of Pharmacy Boards; Kathleen Jaeger, President and CEO, GPhA; Ms. Joanna Disch, Board Member, AARP; and Ms. Elizabeth A. Wennar, M.P.H., D.H.A., President and CEO, United Health Alliance of Bennington, VT and Principle, HealthInova of Manchester, VT, United Health Alliance, Health Care Economist.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, July 14, 2004, at 9:30 a.m., to conduct an oversight hearing on the Federal Election Commission.

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

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. FRIST. Mr. President, I ask unanimous consent that the subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, July 14, at 2:30 p.m.

The purpose of the hearing is to receive testimony on S. 2317, to limit the royalty on soda ash; S. 2353, to reauthorize and amend the National Geologic Mapping Act of 1992; H.R. 1189, to increase the waiver requirement for certain local matching requirements for grants provided to American Samoa, Guam, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, and for other purposes; and H.R. 2010, to protect the voting rights of members of the armed services in elections for the delegate representing American Samoa in the United States House of Representatives, and for other purposes.

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

HONORING FORMER PRESIDENT GERALD FORD ON HIS 91ST BIRTHDAY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 405, which was submitted earlier today by Senators STABENOW and LEVIN.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 405) honoring former President Gerald R. Ford on the occasion of his 91st birthday, and sending the best wishes of the Senate to former President Ford and his family.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LEVIN. Mr. President, today I join my colleague from Michigan in supporting resolution honoring Gerald

R. Ford, the 38th President of the United States on the occasion of his 91st birthday.

President Ford, the favorite son of the city of Grand Rapids, and the only President from Michigan, played a memorable role in our Nation's history in one of its darkest hours. The first Vice-President appointed under the 25th amendment to the Constitution, he became president when Richard Nixon resigned in the wake of the Watergate scandal. It was Gerald Ford's calm and steady leadership that began the process of healing our Nation's wounds after one of the most serious domestic crises in our history. President Clinton awarded him the Medal of Freedom, in 1999, in recognition of that leadership.

Gerald Ford served thirteen terms in the House of Representatives. From 1965 through 1973, he was the minority leader in that body. It is particularly instructive in this time of partisan division in the Congress to reflect on his example as one who fought many battles on behalf of his party, and his constituency, but who did so without acrimony or ill-will. He built life-long relationships and friendships across the party aisle—even with his opposite numbers in the House Democratic leadership. We would be well served at this time in this body to remember his example.

I extend my congratulations and best wishes to Gerry Ford, his wonderful wife, Betty, and his family. I am certain that the people of Michigan, and our colleagues in the Senate join Senator STABENOW and me in paying tribute to President Ford on his 91st birthday.

Ms. STABENOW. Mr. President, I rise today to pay tribute to the only person from the State of Michigan to have served as President of the United States. On behalf of the people of the State of Michigan, I want to extend my best wishes to President Gerald R. Ford and his family on the occasion of his 91st birthday.

President Ford took office during an extraordinarily trying time for America. He was the first Vice President chosen under the terms of the Twenty-Fifth Amendment and, in the aftermath of Watergate, succeeded the first American President ever to resign. In his inaugural address on August 9, 1974, President Ford noted, "This is an hour of history that troubles our minds and hurts our hearts." Gerald Ford took on the challenge of healing our national faith in the presidency with courage, wisdom and integrity.

Indeed, it was President Ford's reputation for openness and integrity that propelled him into the White House. He was appointed Vice President after serving twelve terms in the U.S. House of Representatives, having secured each term with more than 60 percent of the vote. The confidence of his colleagues fueled his ascent to Ranking Member on the Defense Appropriations Subcommittee and, eventually, to Mi-

nority Leader. It also won him an appointment to the Warren Commission investigating the assassination of President John F. Kennedy.

As President, Gerald Ford led our Nation on the path toward healing a wounded faith in that office. He also labored to improve relationships among nations. In his own words "a dyed-in-the-wool internationalist," President Ford presided over the signing of the Helsinki Agreement, which ratified post-World War II European borders and codified international human rights standards. He also worked for improved relations among the nations of the Middle East and, together with Soviet leader Leonid Brezhnev, set new limitations on nuclear proliferation.

Since leaving the White House in 1977, President Ford has remained actively engaged in the political process and has continued to speak out on important issues. He has lectured at hundreds of colleges and universities, hosted numerous forums on public affairs, and served as an adjunct professor of Government at the University of Michigan. In 1999, President Bill Clinton awarded Ford the Presidential Medal of Freedom, the Nation's highest civilian honor.

Gerald Ford has also made an important mark in his home State of Michigan. In 1977, he announced the establishment of the Gerald R. Ford Institute for Public Policy and Service at Albion College, which administers an interdisciplinary program for undergraduate students preparing for careers in public service. In 1981, the Gerald R. Ford Library in Ann Arbor and the Gerald R. Ford Museum in Grand Rapids were dedicated. Through these institutions, the people of Michigan and many visitors from around the country and the world continue to benefit from President Ford's legacy of internationalism, scholarship and humor.

President Ford, on the occasion of your 91st birthday, the American people salute you, and express our profound gratitude for your leadership and service.

Mr. President, I yield the floor.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 405) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 405

Whereas Gerald Rudolph Ford was born on July 14, 1913;

Whereas Gerald R. Ford is the only person from the State of Michigan to have served as President of the United States;

Whereas Gerald R. Ford graduated from the University of Michigan where he was a star center on the football team and later turned down offers to play in the National Football League;

Whereas Gerald R. Ford attended Yale University Law School and graduated in the top 25 percent of his class while also working as a football coach;

Whereas in 1942, Gerald R. Ford joined the United States Navy Reserves and served valiantly on the U.S.S. Monterey in the Philippines during World War II, surviving a heavy storm during which he came within inches of being swept overboard;

Whereas the U.S.S. Monterey earned 10 battle stars, awarded for participation in battle, while Gerald R. Ford served on the ship;

Whereas Gerald R. Ford was released to inactive duty in 1946 with the rank of Lieutenant Commander;

Whereas in 1948, Gerald R. Ford was elected to the House of Representatives where he served with integrity for 25 years;

Whereas in 1963, President Lyndon Johnson appointed Gerald R. Ford to the Warren Commission investigating the assassination of President John F. Kennedy;

Whereas from 1965 to 1973, Gerald R. Ford served as minority leader of the House of Representatives;

Whereas from 1974 to 1976, Gerald R. Ford served as the 38th President of the United States, taking office at a dark hour in the history of the United States and restoring the faith of the people of the United States in the Presidency through his wisdom, courage, and integrity;

Whereas in 1975, the United States signed the Final Act of the Conference on Security and Cooperation in Europe, commonly known as the "Helsinki Agreement", which ratified post-World War II European borders and supported human rights;

Whereas since leaving the Presidency, Gerald R. Ford has been an international ambassador of American goodwill, a noted scholar and lecturer, and a strong supporter of the Gerald R. Ford School of Public Policy at the University of Michigan, which was named for the former President in 1999;

Whereas Gerald R. Ford was awarded the Congressional Gold Medal in 1999; and

Whereas on July 14, 2004, Gerald R. Ford will celebrate his 91st birthday: Now, therefore, be it

Resolved, That the Senate honors former President Gerald R. Ford on the occasion of his 91st birthday and extends its congratulations and best wishes to former President Ford and his family.

CLARIFYING CERTAIN RETIREMENT PLANS

Mr. FRIST. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 2589 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2589) to clarify the status of certain retirement plans and the organizations which maintain the plans.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 2589) was read the third time and passed.

(The bill will be printed in a future edition of the CONGRESSIONAL RECORD.)

HELPING HANDS FOR HOMEOWNERSHIP ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H. R. 4363 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4363) to facilitate self-help housing homeownership opportunities.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

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

The bill (H.R. 4363) was read the third time and passed.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 99-498, appoints the following individual as a member of the Advisory Committee on Student Financial Assistance: Clare M. Cotton of Massachusetts.

ORDERS FOR THURSDAY, JULY 15, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, July 15. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate

then begin a period for the transaction of morning business for up to 60 minutes, with the first 30 minutes under the control of the Democratic leader or his designee, and the final 30 minutes under the control of the majority leader or his designee; provided, that following morning business, the Senate begin consideration of Calendar No. 591, H.R. 4520, the FSC/ETI JOBS bill, as provided under the previous order.

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

PROGRAM

Mr. FRIST. Mr. President, following morning business, the Senate will begin debate on the FSC/ETI JOBS bill. Under the previous agreement, there will be up to 3 hours of debate on the DeWine-Kennedy FDA and tobacco amendment. We will vote on that amendment later tomorrow afternoon.

We will also take up H.R. 4759, the Australian free trade bill tomorrow and complete that measure as well. Therefore, Senators can expect a couple of votes later in the day on Thursday.

MEASURE READ THE FIRST TIME—S. 2652

Mr. FRIST. Mr. President, I understand that S. 2652 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (S. 2652) to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program.

Mr. FRIST. I now ask for its second reading, and in order to place the bill on the Calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. The bill will be read the second time on the next legislative day.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 9:18 p.m., adjourned until Thursday, July 15, 2004, at 9:30 a.m.