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Senate

The Senate met at 12 noon and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Once again, our guest Chaplain is Rabbi Arnold E. Resnicoff, retired U.S. Navy Chaplain.

The guest Chaplain offered the following prayer:

PRAYER

O Lord who gives to everything a season, and a time for every purpose under heaven: a time for war; a time for peace; a time for life; a time for death; and always time for hope. We take time now, as this week starts, and as—we pray—the fighting in Iraq nears its end, to honor those who serve, who fight, who sacrifice in times of war, so that the time of peace—of real peace—might be.

We take time now to offer thanks: for freedoms that are far from free, for they are bought and paid for at the cost of lives cut short, and family dreams that now can never be; and at the cost of lives that will be touched and haunted by memories so painful that most of us give thanks that we will never know, nor ever fully comprehend.

Lord, who gives to every thing a season, and a time for every purpose under heaven, we honor those who gave their lives; and we honor those who still live and serve, within a world that knows too well the time of war. And we honor in a special way their families, those they love and who love them, for whom the battlefields seem much more close to home.

Give us the faith, the strength, the wisdom, too, to do our part to bring about the time of peace for which they fought—and fight; the time of peace for which we pray; the time of peace, just peace, in which we must keep faith; the world of peace which we must do our part to build.

And let us say, Amen.

PLEDGE OF ALLEGIANCE

The Honorable TED STEVENS 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.

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

SCHEDULE

Mr. MCCONNELL. Mr. President, today the Senate will be in a period of morning business until 12:45 p.m. Following morning business, the Senate will begin consideration of the nomination of Deborah Cook to be a Federal judge for the Sixth Circuit.

Under the agreement entered into last week, there will be up to 4 hours of debate on the nomination prior to a vote. Therefore, the first vote will occur at 4:45 p.m. today, and it will be on the confirmation of Deborah Cook.

Upon the disposition of the Cook nomination, the Senate will debate the nomination of Miguel Estrada until 6 p.m., and at 6 p.m. the Senate will conduct its fifth cloture vote on the Estrada nomination.

The majority leader stated on a number of occasions that we are not going to give up on attempting to get Miguel Estrada an up-or-down vote.

In addition to these additional nominations, there are a number of other important issues to be considered during this coming week. On Tuesday, we will begin debate on the energy bill, although amendments will not be in order until Thursday. We are expecting Members to come to the floor to begin the debate on this much needed legislation.

Also, we have been working on agreements that would allow the Senate to consider the State Department reauthorization bill, the NATO expansion treaty, the bioshield bill, and the FISA legislation. Therefore, I will advise our colleagues to prepare for a very busy week with rollcalls each and every day.

Let me also say the majority leader hopes and expects that we will be doing the vote on the Roberts nomination Friday morning, which is pursuant to the agreement the assistant Democratic leader and myself and the two leaders were working on last week. So we hope to be able to wrap that nomination up on Friday as well.

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

Mr. REID. Mr. President, I was listening closely. But the Senator said we would take up the energy bill on Tuesday with no amendments in order. Then he said Thursday. Maybe I misunderstood.

Mr. MCCONNELL. It is my understanding that there will not be any vote on the energy bill until Thursday, but we will take it up tomorrow.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will be a period for the transaction of morning business not to extend beyond the hour of 12:45 with the time equally divided between the majority leader and the Senator from North Dakota or their designees.

The Senator from Wyoming.

ADDITIONAL CLOTURE SIGNATURE

Mr. THOMAS. Mr. President, first, let me ask unanimous consent that it be in order to add the following signature to the cloture motion filed on May 1.

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

The additional signature is as follows:

Peter G. Fitzgerald.

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

ENERGY POLICY

Mr. THOMAS. Mr. President, it has been mentioned this morning, of course, that we are going to move forward this week to deal with energy policy. I must tell you I am very pleased that that is the case. We have worked very long and hard to develop an energy policy to bring it again this year before the Senate. As you recall, we had one last year. It went into conference and we were unable to bring it up.

I think it is certainly important that we do that. Of all the issues that are before us, I expect it may be one of the most compelling—compelling because it is something that is of vital importance to this Nation. Probably more people are affected by energy than most any other service.

We have the Middle East situation, of course. Over time we have gotten ourselves in the position where 60 percent of our oil imports are a matter of importance because we have become very dependent.

It was almost 2 years ago that the President of the United States and the Vice President, DICK CHENEY, and their task force, came up with energy recommendations. This is one of the first issues talked about. Since that time, it has become even more compelling partly because of the unrest in the Middle East. Also, partly because of the result in Iraq, I think people now are more aware of how important it is for us to have an energy policy.

The President said we need to have an energy policy for the future, but, of course, one that also meets the needs of today. I think we can do that. I think we can develop a policy which deals with the problems we now have, but, more importantly, we should try to get a vision for the future—15 or 20 years in the future—and see what we have to do, and where we would expect to be at that time and then measure what we do in the interim with respect to accomplishing those goals.

We do have to make changes. We have to make changes in most everything. But I have to tell you that in the case of energy, perhaps change is more apparent and more obvious and more compelling than most of the other issues with which we have to deal. We must modernize conservation. Obviously, what we need is a balanced policy but one that deals with conservation, one that deals with alternative fuels, one that deals with research, one that deals, of course, with enhancing domestic production, and other issues. But those certainly have to be the basic elements of our energy policy as we look forward.

There is much that we can do. I can recall a number of years ago in Casper, WY, meeting with an energy group. I don't remember who it was. But I remember they said that we have never run out of an energy source. We have continued to change. We used to have wood. We used to have coal. We had oil, we had gas and nuclear, and we continue to change. But it takes some forward thinking to do that. It takes some research to do that. It takes an effort made to bring about the changes that are necessary to provide Americans with a very important element of their support. We need to modernize our infrastructure.

Obviously, situations change. We are going to have production, for instance, in gas. In my State, we have a great deal of supply and a source. In order to get it to a marketplace, you have to have pipelines. You have to have transportation.

The same is very much true with electricity. The largest source of fuel for the future and for which we have a resource is currently coal. You have to move that resource to the consumer. You can either move it as coal in a railroad car, which is very inefficient, or you can produce energy at the mine site and then move it to the consumer in transmission lines. We have not kept up with that. We are beginning to feel the consequences of that very much.

We have to increase our supplies of energy. We are doing that, of course, by having new places to drill, new places to extract, new places to find different alternative fuels that are available, frankly, very little of which has become really commercial in nature.

If you exclude hydro from renewables, then only about 3 percent of our energy comes from renewable sources. That is not very much, so it is going to take a while. It is going to take research. It is going to take much action to make sure we get those actually in the homes in America. Renewables are very important. We have to accelerate our plans and our efforts to protect the environment as we do this.

I think everybody wants a balanced energy policy, a balanced policy which says, yes, we need to produce more of our own energy in whatever way. As we do it, we have to protect the environment.

Again, in my home State of Wyoming, that is very important to us. Fifty percent of Wyoming belongs to the Federal Government, so most of the resources there, such as oil and gas and often coal, are on Federal lands. We need to be able to produce this energy in such a way that you can also have wildlife, you can also enjoy the environment, as well as production. Frankly, we have shown you can do that. We need to make that activity become even more workable by doing more research.

The bottom line, which I have already mentioned, is, in our national security, to be less dependent on having to look somewhere else for the energy that is necessary for us to remain secure and prosperous. It is not only part of security; it is also part of economic stability and economic growth.

We have been trying. I mentioned we tried last year, but our attempts failed. We worked very hard at it, as a matter of fact. We had bills out of both the House and the Senate. After some controversy on both sides, we went to committee to put them together and were never able to come up with a solution. Now we are back again.

That process was flawed. Basically, the committee of jurisdiction, the Energy Committee in this case, did not work through the bill before it came to the floor. Quite frankly, it is very difficult to be successful on the floor unless you can come to some agreement in the committee prior to that. We had no hearings, really. We had no markups.

But it has been different this year. We have a chairman who has worked very hard—the Senator from New Mexico. We have a bill that is ready to come before us, and one we really need to work on.

Again, certainly it is essential to completing this war activity we have been in, to really having stability in our own country so that we have somewhat of an energy independence. We may not be totally independent, of course. There is nothing wrong with bringing in fuels from other places, but we should not allow ourselves to be 60 percent dependent on that.

The development of resources is essential to economic growth and that is what we are looking for now, at the same time we are looking at ways to stimulate the economy to create more jobs. I can tell you, the movement in the energy field is one that allows us to do the same thing. We need a balanced approach. I have mentioned that.

Some people think, oh, my gosh, all you are going to do is take oil wells out there and start drilling everywhere. That is not the case. We are looking at conservation. As we look at our own lives, there are many ways, if we make some changes in what we do, we can reduce our demands on energy. We can shift our demands on energy to those things that are more available.

Think about it at home. Are there any ways in which we could have appliances where we could do things a little differently and have them use less energy? I think that is true. We are all looking for ways to increase mileage in our automobiles, and there are ways to do that.

I have to tell you, I think it is a mistake to mandate certain action over a period of time because that becomes very expensive and also puts a real halt on us moving forward. But what we ought to do is have incentives so that we do work toward having more conservation.

Fossil fuels, of course, are our biggest supplier now of energy and will be for some time. Again, for instance, in the case of coal, we have a great abundance of coal, and we have done a great deal to make it more clean to help with climate change. But we can do even more.

In the coalfields in Wyoming there is an effort to begin to put some emphasis on hydrogen. Hydrogen can be made with coal and water, and hydrogen can

then be used much more efficiently in terms of the movement of the fuel as well as using it for automobiles. We can do that.

Natural gas, of course, is one of our very important resources. Again, we need to be able to move that. We need to be able to use it at the highest priority and use these fuels where we get the best bang for the dollar. That is what we are seeking to do: to give some diversity, to utilize the domestic resources, to have an overall energy strategy.

I think too often—and we are a little guilty of that right here in the Senate—we get into one of these issues and we start talking almost entirely about today's problems and solving the problems we have or our constituents have out there right now. That is fine, and we need to do that. But this is a policy. This is designed to give us a roadmap to make changes over time.

Again, electricity is a good example. Years ago, when you had a distribution area, you had a city or a county, and you had an electric supplier that provided for that group. They had a generating plant and a distribution system, and it was all contained right there in the city or right there in the county.

Now 40 percent of energy is generated by what you call merchant generators that do not do distribution, but they sell it to distributors. Of course, to do that, you have to have transmission lines that move the energy around. So things are changing, and we need to keep ahead of change the best we can.

There are also great opportunities for doing something with nuclear power, which is one of the cleanest sources of power we have. We will be talking about doing some things with Alaska, for example, whether it is pipelines or ANWR.

So I just want to say, Mr. President, we are going to be spending a considerable amount of time on energy in the next several weeks. Our goal, hopefully, in the Senate is to get through with the program by Memorial Day. The House will be moving forward as well and has a program that is ready to go, pretty much.

Part of this, of course, will be in the area of tax incentives. As I said, what we need to do is provide incentives for people to do better, to have better ways of drilling, to do better in geological surveys, and so on. Part of that will be a tax title that has been passed out of the Finance Committee. And now the energy bill has been passed out of the Energy Committee. So we are ready to go.

I am hopeful we can come together. I know there are going to be different views about what we do on conservation, what we do about ethanol, what we do about alternatives, but all of those must be resolved if we are to come forward with something that will be good for our country in terms of an energy policy.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for as much time as I may consume.

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

INCREASING THE FEDERAL DEBT LIMIT

Mr. DORGAN. Mr. President, later this week, I am told, we will be getting in the Senate a proposal to increase the Federal debt limit. My assumption is that the increase in the Federal debt limit we will be asked to consider will be nearly $1 trillion—$900-some billion. I am told it is shaved just enough to be under $1 trillion.

That increase in the debt limit will equal, incidentally, all of the debt accumulated from George Washington until 1980, until Ronald Reagan took office. For all of those years, we accumulated less than $1 trillion in debt. The debt limit increase we will be asked to vote on will be just slightly under $1 trillion.

What does that say about the country's fiscal policy? It says we are running very large Federal budget deficits. Two years ago, it was expected that we would run large budget surpluses as far as the eye could see. President Bush said: Let's have the American people keep their own money. Let's move the surpluses back. Let's have a $1.7 trillion tax cut.

Some of us said: Maybe we should be more conservative. What if these Federal budget surpluses don't materialize? What if we are wrong about that?

They said: Never mind. And they pushed it through the House and the Senate, and with great fanfare they signed the bill.

Two years later, we have budget deficits as far as the eye can see; this year, the biggest budget deficit in history and this week, apparently, a proposal to increase the Federal debt limit by nearly $1 trillion. I don't understand that.

In addition to that, there is a major debate on how much additional tax cuts there should be: Should the President get his program of additional tax cuts? There are not only tax cuts in what is called reconciliation, but tax cut proposals outside of reconciliation, which altogether total $1.3 trillion in additional tax cuts.

The easiest lifting in American politics for any politician anywhere in America is to say: I support tax cuts. If in fact tax cuts produce new jobs, then sign me up. I propose we have a trillion dollars in tax cuts or, better yet, $2 trillion in tax cuts. But, of course, we know what we have ahead of us are very large Federal budget deficits.

For Congress and the President, the question is, What is it that we don't want to do in our Government? Do we not want to have regulatory agencies that provide protection for American citizens and consumers? Do we not want to build roads? Do we not want to fund schools? Do we not want to fund the Customs Service, the Immigration Service, the Border Patrol, the Food and Drug Administration? What exactly is it that we should not be doing? Those are the important questions.

Of course, there is waste in government. And we ought to cut spending where it is wasted. Let me give an example. Senator WYDEN and I some while ago asked the Federal Bureau of Prisons, why are you advertising for a dance instructor? In fact, it was advertising for a dance instructor in the State of Texas. Why are you advertising for that for the Federal Bureau of Prisons? What do we need that for? What is the purpose of that? We have since discovered that the Federal Bureau of Prisons has had dance instructors at eight federal prisons. I don't understand that. Learning how to dance the salsa when you are in prison, is that necessary? In areas where there is waste, let's attack waste.

Let me cite one other example. Senator WYDEN and I mentioned this past week—and this is not direct spending on our budget—that the U.S. Postal System inspector general's office is wasting massive amounts of money. The inspector general's office has 700-some people in the Office of the Postal Department doing events supposed to promote teamwork, where employees wrap themselves in toilet paper. They wear animal costumes. They dress up and do role playing. It is the most Byzantine thing I have ever heard of. They spend millions of dollars on these events. That inspector general ought to lose their job. It is a waste of money.

But there are government functions that are essential for our country. Like those nettlesome regulatory agencies that are supposed to protect us from the kind of grand theft that occurred on the west coast with Enron Corporation and others, where what they did was ratchet up the price of electricity. They were turning it, double, triple, 10 times, charging the consumers on the west coast a massive amount of money for electricity as they were manipulating the price. They were taking plants offline and manipulating the quantity of energy, and they were engaged in efforts that the Federal Energy Regulatory Commission and the Justice Department now apparently say are criminal.

I believe they were criminal. I said so last year when I chaired hearings on Enron Corporation. What we have seen on the west coast, with respect to what was going on with the pricing of electricity, is grand theft. The Federal Energy Regulatory Commission is now beginning to take action, after the fact,

after the west coast consumers were cheated, bilked to the tune of billions of dollars.

So is that a part of government that we don't want to have around? We don't want the regulatory agencies looking over the shoulder of companies such as Enron that were manipulating price and supply in order to cheat consumers in an approach that now appears criminal? That is what FERC says. Do we want to reduce the number of regulators who protect consumers?

What about Wall Street? We saw last week there was a $1.9 billion settlement because Wall Street firms were saying: Let's push this stock to the customers, despite the fact that internally these firms were saying: The stock is a dog; this stock is terrible. Yet what their salesmen in the field were being told by research analysts at these companies was: Push this stock along to an unsuspecting public.

Do we want to cut the money for the Securities and Exchange Commission, and others that are supposed to be regulators protecting consumers, and say let the buyer beware? I don't think so.

Fiscal policy has to be sensible and thoughtful. Tax cuts are fine. If you can afford tax cuts, that is fine. But when you face deficits as far as the eye can see, should this Government say: Let's send our sons and daughters to war and, by the way, we won't pay for it? And when you come back, what we will do is increase the Federal debt by $1 trillion and say, as soon as you take your uniform off, you have to help pay the debt, because we wouldn't pay it, or your children and grandchildren will have to pay it because we wouldn't?

We are talking about implementing tax cuts that predominantly benefit the upper income people, to such an extent that if you were lucky enough to earn $1 million a year, you would get an $80,000 a year tax cut. Is that a priority?

Warren Buffett, the second richest man in the world, said he didn't support it because he said it favors the rich. That is what the second richest man in the world said about the President's tax plan. Is that what we ought to embrace when we are deep in debt, and headed deeper in debt, and about to vote on a $1 trillion increase in the Federal debt? I do not think so. There are some activities in Government that are important. I mentioned schools and roads. There are activities we perform of which we are proud and of which we should be proud.

I once visited a Communist country. It was a country with which we were doing business. I met with the American Chamber of Commerce in that Communist country. Do you know what their message was? Their message was this is a great market for us to tap, but the problem is we need more government in this country to do business.

I said: What do you mean by that? They said: You cannot do business unless you have a judicial system that can sort out the disputes, unless you have a system of administrative practices in which you have referees and regulators. If you do not have that government, the mechanism that establishes the rules and makes sure the rules are followed, you cannot do business. You just cannot.

I said this is really interesting because normally the Chamber of Commerce would not be calling for more government, but they are saying that in this Communist country, government is essential for us to do business.

We ought to remember that in this country as well—whether it is the Securities and Exchange Commission, the Federal Energy Regulatory Commission, you name it—there are structures and processes that are important for the governance of this country, and to decide they do not matter is to suggest our system does not matter. It is to say, let the buyer beware. Let the Enrons run wild and overcharge consumers by billions, and it does not matter.

That is not the kind of government I want. I want a government that allows the system to work, that helps establish fair rules and enforces them.

I mentioned we have these proposals for tax cuts that are very large at a time when we have very large Federal budget deficits. There are things we can do. A, we can cut wasteful Federal spending, and B, we can go after the tens and tens of billions of dollars that are not paid to this country in taxes because the companies that make a lot of money selling products to the American consumers have decided they are going to locate in tax-haven countries but take advantage of the American marketplace to generate their profits.

If it is the case that $50 billion or $70 billion would otherwise be owed to this country in taxes but are not paid because those companies have located in tax-haven countries, then this country should take a look at doing something about it and say to them: If you want to be an American citizen, part of the responsibility of citizenship is to help pay the bills in this country, to help pay for that which makes this country great—our schools, our roads, our infrastructure, everything that makes this a great place in which to live.

I think that is an area we ought to be tackling and trying to solve some problems. I would hope perhaps rather than just talk about tax cuts for the upper-income people, we might talk about tax responsibility for some corporations that have decided they do not want to be a part of American citizenship anymore.

My solution to all these companies that have decided they do not want to be an American citizen is, if you want to go to Bermuda, that is fine. If you get in trouble somewhere around the world and some government is about to expropriate your assets, who are you going to call? Call the Bermudan navy. I think they have 36 people in the Bermudan navy. Call them out. If you do not want to be an American citizen, then do not ask the American military forces to protect your investment around the world.

That sort of behavior is not, in my judgment, something that is very patriotic, and it is something that requires, in my judgment, this Congress to do something about.

THE TRADE DEFICIT

Mr. DORGAN. Mr. President, I wish to ask another question. Why do we have a ceiling on Federal indebtedness? The answer is because we want to try to control it. But there is another form of indebtedness for which there is no ceiling, and that is the trade debt. There is definitely no ceiling on that.

We have a foreign trade debt of about $2.8 trillion at the moment. Every single year, there is more and more red ink. There was a $470 billion trade debt, merchandise trade deficit in 2002. Overall, $2.8 trillion deficit is now about 27 percent of our GDP? How does that happen?

The foreign debt comes from record foreign trade deficits. We are the biggest debtor in the world. As one can see by this chart, we run a deficit every year, and every year it grows. One-fourth of the trade deficit is with China; $103 billion last year alone. China is not the only country. We have deficits with Canada, $50 billion a year; Mexico, $37 billion a year. We have deficits with every major European country except Belgium and The Netherlands. We have deficits with every major Asian country except Singapore, and we are about to fix that because we are doing a free trade agreement with Singapore, and I am sure we will turn that into a trade deficit quickly. We have deficits with all the major countries in Latin America.

In addition to having deficits with the countries, let me talk about how our deficits are constituted: A $110 billion deficit in motor vehicles; a $47 billion deficit in consumer electronics; a $58 billion deficit in clothing. I have been on the floor many times to talk about vehicles, so I will not do that today except to say, to use Korea as an example, Korea sends over 600,000 Korean automobiles every year; some 600,000 Korean cars come in to this country.

We sell 2,800 cars into the country of Korea. Why? Because our market is wide open, and the Korean market is largely closed, and nobody has the spine, the backbone, the nerve, or the will to do much about it. That is always the problem.

If you want to use potato flakes from the United States to make fast food in Korea, the potato flakes will find a 300-percent tariff going in to Korea.

The fact is, we have big problems in a range of areas and nobody does much about it. We used to have a big surplus in meat. That surplus declined by $1 million last year. Our deficit in livestock trade reached $1.5 billion last

year. Our deficit in vegetables and fruits reached $2.5 billion last year.

These deficits come from a very simple fact: Our markets are open to foreign products; foreign markets are closed to ours. Too often the products that flood into this marketplace are products made by 12-year-olds working 12 hours a day being paid 12 cents an hour, and it is not fair trade.

Let me use Bangladesh as an example. The fourth largest producer of garments for the U.S. market is Bangladesh. Workers in Bangladesh get paid on average 1.6 cents for every baseball cap they sew, under contract to an Ivy League school. That same baseball cap for which a worker gets 1.6 cents to sew is sold on the campus of this particular Ivy League college for $17.

Each year Americans buy over 900 million garments made in Bangladesh, and yet workers in Bangladesh still cannot make the 34 cents an hour they need as basic subsistence.

If workers in one of the poorest countries of the world cannot even get paid 34 cents an hour, how do U.S. workers and U.S. businesses compete against that kind of trade?

Some say these trade deals are a way of getting other nations to improve their labor and environmental standards, but the fact is, our trade negotiators do not think about that and do not do anything about that. If one needs evidence of that, take a look at the trade agreement that was just negotiated with Singapore, which is going to come to the Senate floor at some point soon for a vote.

This agreement has a provision that would allow massive transshipment of products through Singapore into this country from countries with abysmal labor and environmental records.

How would that work? Article 3.2 of the agreement says the products made in third countries will be treated as Singapore products as long as the products are on a list approved by U.S. trade officials, which includes electronics, semiconductors, computers, cell phones, photocopiers, medical instruments. This chart shows what it says in that Singapore free trade agreement.

The Carnegie Endowment for International Peace issued a paper saying in that Singapore agreement this provision could very well torpedo the entire agreement. This is what a former senior official at the Department of State on labor matters wrote about what has happened in Indonesia:

> Government enforcement of child labor laws is weak or nonexistent.
>
> There is a long-standing pattern of collusion between police and military personnel and employers, which usually takes the form of intimidation of workers by security personnel in civilian dress, or by youth gangs.

She quotes a State Department study which says:

> Institutions required for a democratic system do not exist, or are at an early stage of development.

So we have a free trade agreement with Singapore. And what happens with that free trade agreement? What is going to happen is we will get products from Burma or Indonesia which go to Singapore and are transshipped into this country. As long as they are going on the product list, what we are going to see is transshipment into this country of products coming from areas with abysmal records with respect to child labor and workers' rights.

This Senate has decided it would like to fit itself out with a straightjacket by unwisely passing something called the fast track agreement. The President called it TPA, which was a euphemism for a fast-track agreement, I should say. Under fast track rules, trade deals come to the Congress for an up-or-down vote, and there will be no amendments offered under any circumstance. And this very flawed Singapore free trade agreement will come to the Senate under fast track rules.

The fact is, our trade negotiators don't care what happens after they negotiate a trade deal.

We did a bilateral trade agreement with China a couple of years ago, and we did it so that China could then get into the WTO. Then China got into the WTO. When they joined the WTO in November 2001, the Chinese agreed to significantly expand the amount of imported wheat that could come into China at relatively low tariffs. China agreed that it would set a tariff rate quota of imported wheat at 8½ million metric tons. That meant 8½ million metric tons could enter the market at low tariffs.

According to the CRS, the Congressional Research Service, the Chinese imports were less than 8 percent of that amount. In fact, the Chinese Agriculture Minister was reported in the South Asia Post saying: 8½ million metric tons does not really mean that is what we are going to bring into our country.

This is a country that has a $103 billion trade surplus with us, that reaches a trade agreement with us saying they are going to buy some of your wheat but never really intends to. What do we do about it? Well, we say it does not matter so much. Nobody is going to do too much about it.

It is unforgivable that this goes on. In fact, a U.S. trade official in charge of agricultural trade with China recently said China has not lived up to its promise. That official said the United States would be justified in filing a World Trade Organization case against China. The same official said the evidence of unfair trade by the Chinese was ''undeniable,'' and the Chinese themselves privately acknowledged they are cheating on agricultural trade.

This official said the administration is reluctant to take action against China because the Chinese might be offended. The official said the administration is worried that a WTO case would be seen as ''in your face'' so soon after China joined the WTO.

Well, what is in your face is what these trade officials are doing to farmers, to workers, and to businesses all around the country. It is not fair. In my judgment, we expect and demand that there be action to enforce trade agreements.

I believe my time is about up. I am going to speak at greater length about China trade in the coming days, but I did want to say today that this is an area that is desperately in need of attention by Congress and the administration.

And the Singapore trade agreement is a terrible agreement. We ought to pay some attention to that.

Finally, going back to where I started, this fiscal policy does not add up. Everyone in the country understands it, and I hope when we talk about the need to increase the Federal indebtedness by $1 trillion this Senate will ask itself: Does this make any sense at all?

The major subject before us is more tax cuts when we have the largest deficits in history for the next 10 years and a requirement to increase the Federal debt limit by $1 trillion.

I come from a really small town. We had a guy living there named Grampy. He knew everything about everybody and everything about everything. I always wondered what would Grampy think if you explained to Grampy where we are—deep in debt as far as you can see; a requirement to increase the debt limit by $1 trillion; and the next big thing on the agenda is to cut your revenue, the benefit of which will go largely to the upper income people.

I think Grampy from my hometown would say: Are you nuts? Can't you add? This is not higher math. This does not add up for the country and will not produce one new job. It will produce more despair, more concern, and less economic growth.

Get your fundamentals right. Make things add up and put things back on the right track.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF DEBORAH L. COOK, OF OHIO, TO BE A UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. The hour of 12:45 having arrived, the Senate will proceed to executive session to consider Executive Calendar No. 34, which the clerk will report.

The assistant legislative clerk read the nomination of Deborah L. Cook, of Ohio, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, it is my great honor to come to the Senate floor this afternoon to speak in favor of the nomination of Deborah Cook to sit on the Sixth Circuit Court of Appeals.

Deborah Cook is from Akron, OH. She is currently serving her second term as an Ohio Supreme Court Justice, a post to which she was first elected in 1994.

I will take a few minutes to tell my colleagues in the Senate about Justice Cook and why I am so pleased this afternoon to support her nomination.

Justice Cook received her law degree in 1978 and an honorary doctor of law degree in 1996, both from the University of Akron. Prior to serving on the Ohio Supreme Court, she served on the Ohio Court of Appeals for the Ninth District from 1991 to 1994. And, from 1976 until 1991, she worked for the Akron law firm of Roderick, Myers & Linton. She was the first female associate hired by the firm, later becoming the firm's first female partner.

Justice Cook is an excellent judge and a gracious and giving individual who has dedicated a great deal of her personal time and energy to helping the underprivileged in her community and in the State of Ohio. First, let me tell my colleagues a little bit about her work as a judge.

Justice Cook has been an appellate judge for over 12 years—4 years on the Ohio Court of Appeals and over 8 years on the Ohio Supreme Court. While Justice Cook was on the Ohio Court of Appeals, she participated in deciding over 1,000 cases. Overall, she had a very low reversal rate.

She has worked on hundreds of additional cases in the Ohio Supreme Court. But rather than focus on these hundreds of cases, I would like to draw my colleagues' attention to just a small handful of Ohio Supreme Court opinions that have been considered by the United States Supreme Court, during Justice Cook's tenure. As my colleagues are aware, the U.S. Court reviews few State supreme court cases.

But this statistic is still worth considering for Justice Cook. During her time on the Ohio Supreme Court, the U.S. Supreme Court has reviewed five Ohio Supreme Court decisions and has agreed with Justice Cook in all five of those cases.

One of those cases was simply a unanimous Ohio Supreme Court decision affirmed by the U.S. Supreme Court 8 to 1. In the other four cases, Justice Cook has dissented in the underlying Ohio case. And, in each of these four cases, the U.S. Supreme Court reversed the Ohio Supreme Courts' majority opinion and reached the same conclusion as Justice Cook.

These were not all just the close 5 to 4 decisions that we sometimes see in the U.S. Supreme Court. For example, in a fifth amendment self-incrimination case, the Supreme Court sided with Justice Cook 9 to 0. Another case went 8 to 1, again siding with Justice Cook's dissent. So it is clear from this record that Justice Cook's decisions have been well founded.

Another useful gauge of a sitting judge's abilities is the evaluations she gets from objective observers who watch the court on a day-to-day basis.

In my home State of Ohio, the major newspapers closely watch our high Court. After observing Justice Cook on the Ohio Supreme Court for a full 6-year term, Justice Cook was endorsed by all the major newspapers in Ohio for her 2000 reelection campaign.

These newspapers included the Cleveland Plain Dealer, the Columbus Dispatch, the Cincinnati Enquirer, the Akron Beacon Journal, the Dayton Daily News, and the Toledo Blade.

Here's what several Ohio papers have said about her nomination to the Sixth Circuit. The Cincinnati Post wrote on January 8, 2003:

> Cook is serving her second term on the Ohio Supreme Court, where she has been a pillar of stability and good sense. Her role on that court—one, which in the last few years, has repeatedly marched on 4 to 3 votes into the realm of policy making—has often been writing sensible dissents.

On December 29, 2002, insisting that the Senate Judiciary Committee act on Justice Cook, the Cleveland Plain Dealer wrote:

> Cook is a thoughtful, mature jurist—perhaps the brightest on the state's highest court.

The Akron Beacon Journal wrote on January 6, 2003:

> Those who watch the Ohio high court know Cook is no ideologue. She has been a voice of restraint in opposition to a court majority determined to chart an aggressive course, acting as problem-solvers . . . more than jurists. In Deborah Cook, they have a judge most deserving of confirmation, one dedicated to judicial restraint.

And, the Columbus Dispatch wrote on January 6, 2003:

> Cook's record is one of continuing achievement. . . . Since 1996, she has served on the Ohio Supreme Court, where she has distinguished herself as a careful jurist with a profound respect for judicial restraint and the separation of powers between the three branches of government.

Mr. President, these quotes are from papers across the political spectrum—all of which endorsed Justice Cook. As these comments make clear, Justice Cook is a talented, serious judge who works diligently to follow the law. At the same time, she also dedicates a great deal of her time to volunteer work and community service.

Justice Cook has served on the United Way Board of Trustees, the Volunteer Center Board of Trustees, the Akron School of Law Board of Trustees, and the Women's Network Board of Directors. She was named Woman of the Year in 1991 by the Women's Network. She has volunteered for the Safe Landing Shelter and for Mobile Meals. She has served as a board member and then president of the Akron Volunteer Center.

Furthermore, Justice Cook has served as a Commissioner on the Ohio Commission for Dispute Resolution and Conflict Management, where she focused on, among other things, truancy mediation for disadvantaged students.

She has chaired Ohio's Commission on Public Legal Education and has taught continuing legal education seminars on oral argument and brief writing. I find it remarkable that Justice Cook has found the time for this level of commitment to her community—and I have yet to describe the most amazing commitment Justice Cook has made to helping the underprivileged in Ohio. Justice Cook believes that the ticket out of poverty is a quality education. And, over the years, in their everyday lives Justice Cook and her husband, Bob Linton, has come across hard working young people who are making an effort to improve their lives through education.

Tashia Smith is one of those people. Justice Cook met her when Tashia was struggling to put herself through college at Kent State by working as a waitress. Justice Cook assisted her with tuition for several years. Today, Tashia is in her final year of nursing school, carrying a 3.8 grade point average.

Tara King is another of these students. With Justice Cook's help, Tara recently graduated from the University of Akron. She just enrolled in graduate school at Cleveland State University.

After helping several students in this manner, Justice Cook and her husband decided they should structure their assistance so they could help more young people early on in their education.

A little over 4 years ago, they started the ''College Scholars'' program with a group of 20 disadvantaged third graders from an inner city school. The students were selected to participate based on teacher recommendations, financial need, and level of family support. Justice Cook matched each of the students with a mentor in the community. The students meet with their mentors weekly and participate in other program activities.

If the students maintain good grades and conduct through secondary school, Justice Cook and her husband will pay for 4 years of their tuition at any public university in Ohio. Let me repeat that—Justice Cook is going to pay for 4 years of college tuition for 20 disadvantaged children.

These activities demonstrate a commitment to the community and dedication to helping the disadvantaged that we would like to see in everyone. These are qualities that help make Justice Deborah Cook a great judge on the Federal bench. It tells us what kind of a person, what kind of human being she is. For these reasons and the other reasons I have outlined, I urge my colleagues to support her nomination.

I add, on a personal note, I have known Justice Deborah Cook for many years. She is a fine individual. She is the type of person that should be on the Federal bench. She has a proven track record of fairness, of compassion, of competence. I would not be on the

Senate floor today if I did not trust her. I would not have recommended her name to the President of the United States if I did not have the utmost confidence in her ability.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). Who yields time?

Mr. DEWINE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DEWINE. Madam President, I ask unanimous consent that any time on the quorum call be taken off both sides at this point.

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

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

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

Mr. KENNEDY. Madam President, I rise to address the nomination of Deborah Cook to serve on the U.S. Court of Appeals for the Sixth Circuit. I welcome the opportunity to speak to the Senate, to express my very deep concerns about the commitment of this nominee to the interests of working families and to the underlying cause of fairness and justice.

I want to say at the outset that I have the highest regard for my friend from Ohio, Senator DEWINE. With his recommendations of a nominee, one has to give not only a first look but a second and a third because the good Senator is so highly regarded and respected here in the institution. Certainly anyone he supports has a very heavy presumption in their favor because of the high regard we have for Senator DEWINE. So I acknowledge that at the outset.

But I must say in reviewing the history of this nominee, there is a pattern of decisionmaking that is of very deep concern for the Senate and for all of us who want to make sure those sitting on the courts of appeal are going to be fair to workers and workers' rights in that district, that district which obviously has so many working families whose rights need to be reaffirmed at different times.

I urge my colleagues to vote against the nomination of Deborah Cook to a lifetime seat on the U.S. Court of Appeals for the Sixth Circuit. Her record demonstrates the extreme length to which she will go to protect corporations and deny the rights of injured workers, victims of discrimination, religious minorities, schoolchildren, and others. She is the leading dissenter on the predominantly Republican Ohio Supreme Court, objecting repeatedly to decisions by that court that favor the rights of individuals. Often she stands alone as the only dissenter, and again and again her colleagues have criticized her for ignoring precedents, for manipulating the law to reach the results she wants. Her record is extreme, even in comparison with her Republican colleagues on the Ohio Supreme Court, and she consistently seems bent on narrowing laws intended to remedy violation of the rights of individuals.

In cases involving workers' rights, her record is among the worst we have ever seen. Her defenders try to maintain a straight face when they say she is only impartially enforcing the law, but more than any other judge on her court, she seems to think that the law should almost always protect corporations and not injured workers. She consistently dissents from the majority and votes to protect corporations from liability when they harm their employees, and she has even tried to shield these corporations from liability when they attempt to cover up their malfeasance. The pattern is overwhelming.

In 37 cases she has supported the rights of employees only 6 times, and in all but 1 of those 6 cases she was joining a unanimous court. Even where a Republican majority on the court rules in favor of the employee, she dissents almost 80 percent of the time. She has never, in any case we know of, dissented from a decision of the court in favor of an employee. In the majority of the cases where she dissents, she is the only dissenter or is joined by only one other member of the seven-member supreme court.

Her dissents take an extremely narrow view of workers' access to the courts. On more than one occasion she would have protected employers who were accused of lying to their employees. In one extreme case, in Davis v. Wal-Mart Stores, she would have penalized the employee when the store had covered up evidence that the workplace was unsafe. In that case, a Wal-Mart worker was killed operating a forklift at work. He was unloading a truck with the forklift when the truck suddenly pulled away from the loading dock. The forklift fell on him and crushed him to death.

His wife brought a tort action to recover damages from Wal-Mart for her husband's death, and during the course of the proceedings on her case, Mrs. DAVIS discovered that Wal-Mart might have withheld evidence and provided false and misleading testimony. Wal-Mart representatives had denied under oath that they were aware of hazardous conditions at the loading docks, and had denied knowledge of incidents similar to those that caused her husband's death. As it turned out, Wal-Mart had improperly concealed documents on similar accidents and had instructed its representatives to lie about them.

If Mrs. Davis had obtained this information sooner, she would have prevailed on some of her claims at the initial trial. With this new evidence, she filed a new claim, in which she alleged that the company's concealment, destruction of evidence and perjury had been used to limit her recovery on her prior claims. All except one of the members of the Ohio Supreme Court ruled that Mrs. Davis's claim that Wal-Mart had concealed and distorted evidence could proceed. One Justice said that concealing evidence as Wal-Mart did ''harms the sanctity of the judicial system and makes a mockery of its search for the truth.''

Deborah Cook was the only member of the court to dissent from the holding that the case should proceed. She was the only member of the court to conclude that the company was not accountable for its misrepresentations of the evidence. Incredibly, her dissent would have had the effect of rewarding an employer who lied to cover up its wrong doing.

Similarly, in Norgard v. Wellman, Cook wrote a dissent that would shield from liability an employer who lied to its employees about their exposure to beryllium on the job. Beryllium is a toxic chemical that causes a serious chronic illness, and exposure to it can be deadly.

The worker in the case developed the disease. The company assured him that he was fine even though it had found through its examinations that he had a heightened sensitivity to beryllium. The company knew that its workers were being exposed to beryllium at the particular job site, and that they were becoming ill from the exposure, but the company concealed these facts from its workers. When the worker learned that the company had withheld information about exposure levels, air-sampling and ventilation problems in the workplace, he filed a lawsuit.

When the case came before the Ohio Supreme Court, the issue was whether the suit had been timely filed. The supreme court held that the suit was still timely, because his employer had concealed the beryllium exposure. It ruled that the time to bring suit begins to run not at the time when the worker becomes ill, but when he learned of his employer's deceit.

Cook, however, rejected this sensible approach. She said that the period to file the suit began to run when the employee had first become ill—even though at that time the employee could not have known that his illness was caused by his unsafe workplace. Under Cook's approach, workers would be responsible for knowing whether or not their employers are lying to them. In her view, if an employer deliberately conceals information about safety violations, the worker has no effective remedy.

Another shameful example of Cook's willingness to strip workers of their legal protections is the case Petrie v. Atlas Iron Processors Inc. Petrie

worked in a scrap-yard, and some of the yard's conveyor belts were in a fenced-in enclosure. Petrie was removing ice and debris from one of the machines when his glove was caught in the moving conveyor belt, and his finger was cut off.

Petrie sought additional workers' compensation on the ground that his employer had violated specific safety requirements. Under Ohio law, he had a claim only if the yard's fenced-in enclosure could be considered a ''workshop.'' The Ohio Supreme Court found the answer so obvious that it wrote only a brief three-paragraph opinion holding that the area was a workshop and Petrie could proceed with his claim.

Cook, however, wrote a two-page dissent—joined only by one other justice—insisting that because the machine was not ''within a building,'' it was not a workshop and the employee was not entitled to the protection of state safety rules. The cases Cook cited, however, did not hold that outdoor factory work was exempt from workshop safety rules. Nevertheless, Cook would have held that a scrapmetal conveyor belt in a fenced-in area, is not subject to workplace safety protections, just because there is no roof over this employee's head.

There are many other examples of Cook's attempts to limit workplace protections. She has opposed allowing employees fired for reporting violations of federal occupational safety and health laws to sue under common law and statutory whistleblower protections. She wrote a lone dissent in the case of a railroad worker who had been repeatedly harassed and threatened on the job and required to work under unsafe conditions. The issue was whether the worker could bring suit under the Federal Employers' Liability Act. Cook alone would have barred the suit, despite the clear language of the statute.

No Senate should confirm a judge so consistently hostile to protections for workers injured or killed on the job. In 2001, there were 5.2 million occupational injuries and illnesses in the private sector, and 6,000 deaths. Many workers in the four states covered by the Sixth Circuit—Kentucky, Michigan, Ohio, and Tennessee—are employed in manufacturing jobs. Often, the workers in such jobs are exposed to a high risk of injury or death in the workplace.

The nation has made genuine progress in reducing injuries and fatalities, but only through careful enforcement of Federal and State safety standards. We rely on the courts to uphold these safety laws and give injured workers the chance to obtain compensation for their injuries. Yet Cook seems bent on denying workers their day in court whenever she can.

Cook has also tried to limit the ability of students in public schools to vindicate their right to an adequately funded public education. The Ohio Constitution, like many State constitutions, guarantees all students what is called a thorough and efficient public education. In many states, public schools are severely underfunded, partly because of heavy reliance on local property taxes to fund education often leads to gross disparities in funding between school districts.

In litigation challenging the constitutionality of Ohio's educational funding system, the Ohio Supreme Court found that many students were attending schools in dangerous disrepair and failed to meet minimum safety requirements. Half of Ohio's schools had unsatisfactory electrical systems, 70 percent lacked adequate fire alarm systems, and more than 80 percent lacked proper heating systems. In one school district, 300 students were hospitalized when carbon monoxide leaked out of heaters and furnaces. In another district, elementary schools, more than 100 years old, had floors so thin that a teacher's foot went through the floor.

In another school, students were breathing coal dust from the coal heating system. The system was in such disrepair that the coal dust often covered students' desks after accumulating overnight. In another district, buildings were crumbling and chunks of plaster were falling from the walls and ceilings. In some districts, classes were held under leaking roofs and in former coalbins. Funding of teachers and supplies was also inadequate. Some districts had to ration basic supplies such as paper and chalk and even toilet paper.

The majority of the Ohio Supreme Court found that ''school districts were starved for funds, lacked teachers, buildings and equipment, had inferior educational programs, and their pupils were being deprived of educational opportunity.'' The majority of the supreme court found that.

The Ohio Supreme Court ruled that the education funding system was unconstitutional and had to be changed, but not Ms. Cook. She dissented. Despite the shameful conditions in some schools, and the large disparities that existed between school districts, she insisted that Ohio citizens did not have a right to go to court to enforce the State constitution's guarantees. On at least four separate occasions, she dissented from the majority of the court which has repeatedly ruled that the legislature must fill the Ohio Constitution's commitment.

In her view, the courts had no authority to define the scope of the Ohio Constitution's provisions on funding education. She says that as long as the legislature provides at least some funding, the constitution is satisfied. As the court's majority has said:

[D]eference to the corresponding branches of government does not mean abdication.

The court's majority specifically criticized the dissent failing to face up to the evidence of the school problems. As the court majority wrote:

The dissent recognizes that it could not in good conscience address these facts and then conclude that Ohio is providing the opportunity for a basic education. Therefore, it does the only thing that it could do: it ignores them.

Few issues are more important to the future of our country than ensuring a good education for our children. Courts, of course, do not have the principal responsibility to remedy all these problems. But a majority of the Ohio Supreme Court clearly ruled that the State constitution gave the Ohio courts a role in assuring that a State provides a basic education to its children. But Cook said no, as she always tries to do in such cases.

In another basic area discrimination case, Cook again seeks to narrow remedies and reverse jury awards. The Nation has made great progress in combating discrimination against minorities and women, but discrimination and harassment continue to exist. Victims of discrimination rely on courts to remedy such discrimination when other avenues have failed.

Cook has joined dissents to protect employers from liability in harassment cases, no matter how flagrant the violation. She has voted to reverse jury verdicts for employees in age discrimination cases and gender discrimination cases, despite the high presumption of the validity of those verdicts on appeal and the clear and abundant evidence of discrimination.

In a case on religious freedom, she adopted a position opposed by all of her colleagues on the court. A Native American employee of a State agency was asked to cut his hair by his employer. His religious beliefs prevented him from doing so, and he tried to be accommodating by pinning his hair under his cap. The Ohio Supreme Court accepted that accommodation, but Cook alone dissented. Despite previous Ohio Supreme Court decisions, Cook wanted a higher standard before plaintiffs could prevail in cases involving violations of religious freedom.

For reasons such as these, Cook's nomination has generated intense opposition from groups that know her record and that represent women, racial minorities, labor, and consumers. I have more than 100 letters in opposition. I ask unanimous consent to have relevant material printed in the RECORD.

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

NATIONAL EMPLOYMENT LAWYERS ASSOCIATION,
January 24, 2003.

Hon. ORRIN HATCH,
Chairman, Senate Judiciary Committee, Hart Office Building, Washington, DC.

Hon. PATRICK LEAHY,
Senate Judiciary Committee, Russell Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATORS HATCH AND LEAHY: I am writing as President of the National Employment Lawyers Association to urge the Senate Judiciary Committee to reject Justice Deborah Cook's nomination for appointment to the Sixth Circuit Court Appeals. NELA is

the country's only professional organization that is exclusively comprised of lawyers who represent individual employees in cases involving employment discrimination and other employment-related matters. NELA and its 67 State and local affiliates have more than 3000 members. The Ohio Employment Lawyers Association is among NELA's largest affiliates.

Justice Cook's record and temperament display all the characteristics of a bad judge. She is dogmatic, often in an unprincipled manner, insensitive and biased in her decision-making. Our Ohio affiliate joined several other statewide organizations in opposing Justice Cook's nomination. I have attached a copy of the letter these Ohio organizations have sent to the Committee. Their description of Justice Cook is apt:

''What is most striking about Justice Cook's career on the bench, particularly her tenure on our state Supreme Court, is her heartlessness. She repeatedly displays a cold indifference to the most tragic situations confronted by the individuals who appear before her. Worse, she routinely adopts strained or extreme legal propositions to deny meaningful relief to those most in need of justice from our courts. Her body of opinions demonstrates that she lacks the compassion, sensitivity and legal integrity which are the hallmark of a jurist who enforces both the letter and spirit of the law. Any objective reading of her decisions, makes it clear she is not a fair-minded judge.''

Although this letter is sent in my capacity as president of NELA, I also write as an Ohio lawyer who has appeared before the Ohio Supreme Court many times during my 27 years of practice. I have represented a wide array of individuals and organizations in the Court both before and during Justice Cook's tenure as a Justice. Justice Cook's anti-civil rights, anti-worker and anti-consumer record on the Court is unparalleled.

Justice Cook is the most frequent dissenter (often the lone dissenter) on a Court consisting of five (5) Republicans and only two (2) Democrats. Justice Cook has taken the position: (1) that even overt racist, sexist and ageist statements and epithets are irrelevant in most discrimination cases. *See Byrnes v. LCI Communications Holdings Co.* (1996), 77 Ohio St. 3d 125, 672 N.E. 2d 145; (2) that blind people are not qualified because of their disability to go to medical school notwithstanding the testimony of successful blind practitioners to the contrary. See, *Ohio Civil Rights Comm'n. v. Case Western Reserve University* (1996) 76 Ohio St.3d 168, 666 N.E.2d 1376; (3) that an employer cannot be sued for destroying, concealing or lying about evidence. See her lone dissent in *Davis v. Wal-Mart Stores, Inc, dba Sam's Club* (2001), 93 Ohio St.3d 488, 756 N.E.2d 657; (4) that railroad workers subjected to severe harassment, including threats of serious physical injuries, cannot pursue a claim under the Federal Employers' Liability Act. See her lone dissent in *Vance v. Consol. Rail Corp.*, (1995) 73 Ohio St.3d 222, 625 NE 2d 776; (5) that an employer can avoid liability by lying to its employees about the presence of dangerous chemicals in the workplace so that fatally affected employees will miss applicable time limits for filing an action against the employer. See *Norgard v. Brush Wellman, Inc.* (2002) 95 Ohio St.3d 165; (6) that employers can disregard their own handbooks and promises to their employees with impunity. See her lone dissent in *Wright v. Honda of America Mfg., Inc.* (1995) 73 Ohio St.3d 571, 653, N.E.2d 381.

In light of the letter signed by Denise Knecht, chairperson of our Ohio affiliate, which reviews more of Justice Cook's opinions in particular cases, I will not detail here the many unfathomable and unjust votes and opinions issued by Justice Cook.

At the request of our Ohio affiliate, my firm undertook a study of all of the employment decisions which were decided on the merits by the Ohio Supreme Court during Justice Cook's tenure. The purpose of the study was to do a complete review of Justice Cook's employment law record (including civil rights cases) to measure the full extent of Justice Cook's propensities in these cases. The review covered all employment related cases other than workers' compensation matters. The cases reviewed included discrimination actions, intentional workplace torts, breach of contract suits, promissory estoppel claims, whistle-blower cases, public policy wrongful discharge cases and alleged violations of statutes governing procedures for termination of public employees.

During Justice Cook's tenure on the Court there were 37 such employment cases in which the Court issued decisions on the merits. Attached to this letter are the results of the study. The study demonstrated the following about Justice Cook's record: (1) Justice Cook has never dissented from any decision of the Court favorable to an employer; (2) Justice Cook dissented 23 times, in cases in which the Court ruled in favor of an employee (or 79 percent of the time); (3) Justice Cook only voted in favor of an employee on 6 occasions (notably, 5 of those 6 cases were ''no brainers'' in which the Court decision for the employee was unanimous); (4) Justice Cook has voted in favor of an employee in only 1 case in which there was a split vote of the Court in favor of the employee (that case, not surprisingly, was a 6 to 1 decision for the employee); (5) Of Justice Cook's 23 dissents from a ruling in favor of an employee, she was either the lone dissenter or joined by only one other Justice 61 percent to the time; (6) Overall, Justice Cook voted in favor of employers in 83 percent of the cases and, as noted above, her few votes in favor of employees were almost always in cases in which the Court was unanimous.

Both Justice Cook's actions and her words demonstrate that she is not fit for a lifetime appointment as a federal judge. As a state court judge she voted to weaken protections for working Americans, undermined equal employment opportunity laws and spurned the pleas of those who have suffered catastrophic injuries caused by intentional misconduct of their employers.

Judges must be fair-minded and impartial. Justice Cook lacks both of these traits. Her hostile an extreme views concerning laws governing the workplace have no place on the Federal bench. Her nomination is a disservice to working men and women. Her appointment will only serve to encourage unscrupulous and prejudiced employers.

I will be happy to provide any further information that the Committee may desire concerning Justice Cook's record.

Very truly yours,

FREDERICK M. GITTES,
President.

Mr. KENNEDY. The groups opposed to her nomination include the Ohio Organization for Women, the National Employment Lawyers Association, and the AFL-CIO. Many of those who have written to oppose her are lawyers who have participated before her and are familiar with her record and approach. Their message is clear: Justice Cook displays a hostility to workers' rights, consumer rights, and civil rights, and she lacks the fairness and balance we expect of our Federal judges.

Many of our Republican colleagues say that when we oppose nominees such as Cook, we are somehow obstructing the President's right to put his nominees on the Federal courts. If fact, the Senate has confirmed 120 of President Bush's judicial nominees—100 of them when Democrats controlled the Senate. Today, our Federal courts have the lowest vacancy rate in more than a decade.

When nominees' records raise concern about whether they will be fair, whether they will enforce Federal rights and protections, the Senate does have the constitutional right to withhold our consent. The Constitution is clear that the Senate's role is not simply to rubberstamp nominees. The Framers clearly intended to avoid vesting too much power in the President. The role of the Senate on Presidential nominations is one of the fundamental checks and balances in the Constitution. From the earliest days of the Nation, the Senate has exercised its duty of advice and consent, rejecting Presidential nominees it has found unsuitable.

Far too many of President Bush's nominees are controversial and divisive. They are clearly part of a plan to pack the Federal courts, particularly the courts of appeals, with judges who will advance an ideological agenda that is hostile to civil rights, hostile to workers' rights, hostile to environmental protections, and hostile to the right to privacy and a woman's right to choose.

We in the Senate do not have to go along for the ride. We should have our constitutional responsibility to safeguard the independence of the judiciary, and to ensure that the courts are not stacked with judges as a part of a White House master plan to tilt the Federal courts as far right as possible.

Deborah Cook's record demonstrates she lacks the fairness the Nation expects from the judiciary, and I urge the Senate to reject her nomination.

I have a number of items. I will not take a great deal of time, but I will read excerpts from a few of these letters. This one is from the National Employment Lawyers Association.

I am writing as President of the National Employment Lawyers Association to urge the Senate Judiciary Committee to reject Justice Deborah Cook's nomination for appointment to the Sixth Circuit Court of Appeals. NELA is the country's only professional organization that is exclusively comprised of lawyers who represent individual employees in cases involving employment discrimination and other employment-related matters. NELA and its 67 state and local affiliates have more than 3000 members. The Ohio Employment Lawyers Association is among NELA's largest affiliates.

Justice Cook's record and temperament display all the characteristics of a bad judge. She is dogmatic, often in an unprincipled manner, insensitive and biased in her decision-making.

And he continues:

Justice Cook's anti-civil rights, anti-worker and anti-consumer record on the Court is unparalleled. . . .

Both Justice Cook's actions and her words demonstrate that she is not fit for a lifetime appointment as a Federal judge. As a State

court judge she voted to weaken protections for working Americans, undermine equal employment opportunity laws and spurned the pleas of those who have suffered catastrophic injuries caused by intentional misconduct of their employers.

Judge's must be fair-minded and impartial. Justice Cook lacks both of these traits. Her hostile and extreme views concerning laws governing the workplace have no place on the federal bench. Her nomination is a disservice to working men and women. Her appointment will only serve to encourage unscrupulous and prejudiced employers.

These are the organizations, the lawyers who represent workers who have been suffered injury and have been discriminated against. This is the national organization. This is as strong a letter as we have received in opposition to a judge by the lawyers who have represented workers who have been before that court. That is a powerful commentary.

We also have a letter from the Ohio Academy of Trial Lawyers:

I write to you on behalf of the Academy . . .

Throughout Justice Cook's tenure, I and numerous other Academy members have had a first hand opportunity to observe Justice Cook's temperament, demeanor and decision making as a member of the Ohio Supreme Court. Our observations of her record demonstrate to our Association that Justice Cook is willing to disregard precedent, misinterpret legislative intent and ignore constitutional mandates in an effort to achieve a result that favors business over consumers. Justice Cook's personal background is from big business and she has allowed her background to bias her decision making. She has consistently in our view voted to limit citizens' access to the courts and routinely articulated positions which would leave members of the public without remedies.

In our view, Justice Cook is among the most conservative activist justices who have served on the Court.

Our Court is viewed by most objective observers as moderate and bipartisan. However, the Court does have extremely conservative Republican members. Justice Cook is to the right of all of them. She has authored 313 dissents, more than any other Justice.

Then it continues:

Another reason for the Academy's concern about Justice Cook stems from her decisions in the area of basic constitutional rights. Justice Cook issued a sole dissent in a religious free exercise case that would have seriously undermined key rights provisions of our Ohio Constitution.

Another example of Justice Cook's lack of commitment to constitutional principles, including due process, can be found in the Bray v. Russell decision. In Bray, Justice Cook dissented from a 5–2 decision striking a state statute which empowered the patrol board add ''bad time'' to a prisoners' sentencing punishment of misconduct occurring during imprisonment.

It continues along:

. . . there is hardly a case in which Justice Cook does not side with the insurance company over its policyholder no matter how outrageous the circumstances.

. . . Justice Cook is not only out of touch with many of the core values shared by most Americans but she lacks the proper judicial temperament and a meaningful sense of justice. She does not afford individual Ohioans a fair opportunity to be heard by an impartial adjudicator. She neither deserves nor is she qualified for a lifetime appointment to the Sixth Circuit Court of Appeals. Her presence on that Court would be even more harmful to the public as she would turn many balanced panels toward extreme positions which will jeopardize access to the courts, civil rights and equal justice. For these reasons, we ask the Committee to carefully study Justice Cook's decisions in their entirety before any vote . . .

We have given some examples of cases. I may have the opportunity to do that a little later in the afternoon.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, I ask unanimous consent that during consideration of the nomination, the time during all quorum calls be equally divided.

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

Mr. DEWINE. Madam President, I certainly have a great deal of respect for my friend and colleague from Massachusetts. We have discussed this nomination in the Judiciary Committee. We are continuing our discussion on the Senate floor today. I would like to respond to a few of his comments.

My colleague has stated Justice Cook has been a dissenter on the Ohio Supreme Court. That certainly is true. She has been a dissenter. I am not sure that is a sin. I am not sure that is a reason someone should not be confirmed by this body. If that was the criteria for turning someone down, some of our greatest justices would not be on the Supreme Court, would not have been confirmed, nor would be on the Federal bench.

Justice Cook has had five cases where the Ohio Supreme Court has been reviewed by the U.S. Supreme Court. In all five of those cases, the Ohio Supreme Court has agreed with Justice Cook. It is interesting that in four of those cases, Justice Cook was a dissenter. Yes, she was a dissenter in the Ohio Supreme Court. The case went up to the U.S. Supreme Court and the U.S. Supreme Court said the majority on the Ohio Supreme Court was wrong. But Justice Cook, the dissenter, was right. So the dissenter, Justice Cook, at least according to the highest Court in this country, the U.S. Supreme Court, was right.

As I have outlined, for some of those decisions by the U.S. Supreme Court, it was not even a close call. So much for that horrible label of being a dissenter.

My colleague and friend from Massachusetts has talked about several cases. I would like to talk about them as well. As the man on the radio says: ''to tell the rest of the story.''

It has been charged that in the case of Davis v. Wal-Mart, Justice Cook voted to shield corporations from the legal consequences of their action. It has been asserted Justice Cook's dissent in that case would have allowed Wal-Mart to get away scot-free. At least that seems to be what has been asserted. But that is simply not what the facts are. In fact, there were two separate legal actions in Davis v. Wal-Mart. We really only hear about one.

In the first case, Justice Cook did not intervene, and Mrs. Davis received almost $3 million. In the second case, when Mrs. Davis attempted to get additional payment for the same event, Justice Cook did vote against her position based on a well-known legal principle.

Let me tell the story. The facts in this case involved a terrible incident in which Mr. Davis, a Wal-Mart employee, was killed on the loading docks while at work. Mrs. Davis sued Wal-Mart, and she won. She won a jury verdict of $2 million because there was evidence that Wal-Mart had failed to provide a safe working environment for Mr. Davis. In addition, the trial court found Wal-Mart had attempted to hide evidence during the trial and, as punishment for that, the trial court awarded interest on the $2 million to Mrs. Davis covering the time from when the case was first filed to the time when the jury found for Mrs. Davis.

Wal-Mart's appeal at the court of appeals failed. The Ohio Supreme Court, including Justice Cook, declined to even consider Wal-Mart's appeal of that decision. So Wal-Mart was punished. Mrs. Davis had her day in court and won a significant verdict plus interest. That is what Justice Cook found.

As I noted earlier, the interest award was on the $2 million during the entire time the case was pending. I believe it was about 4 years' worth of interest. I haven't done the math, but it must have been about $800,000 in interest during that period of time—roughly that. Justice Cook did not affect that verdict in any way. So that was the first case in which Mrs. Davis received approximately $3 million, as she should have.

The unfounded complaints about Justice Cook are based on a second case against Wal-Mart that was filed by the plaintiff's lawyer. In the second case, the plaintiff's lawyer filed a new lawsuit claiming Wal-Mart had covered up evidence during the first trial. Mrs. Davis lost her second case at the trial court because that judge found all the supposedly new evidence was discovered during the original case, and Wal-Mart had already been punished for covering up the evidence. Specifically Wal-Mart had been punished by the award of that interest money, approximately $800,000.

So just to summarize, we have a case in which Wal-Mart engaged in wrongful conduct both at its workplace and in defense of a lawsuit. Wal-Mart was then punished for wrongful conduct in both instances.

Justice Cook in no way interfered with any of that process or punishment. After the jury verdict and after the favorable decision on interests were final, the plaintiff's lawyers tried to take a second bite of the apple. Not surprisingly, they lost the second case at the trial court. The plaintiff's lawyers appealed the loss, and a majority

of the supreme court overturned the trial court and ruled in favor of Mrs. Davis.

The entire supreme court, including Justice Cook, agreed on the legal standard to be applied that such new claims could be brought only if new evidence of wrongful conduct was discovered. The majority of the court said, though, there was new evidence, but they never said what they thought was new. In contrast, Justice Cook agreed with the trial court judge that there was no new evidence. So Justice Cook said there was no new evidence and applied the well-known doctrine of res judicata. In other words, because the issue had already been decided, the case could not be retried.

Reasonable people, reasonable jurists—a disagreement. Justice Cook and the trial court judge agreed; the rest of the supreme court were on the other side. Somehow this agreement about a technical legal issue has been turned into an argument that somehow Justice Cook was attempting to shield Wal-Mart and undercut the rights of the plaintiff after Wal-Mart had already been ordered to pay Mrs. Davis $2 million plus interest.

Those are the facts. That is the rest of the story.

Let's turn to another case that was cited by my friend from Massachusetts, Norgard v. Brush Wellman. Norgard was another tragedy, a tragedy about an individual who contracted chronic beryllium disease while he worked for Brush Wellman. The facts of the case are egregious, especially facts that Brush Wellman withheld information about the causes of the disease.

The legal issue, however, was a simple one. It was a statute of limitations case. A statute of limitations, of course, as we know, is a time within which an individual has to file a claim. In Ohio, the statute of limitations is, as it is in every State, set by the State legislature. The statute of limitations for this type of case in Ohio set by the legislature is 2 years.

As in most States, there is an exception to the statute of limitations called the discovery rule. That rule provides that the 2 years does not start until an injured party discovers he is injured and knows the source of the injury.

In this case, the evidence before the court showed Mr. Norgard knew he was injured and that his injury was caused by his exposure to beryllium at work. He knew that at the latest by August of 1992 when he was formally diagnosed by a doctor.

Even though the company had tried to hide evidence from Mr. Norgard, in a legal sense, it really did not make a difference. He still knew about his exposure by August of 1992. The company's conduct, though horribly reprehensible, did not change the legal fact that Mr. Norgard discovered his illness and the source of his illness. Accordingly, the 2-year statute of limitations required the lawsuit to be filed by August 1994. Instead, tragically, Mr. Norgard did not file his claim until 1997, more than 2 years after his time to do so expired. After the case was filed, the trial court applied the statute of limitations and granted summary judgment against Mr. Norgard.

We know what summary judgment is. It is a ruling that rejects a party's claim without even going to trial. Because summary judgment circumvents the trial, under the law, a court can only grant summary judgment motions if it finds the claimant cannot possibly win even if it gives the plaintiff every benefit of the doubt.

In this instance, the court had to consider all the allegations against Brush Wellman to be true, including the allegations that Brush Wellman outright lied to Mr. Norgard about his exposure to beryllium. They had to accept those as true.

That is what happened in this case. The trial judge gave Mr. Norgard the complete benefit of the doubt to which he legally was entitled. In spite of what we all think about this horrible conduct by Brush Wellman, the trial judge thought he had no choice but to follow the laws laid down by Ohio's legislature and grant summary judgment.

As I noted earlier, legally, unfortunately, it did not make a difference that Brush Wellman had tried to hide the facts. Norgard still knew about his exposure as a fact. So he still had to file his claim by August of 1994.

The court of appeals unanimously upheld the trial court's decision. Justice Cook and two other Ohio Supreme Court justices simply applied the statute of limitations and upheld the decisions of the trial court and the court of appeals.

A four-judge majority in the Ohio Supreme Court was troubled by the facts of the case and decided to follow their policy preferences. The new result was one that was favorable to the Norgard family.

This is what the Akron Beacon Journal had to say about the case:

> In her dissent, Cook did not carry an ideological banner cold heartedly proclaiming the company above all. She has sided with workers in many cases. In this instance, she followed the law. Justices do not have a task of changing the statute of limitations. That job belongs to the legislature.

Madam President, I ask unanimous consent to print in the RECORD the Akron Beacon Journal editorial about this case.

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

[From the Akron Beacon Journal, Feb. 27, 2003]

COOK AND THE LAW

The demonization of Deborah Cook has reached full froth. So much for assessing a judicial nominee on her record.

The Senate Judiciary Committee is expected to vote this morning on the nomination of Deborah Cook to sit on the 6th U.S. Circuit Court of Appeals in Cincinnati. Almost two years have passed since she was first tapped by President Bush to join the federal bench. The delay reflects understandable payback from Democrats who watched strong nominees of Bill Clinton linger for longer as Republicans played political games. Unfortunately, part of the game played by both parties and their allies involves the crude caricature (and worse) of judicial nominees.

A fresh example of the distortion and even recklessness can be found on today's Commentary page. Adam Cohen, an editorial writer for the New York Times, delivers a slashing critique of the Cook record as a justice on the Ohio Supreme Court the past eight years. Too bad his assessment lacks the necessary context, let alone a full grasp of the issues at work in the cases he discusses.

Cohen notes ''the predominantly Republican court'' and later adds that Cook ''frequently breaks with her Republican colleagues.'' The objective is to portray the justice, ''the court's most prolific dissenter,'' as extreme, even for a Republican court. Those who pay cursory attention to the Ohio Supreme Court know that party labels do not tell the story of recent years.

Two of the Republicans have been among the most liberal members, siding regularly with the two Democrats to form a majority in such areas as employment and tort liability law. To say the court is predominantly Republican may be convenient. It doesn't add to an understanding of Cook.

We have noted in the past our sharp disagreements with Cook, especially in the landmark school-funding case. What offends in the current confirmation process is the attempt to demonize the Akron resident, arguing (as Cohen does) that ''often she reaches for a harsh legal technicality to send a hapless victim home empty-handed,'' that she shills for ''big business and insurance companies.''

Actually, the description is funny, in view of the mish-mash the ''bipartisan'' majority made of insurance law in the state. Cook has been a frequent dissenter. That doesn't mean she stands alone. Cohen addresses a half-dozen cases. In four, Cook sided with the rulings of both the trial court and the state appeals court. In the remaining two, she would have upheld the trial court or the appeals court.

Were these courts reaching for ''a harsh legal technicality''? Is there a vast right-wing conspiracy? Sorry, not in Ohio. If anything, Cook and two Republican colleagues (Chief Justice Thomas Moyer, ideologue?) often objected to the majority departing from precedent, hardly a radical position.

Cook critics overlook the majority opinion she wrote rejecting the claims of employers and concluding that punitive damages are available to workers who have suffered discrimination in the workplace. The opinion reveals much about the Cook judicial philosophy. She precisely examined legislative intent in crafting the law.

That is the Cook familiar to many Ohioans. She gives great deference to the legislature. She reflects the principle that this is a nation of laws, not of men or women.

Who doesn't sympathize with David Norgard, a worker exposed to beryllium on the job who has been ailing for two decades? The issue before the Ohio Supreme Court was whether Norgard filed suit within the statute of limitations. The majority ruled he had. Cook dissented.

Cohen suggests Norgard knew little about his illness because the company stonewalled. In truth, Norgard knew for years. He sought advice about hiring an attorney. The trial court dismissed his case on summary judgment. The appeals court unanimously upheld the lower court. Cook objected to the majority casting aside settled law on the statute of limitations. Her interpretation followed the practice of courts across the country.

The ruling of the Ohio Supreme Court in the case of Phyllis Ruth Mauzy provoked cries of amazement in courthouses. Cook dissented from the majority's far-flung and poorly reasoned departure from the way Ohio and almost every other state applied federal civil-rights law. Again, Cook wasn't by herself. She argued the mainstream interpretation.

The impression promoted by Cohen is that Cook is results-oriented, serving corporate masters, denying the little guy his due. Read the cases cited in the Cohen column and many others, and the conclusion is plain: Cook criticizes the majority for bending the law to fit its desired result.

We share concerns about Bush nominees who ''will radically reshape the federal judiciary for a generation'' (as Cohen puts it). Jeffrey Sutton, another selected to sit on the federal appeals court in Cincinnati, may give too little deference to legislative intent. Its the argument that Cook gives too much? A silly argument? It is almost as silly as surveying the many Bush nominees and concluding that Cook offers reason for Americans to be ''very worried.''

In this crowd, she is reassuring.

Other nominees deserve harsh words. Yet, in seeking to demonize Cook, critics risk their credibility. When trouble really enters the committee room, the howls will be dismissed as the usual fare. That ill serves the federal judiciary. The Adam Cohens could learn something from Deborah Cook. They could argue their case more carefully.

Mr. DEWINE. This case was not about Justice Cook standing up for big business. This case was about a very specific legal question: The statute of limitations for this type of lawsuit in Ohio. Justice Cook interpreted the law as it was written by the Ohio Legislature. That was her job as a supreme court justice, and she did her job.

Whether we like the law or not, whether the legislature was right or not, the justice followed the law, and that is a simple fact.

My friend from Massachusetts has talked about the school funding decision, a case that in Ohio is referred to as the Rolf decision.

It may surprise my friend from Massachusetts and I may surprise some of my friends from Ohio when I say that I disagree with Justice Cook on that case. I did not hear all the evidence, but I suspect if I had been on the court, I probably would have ruled the other way. But I think my friend is confusing what was really in front of the court because it was a tough case.

The Ohio Supreme Court is not a superlegislature, and the decision in front of the supreme court was not whether they liked the way Ohio was funding the schools or whether it was the best way or whether it was the fairest way or whether it was constitutional.

That, I would submit, was a very tough decision. The Ohio Supreme Court talks about school funding in these terms and the obligation of a State. It says the State has the obligation to provide a thorough and efficient education for the children of the State. That is the constitutional obligation.

In a similar case, I believe in 1979, if I have my date correct, the Ohio Supreme Court had ruled that Ohio was providing a constitutional education for all of the children. Most observers of the court, most observers of education in Ohio would say that things had not gotten more unconstitutional in that period of time since 1979. In fact, people would argue that, if anything, it had gotten better as far as more equity since 1979.

In a sense, Justice Cook's decision when she dissented was consistent with prior decisions of the Ohio Supreme Court. So while she was dissenting in this case, while she was not in the majority, it was certainly not an unreasonable decision. It was a decision that was consistent with prior precedent of the court. So it was not a decision that was in any way out of bounds.

I will speak later as our debate continues, but I conclude by again talking about my great admiration for Justice Cook. I have known Justice Cook for many years. I know her as an individual. I know her as a public official in the State of Ohio. She is a person of great personal integrity and honesty. In the 2 years she has been nominated for this position, I have had the opportunity to read many of her cases. The one thing that is very clear when one reads her decisions is this is someone a person would want deciding their case, someone who does not have an axe to grind, someone who is very deferential, frankly, to a legislature. I say to my colleagues on the other side of the aisle who are concerned about activist judges, she is someone who I believe will be deferential, as she was to the Ohio Legislature, and who will respect the authority of the legislative body; someone who will be deferential within the proper constitutional framework and bounds to the U.S. Congress and who will understand the separation of powers between the different branches of Government. This is someone with great integrity, great honesty, and someone who will be a fine Federal judge.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I listened carefully to the comments of my friend, Senator DEWINE. No one is suggesting in the cases that I mentioned, which were cases where she was a dissent, that they were overturned by the Supreme Court of the United States. I listened carefully to his explanation of these cases.

To summarize very quickly, in the Wal-Mart case, it is difficult for me to understand how Cook's position in the Wal-Mart case is defensible. Here is a widow who was trying to move forward on certain claims but could not because Wal-Mart had hid the evidence, and Cook was the only one who dissented. That is the bottom line. That is the bottom line of the case. She is the only one who dissented.

In the Norgard case, the employee did not know that he could sue and he did not know he had a claim because the employer had lied. She dissented, making it harder for the employees to recover.

These are just two examples, but to come back to the earlier point, if we look over the history of her dissents, we will find that when the Ohio Supreme Court dissented—or when the Ohio Supreme Court ruled for the employees, which was not a great number of times, but whenever they did, she dissented from that 80 percent of the time. Even when the court ruled for the employees, she dissented 80 percent of the time.

Justice Cook never dissented from any decision of the court when it favored the employer. These are statistics. The examples I have cited are illustrative of a series of instances where the rights of workers were not adequately recognized or respected and where she took a very extreme position, in many of these cases in isolation. In some, she was joined by other members.

I believe there is a consistency and a pattern of insensitivity in terms of workers' rights and workers' needs and the fairness to those workers. That is what both the statistics very clearly demonstrate and what these cases themselves demonstrate.

The idea that one could do legal gymnastics to find out that when you have the employer involved in actually lying to an employee, the employee gets sick, the employer knows it is because of beryllium, does not tell the worker that it is because of beryllium, and he finally brings the case and only later on finds out that it is beryllium and that the company has lied to him, for her to say he should have known he was sick a long time ago, and the statute of limitations really went on during that period of time, it is too bad that the employer lied to that person, endangered that person's health, and disadvantaged that person's health in a dramatic degree, and she finds a technicality and says they might have been sick during the time, but even though the company knew that they could have been devastatingly sick and die from this kind of toxic chemical, she looked for the very narrow niche in order to disadvantage the worker.

When one finds in the case at the Wal-Mart a coverup was taking place and then discovers in a second case that there was a whole diary where the Wal-Mart had lied and then came back in, how Justice Cook could even at that time—and there was such deception and such deceit by the company—find a way to diminish the rights and the interests and the protections of the workers seems to me to be well out of the mainstream.

We are talking about people who should be in the mainstream, and the statistics do not indicate, when it comes to workers' rights and workers' rights cases, that she is in the mainstream.

In age discrimination, in religious tolerance issues, I gave examples where she drew the line in a way that I think

is outside of the common understanding or common interpretation of the law, and we are being asked to give a lifetime appointment to this individual. It seems to me that we can find people to serve on the Sixth Circuit who are going to be fair and balanced and are going to be in the mainstream in terms of their protection of workers' rights and the workers themselves.

This nominee is clearly on the fringes in protecting workers' rights. This circuit court has an enormous responsibility of protecting workers in a major industrial area of our country, and those rights need to be protected when those plaintiffs are up before the judge; they are going to look up at the judge and say: I know from the background, I know from the Senate hearings I am going to get a fair shake. We have the list of letters and reports, all from the representatives of workers, that say they do not believe they will ever get a fair shake. Are they all out of common sense? All these notes and letters representing workers in cases where they have been short shrifted, are they out of the mainstream? I don't believe so.

Those who come before our committee should be able to meet the requirement of fairness in the range of different constitutional issues. They ought to understand what the constitutional issues are, and they ought to have a record of fairness and balance in interpreting those. I do not believe this nominee meets that requirement.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ALLARD). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. VOINOVICH. Mr. President, I am very pleased today to speak on behalf of Deborah Cook, an exceptional lawyer and a longtime friend from the State of Ohio. The President nominated her to serve on the United States Court of Appeals for the Sixth Circuit on May 9, 2001, 2 years ago. In fact, I was at the White House when President Bush nominated Deb, and I remember how enthusiastic he was about her record, not only as a distinguished judge but as a dedicated volunteer and role model in her community.

Now, 2 years later, we are finally voting on her nomination. I am extremely disappointed at the length of time it has taken for this highly qualified nominee to reach the floor but am grateful that this day has come.

I have had the privilege of knowing Deborah Cook for over 25 years. She is not only a brilliant lawyer but a wonderful person. She graduated from the University of Akron School of Law in 1978 and immediately went to work for the law firm of Roderick, Myers & Linton, Akron's oldest law firm. She was the first female lawyer to be hired by this firm, and 5 years later, in 1983, she became its first female partner.

Deborah remained at Roderick Myers until 1991 when she was elected to Ohio's Ninth District Court of Appeals. She remained on this bench until 1995 when she successfully won election to the Ohio Supreme Court, an office she continues to hold.

Deb has always devoted her life to her family, community and profession. Married to Robert Linton, Deborah has always acted on her belief that a member of the bar and judiciary has responsibilities to the community. In this regard, she has given generously of her time to the Akron Women's Network, Akron Volunteer Center, the University of Akron School of Law Intellectual Property Advisory Council, Summit County United Way, and the Akron Art Museum, to name just a few.

In 1999, Deb and her husband established a foundation, Collegescholars, Inc., with their own private funds to foster the education of underserved public school students and encourage them to seek higher education. Students were selected upon finishing third grade based on teacher recommendations, financial need and family support of the program. This group of students is promised a 4-year tuition scholarship to any public university in Ohio. The students, called ''scholars,'' remain eligible for the scholarship by maintaining good grades and conduct and participating with the other college scholars in activities organized for their benefit, including a one-hour, instructed mentor meeting weekly during the school year.

Deb has always recognized that she has a responsibility to help strengthen the legal profession and honors this responsibility through her work with the Ohio and American Bar Associations. She chaired the Commission on Public Legal Education, was a member of the Ohio Courts Futures Commission, and the Ohio Commission on Dispute Resolution and Conflict Management. She is a past president of the Akron Bar Association Foundation, a fellow of the American Bar Foundation, and was a member of the Akron Bar Association disciplinary committee from 1981 to 1993.

Throughout these past 25 years, I have found Deborah Cook to be a woman of exceptional character and integrity. Her professional demeanor and thorough knowledge of the law make her truly an excellent candidate for an appointment to the Sixth Circuit. Deb has served with distinction on Ohio's Supreme Court since her election in 1994 and reelection in 2000.

My only regret is that with her confirmation to the Sixth Circuit, we will lose an outstanding justice on the Supreme Court of Ohio. However, she will be a tremendous asset to the Federal bench.

With 10 years of combined appellate judicial experience on the Ohio Court of Appeals and the Ohio Supreme Court, Deborah Cook also possesses a keen intellect, a record of legal scholarship and consistency in her opinions. She is a strong advocate of applying the law without fear or favor and of not making policy towards a particular constituency. Deborah Cook is committed to upholding the highest standards of her profession and she is a trusted leader. It is my pleasure to give her my highest recommendation for this nomination.

When it was announced that Deb was nominated by the President, the response from the major newspapers in our State was wonderful and amazing. Newspapers from all over Ohio have echoed my sentiments.

In January 6, 2003, the Columbus Dispatch stated that:

> Since 1996, she has served on the Ohio Supreme Court, where she has distinguished herself as a careful jurist with a profound respect for judicial restraint and the separation of powers between the three branches of government.

On December 29, 2002, the Cleveland Plain Dealer stated that:

> Cook is a thoughtful, mature jurist—perahaps the brightest on the state's highest court.

In a May 11, 2000 editorial the Beacon Journal newspaper stated that what distinguishes Deborah Cook's work:

> has been a careful reading of the law, buttressed by closely argued opinions and sharp legal reasoning.

In addition to newspapers, Deb Cook has a bevy of other supporters.

John W. Reece, retired Ohio jurist, stated:

> Judge Cook and I served on the Ninth Judicial District Court of Appeals in Ohio from 1991 to 1995. I believe we became friends as well as colleagues, working closely together although she was a Republican and I a Democrat. I became impressed with Judge Cook's work ethic and legal mind. She quickly became a talented Appellate Judge. In fact, in a rather brief period of time she became a leader on the Court. Later, when she was elected to the Ohio Supreme Court, I was privileged to sit by assignment with her on the Court a few times. She has exhibited an ability and willingness to be an independent thinker and member of that Court.

William Harsha, Judge on the Ohio Court of Appeals, Fourth District, stated:

> Always courteous and seldom impatient, she is the antithesis of the ill-tempered despot that comes to mind when one thinks of 'black robe fever.'''

Many of us have seen people change once they get on the Federal bench. J. Dean Carro, Director of the Legal Clinic at the University of Akron remarked:

> I feel comfortable with expressing an opinion on the qualities I like to see in judges. These qualities are independence, intelligence, and integrity. Justice Cook scores high in all three categories.

This Senator would like to add the characteristic of humility.

With the confirmation of Jeff Sutton last week and Deb Cook today, the Sixth Circuit can begin to breathe a little easier. From 1998 up until September, 2002, the number of vacant

judgeship months in the Sixth Circuit has increased from 13.7 to 91, the highest in the Nation. In addition, during this same time period, the median time from the filing of a notice of appeal to disposition of the case in the Sixth Circuit was 16 months, well above the 10.7 months national average, and the longest in the Nation.

Clearly, the Sixth Circuit is in crisis, and today's confirmation of Deborah Cook will go a long way toward restoring the court's efficiency and ability to deal with cases.

I am sure you will agree that Deborah Cook is exactly what we need on the Federal bench.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DEWINE. Mr. President, in just a few minutes we will be voting on the nomination of Justice Cook. I would like to take this opportunity to again talk to my colleagues about Justice Cook and to urge her confirmation by the Senate.

I have known Justice Cook for many years. She is a person of great integrity. Senator VOINOVICH and I recommended her to the President. He nominated her. She is someone we both have known for many years. She is someone for whom we both have a great deal of respect.

I wish to take a minute to respond to the comments my colleague, Senator KENNEDY, made a few minutes ago. Let me say what a great pleasure it is to work with Senator KENNEDY. He and I have worked together on many pieces of legislation. Many times we have been on the same side of the legislation. Unfortunately, we are opposed on this particular nomination. It always is a pleasure to work with him. He is always a great debater, always someone who is fun to be with. It is a real pleasure to debate him on this issue.

My colleague came to the floor and talked about the Norgard case. I wish to remind my colleagues about the facts in the Norgard case.

Justice Cook was a dissenter in the Norgard case. The facts in the Norgard case, as I pointed out earlier in this debate, are very simple. It was simply a statute of limitations case. So if any of my colleagues have a problem with the outcome of this case, they should have a problem with the Ohio Legislature.

The Ohio Legislature passed a 2-year statute of limitations. Norgard was diagnosed with his disease in August of 1992. That is when he found out about it. Under the Ohio law, the statute started to run, the time limits started to run in 1992. Tragically, he did not file his lawsuit until 1997. Obviously, more than 5 years had passed, much more than the 2-year statute.

Another point my colleague from Massachusetts made was that Justice Cook had not decided just a few cases in favor of employees. We did a quick search of the decisions.

We found at least 25 cases of employees, a long list. I ask unanimous consent that this list be printed in the RECORD.

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

CASES IN WHICH COOK RULED IN FAVOR OF AN EMPLOYEE

1. Ahern v. Technical Constr,. Specialties, Inc. (1992 Ohio App.).
2. Browder v. Narzisi Constr. Co. (1993 Ohio App.).
3. Buie v. Chippewa Local Sch. Dist. Bd. of Educ (1994 Ohio App.).
4. Conley v. Brown (1998 Ohio App.).
5. Douglas v. Administrator BWC (1992 Ohio App.).
6. Edwards v. Douglas Polymer Mixing Corp (1993 Ohio App.).
7. Gibson v. Meadow Gold Dairy (2000 Ohio Sup. Ct.).
8. Hanna v. Goodyear Tire and Rubber Co. (1994 Ohio App.).
9. Harris v. Atlas Single Ply Systems (1992 Ohio Sup. Ct.).
10. Kroh v. Continental General Tire, Inc. (2001 Ohio Supreme Court).
11. Lahoud v. Ford Motor Co. (1993 Ohio App.).
12. Miller-Wagenknecht v. Flowers (1994 Ohio App.).
13. Pytlinski v. Brocar Prod. (2001 Ohio Sup. Ct.).
14. Rice v. Cetainteed Corp (1999 Ohio Sup. Ct.).
15. Ruckman v. Cubby Drilling (1998 Ohio Sup. Ct.).
16. Smith v. Friendship Village of Dublin OH (2001 Ohio Sup. Ct.).
17. Spu Waterproofing of OH v. Zatorski (1999 Ohio App.).
18. SER. David's Cemetery v. Indus. Comm.
19. SER Highfill v. Indus Comm.
20. SER Toledo Neighborhood Housing Serv. v. Indus.
21. SER Minor v. Eschen (1995 Ohio Sup. Ct.).
22. SER MTD Prods v. Indus Comm (1996 Oh. Sup. Ct.).
23. SER Spurgeon v. Indus. Comm (1998 Oh. Sup. Ct.).
24. Tersigni v. Gen. Tire (1993 Ohio App.).
25. Wagner v. B.F. Goodrich Co.

Mr. DEWINE. I hope my colleagues will have a chance to take a look at that. It is long list of 25 different cases where Justice Cook ruled in favor of the employee.

Finally, I ask that my colleagues take a look at an Akron Beacon Journal editorial of February 27. The Akron Beacon Journal is certainly not the most conservative paper in the State. It is a very well-respected paper. It is the paper that endorsed Al Gore for President, and endorsed Tim Hagan, the Democratic nominee for Governor, in the last campaign. It responded in this editorial to an op-ed piece that had been written on the editorial page by Adam Cohen, an editorial writer for the New York Times.

In part, the Akron Beacon Journal stated:

A fresh example of the distortion and even recklessness can be found on today's commentary page. Adam Cohen, an editorial writer for the New York Times, delivers a slashing critique of the Cook record as a justice on the Ohio Supreme Court the past eight years. Too bad his assessment lacks the necessary context, let alone a full grasp of the issues at work in the cases he discusses.

Cook critics overlook the majority opinion she wrote rejecting the claims of employers and concluding that punitive damages are available to workers who have suffered discrimination in the workplace—

Referencing a case that Justice Cook wrote.

The Akron Beacon Journal continues:

The opinion reveals much about the Cook judicial philosophy. She precisely examined legislative intent in crafting the law. That is the Cook familiar to many Ohioans. She gives great deference to the legislature. She reflects the principle that this is a nation of laws, not of men or women.

Who doesn't sympathize with David Norgard, a worker exposed to beryllium on the job who has been ailing for 2 decades? The issue before the Ohio Supreme Court was whether Norgard filed suit within the statute of limitations. The majority ruled he had. Cook dissented.

Cohen suggests Norgard knew little about his illness because the company stonewalled. In truth, Norgard knew for years. He sought advice about hiring an attorney. The trial court dismissed his case on summary judgment. The appeals court unanimously upheld the lower court. Cook objected to the majority casting aside settled law on the statute of limitations. Her interpretation followed the practice of courts across the country.

Other nominees deserve harsh words. Yet, in seeking to demonize Cook, critics risk their credibility.

I will add one comment of my own and that is we have researched the law and we would find that in the State of Massachusetts, their courts also follow a fairly strict interpretation of the statute of limitations, and we would expect if this case had been decided by the court in Massachusetts they would have come down on the same side as Justice Cook.

Justice Cook is a very fine justice of the Ohio Supreme Court. She will do an excellent job on the Federal bench.

Before I yield the floor, I ask unanimous consent that the last 10 minutes of this debate be evenly divided between both sides.

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

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask that I be allowed to use such time as I may consume as in morning business.

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. There remains 5 minutes on each side prior to the vote on the nomination at 4:45.

Mr. LEAHY. Mr. President, today we consider another controversial and divisive judicial nomination, that of Deborah Cook to the Sixth Circuit Court of Appeals. Just last week we debated and voted on the controversial nomination of Jeffrey Sutton to the Sixth Circuit. The vote on his confirmation received the fewest positive votes in almost 20 years. Only 52 Senators voted in favor of his confirmation and appointment to the Sixth Circuit. This number demonstrates the serious opposition many conscientious Senators have to some of the extreme nominations this administration has been insisting be confirmed in its continuing effort to take ideological control of the Federal courts.

The nomination of Deborah Cook to be Judge Sutton's colleague on the Sixth Circuit also presents many serious problems. I believe that it is important to make the record clear that her nomination has a unique procedural posture, especially in light of the recent history of Republican obstruction of President Clinton's nominations to that important court. These procedural controversies are in addition to significant substantive concerns raised by Justice Cook's record as an activist State judge. Similar to Justice Priscilla Owen, Deborah Cook's judicial record is replete with evidence of results-oriented reasoning.

Similar to Priscilla Owen, Justice Cook has demonstrated herself to be an activist judge. Justice Cook sits on a court that is numerically dominated by Republicans. Given the partisan politicization of the judiciary by Republicans over the last several years, one might expect that Justice Cook would be part of the Ohio Supreme Court's majority in all but rare instances and that the two Democratic judges might be the most frequent dissenters. However, Justice Cook is the most active dissenter on the Republican-dominated Ohio Supreme Court. She is the most extreme of her colleagues and demonstrates an inability to reach consensus with seemingly like-minded judges. I fear that if confirmed, her inability to reach a consensus would further polarize the Sixth Circuit, as well.

Justice Cook's dissents distort precedent, misinterpret legislative intent and demonstrate results-oriented reasoning in an effort to suppress workers' rights. She has repeatedly voted to protect corporations that have harmed or lied to employees. One example is Bunger v. Lawson, where a convenience store employee who had been robbed at gunpoint was denied psychological trauma remedies, while the employer had failed to install basic safety features such as a working phone and door locks. Similar to Justice Priscilla Owen, Justice Cook's own Republican colleagues have criticized her extremist opinions. The court in Bunger called Justice Cook's interpretation of the law ''nonsensical,'' and said that it, ''leads to an untenable position that is unfair to employees.'' Taking the position adopted by Justice Cook in her dissent would be, as the majority clearly stated, ''an absurd interpretation that seems borrowed from the pages of Catch-22.''

Similarly, Justice Cook sought to deny workers compensation benefits to another employee in a case called Russell v. Industrial Commission of Ohio. In Russell, Justice Cook's dissent ignored the plain language of the statute and the relevant precedent regarding workers compensation benefits. The Court's opinion stated that Justice Cook's dissent:

> lacks statutory support for its position [and she] has been unable to cite even the slightest dictum from any case to support its view . . . . [the] dissent's argument, which has not been raised by the commission, the bureau, the claimant's employer, or any of their supporting amici, is entirely without merit. Russell at 1073–74.

I ask my colleagues, is this the type of judge who should be given a lifetime appointment to the Federal bench?

As a former prosecutor, I am also troubled by Justice Cook's opinions that repeatedly seek to disregard jury findings in powerful discrimination cases. Anyone who has ever tried a case to verdict before a jury knows how much time and effort goes into the lengthy process. For this reason, jury verdicts should be given the utmost respect on appeal. In Byrnes v. LCI Communications, Justice Cook voted with a 3-judge plurality to overturn a $7.1 million jury verdict for employees in an age discrimination case despite powerful evidence of statements made by the employer about the relative merits of having a younger staff. Evidence in the plaintiffs' favor in this case included blatant statements from the employer that he wanted ''to bring in young, aggressive staff managers and change out the old folks,'' and that ''some of the older folks there could no longer contribute.'' In Byrnes, the jury also heard testimony that the employer said a certain worker was, ''too old to grasp the concepts that he was looking for,'' and that he did not, ''want old marathoners in my sales organization . . . I want young sprinters.'' These statements are directly relevant to a jury's determination whether the employer engaged in age discrimination. Yet, Justice Cook demonstrated her lack of respect for the jury's role in our system of justice by voting to overturn the jury's determination. Unfortunately, this case is not an isolated incident. Justice Cook also voted to overturn jury verdicts in other discrimination cases such as Gliner v. St. Gobain Norton Industries and Perez v. Falls Financial Incorporated.

In addition to her apparent bias against workers' rights, Justice Cook opposes the rights of consumers and victims even in the most compelling cases. For example, in Sutowski v. Eli Lilly, Justice Cook wrote for a divided majority that denied plaintiffs the ability to claim damage to their reproductive systems due to in utero exposure to DES, a drug known to cause cancer and reproductive disorders. She denied these victims the ability to rely on the market-share theory in their complaints against the manufacturers even though the market-share theory was virtually invented for DES cases where hundreds of companies manufactured the drug but the victims could have no idea by whose drug they were affected. Her colleagues in dissent severely criticized Justice Cook's opinion stating that she ''selectively quoted,'' from a prior Ohio case:

> . . . to create the impression that the General Assembly is the only appropriate body to recognize the market-share liability theory in DES litigation. The majority then uses that misguided impression as a platform for launching into a tortured analysis of Ohio's Products Liability Act. It is here that the majority's shell game becomes most deceptive.

In another case, Williams v. Aetna Finance, Justice Cook dissented from the majority's affirmation of the trial courts' holding that an arbitration clause was unconscionable in a case involving a scheme to defraud elderly African American home owners into home improvement loans at exorbitant rates.

These are just a few examples of the hundreds of cases that Justice Cook has decided as a State court judge. They provide a picture of a judge with a proclivity for stretching the boundaries of precedent to rule against victims and workers in favor of corporations. On the substance of her record as a judge, I have concluded that Deborah Cook is a conservative activist who is hostile to consumers, victims, workers and civil rights. The prospect of elevating this activist judge to a lifetime appointment to the Federal bench has generated a significant amount of controversy. We have received letters of opposition from many national organizations that represent labor and consumers, as well as local citizens groups and law professors who oppose her nomination to the Sixth Circuit.

Justice Cook's nomination was forced out of the Judiciary Committee over the objection of the Democratic Senators and in violation of our longstanding Committee rules. The Democratic members of the Committee sought additional time to debate her nomination. Such requests have always before been honored on the Judiciary Committee, which for 24 years had a rule providing protection for minority rights to debate. Rule IV requires the votes of 10 Senators to bring a matter to a vote and one of those votes to end debate must be cast by a member of the minority. In their determination to bring this controversial nominee to the floor in February, Republicans unilaterally overruled the Committee rules by not allowing a vote to end debate

over the objection of Democratic Senators. Along with several other Senators, I voted ''present'' in protest of this violation of our rules and rights.

Over the last several weeks our Republican and Democratic Senate leadership has discussed the violation of Senators' rights that occurred on February 27. I thank them for their attention to these matters and for working with us to address our concerns.

In addition, there is the serious matter of the mistreatment of previous nominations to the Sixth Circuit by the Republican majority. Deborah Cook is nominated to the Sixth Circuit Court of Appeals, a court to which President Clinton had an impossible time getting his nominees considered. For years, the Sixth Circuit has been one of the prime targets of Republicans intent on ideological court packing. During President Clinton's entire second term, not a single nominee to the Sixth Circuit was allowed a hearing or a vote by the Republican majority. Three highly qualified, moderate nominees to the Sixth Circuit, Judge Helene White, Kathleen McCree Lewis and Professor Kent Markus, were all denied hearings and votes in the years 1997 through 2001. Republicans today fail to acknowledge that the vacancies that have plagued the Sixth Circuit in recent years are the result of their tactics to prevent any action on any of President Clinton's nominees.

Judge Helene White of the Michigan Court of Appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March 2001. Judge White's nomination may have set an unfortunate but unforgettable record. Her nomination was pending without a hearing for more than four years. She was one of almost 80 Clinton judicial nominees who did not get a hearing during the Congress in which first nominated. Unfortunately, she was also denied a hearing after being renominated a number of times over the next four years, including in January 2001.

Likewise, Kathleen McCree Lewis, a distinguished African American lawyer from a prestigious Michigan law firm was also never accorded a hearing on her 1999 nomination to the Sixth Circuit. This daughter of a former Sixth Circuit judge and Solicitor General of the United States was never accorded a hearing or vote by the Republican majority. Her nomination was withdrawn by President Bush in March 2001 without ever having been considered.

Professor Kent Markus was another outstanding nominee to a vacancy on the Sixth Circuit. He had served at the Department of Justice and was nominated by President Clinton in 1999, but never received a hearing before his nomination was returned to President Clinton without action in December 2000. While Professor Markus' nomination was pending, his confirmation was supported by individuals of every political stripe, including 14 past presidents of the Ohio State Bar Association and more than 80 Ohio law school deans and professors.

As Professor Markus testified last year, he was told by Republicans that some on the other side of the aisle held these seats open for years for a Republican President to fill, instead of proceeding fairly on the consensus nominees then pending before the Senate. The Republican majority was unwilling to move forward, knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is how the Sixth Circuit was left with eight vacancies, half of its authorized strength, in 2001.

Had Republicans not blocked President Clinton's nominees to the Sixth Circuit, if the three Democratic nominees had been confirmed and President Bush appointed the judges to the other vacancies on the Sixth Circuit, that court would be almost evenly balanced between judges appointed by Republican and Democratic Presidents. That is what Republican obstruction was designed to prevent—balance. The same is true of a number of other circuits, with Republicans benefiting from their obstructionist practices of the preceding six and a half years. This, combined with President Bush's refusal to consult with Democratic Senators about these matters, is particularly troubling.

Long before some of the recent voices of concern were raised about the vacancies on the Sixth Circuit, Democratic Senators in 1997, 1998, 1999 and 2000 implored the Republican majority to give President Clinton's distinguished and moderate Sixth Circuit nominees hearings. Those requests, made not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations. The growing vacancies on the Sixth Circuit were ignored by the Republican majority.

The former Chief Judge of the Sixth Circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee Chairman years ago to ask that the nominees get hearings and that the vacancies be filled. The Chief Judge predicted that by the time the next President was inaugurated, there would be at least six vacancies on the Court of Appeals. In fact, there were soon eight. Despite all these pleas, no hearing on a single Sixth Circuit nominee was held in the last three full years of the Clinton Administration. Not one. The situation was exacerbated further as two additional vacancies arose. And regrettably, despite my best efforts, this White House has rejected all suggestions to redress the legitimate concerns of Senators in that circuit that qualified, moderate nominees were blocked by Republicans Senators during the previous administration. Instead, the White House forwarded several extreme nominees to fill the seats that their party held hostage while leading the Senate during the prior administration.

When I scheduled the April 2001 hearing on the nomination of Judge Gibbons to the Sixth Circuit, it was the first hearing on a Sixth Circuit nomination in almost 5 years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and pending before the Committee for anywhere from one year to over 4 years. Despite the partisan treatment of President Clinton's nominees, I went forward. The conservative Judge Gibbons was confirmed by the Senate on July 29, 2002, by a vote of 95 to 0. We did not stop there, but proceeded to hold a hearing on a second Sixth Circuit nominee, Professor John Marshall Rogers, just a few short months later in June. This conservative was likewise confirmed last year.

Thus, the Democratically-led Senate proceeded to hold hearings, give Committee consideration and confirm two of President Bush's conservative nominees to the Sixth Circuit last year. With the confirmations of Judge Julia Smith Gibbons of Tennessee and Professor John Marshall Rogers of Kentucky, Democrats confirmed the only two new judges to the Sixth Circuit in the previous 5 years.

Under the current Republican leadership, our Committee raced to hold Justice Cook's hearing at the same time as two other controversial circuit court nominees, including Jeffrey Sutton. This triple hearing resulted in a marathon sitting lasting almost 12 hours. Most of the questioning focused on Jeffrey Sutton and relatively little time was dedicated to Justice Cook. Many Democrats serving on the Judiciary Committee requested an additional hearing for Justice Cook and Mr. Roberts. That request was denied for Justice Cook. We invited Justice Cook and Mr. Roberts to meet with us. That request was denied. Then Republicans overrode our longstanding Committee rules in order to report those nominations without proper consideration before the Judiciary Committee.

This nomination is one of a long line of divisive and controversial nominations on which this Administration and the Republican majority in the Senate insist. They are taking full advantage of their power after having unfairly refused to consider President Clinton's well qualified, moderate nominees and now insisting that the administration's ideological court packing scheme be put into effect. The ideological takeover of the Sixth Circuit is all but complete with the confirmation of Judge Gibbons, Professor Rogers, Mr. Sutton and now Justice Cook.

Mr. HATCH. Mr. President, I rise today to express my support for the confirmation of Deborah Cook to the Sixth Circuit Court of Appeals.

Today's vote is important because we have an opportunity to confirm an excellent judge who exercises proper judicial restraint on the bench. Justice Cook is an honorable jurist. She has a distinguished record in private practice, she is a legal pioneer, and she is active in her community. Let me take a few moments to share how Justice Cook came to this point. The story deserves to be told.

A native of Pittsburgh, PA, my hometown as well, I might add—Deborah Cook had anything but a stable childhood. Not only did her family move quite often, but her family suffered economically. Her mother, Katherine Rudolph, struggled to support her children after Justice Cook's father abandoned the family. When Deborah was 16, her mother passed away.

Although she did not have much time with her, Justice Cook credits her mother with instilling in her a sense of justice and a sense of the importance of following the rules. Justice Cook carried these ideals to Akron, Ohio, where she and her siblings moved to join their uncle's large family. All together, the new family numbered 14.

In the next few years, Justice Cook received her bachelor of arts and juris doctor degrees from the University of Akron. While in law school, she clerked part time at Roderick, Myers & Linton, Akron's oldest law firm, and accepted an offer from the same firm in 1978, becoming the first woman attorney ever hired there. Five years later, Justice Cook again made history at the firm when she was named its first woman partner. Let me tell you, Justice Cook knows first hand the difficulties and challenges that professional women face in breaking the glass ceiling.

While in private practice Justice Cook maintained a busy civil litigation caseload, appearing in bankruptcy, state, and federal appellate and trial courts to litigate such matters as claims disputes, workers' compensation claims, insurance claims, employment discrimination cases, torts, and wrongful death lawsuits.

Justice Cook has the experience we look for in a Federal judge. In 1990, she left private practice and ran for a seat on the Ohio Ninth District Court of Appeals, which is based in Akron. The Ohio courts of appeals have appellate jurisdiction over the Ohio common pleas, municipal, and county courts, hearing and deciding cases in three-judge panels. Four years later, Justice Cook ran for the Ohio Supreme Court, a seven-member court, where she currently serves.

Over the past 7 years, Justice Cook has earned a reputation for being a stickler for the law, a judge committed to law and order. She defines her own judicial role ''as [one] limited by the letter of the law.'' She is a student of history and a committed constitutionalist. These are attributes desperately needed in the Federal courts. Simply put, as Justice Cook has said of herself, while she ''might hold a personal view, or perhaps even hold a bias, that has to be put aside.'' She ''work[s] within the parameters given a judge by democratically enacted statutes,'' avoiding the temptation to legislate from the bench. Justice Cook understands what makes an effective judge and she carries out that understanding.

The Ohio newspapers have recognized these qualities in Justice Cook. The Columbus Dispatch says Justice Cook ''uniquely combines keen intellect, careful legal scholarship and consistency in her opinions. She is committed to rendering decisions validated by the [law], not popularity polls and special interests.'' The Cleveland Plain Dealer says Cook is ''extremely well qualified'' and a ''thoughtful, mature jurist perhaps the brightest on the state's highest court.'' The Akron Beacon Journal says Cook ''has been a voice of restraint in opposition to a court majority determined to chart an aggressive course, acting as problem-solvers (as ward pols) more than jurists.''

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

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

[From the Columbus Dispatch (Ohio), Oct. 1, 2000]

SUPREME COURT—COOK, O'DONNELL CAN RESTORE CONFIDENCE

The seven justices who sit on the Ohio Supreme Court are among the most powerful people in the state. Acting in agreement, any four of them can overrule the will of millions of Ohio voters, all 132 members of the General Assembly and the governor.

The state constitution grants the court such awesome power so that the justices can strike down unconstitutional acts of the legislature that threaten the rights and liberties of Ohio's residents.

But if misused, this power also can threaten the rights and liberties of Ohioans. The rule of law is replaced by prejudice or whim.

This is why it is so important that the voters elect justices who regard themselves as servants, not masters, of the constitution. Justices who serve the constitution understand that their role is not to make policy or law, because this is a responsibility given by the constitution to the legislature, not to the courts.

Justices may strike down laws that violate the constitution, but they may not replace those laws with ones more to their own liking.

It also is vital that voters elect justices who understand that their job is to represent the law, not a political party, not an interest group. Their job is to resolve disputes impartially, in accordance with the constitution and Ohio statutes.

In recent years, ideology, not impartial application of the law, frequently appears to have guided court rulings. The familiar 4–3 majority has overturned legislative efforts to limit damage awards in lawsuits, rejected changes in the state workers' compensation system and declared the state's school-funding mechanism unconstitutional, simultaneously dictating the means by which the legislature is to solve the problem.

The perception is that this majority—Democratic Justices Alice Robie Resnick and Francis E. Sweeney and Republicans Paul E. Pfeifer and Andrew Douglas—holds itself above the constitution, entitled to make law.

While not exactly partisan, this majority's bent is definitely political. These four justices are united in judicial activism with a messianic and populist bent.

The perception that the court is controlled by an ideologically driven majority is seriously undermining faith in the integrity and fairness of the high court.

Justices should not be turned out of office lightly: certainly not for an occasional unpopular opinion and particularly not for one resulting from a good-faith effort to adhere to the constitution. But when justice becomes politicized and high court rulings twist the law to reach the majority's preferred outcome, a change is needed.

*For that reason, The Dispatch urges Ohioans to cast their Supreme Court ballots for incumbent Justice Deborah L. Cook and Judge Terrence O'Donnell of the Cuyahoga County Court of Appeals.

Cook, a Republican seeking a second term on the court, believes a judge's job is to apply the law without fear or favor, not to make policy or to favor a constituency. Cook does not believe the court should legislate, a point she has underlined in her dissents to the court's two rulings in the DeRolph school-funding lawsuit.

Of the seven justices, Cook uniquely combines keen intellect, careful legal scholarship and consistency in her opinions. She is committed to rendering decisions validated by the constitution, not popularity polls and special interests.

Cook's Democratic challenger, Judge Tim Black of the Hamilton County Municipal Court, doesn't hesitate to describe himself as a ''progressive,'' which is another way of saying ''judicial activist.'' Black has made it clear in recent statements that he favors the four-member activist majority.

Like Cook, Republican O'Donnell believes in applying the law without fear or favor. He does not make policy from the bench and says judges should be faithful to the law, not to causes. His integrity and well-defined judicial philosophy have made O'Donnell one of the most respected judges in Cuyahoga County.

His opponent, incumbent Democratic Justice Alice Robie Resnick claims to follow the same philosophy, but the record suggests otherwise. She is a dependable member of the four-justice activist majority. Her proposal for a legislative-Supreme Court summit to address the school-funding problem shows either that she doesn't understand her role as a judge or that she wants to rewrite the constitution to make the court a seven-member super-legislature. Neither explanation reflects favorably on her.

Resnick has shown an unseemly willingness to politicize her office. Her appearance at the opening of a school in Vinton County was a transparent attempt to win votes from those who approve of the Supreme Court's use of the DeRolph lawsuit to dictate school-funding policy to lawmakers.

Her appearance at that event along with William L. Phillis, mastermind for the plaintiffs in the continuing DeRolph case, was a glaring conflict of interest and a lapse that cannot be justified or excused.

Six years ago, The Dispatch endorsed Resnick for a second term, believing that she had demonstrated diligence and impartiality in her first term. That can no longer be said.

O'Donnell has pledged to restore integrity to the court. He deserves that chance.

[From the Plain Dealer Publishing Co., (Cleveland, Ohio), Dec. 29, 2002]

BREAK THE JUDICIAL LOGJAM

It has been more than 19 months since President George W. Bush nominated Ohio Supreme Court Justice Deborah Cook and

former state Solicitor Jeffrey Sutton to fill vacancies to the 6th Circuit U.S. Court of Appeals. But inexcusably, the Judiciary Committee of the U.S. Senate has yet to hold a single hearing on Cook or Sutton.

Despite pressure from Bush and other Republicans, Judiciary Committee Chairman Patrick Leahy, a Vermont Democrat, has bottled up more than 100 nominations to federal court openings. And amid the political stalling, the workloads of federal District Court and appellate judges continues to mount.

That should all change on Jan. 7, when the Senate reconvenes and reorganizes under Republican control. Expected to replace Leahy as Judiciary Committee chairman is Orrin Hatch, a Republican from Utah.

Hatch must move quickly to break the judicial logjam. And confirmation hearings for Cook and Sutton should be high on his list.

This isn't about doing any special favor for Ohio or the other states the 6th Circuit serves. It's about competence. Both Cook and Sutton are extremely well qualified. Cook is a thoughtful, mature jurist—perhaps the brightest on the state's highest court. Sutton is regarded as a brilliant litigator who has argued numerous cases before the U.S. Supreme Court.

It's well past time to hold hearings on these and other judicial appointments and put them before the Senate for a confirmation vote.

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[From the Akron Beacon Journal, Jan. 6, 2003]

A COOK TOUR

Tour the Web sites of various liberal interest groups, from the National Organization for Women to the Alliance for Justice, and you will discover how easily nominees for the Federal courts can be caricatured. In recent months, Justice Deborah Cook of the Ohio Supreme Court has been a target.

Members of the Senate Judiciary Committee considering her nomination to the 6th U.S. Circuit Court of Appeals should work their way past the political slogans. They will find a judge conservative in the traditional sense. She follows the principle of judicial restraint, ruling as the law is, not as she would like the law to be. Justice Cook has waited 18 months for a hearing on her nomination. The day appears in sight, perhaps as early as Jan. 14. Cook was among the first judicial nominees of President Bush, one of 11 who gathered at the White House on a spring day to demonstrate the new administration's drive to fill vacancies on the Federal bench.

Put aside that those vacancies reflect the delaying tactics of Senate Republicans during the Clinton years. Cook and the others have encountered obstacles constructed by Democrats. The November elections altered the political landscape. Republicans rule the Senate and the White House. Nominations are set to move forward.

That doesn't mean critics shouldn't howl when the president opts for a nominee with excessive baggage, say, one more comfortable in a debating society than on the Federal bench. Bill Clinton took the cue, avoiding ideologues and sending many impressive nominees to Capitol Hill. President Bush should keep in mind his slight margin of victory and the narrow Republican majority in the Senate.

Cook critics point to her membership in the Federalist Society, a group of conservative lawyers and academics that includes many who advocate countering liberal activists with their own brand of activism. Critics also note the many times Cook has dissented on the Ohio Supreme Court, contending she is out of the mainstream.

Those who watch the Ohio high court know Cook is no ideologue. She has been a voice of restraint in opposition to a court majority determined to chart an aggressive course, acting as problem-solvers (as ward pols) more than jurists. Cook has been accused of advocating the elimination of protections for employee whistleblowers. In truth, she objected to the majority acting as a superlegislature, practicing public policy in the form of judicial rulings.

In another instance, Cook disagreed with the majority because she rightly thought it necessary to have expert medical testimony to establish whether a cancer qualified as a disability under the law. When the majority ruled that managers and supervisors could be sued individually for acts of sexual harassment and discrimination, she noted the glaring departure from the defining federal law.

Are these ''pro-business'' rulings on her part? That would be the caricature. More accurately, they are precise readings of the law. Indeed, in eight years on the Ohio Supreme Court and four on the state appeals court, Cook has consistently produced reasoned and careful analysis.

The argument might be made that we are simply cheering for an Akron resident. We've differed with Justice Cook too many times on school funding and other matters. President Bush won the election. Republicans control the Senate. They have a wide range of candidates for the Federal bench. In Deborah Cook, they have a judge most deserving of confirmation, one dedicated to judicial restraint.

Mr. HATCH. Justice Cook also knows how to serve her community. She is a founder and trustee of CollegeScholars, a mentored college scholarship program in Akron, and she personally mentors students for several hours each week. She and her husband fund the program's activities in an effort to help inner-city children reach college. Their generosity is really remarkable in that they will personally pay the college tuition of students who complete the program.

But service to her community is not limited to the CollegeScholars program. Justice Cook is a United Way volunteer; she has given her time to Safe Landing Shelter, a home for troubled youth; she has served as a Commissioner for the Dispute Resolution Commission, helping address truancy problems for disadvantaged children; and she devoted several years to the Akron Area Volunteer Center as a Center trustee and president. Justice Cook has received the Delta Gamma National Shield Award for Leadership and Volunteerism, and the Akron Women's Network Woman of the Year award.

One of the many reasons that this vote on Justice Cook's nomination is important is because it represents a step in the right direction in terms of addressing the problems in the Sixth Circuit. The Sixth Circuit is severely understaffed and needs judges to enable its work to go forward, and the addition of Justice Cook, along with President Bush's other Sixth Circuit nominee from Ohio, Jeffrey Sutton, will make this happen. At this moment, the 16-seat Sixth Circuit is operating with only 10 judges. All six of the vacancies on the Sixth Circuit are considered judicial emergencies.

The Sixth Circuit has been forced to rely on district court judges to keep pace with its caseload. This practice, in turn, affects the efficiency of the district courts. I understand that the Sixth Circuit currently hears some arguments via telephone to conserve resources. Each three-judge panel on the Sixth Circuit not only must hear more cases each year, but it also must spend less time on each case in order to maintain some control over the docket. Some cases may not be heard despite their merit. In the meantime, the administration of justice suffers.

According to the Administrative Office of the United States Courts, the Sixth Circuit ranks last out of the 12 circuit courts in the time it takes to complete its cases. On average, the Sixth Circuit in 2002 took 16 months to reach a final disposition on a case. With the national average for appellate courts at only 10.7 months, this means the Sixth Circuit takes about 50 percent longer than the average to process a case.

Since 1996, the Sixth Circuit has seen a 46 percent increase in the number of decisions per active judge. The national average has increased only 14 percent in that same time frame. Last year each Sixth Circuit judge handled more than 600 cases.

Mr. President, Justice Cook has demonstrated her capacity to excel on the Federal court bench. She possesses the qualifications, the capacity, and the temperament a judge needs to serve on the Sixth Circuit. She deserves confirmation.

Mrs. FEINSTEIN. Mr. President, I rise in support of the nomination of Ohio State Supreme Court Justice Deborah Cook for the Sixth Circuit Court of Appeals. I intend to vote yes on her nomination because I believe that she has a proper understanding of the role of the judiciary.

Unlike some other nominees who have come before the Senate, Justice Cook's opinions demonstrate a recognition that a judge's proper role is to interpret statutes in a way that reflects the legislature's intent. She does not try to legislate from the bench or inject her views into her interpretations of a statute.

I believe that, based on her past record, she will be an appellate judge who will read statutes faithfully and carefully and decide cases on her best understanding of what the law says as opposed to ruling based on her personal views.

Let me give a couple of examples of Justice Cook's views on judicial restraint from her opinions. In a dissent from an Ohio Supreme Court decision overturning the State's system of funding public education, Cook noted:

> In short, the determination of what constitutes minimum levels of educational opportunity to be provided to Ohio's children is committed by the Ohio Constitution to legitimate policy makers—not the courts, whose proper role is interpretation and application of law.

Similarly, Cook defended the role of the legislature in a dissent from an

Ohio Supreme Court ruling that found a new ''employment intentional tort'' statute to be unconstitutional.

The majority opinion views the issue presented by this case as a question of ''what is right?'', but I believe the true question is ''who decides what is right?'' The General Assembly passed this legislation as part of its policy-making function, a function inherent in the legislative power. With this decision, however the majority usurps the legislative power.

Senator DEWINE, a strong supporter of Justice Cook, has called her an ''old-fashioned'' conservative, and I think that is a very accurate description.

I certainly don't agree with all of Justice Cook's opinions, and take seriously the concerns raised by those who feel she tends to side with big corporations and employers in lawsuits. I also am concerned about some of her opinions arguing for the overturning of jury verdicts.

In weighing the totality of these issues, however, I believe that Justice Cook will properly exercise the judicial office. Most importantly, I believe she will not be an activist judge who will try to legislate from the bench.

Mr. BUNNING. Mr. President, I rise to express my support for Deborah Cook and urge my colleagues to support her confirmation. The Sixth Circuit, which includes my State of Kentucky, is experiencing a true judicial emergency. Five of the sixteen seats on that court are vacant, leading to justice delayed—and thus justice denied—for the citizens of Kentucky, Ohio, Tennessee, and Michigan. Fortunately, last week we confirmed Jeffrey Sutton to the Sixth Circuit, and today we will confirm Deborah Cook.

Deborah Cook was among President Bush's original circuit court nominees first submitted to the Senate on May 9, 2001. Nearly 2 years will have passed from the time her nomination was first submitted until she will be able to assume her seat on the bench. It has been a long wait, but Deborah Cook's confirmation is good news for her and for the people living in the Sixth Circuit.

Deborah Cook is an example of the fine judicial nominees President Bush has submitted to the Senate. She is currently a Justice on the Ohio Supreme Court, where she has served since she was first elected in 1994. Prior to that, Justice Cook served as a Court of Appeals judge in Ohio. She also practiced law for 15 years in Akron, OH, and was her firm's first female associate and partner.

I am proud that President Bush nominated Deborah Cook, and I am proud to vote for her. She has ample experience as an appellate court judge and is well qualified to sit on the Sixth Circuit. Deborah Cook will do a fine job for all people living in the Sixth Circuit. I am glad she will soon be confirmed, and I urge my colleagues to support her as well.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, in just a few moments the U.S. Senate will be voting on this nomination. What are the essential facts? Here are the essential facts:

Justice Deborah Cook authored the Rice case. This case held that workers could get punitive damages from employment discrimination cases.

Second fact: It has been charged that Justice Cook is a big dissenter. It has been charged that she cannot reach consensus. Let us look at the cases from the Ohio Supreme Court which have gone to the U.S. Supreme Court. There have been five of those cases. In each case, the U.S. Supreme Court has agreed with Justice Cook. But, more importantly, in four of those cases, Justice Cook was a dissenter from the Ohio Supreme Court. In those four cases, the U.S. Supreme Court said we disagree with the Ohio Supreme Court, but we agree with the dissenter. We agree with Justice Cook. In fact, most of those cases weren't even close. By an overwhelming majority, in most of those cases the U.S. Supreme Court said the Ohio Supreme Court was wrong, but Justice Cook was right.

So much for the argument that there is something wrong with Justice Cook when she dissents.

Justice Cook has been on the Ohio Supreme Court for 8 years. She was on the court of appeals for 4 years. She has a great deal of experience. She is a person who is a well-rounded individual and who has great compassion.

We have heard on this floor from Senator VOINOVICH and myself about how she has established scholarships for children and how she cares about education. And we have heard from the newspapers in Ohio. That is important because the newspapers in the State of Ohio pay attention. They pay attention to the Ohio Supreme Court. All of the five, six, or seven principal newspapers in Ohio endorsed her for reelection. They have endorsed her for this confirmation. I think what they have said is particularly important.

The Cincinnati Post wrote on January 8:

Cook is serving her second term on the Ohio Supreme Court where she has been a pillar of stability and good sense.

The Cleveland Plain Dealer wrote:

Cook is a thoughtful, mature jurist—perhaps the brightest on the State's highest court.

The Akron Beacon wrote:

Those who watch the Ohio High Court know Cook is no idealogue. She has been a voice of restraint in opposition to a court majority determined to chart an aggressive course acting as problem solvers more than jurists. In Deborah Cook they have a judge most deserving of confirmation, one dedicated to judicial restraint.

The Columbus Dispatch wrote:

Cook's record is one of continuing achievement. Since 1996 she has served on the Ohio Supreme Court where she has distinguished herself as a careful jurist with profound respect for judicial restraint and the separation of powers between the three branches of government.

I ask my colleagues to confirm Justice Cook. Senator VOINOVICH and I asked the President to nominate her. We have known her for many years. She will serve well and ably on the Sixth Circuit Court of Appeals.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, I yield the remaining time.

Mr. DEWINE. I yield the remaining time.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Deborah L. Cook, of Ohio, to be United States Circuit Judge for the Sixth Circuit? The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. REID. I announce that the Senator from Washington (Ms. CANTWELL), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Georgia (Mr. MILLER), and the Senator from Washington (Mrs. MURRAY), are necessarily absent.

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

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

The result was announced—yeas 66, nays 25, as follows:

[Rollcall Vote No. 139 Ex.]

YEAS—66

Alexander	Crapo	Lincoln
Allard	DeWine	Lott
Allen	Dole	Lugar
Bayh	Domenici	McCain
Bennett	Dorgan	McConnell
Biden	Durbin	Nelson (NE)
Bingaman	Ensign	Nickles
Bond	Enzi	Pryor
Breaux	Feingold	Roberts
Brownback	Feinstein	Rockefeller
Bunning	Fitzgerald	Santorum
Burns	Frist	Schumer
Campbell	Graham (SC)	Sessions
Carper	Grassley	Shelby
Chafee	Gregg	Smith
Chambliss	Hagel	Snowe
Cochran	Hatch	Stevens
Coleman	Hutchison	Sununu
Collins	Inhofe	Talent
Conrad	Kohl	Thomas
Cornyn	Kyl	Voinovich
Craig	Landrieu	Warner

NAYS—25

Akaka	Edwards	Levin
Baucus	Harkin	Nelson (FL)
Boxer	Hollings	Reed
Byrd	Inouye	Reid
Clinton	Jeffords	Sarbanes
Corzine	Johnson	Stabenow
Daschle	Kennedy	Wyden
Dayton	Lautenberg	
Dodd	Leahy	

NOT VOTING—9

Cantwell	Lieberman	Murkowski
Graham (FL)	Mikulski	Murray
Kerry	Miller	Specter

The nomination was confirmed.

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE A UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consider the nomination of Miguel A. Estrada, which the clerk will report.

The assistant legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia.

The PRESIDING OFFICER. Under the previous order, the time until 6 p.m. shall be equally divided between the chairman and the ranking member or their designees.

The Senator from Utah.

Mr. REID. Mr. President, if the Senator will yield for a brief statement, we have had a number of people on this side of the aisle who have indicated we are to object to any extension of time beyond 6. Even though the vote took a little longer than expected, we cannot extend the time past 6.

Mr. HATCH. That is fine.

NOMINATION OF PRISCILLA OWEN

I yield 1 minute to the Senator from California on their time. She wanted to make a statement and put something in the RECORD, but it should come on their time.

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

Mrs. BOXER. I thank my friend, Chairman HATCH. When Chairman HATCH and I were debating the Owen nomination, which is not before us, he questioned two statements I made. One was that she did not write a dissenting opinion in Doe and the second was that Judge Gonzales never referred to her as a judicial activist. I ask unanimous consent to have these documents printed in the RECORD, the dissenting opinion, the first page, which shows that she, in fact, did file a dissenting opinion. Secondly, an article that appeared about a week ago in the New York Times which says that Judge Gonzales said he was referring to Justice Owen when he said she was an activist. He did say it was merely heated language but, in fact, he said he was referring to her.

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

. . . Texas interpreting the state's law allowing a teenager to obtain an abortion without notifying her parents if she can show a court that she is mature enough to understand the consequences.

In the dissent, Justice Owen said the teenager in the case had not demonstrated that she knew that there were religious objections to abortion and that some women who underwent abortions had experienced severe remorse.

One of the other justices on the court at the time was Alberto R. Gonzales, now the White House counsel. He wrote that the reading of the law by the dissenters was ''an unconscionable act of jusdicial activism.''

Justice Owen has said that Justice Gonzalez was not referring to her. Mr. Gonzales has, in interviews, acknowledged he was referring to her and said that his description of her as a judicial activist was merely heated language among judges who disagreed.

While the first floor fight over the Owen nomination was occurring, another judicial nomination drama was being played out across the street in the Judiciary Committee, which was considering President Bush's nomination of J. Leon Holmes to be a district judge in Arkansas.

Senator Orrin G. Hatch, the Utah Republican who is chairman of the committee, did not ask for a vote on approving the Holmes nomination as is customary. Instead, he took the extraordinary step of asking that the committee vote to send the nomination to the full Senate without a recommendation.

Mr. Hatch was apparently concerned that some Republicans on the committee were not completely comfortable with the nomination after disclosures that Mr. Holmes, an ardent opponent of abortion, had made several notable comments about the role of women in society.

In 1997 Mr. Holmes wrote that ''the woman is to place herself under the authority of the man.'' He had also written that abortion should not be available to rape victims because conceptions from rape occur with the same frequency as snow in Miami.

Most of the combat over judicial confirmations has been over appeals court judges, the level just below the Supreme Court, and the nomination of Mr. Holmes, to the trial court had initially attracted little notice.

But at a committee session last week, Senator Dianne Feinstein, Democrat of California, said that she had never voted against a district court nominee but that she found Mr. Holmes's remarks shocking.

''I do not see how anyone can divine from these comments that he has either the temperament or the wisdom to be a judge,'' Senator Feinstein said.

Senator Hatch said today that he was concerned about some of those remarks and that Mr. Holmes had expressed regret for some. But the most important factor, the senator said, was that many people in Arkansas, including the state's two Democratic senators, Mark Pryor and Blanche Lincoln, still supported the nomination.

IN RE JANE DOE, NO. 00–0224, SUPREME COURT OF TEXAS

19 S.W.3d 346; 2000 Tex. LEXIS 67; 43 Tex. Sup. J. 910

June 22, 2000, Delivered

DISPOSITION: [**1] Reversed the court of appeals' judgment and rendered judgment granting Doe's application for a judicial bypass.

JUDGES: JUSTICE O'NEILL delivered the opinion of the Court, jointed by JUSTICE ENOCH, JUSTICE BAKER, JUSTICE HANKINSON, and JUSTICE GONZALES and by CHIEF JUSTICE PHILLIPS as to Parts II and III. JUSTICE ENOCH filed a concurring opinion, joined by JUSTICE BAKER, JUSTICE GONZALES filed a concurring opinion, joined by JUSTICE ENOCH. JUSTICE HECHT filed a dissenting opinion. JUSTICE OWEN filed a dissenting opinion. JUSTICE ABBOTT filed a dissenting opinion.

OPINION BY: Harriet O'Neill.

OPINION: [*349] APPEAL UNDER SECTION 33.004(F), FAMILY CODE.

This is an appeal from an order denying a minor's application for a court order authorizing her to consent to an abortion without notifying a parent. After remand from this Court, see In re Jane Doe, 19 S.W.3d 249, 2000 Tex. LEXIS 21 (Tex. 2000) (''Doe 1(I)''), the trial court conducted another hearing and found that Jane Doe failed to prove by a preponderance of the evidence that she is sufficiently well informed to have an abortion without parental notification. The court of appeals affirmed. After reviewing the record, we determined that Doe conclusively [**2] established the statutory requirements and that she was entitled to consent to the procedure without notifying a parent. We issued an order on March 10, 2000, reversing the court of appeals' judgment, with opinions to follow on the concern that Doe be able to undergo a less risky abortion procedure, if that option was still available to her and that was her decision. The following is our opinion holding that the evidence Doe presented conclusively established that she was ''mature and sufficiently well informed'' to consent to an abortion without parental notification. See TEX. FAM. CODE §33.003(i).

I

Abortion is a highly-charged issue that often engenders heated public debate. Such debate is to be expected and, indeed, embraced in our free and democratic society. It is through this very type of open exchange that our Legislature crafted and enacted the particular statutory scheme before us. Our system of government requires the judicial branch to independently review and dispassionately interpret legislation in accordance with the Legislature's will as expressed in the statute. We begin our analysis with an overview of the Parental [*350] Notification [**3] Act's judicial bypass procedure and our role in interpreting it.

A. The Proper Role of Judges

''[Courts] are under the constraints imposed by the judicial function in our democratic society. . . . The function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. . . . A judge must not rewrite a statute, neither to enlarge nor to contract it.''—Felix Frankfurter (RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 213 (1947), reprinted in COURTS, JUDGES, AND POLITICS, at 414 (Walter F. Murphy & C. Herman Pritchett, eds., 2d ed. 1974).

Mrs. BOXER. When I come to speak on the Senate floor, I do my homework. I felt very badly about that, and now I have the documentation. I thank my friend for yielding. I know it does not make him happy, but he was very generous to me to allow this minute to send these documents to the desk.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Rather than take time to respond, I will write a letter to the distinguished Senator and point out where she is in error on the Owen matter. As a matter of fact, I think it has been outrageous the way some of the arguments have been made on the other side against this really excellent justice from the State of Texas, who has a unanimous well qualified, the highest rating, from the American Bar Association. I think we have had pure, unadulterated, raw politics involved with regard to Justice Owen.

This debate we are now having is about the raw politics that are being used against Miguel Estrada, the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia.

Today is Cinco de Mayo, the Fifth of May, commemorating the victory of

the Mexican army over the French army at the Battle of Puebla in 1862. This battle came to represent a symbol of Mexican unity and patriotism. The victory demonstrated to the world that Mexico and all of Latin America were willing to defend themselves against any foreign intervention. Cinco de Mayo is now viewed as a festive day to celebrate freedom and liberty.

The fifth of May, 2003, in the Senate, unfortunately is also the 3-month anniversary of the beginning of the debate on Miguel Estrada. I would hope that we would be celebrating the liberation of his nomination and the freedom to vote on final passage on this Cinco de Mayo. But instead, the nomination of Miguel Estrada has been captured by a minority of Senators who refuse to allow a final vote on his nomination. They insist on their unprecedented filibuster, following their game plan of obstruction. In fact, they have compounded their obstructionist tactics by engaging in a second filibuster, this time on Priscilla Owen, nominated to the Fifth Circuit Court of Appeals. She also has a unanimous well-qualified rating from the American Bar Association, the badge of honor, the gold standard, that our colleagues on the other side of the aisle, have said that rating is.

I must admit, the Democrat game plan of delay and obstructionism is not surprising, but it is getting somewhat contradictory. In the case of Mr. Estrada, Democrats say they cannot vote for the nominee because they do not know enough about him. They allege he did not answer their questions and therefore they must have Department of Justice confidential memoranda he wrote while he was a line attorney in the Solicitor General's office; memoranda that have never been given in any way, shape or form to anybody in the Senate in a confirmation battle before, or anybody else for that matter. Even the White House has not seen these matters because they are so highly privileged, not Judge Gonzales, not anybody else in the White House.

There are no such claims about Justice Owen. Democrat opponents admit they know enough about her, that she did answer the questions, and that she has a record they can review. There are no phony excuses. They simply oppose her on philosophical grounds, namely, her interpretation of the Texas parental notification statute that applies to minor girls seeking an abortion.

This double standard demonstrates that some Senate Democrats are willing to use whatever obstructionist tactics it takes, based on any convenient rationale, to defeat the President's nominees.

While the rationales may be different, the motivation in both cases is the same. I think that a recent editorial appearing in the Atlanta Journal-Constitution said it best: ''The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credentials to serve on the U.S. Supreme Court.'' I ask unanimous consent that a copy of this editorial be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. HATCH. As far as Mr. Estrada goes, there is an additional factor that is not based on any substantive objection to his nomination. I believe that some Senate Democrats do not want the current President, a Republican President, to appoint the first Hispanic as United States Circuit Judge for the District of Columbia Circuit.

Let me read from an editorial published by the Dallas Morning News addressing this point. On February 17, 2003, the News wrote:

Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology—which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his re-election campaign next year. They are even less interested putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.

I ask unanimous consent that the entire editorial be printed in the RECORD following my remarks.

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

Mr. HATCH. I don't know if Mr. Estrada is a conservative Republican, but I do know he is qualified for the position to which he is nominated, and it is well past time to vote on his nomination. This Friday will mark the two-years anniversary of his nomination on May 9, 2001. The Majority leader has made every attempt to obtain time agreements or use other procedures to bring this matter to a resolution. Each of these attempts has been rebuffed by a minority of this body. Some Senate Democrats have used every delay and obstructionist tactic available. Yet they still cannot identify one substantive issue that would justify or excuse their refusal to permit a final vote.

Mr. President, on this day, 141 years ago, the Mexican Army defeated forces which represented tyranny and defended the liberty of their nation. I urge my colleagues, on this day of celebration, to defeat the tyranny of the minority by voting to bring the debate on the nomination of Miguel Estrada to a close.

I yield the floor.

EXHIBIT 1

[From the Atlanta Journal-Constitution, May 4, 2003]

DEMOCRATS USE WRONG ROUTE TO WIN SOUTH

(By Jim Wooten)

U.S. Senator John Kerry (D–Mass.) brought his presidential aspirations to the South last week, promising in Alabama that he will make the national party competitive here once again.

Make competitive, he neglected to mention, a party that has positioned itself in opposition to the war in Iraq and anything other than token tax cuts, and as Democrats reminded the nation once again about the elevation of conservatives to the federal bench. While the White House may appeal to some as inside work with no heavy lifting, getting there through the South toting this party's agenda will be a task requiring Herculean labor.

Just this week, for example, Kerry's Democratic colleagues—Georgia's Zell Miller excepted—began to filibuster the nomination of Texas Supreme Court Justice Priscilla Owen to the New Orleans-based 5th U.S. Circuit Court of Appeals.

Kerry and other Democrats are already filibustering the nomination of Miguel Estrada to the District of Columbia Circuit Court of Appeals—the first time simultaneous filibusters against judicial nominees have occurred in the U.S. Senate.

Both Owen and Estrada are superbly qualified in every respect. Yet on Owen, those who complain that a ''glass ceiling'' exists for women of achievement are busily constructing one to keep her in her place. And those who complain that the federal bench lacks ''diversity'' find Estrada to be too much diversity for their taste. He is considered to be a conservative, and the interest groups that drive the Democratic Party nationally fear Owen is, too, at least on their abortion litmus test.

The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credential to serve on the U.S. Supreme Court.

Kerry, then, and the legions of presidential soundalikes who campaign with him, have to come to a region where conservatism is the mainstream to explain how reducing federal taxes is bad and cheating exemplary women and minorities of the fair hearing they have earned before the U.S. Senate because they might be conservative is good.

''I can help you wage a fight down here and rebuild this party for the long run,'' Kerry said in Birmingham. Republicans have carried Alabama in all but three presidential elections in the past 50 years. Jimmy Carter in 1976 was the last Democrat to carry the state. George W. Bush carried every Southern state in 2000, including Tennessee, his Democratic opponent's home state. Al Gore Jr. thought so little of his Southern prospects that he actively campaigned in just three states—Tennessee, Florida and West Virginia.

Some Democrats, said Kerry, were ''surprised'' that he visited Alabama.

No surprise that he visited. The real surprise is the party baggage he hauled.

Opposition to tax cuts is comprehensible. Politicians loathe interruption in the flow of spendable revenues. Opposition to the war is, too. Too confrontational. Angers adversaries. Provokes understandable aggression, for which we bear unexpurgated sin.

While some positions are understandable, not so their party-line opposition to Owen and Estrada. Owen, the new filibusteree, drew the American Bar Association's highest rating. She is a cum laude graduate of the Baylor University Law School who scored the top grade in Texas on the bar exam. She practiced 17 years before becoming a judge and has been widely praised for her integrity and ability. Liberal groups say, unconvincingly except when they are talking to each other and Senate Democrats, that she is anti-abortion and pro-business.

Being a neighborly people, Southerners of course welcome Kerry to visit the region and

to indulge himself in its hospitality. But the senator should not indulge himself into believing that a party that opposes tax cuts and filibusters nominees such as Owen and Estrada has the slightest chance of carrying this region.

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EXHIBIT 2

[From the Dallas Morning News, Feb. 21, 2003]

RUSH TO JUDGMENT: ESTRADA NOMINATION HAS BEEN BLOCKED TOO LONG

There is a time for talking and a time for voting. The time is past for the U.S. Senate to talk about Miguel Estrada's nomination to the federal Court of Appeals for the District of Columbia circuit. It's time to vote.

Having emigrated from Honduras as a teenager unable to speak much English, Mr. Estrada went on to graduate magna cum laude from Columbia University and Harvard Law School, to clerk for a Supreme Court justice, to serve two administrations in the U.S. solicitor general's office, to win more than a dozen cases in the Supreme Court. In short, the 42-year-old lawyer is talented. Who knew that talent would extend to tying the Senate in knots for days on end.

Democrats by now are in full filibuster. Senate proceedings, as carried on C–Span, resemble the firm Goundhog Day, where the main character has to relive the same day over and over again. Every day, it's the same thing. Democrats get up, march over to the podium, shuffle papers and recite their main complaint with Mr. Estrada—that he's conservative, unconventional and unapologetic. That when he had the chance to hand them the rope with which to hang him during his hearing before the Senate Judiciary Committee, he refused to hold up his end.

Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology—which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his re-election campaign next year. They are even less interested in putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.

And so they have talked and talked, in hopes that Republicans will back down. They won't. Nor should they.

Republicans certainly stalled their share of appointments during the Clinton administration. But Democrats are being shortsighted in seeking retaliation. It is precisely these sorts of narrowly motivated temper tantrums—from both sides of the political aisle—that turn off voters and make cynics of the American people. When that happens, it doesn't matter which nominees get confirmed or rejected. Everybody loses.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, for some reason the Republican leadership is forcing what may be the fifth vote on a cloture motion on this divisive and controversial nomination.

I mention that because none of these cloture motions would have been needed if the administration had simply cooperated with the Senate as did prior administrations, Democratic and Republican. I have been here with six different administrations. The previous five always, no matter who was President, no matter who was in the majority in the Senate, always showed cooperation on judicial nominations as, I believe, has every President in the last century. Not this one.

I mention that because we are having this vote yet nothing has changed since the last cloture vote. No effort has been forthcoming by the administration to accommodate Senators' requests for access to the executive branch documents requested last May, almost a year ago. Everybody says Mr. Estrada is perfectly willing to come up and answer Senators' questions but not to answer the only questions the Senators really want to ask him.

Remember, this man was appointed based on what the administration knows of his writings while employed in the government. They have access to these writings. They say, in effect: Trust us. I am a strong supporter of Ronald Reagan's position: Trust but verify. I would like him to verify what was in these writings. We have not had access to them. If we did, we wouldn't be needing all these cloture votes.

Since the beginning of this year, despite the fixation on the President's most controversial nominations, we have worked hard to reduce judicial vacancies even further. As of today, the number of judicial vacancies is 49. That is the lowest it has been in many years. That is lower than at any time during the entire 8 years of the Clinton administration. We have already reduced judicial vacancies from 110, when I became chairman of the Senate Judiciary Committee, to 49. We did this in less than 2 years. We have reduced the vacancy rate from 12.8 percent to 5.7 percent, the lowest it has been in a decade. If we could get even a modicum of cooperation from the administration, think of the additional progress we could be making.

The Nation's unemployment rate rose last month to 6 percent, but the vacancy rate in the Federal judiciary dipped to 5.7 percent. While the number of private sector jobs lost since the beginning of this administration is 2.7 million, and while almost 9 million Americans are now out of work, and unemployment has risen by more than 45 percent during this administration, Democrats in the Senate have cooperated, moving forward to confirm 121 of the President's judicial nominees to reduce judicial vacancies to the lowest level in more than a decade and to reduce Federal judicial vacancies by more than 60 percent.

Apparently, the majority in the Senate remains obsessed in seeking to force through the most divisive of this President's controversial, ideologically chosen nominees. While they have pushed the Nation's unemployment rate up to 6 percent, they have focused their energies on dropping the vacancy rate of the Federal judiciary to below that.

I think it is unfortunate that the White House and some of my friends on the other side of the aisle have insisted on this confrontation rather than working with us to provide the needed information so we could proceed on the Estrada nomination. Some seem to prefer political game playing, seeking to pack the courts with ideologues and leveling baseless charges of bigotry at those who may disagree with them, rather than working with us on this nomination by providing information and proceeding to a fair vote.

We have spent day after day on this nomination that will not go any further until the nominee is given permission to provide answers to us regarding the same questions that were obviously asked by the administration. What was it he wrote that made the administration want to appoint him to the second highest court in the land?

On one level, I admire their efforts to get this high-paying lifetime job for this nominee. Maybe they should talk about the 9 million Americans who do not have any lifetime job, who now don't have any job; or the 2.7 million Americans who have lost their jobs since this administration came into office. Maybe we should be debating that. Maybe we should be working to put them back to work. Apparently, the administration believes it is more important to have this one job.

In that regard, just as any employer would want to know why they should hire a particular person, we in the Senate have a right to ask what is it in this man's record that made the administration want to appoint him to the second highest court in the land. But they don't want us to see what it was on which they based their decision. Maybe they believe the Senate is irrelevant.

That is not the way I read the advise and consent clause. Let us see what brought them to their conclusion, and then let us go forward. Let's actually take those steps that would unite us rather than divide us, and then maybe the administration will be able to turn to the lives of the millions upon millions of Americans who are out of work—the highest unemployment rate in a decade.

To reiterate, today the Republican leadership in the Senate is forcing what may be the fifth vote on a cloture motion on this divisive and controversial nomination. None of these motions would have been needed if the administration had cooperated with the Senate as have prior administrations, Democratic and Republican. Nothing has changed from the last cloture vote. No effort has been forthcoming by the administration to accommodate Senators' requests for access to the executive branch documents requested last May, almost 1 year ago. The White House continues to obstruct any progress toward resolving this matter

by its unprecedented refusal to turn over documents requested to determine whether or not Miguel Estrada should sit on the second highest court in the land, for life. Mr. Estrada's nomination is apparently being sacrificed by the administration for its own partisan, political purposes.

I do want to thank the Democratic leadership in the Senate for working with us and helping press for a vote on the nomination of Judge Edward Prado to the Fifth Circuit last week. We had been seeking that vote for several weeks, since his nomination was favorably reported with the support of every Democratic member of the Judiciary Committee. Last Thursday, the Republican leadership at last agreed to schedule that nomination for Senate consideration. Judge Prado's nomination was confirmed 97 to zero. This nomination is another example of how quickly the Senate is able to proceed on consensus, mainstream nominees. Judge Prado has 19 years of experience as a U.S. District Court judge. Our review of his actions on the bench showed him to have a solid record of fairness and evenhandedness. No supervisor or colleague of Judge Prado has questioned his willingness to interpret the law fairly. Judge Prado enjoyed the full support of the Congressional Hispanic Caucus and the Mexican American Legal Defense and Education Fund. Not a single person or organization submitted a letter of opposition or raised concerns about Judge Prado.

Judge Prado is now the second nominee of this President to be confirmed by the Senate to the Fifth Circuit after years during which President Clinton's nominees were denied hearings and consideration by a Republican Senate majority. Although Republicans had refused to proceed on three of President Clinton's nominees to that court—two from Texas and one from Louisiana—during his entire second term, Democrats proceeded with hearings and committee votes on all three of President Bush's nominees. Judge Prado is the fourth nominee of this administration to receive a hearing and consideration.

Still stalled on the Senate Executive Calendar is the nomination of Judge Cecilia Altonaga to be a Federal judge in Florida. Senator GRAHAM requested that the Judiciary Committee expedite the consideration of her nomination, and we did. All Democratic members of the Judiciary Committee supported this nomination. She will be the first Cuban-American woman to be confirmed to the Federal bench, whenever the Republican majority is willing to proceed on her nomination. In my view, the Senate's time would be better spent this evening voting on this nomination than another unsuccessful cloture vote on the Estrada nomination. Unfortunately, that is not how the Republican leadership has chosen to proceed.

The administration remains intent on packing the Federal circuit courts and on insisting that the Senate rubberstamp its nominees without fulfilling this body's constitutional advise and consent role in this most important process. The White House could have long ago helped solve the impasse on the Estrada nomination by honoring the Senate's role in the appointment process and providing the Senate with access to Mr. Estrada's legal work. Past administrations have provided such legal memoranda in connection with the nominations of Robert Bork, William Rehnquist, Brad Reynolds, Stephen Trott and Ben Civiletti, and even this administration did so with a nominee to the Environmental Protection Agency. In my statement in connection with an earlier cloture petition, I outlined additional precedent for sharing the requested materials with the Senate, as did Senator KENNEDY. I am disappointed that the White House refuses to end this problem and, instead, continues to politicize the process.

We understand that the President's nominees will be Republicans. We understand they will be conservative. We understand that they will have positions with which we disagree. I have voted for hundreds of nominees who were conservative Republicans.

In just the last 2 years, 121 of the President's judicial nominees have been confirmed. One hundred of those confirmations came during the 17 months of Democratic leadership of the Senate. No fair-minded observer could term that obstructionism. By contrast, during the 6½ years during which Republicans controlled the Senate and President Clinton's nominations were being considered, they averaged only 38 confirmations a year. During the last two years of the Clinton administration, the Senate confirmed only 73 Federal judges—the Senate confirmed 72 judges nominated by President Bush last year alone. Combining the 1996 and 1997 sessions, Republicans in the Senate allowed only 53 judges to be confirmed in 2 years, including only seven new judges to the Circuit Courts.

It is a shame that the White House refuses to work together with us to do even more to help the Federal judiciary. This week, we have already had a debate and vote on yet another controversial circuit court nominee, Deborah Cook, for the Sixth Circuit, and now a cloture vote on the nomination of Miguel Estrada.

The fact is that when Democrats became the Senate majority in the summer of 2001, when we inherited 110 judicial vacancies, there was a dire need to fill judicial vacancies. Over the next 17 months, despite constant criticism from the administration, the Senate proceeded to confirm 100 of President Bush's nominees, including several who were divisive and controversial, several who had mixed peer review ratings from the ABA, and at least one who had been rated not qualified. Despite the additional 40 vacancies that arose, we reduced judicial vacancies to 60, a level below that termed ''full employment'' by Senator HATCH. Since the beginning of this year, in spite of the fixation of the Republican majority on the President's most controversial nominations, we have worked hard to reduce judicial vacancies even further. As of today, the number of judicial vacancies is at 49. That is the lowest it has been in 7 years. That is lower than at any time during the entire 8 years of the Clinton administration. We have already reduced judicial vacancies from 110 to 49, in less than 2 years. We have reduced the vacancy rate from 12.8 percent to 5.7 percent, the lowest it has been in a decade. With some cooperation from this administration, think of the additional progress we could be making.

While the Nation's unemployment rate rose last month to 6 percent, the vacancy rate on the Federal judiciary dipped to 5.7 percent. While the number of private sector jobs lost since the beginning of the Bush administration is 2.7 million, almost 9 million Americans are now out of work, and unemployment has risen by more than 45 percent, Democrats in the Senate have cooperated in moving forward to confirm 121 of this President's judicial nominees, to reduce judicial vacancies to the lowest level in more than a decade, and to reduce Federal judicial vacancies by almost 60 percent. Yet the Republican-led Senate remains obsessed with seeking to force through the most divisive of this President's controversial, ideologically-chosen nominees.

It is unfortunate that the White House and some Republicans have insisted on this confrontation rather than working with us to provide the needed information so that we could proceed on the Estrada nomination. Some on the Republican side seem to prefer political game playing, seeking to pack our courts with ideologues and leveling baseless charges of bigotry, rather than to work with us to resolve the impasse over this nomination by providing information and proceeding to a fair vote.

I was disappointed that Senator BENNETT's straightforward colloquy with Senator REID and me on February 14, which pointed to a solution, was never allowed by hard-liners on the other side to yield results. I am disappointed that all my efforts and those of Senator DASCHLE and Senator REID have been rejected by the White House. The letter that Senator DASCHLE sent to the President on February 11 pointed the way to resolving this matter reasonably and fairly. Republicans would apparently rather engage in partisan politics.

Republican talking points will undoubtedly claim that this is ''unprecedented.'' They will ignore their own recent filibusters against President Clinton's executive and judicial nominees in so doing. The only thing unprecedented about this matter is that the administration and Republican leadership have shown no willingness to be

reasonable and accommodate Democratic Senators' request for information traditionally shared with the Senate by past administrations. That this is the fifth cloture vote on this matter is an indictment of Republican intransigence on this matter, nothing more. What is unprecedented is that there has been no effort on the Republican side to work this matter out as these matters have always been worked out in the past. What is unprecedented is the Republican insistence to schedule cloture vote after cloture vote without first resolving the underlying problem caused by the administration's inflexibility.

I urge the White House and Senate Republicans to end the political warfare and join with us in good faith to make sure the information that is needed to review this nomination is provided so that the Senate may conclude its consideration of this nomination. I urge the White House, as I have for more than 2 years, to work with us and, quoting from today's New York Times editorial:

The answer is not to try to twist the rules or demonize Democrats. It is for the White House to consult with the Senate and agree on nominees that senators from both parties can in good conscience confirm.

The President promised to be a uniter not a divider, but he has continued to send us judicial nominees that divide our nation and, in this case, he has even managed to divide Hispanics across the country. The nomination and confirmation process begins with the President, and I urge him to work with us to find a way forward to unite, instead of divide, the Nation as well as the Senate on these issues.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. 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. HATCH. Mr. President, the Senator from Vermont made a point that the White House has seen these privileged documents in the Solicitor General's Office. If they have any evidence of that, I would like to see it because I know they haven't looked at those records. Those are the most highly privileged records in the Justice Department. I am not sure that a Solicitor General wouldn't resign before giving up those records.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, if I have any remaining time, I yield it.

Mr. HATCH. Likewise.

CLOTURE MOTION

The PRESIDING OFFICER. All time has been yielded. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin Hatch, Judd Gregg, Norm Coleman, John E. Sununu, John Cornyn, Larry E. Craig, Saxby Chambliss, Lisa Murkowski, Jim Talent, Olympia Snowe, Mike DeWine, Michael B. Enzi, Peter G. Fitzgerald, Lindsey Graham, Jeff Sessions.

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

The question is, Is it the sense of the Senate that debate on the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. REID. I announce that the Senator from Washington (Ms. CANTWELL), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Georgia (Mr. MILLER), and the Senator from Washington (Mrs. MURRAY) are necessarily absent.

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

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nays 39, as follows:

[Rollcall Vote No. 140 Ex.]

YEAS—52

Alexander	Craig	Kyl
Allard	Crapo	Lott
Allen	DeWine	Lugar
Bennett	Dole	McCain
Bond	Domenici	McConnell
Breaux	Ensign	Nelson (FL)
Brownback	Enzi	Nelson (NE)
Bunning	Fitzgerald	Nickles
Burns	Frist	Roberts
Campbell	Graham (SC)	Santorum
Chafee	Grassley	Sessions
Chambliss	Gregg	Shelby
Cochran	Hagel	Smith
Coleman	Hatch	Snowe
Collins	Hutchison	Stevens
Cornyn	Inhofe	Sununu
	Talent	Voinovich
	Thomas	Warner

NAYS—39

Akaka	Dodd	Landrieu
Baucus	Dorgan	Lautenberg
Bayh	Durbin	Leahy
Biden	Edwards	Levin
Bingaman	Feingold	Lincoln
Boxer	Feinstein	Pryor
Byrd	Harkin	Reed
Carper	Hollings	Reid
Clinton	Inouye	Rockefeller
Conrad	Jeffords	Sarbanes
Corzine	Johnson	Schumer
Daschle	Kennedy	Stabenow
Dayton	Kohl	Wyden

NOT VOTING—9

Cantwell	Lieberman	Murkowski
Graham (FL)	Mikulski	Murray
Kerry	Miller	Specter

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

VOTE EXPLANATION

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Ms. CANTWELL. Mr. President, I have the great honor of being in Washington State today in order to welcome home the USS *Lincoln* and USS *Camden*. After a 10-month deployment, including valuable service in the recent war against Iraq, the men and women of the USS *Lincoln* and her carrier strike group will finally reach Everett and Bremerton, WA in the next few hours. Unfortunately, in order to be present for this important homecoming in my State—it was necessary to miss two votes today.●

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. MCCONNELL. I ask unanimous consent that the Senate proceed to a period for morning business.

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

TRIBUTE TO DR. PAUL DIXON

Mr. DEWINE. Mr. President, I rise today to pay tribute to a fellow Ohioan, a leader in higher education, a dear friend, and a good neighbor: Dr. Paul Dixon. Dr. Dixon is the current president of Cedarville University, a Baptist liberal arts university located very near my home, my wife Fran's home in Greene County, OH. Dr. Dixon is planning to retire from that position in June of this year after a quarter of a century of great successful leadership. As the longest-serving president of any college or university in Ohio, Paul led the university through an unprecedented period of growth and has

served as an example and friend to many in our community.

I would like to take a few minutes to tell my colleagues in the Senate about Paul's great support and dedication to higher education. He is an exemplary educator and a well respected and committed member of our local community.

Though Paul is retiring from his current position as university president, we are pleased that he will remain at the university as chancellor and will continue to be a role model in our community.

Paul Dixon was born in Cincinnati, OH, and graduated from Tennessee Temple University in 1961, and Temple Baptist Theological Seminary in 1964. After graduation, Paul spent 14 years as an evangelist where he traveled the country preaching and ministering to communities and churches and spoke for professional sports chapel programs, including the Cincinnati Reds and the Bengals, the former Houston Oilers, and most of the National League of baseball. He moved from Chattanooga, TN, to Cedarville, OH, in 1971 with his wife Pat, took a position with the faculty of the Language and Literature Department of then Cedarville College.

In 1978, Cedarville University trustee member Donald Tyler recommended Paul to the board of trustees as a replacement for the retiring university president, Dr. James T. Jeremiah. At the time, Donald was sure the idea of an evangelist serving as president would shock his fellow trustees. But, as Dr. Murray Murdoch's book, ''Cedarville College: A Century of Commitment,'' tells the story, Donald Tyler felt compelled to suggest the successful young evangelist to the board as a candidate for the college's next leader.

Donald Tyler already knew Paul well as an influential evangelist. But he also observed Paul's interest in and involvement with college students as a Cedarville resident and husband of a faculty member. Even though he was not a CEO or business leader, Paul demonstrated leadership skills and began to establish himself as a visionary within the community. Ultimately, these observations convinced Donald that Paul was the right person to serve as the new president, and the entire board of trustees agreed. A glance at the past 25 years of Paul's tenure reveals Donald Tyler's instincts served the university well.

Paul's success as president of Cedarville University may be due in part to his God-given ability to balance stability and change.

With a strong vision and foresight, Paul led the university into a period of tremendous growth. Throughout his 25 years of leadership, $100 million in facilities have been built on a campus that has expanded from 180 to 400 acres. The school attained university status in the year 2000 and now offers more than 100 programs of study, including a graduate degree. Enrollment grew from 1,185 students in 1978 to more than 3,000 students today. Dr. Dixon also championed the university's focus on technology, positioning the institution as an award-winning leader and pioneer in the digital age.

I must say, Mr. President, and Members of the Senate, that the quality students that Cedarville University produces is really a testament to Dr. Paul Dixon as a role model and to the high standards he sets for the faculty and for the students. Without question, Paul Dixon sets the bar high. But the young people—the young people—who graduate from Cedarville University not only leave the school with a diploma, but they also leave the school with a strong set of values to guide them in their future lives. That is due, in no small part, to Dr. Paul Dixon's dedication to each and every student and to his commitment to leading by example.

Apart from Paul's contributions to the growth and success of Cedarville University and its students, he is an admired leader throughout the surrounding community. KeyBank President William Hann said this of Paul:

> Paul is value-driven. He is admired by the entire business community because of his character, compassion, and leadership.

Also, Mike Stephens, president of Greene Memorial Hospital in nearby Xenia, OH, and former Cedarville University student, said this:

> I have worked with Dr. Dixon on several community leadership activities. He is a well respected and sought after community leader, both for his ideas and vision.

Over the years, Paul Dixon has served the area through his leadership on several local business and community boards.

He served on the regional board of directors for KeyBank in Dayton, was a member of the Springfield/Clark County Chamber of Commerce Board of Directors, and was a part of the Greene County Development Task Force, as well as the Greene County Blue Ribbon Committee.

In addition to serving on these boards and committees, Paul Dixon has hosted several events at the university aimed at community outreach and development. Every year, Dr. Dixon has hosted Farmer's Night, with about 250 to 300 local farmers attending, and Community Night, with about 400 community leaders in attendance. These events have brought people together to share problems, success stories, and ideas to better improve our community.

Jackie Pyles, a resident of Cedarville, had this to say about Dr. Dixon:

> Through ''Farmer's Night,'' ''Community Night,'' and consulting area businessmen in their areas of expertise, Dr. Dixon has brought the University and community into a relationship where they are more supportive of each other. With Dr. Dixon's genuineness, love for people, and his sincere sensitivity, he has helped people not look at the University as a separate entity, but rather as an intricate part of this community.

I couldn't agree more.

Paul Dixon has positively influenced the individual lives of so many, but particularly his students. Students, university staff members, and people in the surrounding community all speak of Paul's love for people and his impeccable personal integrity. Reflecting upon this legacy, current trustee member Dr. Eugene Apple said this:

> The accomplishments during Dr. Dixon's tenure as president are well known and very impressive: new programs, campus expansion, enrollment growth, and on and on. Having served on the Board of Trustees for more than 20 years, I noted one characteristic that seemed to rise above all else—his integrity, not only with the Cedarville family, but in a very quiet way with others in need of support, advice, consultation, and help.

The mantle of his presidency has been passed on to Dr. William E. Brown, former president of Bryan College of Dayton, TN. And I congratulate Dr. Brown and welcome him to our community. As I said, Dr. Dixon will not be far away. He will continue to preach, continue to represent the university among a variety of constituencies, and tell the Cedarville University story wherever he goes. Paul will end his presidency the way he began it, and that is by serving people and by serving the community.

Paul has a famous motto: ''Everything we do ought to have quality stamped all over it.'' It is well known by Cedarville University students, staff, faculty, and the surrounding community. It truly captures the essence of who Dr. Paul Dixon is as a person and his mission in life. As the longest-serving college president in Ohio and the 12th longest-serving president in our Nation, Paul's example of stability, commitment, leadership, faithfulness, and quality is unparalleled.

My wife, Fran, and I extend our deepest appreciation to Dr. Paul Dixon for his dedication to college students, his leadership in higher education in Ohio, and his service to the village of Cedarville and the surrounding area. We both cherish Paul and his wife Pat's friendship and wish them our warmest congratulations and an enjoyable retirement.

HONORING OUR ARMED FORCES

Mr. ENSIGN. Mr. President, I rise to share with the Members of this esteemed body the story of Lance Corporal Donald John Cline. John's wife Tina wants to make sure that their young sons know that their dad was ''a proud father, a proud husband, and a proud Marine.'' Dakota, two and a half, and Dillon, 7 months, won't be able to know him as they grow up because their father gave his life in Iraq to protect this nation and defend our freedom. As part of the legacy he left to his boys, I honor him today.

John and Tina met and became friends in 1997 when their families lived in the same apartment complex and both attended Reed High School in

Sparks, NV. According to Tina, John always wanted to be a Marine, and he was already signed up and ready to join during his senior year of high school.

John graduated from Marine boot camp on October 20, 2000. The next day, he and Tina were married at the American Legion Hall. John was assigned to the 1st Battalion, 2nd Marine Regiment of the 2nd Marine Expeditionary Brigade based at Camp Lejeune, NC. Just after last Christmas, John received his orders to ship out to the Middle East.

On March 23, John was killed in an amphibious vehicle hit by enemy fire during an ambush in the southern Iraq town of An Nasiriyah. Lance Corporal Cline was 21 years old when he died. Tina says that she ''saw a teenager grow up to be a man.''

Unfortunately, I did not know John, but I can assure you that the dedication of this brave, proud Marine has touched my life. John's service to this Nation, on behalf of all of us, is truly inspiring. I want Tina and her boys to know that we are a grateful Nation for the man John became and for his courageous contributions to the United States of America and freedom-loving nations around the world.

I know my colleagues join me in praying for strength for John's wife and children as they deal with the loss of this American hero. As his young sons grow, I hope they will realize how grateful this Nation is for their sacrifice and the ultimate sacrifice that their father made.

God bless the Cline family.

THE INTERNATIONAL CRIMINAL COURT

Mr. LEAHY. Mr. President, over the past few months the International Criminal Court, ICC, has taken important steps towards becoming an effective forum to hold accountable those accused of war crimes, genocide, and crimes against humanity. By all accounts, the countries participating in these negotiations did an excellent job of selecting qualified jurists and, perhaps most importantly, a responsible and experienced prosecutor.

But an important voice is missing from these negotiations. That voice is the United States, a country which was founded on the principles of the rule of law, human rights, and democratic freedoms.

Perhaps more than at any other time, the past few months have highlighted the folly of the Bush administration's policy towards the ICC.

The whole world wants the United States to be involved with the development of this institution. Yet, instead of seizing this opportunity to shape the Court in our interests, we are one of the only democracies sitting on the sidelines—joined by some of the world's worst human rights offenders. It is an embarrassment, and contrary to the arguments of those who oppose the Court, it is self-defeating.

Instead of making sure that the ICC will function the way we want it to, this Administration withdrew our signature from the Rome Treaty and supported legislation, the American Service Members Protection Act, openly hostile to the ICC.

Instead of working to influence the selection of judges, prosecutors, and other ICC officials, our negotiators are not even sitting at the table.

Has the administration taken this position because they believe engagement is not a viable strategy to promote U.S. interests in international negotiations?

Clearly not. One need only look at their position on military training assistance to the Indonesian Armed Forces. Despite the fact the Indonesian military is a corrupt, brutal institution that has been implicated in the deaths of American citizens, the State Department says that U.S. aid to this institution ''provides a vehicle for the United States to impart our ideas about civil-military relations to foreign military audiences, and to promote military reform.''

I don't favor training the Indonesian military unless they show they want to reform. Then we can and should help them.

But the ICC is an institution designed to punish the world's worst criminals. The Administration refuses to engage with the ICC, but it will engage with the Indonesian military. If anything, it should be the other way around. We should be working to shape the ICC, an imperfect but potentially valuable institution, to promote U.S. interests, while distancing ourselves from institutions that are corrupt, abusive and incapable of reform.

The administration points to efforts to combat international terrorism as the reason that it wants to restore military training for Indonesia. The same can be said for the ICC. The Court could become an important forum to try dictators or others involved in atrocities—providing an important tool to deter acts of international terrorism.

Another explanation for the administration's policy might be that the United States simply got nowhere during previous negotiating sessions and further engagement simply will not yield results.

In fact, during the negotiations on the Rome Treaty, the U.S. delegation worked to ensure that the Court will serve our national interests by being a strong, effective institution. They succeeded in inserting a number of important safeguards, including provisions to deter frivolous prosecutions.

Like any international agreement, the U.S. did not get 100 percent of what we wanted in the negotiations. However, that is why the U.S. should remain involved with the Court. As the distinguished senior Senator from Pennsylvania, Mr. SPECTER, has said, U.S. policy toward the International Criminal Court should be one of ''aggressive engagement.''

Instead, the Bush administration has taken its bat and ball and walked off the field. While this might make those opposed to the Court feel better, the fact of the matter is that the ICC is a reality—even the Bush administration acknowledges this. It is rapidly becoming operational and will have jurisdiction over offenses committed on the territory of state parties, even if those offenses are committed by the citizens of nonparty states.

Bush administration officials have said over and over that the power of the prosecutor is one of the main reasons that they oppose the ICC. In March, the New York Times reported that, because of the historic role that the United States has played in international justice, many nations sought to appoint an American as Chief Prosecutor to the Court.

I can think of few measures that would have been more effective in accomplishing the Administration's stated goal of guarding against political prosecutions of American soldiers than having an American citizen serve as Chief Prosecutor. However, the New York Times article went on to point out that the Administration's policy of being openly hostile towards the ICC was precluding an American from being appointed to this critical position.

Ultimately, an Argentine was selected as the prosecutor. While this prosecutor appears to be a very capable, distinguished individual, one gets the sense that if U.S. policy towards the ICC had been less hostile, an American would now occupy that position.

The U.S. need not be estranged from the ICC. Our closest allies, almost all of whom are strong supporters of the Court, have made it clear that with or without U.S. ratification of the Rome Treaty they would welcome our involvement in guiding its development.

As a signatory to the final document of the Rome Conference we had the right to participate in all of the various preparatory meetings leading up to the creation of the Court. Despite its concerns about the Court—or rather, because of them—it is bewildering that the Bush administration chose to not even send U.S. representatives to participate in the final negotiations.

Instead of supporting frivolous legislation that declares war on The Hague and would cut off military assistance to a number of key friends and allies, this administration should reconsider its position on the ICC.

By sitting on the sidelines, the United States is losing out on its ability to influence the structure and culture of this important new institution. Each time we refuse to join another treaty or international organization, which has become a pattern of this administration, we erode our international leadership.

I urge the administration to re-engage in a discussion with the Congress, and with our allies, of how the United States can once again play a constructive, leadership role in ensuring that the International Criminal Court effectively carries out its historic mandate.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement 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.

I would like to describe a terrible crime that occurred September 19, 2001 in Teaneck, NJ. An Arab-American was hanging an American flag on his car when a woman approached him and asked if he was an ''Arab.'' He answered, ''Yes, why?'' to which she responded, ''Because I was in the department store buying a rope to hang myself before you kill me.'' The man ignored her and returned to his task. When he turned his back, the woman assaulted him with her fists and her keys.

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.

88TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mr. SARBANES. Mr. President, I rise to commemorate the 88th anniversary of the Armenian genocide, in which 1½ million men, women, and children lost their lives as a result of the brutal massacres and wholesale deportation conducted by the Ottoman Turkish rulers against their Armenian citizens. This was the first genocide of the 20th century. Today, as we remember the bravery and sacrifice of the Armenian people in the face of great suffering, we renew our commitment to protecting the fundamental rights and freedoms of all humanity.

As time passes, we must not forget the terrible blows that befell the Armenians in 1915. On April 24 of that year, more than 250 Armenian intellectuals and civil leaders in Constantinople were rounded up and killed, in what was the first stage of a methodical plan to exterminate the Armenian population in the Ottoman Empire. Next, Armenian soldiers serving in the Ottoman army were segregated into labor battalions and brutally murdered. In towns and villages across Anatolia, Armenian leaders were arrested and killed. And then the remaining Armenian population, women, children, and the elderly, were driven from their homes and deported to the Syrian desert.

''Deportation'' was merely a euphemism for what were, in reality, death marches. Ottoman Turkish soldiers allowed brigands and released convicts to kill and rape the deportees at will; often the soldiers themselves participated in the attacks. Driven into the desert without food and water, weakened by the long march, hundreds of thousands of deportees succumbed to starvation. In areas of Anatolia where deportation was not deemed practicable, other vicious means were used. In the towns along the Black Sea coast, for example, thousands of Armenians were packed on boats and drowned.

The efforts to destroy the Armenian population did not pass unnoticed at the time. Leslie Davis, a U.S. diplomat stationed in eastern Anatolia, wrote in a State Department cable of July 24, 1915: ''It has been no secret that the plan was to destroy the Armenian race as a race, but the methods used have been more cold-blooded and barbarous, if not more effective, than I had at first supposed.''

Henry Morgenthau, the U.S. Ambassador to Turkey at the time and who personally made vigorous appeals to stop the genocide, called it ''the greatest horror in history.'' He later wrote: ''Whatever crimes the most perverted instincts of the human mind can devise, and whatever refinements of persecutions and injustice the most debased imagination can conceive, became the daily misfortunes of this devoted people. I am confident that the whole history of the human race contains no such horrible episode as this.''

Despite this testimony from U.S. diplomats who were witness to the events, and the abundance of evidence documenting the Armenian genocide, the argument continues to be made in some quarters that it never occurred. Much of that evidence was collected by our diplomats, and along with survivors' accounts, is housed in our National Archives. I have no doubt that if he were told that some continue to reject it, Ambassador Morgenthau would be astonished and outraged. Coming to terms with history is a difficult and painful process, as the experiences of South Africa and the countries of the former Soviet Bloc have shown. But we have also learned how pernicious attempts to falsify history are. Not only do they insult the memory of those who suffered or perished, but they leave us all more vulnerable because they weaken the fabric of our common humanity.

Many survivors of the genocide settled in this country, built new lives for themselves, and raised families here. They have made extraordinary contributions to every aspect of our national life, while preserving their own rich faith and cultural traditions. That Americans of Armenian origin have prospered in so many different ways stands as a rebuke to those who would deny the horrors of 1915. Americans of all backgrounds join them in commemorating the tragedy of the Armenian genocide. Together we must commit to building a world in which history shall not repeat itself.

MEDICAL RECORDS PRIVACY

Mr. JOHNSON. Mr. President, the issue of one's privacy is something that resonates throughout each and every one of our lives on a daily basis. As Americans we enjoy the luxury of certain forms of privacy, while at the same time live within the very constraints of a society that is experiencing an erosion of our privacy rights with each passing day, consequently affecting the boundaries of individual freedoms. Jeffrey Rosen, noted author of the book called ''The Unwanted Gaze, The Destruction of Privacy in America,'' stated that ''it is surprising how recent changes in law and technology have been permitted to undermine sanctuaries of privacy that Americans took for granted throughout most of our history.'' Furthermore, he states that ''there is nothing inevitable about the erosion of privacy, just as there is nothing inevitable about its reconstruction.''

On April 14, 2003, America experienced the beginning of comprehensive guidelines governing the world of medical privacy. This day marked the final compliance for health care providers who are implementing the new regulations laid out in the Health Insurance Portability and Accountability Act, HIPAA. Originally known as the Kennedy-Kassebaum legislation, passed in 1996, this bill was the result of over a decade's worth of input regarding the privacy of patients' medical records. As we move forward with these changes, it is important to note a few of the significant alterations that will impact both health care entities and consumers.

HIPAA was enacted by the Federal Government to give patients more control over their health information as well as provide greater boundaries for the use and release of health records. As of April 14, hospitals, health care providers, health plans, and clearinghouses will be working under stricter guidelines in regards to patient records. Health care entities will be restricted from releasing information regarding inpatient, outpatient, or emergency room patients unless that patient agrees to such a release in specific written documentation. Federal law, rather than various State regulations, will now protect the confidentiality of medical files. Consumers will be able to find out who has tried to have access to their medical records. This new law will also prohibit marketers from obtaining personal medical information without an individual's consent. These are just a few of the many new regulations set to take place as a result of implementation of HIPAA law.

Health care providers have had to rearrange existing procedures, as well as yield additional funding to meet the April 14 compliance deadline. This has proven to be more challenging for some entities than others especially those in rural areas where financial and workforce constraints are often greater than for their urban counterparts.

Hailed by medical consumer groups as a significant advance in protecting the rights of consumers and the privacy of medical records, some have expressed concern that the regulations are cumbersome or don't go far enough. Before HIPAA, however, there were few rules in place to the coherence of patient safety. Consumers now will find great comfort in knowing significant protections are being undertaken to protect their personal medical information.

As we move forward with implementation of these new privacy regulations, I will continue to monitor these new rules and solicit feedback from consumers and health providers alike about medical and other privacy issues so critically important to our everyday lives.

IN RECOGNITION OF WILLIAM W. FENNIMAN, POLICE CHIEF OF DOVER, NH

Mr. GREGG. Mr. President, I rise today to recognize the outstanding contribution to public safety and community building made by Dover, NH, Police Chief William W. Fenniman.

Chief Fenniman was first appointed as a Dover police officer in 1981. He rose through the ranks and in 1991, just 10 years later, was appointed the chief of police in Dover. Chief Fenniman has led his Department to become only the 49th police department in the country to be nationally accredited three times by the Commission on Accreditation for Law Enforcement Agencies. Under Chief Fenniman's leadership, the Dover police department has also had the distinction of being the first police department in the State of New Hampshire to be accredited through the State accreditation system. Chief Fenniman's success at the helm of the police department is a testament to his dedication, hard work and determination to strengthen the community through an expansive and effective law enforcement agency that truly is an integral part of the community.

Chief Fenniman has concentrated on fostering strong ties to and within the community. Chief Fenniman's focus on creating lasting and positive relationships between the community and law enforcement has brought crime levels down and improved community spirit. The creation of a youth safe haven and police ministation in partnership with the city housing authority to provide outlets and activities for children after school hours continues to flourish each year.

I am honored to participate in the Afterschool Alliance ''Breakfast of Champions'' event to present Chief William Fenniman with the 2003 Afterschool Community Champion award. Chief Fenniman has made a significant commitment to helping the children of his community find positive activities to do after their school days are over, and his work has helped to increase community ties and reduce crime.

ADDITIONAL STATEMENTS

CITIZENS BANK DOES THE RIGHT THING

● Mr. KENNEDY. Mr. President, I welcome this opportunity to commend Citizens Bank for the strong support it is giving to its employees who have been called up for active duty in connection with the Nation's military deployments in Iraq.

Many of us in Congress continue to be concerned that many members of the National Guard and Reserves have been activated with too little of this needed support, or even none at all. We have introduced legislation, S. 647, to deal with these urgent problems for all activated Guard and Reserve members and their families.

Citizens Bank deserves credit for strengthening its personnel policies to support its brave men and women called to serve. Unfortunately, too many Guard and Reserve families are not as fortunate, and I hope Congress will act quickly to provide this needed relief.

I ask that a statement by Citizens on February 10 announcing its impressive policy may be printed in the RECORD.

The Statement follows.

CITIZENS FINANCIAL GROUP, INC. ENHANCES MILITARY LEAVE POLICY, FEBRUARY 10, 2003

Citizens Financial Group, Inc. announced today is has enhanced the company's existing military leave policy to offer additional support to any employee/reservist activated during Operation Enduring Freedom.

''These are difficult and uncertain times in our nation. The current situation in the Persian Gulf has made real the possibility that Citizens' colleagues or family members may be called to serve their country,'' said Lawrence K. Fish, Chairman, President & CEO.

''We are concerned about our employees and providing benefits that match their needs,'' said Fish. ''We hope it won't be necessary for employees to use these benefits, but we are offering the support in the event it is needed.''

In its new military leave policy, Citizens Bank will: Pay the difference between employees' Citizens pay and the military pay for the duration of the active duty. This benefit is currently only available for the annual summer camp; offer the continuance of medical, dental, vision and life insurance coverage; and provide a comparable job upon return.

Citizens will also offer support to employees whose spouse, domestic partner or child is called to duty. Citizens will grant a paid leave of absence for five consecutive days to coincide with an in-service leave by the family member. If travel is necessary, Citizens will also pay a portion of their travel expenses.

Citizens Financial Group, Inc. is a $56.5 billion commercial bank holding company headquartered in Providence, RI. It is one of the nation's 20 largest commercial banks with 850 Citizens Bank branches, more than 1,700 ATMs and more than 15,000 employees in seven New England and Mid-Atlantic states. It operates as Citizens Bank in Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Pennsylvania and Rhode Island. Citizens is owned by The Royal Bank of Scotland Group plc.●

TRIBUTE TO PULASKI COUNTY SCHOOL SYSTEM

● Mr. BUNNING. Mr. President, I rise today to honor and pay tribute to the Pulaski County School System for receiving the Public Education Achieves in Kentucky Award from the Kentucky School Boards Association. The Pulaski County School System has distinguished itself through its outstanding efforts to promote gifted and talented students.

The Kentucky School Boards Association's Public Education Achieves in Kentucky Award was first awarded in 1997 to bring statewide attention to public school programs that enhance the impact that elementary and secondary schools have on young people. This award was well earned by the members of the Pulaski County School System under the leadership of Superintendent Tim Eaton.

The faculty of the Pulaski County School System have demonstrated excellence in the classroom by making a difference in the lives of their students. Their commitment towards improving the quality of education in Kentucky's schools has proven their roles as educators. Furthermore, credit is also due to the Pulaski County School Board for implementing the higher standards necessary to meet the demands of gifted education.

I am glad the faculty and administration of the Pulaski County School System chose to work and make their home in the Commonwealth of Kentucky. It is a source of great pride to call attention to their excellence. The citizens of Pulaski County should be privileged to be served by such fine professionals, and their example should be followed by educators across Kentucky.●

HONORING OUR MEN AND WOMEN IN UNIFORM

● Mr. FITZGERALD. Mr. President, I rise today with great pride to pay tribute to our Armed Forces involved in Operation Iraqi Freedom. Thanks to the dedication and valor of more than 200,000 of our brave men and women in uniform, the Iraqi people have been liberated from the oppressive and murderous grip of Saddam Hussein and, I believe, this Nation and the world are safer today than they were a few weeks ago.

The successes of our Armed Forces in Iraq are unprecedented. In 3 short weeks, our troops marched 300 miles to the heart of Baghdad, liberated fortified Iraqi cities along the way, and removed Saddam Hussein's entrenched, brutal regime from power. All the while, they worked honorably to minimize civilian casualties, preserve Iraq's infrastructure, distribute food and medical aid to innocent Iraqis, and treat enemy POWs with dignity and respect. In short, our troops engaged in battle with purpose, determination, and compassion. They not only defended but embodied American values.

Their service on our behalf should make all Americans proud.

Yet we know that this war, like any war, was not won without cost. Despite the unprecedented achievements of Operation Iraqi Freedom, both in terms of a mission accomplished and the relatively few coalition casualties, American lives were lost. More than 100 U.S. soldiers, who volunteered to trade the comforts of family and home for a desert battlefield halfway around the world, will not see the fruits of their sacrifice. They join those brave souls throughout our history who died for freedom's cause. As we salute the members of our Armed Forces for a job well done, we pay solemn tribute to all those whose ultimate sacrifice helped make victory in Iraq possible.

Moreover, Mr. President, as we honor the collective sacrifice by all our military men and women, we remember our fallen heroes as individuals. We recall the lives and legacy of those who died to protect us. Each name represents a life—a mother, a father, a sister, a brother, a son, a daughter, a husband, a wife. Each leaves behind someone who was touched by their goodness and sustained by their love. Each has a story that deserves to be told.

I would like to take a few moments to recall those fallen heroes from my home State of Illinois. Seven young men from various parts of my State have lost their lives in Operation Iraqi Freedom.

Marine Captain Ryan Beaupre from St. Anne, IL, age 30, died piloting a helicopter that crashed a few miles from the Iraqi border. Ryan was an honor student and athlete at Bishop McNamara High School and received a bachelor's degree at Illinois Wesleyan College. He left a promising career in the insurance business to serve his country and fulfill his boyhood dream of flying. Ryan lived his dream as a pilot in the 1st Marine Expeditionary Force. According to friends and relatives, Ryan was the ''boy next door''—red hair, freckles, and a wide smile. As one friend put it, Ryan ''would be anybody's friend and apparently he was.''

Marine Private Jonathan Lee Gifford from Decatur, IL, age 30, was killed in an ambush in Southern Iraq. Jonathan served in the 1st Battalion, 2nd Regiment, 2nd Marine Expeditionary Force, which suffered heavy casualties in the first days of the war. A 1991 graduate of Stephen Decatur High School, Jonathan joined the Marines in 2001, fulfilling an ambition he had harbored since he was a teenager. His loved ones say Jonathan was always for the underdog, an attitude which helped motivate his service in Iraq. He leaves behind friends and family, including a much loved four-year-old daughter.

Marine Corporal Evan James from La Harpe, IL, age 20, was killed trying to cross a canal in southeastern Iraq. CPL James, a recent graduate from La Harpe High School, served with the 6th Engineering Support Battalion based in Peoria, Illinois. Prior to being called to active duty, Evan had been studying at Southern Illinois University to be a physical fitness trainer. According to those who knew him best, Evan was an incredibly giving young man. As one high school friend said, ''Evan was an all-American boy. He would do anything for his country, for his school, for his friends.''

Marine Corporal Brian Matthew Kennedy from Glenview, IL, age 25, was killed when his helicopter crashed south of Iraq. Brian attended Glenbrook South High School in Glenview, where his grit and determination enabled him to be a successful starting offensive lineman for the football team at a mere 170 pounds. That same determination served Brian well throughout his all too brief life. Brian's friends and family describe him as an extraordinarily conscientious young man with a firmly positive outlook on life. As a member of the 3d Marine Aircraft Wing, Corporal Kennedy was the quintessential marine: He took pride in everything he did and met life's challenges with skill and determination.

Army Specialist Brandon Rowe from Roscoe, IL, age 20, was killed in an ambush near the Iraqi city of Najaf. A recent graduate of Hononegah High School, Brandon was the youngest of four siblings. Shortly after his high school graduation, Brandon joined the 101st Airborne Division based in Campbell, KY. Gifted with thoughtfulness and humor, Army SP Rowe was known for using wit and laughter to put others at ease. Brandon's family said he genuinely believed in his mission and knew his service would help liberate oppressed Iraqis.

Staff Sergeant Lincoln Hollinsaid from Malden, IL, age 27, was killed by enemy fire as he led his unit into combat. A soldier in the 11th Engineer Battalion, Lincoln joined the Army in 1995, shortly after graduating from Princeton High School in Malden. Lincoln's father has said his son loved two things: the military and the outdoors. When he wasn't marching for the Army, he was marching through the mountains, hunting and fishing. Never one to shy from duty, SSG Hollinsaid had transferred to a new military unit prior to the war to improve his chances for combat.

First Sergeant Edward Smith, age 38, grew up in Chicago. He died from wounds suffered in battle. Edward had been serving as a reserve police officer in Anaheim, CA before being called to active duty as a member of the 1st Marine Division. Edward's wife Sandy described her husband this way: ''He was an unbelievable man. He had such a good heart. He cared about people. He was just the best man I've ever known.'' Edward leaves behind a loving wife and three young children.

Mr. President, these young individuals were ordinary men who lived extraordinary lives of service to America and the cause of freedom. They had many promising years ahead of them, and they leave behind family and friends who will miss them dearly. As we mourn their loss, we honor their sacrifice. On behalf of the Senate and the proud state of Illinois, I salute these fine young men and all the other soldiers killed in combat, and wish their loved ones comfort, peace, and peace of mind. To them I say on behalf of our country: Your loved ones were truly heroes. Their bravery and dedication will live in our memories for all time.●

EINAR V. DYHRKOPP POST OFFICE

● Mr. DURBIN. Mr. President, on May 8, 2003, John F. Potter, Postmaster General of the United States will formally designate and rededicate the post office in Shawneetown, IL in honor of Einar V. Dyhrkopp. This public distinction will recognize the exemplary contributions of Einar Dyhrkopp in his decade of service as a member of the Postal Service Board of Governors. This is certainly a fitting way to publicly express our gratitude to Governor Dyhrkopp for his commitment and dedication to the Postal Service by naming the post office in his hometown in his honor.

Governor Dyhrkopp was appointed a Governor to the U.S. Postal Service Board of Governors by President William J. Clinton on November 24, 1993. He served in this capacity with distinction until December 2002. During his tenure, he served as a member of the Capital Projects and Compensation Committees; Chairman of the Audit and Finance Committee; Vice Chairman; and Chairman of the Board of Governors for two terms.

Among the accomplishments of the Postal Service during his period of service was an unprecedented 5 straight years of positive net income for the Postal Service. In addition, the Postal Service improved performance to the point where 94 percent of first-class mail destined for next-day delivery received overnight service through most of the country. Also, the Postal Service achieved breakthroughs in productivity which allowed the Postal Service to reduce its workforce through attrition. Finally, the Postal Service created a comprehensive Transformation Plan, proposing a new business model that would maintain universal service and strengthen the mail system.

Governor Dyhrkopp is President of Tecumseh International Corporation, a coal marketing firm. Recently, he retired from an active banking career after nearly 35 years of service. Dyhrkopp's interests extend to agriculture, and he has been a livestock and grain farmer. In addition, Governor Dyhrkopp has initiated land development and managed a construction company specializing in commercial and housing building. For 22 years, he was chief executive officer and partner of a southern Illinois manufacturing firm specializing in electronic cabinetry for leading American firms.

A former mayor of Shawneetown, Governor Dyhrkopp has served on several State of Illinois commissions, most recently the Commission on the Future of Afro-American Males. Dyhrkopp is also a member of the Regional Advisory Board of the Southern Illinois University Public Policy Institute.

During World War II, Governor Dyhrkopp served in the Navy on the destroyer-minelayer U.S.S. Aaron Ward, DM 34, which endured major suicide plane damage at the Battle of Okinawa.

Governor Dyhrkopp is married to Francis Lambert Saunders and they are the parents of one son and three grandchildren. In addition to his rewarding family life, Einar is a member of the American Legion, the Masonic Lodge, the Scottish Rites Bodies, the Shrine, and the Veterans of Foreign Wars.

Governor Dyhrkopp's contributions to the United States Postal Service and the Shawneetown community deserve special and lasting recognition. I have admired his dedication and appreciated his friendship.

In the words of my friend Senator Paul Simon, ''Einar Dyhrkopp represents responsible citizenship at its best. He has aided his community and provided leadership on the State and national scene. He has gone out of his way to help those who need assistance.''

Establishing the Einar V. Dyhrkopp Post Office in Shawneetown, IL, will ensure that Governor Dyhrkopp's exemplary service to his community and Nation is properly and publicly acknowledged.●

PERIODIC REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO SUDAN—PM 30

Under the authority of the order of the Senate of January 7, 2003, the Secretary of the Senate, on May 5, 2003, during the adjournment of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1703(c), I am providing herewith a 6-month periodic report prepared by my Administration on the national emergency with respect to Sudan that was declared in Executive Order 13067 of November 3, 1997.

GEORGE W. BUSH.

THE WHITE HOUSE, *May 2, 2003.*

MESSAGE FROM THE HOUSE

At 4:17 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. 1298. An act to provide assistance to foreign countries to combat HIV/AIDS, tuberculosis, and malaria, and for other purposes.

ENROLLED BILL SIGNED

The following enrolled bill, previously signed by the Speaker of the House, was signed on May 1, 2003, by the President pro tempore (Mr. STEVENS).

S. 162. An act to provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian community, and for other purposes.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 1298. An act to provide assistance to foreign countries to combat HIV/AIDS, tuberculosis, and malaria, and for other purposes.

H.R. 6. An act to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on May 2, 2003, she had presented to the President of the United States the following enrolled bill:

S. 162. An act to provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian community, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–2089. A communication from the Director, Office of Workforce Relations, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''5 CFR Part 792, Subpart B Agency Use of Appropriated Funds for Child Care Costs for Lower-Income Employees'' received on April 11, 2003; to the Committee on Governmental Affairs.

EC–2090. A communication from the Assistant Secretary for Administration, Chief Financial Officer, Department of Commerce, transmitting, pursuant to law, the yearly report to Congress of functions performed by the Agency that are not inherently governmental, received on April 11, 2003; to the Committee on Governmental Affairs.

EC–2092. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the Annual Report of the Federal Maritime Commission for the calendar year 2002; to the Committee on Governmental Affairs.

EC–2093. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–53 ''Closing of a Portion of a Public Alley in Square 66 S.O. 02–2491, Act of 2003'' received on April 11, 2003; to the Committee on Governmental Affairs.

EC–2094. A communication from the Chairman, Tennessee Valley Authority, transmitting, pursuant to law, the report on the Tennessee Valley Authority covering Calendar Year 2002, received on April 11, 2003; to the Committee on Governmental Affairs.

EC–2095. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the Federal Maritime Commission's Final Annual Performance Plan for FY 2004, received on April 16, 2003; to the Committee on Governmental Affairs.

EC–2096. A communication from the General Counsel, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a vacancy for the position of Deputy Director for the Office of Management and Budget, received on April 22, 2003; to the Committee on Governmental Affairs.

EC–2097. A communication from the General Counsel, Office of Management and Budget, transmitting, pursuant to law, the report of a nomination confirmed for the position of Comptroller, Office of Management and Budget, Office of Federal Financial Management, received on April 22, 2003; to the Committee on Governmental Affairs.

EC–2098. A communication from the Staff Director, Commission on Civil Rights, transmitting, pursuant to law, the Fiscal Year 2002 Government Performance and Results Act Report, received on April 16, 2003; to the Committee on Governmental Affairs.

EC–2099. A communication from the Attorney General, transmitting, pursuant to law, the report entitled ''Fiscal Year 2002 Performance Report, Fiscal Year 2003 Revised Final Performance Plan, and Fiscal Year 2004 Performance Plan for the Department of Justice'' received on April 22, 2003; to the Committee on Governmental Affairs.

EC–2100. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report concerning Cuban emigration policies, received on April 28, 2003; to the Committee on Finance.

EC–2101. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Annual Report of Child Welfare Outcomes 2000, received on April 2, 2003; to the Committee on Finance.

EC–2102. A communication from the Assistant Secretary, Fish and Wildlife and Parks, National Park Service, transmitting, pursuant to law, the report of a rule entitled ''Personal Watercraft Use at Lake Mead National Recreation Area (1024–AC91)'' received on April 16, 2003; to the Committee on Energy and Natural Resources.

EC–2103. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Maryland Regulatory Program (MD–049–FOR)'' received on April 28, 2003; to the Committee on Energy and Natural Resources.

EC–2104. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Pennsylvania Regulatory Program (SATS PA–139–FOR)'' received on April 16, 2003; to the Committee on Energy and Natural Resources.

EC–2105. A communication from the Acting Director, Human Resources Management, Department of Energy, transmitting, pursuant to law, the report of a vacancy and the Designation of Acting Officer for the position of Assistant Secretary for Congressional & Intergovernmental Affairs, Department of Energy, received on April 11, 2003; to the Committee on Energy and Natural Resources.

EC–2106. A communication from the Acting Director, Human Resources Management, Department of Energy, transmitting, pursuant to law, the report of a change in previously submitted reported information and the Designation of an Acting Officer for the Position of Assistant Secretary for Congressional Affair & Intergovernmental Affairs, received on April 11, 2003; to the Committee on Energy and Natural Resources.

EC–2107. A communication from the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Standards for Business Practices of Interstate Natural Gas Pipelines (Order No. 587–R, Docket RM 96–1–024)'' received on April 11, 2003; to the Committee on Energy and Natural Resources.

EC–2108. A communication from the Assistant Secretary, Land and Minerals Management, Regulatory Affairs, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Application Procedures (1004–AD34)'' received on April 16, 2003; to the Committee on Energy and Natural Resources.

EC–2109. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tuberculosis in Cattle and Bison; State Designations; California'' received on April 28, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2110. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pyraflufen-ethyl; Pesticide Tolerance (FRL 7300–9)'' received on April 23, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2111. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bifenthrin; Pesticide Tolerance (FRL 7304–4)'' received on April 23, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2112. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''a-Hydro-w-Hydroxpoly (oxyethylene) C8–C18–Alkyl Ether Citrates, Poly (oxyethlene) content is 4–12 moles Tolerance Exemption (FRL 7290–8)'' received on April 23, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2113. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Mefenpry-Diethyl; Pesticide Tolerance (FRL 7297–9)'' received on April 23, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2114. A communication from the Director, Office of the White House Liaison, transmitting, pursuant to law, the report of a Designation of an Acting Officer for the position of Assistant Secretary, Department of Education, Office of Elementary and Secondary Education, received on April 11, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2115. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single Employer Plans; allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' received on April 16, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2116. A communication from the Director, Regulations Policy and Management, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''New Animal Drugs; Phenylbutazone; Extralabel Animal Drug Use; Order of Prohibition; CORRECTION (Doc. No. 03N–0024)''; to the Committee on Health, Education, Labor, and Pensions.

EC–2117. A communication from the Director, Regulations Policy and Management, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Labeling Requirements for Systemic Antibacterial Drug Products Intended for Human Use; CORRECTION (RIN 0910–AB78) (Doc. No. 00N–1463)'' received on April 16, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2118. A communication from the Assistant Secretary of Labor, Employment and Training Administration, transmitting, pursuant to law, the report of a rule entitled ''Disaster Unemployment Assistance Program, Final Rule'' received on April 22, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2119. A communication from the Administrator, Office of Workforce Security, Employment and Training Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Unemployment Insurance Program Letter 22–87, Change 2'' received on April 22, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2120. A communication from the Acting Assistant General, Regulations, Office of the General Counsel, Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Rehabilitative Engineering Research Centers Program'' received on April 28, 2003; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of May 1, 2003, the following reports of committees were submitted on May 2, 2003:

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 824. A bill to reauthorize the Federal Aviation Administration, and for other purposes (Rept. No. 108–41).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GRASSLEY, from the Committee on Finance, without amendment:

S. 753. A bill to amend the Internal Revenue Code of 1986 to provide for the modernization of the United States Tax Court, and for other purposes (Rept. No. 108–42).

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. REID:

S. 986. A bill to designate Colombia under section 244 of the Immigration and Nationality Act in order to make nationals of Colombia eligible for temporary protected status under such section; to the Committee on the Judiciary.

By Mr. DORGAN (for himself and Mr. BURNS):

S. 987. A bill to amend title XVIII of the Social Security Act to provide for national standardized payment amounts for inpatient hospital services furnished under the medicare program and to make other rural health care improvements; to the Committee on Finance.

By Mr. COLEMAN:

S. 988. A bill to amend the Workforce Investment Act of 1998 to provide for a job training grant pilot program; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ENZI:

S. 989. A bill to provide death and disability benefits for aerial firefighters who work on a contract basis for a public agency and suffer death or disability in the line of duty, and for other purposes; to the Committee on the Judiciary.

By Ms. LANDRIEU:

S. 990. A bill to amend title 32, United States Code, to increase the maximum Federal share of the costs of State programs under the National Guard Challenge Program, and for other purposes; to the Committee on Armed Services.

By Mr. INOUYE:

S. 991. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work at certain medicare providers, and for other purposes; to the Committee on Finance.

By Mr. NICKLES (for himself, Mr. CONRAD, and Mr. BUNNING):

S. 992. A bill to amend the Internal Revenue Code of 1986 to repeal the provision taxing policyholder dividends of mutual life insurance companies and to repeal the policyholders surplus account provisions; to the Committee on Finance.

By Mr. SMITH:

S. 993. A bill to amend the Small Reclamation Projects Act of 1956, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. INHOFE (for himself and Mr. MILLER):

S. 994. A bill to protect human health and the environment from the release of hazardous substances by acts of terrorism; to the Committee on Environment and Public Works.

By Mr. LEAHY:

S. 995. A bill to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to improve certain child nutritional programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

ADDITIONAL COSPONSORS

S. 113

At the request of Mr. KYL, the names of the Senator from Delaware (Mr. BIDEN), the Senator from Texas (Mr. CORNYN) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 113, a bill to exclude United States persons from the definition of ''foreign power'' under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism.

S. 146

At the request of Mr. DEWINE, the names of the Senator from Utah (Mr. HATCH), the Senator from Alabama (Mr. SHELBY), the Senator from Missouri (Mr. TALENT) and the Senator from Arizona (Mr. KYL) were added as

cosponsors of S. 146, a bill to amend titles 10 and 18, United States Code, to protect unborn victims of violence.

S. 215

At the request of Mrs. FEINSTEIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 215, a bill to authorize funding assistance for the States for the discharge of homeland security activities by the National Guard.

S. 271

At the request of Mr. SMITH, the names of the Senator from Delaware (Mr. CARPER) and the Senator from Missouri (Mr . BOND) were added as cosponsors of S. 271, a bill to amend the Internal Revenue Code of 1986 to allow an additional advance refunding of bonds originally issued to finance governmental facilities used for essential governmental functions.

S. 349

At the request of Mrs. FEINSTEIN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 349, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 401

At the request of Ms. LANDRIEU, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 401, a bill to amend title 10, United States Code, to increase to parity with other surviving spouses the basic annuity that is provided under the uniformed services Survivor Benefit Plan for surviving spouses who are at least 62 years of age; and for other purposes.

S. 445

At the request of Ms. LANDRIEU, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 445, a bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service.

S. 447

At the request of Ms. LANDRIEU, the names of the Senator from Florida (Mr. NELSON), the Senator from Vermont (Mr. LEAHY) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 447, a bill to amend the Higher Education Act of 1965 to require institutions of higher education to preserve the educational status and financial resources of military personnel called to active duty.

S. 493

At the request of Mrs. LINCOLN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 493, a bill to amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat medicare beneficiaries without a requirement for a physician referral, and for other purposes.

S. 518

At the request of Ms. COLLINS, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Illinois (Mr. FITZGERALD) were added as cosponsors of S. 518, a bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy.

S. 564

At the request of Ms. LANDRIEU, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 564, a bill to facilitate the deployment of wireless telecommunications networks in order to further the availability of the Emergency Alert System, and for other purposes.

S. 595

At the request of Mr. HATCH, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. 595, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financings to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 605

At the request of Mr. SMITH, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 605, a bill to extend waivers under the temporary assistance to needy families program through the end of fiscal year 2008.

S. 622

At the request of Mr. GRASSLEY, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 622, a bill to amend title XIX of the Social Security Act to provide families of disabled children with the opportunity to purchase coverage under the medicaid program for such children, and for other purposes.

S. 700

At the request of Mr. CAMPBELL, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 700, a bill to provide for the promotion of democracy, human rights, and rule of law in the Republic of Belarus and for the consolidation and strengthening of Belarus sovereignty and independence.

S. 716

At the request of Ms. LANDRIEU, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 716, a bill to amend the Federal Power Act to improve the electricity transmission system of the United States.

S. 774

At the request of Ms. SNOWE, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 774, a bill to amend the Internal Revenue Code of 1986 to allow the use of completed contract method of accounting in the case of certain long-term naval vessel construction contracts.

S. 786

At the request of Mr. BINGAMAN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 786, a bill to amend the temporary assistance to needy families program under part A of title IV of the Social Security Act to provide grants for transitional jobs programs, and for other purposes.

S. 823

At the request of Mr. SANTORUM, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 823, a bill to amend title XVIII of the Social Security Act to provide for the expeditious coverage of new medical technology under the medicare program, and for other purposes.

S. 838

At the request of Ms. COLLINS, the names of the Senator from Minnesota (Mr. DAYTON) and the Senator from New Hampshire (Mr. SUNUNU) were added as cosponsors of S. 838, a bill to waive the limitation on the use of funds appropriated for the Homeland Security Grant Program.

S. 865

At the request of Mr. MCCAIN, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 865, a bill to amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users.

S. 875

At the request of Mr. KERRY, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 875, a bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes.

S. 903

At the request of Ms. LANDRIEU, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 903, a bill to amend the Internal Revenue Code of 1986 to allow employers in renewal communities to qualify for the renewal community employment credit by employing residents of certain other renewal communities.

S. 922

At the request of Mr. REID, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 922, a bill to change the requirements for naturalization through service in the Armed Forces of the United States, to extend naturalization benefits to members of the Selected Reserve of the Ready Reserve of a reserve component of the Armed Forces, to extend posthumous benefits to surviving spouses, children, and parents, and for other purposes.

S. 950

At the request of Mr. ENZI, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S.

950, a bill to allow travel between the United States and Cuba.

S. 979

At the request of Mr. ENSIGN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 979, a bill to direct the Securities and Exchange Commission to require enhanced disclosures of employee stock options, to require a study on the economic impact of broad-based employee stock option plans, and for other purposes.

S. 982

At the request of Mrs. BOXER, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 985

At the request of Mr. DODD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S.J. RES. 4

At the request of Mrs. DOLE, her name was added as a cosponsor of S.J. Res. 4, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

S. CON. RES. 25

At the request of Mr. VOINOVICH, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. Con. Res. 25, a concurrent resolution recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month'', and for other purposes.

INTRODUCED BILLS AND JOINT RESOLUTIONS—MAY 1, 2003

By Mr. HARKIN (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. COCHRAN, Mr. BIDEN, Ms. LANDRIEU, Mr. KERRY, Mr. CORZINE, Mr. SCHUMER, Mrs. CLINTON, and Mr. DAYTON):

S. 971. A bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes; to the Committee on Finance.

S. 971

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicaid Community-Based Attendant Services and Supports Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Long-term services and supports provided under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) must meet the ability and life choices of individuals with disabilities and older Americans, including the choice to live in one's own home or with one's own family and to become a productive member of the community.

(2) Research on the provision of long-term services and supports under the medicaid program (conducted by and on behalf of the Department of Health and Human Services) has revealed a significant funding bias toward institutional care. Only about 27 percent of long term care funds expended under the medicaid program, and only about 9 percent of all funds expended under that program, pay for services and supports in home and community-based settings.

(3) In the case of medicaid beneficiaries who need long term care, the only long-term care service currently guaranteed by Federal law in every State is nursing home care. Only 27 States have adopted the benefit option of providing personal care services under the medicaid program. Although every State has chosen to provide certain services under home and community-based waivers, these services are unevenly available within and across States, and reach a small percentage of eligible individuals. In fiscal year 2000, only 3 States spent 50 percent or more of their medicaid long term care funds under the medicaid program on home and community-based care.

(4) Despite the funding bias and the uneven distribution of home and community-based services, 2½ times more people are served in home and community-based settings than in institutional settings.

(5) The goals of the Nation properly include providing families of children with disabilities, working-age adults with disabilities, and older Americans with—

(A) a meaningful choice of receiving long-term services and supports in the most integrated setting appropriate to their needs;

(B) the greatest possible control over the services received and, therefore, their own lives and futures; and

(C) quality services that maximize independence in the home and community, including in the workplace.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To reform the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to provide equal access to community-based attendant services and supports.

(2) To provide financial assistance to States as they reform their long-term care systems to provide comprehensive statewide long-term services and supports, including community-based attendant services and supports that provide consumer choice and direction, in the most integrated setting appropriate.

TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT

SEC. 101. COVERAGE OF COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS UNDER THE MEDICAID PROGRAM.

(a) MANDATORY COVERAGE.—Section 1902(a)(10)(D) of the Social Security Act (42 U.S.C. 1396a(a)(10)(D)) is amended—

(1) by inserting ''(i)'' after ''(D)'';

(2) by adding ''and'' after the semicolon; and

(3) by adding at the end the following new clause:

''(ii) subject to section 1935, for the inclusion of community-based attendant services and supports for any individual who—

''(I) is eligible for medical assistance under the State plan;

''(II) with respect to whom there has been a determination that the individual requires the level of care provided in a nursing facility or an intermediate care facility for the mentally retarded (whether or not coverage of such intermediate care facility is provided under the State plan); and

''(III) who chooses to receive such services and supports;''.

(b) COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—

(1) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(A) by redesignating section 1935 as section 1936; and

(B) by inserting after section 1934 the following:

''COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS

''SEC. 1935. (a) REQUIRED COVERAGE.—

''(1) IN GENERAL.—Not later than October 1, 2007, a State shall provide through a plan amendment for the inclusion of community-based attendant services and supports (as defined in subsection (g)(1)) for individuals described in section 1902(a)(10)(D)(ii) in accordance with this section.

''(2) ENHANCED FMAP AND ADDITIONAL FEDERAL FINANCIAL SUPPORT FOR EARLIER COVERAGE.—Notwithstanding section 1905(b), during the period that begins on or after October 1, 2003, and ends on September 30, 2007, in the case of a State with an approved plan amendment under this section during that period that also satisfies the requirements of subsection (c) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 2105(b) with respect to medical assistance in the form of community-based attendant services and supports provided to individuals described in section 1902(a)(10)(D)(ii) in accordance with this section.

''(b) DEVELOPMENT AND IMPLEMENTATION OF BENEFIT.—In order for a State plan amendment to be approved under this section, a State shall provide the Secretary with the following assurances:

''(1) ASSURANCE OF DEVELOPMENT AND IMPLEMENTATION COLLABORATION.—That the State has developed and shall implement the provision of community-based attendant services and supports under the State plan through active collaboration with—

''(A) individuals with disabilities;

''(B) elderly individuals;

''(C) representatives of such individuals; and

''(D) providers of, and advocates for, services and supports for such individuals.

''(2) ASSURANCE OF PROVISION ON A STATEWIDE BASIS AND IN MOST INTEGRATED SETTING.—That community-based attendant services and supports will be provided under the State plan to individuals described in section 1902(a)(10)(D)(ii) on a statewide basis and in a manner that provides such services and supports in the most integrated setting appropriate for each individual eligible for such services and supports.

''(3) ASSURANCE OF NONDISCRIMINATION.—That the State will provide community-based attendant services and supports to an individual described in section 1902(a)(10)(D)(ii) without regard to the individual's age, type of disability, or the form of community-based attendant services and supports that the individual requires in order to lead an independent life.

''(4) ASSURANCE OF MAINTENANCE OF EFFORT.—That the level of State expenditures for optional medical assistance that—

''(A) is described in a paragraph other than paragraphs (1) through (5), (17) and (21) of section 1905(a) or that is provided under a waiver under section 1915, section 1115, or otherwise; and

''(B) is provided to individuals with disabilities or elderly individuals for a fiscal year, shall not be less than the level of such expenditures for the fiscal year preceding the fiscal year in which the State plan amendment to provide community-based attendant services and supports in accordance with this section is approved.

''(c) REQUIREMENTS FOR ENHANCED FMAP FOR EARLY COVERAGE.—In addition to satisfying the other requirements for an approved plan amendment under this section, in order for a State to be eligible under subsection (a)(2) during the period described in that subsection for the enhanced FMAP for early coverage under subsection (a)(2), the State shall satisfy the following requirements:

''(1) SPECIFICATIONS.—With respect to a fiscal year, the State shall provide the Secretary with the following specifications regarding the provision of community-based attendant services and supports under the plan for that fiscal year:

''(A)(i) The number of individuals who are estimated to receive community-based attendant services and supports under the plan during the fiscal year.

''(ii) The number of individuals that received such services and supports during the preceding fiscal year.

''(B) The maximum number of individuals who will receive such services and supports under the plan during that fiscal year.

''(C) The procedures the State will implement to ensure that the models for delivery of such services and supports are consumer controlled (as defined in subsection (g)(2)(B)).

''(D) The procedures the State will implement to inform all potentially eligible individuals and relevant other individuals of the availability of such services and supports under the this title, and of other items and services that may be provided to the individual under this title or title XVIII.

''(E) The procedures the State will implement to ensure that such services and supports are provided in accordance with the requirements of subsection (b)(1).

''(F) The procedures the State will implement to actively involve individuals with disabilities, elderly individuals, and representatives of such individuals in the design, delivery, administration, and evaluation of the provision of such services and supports under this title.

''(2) PARTICIPATION IN EVALUATIONS.—The State shall provide the Secretary with such substantive input into, and participation in, the design and conduct of data collection, analyses, and other qualitative or quantitative evaluations of the provision of community-based attendant services and supports under this section as the Secretary deems necessary in order to determine the effectiveness of the provision of such services and supports in allowing the individuals receiving such services and supports to lead an independent life to the maximum extent possible.

''(d) QUALITY ASSURANCE PROGRAM.—

''(1) STATE RESPONSIBILITIES.—In order for a State plan amendment to be approved under this section, a State shall establish and maintain a quality assurance program with respect to community-based attendant services and supports that provides for the following:

''(A) The State shall establish requirements, as appropriate, for agency-based and other delivery models that include—

''(i) minimum qualifications and training requirements for agency-based and other models;

''(ii) financial operating standards; and

''(iii) an appeals procedure for eligibility denials and a procedure for resolving disagreements over the terms of an individualized plan.

''(B) The State shall modify the quality assurance program, as appropriate, to maximize consumer independence and consumer control in both agency-provided and other delivery models.

''(C) The State shall provide a system that allows for the external monitoring of the quality of services and supports by entities consisting of consumers and their representatives, disability organizations, providers, families of disabled or elderly individuals, members of the community, and others.

''(D) The State shall provide for ongoing monitoring of the health and well-being of each individual who receives community-based attendant services and supports.

''(E) The State shall require that quality assurance mechanisms appropriate for the individual be included in the individual's written plan.

''(F) The State shall establish a process for the mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation in connection with the provision of such services and supports.

''(G) The State shall obtain meaningful consumer input, including consumer surveys, that measure the extent to which an individual receives the services and supports described in the individual's plan and the individual's satisfaction with such services and supports.

''(H) The State shall make available to the public the findings of the quality assurance program.

''(I) The State shall establish an ongoing public process for the development, implementation, and review of the State's quality assurance program.

''(J) The State shall develop and implement a program of sanctions for providers of community-based services and supports that violate the terms or conditions for the provision of such services and supports.

''(2) FEDERAL RESPONSIBILITIES.—

''(A) PERIODIC EVALUATIONS.—The Secretary shall conduct a periodic sample review of outcomes for individuals who receive community-based attendant services and supports under this title.

''(B) INVESTIGATIONS.—The Secretary may conduct targeted reviews and investigations upon receipt of an allegation of neglect, abuse, or exploitation of an individual receiving community-based attendant services and supports under this section.

''(C) DEVELOPMENT OF PROVIDER SANCTION GUIDELINES.—The Secretary shall develop guidelines for States to use in developing the sanctions required under paragraph (1)(J).

''(e) REPORTS.—The Secretary shall submit to Congress periodic reports on the provision of community-based attendant services and supports under this section, particularly with respect to the impact of the provision of such services and supports on—

''(1) individuals eligible for medical assistance under this title;

''(2) States; and

''(3) the Federal Government.

''(f) NO EFFECT ON ABILITY TO PROVIDE COVERAGE UNDER A WAIVER.—

''(1) IN GENERAL.—Nothing in this section shall be construed as affecting the ability of a State to provide coverage under the State plan for community-based attendant services and supports (or similar coverage) under a waiver approved under section 1915, section 1115, or otherwise.

''(2) ELIGIBILITY FOR ENHANCED MATCH.—In the case of a State that provides coverage for such services and supports under a waiver, the State shall not be eligible under subsection (a)(2) for the enhanced FMAP for the early provision of such coverage unless the State submits a plan amendment to the Secretary that meets the requirements of this section.

''(g) DEFINITIONS.—In this title:

''(1) COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—

''(A) IN GENERAL.—The term 'community-based attendant services and supports' means attendant services and supports furnished to an individual, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions through hands-on assistance, supervision, or cueing—

''(i) under a plan of services and supports that is based on an assessment of functional need and that is agreed to by the individual or, as appropriate, the individual's representative;

''(ii) in a home or community setting, which may include a school, workplace, or recreation or religious facility, but does not include a nursing facility or an intermediate care facility for the mentally retarded;

''(iii) under an agency-provider model or other model (as defined in paragraph (2)(C)); and

''(iv) the furnishing of which is selected, managed, and dismissed by the individual, or, as appropriate, with assistance from the individual's representative.

''(B) INCLUDED SERVICES AND SUPPORTS.—Such term includes—

''(i) tasks necessary to assist an individual in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions;

''(ii) the acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish activities of daily living, instrumental activities of daily living, and health-related functions;

''(iii) backup systems or mechanisms (such as the use of beepers) to ensure continuity of services and supports; and

''(iv) voluntary training on how to select, manage, and dismiss attendants.

''(C) EXCLUDED SERVICES AND SUPPORTS.—Subject to subparagraph (D), such term does not include—

''(i) the provision of room and board for the individual;

''(ii) special education and related services provided under the Individuals with Disabilities Education Act and vocational rehabilitation services provided under the Rehabilitation Act of 1973;

''(iii) assistive technology devices and assistive technology services;

''(iv) durable medical equipment; or

''(v) home modifications.

''(D) FLEXIBILITY IN TRANSITION TO COMMUNITY-BASED HOME SETTING.—Such term may include expenditures for transitional costs, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides.

''(2) ADDITIONAL DEFINITIONS.—

''(A) ACTIVITIES OF DAILY LIVING.—The term 'activities of daily living' includes eating, toileting, grooming, dressing, bathing, and transferring.

''(B) CONSUMER CONTROLLED.—The term 'consumer controlled' means a method of providing services and supports that allow the individual, or where appropriate, the individual's representative, maximum control of the community-based attendant services and supports, regardless of who acts as the employer of record.

''(C) DELIVERY MODELS.—

''(i) AGENCY-PROVIDER MODEL.—The term 'agency-provider model' means, with respect to the provision of community-based attendant services and supports for an individual, a method of providing consumer controlled services and supports under which entities contract for the provision of such services and supports.

''(ii) OTHER MODELS.—The term 'other models' means methods, other than an agency-provider model, for the provision of consumer controlled services and supports. Such models may include the provision of vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.

''(D) HEALTH-RELATED FUNCTIONS.—The term 'health-related functions' means functions that can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

''(E) INSTRUMENTAL ACTIVITIES OF DAILY LIVING.—The term 'instrumental activities of daily living' includes meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone and other media, and traveling around and participating in the community.

''(F) INDIVIDUAL'S REPRESENTATIVE.—The term 'individual's representative' means a parent, a family member, a guardian, an advocate, or an authorized representative of an individual.''.

(c) CONFORMING AMENDMENTS.—

(1) MANDATORY BENEFIT.—Section 1902(a)(10)(A) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)) is amended, in the matter preceding clause (i), by striking ''(17) and (21)'' and inserting ''(17), (21), and (27)''.

(2) DEFINITION OF MEDICAL ASSISTANCE.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) by striking ''and'' at the end of paragraph (26);

(B) by redesignating paragraph (27) as paragraph (28); and

(C) by inserting after paragraph (26) the following:

''(27) community-based attendant services and supports (to the extent allowed and as defined in section 1935); and''.

(3) IMD/ICFMR REQUIREMENTS.—Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting ''and (27)'' after ''(24)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section (other than the amendment made by subsection (c)(1)) take effect on October 1, 2003, and apply to medical assistance provided for community-based attendant services and supports described in section 1935 of the Social Security Act furnished on or after that date.

(2) MANDATORY BENEFIT.—The amendment made by subsection (c)(1) takes effect on October 1, 2007.

SEC. 102. ENHANCED FMAP FOR ONGOING ACTIVITIES OF EARLY COVERAGE STATES THAT ENHANCE AND PROMOTE THE USE OF COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.

(a) IN GENERAL.—Section 1935 of the Social Security Act, as added by section 101(b), is amended—

(1) by redesignating subsections (d) through (g) as subsections (f) through (i), respectively;

(2) in subsection (a)(1), by striking ''subsection (g)(1)'' and inserting ''subsection (i)(1)'';

(3) in subsection (a)(2), by inserting '', and with respect to expenditures described in subsection (d), the Secretary shall pay the State the amount described in subsection (d)(1)'' before the period;

(4) in subsection (c)(1)(C), by striking ''subsection (g)(2)(B)'' and inserting ''subsection (i)(2)(B)''; and

(5) by inserting after subsection (c), the following:

''(d) INCREASED FEDERAL FINANCIAL PARTICIPATION FOR EARLY COVERAGE STATES THAT MEET CERTAIN BENCHMARKS.—

''(1) IN GENERAL.—Subject to paragraph (2), for purposes of subsection (a)(2), the amount and expenditures described in this subsection are an amount equal to the Federal medical assistance percentage, increased by 10 percentage points, of the expenditures incurred by the State for the provision or conduct of the services or activities described in paragraph (3).

''(2) EXPENDITURE CRITERIA.—A State shall—

''(A) develop criteria for determining the expenditures described in paragraph (1) in collaboration with the individuals and representatives described in subsection (b)(1); and

''(B) submit such criteria for approval by the Secretary.

''(3) SERVICES AND ACTIVITIES DESCRIBED.—For purposes of paragraph (1), the services and activities described in this subparagraph are the following:

''(A) One-stop intake, referral, and institutional diversion services.

''(B) Identifying and remedying gaps and inequities in the State's current provision of long-term services, particularly those services that are provided based on such factors as age, disability type, ethnicity, income, institutional bias, or other similar factors.

''(C) Establishment of consumer participation and consumer governance mechanisms, such as cooperatives and regional service authorities, that are managed and controlled by individuals with significant disabilities who use community-based services and supports or their representatives.

''(D) Activities designed to enhance the skills, earnings, benefits, supply, career, and future prospects of workers who provide community-based attendant services and supports.

''(E) Continuous improvement activities that are designed to ensure and enhance the health and well-being of individuals who rely on community-based attendant services and supports, particularly activities involving or initiated by consumers of such services and supports or their representatives.

''(F) Family support services to augment the efforts of families and friends to enable individuals with disabilities of all ages to live in their own homes and communities.

''(G) Health promotion and wellness services and activities.

''(H) Provider recruitment and enhancement activities, particularly such activities that encourage the development and maintenance of consumer controlled cooperatives or other small businesses or microenterprises that provide community-based attendant services and supports or related services.

''(I) Activities designed to ensure service and systems coordination.

''(J) Any other services or activities that the Secretary deems appropriate.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2003.

SEC. 103. INCREASED FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN EXPENDITURES.

(a) IN GENERAL.—Section 1935 of the Social Security Act, as added by section 101(b) and amended by section 102, is amended by inserting after subsection (d) the following:

''(e) INCREASED FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN EXPENDITURES.—

''(1) ELIGIBILITY FOR PAYMENT.—

''(A) IN GENERAL.—In the case of a State that the Secretary determines satisfies the requirements of subparagraph (B), the Secretary shall pay the State the amounts described in paragraph (2) in addition to any other payments provided for under section 1903 or this section for the provision of community-based attendant services and supports.

''(B) REQUIREMENTS.—The requirements of this subparagraph are the following:

''(i) The State has an approved plan amendment under this section.

''(ii) The State has incurred expenditures described in paragraph (2).

''(iii) The State develops and submits to the Secretary criteria to identify and select such expenditures in accordance with the requirements of paragraph (3).

''(iv) The Secretary determines that payment of the applicable percentage of such expenditures (as determined under paragraph (2)(B)) would enable the State to provide a meaningful choice of receiving community-based services and supports to individuals with disabilities and elderly individuals who would otherwise only have the option of receiving institutional care.

''(2) AMOUNTS AND EXPENDITURES DESCRIBED.—

''(A) EXPENDITURES IN EXCESS OF 150 PERCENT OF BASELINE AMOUNT.—The amounts and expenditures described in this paragraph are an amount equal to the applicable percentage, as determined by the Secretary in accordance with subparagraph (B), of the expenditures incurred by the State for the provision of community-based attendant services and supports to an individual that exceed 150 percent of the average cost of providing nursing facility services to an individual who resides in the State and is eligible for such services under this title, as determined in accordance with criteria established by the Secretary.

''(B) APPLICABLE PERCENTAGE.—The Secretary shall establish a payment scale for the expenditures described in subparagraph (A) so that the Federal financial participation for such expenditures gradually increases from 70 percent to 90 percent as such expenditures increase.

''(3) SPECIFICATION OF ORDER OF SELECTION FOR EXPENDITURES.—In order to receive the amounts described in paragraph (2), a State shall—

''(A) develop, in collaboration with the individuals and representatives described in subsection (b)(1) and pursuant to guidelines established by the Secretary, criteria to identify and select the expenditures submitted under that paragraph; and

''(B) submit such criteria to the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2003.

TITLE II—PROMOTION OF SYSTEMS CHANGE AND CAPACITY BUILDING

SEC. 201. GRANTS TO PROMOTE SYSTEMS CHANGE AND CAPACITY BUILDING.

(a) AUTHORITY TO AWARD GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall award grants to eligible States to carry out the activities described in subsection (b).

(2) APPLICATION.—In order to be eligible for a grant under this section, a State shall submit to the Secretary an application in such form and manner, and that contains such information, as the Secretary may require.

(b) PERMISSIBLE ACTIVITIES.—A State that receives a grant under this section may use funds provided under the grant for any of the following activities, focusing on areas of need identified by the State and the Consumer Task Force established under subsection (c):

(1) The development and implementation of the provision of community-based attendant services and supports under section 1935 of the Social Security Act (as added by section 101(b) and amended by sections 102 and 103) through active collaboration with—

(A) individuals with disabilities;

(B) elderly individuals;

(C) representatives of such individuals; and

(D) providers of, and advocates for, services and supports for such individuals.

(2) Substantially involving individuals with significant disabilities and representatives of such individuals in jointly developing, implementing, and continually improving a mutually acceptable comprehensive, effectively working statewide plan for preventing and alleviating unnecessary institutionalization of such individuals.

(3) Engaging in system change and other activities deemed necessary to achieve any or all of the goals of such statewide plan.

(4) Identifying and remedying disparities and gaps in services to classes of individuals with disabilities and elderly individuals who are currently experiencing or who face substantial risk of unnecessary institutionalization.

(5) Building and expanding system capacity to offer quality consumer controlled community-based services and supports to individuals with disabilities and elderly individuals, including by—

(A) seeding the development and effective use of community-based attendant services and supports cooperatives, independent living centers, small businesses, microenterprises and similar joint ventures owned and controlled by individuals with disabilities or representatives of such individuals and community-based attendant services and supports workers;

(B) enhancing the choice and control individuals with disabilities and elderly individuals exercise, including through their representatives, with respect to the personal assistance and supports they rely upon to lead independent, self-directed lives;

(C) enhancing the skills, earnings, benefits, supply, career, and future prospects of workers who provide community-based attendant services and supports;

(D) engaging in a variety of needs assessment and data gathering;

(E) developing strategies for modifying policies, practices, and procedures that result in unnecessary institutional bias or the overmedicalization of long-term services and supports;

(F) engaging in interagency coordination and single point of entry activities;

(G) providing training and technical assistance with respect to the provision of community-based attendant services and supports;

(H) engaging in—

(i) public awareness campaigns;

(ii) facility-to-community transitional activities; and

(iii) demonstrations of new approaches; and

(I) engaging in other systems change activities necessary for developing, implementing, or evaluating a comprehensive statewide system of community-based attendant services and supports.

(6) Ensuring that the activities funded by the grant are coordinated with other efforts to increase personal attendant services and supports, including—

(A) programs funded under or amended by the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1860);

(B) grants funded under the Families of Children With Disabilities Support Act of 2000 (42 U.S.C. 15091 et seq.); and

(C) other initiatives designed to enhance the delivery of community-based services and supports to individuals with disabilities and elderly individuals.

(7) Engaging in transition partnership activities with nursing facilities and intermediate care facilities for the mentally retarded that utilize and build upon items and services provided to individuals with disabilities or elderly individuals under the medicaid program under title XIX of the Social Security Act, or by Federal, State, or local housing agencies, independent living centers, and other organizations controlled by consumers or their representatives.

(c) CONSUMER TASK FORCE.—

(1) ESTABLISHMENT AND DUTIES.—To be eligible to receive a grant under this section, each State shall establish a Consumer Task Force (referred to in this subsection as the ''Task Force'') to assist the State in the development, implementation, and evaluation of real choice systems change initiatives.

(2) APPOINTMENT.—Members of the Task Force shall be appointed by the Chief Executive Officer of the State in accordance with the requirements of paragraph (3), after the solicitation of recommendations from representatives of organizations representing a broad range of individuals with disabilities, elderly individuals, representatives of such individuals, and organizations interested in individuals with disabilities and elderly individuals.

(3) COMPOSITION.—

(A) IN GENERAL.—The Task Force shall represent a broad range of individuals with disabilities from diverse backgrounds and shall include representatives from Developmental Disabilities Councils, Mental Health Councils, State Independent Living Centers and Councils, Commissions on Aging, organizations that provide services to individuals with disabilities and consumers of long-term services and supports.

(B) INDIVIDUALS WITH DISABILITIES.—A majority of the members of the Task Force shall be individuals with disabilities or representatives of such individuals.

(C) LIMITATION.—The Task Force shall not include employees of any State agency providing services to individuals with disabilities other than employees of entities described in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.).

(d) ANNUAL REPORT.—

(1) STATES.—A State that receives a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant in such form and manner as the Secretary may require.

(2) SECRETARY.—The Secretary shall submit to Congress an annual report on the grants made under this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $50,000,000 for each of fiscal years 2004 through 2006.

(2) AVAILABILITY.—Amounts appropriated to carry out this section shall remain available without fiscal year limitation.

SEC. 202. DEMONSTRATION PROJECT TO ENHANCE COORDINATION OF CARE UNDER THE MEDICARE AND MEDICAID PROGRAMS FOR NON-ELDERLY DUAL ELIGIBLE INDIVIDUALS.

(a) DEFINITIONS.—In this section:

(1) NON-ELDERLY DUALLY ELIGIBLE INDIVIDUAL.—The term ''non-elderly dually eligible individual'' means an individual who—

(A) has not attained age 65; and

(B) is enrolled in the medicare and medicaid programs established under titles XVIII and XIX, respectively, of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.).

(2) PROJECT.—The term ''project'' means the demonstration project authorized to be conducted under this section.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) AUTHORITY TO CONDUCT PROJECT.—The Secretary shall conduct a project under this section for the purpose of evaluating service coordination and cost-sharing approaches with respect to the provision of community-based services and supports to non-elderly dually eligible individuals.

(c) REQUIREMENTS.—

(1) NUMBER OF PARTICIPANTS.—Not more than 5 States may participate in the project.

(2) APPLICATION.—A State that desires to participate in the project shall submit an application to the Secretary, at such time and in such form and manner as the Secretary shall specify.

(3) DURATION.—The project shall be conducted for at least 5, but not more than 10 years.

(d) EVALUATION AND REPORT.—

(1) EVALUATION.—Not later than 1 year prior to the termination date of the project, the Secretary, in consultation with States participating in the project, representatives of non-elderly dually eligible individuals, and others, shall evaluate the impact and effectiveness of the project.

(2) REPORT.—The Secretary shall submit a report to Congress that contains the findings of the evaluation conducted under paragraph (1) along with recommendations regarding whether the project should be extended or expanded, and any other legislative or administrative actions that the Secretary considers appropriate as a result of the project.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID:

S. 986. A bill to designate Colombia under section 244 of the Immigration and Nationality Act in order to make nationals of Colombia eligible for temporary protected status under such section; to the Committee on the Judiciary.

Mr. REID. Mr. President, amid all the discussions about reconstruction in Afghanistan and Iraq, it is easy for us

to lose sight of other humanitarian crises. One particularly pressing yet overlooked crisis is taking place right here in this hemisphere. For almost 40 years, an internal conflict has ravaged Colombia. Rebel and paramilitary groups designated as terrorist organizations by the State Department have committed thousands of kidnapings, executions and other brutalities. With an estimated combined force of 25,000 insurgents, they have disrupted life throughout the country and have displaced nearly 2 million people, creating the third largest internal refugee crisis in the world. The Colombian people are doing everything in their power to fight the rebels and rein in the paramilitaries, but the conflict shows no signs of ending anytime soon.

We should continue to help Colombia battle the terrorists in its midst. In the meantime, however, it would be unconscionable for us to forcibly deport law-abiding nationals currently residing in the United States, thereby placing them in danger of being tortured, kidnaped, or even murdered upon their return to their war-torn homeland. The bill I am introducing today will grant many of these people temporary protected status from deportation until it is safe for them to return to Colombia. The bill will not grant amnesty to any illegal aliens, nor will it place any immigrants on the path to citizenship. It is a purely humanitarian act that enjoys plenty of precedent—refugees from several Central American and African nations have benefited from temporary protected status in the wake of natural disasters and political turmoil. Immigration laws state that this protection covers only extraordinary circumstances, but we must not hesitate to invoke it when those circumstances arise. Extending temporary protected status to Colombians is the right thing to do, and I urge my colleagues to support this bill.

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. 986

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 ''Colombian Temporary Protected Status Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) Colombia has been embroiled in a 38-year internal conflict, resulting in the death of tens of thousands of civilians and combatants;

(2) the 2 main armed anti-government rebel groups, the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, or FARC) and the National Liberation Army (Ejercito de Liberacion Nacional, or ELN), have engaged in military activities in 700 of 1,098 municipalities in Colombia, and in recent years have influenced local governments in as much as 40 percent to 50 percent of Colombian territory;

(3) the FARC and ELN not only attack police and military forces but also regularly attack civilian populations, commit massacres and extrajudicial killings, collect war taxes, compel citizens into their ranks, force farmers to grow illicit crops, and regulate travel, commerce, and other activities;

(4) paramilitary groups such as the United Self-Defense Groups of Colombia (Autodefensas Unidas de Colombia or AUC), originally established to protect rural landowners, have grown dramatically in recent years to become a major national military force in Colombia;

(5) paramilitary groups are responsible, according to human rights groups, for the greatest number of extrajudicial killings and forced disappearances in Colombia since 1995;

(6) the FARC, ELN, and AUC, all designated by the State Department as foreign terrorist organizations, have an estimated combined force of 25,000 combatants;

(7) the Government of Colombia, particularly during the administration of President Andres Pastrana, has afforded armed rebel groups numerous opportunities to negotiate a peace agreement, including the extraordinary step in November 1998 of creating a safe haven for the FARC by withdrawing its security forces from 5 municipalities covering some 16,000 to 17,000 square miles;

(8) despite having been given the opportunity to seek peace, the FARC instead used the safe haven to enhance its military capability to further its violent campaign against the government and people of Colombia;

(9) while President Pastrana and the Colombian government negotiated in good faith, the FARC proceeded to kidnap political officials;

(10) in February 2002, the FARC's actions forced President Pastrana to withdraw from the peace process and begin the process of retaking the safe zone he had previously ceded to the FARC and other rebel groups;

(11) after the election of Alvaro Uribe as Colombia's President, the FARC began targeting mayors with letters declaring that they had 24 hours to leave or would be considered ''military targets'';

(12) although before the recent Presidential election the violence had been mostly contained in rural areas, it has now spread to the urban areas, with cities such as Medellin experiencing an average of 13 killings a day;

(13) an average of 2.8 rebel bombs go off every day in Colombia while bomb squads disarm another 5;

(14) the middle and upper classes have been targeted for kidnaping, with an average of 3,250 Colombians being kidnaped each year since 1998;

(15) between 1,500,000 and 2,000,000 people have been forced to leave their homes, representing the third largest internal refugee crisis in the world; and

(16) between 1,500 and 2,500 Colombians were massacred in contested rural areas in 2001.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that, in view of the recent escalation of the current civil war in Colombia, Colombia qualifies for designation under section 244(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1254a(b)(1)(A)), pursuant to which Colombian nationals would be eligible for temporary protected status in the United States.

SEC. 4. DESIGNATION FOR PURPOSES OF GRANTING TEMPORARY PROTECTED STATUS TO COLOMBIANS.

(a) DESIGNATION.—

(1) IN GENERAL.—For purposes of section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a), Colombia shall be treated as if it had been designated under subsection (b) of that section, subject to the provisions of this section.

(2) PERIOD OF DESIGNATION.—The initial period of such designation shall begin on the date of enactment of this Act and shall remain in effect for 1 year.

(b) ALIENS ELIGIBLE.—In applying section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a) pursuant to the designation made under this section, subject to section 244(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)(3)), an alien who is a national of Colombia meets the requirements of section 244(c)(1) of that Act (8 U.S.C. 1254a(c)(1)) only if—

(1) the alien has been continuously physically present in the United States since the date of enactment of this Act;

(2) the alien is admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)(2)(A)), and is not ineligible for temporary protected status under section 244(c)(2)(B) of that Act (8 U.S.C. 1254a(c)(2)(B)); and

(3) the alien registers for temporary protected status in a manner that the Secretary of Homeland Security shall establish.

(c) CONSENT TO TRAVEL ABROAD.—The Secretary of Homeland Security shall give the prior consent to travel abroad described in section 244(f)(3) of the Immigration and Nationality Act (8 U.S.C. 1254a(f)(3)) to an alien who is granted temporary protected status pursuant to the designation made under this section, if the alien establishes to the satisfaction of the Secretary of Homeland Security that emergency and extenuating circumstances beyond the control of the alien require the alien to depart for a brief, temporary trip abroad. An alien returning to the United States in accordance with such an authorization shall be treated the same as any other returning alien provided temporary protected status under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a).

By Mr. DORGAN (for himself and Mr. BURNS):

S. 987. A bill to amend title XVIII of the Social Security Act to provide for national standardized payment amounts for inpatient hospital services furnished under the medicare program and to make other rural health care improvements; to the Committee on Finance.

Mr. DORGAN. Mr. President, today I am introducing legislation, the Rural Health Care Fairness and Medicare Equity Act, that will help to make Medicare reimbursement more fair and equitable for rural and small urban hospitals and physicians. I am pleased to be joined in introducing this bill by Senator BURNS.

First, let me take a few minutes to describe some of the challenges facing rural health care systems and why I feel it is critical for the Senate to act now to reduce the inequities in Medicare funding between rural and urban providers.

Rural America depends on its small town hospitals, physicians and nurses, nursing homes, emergency ambulance services, and other members of our rural health care system. And because of past cuts in Medicare reimbursement, plus the historical unfairness in Medicare payments, these vital services are in jeopardy. Fortunately, Congress acted in 1999 and again in 2000 to address some of the cuts that turned out to have a larger impact than intended.

However, additional legislation is still needed to improve Medicare reimbursement for health care providers in order to stabilize the Medicare program and ensure that beneficiaries, especially in rural areas, will continue to have access to their local hospitals, physicians, nursing homes, home health, and other services. Many small rural hospitals in particular serve as the anchor for the full range of health care services in their communities, from ambulatory to long-term care. Medicare is the single most significant payer for services at these hospitals, and as such, it has an impact on the whole community.

Part of the problem in North Dakota is simply demographics: North Dakota's population is the fifth oldest in the Nation, and about two-thirds of North Dakota's 103,000 Medicare beneficiaries live in rural areas. In addition, North Dakota's population—and the population of many rural states in our Nation's Heartland—is shrinking daily. In fact, in 13 of North Dakota's counties, there were 20 or fewer births for the entire county in 2001.

Admissions to rural hospitals have dropped by a drastic 60 percent in the last two decades, and those patients who do remain tend to be older, poorer, and sicker. This means that rural hospitals tend to be disproportionately dependent upon Medicare reimbursement, to the extent that Medicare accounts for 75 to 80 percent of the revenue for some rural hospitals. Obviously, given this reality, Medicare reimbursement has a major impact on the financial health of rural hospitals.

Another part of the problem is that Medicare has historically reimbursed urban health care providers at a much higher rate than their rural counterparts. North Dakota Medicare beneficiaries pay the exact same Medicare payroll taxes and premiums as beneficiaries elsewhere but receive less benefit from the Medicare program. Medicare beneficiaries in North Dakota receive an average of $4,458 in Medicare benefits. This is $632 less than the national average spending per Medicare beneficiary of $5,490, and $5,500 less than the spending for Medicare beneficiaries in Washington, DC. Moreover, most North Dakotans do not even have the option of Medicare+Choice plans because Medicare reimbursement for these plans is so low in rural areas that they are not offered.

As a result of the skewed Medicare formula, North Dakota hospitals are reimbursed significantly less than hospitals of similar size and type elsewhere in the country. For instance, North Dakota hospitals are reimbursed as much as $2,000 less for a Medicare beneficiary with heart failure compared to hospitals of a similar size and mission in Minnesota, New York and California. More specifically, for example, St. Alexius Medical Center in Bismarck, North Dakota is paid about $4,000 for a heart failure patient. A similar sized hospital, with a similar mission, would be paid $5,900 in California, $6,500 in New York, and $6,800 in Minneapolis, MN for caring for the same patient.

Likewise, a similar payment inequity exists for physicians. For example, a physician in Beulah, ND is paid about $46 by Medicare for an office visit, while a doctor in San Francisco is paid $63 for a comparable office visit. A physician who inserts a pacemaker in a patient in New York City is paid about $646, but a doctor who performs the exact same procedure in Fargo, ND is paid only $481, about a quarter less.

This inequity in Medicare reimbursement has real consequences for hospitals and clinics: They have to reduce services, have greater difficulty recruiting staff, are less able to make capital improvements, and struggle to give their patients access to the latest innovations in medical care.

The bill I am introducing today, the Rural Health Care Fairness and Medicare Equity Act, would address the rural inequity in Medicare reimbursement in five ways. First, this bill would equalize the ''standardized payment'' which forms the basis for Medicare's reimbursement to hospitals. You would think something called the ''standardized payment'' would already be standard, but the fact is that hospitals in rural and small urban areas, including all of North Dakota, receive a smaller standardized payment than large urban hospitals. This bill would raise all hospitals up to the same standardized payment. The fiscal year 2003 Omnibus Appropriations bill enacted by Congress earlier this year takes a step in the right direction by equalizing this base payment for the last six months of this fiscal year, but my bill would make this equalization permanent.

Second, my bill would create a wage index floor for the hospitals in this country with the very lowest wage indexes. The current wage index, which is an important factor in a hospital's total Medicare reimbursement, is based on an antiquated theory that it costs more to hire hospital staff in urban areas than it does in rural areas. That may have been true once, but it is no longer true today. Today, hospitals in North Dakota are competing with hospitals in Minnesota, Chicago and elsewhere for the same doctors and nurses, and they have to pay competitive wages in order to recruit staff. However, their low wage index has the effect of limiting the salaries that many rural and small urban hospitals can afford to pay their staff. By creating a floor, we would at least level the playing field a bit for hospitals with a wage index under 0.85.

Third, this bill would reduce the importance of the wage index in factoring a hospital's total Medicare reimbursement. The current ''labor market share'' of 71.1 percent overstates the actual amount that hospitals in North Dakota and nationwide pay for labor. For instance, in North Dakota, a hospital in Bismarck has a labor market share of 58 percent, while a small rural hospital in Cando, ND has a labor market share of 55 percent. For hospitals in North Dakota and other states that already have a low wage index this overstatement of labor costs magnifies the reimbursement inequity. My bill would set the labor market share at 62 percent, which more closely reflects what the correct proportion should be. However, hospitals that would be adversely affected by this change would be held harmless.

In addition, this legislation creates alternative criteria for some hospitals to appeal to the Medicare program for a higher wage index. Hospitals currently can qualify for reclassification to an area with a higher wage index if they can demonstrate that they are proximate to the area to which they seek to be reclassified and pay similar wages or have a similar patient case-mix. The current reclassification process has been used predominantly in areas with high population density as a way for hospitals to increase their Medicare reimbursement. According to a GAO study last year, two-thirds of all hospitals that are able to reclassify are in two areas—California and the northeast.

Unfortunately, however, many rural and small urban hospitals located in states with a large land base and lots of distance between communities largely have not been able to take advantage of the reclassification process because they cannot meet the proximity criteria. This is the case even though, despite the longer distances between communities, hospitals are still competing against each other to recruit nurses and other staff. To address this concern, my bill would create an alternative reclassification process for hospitals in sparsely populated states with large distances between metropolitan areas that do not meet the current proximity criteria but do meet the other reclassification criteria.

Finally, my legislation would establish a floor of 1.00 for the physician work component of the Medicare physician payment system. The Medicare program currently adjusts physician payments based on a ''geographic practice cost index'' that is intended to reflect regional cost-of-living differences. The result has been that physicians in rural areas are generally reimbursed less by Medicare for providing the same exact level of care as doctors in urban areas. Since rural medical practices tend to serve higher proportions of Medicare beneficiaries, they are doubly impacted by this payment inequity.

As many of my colleagues know, it is already very difficult to recruit physicians to rural underserved areas. In fact, many small towns in my State are increasingly relying on foreign physicians working in the country under J–1 visas because they are unable to recruit American physicians. I am very concerned that the disparity in

Medicare reimbursement for doctors provides yet another reason for physicians to decline to serve in rural areas.

By establishing a floor of 1.00 for the work geographic practice cost index, this legislation will ensure that doctors' work in rural areas would at least be valued at the national average. However, it would still allow for payments higher than the national average for physicians serving in areas with a high cost of living.

In closing, I think we as a nation need to acknowledge that a strong health care system is an important part of our rural infrastructure. Over the years, we have determined that rural electric service, rural telephone service, an interstate highway system through rural areas, and rural mail delivery, to name a few services, make us a better, more unified nation. We need to make the same determination in support of our rural health care system, and I will be fighting for policies, such as those reflected in this legislation, that reflect rural health care as a strong national priority. I encourage my colleagues to join Senator BURNS and me in cosponsoring this bill.

Mr. BURNS. Mr. President, I rise to introduce The Rural Health Care Fairness and Medicare Equity Act with my good friend and colleague, Senator DORGAN, from North Dakota.

Many predominately rural States, such as my home State of Montana, face difficult challenges in the health care arena. Funding, staffing shortages, and inadequate reimbursement levels have plagued many hospitals and health care providers in the most rural areas of our country since the passage of the Balanced Budget Act of 1997. I have been a strong supporter of improving access to health care in these areas through education and telemedicine, but many rural communities in particular still face dangerous health care-related shortages.

The Rural Health Care Fairness and Medicare Equity Act seeks to make Medicare reimbursement more fair and equitable for rural and small urban hospitals and physicians by correcting the unintended inequities in the Medicare system put in place by the Balanced Budget Act of 1997 with five components. First, this act would provide a single standardized amount under the Medicare inpatient Provider Payment System, PPS, by permanently raising the standardized amount for rural and other hospitals to the same standardized amount level as large urban area hospitals. My colleagues in the Senate and I recognized the importance of doing this in the fiscal year 2003 Omnibus Appropriations package, which made this change for the remaining months of fiscal year 2003. We should now standardize hospital levels by making this change permanent, and this bill does just that.

Second, this bill would change the hospital labor market share from its current level of 71.1 percent, to 62 percent, based on a study done by the University of North Carolina Rural Health Research and Policy Analysis Center demonstrating that the current hospital labor market share is too high. Hospitals that would be harmed by this change would be held harmless. Third, this legislation would create a wage index floor of 0.85 for hospitals that would otherwise have a wage index less than the floor. Thirty of my colleagues and I cosponsored legislation in the 107th Congress that included a 0.925 floor, and I am hopeful that by setting the floor at 0.85, this provision will be better targeted toward rural hospitals with negative Medicare inpatient margins, helping our rural health centers to not only keep their doors open, but to continue providing quality, affordable health services to the rural communities they serve.

Fourth, this bill would create new, alternative criteria for hospital reclassification. This bill would require the Secretary of Health and Human Services to develop a new category of reclassiciation of hospitals for area wage index and standardized amount purposes. I am greatly concerned that the current reclassification process, particularly the proximity and adjacency criteria, has not been helpful to hospitals in States like Montana, with large land bases and lots of distance between communities, even though these hospitals must still compete with one another for nurses and other health care staff.

Two-thirds of all hospital reclassification take place in California and in the Northeast, largely because of these proximity and adjacency criteria. This bill would allow hospitals located in sparsely populated States that do not meet these prohibitive criteria to reclassify if they otherwise need reclassification criteria. This bill defines a sparsely populated state to be one in which there are fewer than 20 people per square mile of land, under which eight States, including Montana, qualify. Finally, the Rural Health Care Fairness and Medicare Equity Act would create a physician geographic adjustment floor of 1.0 for the physician work component of the Medicare physician payment system, beginning in 2004. This provision would lessen the geographic disparities in Medicare payment so gravely affecting physicians in the field today.

Patients in both rural and urban areas depend on the availability of quality health care providers to offer superior, affordable health services to people across the Nation. Medicare physician payments are intended to correspond to the costs that efficient providers incur. Instead, research has shown that the sustainable growth rate, SGR, under which reimbursement rates are supposed to be adjusted annually fails to account for all the relevant factors that affect the cost of physician payments, and maintains further inequities, such as Medicare paying different amounts for the same service, depending on where the service is provided.

Cuts in Medicare reimbursement to health care providers have forced health providers to make difficult choices, including becoming a nonparticipating Medicare provider, moving to areas with better reimbursement rates or less Medicare patients, retiring from practice early, limiting or discontinuing charitble care, reducing staff, or leaving Medicare entirely. The impact on these cuts has taken a serious toll on rural communities, such as those in Montana. The most recent cut in physician payment levels was the largest in Medicare history, immediately affecting 1 million health care professionals and the countless millions of elderly and disabled patients they, in turn, serve. Not only does this create a negative health care environment so adverse to the principles of the Medicare system, but the inequities in physician reimbursement rates have created a crisis situation for many patients in rural areas who do not have the luxury of choosing to see a different health care provider who can still afford to take Medicare patients.

This bill is extremely important to ensure that America's seniors and low-income have access to high quality physician services. It is imperative that Congress continue it commitment to rural health care quality, accessibility, and affordability, and the Rural Health Care Fairness and Medicare Equity Act is an important step toward this goal.

By Mr. COLEMAN:

S. 988. A bill to amend the workforce Investment Act of 1998 to provide for a job training grant pilot program; to the Committee on Health, Education, Labor, and Pensions.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the bill I introduce today to amend the Workforce Investment Act of 1998 to provide for a job training grant pilot program be printed in the RECORD.

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

S. 988

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JOB TRAINING GRANT PILOT PROGRAM.

Section 171 of the Workforce Investment Act of 1998 (29 U.S.C. 2916) is amended by striking subsection (d) and inserting the following:

''(d) JOB TRAINING GRANT PILOT PROGRAM.—

''(1) IN GENERAL.—

''(A) GRANTS.—The Secretary shall provide grants to qualified job training programs as follows:

''(i) PLACEMENT GRANTS.—Grants in an amount to be determined by the Secretary shall be provided to qualified job training programs upon placement of a qualified graduate in qualifying employment.

''(ii) RETENTION GRANTS.—An additional grant in an amount to be determined by the Secretary shall be provided to qualified job training programs upon retention of a qualified graduate in qualifying employment for a period of 1 year.

''(B) DETERMINATION.—In determining the amount of the grants to be provided under subparagraph (A), the Secretary shall consider the economic benefit received by the Government from the employment of the qualified graduate, including increased tax revenue and decreased unemployment benefits or other support obligations.

''(2) QUALIFIED JOB TRAINING PROGRAM.—For purposes of this subsection, a qualified job training program is 1 that—

''(A) is operated by a nonprofit or for-profit entity, partnership, or joint venture formed under the laws of—

''(i) the United States or a territory of the United States;

''(ii) any State; or

''(iii) any county or locality;

''(B) offers education and training in—

''(i) basic skills, such as reading, writing, mathematics, information processing, and communications;

''(ii) technical skills, such as accounting, computers, printing, and machining;

''(iii) thinking skills, such as reasoning, creative thinking, decision making, and problem solving; and

''(iv) personal qualities, such as responsibility, self-esteem, self-management, honesty, and integrity;

''(C) provides income supplements when needed to eligible participants (defined for purposes of this paragraph as an individual who meets the criteria described in subparagraphs (A) through (C) of paragraph (3)) for housing, counseling, tuition, and other basic needs;

''(D) provides eligible participants with not less than 160 hours of instruction, assessment, or professional coaching; and

''(E) invests an average of $10,000 in training per graduate of such program.

''(3) QUALIFIED GRADUATE.—For purposes of this subsection, a qualified graduate is an individual who is a graduate of a qualified job training program and who—

''(A) is 18 years of age or older;

''(B) had in either of the 2 preceding taxable years Federal adjusted gross income not exceeding the maximum income of a very low-income family (as defined in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2))) for a single individual; and

''(C) has assets of not more than $10,000, exclusive of the value of an owned homestead, indexed for inflation.

''(4) QUALIFYING EMPLOYMENT.—For purposes of this subsection, qualifying employment shall include any permanent job or employment paying annual wages of not less than $18,000, and not less than $10,000 more than the qualified graduate earned before receiving training from the qualified job training program.''.

By Mr. INOUYE:

S. 991. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work at certain medicare providers, and for other purposes; to the Committee on Finance.

Mr. INOUYE. Mr. President, today I introduce the Registered Nurses' Safe Staffing Act of 2003. I'm introducing this bill on behalf of the American Nurses Association's Chief Executive Officer and President Linda Stierle, MSN, RN, CNAA and Barbara A. Blakeney, MS, APRN, BC, ANP respectively. For over 4 decades I have been a committed supporter of nurses and the delivery of safe patient care. While enforceable regulations will help to ensure patient safety, the complexity and variability of today's hospitals require that staffing patterns be determined at the hospital and unit level, with the professional input of registered nurses. More than a decade of research demonstrates that nurse staff levels and the skill mix of nursing staff directly affect the clinical outcomes of hospitalized patients. Studies show that when there are more registered nurses, there are lower mortality rates, shorter lengths of stay, reduced costs, and fewer complications.

A study published in the Journal of the American Medical Association found that the risks of patient mortality rose by 7 percent for every additional patient added to the average nurse's workload. In the midst of a nursing shortage and increasing financial pressures, hospitals often find it difficult to maintain adequate staffing. While nursing research indicates that adequate registered nurse staffing is vital to the health and safety of patients, there are no standardized, public reporting or the enforcement of adequate staffing plans. The only regulations addressing nursing staff exists vaguely in Medicare Conditions of Participation which states: ''The nursing service must have an adequate number of licensed registered nurses, licensed practice, vocational, nurse, and other personnel to provide nursing care to all patients as needed''.

This bill will require Medicare Participating Hospitals to develop and maintain reliable and valid systems to determine sufficient registered nurse staffing. Given, the demands that the healthcare industry faces today, it is our responsibility to ensure that patients have access to adequate nursing care. However, we must ensure that the decisions in which to provide this care are made by the clinical experts, the registered nurses caring for these patients. Support of this bill supports our nation's nurses during a critical shortage, but more importantly, works to ensure the safety of their patients.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 991

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 ''Registered Nurse Safe Staffing Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) There are hospitals throughout the United States that have inadequate staffing of registered nurses to protect the well-being and health of the patients.

(2) Studies show that the health of patients in hospitals is directly proportionate to the number of registered nurses working in the hospital.

(3) There is a critical shortage of registered nurses in the United States.

(4) The effect of that shortage is revealed in unsafe staffing levels in hospitals.

(5) Patient safety is adversely affected by these unsafe staffing levels, creating a public health crisis.

(6) Registered nurses are being required to perform professional services under conditions that do not support quality health care or a healthful work environment for registered nurses.

(7) As a payer for inpatient and outpatient hospital services for individuals entitled to benefits under the medicare program established under title XVIII of the Social Security Act, the Federal Government has a compelling interest in promoting the safety of such individuals by requiring any hospital participating in such program to establish minimum safe staffing levels for registered nurses.

SEC. 3. ESTABLISHMENT OF MINIMUM STAFFING RATIOS BY MEDICARE PARTICIPATING HOSPITALS.

(a) REQUIREMENT OF MEDICARE PROVIDER AGREEMENT.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subparagraph (R), by striking ''and'' after the comma at the end;

(2) in subparagraph (S), by striking the period at the end and inserting '', and''; and

(3) by inserting after subparagraph (S) the following new subparagraph:

''(T) in the case of a hospital, to meet the requirements of section 1889.''.

(b) REQUIREMENTS.—Part D of title XVIII of the Social Security Act is amended by inserting after section 1888 the following new section:

''STAFFING REQUIREMENTS FOR MEDICARE PARTICIPATING HOSPITALS

''SEC. 1889. (a) ESTABLISHMENT OF STAFFING SYSTEM.—

''(1) IN GENERAL.—Each participating hospital shall adopt and implement a staffing system that ensures a number of registered nurses on each shift and in each unit of the hospital to ensure appropriate staffing levels for patient care.

''(2) STAFFING SYSTEM REQUIREMENTS.—Subject to paragraph (3), a staffing system adopted and implemented under this section shall—

''(A) be based upon input from the direct care-giving registered nurse staff or their exclusive representatives, as well as the chief nurse executive;

''(B) be based upon the number of patients and the level and variability of intensity of care to be provided, with appropriate consideration given to admissions, discharges, and transfers during each shift;

''(C) account for contextual issues affecting staffing and the delivery of care, including architecture and geography of the environment and available technology;

''(D) reflect the level of preparation and experience of those providing care;

''(E) account for staffing level effectiveness or deficiencies in related health care classifications, including but not limited to, certified nurse assistants, licensed vocational nurses, licensed psychiatric technicians, nursing assistants, aides, and orderlies;

''(F) reflect staffing levels recommended by specialty nursing organizations;

''(G) establish upwardly adjustable registered nurse-to-patient ratios based upon registered nurses' assessment of patient acuity and existing conditions;

''(H) provide that a registered nurse shall not be assigned to work in a particular unit without first having established the ability to provide professional care in such unit; and

''(I) be based on methods that assure validity and reliability.

''(3) LIMITATION.—A staffing system adopted and implemented under paragraph (1) may not—

''(A) set registered-nurse levels below those required by any Federal or State law or regulation; or

''(B) utilize any minimum registered nurse-to-patient ratio established pursuant to paragraph (2)(G) as an upper limit on the staffing of the hospital to which such ratio applies.

''(b) REPORTING, AND RELEASE TO PUBLIC, OF CERTAIN STAFFING INFORMATION.—

''(1) REQUIREMENTS FOR HOSPITALS.—Each participating hospital shall—

''(A) post daily for each shift, in a clearly visible place, a document that specifies in a uniform manner (as prescribed by the Secretary) the current number of licensed and unlicensed nursing staff directly responsible for patient care in each unit of the hospital, identifying specifically the number of registered nurses;

''(B) upon request, make available to the public—

''(i) the nursing staff information described in subparagraph (A); and

''(ii) a detailed written description of the staffing system established by the hospital pursuant to subsection (a); and

''(C) submit to the Secretary in a uniform manner (as prescribed by the Secretary) the nursing staff information described in subparagraph (A) through electronic data submission not less frequently than quarterly.

''(2) SECRETARIAL RESPONSIBILITIES.—The Secretary shall—

''(A) make the information submitted pursuant to paragraph (1)(C) publicly available, including by publication of such information on the Internet site of the Department of Health and Human Services; and

''(B) provide for the auditing of such information for accuracy as a part of the process of determining whether an institution is a hospital for purposes of this title.

''(c) RECORDKEEPING; DATA COLLECTION; EVALUATION.—

''(1) RECORDKEEPING.—Each participating hospital shall maintain for a period of at least 3 years (or, if longer, until the conclusion of pending enforcement activities) such records as the Secretary deems necessary to determine whether the hospital has adopted and implemented a staffing system pursuant to subsection (a).

''(2) DATA COLLECTION ON CERTAIN OUTCOMES.—The Secretary shall require the collection, maintenance, and submission of data by each participating hospital sufficient to establish the link between the staffing system established pursuant to subsection (a) and—

''(A) patient acuity from maintenance of acuity data through entries on patients' charts;

''(B) patient outcomes that are nursing sensitive, such as patient falls, adverse drug events, injuries to patients, skin breakdown, pneumonia, infection rates, upper gastrointestinal bleeding, shock, cardiac arrest, length of stay, and patient readmissions;

''(C) operational outcomes, such as work-related injury or illness, vacancy and turnover rates, nursing care hours per patient day, on-call use, overtime rates, and needlestick injuries; and

''(D) patient complaints related to staffing levels.

''(3) EVALUATION.—Each participating hospital shall annually evaluate its staffing system and establish minimum registered nurse staffing ratios to assure ongoing reliability and validity of the system and ratios. The evaluation shall be conducted by a joint management-staff committee comprised of at least 50 percent of registered nurses who provide direct patient care.

''(d) ENFORCEMENT.—

''(1) RESPONSIBILITY.—The Secretary shall enforce the requirements and prohibitions of this section in accordance with the succeeding provision of this subsection.

''(2) PROCEDURES FOR RECEIVING AND INVESTIGATING COMPLAINTS.—The Secretary shall establish procedures under which—

''(A) any person may file a complaint that a participating hospital has violated a requirement or a prohibition of this section; and

''(B) such complaints are investigated by the Secretary.

''(3) REMEDIES.—If the Secretary determines that a participating hospital has violated a requirement of this section, the Secretary—

''(A) shall require the facility to establish a corrective action plan to prevent the recurrence of such violation; and

''(B) may impose civil money penalties under paragraph (4).

''(4) CIVIL MONEY PENALTIES.—

''(A) IN GENERAL.—In addition to any other penalties prescribed by law, the Secretary may impose a civil money penalty of not more than $10,000 for each knowing violation of a requirement of this section, except that the Secretary shall impose a civil money penalty of more than $10,000 for each such violation in the case of a participating hospital that the Secretary determines has a pattern or practice of such violations (with the amount of such additional penalties being determined in accordance with a schedule or methodology specified in regulations).

''(B) PROCEDURES.—The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A.

''(C) PUBLIC NOTICE OF VIOLATIONS.—

''(i) INTERNET SITE.—The Secretary shall publish on the Internet site of the Department of Health and Human Services the names of participating hospitals on which civil money penalties have been imposed under this section, the violation for which the penalty was imposed, and such additional information as the Secretary determines appropriate.

''(ii) CHANGE OF OWNERSHIP.—With respect to a participating hospital that had a change in ownership, as determined by the Secretary, penalties imposed on the hospital while under previous ownership shall no longer be published by the Secretary of such Internet site after the 1-year period beginning on the date of change in ownership.

''(e) WHISTLEBLOWER PROTECTIONS.—

''(1) PROHIBITION OF DISCRIMINATION AND RETALIATION.—A participating hospital shall not discriminate or retaliate in any manner against any patient or employee of the hospital because that patient or employee, or any other person, has presented a grievance or complaint, or has initiated or cooperated in any investigation or proceeding of any kind, relating to the staffing system or other requirements and prohibitions of this section.

''(2) RELIEF FOR PREVAILING EMPLOYEES.—An employee of a participating hospital who has been discriminated or retaliated against in employment in violation of this subsection may initiate judicial action in a United States district court and shall be entitled to reinstatement, reimbursement for lost wages, and work benefits caused by the unlawful acts of the employing hospital. Prevailing employees are entitled to reasonable attorney's fees and costs associated with pursuing the case.

''(3) RELIEF FOR PREVAILING PATIENTS.—A patient who has been discriminated or retaliated against in violation of this subsection may initiate judicial action in a United States district court. A prevailing patient shall be entitled to liquidated damages of $5,000 for a violation of this statute in addition to any other damages under other applicable statutes, regulations, or common law. Prevailing patients are entitled to reasonable attorney's fees and costs associated with pursuing the case.

''(4) LIMITATION ON ACTIONS.—No action may be brought under paragraph (2) or (3) more than 2 years after the discrimination or retaliation with respect to which the action is brought.

''(5) TREATMENT OF ADVERSE EMPLOYMENT ACTIONS.—For purposes of this subsection—

''(A) an adverse employment action shall be treated as retaliation or discrimination; and

''(B) the term 'adverse employment' action includes—

''(i) the failure to promote an individual or provide any other employment-related benefit for which the individual would otherwise be eligible;

''(ii) an adverse evaluation or decision made in relation to accreditation, certification, credentialing, or licensing of the individual; and

''(iii) a personnel action that is adverse to the individual concerned.

''(f) RELATIONSHIP TO STATE LAWS.—Nothing in this section shall be construed as exempting or relieving any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful practice under this title.

''(g) REGULATIONS.—The Secretary shall promulgate such regulations as are appropriate and necessary to implement this section.

''(h) DEFINITIONS.—In this section:

''(1) PARTICIPATING HOSPITAL.—The term 'participating hospital' means a hospital that has entered into a provider agreement under section 1866.

''(2) REGISTERED NURSE.—The term 'registered nurse' means an individual who has been granted a license to practice as a registered nurse in at least 1 State.

''(3) UNIT.—The term 'unit' of a hospital is an organizational department or separate geographic area of a hospital, such as a burn unit, a labor and delivery room, a post-anesthesia service area, an emergency department, an operating room, a pediatric unit, a stepdown or intermediate care unit, a specialty care unit, a telemetry unit, a general medical care unit, a subacute care unit, and a transitional inpatient care unit.

''(4) SHIFT.—The term 'shift' means a scheduled set of hours or duty period to be worked at a participating hospital.

''(5) PERSON.—The term 'person' means 1 or more individuals, associations, corporations, unincorporated organizations, or labor unions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

By Mr. NICKLES (for himself, Mr. CONRAD, and Mr. BUNNING):

S. 992. A bill to amend the Internal Revenue Code of 1986 to repeal the provision taxing policyholder dividends of mutual life insurance companies and to repeal the policyholders surplus account provisions; to the Committee on Finance.

Mr. NICKLES. Mr. President, I rise today to introduce legislation to simplify the taxation of life insurance companies. I am joined by my colleague from North Dakota, Mr. CONRAD, and my colleague from Kentucky, Mr. BUNNING.

Our legislation repeals Sections 809 and Section 815 of the Internal Revenue Code. These provisions are no longer relevant given the significant changes in the life insurance industry over the past 25 years, and repeal will simplify the tax code.

Section 809 was enacted in 1984 as a part of major revisions to the laws governing life insurance companies. It was intended to ensure that mutual life insurance companies do not have a competitive tax advantage over stock life insurance companies. At that time, mutual life insurance companies dominated the market. Now, however, mutuals account for only 10 percent of the industry, and there are very few large mutuals in existence. Section 809 reduces the amount of policyholder dividends a mutual insurance company can deduct according to a complex formula based on the previous 3 years' earnings of stock companies. Section 809 is burdensome and raises very little revenue. Because its original purpose is no longer valid, our bill would repeal the provision permanently. In last year's economic stimulus bill, Congress temporarily suspended Section 809. In addition, President Bush included in his fiscal year 2003 budget submission a proposal to repeal Section 809 permanently.

Section 815 has an even longer history, dating back to 1959. Tax changes in 1959 created an accounting mechanism called a ''policyholder surplus account'' for stock life insurance companies. Stock companies were permitted to defer tax on one-half of their underwriting income as long as that income was not distributed to shareholders. This income was accounted for through the policyholder surplus account, PSA. In 1984, Congress eliminated deferral of tax on underwriting income, but did not address the issue of PSAs. The amounts in these accounts, which are just an accounting entry, and do not contain real money, remain subject to tax if certain triggering events occur. Because virtually no company is willing to ''trigger'' the tax on the account, Section 815 also raises little or no revenue. It does, however, directly inhibit the business decisions of stock companies with PSAs.

Congress has worked hard over the last few years to modernize laws governing the financial services industry to encourage growth and enhance competitiveness. Elimination of outdated tax provisions such as Sections 809 and 815 will complement this effort and provide more rational taxation of life insurance companies.

I urge my colleagues to join us in this initiative.

By Mr. LEAHY:

S. 995. A bill to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to improve certain child nutritional programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. LEAHY. Mr. President, I rise today to introduce my Child Nutrition Initiatives Act of 2003. This legislation consists of a number of proposals that I believe will significantly improve the nutrition benefits available to our Nation's children through Federal child nutrition programs.

I am hoping that this legislation will serve as a starting point in the Senate's debate over how to improve child nutrition programs this year. It is not meant to be a comprehensive proposal for reauthorization, nor does it represent all of the potential improvements that could be made to the programs that I will be supporting in the Agriculture Committee. I look forward to working with Chairman COCHRAN and with Senator HARKIN, the ranking Democrat on the Committee, as well as the rest of the Committee to craft a comprehensive bill.

The Committee has already held two hearings on child nutrition legislation, where we heard from a wide variety of nutritionists, school food service operators and others interested in these programs. They presented us with a wide variety of ideas, some of them appearing in my bill, which underlined the immense impact of these programs to the nutritional health and well-being of all of our children and grandchildren. Undersecretary Bost also testified, and he too offered an array of proposals for improving these programs. I look forward to more detailed proposals from the Department of Agriculture on how we can better serve the children in these programs.

I was encouraged to hear that the Administration is interested in providing much-needed financial help for schools choosing to improve their nutritional environment. We know that many school food service directors and employees want to offer healthier, more appetizing options to the children they serve, yet the cost of providing attractive fresh fruits and vegetables, or milk in child-friendly plastic containers kept chilled in a cooler, is often prohibitive. Increased per-meal reimbursements will encourage school cafeterias to spend more on the foods that are healthiest for kids. With these funds, schools will be able to make the salad bar and the milk cooler just as attractive to school children as less nutritious foods.

Healthier food in the school cafeteria does little good if children do not understand the benefits of eating apples over high-fat junk food. For years, the Nutrition Education and Training, NET, program provided critical support for state and local efforts to increase and improve nutrition education in classrooms. It is in the classrooms where the most effective and innovative nutrition education is happening, and NET offered teachers the resources they needed to develop a nutritional curriculum for their students. Unfortunately, this program has not been funded in the last few years. My bill would reinstate funding for the NET program, and encourage strong nutrition education at the local level.

It is amazing how many kids do not know where the food that they eat comes from. It's also amazing how far some farm products travel to get to the cafeteria table. My bill includes a farm-to-cafeteria program that will provide one-time grants to connect farms with their local school system. These grants would be used to buy equipment and pay for other costs to provide the freshest farm products available to our children. Projects funded by the farm-to-cafeteria program would also give children first-hand experience about how food is produced. This new program would also provide economic benefits for small, local firms by keeping food dollars within the community.

My support for these new farm-to-cafeteria projects comes in part from the amazing successes demonstrated by the WIC Farmers Market Nutrition Program. Years ago, I helped create this program, which provides vouchers to WIC families good for fruits and vegetables at their local farmers market. The effects of this program have been stunning. In Vermont, recipients and farmers are raving about this program, which provides fresh, local, and healthy food to those who need it most. There has also been an unexpected educational component to this program, with many recipients reporting that the farmers who sell them the food have also helped them learn how to best prepare it. This is a win-win situation. My bill will secure steady and predictable funding for the Farmers Market Nutrition Program.

Every State receives a small amount of funds to administer and ensure the integrity of all Federal child nutrition programs. Though these funds are distributed based on usage of the programs, there has been an all-State minimum to ensure that all States still have enough funds to meet the basic administrative requirements mandated by law. This minimum, however, has not been raised since 1981, despite inflation and expansion of the responsibilities of the states. My bill updates the minimum funding level to reflect inflation since 1981 and also indexes it for inflation into the future.

I am pleased that my bill has the support of the American School Food Service Association, the National Association for Farmers Market Nutrition Programs, the National Milk Producers Federation, the International Dairy Foods Association, and the Community Food Service Coalition.

Opponents of my bill will undoubtedly point to the cost of these programs, stating ''there is no money for such programs.'' Well, I answer them

with one word: priorities. Our Nation is faced with a growing health crisis. Children are growing up and growing out. They eat more, eat less nutritious foods and exercise less. It is a health epidemic that plagues them throughout life. By acting now, we can increase the quality of life for these children and save in healthcare costs down the line. For example, a study for the American School Food Service Association and the National Dairy Council found that by improving the quality, and therefore consumption, of milk in our school lunch programs, we could save between $800 million to $1.1 billion in health care costs every year.

I joined with a number of fellow senators in requesting that Congress provide a modest increase of $1 billion per year in the Budget Resolution so that we on the authorizing committees might make some long-awaited and essential improvements to the child nutrition programs. I am disappointed that increased funds were not provided. The Senate sent a clear message to America's children: we would rather give a several hundred billion dollar tax cut to a small minority of health adults than protect our children, through $1 billion in programming, from a health crisis.

The Federal Government reaches well over 25 million children each year with these programs. We have a tremendous opportunity to be proactive—to teach kids about food and give them nutritious options. We have a growing health crisis on our hands as our children grow wider because of unhealthy diets and less exercise. We must get serious about finding solutions to the problem. Or we can wait, and allow a system already doing its very best, working at maximum capacity, to deteriorate. I am for acting now and I hope the Senate is too.

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. 995

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Child Nutrition Initiatives Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—SCHOOL LUNCH AND RELATED PROGRAMS

SEC. 101. INCENTIVES FOR HEALTHIER SCHOOLS.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end the following:

''(q) INCENTIVES FOR HEALTHIER SCHOOLS.—

''(1) IN GENERAL.—To encourage healthier nutritional environments in schools and institutions receiving funds under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)), the Secretary shall establish a program under which any such school or institution may (in accordance with paragraph (3)) receive an increase in the reimbursement rate for meals otherwise payable under this Act and the Child Nutrition Act of 1966, if the school or institution implements a plan for improving the nutritional value of meals consumed in the school or institution by increasing the consumption of fluid milk, fruits, and vegetables, as approved by the Secretary in accordance with criteria established by the Secretary.

''(2) PLANS.—

''(A) IN GENERAL.—For purposes of the program established under paragraph (1), the Secretary shall establish criteria for the approval of plans of schools and institutions for increasing consumption of fluid milk, fruits, and vegetables.

''(B) CRITERIA.—An approved plan may—

''(i) establish targeted goals for increasing fluid milk, fruit, and vegetable consumption throughout the school or institution or at school or institution activities;

''(ii) improve the accessibility, presentation, positioning, or promotion of fluid milk, fruits, and vegetables throughout the school or institution or at school or institution activities;

''(iii) improve the ability of a school or institution to tailor its food services to the customs and demographic characteristics of—

''(I) the population of the school or institution; and

''(II) the area where the school or institution is located; and

''(iv) provide—

''(I) increased standard serving sizes for fluid milk consumed in middle and high schools; and

''(II) packaging, flavor variety, merchandising, refrigeration, and handling requirements that promote the consumption of fluid milk, fruits, and vegetables.

''(C) ADMINISTRATION.—In establishing criteria for approval of plans under this subsection, the Secretary shall—

''(i) take into account relevant research; and

''(ii) consult with school food service professionals, nutrition professionals, food processors, agricultural producers, and other groups, as appropriate.

''(3) REIMBURSEMENT RATES.—

''(A) IN GENERAL.—For purposes of administering the program established under paragraph (1), the Secretary shall increase reimbursement rates for meals under this Act and the Child Nutrition Act of 1966 in an amount equal to not less than 2 cents and not more than 10 cents per meal, to reflect the additional costs incurred by schools and institutions in increasing the consumption of fluid milk, fruits, and vegetables under the program.

''(B) CRITERIA.—The Secretary may vary the increase in reimbursement rates for meals based on the degree to which the school or institution adopts the criteria established by the Secretary under paragraph (2).''.

SEC. 102. GRANTS TO SUPPORT FARM-TO-CAFETERIA PROJECTS.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) (as amended by section 101) is amended by adding at the end the following:

''(r) GRANTS TO SUPPORT FARM-TO-CAFETERIA PROJECTS.—

''(1) IN GENERAL.—To improve access to local foods in schools and institutions receiving funds under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1768)), the Secretary shall provide competitive grants to nonprofit entities and educational institutions to establish and carry out farm-to-cafeteria projects that may include the purchase of equipment, the procurement of foods, and the provision of training and education activities.

''(2) PREFERENCE FOR CERTAIN PROJECTS.—In selecting farm-to-cafeteria projects to receive assistance under this subsection, the Secretary shall give preference to projects designed to—

''(A) procure local foods from small- and medium-sized farms for the provision of foods for school meals;

''(B) support nutrition education activities or curriculum planning that incorporates the participation of school children in farm and agriculture education projects; and

''(C) develop a sustained commitment to farm-to-cafeteria projects in the community by linking schools, agricultural producers, parents, and other community stakeholders.

''(3) TECHNICAL ASSISTANCE AND RELATED INFORMATION.—

''(A) TECHNICAL ASSISTANCE.—In carrying out this subsection, the Secretary may provide technical assistance regarding farm-to-cafeteria projects, processes, and development to an entity seeking the assistance.

''(B) SHARING OF INFORMATION.—The Secretary may provide for the sharing of information concerning farm-to-cafeteria projects and issues among and between government, private for-profit and nonprofit groups, and the public through publications, conferences, and other appropriate means.

''(4) GRANTS.—

''(A) IN GENERAL.—From amounts made available to carry out this subsection, the Secretary shall make grants to assist private nonprofit entities and educational institutions to establish and carry out farm-to-cafeteria projects.

''(B) MAXIMUM AMOUNT.—The maximum amount of a grant provided to an entity under this subsection shall be $100,000.

''(C) MATCHING FUNDS REQUIREMENTS.—

''(i) IN GENERAL.—The Federal share of the cost of establishing or carrying out a farm-to-cafeteria project that receives assistance under this subsection may not exceed 75 percent of the cost of the project during the term of the grant, as determined by the Secretary.

''(ii) FORM.—In providing the non-Federal share of the cost of carrying out a farm-to-cafeteria project, the grantee shall provide the share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services.

''(iii) SOURCE.—An entity may provide the non-Federal share through State government, local government, or private sources.

''(D) ADMINISTRATION.—

''(i) SINGLE GRANT.—A farm-to-cafeteria project may be supported by only a single grant under this subsection.

''(ii) TERM.—The term of a grant made under this subsection may not exceed 3 years.

''(5) EVALUATION.—Not later than January 30, 2008, the Secretary shall—

''(A) provide for the evaluation of the projects funded under this subsection; and

''(B) submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the results of the evaluation.

''(6) FUNDING.—

''(A) IN GENERAL.—On October 1, 2002, and on each October 1 thereafter through October 1, 2007, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection $10,000,000, to remain available until expended.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.''.

TITLE II—SCHOOL BREAKFAST AND RELATED PROGRAMS

SEC. 201. STATE ADMINISTRATIVE EXPENSES.

(a) MINIMUM AMOUNT.—Section 7(a)(2) of the Child Nutrition Act of 1966 (42 U.S.C.1776(a)(2)) is amended by striking the last sentence and inserting the following: ''In no case shall the grant available to any State under this subsection be less than $200,000, as adjusted in accordance with section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)).''.

(b) EXTENSION.—Section 7(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(g) is amended by striking ''2003'' and inserting ''2008''.

SEC. 202. SPECIAL SUPPLEMENTAL PROGRAM FOR WOMEN, INFANTS AND CHILDREN.

(a) SENSE OF CONGRESS ON FULL FUNDING FOR WIC.—It is the sense of Congress that the special supplemental nutrition program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) should be fully funded for fiscal year 2004 and each subsequent fiscal year so that all eligible participants for the program will be permitted to participate at the full level of participation for individuals in their category, in accordance with regulations promulgated by the Secretary of Agriculture.

(b) REAUTHORIZATION OF PROGRAM.—Section 17(g)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(1)) is amended in the first sentence by striking ''2003'' and inserting ''2008''.

(c) NUTRITION SERVICES AND ADMINISTRATION FUNDS.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended—

(1) in paragraph (2)(A), by striking ''2003'' and inserting ''2008''; and

(2) in paragraph (10)(A), by striking ''2003'' and inserting ''2008''.

(d) FARMERS' MARKET NUTRITION PROGRAM.—Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)) is amended—

(1) in paragraph (1), by striking ''(m)(1) Subject'' and all that follows through ''the Secretary'' and inserting the following:

''(m) FARMERS' MARKET NUTRITION PROGRAM.—

''(1) IN GENERAL.—The Secretary'';

(2) in paragraph (6)(B)—

(A) by striking ''(B)(i) Subject to the availability of appropriations, if'' and inserting the following:

''(B) MINIMUM AMOUNT.—If''; and

(B) by striking clause (ii); and

(3) in paragraph (9), by striking ''(9)(A)'' and all that follows through the end of subparagraph (A) and inserting the following:

''(9) FUNDING.—

''(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection—

''(i) on October 1, 2003, $25,000,000;

''(ii) on October 1, 2004, $29,000,000;

''(iii) on October 1, 2005, $33,000,000;

''(iv) on October 1, 2006, $37,000,000; and

''(v) on October 1, 2007, $41,000,000.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

''(C) AVAILABILITY OF FUNDS.—Funds transferred under subparagraph (A) shall remain available until expended.''.

SEC. 203. NUTRITION EDUCATION AND TRAINING.

Section 19(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1788 (i)) is amended by striking ''(i) AUTHORIZATION OF APPROPRIATIONS.—'' and all that follows through the end of paragraph (1) and inserting the following:

''(i) FUNDING.—

''(1) PAYMENTS.—

''(A) IN GENERAL.—On October 1, 2003, and on each October 1 thereafter through October 1, 2007, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this section $27,000,000, to remain available until expended.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under subparagraph (A), without further appropriation.

''(2) GRANTS.—

''(A) IN GENERAL.—Grants to each State from the amounts made available under subparagraph (A) shall be based on a rate of 50 cents for each child enrolled in schools or institutions within the State.

''(B) MINIMUM AMOUNT.—The minimum amount of a grant provided to a State for a fiscal year under this section shall be $200,000, as adjusted in accordance with section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)).''.

TITLE III—EFFECTIVE DATE

SEC. 301. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on October 1, 2003.

McCAIN-FEINGOLD CAMPAIGN FINANCE LAW

Mr. FEINGOLD. Mr. President, at 3:45 p.m. on Friday afternoon, a three-judge panel of the United States District Court for the District of Columbia released a long-awaited decision in the case of McConnell v. FEC. That is the lawsuit challenging the constitutionality of the Bipartisan Campaign Reform Act of 2002, sometimes known as the McCain-Feingold bill.

Over 80 different plaintiffs participated in the case, which was defended by the Department of Justice and the Federal Election Commission. Six congressional sponsors of the law, Senator JOHN MCCAIN, Senator OLYMPIA SNOWE, Senator JAMES JEFFORDS, Representative CHRISTOPHER SHAYS, Representative MARTY MEEHAN, and I, intervened as defendants in the case.

A number of commentators and lawyers for the parties have commented that the most important aspect of this decision is that it has finally come down. I agree with that. From the very beginning of our effort to reform the campaign laws over a period of 7 years, we knew that the Supreme Court of the United States would decide the fate of the law. We provided for expedited consideration of any challenge to the law's constitutionality by having a three-judge panel hear the case as the trial court with a direct appeal to the Supreme Court.

Discovery and briefing in the case proceeded on a very fast track, and the court heard oral argument on December 4, 2002, an argument which I had a chance to attend in part. At that argument, the chief judge of the panel suggested that the panel would rule by the end of January. It took considerably longer than that, and now we know why. On Friday, the court released over 1,600 pages of opinions. A shifting majority among the three judges upheld some of the most important portions of the law while it struck down some others.

Now that the three-judge panel has finally ruled, the Supreme Court can take the case and begin its consideration of the constitutional issues raised by the law. I hope the Court will act quickly, but I also hope it will act carefully and judiciously as, of course, we assume it will. The decision of the Court will shape the conduct of elections and fundraising in this country for many years to come.

While the district court opinion will become a mere footnote to history once the Supreme Court rules, I believe it is useful to comment on the decision today because the press coverage of the details of the ruling has been sometimes contradictory, and unfortunately in a number of cases the press reports were simply inaccurate about what had happened with the court decision. This is not surprising given the complexity of the ruling and the length of the opinions. For the benefit of my colleagues, particularly those who supported our long effort to pass reform, I wanted to discuss today what the court did and did not do.

The court's ruling was shaped by two different 2–1 majorities. U.S. Circuit Judge Karen Henderson would have struck down much of the law, while U.S. District Judge Colleen Kollar-Kotelly would have upheld most of it. The deciding vote in most cases was U.S. District Judge Richard Leon, who sided with Judge Henderson on some issues and with Judge Kollar-Kotelly on others. The three judges were unanimous on a handful of issues, mostly on some of the minor provisions in the bill, but also on one very significant portion of the soft money ban.

Let me start with soft money, especially in light of the headlines that screamed ''soft money ban struck down.'' Those headlines were not correct.

Let me start with soft money, which was the core of the reform effort and was dealt with in title I of the McCain-Feingold bill.

The court struck down our prohibition on national parties raising soft

money. Under this ruling, national party committees may again raise unlimited contributions from unions, corporations, and wealthy individuals. That, of course, assumes that the Supreme Court agrees with this point, which frankly I believe they will not. State parties were never prohibited from raising such money under McCain-Feingold. Each State's fundraising activities are governed by State law. That is quite key to understanding exactly what happened by the ruling.

The court left intact, however, the prohibition on the national parties spending soft money on public communications, such as broadcast advertising, television ads, that promotes, supports, attacks, or opposes a Federal candidate. Over the past four election cycles, dating back to the 1996 campaign, both Federal and State parties have spent millions upon millions of dollars of soft money on television ads attacking candidates of the other party.

Frankly, it was this practice, the use of soft money for television ads, that more than anything else drove Senator MCCAIN and I, and the other authors and supporters of the bill, to work so hard for 7 years.

This court, this district court, upheld the ban on ads being paid for by soft money.

The so-called issue ads are the biggest end run around the campaign finance laws out there, and they were the core of what McCain-Feingold is trying to stop. I am pleased to say the district court upheld our efforts in that area.

Under this ruling, party committees can raise soft money but they cannot spend it on all those phony issue ads you see on television all throughout the campaigns and about which so many people have complained. They can spend it, however, under this rule, on other activities that Congress determined in BCRA had a significant effect on Federal elections, such as voter registration drives conducted near in time to Federal elections and voter identification and voter registration efforts.

In upholding the prohibitions on the parties spending soft money to finance election-related advertising, I firmly believe the basic principle of McCain-Feingold was upheld. The court recognized the corrupting effect of this money and the power of Congress to regulate it when it affects Federal elections. That is a significant finding.

Note that the court did not find that the first amendment or free speech rulings or practices restrict or prevent a complete ban on ads paid for by soft money. That was the biggest issue out here in the debate over 7 years, and even this district court agreed with that fundamental principle of McCain-Feingold.

When the case goes to the Supreme Court, congressional supporters of the law and the United States will urge the Court to recognize that the corrupting effect of soft money on our political process is not eliminated by simply restricting its use to so-called party-building activities. So there is no question, we hope for an even stronger ruling from the Supreme Court. Furthermore, there is ample evidence, we believe, that the kinds of activities the district court determined can still be financed with soft money do, in fact, have a major impact on Federal elections.

The same 2-to-1 majority that struck down the ban on national parties raising soft money also held unconstitutional the prohibition of parties raising soft money for or transferring soft money to advocacy groups. The other 2-to-1 majority upheld the prohibition on State candidates spending money on advertisements that mention Federal candidates and promote, support, attack, or oppose these candidates.

Again, not only did the court say that at the Federal level the parties could not buy soft money TV ads, but also the State parties cannot run ads on behalf of Federal candidates using soft money—again, very different from what you might have assumed had you been watching CNN late Friday afternoon.

All three judges, however—and I think this is very significant—uphold the crucial portion of the new law that simply prohibits Federal officeholders and candidates from raising and spending soft money. This is a significant blow to those who wanted to believe when they first heard about this decision that it had somehow restored the status quo of political fundraising and campaign spending in this country.

Even Judge Henderson, who ruled against our side on virtually every other matter, rejected most of the new justifications of the new law offered by its proponents. Even she recognized the fact that there is an appearance of corruption created when Members of Congress or other Federal officials seek to raise huge donations from corporations, unions, or wealthy individuals. She upheld this provision under the highest standard of review, strict scrutiny.

Today, just like last Thursday, it is still against the law—a criminal violation—for a Member of Congress to call up a union, an individual, or a corporate entity and ask for unlimited campaign contributions. It cannot be done today any more than it could have been done a few days ago.

It is important to know that the provision of the law upheld in this part of the court's opinion includes a prohibition not only on Members themselves doing this, raising soft money for purposes of broadcast, but also on entities directly or indirectly established, financed, maintained, or controlled by Federal candidates or officeholders. As a matter of fact, this is a complete prohibition on soft money fundraising by these entities.

I misspoke a minute ago saying it only related to broadcast. This prohibition on Federal officeholders and entities directly or indirectly established by them relates to any kind of fundraising for any kind of soft money whatever. Therefore, leadership PACs maintained by Members of Congress may still not raise soft money under this ruling; nor can the congressional campaign committees which are clearly established and controlled by Members of Congress to aid the reelection efforts of themselves and their colleagues.

Now, unfortunately the former head of one such committee quickly announced he would begin raising soft money immediately anyway. He might want to get some legal advice first. Although the soft money portion of the court's ruling certainly changes much in the political fundraising landscape, it leaves one very important part of the new regime imposed by the McCain-Feingold bill: Members of Congress and the executive branch must stay out of the soft money game altogether. Especially in this period of uncertainty between now and when the Supreme Court issues its decision, the spectacle of Members of Congress getting out their old soft money Rolodexes and dialing for dollars again would be more than the American people would stand.

So I am not only very pleased but relieved that the district court recognized the importance of stopping the part of the soft money system that some of us have referred to as legalized extortion or legalized bribery or, more directly, simply a shakedown.

Title II of the McCain-Feingold bill dealt with what we called electioneering communications, the phony issue ads by outside groups that commanded so much attention during the last few election cycles. Here again, the court was divided. It did strike down the primary definition of electioneering communications we had referred to on the floor as the bright line test. Actually, we also referred to it as the Snowe-Jeffords provision. Under that formulation, an ad that ran within 60 days of a general election or 30 days of a primary could be financed only with hard money; that is, only through a PAC set up by the company, union, or group running the ad.

Now, a majority of the district court panel believed this definition was overly broad because it would capture a substantial number of ''true issue ads'' as well as those aimed at electioneering.

Again, despite the initial erroneous reports, there was more to the decision than that—quite dramatically more. The court upheld a fallback definition which was originally added on the floor by Senator SPECTER during the debate in 2001. That definition uses language similar to that which we employed in the soft money ban to address phony issue ads run by the parties. So if an ad promotes, supports, attacks, or opposes a candidate, it still must be paid for with hard money. The court also

upheld the Wellstone amendment that applied this definition to ads run by advocacy groups in addition to labor unions and for-profit corporations and upheld the disclosure requirements in the law.

The definition upheld by the district court actually is not limited to a 30- or 60-day window. So at any time during the election cycle, including today, groups may not use soft money to run ads attacking candidates in this manner. This is very significant. The definition is broader and will very likely cover many more ads in the primary definition of electioneering communications that we passed. The court even threw out a clause included by Senator SPECTER to attempt to narrow the definition, declaring it made the overall definition too vague. Frankly, I don't know whether this ruling will survive when the Supreme Court rules on the case.

What is most interesting here is the majority of the court decided that Congress is not limited to regulating advertisements that use the so-called magic words of express advocacy. Year after year, opponents of McCain-Feingold said you could only limit this to the magic words, vote for or vote against. That is not true under this court's ruling, and that is a major step forward, potentially. It recognizes the Constitution is not a straitjacket leaving the Congress powerless to address clear efforts to evade the law through phony issue ads.

In our appeal to the Supreme Court, we will argue that the 30/60 provision drafted by Senators SNOWE and JEFFORDS is constitutionally defensible because it gives groups certainty over what ad is covered and what is not. But either definition is preferable to the current very narrow magic words test that allows a massive evasion of disclosure and source requirements for the attack ads that tend to dominate the airways in the weeks before an election.

The court reached decisions on a number of other provisions of the bill. A number of these decisions were unanimous, and I will not take time right now to go through each of them. I ask unanimous consent that a summary of those rulings be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. FEINGOLD. Mr. President, in the next few days a decision will be made whether to seek a stay of the district court's decision. I think the arguments for such a stay are strong. The parties have been working under the new campaign finance rules since November of last year.

To shift to another system for a few months while the Supreme Court reviews the case only to shift again when the Supreme Court rules, whatever its decision might be, does not make much sense. It would be preferable for a variety of reasons to keep things the way they are now until the Supreme Court makes a final decision. That decision should come in plenty of time for the parties to prepare for the upcoming elections.

One of the main arguments for a stay is that in order to put the district court's decision in place, the FEC would almost certainly have to undertake a whole new set of rulemaking proceedings. The FEC worked to put implementing regulations in place in a timely manner, as instructed by the new law. Many of those regulations are not particularly useful under the law established by the district court's decision. In any event, I call on the parties to act with restraint, especially until the courts rule on any requests for a stay.

As I mentioned at the outset, we have always known that this case was headed to the Supreme Court. I am pleased that the decision of the three judge panel has come down and that the final stage of this legal process can now begin. I have great confidence in the Department of Justice and in the legal team that is representing the congressional sponsors. They did an extraordinary job in assembling a factual record and laying out the arguments for the law's constitutionality in the district court.

These lawyers are acting to defend a legislative product that reflects not only political compromise, but also great care and attention to constitutional principles and the American people's desire for a political system that is based on ideas and not money. I am proud to continue the fight for campaign finance reform in the courts, and I again thank my colleagues for their support in this long effort.

I chose to come to the floor because if anybody had read the news accounts on Friday and Saturday, frankly, they would not have any idea of what the actual effect of this ruling was which was, on balance, positive, in favor of campaign finance reform. But we do hope the U.S. Supreme Court will even go further and complete the job.

EXHIBIT 1

Coordionation—A 2–1 majority of the court rejected challenges to the coordination provisions. It held that a challenge to the provision that requires the FEC to issue new regulations was premature.

Independent/coordinated party expenditures—By a 3–0 vote, the court struck down the provision of the bill that requires parties to choose once a candidate had been nominated between making independent or 441a(d) expenditures.

Millionaire provisions—By a 3–0 vote, the court decided that the plaintiffs lacked standing to challenge the millionaire amendments.

Stand by your ad—By a 3–0 vote, the court determined that the candidate plaintiffs do not have standing to challenge the Wyden amendment requiring candidates to personally appear in ads that attack their opponents in order to get the lowest unit rate.

Increased contribution limits—By a 3–0 vote, the court ruled that the Adams plaintiffs do not have standing to challenge the increased contributions limits.

Minors' contributions—By a 3–0 vote, the court struck down the ban on contributions by minors.

ID of sponsors—The court upheld the Durbin amendment requiring more identifying information on the identification of the sponsor or sponsors of a political ad.

Disclosure of broadcasting records—By a 3–0 vote, but for differing reasons, the court struck down the Hagel amendment requiring broadcasting stations to maintain and make publicly available records of requests to purchase political advertising time.

RECESS APPOINTMENT OF PETER EIDE

Mr. DURBIN. Mr. President, today I rise to share my concerns about the recess appointment of Peter Eide to fill the post of general counsel at the Federal Labor Relations Authority.

Recently, President Bush announced several recess appointments of pending nominees to fill posts in his administration. One of those appointments was granted to Peter Eide. Mr. Eide's nomination has been under active consideration by the Governmental Affairs Committee since its referral, and a public hearing to consider his appointment was held on April 10. I am disappointed that the President chose to exercise his discretion to make this recess appointment rather than allowing the advice and consent process to continue on course.

Mr. Eide's credentials would make him an impeccable candidate for any number of positions in the Federal Government. However, General Counsel at the Federal Labor Relations Authority is not one of them.

The position to which Mr. Eide was appointed is described under law as being a neutral party in the settlement of disputes that arise between Federal agencies and unions on matters outlined in the Federal Service Labor Management Relations statute. However, for the past 12 years, Mr. Eide has been an outspoken critic of labor protections on behalf of the Chamber of Commerce. He has consistently supported the dilution of protections for workers. He opposed OSHA regulations on safety and health programs, including ergonomics standards. He opposed provisions of the 1991 Civil Rights Act that provide compensatory damages and jury trials for violations of the Americans with Disabilities Act. He advocated a policy that would exempt employers who hired former welfare recipients from employment discrimination laws for 18 months. He consistently opposed increases in the Federal minimum wage. I find it disconcerting that someone who has been such a passionate and unrelenting foe of such labor protections for so many years would not only seek this position, but feel he is qualified to be the general counsel of the Federal Labor Relations Authority.

Looking beyond his former policy positions, Mr. Eide also lacks the requisite experience with Federal labor-management relations that I believe this important post necessitates. Most of his recent labor law experience has been in the private sector representing

management viewpoints. Nothing in his experience indicates he has the qualifications to perform a job representing Federal employee labor concerns.

Given his background, Federal employee labor organizations are worried about Mr. Eide's ability to perform the functions of his new post. I believe they have good reason to be concerned. I am submitting for the RECORD letters that I have received from Federal labor union leaders in opposition to Mr. Eide's nomination. I ask unanimous consent that these documents be printed in the RECORD at the conclusion of my statement.

As I have previously stated, Mr. Eide has the qualifications to serve in hundreds of positions throughout the Federal Government. General Counsel at the Federal Labor Relations Authority is simply not one of them.

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

THE NATIONAL TREASURY EMPLOYEES UNION,
March 26, 2003, Washington, DC.

Hon. RICHARD J. DURBIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR DURBIN: The National Treasury Employees Union, the largest independent union of federal employees, respectfully opposes the nomination of Peter Eide to be General Counsel of the Federal Labor Relations Authority (FLRA).

As members of the Governmental Affairs committee are aware, the General Counsel of the FLRA is charged with enforcing the provisions of the Federal Sector Labor-Management Relations Statute (FSLMRS). The General Counsel directs the operations of the FLRA's regional offices in their investigation of unfair labor practices and in their conduct of representation matters, such as running elections and making appropriate unit determinations. The General Counsel is the prosecutor for the FLRA; the incumbent determines, in the first instance, whether to pursue alleged misconduct and, if so, under what legal theory. The refusal of the General Counsel to issue a complaint on an alleged unfair labor practice charge is unreviewable. If the General Counsel does issue a complaint, he or she controls the course of the litigation before the FLRA.

Mr. Eide, in our opinion, is not qualified to perform the important responsibilities of the position of General Counsel. Although the General Counsel is the chief prosecuting lawyer for the FLRA, Mr. Eide has not been a practicing lawyer since 1990. Moreover, his legal experience up to the date was confined to private sector labor relations. There is nothing in his record that indicates any experience whatsoever in federal sector labor relations, which differs in many major respects from its private sector counterpart.

Perhaps even more troubling to NTEU, Mr. Eide's work for the last twelve years has been as an advocate for the dilution of statutory protections for employees. As Manager and then Director of Labor Policy for the Chamber of Commerce, Mr. Eide has worked to oppose OSHA regulations on safety and health programs. For example, he has proudly pointed to this role in spearheading a coalition of businesses and associations opposing OSHA ergonomics regulations. He has also worked vigorously to undermine the Fair Labor Standards Act and to amend Title VII of the Civil Rights Act of 1964. In short, there is nothing in this record to indicate that Mr. Eide would energetically enforce the statutory protections of the FSLMRS, if confirmed as General Counsel.

The General Counsel of the FLRA operates, to a large extent, without review by the members of the Authority or by any court. If he refuses to pursue allegations of misconduct, the injured entity has no other legal recourse. This broad prosecutorial discretion makes the incumbent an extremely powerful figure in the federal sector labor relations. It should not be entrusted to one whose career has been devoted to advocacy of diminution of statutory protections for workers.

NTEU therefore asks you to oppose the nomination of Peter Eide to be General Counsel of the FLRA.

Sincerely yours,
COLLEEN M. KELLEY,
National President.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO
April 9, 2003, Washington, DC.

The Hon. RICHARD DURBIN,
Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR SENATOR DURBIN: On behalf of the American Federation of Government Employees, AFL–CIO, I am writing to express our opposition to the nomination of Peter Eide to be General Counsel of the Federal Labor Relations Authority (FLRA).

The General Counsel of the FLRA is, in effect, the chief prosecutor of unfair labor practices. Over 80 percent of unfair labor practices in the federal sector are filed by unions. The General Counsel of the FLRA, therefore, is primarily called upon to enforce the labor statute on behalf of unions. Mr. Eide's career, for over the past decade, would indicate that he is ideologically incapable of performing this task.

In this regard, our review of his resume clearly shows that Mr. Eide has spent the last twelve years working for the Chamber of Commerce as the chief architect of every Chamber effort opposing every labor initiative. From his opposition to Senator Edward Kennedy's ergonomics initiative to promoting a diminution of Fair Labor Standards Act and Equal Employment Opportunity protections, Mr. Eide's efforts have been dedicated 100% of the time to opposing the labor movement and worker-friendly statutes.

Section 7101, the ''findings and purpose'' section of the Federal Service Labor-Management Relations statute, states that:

''(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest.

(B) contributes to the effective conduct of public business, and

(C) facilities and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.''

AFGE respectfully submits that Mr. Eide's entire adult career is inexorably inconsistent and opposed to the stated Congressional ''findings and purpose'' of Section 7101, and his nomination should be opposed.

Sincerely,
BOBBY L. HARNAGE, SR.,
National President.

MEASURES READ FOR FIRST TIME—H.R. 6 AND H.R. 1298

Mr. MCCONNELL. Mr. President, I understand that H.R. 6 and H.R. 1298 are at the desk, and I ask for their first reading.

The PRESIDING OFFICER. The clerk will read the bills by title for the first time.

The legislative clerk read as follows:

A bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

A bill (H.R. 1298) to provide assistance to foreign countries to combat HIV/AIDS, tuberculosis, and malaria, and for other purposes.

Mr. MCCONNELL. I ask for their second reading and object to further proceedings on the matters.

The PRESIDING OFFICER. The objection is heard. The bills will remain at the desk.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. MCCONNELL. As in executive session, I ask unanimous consent that on Wednesday, May 7, at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session to consider Calendar No. 6, the NATO expansion treaty on today's Executive Calendar. I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification; further, that the nine committee-recommended declarations and three understandings be considered agreed to; there then be 4 hours for debate equally divided between the chairman and the ranking member; provided further that the only amendments in order be the following: a Warner-Levin-Roberts on a consensus, a Levin-Warner on suspension, and a Dodd on administrative structure.

Further, there be 60 minutes equally divided on each of the amendments, with relevant second degrees in order and limited to 60 minutes as well. I further ask that following the disposition of the above amendments and the use or yielding back of time, the resolution of ratification be temporarily set aside; provided further that the Senate then proceed to a vote on the adoption of the resolution of ratification on Thursday, May 8, at a time determined by the leader, after consultation with the Democratic leader.

The PRESIDING OFFICER. Is there objection? The Senator from Nevada.

Mr. REID. Mr. President, I apologize to the distinguished majority whip, but

we just received a call from one of the senior Senators indicating at this stage we cannot agree to the expansion of NATO. I will be happy to work with my friend because this is something on which Senator BIDEN wants to move forward. We will do the best we can, but we just received a call. I will give the name of the Senator to my friend at a subsequent time.

The PRESIDING OFFICER. The objection is heard.

Mr. MCCONNELL. I ask the assistant Democratic leader, then, is it hoped we can work this out in the morning?

Mr. REID. I think we can work it out fairly easily by tomorrow noon or something. If the Senator wanted to stay around for a little bit, we might work on it tonight.

ORDERS FOR TUESDAY, MAY 6, 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 9:30 a.m., Tuesday, May 6. I further ask that following the prayer and the pledge, the morning hour be deemed expired and 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 morning business until 10:30 a.m., with the time equally divided between the two leaders or their designees and with Members permitted to speak for up to 10 minutes each; provided that at 10:30 a.m., the Senate proceed to the consideration of S. 14, the energy bill, as provided under the previous order.

I further ask unanimous consent that the Senate recess from 12:30 to 2:15 for the weekly party lunches.

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

PROGRAM

Mr. MCCONNELL. For the information of all Senators, tomorrow the Senate will be in a period for morning business until 10:30 a.m. Following morning business, the Senate will begin the consideration of the energy bill. Under the previous agreement, no amendments will be in order to the bill until Thursday, but Members are encouraged to come to the floor to debate the bill.

In addition to the energy bill, the Senate may begin consideration of any of the following items tomorrow: State Department reauthorization bill, the air cargo security bill, the FAA reauthorization bill, the NATO expansion treaty, as well as any nominations that can be cleared. Therefore, Members should anticipate rollcall votes during tomorrow's session. I encourage Members to plan for a busy week with votes possible each day.

I am going to put in a quorum call in the hopes that we can work out the agreement under which we were going to go to the NATO expansion bill before we leave tonight.

Mr. REID. I say to my friend, we should be able to do this in the next few minutes, one way or the other.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. 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. MCCONNELL. Mr. President, I renew my previous unanimous consent request related to the treaty consent of NATO expansion, with the following proviso: Provided further that the only amendments in order be the following: Warner-Levin-Roberts consensus suspension, 90 minutes equally divided; Dodd, administrative structure, 60 minutes equally divided, with relevant second degrees in order and limited to 60 minutes as well.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, the way I read this, we save 30 minutes. Isn't that right? It is.

I have no objection.

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

Mr. MCCONNELL. Mr. President, as I said earlier, looking at the remainder of the week, in addition to the energy bill, the Senate may begin consideration of any of the following items tomorrow: State Department reauthorization bill, the air cargo security bill, the FAA reauthorization bill, the NATO expansion treaty, as well as any additional nominations that can be cleared. Therefore, Members should anticipate rollcall votes during tomorrow's session. I encourage all of our Members to plan for a very busy week with votes possible each day.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MCCONNELL. 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 6:59 p.m., adjourned until Tuesday, May 6, 2003, at 9:30 a.m.

CONFIRMATION

Executive Nomination Confirmed by the Senate May 5, 2003:

THE JUDICIARY

DEBORAH L. COOK, OF OHIO, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.