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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 25, 2003, at 2 p.m.

Senate

MONDAY, FEBRUARY 24, 2003

The Senate met at 12 noon and was called to order by the Honorable GEORGE ALLEN, a Senator from the State of Virginia.

PRAYER

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

On this day when George Washington's Farewell Address is read, it is appropriate that our prayer today be his ''Prayer for the United States of America,'' exactly as it is preserved in the chapel at Valley Forge.

Let us pray:

''Almighty God; We make our earnest prayer that Thou wilt keep the United States in Thy Holy protection; that Thou wilt incline the hearts of the Citizens to cultivate a spirit of subordination and obedience to Government, and entertain a brotherly affection and love for one another and for their fellow Citizens of the United States at large.

''And finally that Thou wilt most graciously be pleased to dispose us all to do justice, to love mercy, and to demean ourselves with that Charity, humility, and pacific temper of mind which were the Characteristics of the Divine Author of our blessed Religion, and without a humble imitation of whose example in these things we can never hope to be a happy nation.

''Grant our supplication, we beseech Thee, through Jesus Christ our Lord. Amen.''

PLEDGE OF ALLEGIANCE

The Honorable GEORGE ALLEN led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 24, 2003.

To the Senate:

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

TED STEVENS,
President pro tempore.

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

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

DR. AND MRS. OGILVIE

Mr. REID. Mr. President, prior to the distinguished Senator from Georgia beginning the reading of the statement, Dr. Ogilvie is not in the Chamber often. He is in the process of moving to California. We have had a number of guest Chaplains in the last several weeks, and while he is here, I wanted to say from a personal perspective how much I enjoyed meeting him and getting to know him. I think the time I got to know him the best was the first time I saw him perform at a funeral. That was in Georgia for Paul Coverdell. He did such an outstanding job. He made everyone there feel Senator Coverdell's life was so meaningful.

I have also worked with him on a number of matters dealing with Senate personnel. He has always been open and easy to contact. The people with whom he counsels have been better for having had Dr. Ogilvie work with them. The Senate will miss him. I wish him well, and especially for the recovery of his wife. I certainly hope that works out well.

The ACTING PRESIDENT pro tempore. The Chair thanks the Senator from Nevada for his expressing the views of all Senators and their families.

RESERVATION OF LEADER TIME

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

READING OF WASHINGTON'S FAREWELL ADDRESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Georgia, Mr. CHAMBLISS, is recognized to read George Washington's Farewell Address.

The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I am honored today to read George Washington's Farewell Address before the Senate. The tradition of reading this historical document was begun in 1893 and has continued each year with

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

the exception of 1895. I am humbled to sign my name to the list of Senators who have been privileged to read the Farewell Address in observance of Washington's birthday, especially those from my home State of Georgia, Senators Augustus Bacon and Walter F. George.

George Washington, the first President of the United States, was a legend in his own right by 1796, the year that the address was published. Americans knew Washington as the ''Father of our Country.'' He was chosen to serve two Presidential terms, and could easily have served a third term with tremendous support from his fellow countrymen.

Washington was a man of high moral character and integrity. He was a farmer, a military general, and a strong political leader whose leadership helped shape the foundation of our Government by balancing a strong central authority with the union of States that held our fledgling Nation together. Washington's leadership earned him the well-deserved title, ''Father of our Country.'' After the President's death, Congressman Henry Lee, speaking on behalf of the House of Representatives, described him as ''the first in war, the first in peace, and first in the hearts of his countrymen.''

Washington's Farewell Address was printed in newspapers across the Nation to convey his decision of voluntary retirement. George Washington's retirement after serving two terms may not sound odd to us in this day and time, but we must remember that before Washington the only known entity to rule this country was the English monarchy. With Washington's voluntary retirement, a precedent was set regarding the Office of the President. A statement was made about this announcement, which was although the person who serves in the Office of the President may be disposable, the Office of the President will always be indispensable. This precedent was the fundamental difference between the European monarchy and the Office of the President of the United States of America.

Over time many historians have interpreted different meanings from the address. Washington's Farewell Address was a communication to his fellow countrymen, I believe, to advise the country on how to sustain national unity and purpose with or without him as President. This fundamental advice has stood the test of time, and will do so, I am sure, for many generations to come. Interestingly, many of the maxims set forth in the address are still applicable today.

Mr. CHAMBLISS, at the rostrum, read the Farewell Address, as follows:

The Farewell Address of President George Washington, September 19, 1796:

To the people of the United States.

FRIENDS AND FELLOW CITIZENS: The period for a new election of a citizen to administer the executive government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed, to decline being considered among the number of those out of whom a choice is to be made.

I beg you at the same time to do me the justice to be assured, that this resolution has not been taken without strict regard to all the considerations appertaining to the relation which binds a dutiful citizen to his country—and that, in withdrawing the tender of service which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest, no deficiency of grateful respect for your past kindness, but am supported by a full conviction that the step is compatible with both.

The acceptance of, and continuance hitherto in the office to which your suffrages have twice called me have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire. I constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which I had been reluctantly drawn. The strength of my inclination to do this, previous to the last election, had even led to the preparation of an address to declare it to you; but mature reflection on the then perplexed and critical posture of our affairs with foreign nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea.

I rejoice that the state of your concerns external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety; and am persuaded, whatever partiality may be retained for my services, that in the present circumstances of our country you will not disapprove my determination to retire.

The impressions with which I first undertook the arduous trust were explained on the proper occasion. In the discharge of this trust, I will only say that I have, with good intentions, contributed towards the organization and administration of the government the best exertions of which a very fallible judgment was capable. Not unconscious in the outset of the inferiority of my qualifications, experience, in my own eyes, perhaps still more in the eyes of others, has strengthened the motives to diffidence of myself; and, every day, the increasing weight of years admonishes me more and more that the shade of retirement is as necessary to me as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe that, while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment which is intended to terminate the career of my political life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I owe to my beloved country for the many honors it has conferred upon me, still more for the steadfast confidence with which it has supported me and for the opportunities I have thence enjoyed of manifesting my inviolable attachment by services faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise and as an instructive example in our annals, that, under circumstances in which the passions agitated in every direction were liable to mislead, amidst appearances sometimes dubious, vicissitudes of fortune often discouraging, in situations in which not unfrequently, want of success has countenanced the spirit of criticism, the constancy of your support was the essential prop of the efforts and a guarantee of the plans by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave as a strong incitement to unceasing vows that Heaven may continue to you the choicest tokens of its beneficence; that your union and brotherly affection may be perpetual; that the free constitution, which is the work of your hands, may be sacredly maintained; that its administration in every department may be stamped with wisdom and virtue; that, in fine, the happiness of the people of these states, under the auspices of liberty, may be made complete by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger natural to that solicitude, urge me on an occasion like the present to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments which are the result of much reflection, of no inconsiderable observation, and which appear to me all important to the permanency of your felicity as a people. These will be offered to you with the more freedom as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel. Nor can I forget, as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The unity of government which constitutes you one people is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real

independence, the support of your tranquility at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee that, from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite movement that you should properly estimate the immense value of your national Union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can, in any event, be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens by birth or choice of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have in a common cause fought and triumphed together. The independence and liberty you possess, are the work of joint councils and joint efforts—of common dangers, sufferings and successes.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest. Here every portion of our country finds the most commanding motives for carefully guarding and preserving the Union of the whole.

The *North*, in an unrestrained intercourse with the *South*, protected by the equal laws of a common government, finds in the productions of the latter, great additional resources of maritime and commercial enterprise, and precious materials of manufacturing industry. The *South*, in the same intercourse, benefiting by the same agency of the *North*, sees its agriculture grow and its commerce expand. Turning partly into its own channels the seamen of the *North*, it finds its particular navigation invigorated; and while it contributes, in different ways, to nourish and increase the general mass of the national navigation, it looks forward to the protection of a maritime strength to which itself is unequally adapted. The *East*, in a like intercourse with the *West*, already finds, and in the progressive improvement of interior communications by land and water will more and more find a valuable vent for the commodities which it brings from abroad or manufactures at home. The *West* derives from the *East* supplies requisite to its growth and comfort—and what is perhaps of still greater consequence, it must of necessity owe the *secure* enjoyment of indispensable *outlets* for its own productions to the weight, influence, and the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interest as *one nation*. Any other tenure by which the *West* can hold this essential advantage, whether derived from its own separate strength or from an apostate and unnatural connection with any foreign power, must be intrinsically precarious.

While then every part of our country thus feels an immediate and particular interest in union, all the parts combined cannot fail to find in the united mass of means and efforts greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and, what is of inestimable value! they must derive from union an exemption from those broils and wars between themselves which so frequently afflict neighboring countries not tied together by the same government, which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues would stimulate and embitter. Hence likewise, they will avoid the necessity of those overgrown military establishments, which under any form of government are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty. In this sense it is, that your Union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the Union as a primary object of patriotic desire. Is there a doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case were criminal. We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy issue to the experiment. It is well worth a fair and full experiment. With such powerful and obvious motives to union, affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who in any quarter may endeavor to weaken its bands.

In contemplating the causes which may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by *geographical* discriminations—*northern* and *southern—Atlantic* and *western*; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourself too much against the jealousies and heart burnings which spring from these misrepresentations. They tend to render alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our western country have lately had a useful lesson on this head. They have seen, in the negotiation by the executive—and in the unanimous ratification by the Senate—of the treaty with Spain, and in the universal satisfaction at that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them of a policy in the general government and in the Atlantic states, unfriendly to their interests in regard to the Mississippi. They have been witnesses to the formation of two treaties, that with Great Britain and that with Spain, which secure to them everything they could desire, in respect to our foreign relations, towards confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages on the Union by which they were procured? Will they not henceforth be deaf to those advisers, if such they are, who would sever them from their brethren and connect them with aliens?

To the efficacy and permanency of your Union, a government for the whole is indispensable. No alliances, however strict, between the parts can be an adequate substitute. They must inevitably experience the infractions and interruptions which all alliances, in all times, have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a Constitution of government, better calculated than your former, for an intimate Union and for the efficacious management of your common concerns. This government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government.—But the Constitution which at

any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power, and the right of the people to establish government, presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction; to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common councils, and modified by mutual interests. However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government; destroying afterwards the very engines which have lifted them to unjust dominion.

Towards the preservation of your government and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular opposition to its acknowledged authority but also that you resist with care the spirit of innovation upon its principles, however specious the pretext. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions, that experience is the surest standard by which to test the real tendency of the existing constitution of a country, that facility in changes upon the credit of mere hypotheses and opinion exposes to perpetual change from the endless variety of hypotheses and opinion; and remember, especially, that for the efficient management of your common interests in a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty is indispensable; liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is indeed little else than a name, where the government is too feeble to withstand the enterprises of fraction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of parties in the state, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view and warn you in the most solemn manner against the baneful effects of the spirit of party, generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual; and, sooner or later, the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purpose of his own elevation on the ruins of public liberty.

Without looking forward to an extremity of this kind, (which nevertheless ought not to be entirely out of sight) the common and continual mischiefs of the spirit of party are sufficient to make it in the interest and duty of a wise people to discourage and restrain it.

It serves always to distract the public councils, and enfeeble the public administration. It agitates the community with ill founded jealousies and false alarms, kindles the animosity of one part against another, forments occasional riot and insurrection. It opens the door to foreign influence and corruption, which finds a facilitated access to the government itself through the channels of party passions. Thus the policy and the will of one country are subjected to the policy and will of another.

There is an opinion that parties in free countries are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This within certain limits is probably true—and in governments of a monarchial cast, patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of the popular character, in governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be by force of public opinion to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent it bursting into a flame, lest instead of warming, it should consume.

It is important likewise, that the habits of thinking in a free country should inspire caution in those entrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions of the others, has been evinced by experiments ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths, which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

It is substantially true, that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who that is a sincere friend to it can look

with indifference upon attempts to shake the foundation of the fabric?

Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that the public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering, also, that timely disbursements, to prepare for danger, frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of peace to discharge the debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear. The execution of these maxims belongs to your representatives, but it is necessary that public opinion should cooperate. To facilitate to them the performance of their duty, it is essential that you should practically bear in mind that towards the payment of debts there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment inseparable from the selection of the proper objects (which is always a choice of difficulties) ought to be a decisive motive for a candid construction of the conduct of the government in making it, and for a spirit of acquiescence in the measures for obtaining revenue, which the public exigencies may at any time dictate.

Observe good faith and justice towards all nations; cultivate peace and harmony with all; religion and morality enjoin this conduct, and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt but, in the course of time and things the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular nations and passionate attachment for others should be excluded and that in place of them just and amicable feelings towards all should be cultivated. The nation which indulges towards another an habitual hatred, or an habitual fondness, is in some degree a slave. It is a slave to its animosity, or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur. Hence frequent collisions, obstinate, envenomed, and bloody contests. The nation, prompted by ill will and resentment, sometimes impels to war the government, contrary to the best calculations of policy. The government sometimes participates in the national propensity and adopts through passion what reason would reject; at other times, it makes the animosity of the nation's subservient to projects of hostility, instigated by pride, ambition and other sinister and pernicious motives. The peace often, sometimes perhaps the liberty of nations, has been the victim.

So likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter, without adequate inducements or justifications. It leads also to concessions, to the favorite nation of privileges denied to others, which is apt doubly to injure the nation making the concessions, by unnecessarily parting with what ought to have been retained and by exciting jealously, ill will, and a disposition to retaliate in the parties from whom equal privileges are withheld. And it gives to ambitious, corrupted or deluded citizens (who devote themselves to the favorite nation) facility to betray or sacrifice the interests of their own country, without odium, sometimes even with popularity gilding with the appearances of virtuous sense of obligation, a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practice the arts of seduction, to mislead public opinion, to influence or awe the public councils! Such an attachment of a small or weak towards a great and powerful nation, dooms the former to be the satellite of the latter.

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove, that foreign influence is one of the most baneful foes of republican government. But that jealously to be useful must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike for another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people to surrender their interests.

The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests, which to us have none or a very remote relation. Hence, she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence therefore it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation, when we may choose peace or war, as our interest guided by justice shall counsel.

Why forgo the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliance with any portion of the foreign world—so far, I mean, as we are now at liberty to do it, for let me not be understood as capable of patronizing infidelity to existing engagements. (I hold the maxim no less applicable to public than private affairs, that honesty is always the best policy)—I repeat it, therefore, let those engagements be observed in their genuine sense. But in my opinion, it is unnecessary, and would be unwise to extend them.

Taking care always to keep ourselves, by suitable establishments, on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, liberal intercourse with all nations, are recommended by policy, humanity, and interest. But even our

commercial policy should hold an equal and impartial hand: neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the streams of commerce but forcing nothing; establishing with powers so disposed, in order to give trade a stable course—in order to give to trade a stable course, to define the rights of our merchants, and to enable the government to support them, conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary, and liable to be from time to time abandoned or varied as experience and circumstances shall dictate; constantly keeping in view, that it is folly in one nation to look for disinterested favors from another—that is must pay with a portion of its independence for whatever it may accept under that character—that by such acceptance, it may place itself in the condition of having given equivalents for nominal favors and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old and affectionate friend, I dare not hope they will make the strong and lasting impression I could wish—that they will control the usual current of the passions or prevent our nation from running the course which has hitherto marked the destiny of nations. But if I may even flatter myself that they may be productive of some partial benefit, some occasional good, that they may now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigue, to guard against the impostures of pretended patriotism—this hope will be a full recompense for the solicitude for your welfare by which they have been dictated.

How far in the discharge of my official duties, I have been guided by the principles which have been delineated, the public records and other evidences of my conduct must witness to you and to the world. To myself, the assurance of my own conscience is, that I have, at least, believed myself to be guided by them.

In relation to the still subsisting war in Europe, my proclamation of the 22d of April 1793 is the index to my plan. Sanctioned by your approving voice and by that of your representatives in both houses of Congress, the spirit of that measure has continually governed me, uninfuenced by any attempts to deter or divert me from it.

After deliberate examination with the aid of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take, and was bound in duty and interest to take—a neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it with moderation, perseverance and firmness.

The considerations which respect the right to hold this conduct it is not necessary on this occasion to detail. I will only observe that, according to my understanding of the matter, that right, so far from being denied by any of the belligerent powers, has been virtually admitted by all.

The duty of holding a neutral conduct may be inferred, without anything more, from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity towards other nations.

The inducements of interest for observing that conduct will best be referred to your own reflections and experience. With me, a predominant motive has been to endeavor to gain time to our country to settle and mature its yet recent institutions and to progress, without interruption to that degree of strength and consistency which is necessary to give it, humanly speaking, the command of its own fortunes.

Though in reviewing the incidents of my administration I am unconscious of intentional error, I am nevertheless too sensible of my defects not to think it probable that I may have committed many errors. Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my country will never cease to view them with indulgence and that, after forty-five years of my life dedicated to its service with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Relying on its kindness in this as in other things, and actuated by that fervent love towards it which is so natural to a man who views in it the native soil of himself and his progenitors for several generations, I anticipate with pleasing expectation that retreat, in which I promise myself to realize without alloy the sweet enjoyment of partaking in the midst of my fellow citizens the benign influence of good laws under a free government—the ever favorite object of my heart, and the happy reward, as I trust, of our mutual cares, labors and dangers.

GEO. WASHINGTON.

The PRESIDING OFFICER. The Chair wishes to thank the Senator from Georgia for his outstanding elocution in delivering George Washington's Farewell Address. It was an outstanding presentation.

Mr. CHAMBLISS. I thank the Presiding Officer.

EXECUTIVE SESSION

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

The PRESIDING OFFICER (Mr. CHAMBLISS). Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 21, which the clerk will report.

The 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. The Senator from Texas.

Mr. CORNYN. Mr. President, as I listened to the distinguished Senator from Georgia recite the Farewell Address of George Washington dating back to 1796, I could not help but think how the Founding Fathers must regard the debate on the confirmation of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit that we have been having for 3 weeks. I rise this afternoon, at the beginning of that third week of Senate debate, with grave concerns about the judicial confirmation process and about how that process is being applied in this particular case.

I am saddened to say I believe the process has degenerated into one where double standards are being applied, and games of payback that are really beneath the dignity of this institution. I have actually heard with my own ears, as the junior Senator from New York has said, that Democrat obstructionism in this instance is justified by the manner in which confirmation proceedings have occurred in the past, using a phrase like ''what is good for the goose is good for the gander.''

That kind of language, that kind of attitude, that kind of conduct in this Chamber is deeply disconcerting to me, and I suspect to all the American people. As I have had the opportunity to say previously, many of us, myself included, were not in the Senate when these perceived slights took place in the past, but I believe what we need is a fresh start with regard to judicial nominations and the judicial confirmation process, one where Presidential nominees can be given a timely hearing and then voted up or down without unnecessary delay and gamesmanship. Only then can we discharge our responsibility and get on with the business the American people have sent us to do, putting the public interests and not special interests first.

In this instance, I am not just concerned about the unfair delays—in fact, Mr. Estrada was nominated by the President on May 9, 2001—I am also concerned about unfair standards, double standards. Those who oppose Mr. Estrada's confirmation will apparently stop at nothing to obstruct it. It must be a terrible dilemma indeed for those

who oppose this nomination because for them to win, the American dream must lose.

Of course, the time to vote has come and gone. Yet we have only delay and obstruction. It does not affect only this one nomination. On every day the Senate has been in session since February 5, Members of this body have extensively and exhaustively debated this nomination. Precious Senate time, energy, and attention that could have been devoted to getting the Nation's business done has simply been delayed: Things such as getting the economy moving again, strengthening our national security, protecting our homeland, modernizing and strengthening Medicare.

This time has been squandered by endlessly debating an obviously and extremely qualified nominee. So many other challenges needing this body's attention have been hijacked by this delay and by those who will not even allow a vote on Mr. Estrada's nomination, a truly selfish and unprecedented act.

The debates on this issue have run into the late hours of the day and even into the wee hours of the night. It is time, indeed it is long past time, to bring this debate to a close.

We have returned after the President's Day recess, and I hope others will join with me as I join President Bush in calling for a vote on Mr. Estrada's nomination today.

Unfortunately, the Democratic leadership strategy is clear: Delay the nomination indefinitely in the belief that Mr. Estrada's countless supporters across this Nation and across the political spectrum will eventually grow tired and give up hope. These same leaders seek to defeat Mr. Estrada, even though he commands the support of a bipartisan majority of the Senate, and they want to deny the President his plan to place Mr. Estrada, a role model for countless immigrants and an inspiration to all Americans, on to one of the most prestigious Federal courts in all the land.

It is worth recounting who is Miguel Estrada. He is an individual of extraordinarily high academic achievement, having graduated magna cum laude from both Columbia and Harvard Law School, and having been an editor on the Harvard Law Review. He is an individual who has already served the public with great distinction, as a law clerk to one of President Jimmy Carter's most respected appointees on the Federal courts of appeals, as a law clerk to U.S. Supreme Court Justice Anthony Kennedy, as an Assistant U.S. Attorney, and as an Assistant to the Solicitor General during the first Bush and Clinton administrations. This is an individual who has argued 15 appeals to the U.S. Supreme Court, the legal equivalent of the Super Bowl, reserved for only the Nation's very top lawyers.

This is an individual who has been endorsed by numerous top Clinton administration lawyers and officials, including Vice President Gore's former chief of staff and a former chief counsel to the Senate Judiciary Committee, Ron Klain, the Clinton Justice Department Solicitor General, Seth Waxman, and several other high-ranking Clinton Administration officials. This is an individual who has been supported by numerous Hispanic organizations, including the League of United Latin American Citizens, the National Hispanic Bar Association, the U.S. Hispanic Chamber of Commerce, and the Latino Coalition, to name but a few.

Miguel Estrada is an individual who was not born in this country but who came here at age 17 from his native Honduras barely speaking English. This is an individual described by the oldest and largest Hispanic organization in the United States as ''truly one of the rising stars in the Hispanic community and a role model for our youth.'' This is an individual who has been rated unanimously well qualified by the American Bar Association, which some of my Democratic colleagues have referred to as the ''gold standard'' in judicial confirmation proceedings. And yes, this is an individual who embodies the realization of the American dream for immigrants throughout our land. It is no wonder that today, the beginning of the third week of debate on this exceptional individual's nomination to the Federal bench, that a bipartisan majority of the Senate stand ready to confirm him right now without any further debate or discussion.

We need to do what the American people have sent us here to do. We need to vote. The Democratic leadership has tried to convince Members of this body to vote against confirmation. But because those leaders have failed to make the case for voting this nominee down, they are now left with one alternative, and that is obstructing any vote on this nominee.

There is simply no reasonable case for refusing confirmation of this individual to the U.S. Court of Appeals for the D.C. Circuit. Yet it seems that the Democratic leadership is obsessed with obstruction. Before the November election in 2002, they obstructed President Bush's proposal to create a Department of Homeland Security to better ensure the protection of the United States and the American people in the event of further terrorist attacks. They have obstructed President Bush's proposal to stimulate the economy by making the 2001 tax cuts permanent, leaving the economy flat and too many Americans out of work. They also failed to pass a budget for the Federal Government last year.

Because of their obstruction, much of our time since January 7, 2003, when this Congress convened, has simply been devoted to cleaning up the mess left by the failure to get the job done last year under their leadership. And today they are obstructing a vote on President Bush's appointment of one of the most talented lawyers in our Nation to the Federal bench.

The Democratic leadership seems particularly obsessed and preoccupied with obstructing Mr. Estrada's confirmation. I have wondered why that is. As I have already explained, he is an exceptionally qualified attorney and has an inspiring personal story. The Democratic leadership does not rebut any of that record, and they cannot point to any evidence that Mr. Estrada will not be a fair and just member of the Federal bench who will interpret the law as written, without injecting his personal agenda or political views. Nor can they rebut his stellar record of government service as a law clerk on the U.S. Supreme Court and as a career Justice Department attorney, working under Democrats and Republicans alike. Nor can they rebut the fact that the American Bar Association has unanimously given him the highest possible rating of well qualified.

So you might ask, why are they picking on Mr. Estrada? When I was back home in Texas last week during the Presidents Day recess, I read an editorial from the Dallas Morning News that perhaps gives us some clue as to why the Democratic leadership is so obsessed with obstructing Mr. Estrada's confirmation. They said: ''There is a time for talking and a time for voting. The time has passed for the U.S. Senate to talk about Mr. Estrada's nomination. It is time to vote. . . . But . . . Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his reelection campaign next year.''

I could not put it any better myself. The Democratic leadership wants to deny President Bush the opportunity to make history by placing an American success story, an exceptionally talented attorney, and the pride of the Hispanic community on one of the most prestigious courts in this country. Why? I am sorry to say, the answer is for petty partisan purposes. The Democratic leadership is frantic to stop Mr. Estrada, even though a bipartisan majority of the Senate stands ready to confirm him.

But how do you do that? How do you convince a majority of Senators to vote against such an exceptional individual? When you have such an obviously qualified person in Mr. Estrada, there is only one thing that the Democratic leadership can do to stop him. There is only one tool of obstruction left and that is to change the rule and to create an unfair double standard.

Mr. President, the only tool of obstruction left for those who oppose this nominee is simply to change the rules. The American people will not stand for such unfair and childish behavior in the Senate.

Faced with a nomination of the President's exceptional nominee, the Democratic leadership has no real evidence, no real facts, no real justification with which to oppose Mr. Estrada. As the Austin American Statesman has editorialized: ''If Democrats have

something substantive to block Miguel Estrada's confirmation to the U.S. Court of Appeals for the District of Columbia, it's past time they share it.''

I would refer Members to an excellent letter of February 12, 2003, signed by White House Counsel Alberto Gonzales, which responds to Senator DASCHLE's and Senator LEAHY's renewed request for confidential Department of Justice memos written while Mr. Estrada worked in the Office of Solicitor General, including for 4 years during the Clinton administration.

Mr. President, I ask unanimous consent that a copy of that letter be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, DC, February 12, 2003.

DEAR SENATOR DASCHLE AND SENATOR LEAHY: On behalf of President Bush, I write in response to your letter to the President dated February 11, 2003. In the letter, you renew your previous request for confidential Department of Justice memoranda in which Mr. Estrada provided appeal, certiorari, and amicus recommendations while he was a career attorney in the Office of Solicitor General for four years in the Clinton Administration and one year in the George H.W. Bush Administration. You also request that Mr. Estrada answer certain questions beyond the extensive questions that he already answered appropriately and forthrightly during his Committee hearing and in follow-up written responses.

We respect the Senate's constitutional role in the confirmation process, and we agree that the Senate must make an informed judgment consistent with its traditional role and practices. However, your requests have no persuasive support in the history and precedent of judicial appointments. Indeed, the relevant history and precedent convincingly demonstrate that a new and shifting standard is being applied to Miguel Estrada.

First, as the Department of Justice explained in its letters of June 5, 2002, October 8, 2002, and January 23, 2003, all living former Solicitors General (four Democrats and three Republicans) have strongly opposed your request for Solicitor General memoranda and stated that it would sacrifice and compromise the ability of the Justice Department to effectively represent the United States in court. Even more telling, we are informed that the Senate has not requested memos such as these for any of the 67 appeals court nominees since 1977 who had previously worked in the Justice Department (including the seven nominees who had previously worked in the Solicitor General's office). The few isolated examples you have cited—in which targeted requests for particular documents about specific issues were accommodated for nominees to positions other than the U.S. Courts of Appeals—similarly do not support your request here.

Second, as explained more fully below with respect to your request that Mr. Estrada answer additional questions, the only specific question identified in your letter refers to this judicial role models. You claim that Mr. Estrada refused to answer a question on this topic. In fact, in his written responses to Senator DURBIN'S question on this precise subject that Mr. Estrada submitted three months ago, he cited Justice Anthony Kennedy, Justice Lewis Powell, and Judge Amalya Kearse as judges he admires (he clerked for Justice Kennedy and Judge Kearse), and he further pointed out, of course, that he would seek to resolve cases as he analyzed them ''without any preconception about how some other judge might approach the question.'' Your letter to the President ignores Mr. Estrada's answer to this question. In any event, beyond this one query, your letter does not pose any additional questions to him. Additionally, neither of you has posed any written questions to Mr. Estrada in the more than three months since his allday Committee hearing. Since the hearing, Mr. Estrada also has met (and continues to meet) with numerous Democrat Senators interested in learning more about his record. Finally, as I will explain below, Mr. Estrada forthrightly answered numerous questions about his judicial approach and views in a manner that matches or greatly exceeds answers demanded of previous appeals court nominees.

With respect, it appears that a double standard is being applied to Miguel Estrada. This is highly unfair and inappropriate, particularly for this well-qualified and well-respected nominee.

I will turn now in more detail to the various issues raised by your letter. I will address them at some length given the importance of this issue and the nature of your requests.

L. MIGUEL ESTRADA'S QUALIFICATIONS AND BIPARTISAN SUPPORT

Miguel Estrada is an extraordinary qualified judicial nominee. The American Bar Association, which Senators LEAHY and SCHUMER have referred to as the ''gold standard,'' unanimously rated Estrada ''well qualified'' for the D.C. Circuit, the ABA's highest possible rating. The ABA rating was entirely appropriate in light of Mr. Estrada's superb record as Assistant to the Solicitor General in the Clinton and George H.W. Bush Administrations, as a federal prosecutor in New York, as a law clerk to Justice Kennedy, and in performing significant pro bono work.

Some who are misinformed have seized on Mr. Estrada's lack of prior judicial experience, but five of the eight judges currently serving on the D.C. Circuit had not prior judicial experience, including two appointees of President Clinton and one appointee of President Carter. Miguel Estrada has tried numerous cases before federal juries, argued many cases in the federal appeals courts, and argued 15 cases before the Supreme Court of the United States. That is a record that few judicial nominees can match. And few lawyers, whatever there ideology or philosophy, have volunteered to represent a death row inmate pro bono before the Supreme Court as did Miguel Estrada.

Mr. Estrada's excellent legal qualifications are all the more extraordinary given his personal history. Simply put, Miguel Estrada is an American success story. He came to this country at age 17 from Honduras speaking little English. Through hard work and dedicated service to the United States, Miguel Estrada has risen to the very pinnacle of the legal profession. If confirmed, he would be the first Hispanic judge to sit on the U.S. Court of Appeals for the D.C. Circuit. Given his record, his background, and his integrity, it is no surprise that Miguel Estrada is strongly supported by the vast majority of national Hispanic organizations. The League of United Latin American Citizens (LULAC), for example, wrote to Senator LEAHY to urge Mr. Estrada's confirmation and explain that he ''is truly one of the rising stars in the Hispanic community and a role model for our youth.'' A group of 19 Hispanic organizations, including LULAC and the Hispanic National Bar Association, recently wrote to the Senate urging ''on behalf of an overwhelming majority of Hispanics in this country'' that ''both parties in the U.S. Senate . . . put partisan politics aside so that Hispanics are no longer denied representation in one of the most prestigious courts in the land.''

The current effort to filibuster Mr. Estrada's nomination is particularly unjustified given that those who have worked with Miguel—including prominent Democratic lawyers whom you know well—strongly support his confirmation. For example, Ron Klain, who served as a high-ranking adviser to former Vice President Gore and former Chief Counsel to the Senate Judiciary Committee, wrote: ''Miguel is a person of outstanding character, tremendous intellect, and with a deep commitment to the faithful application of precedent. . . . [T]he challenges that he has overcome in his life have made him genuinely compassionate, genuinely concerned for others, and genuinely devoted to helping those in need.''

President Clinton's Solicitor General, Seth Waxman, wrote: ''During the time Mr. Estrada and I worked together, he was a model of professionalism and competence. . . . In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his personal views—or indeed that they reflected any consideration other than the long-term interests of the United States. I have great respect both for Mr. Estrada's intellect and for his integrity.''

A bipartisan group of 14 former colleagues in the Office of the Solicitor General at the U.S. Department of Justice wrote: ''We hold varying ideological views and affirmations that range across the political spectrum, but we are unanimous in our conviction that Miguel would be a fair and honest judge who would decide cases in accordance with the applicable legal principles and precedents, not on the basis of personal preferences or political viewpoints.'' One former colleague, Richard Seamon, wrote that he is a prochoice, lifelong Democrat with self-described ''liberal views on most issues'' who said he would ''consider it a disgrace'' if Mr. Estrada is not confirmed.

Similarly, Leonard Joy, head of the Federal Defense Division of the Legal Aid Society of New York, wrote that ''Miguel would make an excellent Circuit Court Judge. He is a fine a lawyer as I have met and, on top of all his intellectual abilities and judgment he would bring to bear, he would bring a desirable diversity to the Court. I heartily recommend him.''

Beyond the extensive personal testimony from those who worked side-by-side with him for many years, the performance reviews of Miguel for the years that he worked in the Office of Solicitor General gave him the highest rating of ''outstanding'' in every possible category. The reviews stated that Miguel:

''states the operative facts and applicable law completely and persuasively, with record citations, and in conformance with court and office rules, and with concern for fairness, clarity, simplicity, and consicieness.''

''[i]s extremely knowledgeable of resource materials and uses them expertly; acting independently, goes directly to point of the matter and gives reliable, accurate, responsive information in communicating position to others.''

''[a]ll dealings, oral and written, with the courts, clients, and others are conducted in a diplomatic, cooperative, and candid manner.''

''[a]ll briefs, motions and memoranda reviewed consistently reflect no policies at variance with Department or Governmental policies, or fails to discuss and analyze relevant authorities.''

''[i]s constantly sought for advice and counsel. Inspires co-workers by example.''

In the two years that Miguel Estrada and Paul Bender worked together, Mr. Bender

signed those reviews. These employment reviews thus call into serious question some press reports containing a negative comment from Mr. Bender about Mr. Estrada's temperament (which is the only negative comment made by anyone who actually knows Mr. Estrada). Just as important, President Clinton's Solicitor General Seth Waxman expressly refuted Mr. Bender's statement.

In sum, based on his experience, his intellect, his integrity, and his bipartisan support, Miguel Estrada should be confirmed promptly.

II. THE SENATE'S ROLE

President Bush nominated Miguel Estrada nearly two years ago on May 9, 2001. As explained above, he is well-qualified and well-respected. By any traditional measure that the Senate has used to evaluate appeals courts nominees, Miguel Estrada should have been confirmed long ago. Your letter and public statements indicate, however, that you are applying both a new standard and new tactics to this particular nominee.

As to the standard, the Senate has a very important role in the process, but the Senate's traditional approach to appeals court nominees, and the approach envisioned by the Constitution's Farmers, is far different from the standard that you now seek to apply. Senator BIDEN stated the traditional approach in 1997: ''any person who is nominated for the district or circuit court who, in fact, any Senator believes will be a person of their word and follow stare decisis, it does not matter to me what their ideology is, as long as they are in a position where they are in the general mainstream of American political life, and they have not committed crimes of moral turpitude, and have not, in fact, acted in a way that would shed a negative light on the court.'' Congressional Record, March 19, 1997. Alexander Hamilton explained that the purpose of Senate confirmation is to prevent appointment of ''unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.'' Federalist No. 76. It was anticipated that the Senate's approval would not often be refused unless there were ''special and strong reasons for the refusal.'' No. 76.

As to tactics, you have indicated that some Senate Democrats intend to filibuster to prevent a vote on this nominee. As you know, there has never been a successful filibuster of a court of appeal nominee. Only a few years ago, Senator Leahy and other Democrat Senators expressly agreed with then-Governor Bush that every judicial nominee was entitled to an up-or-down floor vote within a reasonable time. On October 3, 2000, for example, Senator LEAHY STATED:

''Governor Bush and I, while we disagree on some issues, have one very significant issue on which we agree. He gave a speech a while back and criticized what has happened in the Senate where confirmation are held up not because somebody votes down a nominee but because they cannot ever get a vote. Governor Bush said: You have the nominee. Hold the hearing. Then, within 60 days, vote them up or vote them down. Don't leave them in limbo. Frankly, that is what we are paid to do in this body. We are paid to vote either yes or no—not vote maybe. When we hold a nominee up by not allowing them a vote and not taking any action one way or the other, we are not only voting 'maybe,' but we are doing a terrible disservice to the man or woman to whom we do this.''

Senator Daschle similarly stated on October 5, 1999, that ''[t]he Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down. An up or down vote, that is all we seek for Berzon and Paez. And after years of waiting, they deserve at least that much.''

In his East Room speech of October 30, 2002, President Bush reiterated that every judicial nominee deserves a timely up-or-down vote in the Senate, no matter who is President or which party controls the Senate. Contrary to President Bush's attempts at permanent reform to bring order to the process, your current effort to employ a filibuster and block an up-or-down vote on the Estrada nomination may significantly exacerbate the cycle of bitterness and recrimination that President Bush has sought to resolve on a bipartisan basis. We fear that the damage caused by a filibuster could take many years to undo. To continue on this path would also be, in Senator Leahy's words, ''a terrible disservice'' to Mr. Estrada. We urge you to reconsider this extraordinary action, to end the filibuster of Mr. Estrada's nomination, and to allow the full Senate to vote up or down.

III. REQUEST FOR CONFIDENTIAL SOLICITOR GENERAL MEMOS

You have suggested that Mr. Estrada's background, experience, and support are insufficient to assess his suitability for the D.C. Circuit. You have renewed your request for Solicitor General memos authored by Mr. Estrada. But every living former Solicitor General signed a joint letter to the Senate opposing your request. The letter was signed by Democrats Archibald Cox, Walter Dellinger, Drew Days, and Seth Waxman. They stated: ''Any attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself. . . . Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.''

It bears mention that the interest asserted here is that of the United States, not the personal interest of Mr. Estrada. Indeed, Mr. Estrada himself testified that ''I have not opposed the release of those records. . . . I am exceptionally proud of every piece of legal work that I have done in my life. If it were up to me as a private citizen, I would be more than proud to have you look at everything that I have done for the government or for a private client.''

The history of Senate confirmations of nominees who had previously worked in the Department of Justice makes clear that an unfair double standard is being applied to Miguel Estrada's nomination. Since the beginning of the Carter Administration in 1977, the Senate has approved 67 United States Court of Appeals nominees who previously had worked in the Department of Justice. Of those 67 nominees, 38 had no prior judicial experience, like Miguel Estrada. The Department of Justice's review of those nomination records disclosed that in none of those cases did the Department of Justice produce internal deliberative materials created by of the Department. In fact, the Department's review disclosed that the Senate did not even request such materials for a single one of these 67 nominees.

Of this group of 67 nominees, seven were nominees who had worked as a Deputy Solicitor General or Assistant to the Solicitor General. These seven nominees, nominated by Presidents of each party and confirmed by Senates controlled by each party, included Samuel Alito, Danny Boggs, William Bryson, Frank Easterbrook, Daniel Friedman, Richard Posner, and Raymond Randolph.

The five isolated historical examples you have cited do not support your current request. In each of those five cases, the Committee made a targeted request for specific information primarily related to allegations of misconduct or malfeasance identified by the Committee. Even in those isolated cases, the vast majority of deliberative memoranda written by those nominees were neither requested nor produced. With respect to Judge Bork's nomination, for example, the Committee received access to certain particular memoranda (many related to Judge Bork's involvement in Watergate-related issues). The vast majority of memoranda authored by Judge Bork were never received. With respect to Judge Trott, the Committee requested documents unrelated to Judge Trott's service to the Department. So, too, in the three other examples you cite, the Committee requested specific documents primarily related to allegations have been made in the case of Mr. Estrada.

In sum, the examples you have cited only highlight the lack of precedent for the current request. As the Justice Department has explained to you previously, the existence of a few isolated examples where the Executive Branch on occasion accommodated a Committee's targeted requests for very specific information primarily related to allegations of misconduct does not in any way alter the fundamental and long-standing principle that memos from the Office of Solicitor General—and deliberative Department of Justice memoranda more broadly—must remain protected in the confirmation context so as to maintain the integrity of the Executive Branch's decisionmaking process. That is a fundamental principle that has been followed irrespective of the party that controls the White House and the Senate.

Your continued requests for these memoranda have provoked a foreseeable and inevitable conflict that, in turn, has been cited as a basis for obstructing a vote on Mr. Estrada's nomination. Respectfully, the conflict is unnecessary because your desire to assess the nominee can be readily accommodated in many ways other than intruding into the severely damaging the deliberative process of the Office of Solicitor General. For example, you can review Mr. Estrada's written briefs and oral arguments both as an attorney for the United States and in private practice. As you know, those documents are publicly available and easily accessible, that said, we would be pleased to facilitate your access to them. (Mr. Estrada's hearing transcript suggests that no Democrat Member of the Committee had read Mr. Estrada's many dozens of Solicitor General merits briefs, certiorari petitions, and opposition briefs or the transcripts of his 14 oral arguments when he represented the United States.) You also may consider the opinions of others who served in the Office at the same time (discussed above) and examine the nominee's written performance reviews (also discussed above). There is more than ample information for you to assess Mr. Estrada's qualifications and suitability for the D.C. Circuit based on the traditional standards the Senate has employed.

It also is important to recognize that political appointees of President Clinton have read virtually all of the memoranda in question—namely, the Democrat Solicitors General Drew Days, Walter Dellinger, and Seth Waxman. None of those three highly respected Democrat lawyers has expressed any concern whatever about Mr. Estrada's nomination. Indeed, Mr. Waxman wrote a letter of strong support, and Mr. Days made public statements in support of Mr. Estrada.

In sum, the historical record and past precedent convincingly demonstrate that this request creates and applies an unfair double standard to Miguel Estrada.

IV. REQUEST THAT MIGUEL ESTRADA ANSWER ADDITIONAL QUESTIONS

Your letter also suggests that Miguel Estrada should answer certain questions that he allegedly did not answer in his hearing. To begin with, we do not know what your specific questions are. In addition, this request frankly comes as a surprise given that (i) Senator Schumer chaired the hearing on Mr. Estrada, (ii) the hearing lasted an entire day, (iii) Senators at the all-day hearing asked numerous far-reaching questions that Mr. Estrada answered forthrightly and appropriately, and (iv) only two of the 10 Democrat Senators then on the Committee even submitted any follow-up written questions, and they submitted only a few questions (in marked contrast to other nominees who received voluminous follow-up questions).

It also bears mention that Mr. Estrada has personally met with a large number of Democrat Senators, including Senators Landrieu, Lincoln, Bill Nelson, Ben Nelson, Leahy, Feinstein, Kohl, and Breaux; is scheduled to meet with Senator Carper, and would be pleased to meet with additional Senators.

The only specific question your letter identifies refers to Mr. Estrada's judicial role models, and you claim that he refused to answer a question on this topic. In fact, in Mr. Estrada's written responses to Senator Durbin's questions on this precise subject, Mr. Estrada cited Justice Anthony Kennedy, Justice Lewis Powell, and Judge Amalya Kearse as judges he admires, and he further pointed out, of course, that we would seek to resolve cases as he analyzed them ''without any preconception about law some other judge might approach the question.''

In our judgment, moreover, Mr. Estrada answered the Committee's questions in a manner that was both entirely appropriate and entirely consistent with the approach that judicial nominees of President of both parties have taken for many years. Your suggestions to the contrary do not square with the hearing record or traditional practice.

A. JUDICIAL ETHICS AND TRADITIONAL PRACTICE

In assessing your request that Miguel Estrada did not answer appropriate questions, we begin with rules of judicial ethics that govern prospective nominees. Canon 5A(3)(d) provides that prospective judges' ''shall not . . . make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court'' (emphasis added). Justice Thurgood Marshall made the point well in 1967 when asked about the Fifth Amendment: ''I do not think you want me to be in a position of giving you a statement on the Fifth Amendment and then, if I am confirmed and sit on the Court, when a Fifth Amendment case comes up, I will have to disqualify myself.'' Lloyd Cutler, who served as Counsel to President Carter and President Clinton, has stated that ''candidates should decline to reply when efforts are made to find out how they would decide a particular case.''

In 1968, in the context of the Justice Abe Fortas' nomination to be Chief Justice, the Senate Judiciary Committee similarly stated: ''Although recognizing the constitutional dilemma which appears to exist when the Senate is asked to advise and consent on a judicial nominee without examining him on legal questions, the Committee is of the view that Justice Fortas wisely and correctly declined to answer questions in this area. To require a Justice to state his views on legal questions or to discuss his past decisions before the Committee would threaten the independence of the judiciary and the integrity of the judicial system itself. It would also impinge on the constitutional doctrine of separation of powers among the three branches of Government as required by the Constitution.'' S. Exec. Rep. No. 8, 90th Cong. 2d Sess. 5 (1968).

Even in the context of a Supreme Court confirmation hearing, Senator Kennedy defended Sandra Day O'Connor's refusal to discuss her views on abortion: ''It is offensive to suggest that a potential Justice÷ of the Supreme Court must pass some presumed test of judicial philosophy. It is even more offensive to suggest that a potential justice must pass the litmus test of any single-issue interest group.'' Nomination of Sandra O'Connor: Hearings Before the Senate Comm. on the Judiciary on the Nomination of Judge Sandra Day O'Connor of Arizona to Serve as an Associate Justice of the Supreme Court of the United States, 97th Cong. 6 (1981) (statement of Sen. Kennedy).

Justice Ruth Bader Ginsburg likewise declined to answer certain questions: ''Because I am and hope to continue to be a judge, it would be wrong for me to say or to preview in this legislative chamber who I would cast my vote on questions the Supreme Court may be called upon to decide. Were I to rehearse here what I would say and how I would reason on such questions, I would act injudiciously.'' Similarly, Justice John Paul Stevens stated in his hearing: ''I really don't think I should discuss this subject generally, Senator. I don't mean to be unresponsive but in all candor I must say that there have been many times in my experience in the last five years where I found that my first reaction to a problem was not the same as the reaction I had when I had the responsibility of decisions and I think that if I were to make comments that were not carefully though through they might be given significance that they really did not merit.''

Justice Ginsburg described the traditional practice in a case decided last year: ''In the context of the federal system, how a prospective nominee for the bench would resolve particular contentious issues would certainly be 'in interest' to the President and the Senate . . . But in accord with a longstanding norm, every Member of this Court declined to furnish such information to the Senate, and presumably to the President as well.'' Republican Party of Minnesota v. White, 122 S. Ct. 2528, 2552 n. 1 (2002) (Ginsburg, J., dissenting) (emphasis added). Justice Ginsburg added that this adherence to this ''longstanding norm'' was ''crucial to the health of the Federal Judiciary.'' Id. In his majority opinion, Justice Scalia did not take issue with that description and added: ''Nor do we assert that candidates for judicial office should be compelled to announce their views on disputed legal issues.'' Id. at 2539 n.11 (emphasis in original).

In some recent hearings, including Mr. Estrada's, Senator Schumer has asked that nominees identify particular Supreme Court cases of the last few decades with which they disagree. But the problems with such a question and answer were well stated by Justice Stephen Breyer. As Justice Breyer put it, ''Until [an issue] comes up, I don't really think it through with the depth that it would require. . . . So often, when you decide a matter for real, in a court or elsewhere, it turns out to be very different after you've become informed and think it through for real than what you would have said at a cocktail party answering a question.'' 34 U.C. Davis L. Rev. 425, 462.

Senator Schumer also has asked nominees how they would have ruled in particular Supreme Court cases. Again, a double standard is being applied. The nominees of President Clinton did not answer such questions. For example, Richard Tallman, a nominee with no prior judicial service who would now serves on the Ninth Circuit, not only would not answer how he would have ruled as a judge in Roe v. Wade—but even how he would have ruled in Plessy v. Ferguson, the infamous case that upheld the discredited and shameful ''separate but equal'' doctrine. So, too, in the hearing on President Clinton's nomination of Judges Barry and Fisher, Senator Smith asked whether the nominees would have voted for a constitutional right to abortion before Roe v. Wade. Chairman Hatch interrupted Senator Smith to say ''that is not a fair question to these two nominees because regardless of what happened pre-1973, they have to abide by what has happened post-1973 and the current precedents that the Supreme Court has.''

B. ANSWERS BY MIGUEL ESTRADA

Miguel Estrada answered the Committee's question forthrightly and appropriately. Indeed, Miguel Estrada was more expansive than many judicial nominees traditionally have been in Senate hearings, and he was asked a far broader range of questions than many previous appeals court nominees were asked. We will catalogue here a select sample of his answers.

Unenumerated rights, privacy, and abortion

When asked by Senator Edwards about the Constitution's protection for rights not enumerated in the Constitution, Mr. Estrada replied: ''I recognize that the Supreme Court has said [on] numerous occasions in the area of privacy and elsewhere that there are unenumerated rights in the Constitution, and I have no view of any sort, whether legal or personal, that would hinder me from applying those rulings by the court. But I think the court has been quite clear that there are a number of unenumerated rights in the Constitution. In the main, the court has recognized them as being inherent in the right of substantive due process and the liberty clause of the Fourteenth Amendment.''

When asked by Senator Feinstein whether the Constitution encompasses a right to privacy and abortion, Mr. Estrada responded, ''The Supreme Court has so held, and I have no view of any nature whatsoever, whether it be legal, philosophical, moral, or any other type of view that would keep me from applying that case law faithfully.'' When asked whether Roe v. Wade was ''settled law,'' Mr. Estrada replied, ''I believe so.''

General approach to judging

When asked by Senator Edwards about judicial review, Mr. Estrada explained: ''Courts take the laws that have been passed by you and give you the benefit of understanding that you take the same oath that they do to uphold the Constitution, and therefore they take the laws with the presumption that they are constitutional. It is the affirmative burden of the plaintiff to show that you have gone beyond your oath. If they come into court, then it is appropriate for courts to undertake to listen to the legal arguments—why it is that the legislature went beyond [its] role as a legislat[ure] and invaded the Constitution.''

Mr. Estrada stated to Senator Edwards that there are 200 years of Supreme Court precedent and than it is not the case that ''the appropriate conduct for courts is to be guided solely by the bare text of the Constitution because that is not the legal system that we have.''

When asked by Senator Edwards whether he was a strict constructionist, Mr. Estrada replied that he was ''a fair constructionist''—meaning that ''I don't think that it should be the goal of courts to be strict or lax. The goal of courts is to get it right. . . . It is not necessarily the case in my mind that, for example, all parts of the Constitution are suitable for the same type of interpretative analysis. . . . [T]he Constitution says, for example, that you must be 35 years

old to be our chief executive. . . . There are areas of the Constitution that are more open-ended. And you adverted to one, like the substantive component of the due process clauses, where there are other methods of interpretation that are not quite so obvious that the court has brought to bear to try to bring forth what the appropriate answer should be.''

When Senator Kohl asked him about environmental statutes, for example, Mr. Estrada explained that those statutes come to court ''with a strong presumption of constitutionality.''

In response to Senator Leahy, Mr. Estrada described the most important attributes of a judge: ''The most important quality for a judge, in my view Senator Leahy, is to have an appropriate process for decisionmaking. That entails having an open mind. It entails listening to the parties, reading their briefs, going back beyond those briefs and doing all of the legwork needed to ascertain who is right in his or her claims as to what the law says and what the facts [are]. In a court of appeals court, where judges sit in panels of three, it is important to engage in deliberation and give ear to the view of colleagues who may have come to different conclusions. And in sum, to be committed to judging as a process that is intended to give us the right answer, not to a result. And I can give you my level best solemn assurance that I firmly think I do have those qualities or else I would not have accepted the nomination.''

In response to Senator Durbin, Miguel Estrada stated that ''the Constitution, like other legal texts, should be construed reasonably and fairly, to give effect to all that its text contains.''

Mr. Estrada indicated to Senator Durbin that he admired the judges for whom he clerked, Justice Kennedy and Judge Kearse, as well as Justice Lewis Powell.

Mr. Estrada stated to Senator Durbin that ''I can absolutely assure the Committee that I will follow binding Supreme Court precedent until and unless such precedent has been displaced by subsequent decisions of the Supreme Court itself.''

In response to Senator Grassley, Mr. Estrada stated: ''When facing a problem for which there is not a decisive precedent from a higher court, my cardinal rule would be to seize aid from anyplace where I could get it. Depending on the nature of the problem, that would include related case law in other areas that higher courts had dealt with that had some insights to teach with respect to the problem at hand. It could include the history of the enactment, including in the case of a statute legislative history. It could include the custom and practice under any predecessor statute or document. It could include the views of academics to the extent that they purport to analyze what the law is instead of—instead of prescribing what it should be. And in sum, as Chief Justice Marshall once said, to attempt not to overlook anything from which aid might be derived.''

In response to Senator Sessions, Mr. Estrada stated: ''I am very firmly of the view that although we all have views on a number of subjects from A to Z, the first duty of a judge is to self-consciously put that aside and look at each case by starting withholding judgment with an open mind and listen to the parties. So I think that the job of a judge is to put all of that aside, and to the best of his human capacity to give a judgment based solely on the arguments and the law.''

In response to Senator Sessions, Mr. Estrada stated that ''I will follow binding case law in every case. . . . I may have a personal, moral, philosophical view on the subject matter. But I undertake to you that I would put all that aside and decide cases in accordance with binding case law and even in accordance with the case law that is not binding but seems constructive on the area, without any influence whatsoever from any personal view I may have about the subject matter.''

Miranda/Stare decisis

Mr. Estrada stated that United States v. Dickerson—a case raising the question whether Miranda should be overruled—reflected a ''reasonable application of the doctrine of stare decisis. In my view, it is rarely appropriate for the Supreme court to overturn one of its own precedents.''

Affirmative action

With respect to affirmative action, Mr. Estrada responded to Senator Kennedy that ''any policy views I might have as a private citizen on the subject of affirmative action would not enter into how I would approach any case that comes before me as a judge. Under controlling Supreme Court authority, particularly Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995), if a government program creates a racial classification, it will be subject to strict scrutiny. Whether the program survives that sort of scrutiny will often involve a highly contextual and fact-specific inquiry into the nature of the justifications asserted by the government and the fit between those justifications and the classification at issue. Adarand and similar cases provide the framework that I would be required to apply, and would apply, in considering these issues as a judge.''

Asked by Senator Leahy about the strict scrutiny test, Mr. Estrada replied, ''the Supreme Court in the Adarand case stated, as a general rule, that the consideration of race is subject to strict scrutiny. That means that though it may be used in some cases, it has to be justified by a compelling state interest. And with respect to the particular context, there must be a fairly fact-bound individual assessment of the fit between the interest that is being asserted and the category being used. That is just another way of saying that it is a very fact-intensive analysis in the context of a specific program and in the context of the justifications that are being offered in support of the program.''

Congressional authority

With respect to the outer limits of Congress' power to confer authority on other governmental bodies, Miguel responded to Senator Kennedy that the Supreme Court has said that ''particular factual context is significant in analyzing the appropriateness of a particular delegation. . . . Of course, the fact that the Supreme Court only rarely has struck down statutes on this ground suggests that the Court has been quite deferential to congressional judgments about the types of delegations that reasonably might be needed to carry on the business of government.''

When Senator Kohl asked Mr. Estrada about the 1995 Lopez case concerning the scope of Congress' power to regulate, Mr. Estrada pointed out that he had argued in a companion case ''for a very expansive view of the power to Congress to pass statutes under the Commerce Clause and have them be upheld by the court. . . . Lopez has given us guidance on when it is appropriate for the court to exercise the commerce power. It is binding law and I would follow it.''

Ethnicity

With respect to the fact that the President had noted Miguel's ethnicity, Miguel responded to Senator Kennedy: ''The President is the leader of a large and diverse country, and it is accordingly appropriate for him, in exercising his constitutional nomination and appointment powers, to select qualified individuals who reflect the breadth and diversity of our Nation.''

With respect to the Democrat Congressional Hispanic Caucus's criticism of him, Miguel responded to Senator Kennedy that ''I strongly disagree, however, with the Congressional Hispanic Caucus' view that I lack an understanding of the role and importance of courts in protecting the legal rights of minorities, of the values and mores of Latino culture, or the significance of role models for minority communities.''

Racial discrimination

With respect to race discrimination, Mr. Estrada stated in response to Senator Kennedy: ''I take a backseat to no one in my abhorrence of race discrimination in law enforcement or anything else.''

Senator Feingold asked Mr. Estrada whether he believed that racial profiling and racially motivated law enforcement misconduct are problems in this country today. Mr. Estrada replied, ''I am—I will once again emphasize I'm unalterably opposed to any sort of race discrimination in law enforcement, Senator, whether it's called racial profiling or anything else. . . . I know full well that we have real problems with discrimination in our day and age.''

Senator Leahy asked Mr. Estrada about whether statistical evidence of discriminatory impact is relevant in establishing discrimination. Mr. Estrada replied: ''I am not a specialist in this area of the law, Senator Leahy, but I am aware that there is a line of cases, beginning with the Supreme Court's decision in Griggs, that suggests that in appropriate cases that [such evidence] may be appropriate. . . . I do understand that there is a major area of law that deals with how you prove and try disparate-impact cases.''

Congressional authority to regulate firearms

Senator Feinstein asked whether Congress may legislate in the area of dangerous firearms, and Mr. Estrada responded that the Supreme Court had ruled that ''if the government were to prove that the firearm had at any time in its lifetime been in interstate commerce even if that had nothing to do with the crime at issue, that that would be an adequate basis for the exercise of Congress' power.''

Right to counsel

Senator Edwards asked about Gideon v. Wainwright, the Supreme Court case guaranteeing the right to counsel for poor defendants who could not afford counsel. Although Senator Edwards appeared to question the reasoning in that landmark case, Mr. Estrada responded that ''I frankly have always taken it as a given that that's—the ruling in the case.''

C. ANSWERS BY PRESIDENT CLINTON'S NOMINEES

Your criticism of Miguel Estrada's testimony creates a double standard. You did not require nominees of President Clinton to answer questions of this sort (keeping in mind that you have not identified what your additional questions to Mr. Estrada are). President Clinton's appeals court nominees routinely testified without discussing their views of specific issues or cases. A few select examples, including of several nominees who had no prior judicial experience, illustrate the point. (Please note that these are isolated examples; there are many more we can provide if necessary).

Merrick Garland (no prior judicial experience). In the nomination of Merrick Garland to the D.C. Circuit, Senator Specter asked him: ''Do you favor, as a personal matter, capital punishment?'' Judge Farland replied only that he would follow Supreme Court precedent: ''This is really a matter of settled law now. The Court has held that capital punishment is constitutional and lower courts are to follow that rule.'' Senator Specter also asked him about is views of the

independent counsel statute's constitutionality, and Judge Garland responded: ''Well, that, too, the Supreme Court in Morrison v. Olson upheld as constitutional, and, of course, I would follow that ruling.'' Judge Garland did not provide his personal view of either subject.

Judith Rogers. In the hearing on Judge Judith Rogers' nomination to the D.C. Circuit, Judge Rogers was asked by Senator Cohen about the debate over an evolving Constitution. Judge Rogers responded: ''My obligation as an appellate judge is to apply precedent. Some of the debates which I have heard and to which I think you may be alluding are interesting, but as an appellate judge, my obligation is to apply precedent. And so the interpretations of the Constitution by the U.S. Supreme Court would be binding on me.'' She then was asked how she would rule in the absence of precedent and responded: ''When I was taking my mater's in judicial process at the University of Virginia Law School, one of the points emphasized was the growth of our common law system based on the English common law judge system. And my opinions, I think if you look at them, reflect that where I am presented with a question of first impression, that I look to the language of whatever provision we are addressing, that I look to whatever debates are available, that I look to the interpretations by other Federal courts, that I look to the interpretations of other State courts, and it may be necessary, as well, to look at the interpretations suggested by commentators. And within that framework, which I consider to be a discipline, that I would reach a view in a case of first impression.'' Finally, Judge Rogers was asked her view of the three-strikes law and stated: ''As an appellate judge, my obligation is to enforce the laws that Congress passes or, where I am now, that the District of Columbia Council passes.'' Judge Rogers did not provide her personal view of these subjects.

Marsha Berzon (no prior judicial experience). Senator Smith asked her views on Roe v. Wade and whether ''an unborn child is a human being.'' Judge Berzon stated: ''[M]y role as a judge is not to further anything that I personally believe or don't believe, and I think that is the strength of our system and the strength of our appellate system. The Supreme Court has been quite definitive quite recently about the applicable standard, and I absolutely pledge to you that I will follow that standard as it exists now, and if it is changed, I will follow that standard. And my personal views in this area, as in any other, will have absolutely no effect.'' When Senator Smith probed about their personal views on abortion and Roe v. Wade, Chairman Hatch interrupted: ''I don't know how they can say much more than that at this point in this meeting.''

Richard Tallman (no prior judicial experience). In response to written questions, Judge Tallman explained that ''[j]udicial nominees are limited by judicial ethical considerations from answering any question in a manner that would call for an 'advisory opinion' as the courts have defined it or that in effect ask a nominee to suggest how he or she would rule on an issue that could foreseeably require his or her attention in a future case or controversy after confirmation.'' He was asked how he would have ruled in Plessy v. Ferguson. He stated: ''It is entirely conjectural as to what I would have done without having the opportunity to thoroughly review the record presented on appeal, the briefs and arguments of counsel, and supporting legal authorities that were applicable at that time.'' He gave the same response when asked how he would have ruled on Roe v. Wade. When asked his personal view on abortion, he wrote: ''I hold no personal views that would prevent me from doing my judicial duty to follow the precedent set down by the Supreme Court.'' He gave the same answer about the death penalty.

Kim Wardlaw. In the hearing on Judge Kim Wardlaw's nomination to the Ninth Circuit, Judge Wardlaw was asked about the constitutionality of affirmative action. She stated (in an answer similar to Miguel Estrada's answer to the same question): ''The Supreme Court has held that racial classifications are unconstitutional unless they are narrowly tailored to meet a compelling governmental interest.''

Maryanne Trump Barry. In the hearing on Judge Maryanne Trump Barry's nomination to the Third Circuit, Senator Smith asked for her personal opinion on whether ''an unborn child at any stage of the pregnancy is a human being.'' Judge Barry responded: ''Casey is the law that I would look at. If I had a personal opinion—and I am not suggesting that I do—it is irrelevant because I must look to the law which binds me.''

Raymond Fisher. In the hearing on Judge Raymond Fisher's nomination to the Ninth Circuit, Senator Sessions asked Judge Fisher's own personal views on whether the death penalty was constitutional. Judge Fisher responded that ''My view, Senator, is that, as you indicated, the Supreme Court has ruled that the death penalty is constitutional. As a lower appellate court judge, that is the law that I am governed by. I don't want in my judicial career, should I be fortunate enough to have one, to inject my personal opinions into whether or not I follow the law. I believe that the precedent of the Supreme Court is binding and that is what my function is.''

V. CONCLUSION

Miguel Estrada is a well-qualified and well-respected judicial nominee who has very strong bipartisan support. Based on our reading of history, we believe that you have ample information about this nominee and have had more than enough time to consider questions about his qualifications and suitability. We urge you to stop the unfair treatment, and the filibuster, allow an up-or-down vote, and vote to confirm Mr. Estrada.

Sincerely,

ALBERTO R. GONZALES,
Counsel to the President.

Mr. CORNYN. The first instance of a double standard being applied to Mr. Estrada by those who oppose an up-or-down vote is that, as opponents charge, Mr. Estrada cannot serve on the D.C. Circuit Court because he has no judicial experience. Yet the fact is that a majority of the judges who currently serve on that court had no prior judicial experience. That's right, they never served as a judge before the Senate voted to confirm them to serve in that important position.

Let's take one case as an example. Judge Merrick Garland was nominated by President Clinton and confirmed by a Republican-controlled Senate. Like Mr. Estrada, Judge Garland graduated from Harvard Law School magna cum laude, clerked for a prominent judge on the Second Circuit, and then later clerked for a Supreme Court Justice. Both Mr. Estrada and Mr. Garland served as assistant U.S. attorneys. Both worked at the Department of Justice in Washington, D.C. Both practiced law in the private sector. Both enjoyed bipartisan support, and neither had prior judicial experience. It took the Senate just a few months to confirm Judge Garland.

Meanwhile, Mr. Estrada has waited 21 months, and still the Democratic leadership will not allow a vote on his confirmation.

But why stop there? If prior judicial experience were really so important to serving on a Federal court of appeals, why did the Senate vote to confirm Thurgood Marshall to the Second Circuit? Why did the Senate vote to confirm Stephen Breyer to the First Circuit? Why did the Senate vote to confirm Ruth Bader Ginsburg to the DC Circuit? And why did the Senate confirm John Paul Stevens to the Seventh Circuit? Indeed, why did the Senate confirm Anthony Kennedy to the Ninth Circuit? None of these individuals, all of whom have subsequently served on the U.S. Supreme Court, had any prior judicial service before they were nominated to the circuit courts and confirmed.

Moreover, since the beginning of the Carter administration in 1977, the Senate has approved 38 nominees to the Federal courts of appeals who have previously worked at the Justice Department but never held judicial office, exactly like Miguel Estrada.

There is also a double standard being applied when opponents to calling an up-or-down vote, advocates and proponents of this obstructionism, claim that Mr. Estrada cannot be confirmed until the Justice Department hands over all confidential documents he wrote as an Assistant to the Solicitor General.

This request would be too laughable if it was not so transparent and so cynical. First, Mr. Estrada does not even have control of these memos, and he has said he does not object if the Justice Department decides to release them. Second, Senator DASCHLE and Senator LEAHY know, were Mr. Estrada to somehow provide it, that it would violate ethical rules which benefit the American people and the entire U.S. Government, including Congress, whose acts the Department of Justice is charged with defending and enforcing in court.

Of course, this fishing expedition is unprecedented evidence, again, of a double standard being applied to Mr. Estrada. Since the beginning of the Carter administration in 1977, the Senate has confirmed 67 nominees to the Federal courts of appeals who have previously worked for the Justice Department, including seven who worked as Deputy Solicitors General, or Assistants to the Solicitor General. Yet in none of these cases was the nominee required to produce such materials protected by the attorney-client privilege. In fact, the Justice Department has determined that the Senate did not even request such materials for a single one of those 67 nominees.

Again, Mr. Estrada served in the Solicitor General's Office during the entire first term of the Clinton Administration, from 1993 to 1997. That means

the Solicitors General for whom he worked during that time were all Democratic political appointees of President Clinton. None of these Solicitors General, I believe it is significant, have raised any objection to Mr. Estrada. Moreover, all former Solicitors General, all former living Solicitors General, both Democratic and Republican, for ethical reasons, oppose the request for these documents made by Senator DASCHLE and Senator LEAHY.

There is a third double standard being applied to Miguel Estrada by the Democratic leadership, those who would obstruct an up-or-down vote on this highly qualified nominee. They claim he has inappropriately refused to answer specific questions indicating how he would rule on specific legal questions that might come before him as a judge. Mr. President, Miguel Estrada is not running for election. He seeks to be a judge. It would be both wrong and unfair for him to prejudge those issues, issues that might well come before him as a judge. Indeed, this principle has been recognized by Supreme Court Justices Stevens, Souter, Breyer, and Ginsburg, who recently explained:

> [H]ow a prospective nominee for the bench would resolve particular contentious issues would certainly be ''of interest'' to the President and the Senate in the exercise of their respective nomination and confirmation powers. . . . But in accord with a longstanding norm, every Member of [the Supreme] Court declined to furnish such information to the Senate. . . . [T]he line each of us drew in response to preconfirmation questioning . . . is crucial to the health of the Federal Judiciary.

I will not belabor the point here, but the letter written by White House Counsel Alberto Gonzales documents numerous Clinton judicial Federal nominees who answered just as Mr. Estrada did, just as these U.S. Supreme Court Justices did, to similar questions posed by the Senate Judiciary Committee. Yet all of these nominees were confirmed.

It becomes abundantly clear on examination that the Democratic leadership, so bent on obstruction of any up-or-down vote on Mr. Estrada's confirmation, is not really interested in the answers to these questions as they claim. Consider this: After a whole day of hearings, the Senate Judiciary Committee released Mr. Estrada. They didn't ask him to come back and answer more questions. They released him. While it is common practice for members to submit follow-up questions to the nominee, only 2 of the 10 Democratic Senators on the committee bothered to ask only a few followup questions, in stark contrast to other nominees who have received voluminous written questions.

So I say there is really no objection that Mr. Estrada has failed to comply with the Senate's traditional standards for confirming nominees by refusing to answer specific questions. Yet this is just another example of the Democratic leadership's double standard that seeks to stop Miguel Estrada.

Finally, Democrat leaders are seeking to impose a double standard by insisting that 60 Senators must vote to close debate before a vote can be had on Mr. Estrada's confirmation.

This is not legislation. This is a confirmation. The Constitution does not say 60 Senators must approve a judicial nomination. The Constitution does not say two-thirds of Senators must give advice and consent to a judicial nomination, as it does specifically say with regard to treaties. It just says the Senate shall give its advice and consent, which means a simple majority vote—not two-thirds of the Senate, but 51 votes. The fact is that 51 Senators—indeed, 54, as I count them, a bipartisan majority of this Senate—stand ready to confirm Mr. Estrada to the U.S. Court of Appeals for the District of Columbia Circuit if they would just be allowed to vote.

According to the Congressional Research Service, no judicial nominee to the circuit court of appeals has ever been denied confirmation by filibuster—not once in the entire history of the Senate. Yet the Democratic leadership has seen fit to change the rules again—another double standard—as their only hope for stopping a bipartisan majority of the Senate from confirming the superbly qualified Miguel Estrada.

But one of the most remarkable things I have seen in the last 3 weeks as I have observed this debate was an argument that was featured on the final day of Senate debate before the President's Day recess. On Friday, February 14, the senior Senator from Illinois argued in effect that the Constitution forbids confirming Mr. Estrada because the Senate has not sufficiently investigated him.

I quote from my colleague's speech on the Senate floor:

> [U]nder the Constitution, which we have sworn to uphold, and which we take very seriously, in article II, section 2, it says:
>
> The President . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for. . . .
>
> This tells those who are watching that what is at stake here is not just a discretionary decision by the Senate as to whether or not we will investigate a judicial nominee. We have a constitutional obligation. And if we believe in that investigation that a nominee is wanting, might not be a person suited to serve in the Federal judiciary, I think we are duty bound to vote against him.

I am dumbfounded by this constitutional argument, particularly coming from a member of the Senate Judiciary Committee. Of course, we would welcome that vote he speaks of, even if some, based upon an erroneous constitutional standard, would choose to vote no on this nominee.

But for the life of me, I cannot understand why the Senator can make such an argument based on any review of the Constitution or the history of judicial confirmations. The only thing I can think of is that my colleagues on the other side of the aisle—some of them anyway, because, as I said, there is a bipartisan majority of the Senate that stands ready to confirm Mr. Estrada today—but at least the Democratic leadership has simply decided to do whatever it takes and to make any argument, no matter how implausible, however devoid of any basis in law or in fact, to maintain this unprecedented filibuster against an exceptionally qualified nominee.

The filibuster effort appears to have become so desperate, in fact, that they might even argue that the Constitution requires a filibuster. I know, however, that the Senator from Illinois takes the Constitution very seriously, as all of us do. And so I hope I can just take a few moments to discuss what the Constitution contemplates in this regard and convince my colleague to reconsider his argument.

My distinguished colleague, the senior Senator from Illinois, argues that for the Senate to confirm Mr. Estrada now would violate the Constitution because the Senate has failed to conduct an adequate investigation. I would be the first to say the Senate's advice and consent function is indeed an important function, particularly when you are dealing with lifetime-tenured judicial appointees. Each of us indeed has undertaken an oath to ''support and defend the Constitution of the United States.''

That Constitution includes a firm commitment to the doctrine of separated powers. Under the Constitution, the Congress legislates, the President executes the laws, and it is the courts that interpret the laws—not make laws.

It bears repeating. Judges interpret laws. They aren't legislators wearing black robes—at least they are not supposed to be. The only body of our Government that legislates is the Congress. The Constitution, of course, demands that judges respect this fundamental distinction—one that, in the debates on this nominee, some seem to have been glossed over. I recall even one argument by the senior Senator from Vermont to the effect that Mr. Estrada ought to have to basically run on a platform, as he would when he runs for election to the U.S. Senate from Vermont, making no distinction between the fact that a Senator is a representative, and a judge is a representative of no one other than the law.

I believe in the last 3 weeks that our solemn duty to advise and consent and investigate this particular nominee has been more than complied with. Certainly in the last 2 years every Senator in this body has had more than an adequate opportunity to investigate and study Mr. Estrada's qualifications. I can't imagine any judicial nominee who has been more vigorously investigated than Mr. Estrada. So we are hardly talking about the Senate being

railroaded into confirming an individual without time to think, without time to reflect, without time to investigate, and after a full and thorough debate.

Mr. Estrada has been very clear about his judicial philosophy. He has said that nothing in his personal views would prevent him from following the law. That is very important in a judge. We want to make sure that the only judges we confirm are those who will follow the law as written by the legislature and is handed down in precedents by the U.S. Supreme Court.

The Senate has undertaken a substantial investigation into Mr. Estrada already, and in so doing has developed a record that amply supports Mr. Estrada's sworn testimony about how he would conduct himself as a judge.

That record includes strongly supported statements from numerous witnesses across the political spectrum, including prominent Clinton Administration lawyers. I go back to Ron Klain, whom I mentioned earlier was Vice President Gore's Chief of Staff and a former Democratic chief counsel to the Senate Judiciary Committee. He has known Mr. Estrada since their days together at Harvard, and has concluded that Mr. Estrada would ''faithfully follow the law.''

President Clinton's Solicitor General, Seth Waxman, flatly rejected any notion that ''the recommendations Mr. Estrada made or the analyses that he prepared were colored in any way by his personal views.'' A bipartisan group of 14 of Mr. Estrada's former colleagues in the Office of Solicitor General have written:

> We hold varying ideological views and affiliations that range across the political spectrum, but we are unanimous in our conviction that Miguel would be a fair and honest judge who would decide cases in accordance with the applicable legal principles and precedents, not on the basis of personal preferences or political viewpoints.

I could go on and on.

The FBI has investigated Mr. Estrada and given him a clean bill of health. The American Bar Association has investigated him and given him a unanimous well-qualified rating—the highest that the American Bar Association has to offer.

The Senate has more than discharged its responsibility, with respect to Mr. Estrada, to confirm as judges only those individuals who respect the law and who respect the distinction between judging and legislating, those who will not politicize our courts, and those who will put aside personal views and enforce laws as written by Congress and by our Founders.

I submit that our colleagues who oppose this vote on this highly qualified nominee have again changed the rules and imposed a double standard by contending that, not withstanding this ample record and vigorous investigation, the Senate must still go further and must inquire evermore deeply into Mr. Estrada's personal views. When confirmed, Mr. Estrada will behave as a judge and not as a legislator. The Senate needs nothing further in order to confirm him to the Federal bench other than to simply vote.

The Constitution requires a majority of the Senate for an individual to be confirmed to judicial office. Although this is an important function, it is also the lowest threshold level of Congressional participation contemplated anywhere in the Constitution. By contrast, to enact legislation requires a majority of both Houses of Congress, not just the Senate. To authorize the President to ratify a treaty requires a two-thirds vote of this body. To impeach and convict a Federal official requires the approval of both Houses of Congress, including two-thirds of the Senate. Amending the Constitution and overriding a Presidential veto requires two-thirds of both Houses of Congress. In other words, the Constitution makes it easier for the Senate to confirm judicial nominees than it does to enact legislation, consent to treaties, punish an official during an impeachment effort, or to amend the Constitution.

Professor Michael Gerhardt, a constitutional scholar and author of a scholarly volume called ''The Federal Appointments Process,'' has reviewed all of these constitutional provisions and compared them to the Senate's advice and consent function with respect to nominees and concluded that ''[t]he Constitution . . . establishes a presumption of confirmation''—a presumption of confirmation—''that works to the advantage of the President and his nominees.'' In fact, I think Mr. Gerhardt is on to something.

Here again, this is not just about Miguel Estrada. The Democratic leadership seeks to defeat a constitutional presumption of confirmation in the judicial confirmation process. They are still fighting the last election by and through the person of Miguel Estrada. Although the country has embraced this President and his great leadership, the Democratic leadership is still fighting against it, seeking to defeat President Bush wherever and whenever they can.

The constitutional structure demonstrates that the Senate's role is satisfied when the record makes clear that whatever a nominee's personal views, that they will play no role in how the nominee will judge specific cases and controversies. After all, to do otherwise would mean that it would take practically all of the Senate's time to confirm Presidential nominees, leaving no room for legislation, treaties, and other matters to which the Constitution gives even more responsibility to Congress than in the confirmation process.

The Constitution nowhere requires a majority of the Senate to undertake a full-blown trial of a judicial nominee. Yet that seems to be what the Democratic leadership is asking for. Quite to the contrary, the Framers of the Constitution well understood that the Senate's role in the process is really quite limited—something it does us well to reflect on, with the confirmation process today so skewed and so poisoned, and so toxic, toxic not only to the nominees but also to this body.

As Alexander Hamilton explained in the Federalist Papers, the Constitution gives the Senate a confirmation role to ensure that the President has not injected cronyism into his appointment process. Alexander Hamilton does not say that the Senate is supposed to second-guess the President's judgment or to conduct a deep and searching inquiry into the legal views of the nominee—the sorts of things that are being asked for here. Instead, Alexander Hamilton writes, in Federalist No. 76:

> To what purpose then require the cooperation of the Senate? . . . It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.

Indeed, far from indicating that substantial hearings and investigation would be required, Hamilton noted that the Senate's confirmation role would be, ''in general, a silent operation.''

Hamilton's understanding of the confirmation process—that it would largely be what he called ''a silent operation''—is reflected in the text of the Constitution. By contrast, the impeachment provisions of the Constitution require the Senate to undertake an actual trial before an official can be punished, including removal from office.

So it is clear that the text, the structure, the original understanding, and, indeed, the tradition of confirmation proceedings handed down these last 200 years all refute the theory of Senate advice and consent suggested by those who would obstruct this vote, including the views expressed by the senior Senator from Illinois and those who would espouse a new standard, one made of whole cloth, again changing the rules and applying a double standard to Miguel Estrada.

Once the Senate has determined that an otherwise qualified judicial nominee respects the law and understands that judges interpret the law and do not make the law, that nominee may be confirmed to the Federal bench. It is absurd to think that the Constitution would require anything else.

Moreover—and this is significant, to show how far afield we have come from the confirmation process as practiced by the Founding Fathers and those in the last 200 years—for much of our Nation's history, the Senate did not even conduct confirmation hearings, not even for nominees to the U.S. Supreme Court. Instead, the Senate either deferred to the President's determination that the nominee would abide by constitutionally required distinctions between judging and law making, or would reject nominees without resort to intrusive hearings.

Indeed, the Senate Committee on the Judiciary did not even exist during the first half century of this country's existence—nearly 30 years after the ratification of the Constitution. It did not even exist until 1816. And even when such hearings were later held in our Nation's history, by custom, the nominee would not even appear.

The first extensive hearings on a Supreme Court nominee were not held until the nomination of Louis Brandeis in 1916. Yet despite those hearings, Mr. Brandeis never even appeared in person before the Senate or a committee.

On September 5, 1922, the day after Justice John Hessin Clarke resigned, President Harding nominated George Sutherland to the Supreme Court, and the Senate confirmed him that very day. It was not until Harlan Fiske Stone, in 1925, that the first nominee for the U.S. Supreme Court would actually appear in person before the Judiciary Committee, and even that was a novel episode, after which nominees would revert back to the tradition of not appearing personally before the Judiciary Committee. That tradition continued for over a decade, until Felix Frankfurter testified before the Senate Judiciary Committee in 1939. Even then, Justice Frankfurter read a prepared statement in which he said he would not express his personal views on controversial issues before the court, the same answer that Mr. Estrada has given in response to the questions asked him during these proceedings.

As late as 1949, Sherman Minton refused to appear before the Senate Judiciary Committee and was still confirmed. And it was not until 1955, when John Marshall Harlan started the modern tradition of judicial nominees appearing and testifying before the Senate. And even then, confirmation hearings have typically been brief, even in cases of Supreme Court nominations. Justice Byron White's confirmation, for example, in 1962, lasted less than 2 hours.

Can it really be the position of the senior Senator from Illinois or our colleagues across the aisle who are blocking a vote on this nomination that the countless Federal judges and Supreme Court Justices who were confirmed following a less extensive investigation than that already inflicted on Mr. Estrada all served pursuant to illegal confirmations? Did so many of our predecessors in the Senate violate the constitutional oath they took on each and every one of those occasions? Of course not.

The nomination of Miguel Estrada is the unfortunate culmination of a destructive judicial confirmation process that must stop. It must stop for the health and the proper functioning of this institution. It must stop so that the confidence of the public in the job we are here performing on their behalf can continue. This destructive judicial confirmation process must stop, so that Presidents, now and in the future, will be able to nominate candidates for judicial office, who otherwise might not be willing to subject themselves to this unreasonable process that has been so much in evidence during the course of Miguel Estrada's confirmation.

The obstruction must stop. The double standard for Miguel Estrada must stop. This filibuster especially must stop.

Across the country, the American people are insisting that the Senate take a vote on this exceptional and inspiring candidate for the Federal bench. Newspapers across my State of Texas—the Dallas Morning News, the El Paso Times, the Austin American-Statesman, the Fort Worth Star-Telegram—are all urging that the Democratic leadership permit a vote on this nominee.

I say let's stop the games. Let's stop the double standard. Let's vote. Of course, every Senator is entitled to vote according to the dictates of their conscience, but let's vote.

There is no basis for the current unprecedented attempt to deny a bipartisan majority of the Senate from the opportunity to even vote up or down on this nominee. That has never before happened in the history of the United States.

It should not start today. It should certainly not start against a nominee of such exceptional talent. In the words of the Washington Post: ''Just vote.''

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that following my statement, the Senator from California be recognized to speak on a subject not related to this nomination and following that Senator GRASSLEY be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. Reserving the right to object, and I probably will not, I understand the Senator from California wishes to speak on a topic other than the nomination of Miguel Estrada. If I am correct, I am wondering why, if there is no further debate on the nomination, we cannot proceed to a vote. With that said, I withdraw my reservation.

We do have speakers for this afternoon on the nomination. I would hope that we can remain on the nomination. I believe Senator GRASSLEY will be here about 2 o'clock.

Mr. REID. Mr. President, is there objection or is there not objection?

Mr. CORNYN. I ask unanimous consent that Senator GRASSLEY be recognized following Senator FEINSTEIN's remarks.

The PRESIDING OFFICER. Does the Senator object or not object?

Mr. CORNYN. With that, I withdraw my objection.

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

Mr. REID. Mr. President, that was part of the unanimous consent request, that Senator GRASSLEY be recognized.

I have been involved in many debates in the Senate. I have been involved in the debate since the beginning on the Estrada nomination. Senator HATCH and I have been here until 1 o'clock in the morning. Never have I heard the name calling and the statements such as ''heard people talking about payback.'' If there are statements that strong, they should be inserted in the RECORD.

In addition, in my many years in the Senate, I have not heard statements such as ''desperate,'' ''laughable,'' ''cynical,'' and then part of it I was not able to hear because the Presiding Officer was talking to me, but I hope the debate on this matter will remain senatorial and not go to name calling. We have a right to speak about this nomination for as long as we want until the majority or someone files a motion to invoke cloture. That is the way to stop debate.

There has been a lot of talk about not allowing a vote. We are not stopping a vote. The only situation is, the Senate rules are such that if you want to have a vote and you want to stop the debate, you invoke cloture. It takes 16 or 17 Senators to file a cloture motion. That is how it works.

We need to understand that there are certain issues that are important. I recognize there is a lot more to do in this country. We have a lot to do. I believe that what is happening here is an effort to cover for the fact that there is nothing being done by the majority. They could pull off this anytime they wanted. If they have other things to do, let the majority move to something else or invoke cloture to stop the debate from going forward.

There have been statements made that this has never happened before. Of course, you shouldn't talk to the Abe Fortas family. The fact is, if you read a history book, that is how that was stopped, his nomination to be Chief Justice of the Supreme Court.

In the years I have served in the Senate, there have not been, as Senator HATCH said, real filibusters, but sometimes those nonreal filibusters have stopped nominations from going forward. It is a fact. Mr. President, the ABA gold standard—let's talk about that a little bit. My friend from Texas talks about this ABA stamp of approval being so important. As the Presiding Officer knows, and I am sure most every Senator knows, the majority, when they were in the majority before we took over, wanted to do away with the ABA. We thought it was a good thing that it continue. I still feel that way, in spite of the lack of credibility of this nomination.

The reason I say that is the person who moved forward on this nomination for the ABA—I am sure he asked for it and he got it—was a man by the name of Fred Fielding. Mr. Fielding, of course, likes Estrada. That is very clear.

Mr. Fielding, who evaluated Mr. Estrada's record and qualifications, is

a partner at Wiley, Rein & Fielding. While serving on the ABA committee to evaluate judicial nominees, Mr. Fielding continued to be actively involved in partisan activities, such as working with counsel for the Republican National Committee. He served on the Bush-Cheney transition team. Of course, then he wrote a report recommending Miguel Estrada to the DC Circuit Court.

If those partisan activities were not enough, take this and see if it has any bearing on whether this was an impartial evaluation. While still serving on the ABA committee responsible for peer review ratings, Fielding cofounded the Committee for Justice with Bush confidant and former Bush White House counsel C. Boydon Gray. They formed this committee to help the White House with public relations and in its effort to pack the court and run ads against Democrats who dare vote against their judicial nominees.

In addition to forming this group, he served as deputy counsel to President Nixon. He served on the Reagan-Bush campaign team, the Lawyers for Reagan advisory group. With the Reagan-Bush transition team, he was conflict-of-interest counsel—which is really interesting to me—in that process. He served in the Office of Counsel to the President. He worked as deputy counsel to President Reagan. He served on the Bush-Quayle campaign. He was Republican National Committee legal advisor, campaign counsel to Senator Quayle, and he served as deputy director to the Bush-Quayle campaign in 1992 as a senior legal advisor. He served then as legal advisor to the Dole-Kemp campaign.

Virtually all of Mr. Fielding's substantial Federal election contributions are for Republican candidates or the Republican National Committee. The Bush White House could not have handpicked someone with better partisan credentials than Mr. Fielding to evaluate its DC Circuit Court nominees—and especially Mr. Estrada. Which lawyers, Republican or Democrat, would be courageous enough to be candid with any concerns that may have been existing about Mr. Estrada's qualifications, temperament, or rating, with an insider like Fielding writing the evaluation and recommending the ratings?

It is noteworthy that when Fielding testified before the Judiciary Committee last September, he was asked about the Senate's consideration of ideology of judicial nominees, as well as the White House's. When asked whether the Republican Presidents he served ever appointed a liberal, he said he hoped not.

Obviously, the White House took ideology into account in choosing Estrada. How fortunate it was for the White House that the loyalist, Mr. Fielding, was there to recommend such a high rating for Estrada, despite his youth, lack of experience, and the types of cases he handled in the DC Circuit, and temperament and fairness issues that have been raised by many others.

We do appreciate the ABA's continued efforts, but if there were ever a review and revamping that needs to take place, take a look at Fielding and Estrada. It is simply unethical for this to take place. If there were ever a conflict of interest, this is it.

Now, there were continued statements by the distinguished junior Senator from Texas, who has served in the Senate now going on 2 months, about the need for a vote. I agree. As I said earlier, if the majority wants a vote, it is up to them. They can have one in 2 days. File a cloture motion and it ripens in 2 days. The vote is up to them.

There are also statements made that the Democratic leaders have failed to make a case. If the case is so bad, let them file a cloture motion. My friend from Texas said the Democratic leaders—I assume I am one of those—are obsessed with obstruction. If that is the case and we are name-calling here, it appears with what has happened to the economy, the Republican majority must be obsessed with deficits. The President takes office and there is a $7 trillion surplus. Now, in this year alone, we will have the largest single deficit in the history of the world. You see it printed in the paper, that it is $350 billion. That is without the disguise that takes place because of the Social Security surpluses. It is closer to $500 billion. The surplus of $7 trillion is history—gone, every penny of it. It is not because of the war; it is because of economic policies of this administration and the tax cuts.

Now, it is very difficult for me to do, but I listened, and my friend from Texas says what they are doing is cleaning up the mess from the last Congress. As I recall, the Senate passed all 13 appropriations bills out of committee. But we could not get the House to move on them. Why? Because they refused to take votes prior to the November elections because they knew the American people would not stand for the draconian cuts they had in their bills. So nothing was done. We went on a continuing resolution. If there was a mess created last Congress, it wasn't by the Senate. We reported out of committee, chaired by Senator BYRD, with ranking member Senator STEVENS, every one of the appropriations bills. We did that. The House refused to take hard votes.

Mr. President, the speaker before me also indicated the fact that Mr. Estrada has no judicial experience should not matter, should not be determinative. I agree. There are great judges who had no judicial experience. We are not making that an issue.

LULAC. As most everyone knows, the vast majority of Hispanic groups in the country, 85 to 90 percent of them, support the position we are taking, which is that Miguel Estrada should not be a member of the DC Circuit Court until he answers questions and has his memos from when he worked at the Solicitor General's Office made public. We believe that to be the case. That is why the Hispanic groups support our position.

LULAC, which is a fine organization, wrote a letter last week. It was written to Senators HATCH and DASCHLE. Among other things, it said:

> We do not subscribe to this view at all and we do not wish to be associated with such accusations.

What are those? The accusations that the Senate Democrats and Congressional Hispanic Caucus are opposing the nomination because of his ethnicity.

What does LULAC say?

> We do not subscribe to this view at all and we do not wish to be associated with such accusations.

They should just back away from that. The letter says:

> LULAC has had a long and productive working relationship with Senate Democrats and all the members of the Congressional Hispanic Caucus, and our experience is they would never oppose any nominee because of his or her race or ethnicity.
>
> On the contrary, it is most often the Democratic Members of the Senate who support LULAC'S priority issues and score highest on the national Hispanic leadership agenda congressional scorecard which LULAC helps to compile. It is the Congressional Hispanic Caucus that is the champion of our legislative priority as outlined in the enclosed LULAC legislative platform.

Mr. President, when talking about LULAC being the determinative factor, I think people should read the letter they sent to us.

I repeat, if the majority wants a vote on Miguel Estrada, the only vote they are going to get is whether to invoke cloture. They made a decision, obviously, not to go forward on cloture. I suggest we have a lot of business to do, and that is what we should be doing.

I repeat what I said earlier this afternoon that this matter is not moving forward because there is no agenda, no plan, no program by the majority. This is filling up time so they cannot be criticized for doing nothing. If we were not doing this Estrada nomination, we would be doing nothing.

I returned from Nevada a few days ago. People in Nevada are concerned about the war. They are concerned about economic problems. They are concerned about health care. There are a lot of issues, not the least of which is homeland security. I have no concern with the Secretary of Homeland Security suggesting that people learn about duct tape and plastic wrap, but certainly there is more to homeland security.

If the majority does not have a program, we do. We have a Democratic stimulus package that we think would be most helpful to the American people. It would be immediate tax relief, it would go to the middle class, and it would not have any impact on the long-term deficit. Let's move to that this afternoon. Let's move to it tomorrow. We can have a long, full debate on that stimulus package. The longer we

wait for a stimulus package, the worse it is going to be for our country. But the majority does not want to do that because they know the tax plan submitted to us by the Bush administration is not going anywhere. The Speaker said it was not. My friend, who was on the floor just a minute ago, Senator GRASSLEY, initially said he had problems with it. The chairman of the Ways and Means Committee in the House and scores of Nobel Prize winners in economics have said the plan is no good. That is why they are unwilling to move on cloture and want to stay on this nomination.

People wonder why we are on this nomination. My friend, the junior Senator from Texas, said: On treaties, we need a two-thirds vote; on impeachment, we need a supermajority; and on filibusters, we need 60 votes. For legislative measures, we need a simple majority. That is right. But this is something the Senate has been dealing with, and that is a filibuster. That is what is going on here. It is part of the Senate tradition.

Talk about tradition, this is it, and there is a way to get rid of it. One way is to invoke cloture, the other way is to get off the legislation, and another way would be to do what we have asked be done: Let Miguel Estrada come back and answer questions and submit—with which he said he has no problem—the memoranda from the Solicitor General's Office. He said he does not care. It is being held back by, I assume, the administration.

There are those who ask why we have some questions about Miguel Estrada. Let me show my colleagues why we have some concerns.

Miguel Estrada's answers to the Judiciary Committee's questions, summarized on this chart, amount to nothing. The answers he has given us do not answer anything. There were a lot of words but no answers.

We have also asked about these legal memoranda. Why are people trying to keep these memoranda from us? Is there a reason? We want to look at those memoranda. Those are the only legal records we have where we can find out what his legal philosophy might be.

Some have said he has argued some cases before the Supreme Court, and he has handled other cases. From all the cases I handled, one could not determine what my political philosophy was. Legal philosophy maybe; maybe not because I represented people who had causes they brought to me and they paid me and I did the best I could to represent them in their causes. We need those legal memoranda to find out about Miguel Estrada's philosophy.

The same applies to his legal philosophy. We do not know what it is. We do know there has been a lot of talk about some of the people he went to law school with thinking he is a great guy. I have no doubt he is a very nice man. I am sure he is a fine man. He appears to have been a good law student, but the fact is that some people do not think it would be good for him to serve on the court.

The person who was his supervisor, a man by the name of Paul Bender, who was in the Solicitor General's Office, has qualifications that match that of Miguel Estrada. He received an LLD magna cum laude from Harvard Law School. He wrote as an editor for the Harvard Law Review. After graduation, he clerked for a U.S. Supreme Court Justice. He worked as a law clerk to Judge Learned Hand, one of the most distinguished judges in the history of this country. As I indicated, Paul Bender worked as a law clerk for Justice Felix Frankfurt. He was a law professor at the University of Pennsylvania, an Ivy League school, for 24 years. He was dean of the Arizona State University College of Law. He was principal Deputy Solicitor General of the United States from 1993 to 1996, and that is where Miguel Estrada worked for him.

He has since been working at Arizona State University as a law professor. He has argued more cases before the Supreme Court than Miguel Estrada.

The point I am trying to make is this guy is not some kind of slouch. He said it would not be in the best interest of our country if this man set on the court. He was too much of an ideologue. Those were his words.

In more detail, there was some question that Paul Bender really meant what he said in his letter to Senator HATCH, dated February 10. He makes a number of important points, including the point that some Republicans are misrepresenting his position and suggesting that Professor Bender has changed his opinion about the nomination, and he said that is wrong. Professor Bender, who was Miguel Estrada's direct supervisor at the Solicitor General's Office, notes:

> I have not changed my opinion of the nomination, nor have I ever said to anyone I changed my opinion. Someone must have inadvertently given you incorrect information about this letter to Senator Hatch.

Mr. President, Professor Bender is a person who worked directly with Miguel Estrada.

Then, of course, they bring in all the evaluations showing he did a good job. Professor Bender also answered that point. He said every person who worked there received the same evaluation. That is what he was supposed to do.

There has been another point raised recently that it is inappropriate to answer questions about judicial philosophy; it would be inappropriate and would violate the ABA ethics code. In fact, the Republican National Committee, through the National Republican Lawyers Association, sent out a press release. The ABA said it is the wrong thing to do.

The fact is that judicial candidates should not make pledges how they will vote or make statements that appear to commit them on controversies or issues likely to come before the court. But they are using this to defend the new threshold that people have tried to set for Estrada by having him refuse to answer even the most basic questions about judicial philosophy or his view of legal decisions prior to entrusting him to a lifetime seat on the second highest court in the country.

This is hypocritical, given the fact the Republican Party sued the State of Minnesota to ensure that their candidates for judicial office could give their views on legal issues without violating judicial ethics. Republicans took the case to the U.S. Supreme Court, and they won. In an opinion by Justice Scalia, one of Bush's model jurists, the Supreme Court ruled that the ethics code did not prevent candidates for judicial office from expressing their views on cases or legal issues.

In its recent letter to Senators DASCHLE and LEAHY, the White House, contrary to citing Scalia, cites the dissent by Ginsburg in that case. They refuse to mention the word ''Scalia.''

Some people may disagree with the judicial philosophy of Antonin Scalia but no one can dispute his brilliance. He is a man who I am sure is an advocate on that court. When they go behind those curtains, I am sure they have a handful to try to handle his logic because he is really good. He is a smart man. So we have to accept something that he would say, and Scalia has said that anyone coming to a judgeship is bound to have opinions about legal issues and the law and there is nothing improper about expressing them, so long as a candidate does not pledge to always rule a certain way. Specifically, in Republican Party of Minnesota v. White, the U.S. Supreme Court overruled ABA model restrictions against candidates for elected judicial office from indicating their views on legal issues while campaigning or seeking judicial office. In his opinion, Justice Scalia wrote that making statements of honestly held views would not make a candidate unfit.

In that majority opinion, Justice Scalia explained that even if it were possible to select judges who do not have preconceived views on legal issues, it would hardly be desirable to do so. Proof that a justice's mind at the time he joined a court was a blank slate in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias. And since avoiding judicial preconceptions on legal issues is neither possible nor desirable, pretending otherwise by attempting to preserve the appearance of that type of impartiality can hardly be a compelling state of interest, either. That is Scalia. Was that a brilliant statement? One may not agree with it but don't they understand what he is saying? Of course, they do.

Accordingly, prior to last summer, some judicial candidates may have thought that they could not share their views on legal issues, although some tried to answer questions as best they could. Some candidates tried to view

the ABA modeling rules expansively to try to avoid sharing their views.

Professor McConnell, who was confirmed last year, answered all the questions. It is clear that the ethical rules do not prevent a candidate from sharing his or her views, a result sought by Republicans eager to use these views to try to win the election of Republican judges to short-term positions. They went to the Supreme Court to prove this. Of course, a judicial candidate cannot be compelled to share his views but he refuses to do so at his own peril. That is what we are talking about.

Scalia said that even if it were possible to select judges who do not have preconceived views on legal issues, it would hardly be desirable to do so. Proof that a justice's mind at the time he joined the court was complete—and he uses a Latin word. I did not take much Latin, but it is tabula rasa, which means a blank slate—in the areas of constitutional adjudication would be evidence of lack of qualification, not lack of bias.

Scalia was quoting from Justice Rehnquist's 1971 opinion in Laird v. Tatum in which he refused to recuse himself on a case involving an issue on which he had previously expressed a view.

So expressing a view on a legal issue or case does not violate legal ethics and would also be unlikely to require recusal.

I do not serve on the Judiciary Committee but I have talked to a number of my colleagues, and a man by the name of McConnell came before the committee and all of the red flags came up on this side of the aisle: He is too conservative; Senator HATCH has handpicked him. All of these kinds of things came up.

He appeared before the Judiciary Committee, and even though some may have disagreed, I am told, with some of the things he said, they thought he answered every question, and he is now a member of a circuit court of appeals. He did not hide his views. He answered the questions. So people knew what he was talking about.

We do not know anything about Estrada, other than he is smart. That is not enough to get you to be a circuit court judge.

Saying, as Mr. Estrada has, that you cannot give your view of any Supreme Court case without reading the briefs, listening to oral argument, conferring with colleagues and doing your own independent legal research is just a fancy way of saying I am not going to tell you guys anything. It also defies the experiences of law students, lawyers, and citizens. It is especially evasive when a nominee has a reputation for being outspoken, passionate, and an aggressive debater on legal issues and decisions from a strong ideological perspective so much that he is a front-runner in right-wing circles for the Supreme Court, and the notion that he could be counted on to rule their way, even more so than the counsel to the President, Mr. Gonzales.

Yesterday I saw a prominent faculty member from a law school in this metropolitan area. I am not going to give his name. It may embarrass him in some way, and I did not get permission to quote him publicly, but he is a very conservative law professor, I can guarantee that. He came up to me and he said, you would make a mistake going with Estrada. Now, this is from a conservative, prominent, constitutional scholar.

So we are entitled to know his views. He should answer the questions.

There has been a lot quoted from editorials from this paper and that, most of them from Texas, which certainly my friend who just spoke is from Texas and that would be the place he should go to look for his editorials, but there was a syndicated column written by a man named E.J. Dionne, Jr., on last Friday. I am going to quote some things from his article, although not everything. It is entitled ''They Started It.''

So why are Senate Democrats filibustering President Bush's nomination of Miguel Estrada to one of the nation's most important courts?. . .

To say the guy is no slouch is an understatement. But the fight over Estrada's nomination to the U.S. Court of Appeals for the District of Columbia Circuit is not simply about him. It is about a concerted effort to pack our courts with representatives of a single point of view. If Democrats just rolled over on Bush's judicial nominations, they would be guilty of oppositional malpractice.

To understand this battle, you could go back to Richard Nixon's campaign against liberal judges. But let's just look at what happened to Bill Clinton's effort to get two highly qualified nominees onto the D.C. Circuit.

The DC Circuit is the circuit that Estrada wants to go to.

Elena Kagan, who served in the Clinton White House, graduated at the top of her class at Estrada's law school and now teaches there, saw her nomination languish in the Republican Senate for 18 months. Allen Snyder clerked for that well-known left-winger, U.S. Chief Justice William Rehnquist, and was also at the top at Harvard Law School. His nomination languished for 15 months.

If Republicans believe in voting for quality—their argument for Estrada—why didn't they confirm Kagan and Snyder? The answer is obvious: We have before us, sadly, a fierce political struggle for control of the courts.

It's not good enough to say that the way out of this politicized process is for Democrats to ignore the past and cave in to the Republicans. To do that would be to reward a determined conservative effort to control the courts for a generation. Stage One involved obstructing Clinton's nominees. Stage Two involves using any means necessary—including outrageous charges of ethnic bias—to ram conservative choices through.

I read from the LULAC statement that that simply is invalid.

The stakes go beyond any single nominee. Do we want courts entirely dominated by one side, or do we want a fair and balanced judiciary?

Consider these statistics, gathered by the Democratic staff of the Senate Judiciary Committee. There are 13 circuits: 11 regional plus the D.C. Circuit and the federal court that handles specialized cases. If all of Clinton's nominees had been approved, the circuits would have been evenly balanced in partisan terms by the time he left office. Six would have had majorities appointed by Democratic presidents, six by Republicans, and one would have been evenly split.

But if Bush succeeds in filling every open seat, some of them vacant because Clinton nominees were blocked, 11 of the 13 circuits will have Republican-appointed majorities. In eight of the 13, Republican nominees would have majorities of 2 to 1 or more. Is that a formula for careful, balanced decisionmaking?

To push attention away from this fundamental question, Republican who say they don't want a politicized nominating process—and who regularly accuse Democrats of ''playing the race card''—are doing all they can to turn the Estrada fight into an ethnic imbroglio.

''If we deny Mr. Estrada the position on the D.C. Circuit, it would be to shut the door on the American dream of Hispanic Americans everywhere,'' Sen. Chuck Grassley (R-Iowa) said in January. Last year, Republican Sen. Trent Lott if Mississippi said of the Democrats: ''They don't want Miguel Estrada because he's Hispanic.''

Never mind that eight of the 10 Hispanic appellate judges were appointed by Clinton. And never mind that Republicans had no problem blocking such Hispanic Clinton nominees as Enrique Moreno, Jorge Rangel and Christine Arguello.

Mr. President, the congressional Hispanic Caucus, which wants as many Hispanics involved in Government and the judiciary as is possible, opposes this man. We believe the debate today is where it was a week ago, 2 weeks ago, that there are ways we can move this nomination. Give us the information, answer questions, give us the memo, pull the nomination, or invoke cloture. That is about all there is.

I hope the majority leader will make a decision of what he is going to do and we can move, I hope tomorrow, to our proposal to give a stimulus package to the country—that certainly would be appropriate—or move to something the majority wants to do.

I repeat for the third time, one reason we are so tied up is the majority has nothing to do. They do not know what they want to move to next. I certainly hope we do not spend more time on this nomination.

The Presiding Officer is going to get the Golden Gavel Award probably within the next few months and is spending so much time here presiding. For those listening, Golden Gavel, as I understood, is someone who presides for 100 hours, and they get a plaque. It is hard to preside 100 hours during the year. I hope the Presiding Officer does that. It is a great way to learn about what goes on in the Senate. I can remember doing that myself.

The Presiding Officer has heard me say this on other occasions: We have more we can do. There are other things we should do. We approved 100 judges during the time we were under control. The only three judges who have come before the floor this year we approved unanimously. We can continue this debate for a week, 2 weeks, 3 weeks, whatever it takes. We can spend time here at night. That is no punishment.

The majority is the one that has to have Presiding Officers. If you want to punish yourselves, that is fine, go ahead and do that. We will have someone here making sure everything is done properly.

Everything has been said about Miguel Estrada. I could take a test on Miguel Estrada's life and I would get an A+. I would either do multiple choice, true and false, or an essay question. I can do just fine on Miguel Estrada. I know everything there is to know about Miguel Estrada. But everything we have to know today about Miguel Estrada from our perspective is not much. I can tell you he was 17 when he came here, he was a fine student at Harvard. Everyone seems to like him. He seems like a nice guy. I met him. I saw him on television when he was questioned by the Judiciary Committee. He obviously is very bright. He is very opinionated. But we do not know all those opinions. We only get that from people he has talked with.

Everything has been said. We are getting to the point where almost everyone has said it. But we can repeat it. Who knows, maybe the majority will decide, with the help of Mr. Gonzales, the counsel of the President, that we can get the information we want. Senators DASCHLE and LEAHY wrote a letter and asked for the memos and that he appear again. We got a 15-page letter in response. Obviously this is not a matter where everyone can compromise. That is too bad.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I have spoken twice about Miguel Estrada and have made my views rather well known. However, in response to the distinguished Senator from Texas, who is a relative newcomer on the Senate Judiciary Committee, I want to just quickly point out what I found in my 10 years of service on that committee.

From the 104th to the 106th Congress, when Republicans controlled the Senate, 53 Clinton judges were refused even a hearing in committee; six had a hearing but no vote; 11 came out of committee, but no floor vote.

What is my point in this? My point is there is more than one way of filibustering a judge. Right now, there is a filibuster going on over a nominee to the D.C. Circuit. However, that filibuster can occur in a couple of ways. One, someone can object to unanimous consent to come to a vote. A cloture vote can happen. If there are 60 votes there, it ends the filibuster.

But another kind of filibuster is a filibuster in committee when an individual is nominated and they wait year after year, some for an appellate court as long as 4 years, and never have a hearing. Some of President Clinton's nominees withdrew rather than continue this painful process.

The fact of the matter is every Presidential nominee who comes over to the Judiciary Committee for review, for a hearing, and for a vote, does not receive that review, that hearing, and that vote. That is just a fact. So you could say 70 Clinton judicial nominees were essentially filibustered by a Republican-controlled Judiciary Committee—53 never had a hearing, six had their hearing, but were never brought to a committee vote, and 11 were actually reported out of committee, but never had a vote in the Senate.

I do not think what is happening with respect to Mr. Estrada is anything that is very unusual. There are good reasons for it. There is probably no circuit more sensitive than the DC Circuit. The Presiding Officer, who is a very bright individual, understands this. We all understand the circuit is evenly split. We all understand that President Clinton proposed nominees, two of whom never got a vote, for that particular circuit. Therefore, whoever is appointed to this circuit has a special predominance in our thinking. We would like to know what that individual believes. We would like to know their jurisprudence. We would like to be able to know their temperament. Mr. Estrada, to a great extent, through his own volition, has prevented that from happening.

ENERGY

I come to the floor today in another capacity, and that is as a member of the Energy and Natural Resources Committee. I quickly bring to the Senate recent disclosures about how a number of energy firms have engaged in deceptive trading practices to drive up prices for consumers in the western energy market. I believe strongly this recent evidence requires the Federal Energy Regulatory Commission to take additional strong and aggressive steps to keep energy markets from continually being abused. I will update the Senate on these revelations that have been uncovered in the past year.

Earlier this month, Jeffrey Richter, the former head of Enron's Short-Term California energy trading desk, pled guilty to conspiracy to commit fraud as part of Enron's well known schemes to manipulate western energy markets. Richter's plea follows that of head Enron trader Tim Belden in the fall of 2002. Belden admitted that he schemed to defraud California during the Western energy crisis and also plead guilty to conspiracy to commit wire fraud.

The Enron plea came on the heels of FERC's release of transcripts from Reliant Energy that reveal how their traders intentionally withheld power from the California market in an attempt to increase prices. This is one of the most egregious examples of fraud and manipulation that affected the western energy market in 2000 and 2001 and it is clear and convincing evidence of coordinate schemes to defraud consumers.

Let me read just one part of the transcript to demonstrate the greed behind the market abuse by Reliant and its traders.

On June 20, 2000 two Reliant employees had the following conversation that reveals the company withheld power from the California market to drive prices up. Let me read to you this phone call transcript.

Reliant Operations Manager 1: ''I don't necessarily foresee those units being run the remainder of this week. In fact you will probably see, in fact I know, tomorrow we have all the units at Coolwater off.''

Reliant Plant Operator 2: ''Really?''

Reliant Operations Manager 1: ''Potentially. Even number four. More due to some market manipulation attempts on our part. And so, on number four it probably wouldn't last long. I would probably be back on the next day, if not the day after that. Trying to uh . . .''

Reliant Plant Operator 2: ''Trying to shorten supply, uh? That way the price on demand goes up.''

Reliant Operations Manager 1: ''Well, we'll see.''

Reliant Plant Operator 2: ''I can understand. That's cool.''

Reliant Operations Manager 1: ''We've got some term positions that, you know, that would benefit.''

Six months after this incident, as the Senate Energy Committee was attempting to get to the bottom of why energy prices were soaring in the west, the President and CEO of Reliant testified before Congress that the State of California ''has focused on an inaccurate perception of market manipulation.''

Reliant's President and CEO went on to say:

We are proud of our contributions to keep generation running to try to meet the demand for power in California. Reliant Energy's plant and technical staffs have worked hard to maximize the performance of our generation.

These transcripts prove otherwise and reveal the truth about market manipulation in the energy sector.

If you think that is a lot of money, remember that the cost of energy for California went from $8 billion 1 year to $28 billion the next year. So the fraud and the manipulation was huge during that period of time.

Despite this clear and convincing evidence of fraud, on January 31 of this year, the Federal Energy Regulatory Commission chose to give Reliant a slap on the wrist for this behavior. The company paid only $13.8 million to sweep this criminal behavior under the rug and settle with FERC.

Let me turn to some other recent examples that demonstrate how other energy companies manipulated the western energy market as Reliant did. On December 11 FERC finally released audio tapes that show how traders at Williams conspired with AES Energy plant operators to keep power offline and drive prices up.

The tapes depict how on April 27, 2000, Williams outage coordinator Rhonda Morgan encouraged an AES operator at the company's Alamitos plant to extend a plant outage because the California grid operator was paying ''a premium'' for power at the time. The Williams employee stated:

That's one reason it wouldn't hurt Williams' feelings if the outage ran long.

Later that day, Eric Pendergraft, a high-ranking AES employee called to confirm with Ms. Morgan that Williams wanted the plant to stay offline by saying:

You guys were saying that it might not be such a bad thing if it took us a little while longer to do our work? I don't want to do something underhanded, Ms. Morgan responded, but if there is work you can continue to do . . .''

At this point Mr. Pendergraft interrupted to cut off their suspicious conversation, saying:

I understand. You don't have to talk anymore.

Clearly, this is evidence of a calculated intent to withhold power to raise prices. I find it unconscionable.

Let's turn to some other examples.

On January 27, 2003, Michelle Marie Valencia, a 32-year-old former senior energy trader for Dynegy was arrested on charges that she reported fictitious natural gas transactions to an industry publication.

On December 5, 2002, Todd Geiger, a former vice president on the Canadian natural gas trading desk for El Paso Merchant Energy, was charged with wire fraud and filing a false report after allegedly telling a trade publication about the prices for 48 natural gas trades that he never made in an effort to boost prices and company profit.

These indictments are just the latest examples of how energy firms reported inaccurate prices to trade publications to drive energy prices higher.

Industry publications claimed they could not be fooled by false prices because deviant prices are rejected, but this claim was predicated on the fact that everyone was reporting honestly—which we now know they weren't doing.

CMS Energy, Williams, American Electric Power Company, and Dynegy have each acknowledged that its employees gave inaccurate price data to industry participants. On December 19 Dynegy agreed to pay a $5 million fine for its actions.

In September an Administrative Law Judge at FERC issued a landmark ruling concluding that El Paso Corporation withheld natural gas from California and recommended penalty proceedings against the company. Since the El Paso Pipeline carries most of the natural gas to Southern California, this ruling has tremendous implications. The FERC Commissioners are expected to take up this case for a final judgment soon.

This is one of the things I tried to see the President about, but he wouldn't see me, because it became very clear during this period of time that natural gas going into San Juan, NM, was trading at about $5 to $6 a decatherm, whereas natural gas going just a short distance away into southern California was trading at $60 a decatherm, and natural gas forms the basis for the price of electricity. I had hoped if I could give this information to the President of the United States at that time that he might look into it and we might have prevented some of what happened in the western energy markets. Unfortunately—and I wrote four letters—he refused to see me on this subject.

This past summer, California State Senate investigators uncovered how Perot Systems—a company which set up the computer system for California's electricity market—provided its energy clients with a detailed blueprint of how to exploit holes in the state's bidding system to drive prices up.

These have been the latest revelations in a series of energy disclosure bombshells that began on Monday, May 6, when the Federal Energy Regulatory Commission posted a series of documents on their website that revealed Enron manipulated the western energy market by engaging in a number of suspect trading strategies.

These memos revealed for the first time how Enron used schemes called ''Death Star,'' ''Get Shorty,'' ''Fat Boy,'' and ''Ricochet'' to fleece families and businesses in the West.

By using Death Star, for example, Enron would ''get paid for moving energy to relieve congestion without actually moving energy or relieving any congestion.'' That is according to their own internal memo.

Just on its face, that is fraud. We are going to move energy without moving energy—fraud.

In another strategy detailed in these memos, Enron would ''create the appearance of congestion through the deliberate overstatement of loads'' to drive prices up.

Create ''the appearance of congestion through the deliberate overstatement of loads''—fraud.

The above-mentioned strategy reveals an intentional and coordinated attempt to manipulate the western energy market for profit.

This is an important piece of the puzzle, and some former Enron traders helped fill in the blanks.

CBS news reported in May that former Enron traders admitted that the energy company was directly responsible for rolling blackouts in California. Yet, interestingly enough, no one has followed up on this report.

Anybody who has ever been through a rolling blackout knows what it is like. Everything goes off and you cannot predict where it goes off next. Street lights, hospitals—literally everything goes off.

According to CBS news, the traders said Enron's former President, Jeff Skilling, pushed them to trade aggressively in California and told them: If you can't do that, then you need to find a job at another company or go trade pork bellies.

The CBS article mentions that Enron traders played a disturbing role in blackouts that hit California. The report mentioned specific manipulative behavior by Enron on June 14 and 15 in the summer of 2000 when traders said they intentionally clogged Path 26. That is a key transmission path connecting northern and southern California. Here is what one trader said about that event:

What we did was overbook the line we had the rights on during the shortage or in a heat wave. We did this in June of 2000 when the Bay Area was going through a heat wave and the ISO couldn't send power to the north. The ISO has to pay Enron to free up the line in order to send power to San Francisco to keep the lights on. But by the time they agreed to pay us rolling blackouts had already hit California and the price for electricity went through the roof.

California lost billions. Yet, according to the traders, Enron made millions of dollars by employing this strategy alone.

On top of all of this, traders disclosed that Enron's manipulative trading strategy helped force California to sign expensive long-term contracts. It is no surprise that Enron and others were able to profit so handsomely during the crisis.

Financial statements show that revenue and income surged for energy trading companies in 2000 and 2001. Many firms such as Duke, Dynegy, Enron, Mirant, Reliant, and Williams greatly increased their revenues by taking advantage—taking advantage—of the California market.

And the evidence suggests that other companies were—and may continue to be—engaging in these manipulative strategies and that the Enron memos may well be the tip of the iceberg. One of the Enron memos said: Enron may have been the first to use this strategy, others have picked up on it, too.

Dynegy, Duke Energy, El Paso, Reliant Resources, CMS Energy, and Williams all admitted engaging in false ''round-trip'' or ''wash'' trades.

What is a ''round-trip'' or ''wash'' trade, one might ask? ''Round-trip'' trades occur when one firm sells energy to another and then the second firm simultaneously sells the same amount of energy back to the first company at exactly the same price. No commodity ever changes hands. But when done on an exchange, these transactions send a price signal to the market and they artificially boost revenue for the company. Fraud again.

How widespread are ''round-trip'' trades? The Congressional Research Service looked at trading patterns in the energy sector over the last few years. This is what they reported:

This pattern of trading suggests a market environment in which a significant volume of fictitious trading could have taken place. Yet since most of the trading is unregulated by the Government, we have only a slim idea of the illusion being perpetrated in the energy sector.

Consider the following recent confessions from energy firms about ''round-trip'' trades:

Reliant admitted 10 percent of its trading revenues came from ''round-trip'' trades. The announcement forced the company's president and head of wholesale trading to both step down.

DMS Energy announced 80 percent of its trade in 2001 were ''round-trip'' trades.

That means 80 percent of all of their trades that year were bogus trades where no commodity changed hands, and yet the balance sheets reflect added revenue. If that isn't fraudulent, I do not know what is.

Remember, these trades are sham deals where nothing was exchanged.

Duke Energy disclosed that $1.1 billion worth of trades were ''round-trip'' since 1999. Roughly two-thirds of these were done on the InterContinental Exchange; that is, the online, nonregulated, nonaudited, nonoversight for manipulation and fraud entity run by banks in this country. That means thousands of subscribers would see false pricing.

A lawyer for J.P. Morgan Chase admitted the bank engineered a series of ''round-trip'' trades with Enron.

Dynegy and Williams have also admitted to ''round-trip'' trades.

Although these trades mostly occurred with electricity, there is evidence that suggests that ''round-trip'' trades were made in natural gas and even broad band.

By exchanging the same amount of commodity at the same price, I believe these companies have not engaged in meaningful transactions but deceptive practices to fool investors and drive up energy prices for consumers. It is, therefore, imperative that the Department of Justice, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodities Futures Trading Commission, and every other oversight agency within this Federal Government conduct an aggressive and vigorous investigation into all of the energy companies that participated in these markets.

Beyond that, I believe Congress must reexamine what tools the Government needs to better keep watch over these volatile markets that are, frankly, little understood.

In the absence of vigilant Government oversight of the energy sector, firms have the incentive to create the appearance of a mature, liquid, and well-functioning market. But it is unclear, and I think improbable, that such a market actually exists.

The ''round-trip'' trades and the Enron memos raise questions about illusions in the energy market. To this end, I believe it is critical for the Senate to act soon on the legislation I offered last April to regulate online energy trading.

This week, I plan to reintroduce this legislation with Senators FITZGERALD, LUGAR, HARKIN, CANTWELL, WYDEN, and LEAHY, to subject electronic exchanges like Enron On-Line to the same oversight, reporting, and capital requirements as other commodity exchanges such as the Chicago Mercantile Exchange, the New York Mercantile Exchange, and the Chicago Board of Trade.

This legislation will be called the Energy Market Oversight Act. Without this type of legislation, there is insufficient authority to investigate and prevent fraud and price manipulation and, also, the parties making the trade are not required to keep any records, nor are the trades transparent. In other words, they are secret trades with no audit trails, no oversight for fraud and manipulation. They cannot exist over a regular exchange like that, but the Internet, the online trading community is exempt from this oversight. It is a huge loophole, and it has cost my State billions.

I strongly believe that in order to restore confidence in the economy, we must bolster the authority of the Securities and Exchange Commission, the Federal Energy Regulatory Commission, and the Commodity Futures Trading Commission, and other regulatory agencies.

The marketplace must be fair and transparent, and regulatory bodies such as FERC must show they will act in the public interest and release to the public all information on fraud and manipulation. This includes removing the ''protective order'' FERC has placed on evidence uncovered by the State of California and other interested parties, information the Commission has on wrongdoing in the energy sector but hasn't disclosed. With something as broadly based as energy, as important to people as energy, it is unconscionable to have all this information protected in a lockbox. It must change.

I strongly believe families and businesses that suffered during the western energy crisis have a right to know the extent of the fraud and manipulation that was wrought upon them. So I intend to help ensure that FERC fulfills its public duty so this abuse cannot happen again. Unfortunately, at this time, none of us can give this guarantee to the people of America. And that must change.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Arizona.

Mr. KYL. Mr. President, I will speak about the nomination of Miguel Estrada to be a judge for the District of Columbia Circuit Court of Appeals.

That is, of course, the pending business before the Senate, and it is the business which we will complete before we can move on to other matters, such as the adoption of a budget, and the consideration of the President's economic growth and jobs creation package. But I do not think the President is going to back down on his nomination. Yet I heard a member of the other side of the aisle yesterday, on television, say as far as he was concerned, that nomination would never come up for a vote; that is to say, at least until he ''answered'' the questions of the Members of the other side.

I would like to set the record straight. Through an entire day of hearings, and some 30 questions that were asked of him, Miguel Estrada answered the questions posed. There has been an opportunity to follow up with written questions. If Members have not availed themselves of that opportunity, then that is their problem, not his.

Miguel Estrada has answered all of the questions put before him. He is one of the most competent, qualified, brilliant lawyers the President could have nominated for this position. And really nobody disputes that. So the business about not answering questions is really a smokescreen. It is a smokescreen for opposition to his candidacy based upon the fact that President Bush nominated him and President Bush is a conservative President.

President Bush, I suspect, is more representative of the mainstream of the thinking in this country than certain people on the fringe of either the Democratic party or the Republican party. So I do not think one can simply say because President Bush has nominated somebody that they are extremist or rightwing or that they are ideologves. In fact, the people who have opposed Judge Estrada's nomination have confirmed as much by saying they simply do not know enough about him. So I am a little tired of those who say, on the one hand, we do not know enough about him but, on the other hand, he is some kind of an ideologve. The fact is, he isn't. They do not have anything to suggest he is. It seems to me in the great American idiom, it is time to put up or shut up.

Now, we are not going to shut the Democratic side up. If they want to keep talking about Miguel Estrada, they can talk, as far as we are concerned, as long as they want to. But they should be addressing his nomination instead of speaking about other things or simply not being here on the Senate floor debating his confirmation. His confirmation is the pending business. If Members have a concern about him, they ought to bring it forth. If they have some evidence that he has done something in his background that isn't right, then they ought to bring it forth. If they have an objection to one of his opinions, then they should bring that forth. None of this has happened or will happen because, in fact, there is nothing there. That is why they are regulated to saying: Well, we just don't know enough about him.

It is time for those who oppose Miguel Estrada to be honest about their opposition, to come forth and talk to the American people about it, and find out what the American people think about their opposition to Miguel Estrada.

I put together just a few quotations of people around the country who have commented on his nomination. I would like to just read a few of them.

We are all aware of the fact the American Bar Association—whose opinion used to be the ''Gold Standard'' for Democrat Members in the Senate on judicial nominations—rated Miguel Estrada well qualified unanimously. That is their highest rating. And they take into consideration everything, from judicial temperament, to educational background, to experience. Obviously, if someone were way outside the mainstream or too political, the

American Bar Association would not have unanimously indicated their approval of the candidate.

This is from Ruben Navarette, who wrote in the Dallas Morning News—by the way, a very competent journalist who used to write for the Arizona Republic, one of my hometown newspapers:

Miguel Estrada deserves a hearing, and Mr. Bush deserves to have his nominees considered in a timely manner. The only thing preventing that in the case of Mr. Estrada is Democrat fear of the political damage they could sustain from such a nomination.

So spoken by Ruben Navarette.

Ron Klain is a former counsel to Vice President Gore. He said this just about a year ago:

I have no doubt that on the bench, Miguel will faithfully apply the precedents of his court, and the Supreme Court, without regard to his personal views or his political perspectives. His belief in the rule of law, in a limited judiciary, and in the separation of powers is too strong for him to act otherwise.

That goes directly to this business that somehow or other Miguel Estrada—though he has not written anything or said anything that would lead to this conclusion—could not be trusted to apply the rule of law as he understands it from the U.S. Supreme Court.

Here is a former counsel to Vice President Gore saying he knows Miguel Estrada is beyond that, that Miguel Estrada is a person who understands his role as a judge, his belief in the rule of law, and a limited judiciary, and the separation of powers and, therefore, that he would act in accordance with what we understand to be the correct role of a judge in these circumstances.

There was a statement I thought particularly interesting from former Solicitors General. Remember that Miguel Estrada was an Assistant Solicitor General. This is the office in the Department of Justice that actually represents the Government before the U.S. Supreme Court.

Miguel Estrada has argued 15 cases before the U.S. Supreme Court. In a letter signed by colleagues from the Office of the Solicitor General under Presidents Clinton and George H. W. Bush, dated September 19, 2002, I quote:

Miguel is a brilliant lawyer, with an extraordinary capacity for articulate and incisive legal analysis and a commanding knowledge of an appreciation for the law. Moreover, he is a person whose conduct is characterized by the utmost integrity and scrupulous fairness, as befits a nominee to the federal bench. In addition, Miguel has a deep and abiding love for his adopted country and the principles for which it stands, and in particular for the rule of law.

Again, Democrats and Republicans alike affirm the fact that Miguel Estrada is above partisan politics and appreciates his role as a judge, applying the law of the precedents of the courts and of the Supreme Court.

Seth Waxman was former Solicitor General during the Clinton administration, a well-respected lawyer. This is what he wrote:

During the time Mr. Estrada and I worked together, he was a model of professionalism and competence. In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his personal views—or indeed that they reflected any consideration other than the long-term interests of the United States.

It is astounding to me that our friends on the other side of the aisle, despite the recommendations of high level Clinton administration lawyers affirming the professionalism and honesty and credentials of Miguel Estrada, would still contend that they don't have enough information about him. I suggest to my colleagues that they consult some of their friends in the former Clinton administration, former Solicitors General, and ask them about Miguel Estrada. If they are saying they don't know enough about him, there are some very highly qualified people to whom they could speak. I doubt there is anybody they could speak to who knows Miguel Estrada well that wouldn't confirm his qualifications to be on the court.

Instead they are relegated to dark, suspicious comments such as, ''Well, maybe he believes things that we don't know about because he just hasn't answered our questions thoroughly enough.'' I suggest they talk to those who have worked with him on a day-in and day-out basis. They will find that he is not only highly qualified but very fair.

Just perhaps one or two other comments. Then I will yield to my friends.

Rick Davolina, LULAC national president, said:

We are confident that Mr. Estrada will fulfill the duties of the United States Circuit Judge for the District of Columbia Circuit with fairness, intelligence, and commitment to the ideals of the United States.

I had a call from one of the local LULAC officials over the weekend who confirmed LULAC's position and support of his nomination.

Elizabeth Lisboa-Farrow, chair of the U.S. Hispanic Chamber of Commerce, said:

From his humble beginnings as an immigrant from Honduras who achieved a stellar academic career . . . to his varied and impressive achievements in the Justice Department and private firms, Mr. Estrada has shown himself to be one of superior talents and accomplishments.

From the Hispanic community, from newspapers around the country, from former Clinton administration officials and others who know Miguel Estrada well, there is no doubt in their mind that he is not only qualified to serve but that he would do so applying the precedents of his court and the U.S. Supreme Court.

Therefore, I again ask my colleagues again on the other side of the aisle, if you have concerns about Miguel Estrada, bring them to the floor. Let's talk about them. Let's debate them. But at the end of the day, it is only fair to give Miguel Estrada a vote so that he can be confirmed as a judge on the DC Circuit Court of Appeals.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I compliment my friend and colleague from Arizona and wish to join him in urging our colleagues to vote in favor of Miguel Estrada to be on the DC Circuit Court of Appeals. Senator KYL said it all and said it well. I compliment him. I compliment Senator HATCH for his leadership.

I urge my colleagues to support Miguel Estrada. I did something I haven't done in my many years in the Senate. I suggested to some of our colleagues that because, in the last couple of years, we had had a hard time moving forward circuit court nominees before the Senate, that we individually take one or two of these nominees and more or less adopt them, get to know them well and encourage their nomination.

We had good success. I thank my friend, the former chairman of the Judiciary Committee. We had good success in moving through a lot of the district court nominees. Senator LEAHY was very accommodating with us. We moved through four Oklahoma judges to serve on the district court. It didn't take very long. A lot of district court nominees were confirmed.

But on the appellate level, on the circuit court level, it wasn't the same. In fact, I believe in the last 2 years, the first 2 years, or the 107th Congress, President Bush submitted 32 nominees to the circuit court and only 17 were confirmed—53 percent. That compares to President Clinton. In his first 2 years he got 87 percent; President Bush, 96 percent; and President Reagan, 95 percent. This President Bush in the 107th Congress only got 53 percent.

I suggested to our colleagues, let's take special attention, individual Senators take special attention to some of the nominees and then encourage that they be confirmed. The reason I would do that is obviously home State Senators are going to encourage their particular nominees for district court, but maybe when you talk about the circuit court, since it applies to many States, many areas, it doesn't have quite the same degree of support from an individual Senator.

It so happens on Miguel Estrada, Senator PETE DOMENICI and I both decided that we would take particular interest in Miguel Estrada. By that we got to know him. We had meetings with him. We had press conferences on his behalf. We encouraged others to join in the effort to confirm Miguel Estrada. We were not successful in the last 2 years. He was eventually approved by the committee but not on the floor of the Senate.

That is with great regret. Now we are before the Senate trying to confirm Miguel Estrada. We haven't been able to get a vote. We have been talking for a long time. Now people want to talk, I don't know how long, but we will spend some time because this is an outstanding nominee.

I got to know him. He is a truly a success story. He immigrated to this country from Honduras at age 17. Then he graduated magna cum laude and Phi Beta Kappa from Columbia. He also graduated magna cum laude from Harvard Law School where he distinguished himself as editor of the Harvard Law Review. What a remarkable accomplishment for somebody who immigrated to this country at age 17 and could hardly speak English.

Since then he has argued 15 cases before the U.S. Supreme Court. He won 10 of those cases. Find the number of attorneys in the United States who have argued 15 cases before the Supreme Court. It is a pretty elite group. Almost by definition he is an outstanding attorney or he would not have argued 15 cases before the Supreme Court.

He was rated unanimously well qualified by the American Bar Association, its highest possible rating. President Clinton's Solicitor General, a Democrat, Seth Waxman, had this to say about Miguel Estrada:

> During the time Mr. Estrada and I worked together, he was a model of professionalism and competence. In no way did I ever discern that the recommendations Mr. Estrada made or the [views] he propounded were colored in any way by his personal views—or indeed that they reflected anything other than the long-term interests of the United States.

That is from President Clinton's Solicitor General. Some people are saying, we want to see his notes when he was giving advice or memos as Assistant Solicitor General. That should not be done.

Ron Klain, former counsel to Vice President Gore, wrote to Senator LEAHY on January 16, 2002:

> Miguel is a person of outstanding character, tremendous intellect, and with a deep commitment to the faithful application of precedent. Miguel will rule justly towards all without showing favor towards any group or individual.

Is there any higher standard that we should hold our judges to than that? This is from the counsel to former Vice President Gore, also a Democrat.

Mr. Estrada has extensive appellate practice, and he is widely regarded as one of the country's best appellate lawyers. He is currently a partner in the prestigious Washington, DC, law firm of Gibson, Dunn & Crutcher. He also clerked for Judge Kearse, President Carter's well-respected appointee to the Second Circuit Court of Appeals. In 1998 and 1999, he clerked for Supreme Court Justice Anthony Kennedy. It goes without saying that somebody who clerks for a Supreme Court Justice is an exceptionally talented individual. He served as Assistant Solicitor General of the United States under both Presidents Clinton and Bush. He held that position for 5 years.

This is an exceptionally well-qualified individual. He has performed significant pro bono service, including representation of a death row inmate before the Supreme Court, a case to which he dedicated approximately 400 hours.

So I don't think anyone can dispute that he is well qualified, and he is an outstanding success story. I find no legitimate reason whatsoever to oppose his nomination. I am very concerned about colleagues trying to say, ''Now, you are going to have to get 60 votes to confirm Miguel Estrada as a Federal judge.'' I am concerned about that.

I have been in the Senate for 22 years. I have heard people talk about filibustering judges, but it has never happened in my Senate career. We have filed cloture a few times—maybe for procedural reasons, or whatever; but most of the time, even when cloture was filed, it was granted overwhelmingly, with 85 or 90 votes in most cases. Those were not filibusters. The only successful filibuster goes back to 1968. So that is the only filibuster of a judicial nominee that has happened in the history of the United States. That was on Abe Fortas' nomination. It was filibustered by Democrats and Republicans. I am not saying it was right. I think it was probably wrong. But this hasn't been done since 1968.

I think it has been implied that many people in the Democrat Party are talking about filibustering several judges. So we are going to have a new standard now—that confirmation of judges is not 50 or 51, but it is going to be 60. We didn't do that with Judge Bork, Justice Thomas, or Justice Rehnquist, or in previous nominations that were fairly controversial.

I urge my colleagues to think about this. If they are going to march down this road and say you need 60 votes to confirm Mr. Estrada and others, that may be a serious mistake. One may look back on his or her Senate career and say we made a mistake. Both sides can play that game. I don't want this side to play that game, and I don't want the other side to play that game. Two wrongs don't make a right. We should not make the first bad mistake on Miguel Estrada.

Other people have said they want to have more information. They don't know enough about this young man. Compare. What did we know about many of the judges who have been confirmed? They don't commit themselves on how they would rule on a future case. Well, I hope they don't. They should not. He is not turning over his memoranda that he did as Assistant Solicitor General. First, those are confidential attorney-client memoranda, which were not requested by the seven previous nominees who worked in the Solicitor General's Office. We didn't request them previously, and we should not today. Every former Solicitor General, including Democrats Archibald Cox, Seth Waxman, Drew Days, and Walter Dellinger, signed a letter to the Judiciary Committee stating their opposition to the production of these documents, saying, ''By doing that, they would have a debilitating effect on the ability of the Department of Justice to represent the United States before the Supreme Court.''

Heaven forbid, if you have somebody working for a client saying, I cannot give a memo because it might not be politically correct, or it might not help me if I wish to be confirmed before the Senate in the future, that is a terrible idea. Seth Waxman, a Democrat Solicitor General under President Clinton, already said he represented the interests of the United States. That may not have coincided with his interest. It was in the interest of his client on whose behalf he was advocating.

Also, it so happens—I believe Mr. Estrada has said he would be willing to come forward with those, but the Justice Department rightly says that would be a very negative precedent to set, and they are rightfully saying they should be withheld, as all the former living Solicitors General have said. They are correct.

Again, we didn't request these memoranda from the seven other nominees who worked as Assistant Solicitors General. We should not do it in this case.

Somebody said: What about Judge Paez and Judge Berzon? They were both on the Ninth Circuit Court of Appeals, the most liberal circuit court in the country. Yes, there was a cloture vote on both of them. I will note that the cloture vote on both of them was—first, Marsha Berzon's was 86 to 13. Cloture on Richard Paez was 85 to 14. So there wasn't a filibuster on those two judges. We had a vote. I voted against them. I think I made a good vote. They were confirmed.

We should vote on Miguel Estrada, and if people don't wish to confirm him, they can vote no. The fact is, they know he would be confirmed, so they are trying to deny him a vote. I urge my colleagues to step back a little bit and ask what would this be doing to the Senate? The Constitution gives the right to the Senate in the confirmation to give advice and consent. That implies a vote. We should vote on Miguel Estrada and we should confirm Miguel Estrada. I have every confidence, having known him probably better than almost any circuit court nominee in my 22 years, that he will make an outstanding circuit court judge, one that we will be proud to have confirmed, one that the people who are obstructing his confirmation will regret. I think they will soon find out that he is an outstanding nominee and he will make an outstanding judge.

I urge my colleagues who have maybe participated in dragging this thing on—and we have been on it for a couple weeks—after talking to Majority Leader FRIST, I think we will be on it for a long time. Mr. Estrada deserves a vote. He deserves our vote of confidence, and he deserves to be confirmed by the Senate.

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

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

CONFERENCE AGREEMENT ON H.J. RES. 2

Mr. NICKLES. Mr. President, I submit for the RECORD a table which summarizes the conference agreement on H.J. Res. 2, the fiscal year 2003 omnibus appropriations resolution. This table was prepared by my staff based upon the estimates of the Congressional Budget Office.

I congratulate our majority leader and the chairman of the Appropriations Committee for working to provide no more in total appropriations for fiscal year 2003 than was requested by the President. The conference agreement on H.J. Res. 2 contains $397.855 billion in discretionary spending which, when added to amounts in the Defense and military construction appropriations bills already enacted, totals $763.184 billion in fiscal year 2003 discretionary spending. These totals increased from the Senate-passed levels primarily to accommodate additional defense spending requested by the President. The totals also include a 0.65 percent across-the-board reduction, amounting to $2.622 billion, from most accounts in the 11 appropriation bills included in the conference agreement.

Compared to fiscal year 2002, total discretionary spending after enactment of H.J. Res. 2 will grow by 3.9 percent. Defense discretionary spending will grow by 8.7 percent, and domestic discretionary spending will decline by 0.7 percent.

Compared to fiscal year 2002 less spending for one-time nonrecurring projects, total discretionary spending after enactment of H.J. Res. 2 will grow by 6.2 percent, defense discretionary spending will grow by 9.1 percent, and domestic discretionary spending will grow by 3.4 percent.

The conference agreement includes $25.385 billion in advance appropriations, an increase of $2.227 billion over the level of advance appropriations provide in fiscal year 2002 appropriations bills.

The conference agreement on H.J. Res. 2 also includes several increases in mandatory spending programs. The increased spending, which totals $4.257 billion in 2003 and $54.792 billion from 2003 to 2013 includes changes in agriculture payments for drought, payments to physicians and rural hospitals, and TANF payments to States.

Mr. President, I ask for unanimous consent that a table displaying the Budget Committee scoring of the conference agreement on H.J. Res. 2 and enacted appropriations, with a comparison to 2002, be printed in the RECORD.

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

CBO ESTIMATES OF THE CONFERENCE APPROPRIATIONS BILLS FOR FY 2003 COMPARED TO FY 2002

[Budget authority, in billions of dollars]

Subcommittees	2002 [1]	Senate appropriations bills [2]	Percent increase or decrease
Divisions A–K and Defense and Military Construction Bills:			
Agriculture	17.171	17,995	4.8
CJS	42,995	41,387	−3.7
Defense	0.560	0.574	2.5
Nondefense	42.435	40.813	−3.8
Defense	334.113	354.830	6.2
DC	0.607	0.512	−15.7
Energy and Water	25.334	26.164	3.3
Defense	15.164	15.898	4.8
Nondefense	10.170	10.266	0.9
Foreign Ops	16.433	16.300	−0.8
Interior	19.135	19.057	−0.4
Labor, HHS	127.659	133.399	4.5
Legislative	3.254	3.360	3.3
Mil Con	10.604	10.499	−1.0
Transportation [3]	23.095	21.200	−8.2
Defense	0.440	0.340	−22.7
Nondefense	22.655	20.860	−7.9
Treasury, Postal	18.515	18.326	−1.0
VA, HUD	95.758	90.350	−5.6
Defense	0.153	0.144	−5.9
Nondefense	95.605	90.206	−5.6
Deficiencies	−0.350	0.000	.....
Defense	−0.196	0.000	.....
Nondefense	−0.154	0.000	.....
Total, Divisions A–K	734.323	753.379	2.6
Defense	360.838	382.285	5.9
Nondefense	373.485	371.094	−0.6
Division: Classified Defense Programs	0.000	10.000	.....
Division N:			
Election Reform—Title I	0.000	1.500	.....
Wildland Fire Management—Title III	0.000	0.825	.....
Fisheries Disasters—Title V	0.000	0.100	.....
0.65 percent across the board rescission on accounts (with exceptions) in 11 bills—Title V	0.000	−2.622	.....
Subtotal	0.000	−0.197	.....
Division P: U.S.-China Commission	0.000	0.002	.....
Total, Discretionary	734.323	763.184	3.9
Defense	360.838	392.175	8.7
Nondefense	373.485	371.009	−0.7
One-time, non-recurring projects [4]	15.946	0.000	.....
Defense	1.338	0.000	.....
Nondefense	14.608	0.000	.....
Total, Discretionary less one-time	718.377	763.184	6.2
Defense	359.500	392.175	9.1
Nondefense	358.877	371.009	3.4
Total, without enacted Defense and Mil Con	.....	397.855	.....
Defense	.....	26.846	.....
Nondefense	.....	371.009	.....
Memo:			
Mandatory Items in Division N:.			
Title II—Agriculture Drought Relief, as amended	.....	3.084	.....
Title IV—Medicare Physicians	.....	0.800	.....
Title IV—Rural Hospitals	.....	0.250	.....
Title IV—Welfare Payments to States	.....	0.098	.....
Title IV—QI–1 Program	.....	0.025	.....
Title VII—Bonneville Power Administration	.....	0.000	.....
Total	.....	4.257	.....
Total, with Mandatories	.....	767.441	.....
Total, without enacted Defense and Mil Con	.....	402.112	.....

[1] The 2002 figures include the levels enacted in the FY 2002 appropriations bills, as well as the $24.2 billion in BA in P.L. 107–206 (the Emergency Supplemental Appropriations and Rescissions, 2002), as estimated by CBO.

[2] This represents Divisions A through P of the Conference Report on H.J. Resolution 2 (Making Further Continuing Appropriations for the Fiscal Year 2003, and for Other Purposes), as well as the FY 2003 Defense (P.L. 107–248) and Military Construction (P.L. 107–249) appropriations bills. These bills also include $25.385 billion in advance appropriations, $2.227 billion more than the $23.158 billion in advances for the FY 2002 appropriation bills.

[3] Includes mass transit budget authority of $1.445 billion.

[4] The $15.946 billion in one-time, nonrecurring projects and activities were identified in Attachment C of OMB Bulletin 02–06, Supplement No. 1, dated October 4, 2002.

Source: Congressional Budget Office; Senate Budget Committee Republican Staff.

H.J. RES. 2: 2003 OMNIBUS APPROPRIATIONS BILL, CONFERENCE

[Fiscal year 2003, in millions of dollars]

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004–13
Mandatory:												
Division N:												
Title 2—Agricultural assistance:												
BA	3,084	60	47	54	(10)	(213)	(375)	(498)	(603)	(703)	(849)	(3,090)
O	3,137	535	184	153	62	(168)	(344)	(479)	(599)	(702)	(848)	(2,206)
Title 4—Medicaid:												
Section 401:												
TANF:												
BA	64	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
O	71	6	3	(7)	.....	(6)	(3)	.....	.....	.....	.....	(7)
Transitional Medicaid:												
BA	34	85	9	3	.....	.....	(2)	.....	.....	.....	.....	95
O	32	80	11	3	.....	.....	1	.....	.....	.....	.....	95
Total, section 401:												
BA	98	855	9	3	.....	.....	(2)	.....	.....	.....	.....	95
O	103	86	14	(4)	.....	(6)	(2)	.....	.....	.....	.....	88
Section 402(a)—physicians' fee schedule:												
BA	800	2,200	3,000	4,000	5,200	6,500	7,300	7,000	6,300	5,800	5,500	52,800
O	800	2,200	3,000	4,000	5,200	6,500	7,300	7,000	6,300	5,800	5,500	52,800
Section 402(b)—Hospitals:												
BA	250	30	.....	.....	.....	.....	.....	.....	.....	.....	.....	30
O	250	30	.....	.....	.....	.....	.....	.....	.....	.....	.....	30
Section 403—QI-1 program:												
BA	25	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
O	25	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total, title 4:												
BA	1,173	2,315	3,009	4,003	5,200	6,500	7,298	7,000	6,300	5,800	5,500	52,925
O	1,178	2,316	3,014	3,996	5,200	6,494	7,298	7,000	6,300	5,800	5,500	52,918
Title 7—Bonneville Power Administration:												
BA	.....	300	300	100	.....	.....	.....	.....	.....	.....	.....	700
O	.....	60	210	260	140	30	.....	.....	.....	.....	.....	700
Total, H.J. Res. 2, mandatory:												
BA	4,257	2,675	3,356	4,157	5,190	6,287	6,923	6,502	5,697	5,097	4,651	50,535
O	4,315	2,911	3,408	4,409	5,402	6,356	6,954	6,521	5,701	5,098	4,652	51,412

Mr. LEAHY. Mr. President, I will speak for a few minutes regarding the debate on Mr. Estrada. The reason I say this, when I came on the floor I heard a great deal of discussion about the Hispanic National Bar Association. I heard from my friends on the other side of the aisle the current president of the Hispanic National Bar Association has led the support of this organization for Mr. Estrada's nomination, which is so. However, it jogged my memory that this morning I received a letter from 15 former presidents of the Hispanic National Bar Association. These 15 take an entirely different position than the current president: 15 well-respected former national leaders of this important bar association. They date back to the founding of it in 1972.

They have written to the Senate to oppose this nomination. They wrote to Senator HATCH and they wrote to Senator FRIST, as well as to Senator DASCHLE and myself. I am sure the speakers earlier this morning, when they spoke of the importance of the position of the president of the Hispanic National Bar Association, were probably not aware that but one is in favor of Mr. Estrada and 15 were opposed. It is very weighty opposition for 15 prior presidents of the Hispanic National Bar Association, based on the criteria to evaluate judicial nominees that this association has formally used since 1991, which has been the practical standard for the past 30 years, to make this assessment.

In addition to the candidate's professional experience and temperament, the criteria for endorsement includes the extent to which a candidate has been involved, supportive of, and responsive to the issues, needs, and concerns of Hispanic Americans and, secondly, the candidate's demonstrated commitment to the concept of equal opportunity and equal justice under the law.

In the view of the overwhelming majority of the living past presidents of the Hispanic National Bar Association, Mr. Estrada's record does not provide evidence that meets those criteria. But they say his candidacy ''falls short in these respects.''

They conclude:

We believe that for many reasons including: his virtually non-existent written record, his verbally expressed and unrebutted extreme views, his lack of judicial or academic teaching experience (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his poor judicial temperament, his total lack of any connection whatsoever to, or lack of demonstrated interest in the Hispanic community, his refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to other straightforward questions of Senate Judiciary Committee members, and because of the Administration's refusal to provide the Judiciary Committee the additional information and cooperation it needs to address these concerns, the United States Senate cannot and must not conclude that Mr. Estrada can be a fair and impartial appellate court judge.

This is a significant letter because during the tenure of these past presidents, the Hispanic National Bar Association has had a fair nonpartisan record of following its criteria, and endorsing or not endorsing or rejecting nominees, regardless of whether the nominee is Republican or Democrat. They follow the same criteria for Republicans and Democrats. The HNBA has been at the forefront of the effort to increase diversity on the Federal bench and improve the public confidence among Hispanics and others in the fairness of the Federal courts. They have supported Republican nominees as well as Democratic nominees. But these 15 individuals, who devoted a great deal of time in their legal careers to advancing the careers of Hispanics in the legal community, have felt compelled publicly to oppose the Estrada nomination, although they publicly supported both Democrats and Republicans before. This one they opposed.

I ask unanimous consent the letter that was sent to me, to Senator HATCH, to Senator FRIST, and to Senator DASCHLE be printed in the RECORD.

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

HNBA'S PAST PRESIDENTS' STATEMENT, FEBRUARY 21, 2003

We the undersigned past presidents of the Hispanic National Bar Association write in strong opposition to the nomination of Miguel A. Estrada for a judgeship on the Court of Appeals for the District of Columbia Circuit.

Since the HNBA's Establishment in 1972, promoting civil rights and advocating for judicial appointments of qualified Hispanic Americans throughout our nation have been our fundamental concerns. Over the years, we have had a proven and respected record of endorsing or not endorsing or rejecting nominees on a non-partisan basis of both Republican and Democratic presidents.

In addition to evaluating a candidate's professional experience and judicial temperament, the HNBA's policies and procedures governing judicial endorsements have required that the following additional criteria be considered:

1. The extent to which a candidate has been involved in, supportive of, and responsive to the issues, needs and concerns of Hispanic Americans, and

2. The candidate's demonstrated commitment to the concept of equal opportunity and equal justice under the law.

Based upon our review and understanding of the totality of Mr. Estrada's record and life's experiences, we believe that there are more than enough reasons to conclude that Mr. Estrada's candidacy falls short in these respects. We believe that for many reasons including: his virtually non-existent written record, his verbally expressed and un-rebutted extreme views, his lack of judicial or academic teaching experience, (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his poor judicial temperament, his total lack of any connection whatsoever to, or lack of demonstrated interest in the Hispanic community, has refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to other straightforward questions of Senate Judiciary Committee members, and because of the Administration's refusal to provide the Judiciary Committee the additional information and cooperation it needs to address these concerns, the United States Senate cannot and must not conclude that Mr. Estrada can be a fair and impartial appellate court judge.

Respectfully submitted,

Signed by 15 past HNBA presidents.

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.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the hour of 3:30 p.m. having arrived, the Senate will now return to legislative session.

PROSECUTORIAL REMEDIES AND TOOLS AGAINST THE EXPLOITATION OF CHILDREN ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consider S. 151, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 151) to amend title 18, United States Code, with respect to the sexual exploitation of children.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments, as follows:

[Strike the parts shown in boldface brackets and insert the parts shown in italic.]

S. 151

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 ''Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003'' or ''PROTECT Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment under Miller v. California, 413 U.S. 15 (1973) (obscenity), or New York v. Ferber, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. ''The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,'' New York v. Ferber, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. Osborne v. Ohio, 495 U.S. 103, 110 (1990).

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. ''[T]he most expeditious if not the only practical method of law

enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.'' Ferber, 458 U.S. at 760.

(4) In 1982, when the Supreme Court decided Ferber, the technology did not exist to: [(A) create depictions of virtual children that are indistinguishable from depictions of real children;] *(A) computer generate depictions of children that are indistinguishable from depictions of real children;* [(B) create depictions of virtual children using compositions of real children to create an unidentifiable child; or] *(B) use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that prevents even an expert from concluding that parts of images of real children were used; or* (C) disguise pictures of real children being abused by making the image look computer generated.

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer generated. The technology will soon exist, if it does not already, [to make depictions of virtual children look real] *to computer generate realistic images of children*.

(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, [and/or] *or* related media.

(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since Ferber have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges [will likely increase] *increased significantly* after the Ashcroft v. Free Speech Coalition decision.

(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic [delineation] *assessment* may depend on the quality of the image scanned and the tools used to scan it.

(9) The impact on the government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in Free Speech Coalition. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

(10) Since the Supreme Court's decision in Free Speech Coalition, defendants in child pornography cases have almost universally raised the contention that the images in question could be virtual, thereby requiring the government, in nearly every child pornography prosecution, to find proof that the child is real. Some of these defense efforts have already been successful.

[(10)] *(11)* In the absence of congressional action, this problem will continue to grow increasingly worse. The mere prospect that the technology exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution, for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable. *Moreover, imposing an additional requirement that the Government prove beyond a reasonable doubt that the defendant knew that the image was in fact a real child—as some courts have done—threatens to result in the de facto legalization of the possession, receipt, and distribution of child pornography for all except the original producers of the material.*

[(11)] *(12)* To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

[(12)] *(13)* The Supreme Court's 1982 Ferber [v. New York] decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary *now* to ensure that open and notorious trafficking in such materials does not reappear, *and even increase, on the Internet*.

SEC. 3. CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.

Section 2252A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting the following:

''(3) knowingly—

''(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or

''(B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that [conveys the impression] *reflects the belief, or that is intended to cause another to believe,* that the material or purported material is, or [contains, an obscene visual depiction of a minor engaging in sexually explicit conduct;';] *contains—*

''(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

''(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;'';

(B) in paragraph (4), by striking ''or'' at the end;

(C) in paragraph (5), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, [of sexually explicit conduct] where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

''(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;

''(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

''(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer,

for purposes of inducing or persuading a minor to participate in any activity that is illegal.'';

(2) in subsection (b)(1), by striking ''*paragraphs* (1), (2), (3), or (4)'' and inserting ''*paragraph* (1), (2), (3), (4), or (6)''; and

(3) by striking subsection (c) and inserting the following:

''(c) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) that—

''(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

''(B) each such person was an adult at the time the material was produced; or

''(2) the alleged child pornography was not produced using any actual minor or minors. No affirmative defense *under subsection (c)(2)* shall be available in any prosecution that involves [obscene child pornography or] child pornography as described in section [2256(8)(D)] *2256(8)(C)*. A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.''.

SEC. 4. ADMISSIBILITY OF EVIDENCE.

Section 2252A of title 18, United States Code, is amended by adding at the end the following:

''(e) ADMISSIBILITY OF EVIDENCE.—On motion of the government, in any prosecution under this chapter, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.''.

SEC. 5. DEFINITIONS.

Section 2256 of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting before the semicolon the following: ''and shall not be construed to require proof of the actual identity of the person'';

[(2) in paragraph (8)—

(A) in subparagraph (B), by inserting ''is obscene and'' before ''is'';

(B) in subparagraph (C), by striking ''or'' at the end; and

(C) by striking subparagraph (D) and inserting the following:

''(D) such visual depiction—

''(i) is, or appears to be, of a minor actually engaging in bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

''(ii) lacks serious literary, artistic, political, or scientific value; or

''(E) the production of such visual depiction involves the use of an identifiable minor engaging in sexually explicit conduct;''; and]

(2) in paragraph (2)—

(A) by striking ''means actual'' and inserting the following: ''means—

''(A) actual'';

(B) in subparagraphs (A), (B), (C), (D), and (E), by indenting the left margin 2 ems to the right and redesignating subparagraphs (A), (B), (C), (D), and (E) as clauses (i), (ii), (iii), (iv), and (v), respectively;

(C) in subparagraph (A)(v), as redesignated, by inserting ''or'' after the semicolon; and

(D) by adding at the end the following:

''(B)(i) actual sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;

''(ii) actual or lascivious simulated—

''(I) bestiality;

''(II) masturbation; or

''(III) sadistic or masochistic abuse; or

''(iii) actual lascivious or simulated lascivious exhibition of the genitals or pubic area of any person;'';

(3) in paragraph (8)—

(A) by striking subparagraph (B) and inserting the following:

''(B) the production of such visual depiction involves the use of an identifiable minor engaging in sexually explicit conduct; or'';

(B) in subparagraph (C)—

(i) by inserting after ''is engaging in sexually explicit conduct'' the following: '', except that the term 'identifiable minor' as used in this subparagraph shall not be construed to include the portion of the definition contained in paragraph (9)(B)''; and

(ii) by striking ''or'' at the end; and

(C) by striking subparagraph (D); and

[(3)**]** *(4)* by striking paragraph (9), and inserting the following:

''(9) 'identifiable minor'—

''(A)(i) means a person—

''(I)(aa) who was a minor at the time the visual depiction was created, adapted, or modified; or

''(bb) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

''(II) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

''(ii) shall not be construed to require proof of the actual identity of the identifiable minor; or

[''(B) means a computer or computer generated image that is virtually indistinguishable from an actual minor; and

''(10) 'virtually indistinguishable' means that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor.''.**]**

''(B) means a computer image, computer generated image, or digital image—

''(i) that is of, or is virtually indistinguishable from that of, an actual minor; and

''(ii) that depicts sexually explicit conduct as defined in paragraph (2)(B); and

''(10) 'virtually indistinguishable'—

''(A) means that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor; and

''(B) does not apply to depictions that are drawings, cartoons, sculptures, diagrams, anatomical models, or paintings depicting minors or adults or reproductions of such depictions.''.

SEC. 6. OBSCENE VISUAL REPRESENTATIONS OF THE SEXUAL ABUSE OF CHILDREN.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2252A the following:

''§ 2252B. Obscene visual representations of the sexual abuse of children

''(a) IN GENERAL.—Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

''(1)(A) depicts a minor engaging in sexually explicit conduct; and

''(B) is obscene; or

''(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

''(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

''(b) ADDITIONAL OFFENSES.—Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

''(1)(A) depicts a minor engaging in sexually explicit conduct; and

''(B) is obscene; or

''(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

''(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(2), including the penalties provided for cases involving a prior conviction.

''(c) NONREQUIRED ELEMENT OF OFFENSE.—It is not a required element of any offense under this section that the minor depicted actually exist.

''(d) CIRCUMSTANCES.—The circumstance referred to in subsections (a) and (b) is that—

''(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

''(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

''(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

''(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

''(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

''(e) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (b) that the defendant—

''(1) possessed less than 3 such visual depictions; and

''(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction—

''(A) took reasonable steps to destroy each such visual depiction; or

''(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

''(f) DEFINITIONS.—For purposes of this section—

''(1) the term 'visual depiction' includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;

''(2) the term 'sexually explicit conduct' has the meaning given the term in section 2256(2); and

''(3) the term 'graphic', when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2252A the following:

''2252B. Obscene visual representations of the sexual abuse of children.''.

(c) SENTENCING GUIDELINES.—

(1) CATEGORY.—Except as provided in paragraph (2), the applicable category of offense to be used in determining the sentencing range referred to in section 3553(a)(4) of title 18, United States Code, with respect to any person convicted under section 2252B of such title, shall be the category of offenses described in section 2G2.2 of the Sentencing Guidelines.

(2) RANGES.—The Sentencing Commission may promulgate guidelines specifically governing offenses under section 2252B of title 18, United States Code, if such guidelines do not result in sentencing ranges that are lower than those that would have applied under paragraph (1).

SEC. [6.] *7.* RECORDKEEPING REQUIREMENTS.

Section 2257 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by striking ''of this section'' and inserting ''of this chapter or chapter 71,'';

(2) in subsection (h)(3), by inserting '', computer generated image, *digital image,* or picture,'' after ''video tape''; and

(3) in subsection (i)—

(A) by striking ''not more than 2 years'' and inserting ''not more than 5 years''; and

(B) by striking ''5 years'' and inserting ''10 years''.

SEC. [7.] *8.* SERVICE PROVIDER REPORTING OF CHILD PORNOGRAPHY AND RELATED INFORMATION.

Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended—

(1) in subsection (b)(1), by inserting ''or a violation of section 2252B of that title'' after ''of that title)'';

[(1)**]***(2)* in subsection (c), by inserting ''or pursuant to'' after ''to comply with'';

[(2)**]***(3)* by amending subsection (f)(1)(D) to read as follows:

''(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.'';

[(3)**]***(4)* by redesignating paragraph (3) of subsection (b) as paragraph (4); and

[(4)**]***(5)* by inserting after paragraph (2) of subsection (b) the following new paragraph:

''(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2), the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.''.

SEC. [8.] *9.* CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

Section 2702 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6)—

(i) in subparagraph (A)(ii), by inserting ''or'' at the end;

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B);

(C) by redesignating paragraph (6) as paragraph (7); and

(D) by inserting after paragraph (5) the following:

''(6) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''; and

(2) in subsection (c)—

(A) in paragraph (4), by striking ''or'' at the end;

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

''(5) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''.

SEC. [9.] *10.* EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 of title 18, United States Code, is amended—

(1) by striking ''subsection (d)'' each place that term appears and inserting ''subsection (e)'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following:

''(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

''(2) The circumstance referred to in paragraph (1) is that—

''(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

''(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.''.

SEC. [10.] *11.* CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''(f) CIVIL REMEDIES.—

''(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

''(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

''(A) temporary, preliminary, or permanent injunctive relief;

''(B) compensatory and punitive damages; and

''(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.''.

SEC. [11.] *12.* ENHANCED PENALTIES FOR RECIDIVISTS.

Sections 2251(d), 2252(b), and 2252A(b) of title 18, United States Code, are amended by inserting ''chapter 71,'' before ''chapter 109A,'' each place it appears.

SEC. [12.] *13.* SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct.

SEC. [13.] *14.* MISCELLANEOUS PROVISIONS.

(a) APPOINTMENT OF TRIAL ATTORNEYS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice or to appropriate U.S. Attorney's Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography laws.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out this subsection.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.

SEC. 15. AUTHORIZATION OF INTERCEPTION OF COMMUNICATIONS IN THE INVESTIGATION OF SEXUAL CRIMES AGAINST CHILDREN.

Section 2516(1)(c) of title 18, United States Code, is amended—

(1) by inserting ''section 1591 (sex trafficking of children by force, fraud, or coercion),'' after ''section 1511 (obstruction of State or local law enforcement),''; and

(2) by inserting ''section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 2252B (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes),'' after ''sections 2251 and 2252 (sexual exploitation of children),''.

SEC. 16. INVESTIGATIVE AUTHORITY RELATING TO CHILD PORNOGRAPHY.

Section 3486(a)(1)(C)(i) of title 18, United States Code, is amended by striking ''the name, address'' and all that follows through ''subscriber or customer utilized,'' and inserting ''the information specified in section 2703(c)(2)''.

SEC. [14.] *17.* SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

The PRESIDING OFFICER. Time for debate shall be limited to 2 hours to be equally divided between the chairman and ranking member of the Judiciary Committee or their designee.

Mr. LEAHY. Am I correct, at the request of the majority leader, there will be no vote prior to 5:30?

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. LEAHY. Mr. President, because we are starting late, I ask unanimous consent—and obviously I would not object to a change should the majority leader or his designee ask otherwise—I ask unanimous consent the vote be at 5:30, and the time be equally divided between Senator HATCH and myself.

The PRESIDING OFFICER. In my capacity as a Senator from New Hampshire, I object.

Mr. LEAHY. I understand, Mr. President, having started the debate at 3:30, the time would run out at 5:30; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. Were I to yield back my time, we would still be in a situation where it would occur prior to 5:30, unless we were in a quorum call; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I see your staff running around making suggestions to the Presiding Officer. I wanted to remind them that while Senators are merely constitutional impediments to the staff, in the minds of some, we could still have the vote at 5:30. I am trying to keep this schedule to what the distinguished majority leader wanted and do what was told others. Frankly, I don't care when the vote is, but I do thank the staff for trying to keep us on other schedules.

If we go the full time, then the vote would be, am I correct, unless some time is yielded back, it would be around 20 minutes to 6 and not 5:30?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. The distinguished senior Senator from Utah is on his way back from another engagement. I will begin.

I join with Senator HATCH, the Chairman of the Judiciary Committee, in urging passage of S. 151, the Hatch-Leahy PROTECT Act, a bill providing important new tools to fight child pornography. I commend Senator HATCH for his leadership and his unflagging efforts to protect our nation's children

from exploitation by child pornographers.

When Senator HATCH and I introduced this bill last month, I supported passing a bill that was identical to the measure that we worked so hard on in the last Congress. That bill had passed the Judiciary Committee and the Senate unanimously in the 107th Congress. It did not become law last year because, even though the Senate was still meeting, considering and passing legislation, the House of Representatives had adjourned and would not return to take action on this measure that had passed the Senate unanimously or to work out our differences.

As I said when we introduced the Hatch-Leahy PROTECT Act and again as the Judiciary Committee considered this measure, although this bill is not perfect, it is a good faith effort to provide powerful tools for prosecutors to deal with the problem of child pornography within constitutional limits. We failed to do that in the 1996 Child Pornography Prevention Act—''CPPA'', much of which the Supreme Court struck down last year. We must not make the same mistake again. The last thing we want to do is to create years of legal limbo for our nation's children, after which the courts strike down yet another law as unconstitutional.

I also said at our Judiciary Committee meeting that I hoped we could pass the bill in the same form as it unanimously passed in the last Congress. That is still my position and I believe it would have been wiser to proceed in that manner. Since my colleagues on the other side of the aisle and the Administration have jointly decided not to follow this route, however, I have nevertheless continued to work with Senator HATCH to craft the strongest bill possible that will produce convictions that will stick under the constitution.

I urge the Senate to pass this legislation, and I strongly urge the Republican leadership in the House of Representatives to take this second opportunity to pass this important legislation in the form that we send to them. I urge the Administration to support this bipartisan measure, instead of using this debate as an opportunity to add more changes that strive to make an ideological statement, but which may not withstand Constitutional scrutiny and may bog down the bill. If we act in a bipartisan manner, we can have a bill to the President that can begin working for America's children in short order.

I want to take a moment to speak again about the history of this important bill and the joint effort that it took to get to this point. In May of 2002, I came to the Senate floor and joined Senator HATCH in introducing the PROTECT Act, after the Supreme Court's decision in Ashcroft v. Free Speech Coalition ''Free Speech''. Although there were some others who raised constitutional concerns about specific provisions in that bill, I believed that unlike legislative language proposed by the Administration in the last Congress, it was a good faith effort to work within the First Amendment.

Everyone in the Senate agrees that we should do all we can to protect our children from being victimized by child pornography. That would be an easy debate and vote. The more difficult thing is to write a law that will both do that and will produce convictions that stick. In 1996, when we passed the CPPA many warned us that certain provisions of that Act violated the First Amendment. The Supreme Court's decision last year in Free Speech has proven them correct.

We should not sit by and do nothing. It is important that we respond to the Supreme Court's decision. It is just as important, however, that we avoid repeating our past mistakes. Unlike the CPPA, this time we should respond with a law that passes constitutional muster. Our children deserve more than a press conference on this issue. They deserve a law that will last rather than be stricken from the law books.

It is important that we do all we can to end the victimization of real children by child pornographers, but it is also important that we pass a law that will withstand First Amendment scrutiny. We need a law with real bite, not one with false teeth.

After joining Senator HATCH in introducing the PROTECT Act in the 107th Congress, as chairman of the Judiciary Committee in the last Congress, I convened a hearing on October 2, 2002 on the legislation. We heard from the Administration, from the National Center for Missing and Exploited Children—''NCMEC'', and from experts who came and told us that our bill, as introduced, would pass constitutional muster, but the House-passed bill supported by the Administration would not.

I then placed the Hatch-Leahy PROTECT Act on the Judiciary Committee's calendar for the October 8, 2002, business meeting. I continued to work with Senator HATCH to improve the bill so that it could be quickly enacted. Unfortunately the Judiciary Committee was unable to consider it because of procedural maneuvering by my colleagues that had nothing to do with this important legislation.

I still wanted to get this bill done. That is why, for a full week in October, I worked to clear and have the full Senate pass a substitute to the bill that tracked the Hatch-Leahy proposed committee substitute in nearly every area. Indeed, the substitute I offered even adopted parts of the House bill which would help the NCMEC work with local and state law enforcement on these cases. Twice, I spoke on the Senate floor imploring that we approve such legislation. As I stated then, every single Democratic Senator cleared that measure. I then urged Republicans to work on their side of the aisle to clear this measure—so similar to the joint Hatch-Leahy substitute—so that we could swiftly enact a law that would pass constitutional muster. Unfortunately, they did not. Facing the recess before the mid-term elections, we were stymied again.

Even after the last election, however, during our lame duck session, I continued to work with Senator HATCH to pass this legislation through the Senate. As I had stated I would do prior to the election, I called a meeting of the Judiciary Committee on November 14, 2002. In the last meeting of the Judiciary Committee under my Chairmanship in the 107th Congress, I placed S. 2520, the Hatch-Leahy PROTECT Act, on the agenda yet again. At that meeting the Judiciary Committee amended and approved this legislation. We agreed on a substitute and to improvements in the victim shield provision that I authored.

Although I did not agree with certain of Senator HATCH's amendments, because I thought that they risked having the bill declared unconstitutional, I nevertheless both called for the Committee to approve the bill and voted for the bill in its amended form. That is the legislative process. I compromised on some issues, and Senator HATCH compromised on others. Even though the bill was not exactly as either of us would have wished, we both worked fervently to seek its passage.

I sought, the same day as the bill unanimously passed the Judiciary Committee, to gain the unanimous consent of the full Senate to pass the Hatch-Leahy PROTECT Act as reported, and I worked with Senator HATCH to clear the bill on both sides of the aisle. I am pleased that the Senate did pass the bill by unanimous consent. I want to thank Senator HATCH for all he did to help clear the bill for passage in the 107th Congress. Unfortunately, the House failed to act on this measure last year and the Administration decided not to push for passage. If they had, we could have passed a bill, sent it to the President, and already had a new law on the books.

Instead, we were forced to repeat the entire process again, and I am here again with Senator HATCH asking yet again that this bill be enacted. I am glad to have been able to work hand-in-hand with Senator HATCH on the PROTECT Act because, it is a bill that gives prosecutors and investigators the tools they need to combat child pornography. The Hatch-Leahy PROTECT Act strives to be a serious response to a serious problem. Let me outline some of the bill's important provisions:

Section 3 of the bill creates two new crimes aimed at people who distribute child pornography and those who use such material to entice children to do illegal acts. Each of these new crimes carries a 15 year maximum prison sentence for a first offense and double that term for repeat offenders. First, the bill criminalizes the pandering of child pornography, creating a new crime to respond to the Supreme Court's recent ruling striking down the CPPA's definition of pandering. This provision is

narrower than the old ''pandering'' definition in at least one way that responds to a specific Court criticism. The new crime only applies to the people who actually pander the child pornography or solicit it, not to all those who possess the material ''downstream'' and it requires the government to demonstrate that the defendant acted with the specific intent that the material is believed to be child pornography. The bill also contains a directive to the Sentencing Commission which asks it to distinguish between those who pander or distribute such material and those who only ''solicit'' the material. As with narcotics cases, distributors and producers are more culpable than users and should be more harshly punished for maximum deterrent effect.

I would have liked for the pandering provision to be crafted more narrowly so that ''purported'' material was not included and so that all pandering prosecutions would be linked to ''obscenity'' doctrine. That is the way that Senator HATCH and I originally wrote and introduced this provision in the last Congress. Unfortunately, the amendment process has resulted in some expansions to this once non-controversial provision that may subject it to a constitutional challenge. Thus, while it responds to some specific concerns raised by the Supreme Court there are constitutional issues that the courts will have to seriously consider with respect to this provision. I will discuss these issues later.

Second, the bill creates a new crime that I proposed to take direct aim at one of the chief evils of child pornography: namely, its use by sexual predators to entice minors either to engage in sexual activity or the production of more child pornography. This was one of the compelling arguments made by the government before the Supreme Court in support of the CPPA, but the Court rejected that argument as an insufficient basis to ban the production, distribution or possession of ''virtual'' child pornography. This bill addresses that same harm in a more targeted and narrowly tailored manner. It creates a new felony, which applies to both actual and virtual child pornography, for people who use such material to entice minors to participate in illegal activity. This will provide prosecutors a potent new tool to put away those who prey upon children using such pornography B whether the child pornography is virtual or not.

Next, this bill attempts to revamp the existing affirmative defense in child pornography cases both in response to criticisms of the Supreme Court and so that the defense does not erect unfair hurdles to the prosecution of cases involving real children. Responding directly to criticisms of the Court, the new affirmative defense applies equally to those who are charged with possessing child pornography and to those who actually produce it, a change from current law. It also allows, again responding to specific Supreme Court criticisms, for a defense that no actual children were used in the production of the child pornography—i.e. that it was made using computers. At the same time, this provision protects prosecutors from unfair surprise in the use of this affirmative defense by requiring that a defendant give advance notice of his intent to assert it, just as defendants are currently required to give if they plan to assert an alibi or insanity defense. As a former prosecutor I suggested this provision because it effects the real way that these important trials are conducted. With the provision, the government will have sufficient notice to marshal the expert testimony that may be needed to rebut this ''virtual porn'' defense in cases where real children were victimized.

This improved affirmative defense measure also provides important support for the constitutionality of much of this bill after the Free Speech decision. Even Justice Thomas specifically wrote that it would be a key factor for him. This is one reason for making the defense applicable to all non-obscene, child pornography, as defined in 18 U.S.C. §2256. In the bill's current form, however, the affirmative defense is not available in one of the new proposed classes of virtual child pornography, which would be found at 18 U.S.C. §2252B(b)(2). This omission may render that provision unconstitutional under the First Amendment, and I hope that, as the legislative process continues, we can work to improve the bill in this and other ways. I do not want to be here again in five years, after yet another Supreme Court decision striking this law down.

The bill also provides needed assistance to prosecutors in rebutting the virtual porn defense by removing a restriction on the use of records of performers portrayed in certain sexually explicit conduct that are required to be maintained under 18 U.S.C. §2257, and expanding such records to cover computer images. These records, which will be helpful in proving that the material in question is not ''virtual'' child pornography, may be used in federal child pornography and obscenity prosecutions under this Act. The purpose of this provision is to protect real children from exploitation. It is important that prosecutors have access to this information in both child pornography and obscenity prosecutions, since the Supreme Court's recent decision has had the effect of narrowing the child pornography laws, making more likely that the general obscenity statutes will be important tools in protecting children from exploitation. In addition, the Act raises the penalties for not keeping accurate records, further deterring the exploitation of minors and enhancing the reliability of the records.

Next, the Hatch-Leahy bill contains several provisions altering the definition of ''child pornography'' in response to the Free Speech case. One approach would have been simply to add an ''obscenity'' requirement to the child pornography definitions. Outlawing all obscene child pornography—real and virtual; minor and 'youthful-adult;' simulated and real—would clearly pass a constitutional challenge because obscene speech enjoys no protection at all. Under the Miller obscenity test, such material (1) ''appeals to the prurient interest,'' (2) is utterly ''offensive'' in any ''community,'' and (3) has absolutely no serious ''literary, artistic or scientific value.''

Some new provisions of this bill do take this ''obscenity'' approach, like the new §2252B(b)(1) and, to a lesser extent the new §2252B(b)(2), which I crafted with Senator HATCH. Other provisions, however, take a different approach. Specifically, the CPPA's definition of ''identifiable minor'' has been modified in the bill to include a prong for persons who are ''virtually indistinguishable from an actual minor.'' This adopts language from Justice O'Connor's concurrence in the Free Speech case. Thus, while this language is defensible, I predict that this provision will be the center of much constitutional debate. Although I will explain in more detail later, these new definitional provisions risk crossing the constitutional line. I am not alone in this view and ask to have supporting letters from constitutional experts printed in the record.

This bill also contains a variety of other measures designed to increase jail sentences in cases where children are victimized by sexual predators. First, it enhances penalties for repeat offenders of child sex offenses by expanding the predicate crimes which trigger tough, mandatory minimum sentences. Second, the bill requires the U.S. Sentencing Commission to address a disturbing disparity in the current Sentencing Guidelines. The current sentences for a person who actually travels across state lines to have sex with a child are not as high as for child pornography. The Commission needs to correct this oversight immediately, so that prosecutors can take these dangerous sexual predators off the street. These are all strong measures designed to protect children and increase prison sentences for child molesters and those who otherwise exploit children.

The Hatch-Leahy PROTECT Act also has several provisions designed to protect the children who are victims in these horrible cases. Privacy of the children must be paramount. It is important that they not be victimized yet again in the criminal process. This bill provides for the first time ever an explicit shield law that prohibits the name or other non physical identifying information of the child victim (other than the age or approximate age) from being admitted at any child pornography trial. It is also intended that judges can and will take appropriate steps to ensure that such information as the child's name, address or other

identifying information not be publicly disclosed during the pretrial phase of the case or at sentencing as well. The bill also contains a provision requiring the judge to instruct the jury, upon request of the government, that no inference should be drawn against the United States because of information inadmissible under the new shield law.

The Hatch-Leahy PROTECT Act also amends certain reporting provisions governing child pornography. Specifically, it allows federal authorities to report information they receive from the Center from Missing and Exploited Children, (''CMEC''), to state and local police without a court order. In addition, the bill removes the restrictions under the Electronic Communications Privacy Act, (ECPA) for reporting the contents of, and information pertaining to, a subscriber of stored electronic communications to the CMEC when a mandatory child porn report is filed with the CMEC pursuant to 42 U.S.C. §13032.

While this change may invite rogue federal, state or local agents to try to circumvent all subpoena and court order requirements under ECPA and allow them to obtain subscriber emails and information by triggering the initial report to the CMEC themselves, it should be well understood that this is not the intention behind this provision. These important safeguards are not being altered in any way, and a deliberate use of the tip line by a government agent to circumvent the well established statutory requirements of these provisions would be a serious violation of the law. Nevertheless, we should still consider further clarification to guard against subverting the safeguards in ECPA from government officials going on fishing expeditions for stored electronic communications under the rubric of child porn investigations.

As I made clear when this bill was introduced, I continue to express my disappointment in the Department of Justice information sharing regulations related to the CMEC tip line. According to a recent Government Accounting Office, (GAO) report, due to outdated turf mentalities, the Attorney General's regulations exclude both the United States Secret Service and the U.S. Postal Inspection Service from direct access to important tip line information. That is totally unacceptable, especially in the post 9–11 world where the importance of information sharing is greater than ever. How can the Administration justify support of this Hatch-Leahy bill, which allows state and local law enforcement officers such access, when they are simultaneously refusing to allow other federal law enforcement agencies access to the same information? I made this request in my statement when we introduced this bill, but once more I urge the Attorney General to end this unseemly turf battle and to issue regulations allowing both the Secret Service and the Postal Inspection Service, who both perform valuable work in investigating these cases, to have access to this important information so that they can better protect our nation's children.

The Hatch-Leahy bill also provides for extraterritorial jurisdiction where a defendant induces a child to engage in sexually explicit conduct outside the United States for the purposes of producing child pornography which they intend to transport to the United States. The provision is crafted to require the intent of actual transport of the material into the United States, unlike the House bill from the last Congress, which criminalized even an intent to make such material ''accessible.'' Under that overly broad wording, any material posted on a web site internationally could be covered, whether or not it was ever intended that the material be downloaded in the United States. Under the bill we consider today, however, proof of a specific intent to send such material to the United States is required.

Finally, the bill provides a new private right of action for the victims of child pornography. This provision has teeth, including injunctive relief and punitive damages that will help to put those who produce child pornography out of business for good. I commend Senator HATCH for his leadership on this provision and his recognition that such punitive damages provisions are important means of deterring misconduct. These provisions are important, practical tools to put child pornographers out of business for good and in jail where they belong.

As I mentioned previously, the PROTECT Act is a good faith effort to tackle the child pornography problem, and I have supported its passage from the outset. I am also glad that because of our bipartisan cooperation, Senator HATCH and I were able to offer a joint amendment in Committee that strengthened the bill further against constitutional attack. Here are some of the improvements that we jointly made to the bill as introduced.

The Hatch-Leahy amendment created a new specific intent requirement in the pandering crime. The provision is now better focused on the true wrongdoers and requires that the government prove beyond a reasonable doubt that the defendant actually intended others to believe that the material in question is obscene child pornography. This is a positive step.

The Hatch-Leahy amendment narrowed the definition of ''sexually explicit conduct'' for prosecutions of computer created child pornography. Although I continue to have serious reservations about the constitutionality of prosecuting cases involving such ''virtual child pornography'' after the Supreme Court's decision in Free Speech Coalition v. Ashcroft, narrowing the definition of the conduct covered provides another argument that the provision is not as overbroad as the one in the CPPA. I had also proposed a change that contained an even better definition, in order to focus the provision to true ''hard core'' child pornography, and I hope we will consider such a change as the process continues.

The Hatch-Leahy amendment the saved the existing ''anti-morphing'' provision from a fresh constitutional attack by excluding 100% virtual child pornography from its scope. That morphing provision was one of the few measures from the CPPA that the Supreme Court did not strike down last year. I am pleased that we are avoiding placing this measure in constitutional peril in this bill.

The Hatch-Leahy amendment refined the definition of virtual child pornography in the provision that Senator HATCH and I worked together to craft last year, which will be new 18 U.S.C. § 2252B. These provisions rely to a large extent on obscenity doctrine, and thus are more rooted in the constitution than other parts of the bill. I was pleased that the Hatch-Leahy amendments includes in new 2252B(2) a definition that the image be ''graphic''—that is one where the genitalia are actually shown during the sex act for two reasons.

First, because the old law would have required proof of ''actual'' minors in cases with ''virtual'' pictures, I believe that this clarification will remove a potential contradiction from the new law which pornographers could have used to mount a defense. Second, it will provide another argument supporting the law's constitutionality because the new provision is narrowly tailored to cover only the most ''hard core'' child pornography. I am disappointed that we could not include a similar definition in the S. 151's other virtual child pornography provision, which was included at the request of the Administration. I hope that will be considered as this bill moves forward.

The Hatch-Leahy amendment also clarifies that digital pictures are covered by the PROTECT Act, an important addition in today's world of digital cameras and camcorders.

These were important changes, and I was glad to work with Senator HATCH to craft them.

This law is not perfect, however, and I would have liked to see some additional improvements to the bill. Let me outline some of them.

First, regarding the tip line, I would have liked to further clarify that law enforcement agents may not and should not ''tickle the tip line'' to avoid the key protections of the Electronic Communications Privacy Act (ECPA). This might have included clarifying 42 U.S.C. §13032 that the initial tip triggering the report may not be generated by the government's investigative agents themselves. A tip line to the CMEC is just that—a way for outsiders to report wrongdoing to the CMEC and the government, not for the government to generate a report to itself without following otherwise required lawful process. It was not the intent of any part of this bill to alter that purpose.

Second, regarding the affirmative defense, I would have liked to ensure that there is an affirmative defense for each new category of child pornography and for all cases where a defendant can prove in court that a specific, non-obscene image was made using not any child but only actual, identifiable adults. That will no doubt be a basis for attacking the constitutionality of this law.

As a general matter, it is worth repeating that we could be avoiding all these problems were we to take the simple approach of outlawing ''obscene'' child pornography of all types, which we do in one new provision that I suggested. That approach would produce a law beyond any possible challenge. This approach is also supported by the National Center for Missing and Exploited Children, which we all respect as the true expert in this field.

Following is an excerpt from the Center's answer to written questions submitted after our hearing, which I will place in the record in its entirety and I quote:

Our view is that the vast majority (99–100%) of all child pornography would be found to be obscene by most judges and juries, even under a standard of beyond a reasonable doubt in criminal cases. Even within the reasonable person under community standards model, it is highly unlikely that any community would not find child pornography obscene. . . .

In the post Free Speech decision legal climate, the prosecution of child pornography under an obscenity approach is a reasonable strategy and sound policy.

Based on this letter, according to the National Center for Missing and Exploited Children, the approach that is least likely to raise constitutional questions—using established obscenity law—is also an effective one. In short, the obscenity approach is the most narrowly tailored to prevent child pornography. New section 2252B adopts this obscenity approach, but because that is not the approach that other parts of the PROTECT Act uses, I recognize that it contains provisions about which some may have legitimate Constitutional questions.

Specifically, in addition to the provisions that I have already discussed, there were two amendments adopted in the Judiciary Committee in the last Congress and one on this Congress to which I objected that are included in the bill as we consider it today. I felt and still feel that these alterations from the original way that Senator HATCH and I introduced the bill needlessly risk a serious constitutional challenge to a bill that provided prosecutors the tools they needed to do their jobs, and that the bill would be even stronger than it is now were they changed. Let me discuss my opposition to these changes adopted by the Judiciary Committee in this Congress and the last.

Although I worked with Senator HATCH to write the new pandering provision in the PROTECT Act, I did not support two of Senator HATCH's amendments extending the provision to cover (1) ''purported'' material, and (2) material not linked to obscenity.

First, in the last Congress during our markup I objected to an amendment from Senator HATCH to include in the pandering provision ''purported'' material, which criminalizes speech even when there is no underlying material at all—whether obscene or non-obscene, virtual or real, child or adult. The pandering provision is an important tool for prosecutors to punish true child pornographers who for some technical reason are beyond the reach of the normal child porn distribution or production statutes. It is not meant to federally criminalize talking dirty over the internet or the telephone when the person never possesses any material at all. That is speech, and that goes too far.

The original pandering provision in S. 2520 as introduced last Congress was quite broad, and some argued that it presented constitutional problems as written, but I thought that prosecutors needed a strong tool, so I supported Senator HATCH on that provision.

I was heartened that Professor Schauer of Harvard, a noted First Amendment expert, testified at our hearing last year that he thought that the original provision was Constitutional, barely. Unfortunately, Professor Schauer has since written to me stating that this new amendment to include ''purported'' material ''would push well over the constitutional edge a provision that is now up against the edge, but probably barely on the constitutional side of it'' I placed his letter in the record upon introduction of the bill in this Congress on January 13, 2003.

The second amendment to the pandering provision to which I objected expanded it to cover cases not linked in any way to obscenity. It would allow prosecution of anyone who ''presented'' a movie that was intended to cause another person to believe that it included a minor engaging in sexually explicit conduct, whether or not it was obscene and whether or not any real child was involved. Any person or movie theater that presented films like Traffic, Romeo and Juliet, and American Beauty would be guilty of a felony. The very point of these dramatic works is to cause a person to believe that something is true when in fact it is not. These were precisely the overbreadth concerns that led 7 justices of the Supreme Court to strike down parts of the 1996 Act. We do not want to put child porn convictions on hold while we wait another 6 years to see if the law will survive constitutional scrutiny.

Because these two changes endanger the entire pandering provision, because they are unwise, and because that section is already strong enough to prosecute those who peddle child pornography, I oppose those expansions of the provision and still hope that we can reconsider them.

Although I joined Senator HATCH in introducing this bill, even when it was introduced last year I expressed concern over certain provisions. One such provision was the new definition of ''identifiable minor.'' When the bill was introduced, I noted that this provision might ''both confuse the statute unnecessarily and endanger the already upheld ''morphing'' section of the CPPA.'' I said I was concerned that it ''could present both overbreadth and vagueness problems in a later constitutional challenge.'' Unfortunately, this provision remains problematic and susceptible to constitutional challenge.

As the bill developed, a change to the definition of ''identifiable minor'' expanded it to cover ''virtual'' child pornography—that is, 100% computer generated pictures not involving any real children. For that reason, it presented additional constitutional problems similar to the Administration supported House bill. I objected to this amendment when it was added to the bill in the last Congress in Committee, and I continue to have serious concerns with it now.

The ''identifiable minor'' provision in the PROTECT Act may be used without any link to obscenity doctrine. Therefore, what potentially saved the original version we introduced in the 107th Congress was that it applied to child porn made with real ''persons.'' The provision was designed to cover all sorts of images of real kids that are morphed or altered, but not something entirely made by computer, with no child involved.

The change adopted in the Judiciary Committee last year and supported by the Administration, however, redefined ''identifiable minor'' by creating a new category of pornography for any ''computer generated image that is virtually indistinguishable from an actual minor'' dislodged, in my view, that sole constitutional anchor. The new provision could be read to include images that never involved real children at all but were 100 percent computer generated.

That was not the original goal of this provision, and that was the reason it was constitutional. There are other provisions in this bill that deal with obscene virtual child pornography that I support, such as those in new section 2252B, which are linked to obscenity doctrine. This provision, however, was intended to ease the prosecutor's burden in cases where images of real children were cleverly altered to avoid prosecution. By changing the identifiable minor provision into a virtual porn provision, the Administration has needlessly endangered its constitutionality.

For these reasons, I was glad to work alongside Senator HATCH to narrow this provision before the Judiciary Committee. Unfortunately, despite our best efforts, I fear we did not do everything possible to strengthen it against constitutional attack. Let me explain.

Although the Hatch-Leahy amendment adopted in Committee included a

slightly narrower definition of sexually explicit conduct and excluded cartoons, sculptures, paintings, anatomical models and the like, the virtual porn provision still sweeps quite broadly and is potentially vague. New section 2252A(2)(B)(i) lumps in such truly ''hard core'' sexual activities such as intercourse, bestiality, and s&m in with simple lascivious exhibition of the genitals and simulated intercourse where any part of a breast is shown. Equating such disparate types of conduct, however, does not mesh with community standards and is precisely the type of ''one size fits all'' approach that the Supreme Court rejected in the area of virtual pornography in the Free Speech case. The contrast between this broad definition and the tighter definition in new Section 2252B(b)(2), crafted by Senator HATCH and myself, is striking. In fact, I suggested that we include the same definition of ''graphic'' conduct found in new section 2252B in the new Section 2252A virtual child porn provision to better focus it on hard core conduct. Unfortunately, the Administration rejected that proposal and the provision may be open to overbreadth attacks.

I also believe that there is a vagueness concern in the new statute 2252A because, while it is clearly aimed at ''virtual'' child pornography (where no real children are involved), it still requires ''actual'' conduct. In the realm of computer generated images, however, the distinction between actual and simulated conduct makes no sense. It is so vague and confusing that I fear that clever defendants might seek to argue that this new provision still requires proof ''actual'' sexual acts involving real children. I hope that this language is further clarified in order to address these concerns.

The Supreme Court made it clear that we can only outlaw child pornography in two situations: No. 1, it is obscene, or No. 2, it involves real kids. That is the law as stated by the Supreme Court, whether or not we agree with it.

Senator HATCH and I agree that legislation in this area is important. But regardless of our personal views, any law must be within constitutional limits or it does no good at all. The amended identifiable minor provision, which would include most ''virtual child pornography'' in the definition of child pornography, in my view, crosses the constitutional line, however, and needlessly risks protracted litigation that could assist child pornographers in escaping punishment.

Another new provision in the bill includes a mandatory directive to the United States Sentencing Commission to establish penalties for these new crimes at certain levels. In my experience, however, the non-partisan Sentencing Commission operates best when it is allowed to study an issue carefully and come up with a particular sentencing guideline based upon its expertise in these matters. In fact, in child pornography cases the Sentencing Commission has established appropriately high penalties in the past, and there is no reason to believe that it would not do so again with respect to these new laws.

While most all of the provisions of the Hatch-Leahy PROTECT Act are designed to withstand constitutional scrutiny, unfortunately legal experts could not vouch for the constitutionality of the bill supported by the Administration in the last Congress, which seemed to challenge the Supreme Court's decision, rather than accommodate the restraints spelled out by the Supreme Court. That proposal and the associated House bill from the 107th Congress simply ignored the Supreme Court's decision, reflecting an ideological response rather than a carefully drawn bill that would stand up to scrutiny.

I supported passage of the PROTECT Act as Senator HATCH and I introduced it and as it passed the Senate unanimously in the last Senate. Even so, I was willing to work with him to further amend the bill in the Judiciary Committee. Some amendments that we considered in committee I supported because they improved the bill. Others went too far.

These provisions raise legitimate concerns, but in the interest of making progress I support consideration and passage of the measure in its current form. I hope that we can work to further improve this bill so that it has the best possible chance of withstanding a constitutional challenge.

That is not everyone's view. Others evidently think it is more important to make an ideological statement than to write a law. A media report on this legislation at the end of the last Congress reported the wide consensus that the Hatch-Leahy bill was more likely than the House bill to withstand scrutiny, but quoted a Republican House member as stating: ''Even if it comes back to Congress three times we will have created better legislation.''

To me, that makes no sense. Why not create the ''better legislation'' right now for today's children, instead of inviting more years of litigation and putting at risk any convictions obtained in the interim period before the Supreme Court again reviews the constitutionality of Congress' effort to address this serious problem? That is what the PROTECT Act seeks to accomplish.

Even though this bill is not perfect, I am glad to stand with Senator HATCH to secure its approval by the Senate as I did in the last Congress. The floor statements, including my statement today and the statement and material I placed in the CONGRESSIONAL RECORD on introduction of this bill on January 13, 2003, will be important to the legislative history of this matter, and so I seek consent to place letters from experts in the record commenting upon aspects of the bill. Creating a comprehensive record is especially important for statutes that face constitutional challenges, as this law nearly certainly will.

As I have explained, I believe that this issue is so important that I have been willing to compromise and to support a measure even though I do not agree with each and every provision that it contains. That is how legislation is normally passed. I hope that the administration and the House do not decide to play politics with this issue and seek further changes that could bog the bill down. I urge swift consideration and passage of this important bill as it is currently written. It is aimed at protecting our Nation's children.

Just to further explain my support for this measure and to reiterate, let me continue. As I said when we introduced the Hatch-Leahy PROTECT Act, again, as the Judiciary Committee considered this measure, although the bill is not perfect, and on this subject it is difficult to get a perfect bill, it is a good-faith effort to provide powerful tools for prosecutors to deal with the problem of child pornography within constitutional limits. We failed to do that in 1996 with the Child Pornography Prevention Act, much of which the Supreme Court struck down last year.

I hope we would not make the same mistake again. The last thing we want to do is to create years of legal limbo for our Nation's children, after which the courts strike down yet another law as unconstitutional.

I also said at our Judiciary Committee meeting that I hoped we could pass the bill in the same form as unanimously passed in the last Congress. That is still my position. I believe it would have been wiser to have proceeded in that manner. Since my colleagues on the other side of the aisle, at the request of the administration, have decided not to follow this route, I have nevertheless continued to work with Senator HATCH to craft the strongest bill possible to produce convictions that will stick under the Constitution.

In my years as a prosecutor, I learned that it was important to make sure that any cases we brought were based on legislation that was constitutional in the first place so the prosecution would stick.

I urge the Senate to pass the Hatch-Leahy bill, and I urge the Republican leadership in the House of Representatives to take the second opportunity to pass this important legislation. As I said earlier, the Senate did pass it last year. The other body did not take up our bill.

I also urge the administration to support this bipartisan measure. It is not a partisan issue to be against child pornographers. We are all against child pornographers, Republican or Democrats. Those who are parents or grandparents feel very strongly the desire to pass this legislation. If we act in a bipartisan manner we can have a bill to the President that begins working to

protect America's children, and we can do it in very short order.

Our children deserve more than a press conference on this issue. It is easy enough for people to stand up and say they are against child pornographers, as though anyone here would be for them. But it is one thing to have a press conference and another thing to give to prosecutors tools they can use. Our children deserve a law that will last rather than one that is passed to make political points but will be struck down as unconstitutional.

Let me describe a few of the provisions in the Hatch-Leahy bill. Section 3 of the bill creates two new crimes aimed at people who distribute child pornography and those who use such material to entice children to do illegal acts. The bill creates a new crime that I propose to take direct aim at one of the chief evils of child pornography; namely, its use by sexual predators to entice minors to either engage in sexual activity or other crimes. This 15-year felony will provide prosecutors a potent new tool to put away those who actually prey upon children in using such pornography.

Next, this bill revamps existing affirmative defense of child pornography cases, both in response to criticisms of the Supreme Court. As a former prosecutor, I made sure that the provision is drafted to protect prosecutors from unfair surprise in the use of affirmative defense by requiring a defendant give advance notice of his intent to assert.

Frankly, what I did was put myself in the position of what prosecutors would have to do to get convictions. I tried to make sure by the provisions I put into this bill, that prosecutors would have the tools to give them the best chance to get such convictions.

Next, the Hatch-Leahy bill contains several provisions altering the definition of child pornography in response to the free speech case in allowing prosecution of virtual or computer-created child porn. Some such provisions take the traditional obscenity approach, like the new section 2252(b) which I crafted with Senator HATCH. Other provisions, however, take a broader approach as advocated by the administration last year. I predict this provision will be the center of much constitutional debate. I am afraid that some in the administration were more eager to have a debating point than they were to have something on which prosecutors could rely.

The bill also contains a variety of other measures designed to increase jail sentences in cases where victims are actually sexually victimized by sexual predators. The bill requires the U.S. Sentencing Commission to address what I believe is a disturbing disparity in the current sentencing guidelines.

What is disturbing to me is that the current sentences for a person who actually travels across State lines to have sex with a child are not as high as they are for child pornography. The Commission needs to correct this oversight immediately so prosecutors can take such dangerous sexual predators off the streets.

The Hatch-Leahy PROTECT Act also has several provisions designed to protect the children who are victims in these horrible cases. Privacy of the children must be paramount. Unfortunately, sometimes, if you drag the name of a child who has been the victim of a sexual predator out into the public, then they are victimized yet again, even as you go after the predator. The bill provides for the first time ever an explicit shield law that prohibits a name or other nonphysical identifying information of the child victim from being admitted at child pornography trials.

Finally, the bill provides a new private right of action for the victims of child pornography. This is something we have not done before in this arena. This provision has real teeth. It includes injunctive relief and punitive damages to help put those who produce child pornography out of business for good. I commend Senator HATCH for his recognition that punitive damage provisions are an important means for deterring misconduct.

Some of these people think if they just move from place to place and nothing happens to them, they are free. If they know that whatever profits they make are gone and they are going to have punitive damages assessed and still may face, on top of that, criminal action, then they will think twice. These are important, practical tools not only to put child pornographers out of business but to put them in jail.

The law is not perfect. As I said, I wish we had adopted the version that had unanimously passed the Senate last Congress, that all Republicans and Democrats supported. That was the decision made by the majority not to do that.

As a general matter, it is worth repeating that we could be avoiding all problems if we were to take the simple approach of outlawing obscene child pornography of all types. The reason I say that is because of the experts in this area, and it is a very difficult area, agree. This approach is supported by the National Center for Missing and Exploited Children. I think we all respect them as true experts on protecting the children. I wish we had followed their approach.

Following, again, is an excerpt from the answer to the Senator's written questions submitted after a hearing and I quote:

> Our view is that the vast majority (99–100 percent) of all child pornography would be found to be obscene by most judges and juries, even under a standard of beyond a reasonable doubt in criminal cases. . . .
>
> In the post Free Speech decision legal climate, the prosecution of child pornography under an obscenity approach is a reasonable strategy and sound policy.

Thus, according to the National Center for Missing and Exploited children, the approach least likely to raise constitutional questions—using established obscenity law—is also an effective one.

Because certain provisions do not follow this approach, I recognize that some may have legitimate constitutional questions about provisions in this act. These provisions raise legitimate concerns, but in the interests of making progress, I support consideration and passage of the measure in its current form, and I hope we can work to improve the bill so it has the best possible chance of withstanding a constitutional challenge.

The bill is not perfect but I am glad to stand with Senator HATCH to secure its approval by the Senate, as I did in the last Congress.

I know I speak for the Senator from Utah that the thing both of us want is that we have a bill that can be used by those attacking pornographers, prosecutors attacking pornographers, that will stand up in court. It is not a case of there are people for or against child pornographers. We are all against them. But we want to make sure for the prosecutor, if you sue them, if you seek injunctive relief if you prosecute, that you win.

I believe this issue is so important that I have been willing to compromise and to support a measure, even though I do not agree with each and every provision it contains. I hope the administration, and the other body, do not decide to play politics with this issue and seek further changes that could bog down the bill. Had they allowed the bill to go forward last year, the one Senator HATCH and I brought to the floor of the Senate and passed unanimously, we would have a bill in law—a law on the books today. But I urge swift consideration and passage of this important bill as it is currently written. It is aimed at protecting our Nation's children.

It is important we do all we can to end the victimization of real children by child pornographers, but it is also important that we pass a law that will withstand first amendment scrutiny. We need a law with real bite, not one with false teeth.

I ask unanimous consent to have expert views on this legislation printed in the RECORD, in addition to the supporting letters and materials to which I referred.

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

NATIONAL CENTER FOR MISSING
AND EXPLOITED CHILDREN,
October 17, 2002.

HON. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Thank you for the opportunity to express the views of the National Center for Missing and Exploited Children on these critically important issues for our nation's children. Your stewardship of the Committee's tireless efforts to craft a statute that will withstand constitutional scrutiny is wise and in the long-term best interest of the nation. The National Center for Missing and Exploited Children is grateful for your leadership on this issue.

Please find below my response to your written questions submitted on October 9, 2002 regarding the ''Stopping Child Pornography: Protecting our Children and the Constitution.''

1. Our view is that the vast majority (99–100%) of all child pornography would be found to be obscene by most judges and juries, even under the standard of beyond a reasonable doubt in criminal cases. Even within the reasonable person under community standards model, it is highly unlikely that any community would not find child pornography obscene.

There is a legitimate concern that the obscenity standard does not fully recognize, and therefore punish the exceptional harm to children inherent in child pornography. This issue can be addressed by the enactment of tougher sentencing provisions if the obscenity standard is implemented in the law regarding child pornography. Moreover, mere possession of obscene materials under current law in most jurisdictions is not a criminal violation. If the obscenity standard were implemented for child pornography the legislative intent should be clear concerning punishment for possession of child obscene pornography.

In the post—Free Speech decision legal climate the prosecution of child pornography cases under an obscenity approach is a reasonable strategy and sound policy.

2. Based on my experience all the images in actual criminal cases meet the lawful definition of obscenity, irrespective of what community you litigate the case. In my experience there has never been a visual depiction of child pornography that did not meet the constitutional requirements for obscenity.

3. The National Center for Missing and Exploited Children fully supports the correction of this sentencing disparity and welcomes the provision of additional tools for federal judges to remove these predators from our communities. These types of offenders belong to a demographic that is the highest percentile in terms of recidivism than any other single offender category.

4. The National Center for Missing and Exploited Children fully supports language that allows only ''non-government sources'' to provide tips to the CyberTipline. The role of the CyberTipline at the National Center for Missing and Exploited Children is to provide tips received from the public and Electronic Communication Services communities and make them available to appropriate law enforcement agencies. Due in part to the overwhelming success of the system and in part to the tragedies of September 11, 2001, federal law enforcement resources cannot address all of the legitimate tips and leads received by the CyberTipline. Allowing the National Center for Missing and Exploited Children and appropriate federal agencies to forward this valuable information to state and local law enforcement while at the same time addressing legitimate privacy concerns is fully supported.

5. The victim shield provision is an excellent and timely policy initiative and one that is fully supported by the National Center for Missing and Exploited Children. This provision should allow the narrow exception to a general non-disclosure clause that anticipates the need for law enforcement and prosecutors to use the victim's photography and other relevant information for the sole purpose of verification and authentication of an actual child victim in future cases. This exception would allow the successful prosecution of other cases that may involve a particular victim and still provide the protection against the re-victimization by the criminal justice system.

6. The National Center for Missing and Exploited Children fully supports extending the terms of authorized supervised release in federal cases involving in exploitation of minors. The evidence for extended supervision in such cases is overwhelming. Without adequate treatment and continued supervision, there is a significantly higher risk for re-offending by this type of offender. Moreover, thee is a significant link between those offenders who possess child pornography and those who sexually assault children. Please see the attached studies that the National Center for Missing and Exploited Children has produced on these issues.

Thank you again for the opportunity to address these important issues. Should you need further input or assistance please contact us at your convenience.

Sincerely,

DANIEL ARMAGH,
Director, Legal Resource Division.

MAY 13, 2002.

Chairman PATRICK J. LEAHY,
U.S. Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to express our grave concern with the legislation recently proposed by the Department of Justice in response to the Supreme Court's decision in *Ashcroft, et al.* v. *The Free Speech Coalition, et al.,* No. 00–795 (Apr. 16, 2002). In particular, the proposed legislation purports to ban speech that is neither obscene nor unprotected child pornography (indeed, the bill expressly targets images that do not involve real human beings at all). Accordingly, in our view, it suffers from the same infirmities that led the Court to invalidate the statute at issue in *Ashcroft*.

We emphasize that we share the revulsion all Americans feel toward those who harm children, and fully support legitimate efforts to eradicate child pornography. As the Court in *Ashcroft* emphasized, however, in doing so Congress must act within the limits of the First Amendment. In our view, the bill proposed by the Department of Justice fails to do so.

Respectfully submitted,

Jodie L. Kelley, Partner, Jenner and Block, LLC, Washington, DC.

Erwin Chemerinsky, Sydney M. Irmas Professor of Public Interest Law, Legal Ethics and Political Science, University of Southern California Law School, Los Angeles, CA.

Paul Hoffman, Partner, Schonbrun, DeSimone, Seplow, Harris and Hoffman, LLP, Venice, CA.

Adjunct Professor, University of Southern California Law School, Los Angeles, CA.

Gregory P. Magarian, Assistant Professor of Law, Villanova University School of Law, Villanova, PA.

Jamin Raskin, Professor of Law, American University, Washington College of Law, Washington, DC.

Donald B. Verrilli, Jr., Partner, Jenner and Block, LLC, Washington, DC.

HARVARD UNIVERSITY,
Cambridge, MA, October 3, 2002.

Re S. 2520.

Hon. PATRICK LEAHY,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR LEAHY: Following up on my written statement and on my oral testimony before the Committee on Wednesday, October 2, 2002, the staff of the Committee has asked me to comment on the constitutional implications of changing the current version of S. 2520 to change the word ''material'' in Section 2 of the bill (page 2, lines 17 and 19) to ''purported material.''

In my opinion the change would push well over the constitutional edge a provision that is now right up against that edge, but probably barely on the constitutional side of it.

As I explained in my statement and orally, the Supreme Court has from the Ginzburg decision in 1966 to the Hamling decision in 1973 to the Free Speech Coalition decision in 2002 consistently refused to accept that ''pandering'' may be an independent offense, as opposed to being evidence of the offense of obscenity (and, by implication, child pornography). The basic premise of the pandering prohibition in S. 2520 is thus in some tension with more than thirty-five years of Supreme Court doctrine. What may save the provision, however, is the fact that pandering may also be seen as commercial advertisement, and the commercial advertisement of an unlawful product or service is not protected by the Supreme Court's commercial speech doctrine, as the Court made clear in both Virginia Pharmacy and also in *Pittsburgh Press* v. *Human Relations Commission,* 413 U.S. 376 (1973). It is important to recognize, however, that this feature of commercial speech doctrine does not apply to noncommercial speech, where the description or advocacy of illegal acts is fully protected unless under the narrow circumstances, not applicable here, of immediate incitement.

The implication of this is that moving away from communication that could be described as an actual commercial advertisement decreases the availability of this approach to defending Section 2 of S. 2520. Although it may appear as if advertising ''material'' that does not exist at all (''purported material'') makes little difference, there is a substantial risk that the change moves the entire section away from the straight commercial speech category into more general description, conversation, and perhaps even advocacy. Because the existing arguments for the constitutionally of this provision are already difficult ones after Free Speech Coalition, anything that makes this provision less like a straight offer to engage in commercial transaction increases the degree of constitutional jeopardy. By including ''purported'' in the relevant section, the pandering looks less commercial, and thus less like commercial speech, and thus less open to the constitutional defense I outlined in my written statement and oral testimony.

I hope that this is helpful.

Yours sincerely,

FREDERICK SCHAUER,
Frank Stranton Professor of the First Amendment.

Mr. LEAHY. Mr. President, I see the distinguished senior Senator from Utah, the chairman of our committee, in the Chamber. As I said earlier, I would certainly yield once he arrived. I commend him for his cosponsorship of this bill. I yield the floor, reserving the remainder of my time.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that the committee amendments be adopted en bloc and that the motion to reconsider be laid on the table.

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

The committee amendments were agreed to.

Mr. HATCH. Mr. President, I am delighted that we are considering S. 151, the PROTECT Act of 2003. Senator LEAHY and I introduced this bill last May following the Supreme Court's decision in Ashcroft v. Free Speech Coalition, a ruling that made child pornography prosecutions immeasurably

more difficult. This problem is intolerable and demands our immediate attention. Because we could not get this bill to the President's desk last year, it has been my top priority this year.

I want to begin by thanking Senator LEAHY and his staff for working so diligently with me in writing the PROTECT Act during the past ten months. While we have not seen eye to eye on every provision, we have agreed about most of them. We still have some honestly held disagreements, but that is hardly unusual when people talk about the First Amendment. Senator LEAHY's valuable input and insights helped to make this a better bill. I very much hope that he is as proud of the final result as I am.

Mr. President, Congress has long recognized that child pornography produces three distinct and lasting harms to our children. First, child pornography whets the appetites of pedophiles and prompts them to act out their perverse sexual fantasies on real children. Second, child pornography is a tool used by pedophiles to break down the inhibitions of children. Third, child pornography creates an immeasurable and indelible harm on the children who are abused to manufacture it.

It goes without saying that we have a compelling interest in protecting our children from harm. The PROTECT Act strikes a necessary balance between this goal and the First Amendment.

First—and most significantly—the bill plugs a gaping loophole that exists in current law. Following the Supreme Court's decision last April, child pornographers can evade even legitimate prosecutions by falsely claiming that their sexually explicit materials did not depict real children. This frivolous argument is made possible by the growth of technology. Computer imaging technology has become so sophisticated that even experts often cannot say with absolute certainty that an image is real or a ''virtual'' computer creation. The PROTECT Act therefore permits a prosecution to proceed when the child pornography involves life-like computer images of real kids. The bill balances this provision by creating a new and powerful affirmative defense. In virtually every prosecution for child pornography, the PROTECT Act affords the accused a complete defense to liability upon a showing that the child pornography did not involve an actual minor. In creating this new balance, the bill responds directly to the concerns expressed by the Supreme Court in the Free Speech Coalition decision.

Second, the PROTECT Act creates three brand new offenses that are designed to target some particular problems that stem from child pornography. One provision prohibits the use of child pornography to entice a minor to participate in sexual activity or some other crime. Another prohibits offers to buy, sell or trade either obscene or actual child pornography. The third creates a new offense for obscene child pornography that will be punished more severely than ordinary obscenity.

Third, the PROTECT Act expands the record keeping requirements in existing law that apply to those who decide to produce sexually explicit materials. Section 7 of the bill expands the scope of materials covered to reflect the computerized manner in which they are increasingly being distributed and sold. Producers of such sexually explicit materials must make and maintain records confirming that no actual minors were involved in the making of the sexually explicit materials. In light of the difficulty experts face in determining an actor's true age and identity just by viewing the material itself, maintaining these records is vital to ensuring that only adults appear in such productions.

Fourth, in recognition of the enormous breadth and scope of the problem, the PROTECT Act broadens enforcement efforts in order to create a more level playing field. Section 9 of the bill provides extra-territorial jurisdiction over those foreign producers of child pornography who transport, or intend to transport, such materials to the United States. Because this is one area of the law where we can truly benefit from more vigorous enforcement, section 14 of the bill directs the Department of Justice to appoint 25 additional attorneys dedicated to enforcing child pornography laws, and section 11 creates a new civil action for those aggrieved by such violations. The PROTECT Act also toughens existing penalties for offenders. Not only does it broaden the category of repeat offenders subject to more stringent criminal sentences, but it also calls on the U.S. Sentencing Commission to review the appalling low sentences that currently apply to offenders who travel across state lines in order to have sex with children.

Finally, the PROTECT Act contains new provisions to refine and enhance the government's existing authority to tackle child sex crimes. Section 15 adds a number of child crimes into the section of Title 18 that authorizes the government to apply for wiretaps. Without this new provision, the government could not seek a wiretap to investigate cases where, for example, children are being forced to engaging in sex for money. Section 16 updates the type of information the government can obtain from telephone companies with an administrative subpoena in, among other things, an investigation involving the sexual exploitation of children. Other sections of the bill, moreover, enhance the ability of internet service providers to report instances when they spot child pornography, and authorize the release of that information to state and local officials for prosecution.

The PROTECT Act has been carefully drafted to avoid constitutional concern. I wish it could be stronger. But because of the Supreme Court decisions, we have had to draft it the way we have. From the beginning, I have worked very hard to digest the relevant legal issues and to make the PROTECT Act square with the law as articulated by the Supreme Court. This bill has gone through more than a dozen rounds of edits since we began drafting it in April 2002. The issues are complex, and we have meticulously gone over every word and phase numerous times in order to write a carefully tailored law that will withstand judicial review. I am confident that we have done just that. The end result of all of our hard work is a bill that we can all be proud of: One that is tough on pedophiles and child pornographers in a measured and constitutional way.

Congress has consistently acted in a bipartisan manner to address the harms of child pornography. I am pleased to report that we are doing so again with the PROTECT Act. This has been a bipartisan effort from the beginning, and it remains a bipartisan effort today.

I respect my colleagues on the other side for being willing to work with us to fashion this bill in a constitutionally sound form. We expect the overwhelming support of Members on both sides of the aisle, and, quite frankly, our Nation's children deserve no less.

Mr. President, I ask unanimous consent that the Congressional Budget Office cost estimate for the PROTECT Act, S. 151, be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 19, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 151, the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, FEBRUARY 19, 2003

S. 151: PROSECUTORIAL REMEDIES AND TOOLS AGAINST THE EXPLOITATION OF CHILDREN TODAY ACT OF 2003

[As reported by the Senate Committee on the Judiciary on January 30, 2003]

SUMMARY

S. 151 would establish new federal crimes and expand authorities under existing crimes against child pornography. It also would give law enforcement agents additional powers to investigate offenders. The bill would authorize the appropriation of such sums as may be necessary for the Attorney General to appoint 25 additional trial attorneys to prosecute child pornographers.

Assuming appropriations of the necessary amounts, CBO estimates that implementing S. 151 would cost about $55 million over the 2003–2008 period for new attorneys and for anticipated costs to the federal court and prison system as a result of those hires. About

$30 million of the total estimated would be to accommodate more convicted offenders in federal prisons. This legislation could affect direct spending and receipts, but we estimate that any such effects would be less than $500,000 annually.

S. 151 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs resulting from the voluntary disclosure of stored communications by public electronic communications providers would be insignificant. The bill would impose a private-sector mandate as defined in UMRA on producers involved in interstate and foreign commerce of certain sexually explicit material. CBO estimates that the cost of the mandate would not exceed the annual threshold by UMRA ($117 million in 2003, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 151 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorized Level	1	5	9	12	14	15
Estimated Outlays	1	5	9	12	14	15

In addition to the costs shown above, enacting S. 151 could affect direct spending and receipts. However, we estimate that any such effects would be less than $500,000 in any year.

BASIS OF ESTIMATE

CBO estimates that implementing S. 151 would cost about $55 million over the 2003–2008 period, mostly to hire attorneys and to accommodate more prisoners in the federal prison system. For this estimate, CBO assumes that the bill will be enacted during 2003 and that the necessary amounts will be appropriated for each fiscal year. In addition, we estimate that the bill would increase revenues and direct spending by less than $500,000 each year.

Spending subject to appropriation

Based on information from the Department of Justice, CBO estimates that the costs of hiring 25 additional attorneys and necessary support staff would reach $3 million in fiscal year 2004 and would total $18 million over the 2003–2008 period, subject to the appropriation of the necessary amounts.

Because the bill would establish new federal crimes and would provide funding for more attorneys to prosecute offenders, the government would be able to pursue more cases than it could under current law. Based on information from the Administrative Office of the United States Courts, CBO expects the 25 new attorneys to generate roughly 600 new cases each year against child sex offenders, which would increase court costs by about $9 million over the 2003–2008 period. Those costs would be subject to the availability of appropriated funds.

In addition, implementing S. 151 would increase costs to the federal prison system to accommodate more convicted offenders. The effects of this legislation on the prison system cannot be predicted with certainty, but based on incarceration rates and prison sentences for current sex offenders, CBO expects that the additional cases generated by S. 151 would increase the prison population by roughly 1,000 prisoners per year by 2008. At an annual cost per prisoner of about $7,000 (at 2003 prices), CBO estimates that the cost to support those additional prisoners would be a little less than $30 million over the 2003–2008 period.

Direct spending and receipts

Because those prosecuted and convicted under S. 151 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Collections of such fines are recorded in the budget as revenues (i.e., governmental receipts), which are deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would be less than $500,000 annually.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 151 contains no intergovernmental mandates as defined in UMRA. Any costs resulting from the voluntary disclosure of stored communications by public electronic communications providers would be insignificant.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 151 would impose a private-sector mandate as defined by UMRA on producers involved in interstate and foreign commerce of certain sexually explicit material. Under current law, those producers are required to create and maintain records of all performers portrayed in certain sexually explicit conduct displayed in any book, magazine, periodical, film, or video tape. This bill would expand the recordkeeping requirement to include performers portrayed in a computer-generated image, digital image, or picture. CBO estimates that the cost for additional recordkeeping would be small and would not exceed the annual threshold established by UMRA ($117 million in 2003, adjusted annually for inflation).

Estimate Prepared By: Federal Costs: Mark Grabowicz (226–2860); Impact on State, Local, and Tribal Governments: Greg Waring (225–3220); and Impact on the Private Sector: Jean Talarico (226–2949)

Estimate Approved By: Peter H. Fontaine; Deputy Assistant Director for Budget Analysis.

Mr. HATCH. 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 (Mr. FITZGERALD). Without objection, it is so ordered.

Mr. LEAHY. Mr. President, how much time remains for the Senator from Vermont or his designees?

The PRESIDING OFFICER. Thirty-nine minutes and 13 seconds.

Mr. LEAHY. Mr. President, I ask how much time is remaining to the Senator from Vermont and how much time to the Senator from Utah.

The PRESIDING OFFICER. The Senator has 33 minutes; the Senator from Utah has no time remaining.

Mr. HATCH. Mr. President, would I be correct, if I yielded back my time, then all time would be yielded back? Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. While sorely tempted only as a chance to demonstrate an earlier point, I will refrain from that 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. 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. GRASSLEY. Mr. President, I rise today in support of the PROTECT Act, which I am proud to be co-sponsoring with Senators HATCH, LEAHY and others. I have been greatly concerned with the increase in reports of child abductions and murders, so I am glad to be a part of this effort to address this growing problem. In my tenure on the Judiciary Committee, I have long fought for our Nation's children, and have ardently supported laws that bring them and their families greater protection.

This legislation comes at a critical time because we are hearing more and more about children being taken from their homes or schools and abused, or worse, murdered. Our children are a gift to us, are our national treasure, and are our future. We must do all that we can to protect these innocents and give law enforcement every tool possible to ferret out the criminals who would do our children harm. With this legislation, we will be ensuring a greater measure of protection for our children.

This bill helps the public know about sexual predators in their communities, improves the Nation's ability to respond to child abduction reports, and aids criminal investigators and prosecutors in their efforts to protect the public by identifying and locking-up child predators.

I urge my fellow Senators to vote for this important bill.

Mr. SCHUMER. Mr. President, I rise today in support of S. 151, the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act, or the PROTECT Act, a critical piece of legislation which is desperately needed to fight the war on child pornography.

And make no mistake, the fight against child pornography is indeed a war. It's a worldwide war being fought out largely on the worldwide web. Child pornographers are organized and spread across the globe, but the globe is a lot smaller now that the Internet reaches from Antwerp, Belgium, to Antwerp, New York, and everywhere in between.

As I speak, prosecutors across our country are fighting an exponential growth in child pornography, from here and abroad, and they are struggling to keep up with the wily tactics of the child pornographers.

To fight this critical fight, our prosecutors need new, more, and better weapons. Just as our local police in so many communities are taking to the streets outgunned by drug dealers, our cybercops are working at a technological disadvantage as they go after cybersmut purveyors.

The enemy does not sit still and neither should we. The PROTECT Act gives prosecutors more of the weapons they need.

We cannot and we will not permit child pornographers to hide behind the courts or modern technology. We cannot and we will not permit them to continue to abuse children, real, live children, children from all races, backgrounds and creeds.

We must send child pornographers the message that Congress will not tolerate child abuse or child pornography, today, tomorrow, or ever, no matter what the state of technology is. Technology is intended to help children, not hurt them. This bill helps us take a big step in that direction.

The PROTECT Act goes a long way toward strengthening federal law against child pornography.

For starters, it creates two new crimes which target distributors of child pornography and people who entice new children to engage in it.

The bill provides tough punishment with both of these crimes carrying a maximum penalty of 15 years in prison for a first offense and double that for repeat offenders. Only through serious measures like these can we show that we are serious about fighting this war on child pornography.

Like our anti-terrorism laws which deal with the threat from overseas, the PROTECT Act deals with the threat to our children from those who make child pornography overseas then bring it into the United States. This new law will say that if you force a child to participate in pornography and intend to send that pornography to the United States, you are committing a crime and answerable to our system of justice. In short, you are going to jail, and you're not looking at a short stint in any country club prison. You are doing serious time.

The PROTECT Act specifically increases penalties for people who commit repeat acts of sex offenses by expanding the types of crimes which can trigger mandatory minimum sentences. In this bill, we back up our tough talk on penalties by requiring the U.S. Sentencing Commission to fix a disparity in the current sentencing scheme.

Believe it or not, under current law, under some circumstances you can get less jail time for having sex with a child than you'd get for possessing child pornography. The PROTECT Act fixes this absurd disparity.

The PROTECT Act also provides protection for the true victims of child pornography, the children who are used and abused to make it.

A recent New York Times article highlighted the horrific truth about who these children are. In the article, in the Sunday New York Times from February 9, 2003, the author wrote that ''most children depicted in child pornography are prepubescent, with most of them appearing to be from 6 to 11 years old'' and ''many of the victims appear to be toddlers or infants.'' These are real children, our children, children who need to be protected from this despicable evil.

And as its name implies, the PROTECT Act protects these children. This legislation provides, for the first time, a ''child victim shield provision'' to protect the names of victims. Under this provision, the Government can file a motion in a child pornography case to keep the name, address, social security number and other nonphysical identifying information of the real child victim from being revealed.

This is critical to successful child pornography prosecutions. To get child victims to cooperate, we must protect their identities. To reveal the name of a child pornography victim without good cause and through a judge, would be to victimize that child twice. We cannot permit that to happen.

This bill also protects victims by creating, again for the first time, a new private right of action for victims of child pornography against those who produce it. We are hearing a lot about tort reform here these days, but I hope my colleagues will agree that victims of child pornography should have the right to collect punitive damages from their abusers. If anyone deserves punitive damages, they do.

But the bill does not stop there. It also addresses a subject that has been of some controversy in light of the Supreme Court decision last year, but which we need to address. That subject is the use of modern technology by child pornographers to attempt to hide the fact that their images are made using real children.

In the old days, child pornographers would ply their filthy craft by taking photographs and distributing them. With the advent of television, child pornographers began to take video images, images which displayed real, live children engaged in sick, perverted sexual or obscene acts.

With the development of the video recorder, child pornographers were able to store these images and distribute them more widely. With the development of the CD and DVD, the images could be stored on a disk which could literally fit in the palm of your hand.

The greatest growth in the creation and distribution of child pornography, however, has come in recent years with the development of the Internet and the digital image. These developments have permitted child pornographers to disseminate their product exponentially, not only across America, but around the world, with a few simple strokes of a keyboard.

As the New York Times observed, ''the combination of digital photograph and high-speed home Internet across has set off what authorities say is an explosion of homemade child pornography in recent years, with growing numbers of victims.'' We need to stop the number of victims by shrinking the number of child pornographers.

In fact, today, it has become apparent through evidence submitted to Congress by the National Center for Missing and Exploited Children and other groups that child pornographers use technology to disguise depictions of real children to make them unidentifiable and appear to be computer generated.

Some efforts are being undertaken to deal with so-called ''virtual porn'' which distorts the images of real children, but those efforts don't go far enough.

We need to do more to bring the law up to speed with the technology of child pornography. The PROTECT Act attempts to do so.

One of our Nation's biggest law enforcement problems is the failure of Federal authorities to work closely with their state counterparts. This is especially true when it comes to child pornography. There are countless cases where Federal officials have stepped on state officers' toes while conducting parallel investigations and never talking with each other. This bill requires a greater degree of Federal local coordination than has ever happened before in these kinds of cases.

In sum, the time has come to send a message to child pornographers. We are telling them that no matter how advanced their computers and cameras are, child porn makers and puveryors cannot run and hide from American law enforcement.

This is a 21st century problem in need of a 21st century solution. The PROTECT Act does not solve all of our problems in this area, but it's a step in the right direction.

Mr. LEAHY. Mr. President, we are near 5:30. Even though I have more time remaining, in a couple of minutes I am going to yield back that time. I understand from both the Republican side and the Democratic side that Members prefer to vote at 5:30.

Let me first ask for the yeas and nays on the pending legislation.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. I thank the Chair.

Mr. President, as I said earlier in my speech, I would much prefer that we pass exactly the bill Senator HATCH and I wrote last year and which passed the Senate unanimously. It was then for some reason that leadership in the other body decided not to bring it up. Now we have written one that is very much like the original Hatch-Leahy bill with some modification. I am worried about some of the modifications because of the constitutional problem that may arise, but I am willing to support this bill and will vote for this bill.

I would hope the other body would take this bill as it is and not add further to it. I think what happened last year was the case where we passed a good piece of legislation. Republicans and Democrats came together across the political spectrum and passed a good bill on child pornography. And some, I guess, were more concerned about making speeches and all than to actually pass a piece of legislation that would protect children.

I have looked at this with the eyes of a former prosecutor. I want to be able to go after child pornographers. There is nobody in this body—Republican or Democrat—who is on the side of child pornographers. This is not a free speech question; this a child abuse question. Nobody supports those who abuse children for this purpose.

So let us understand that and know we can pass this piece of legislation. Let's hope nobody tries to change it to make a political football of it. Let it go forward.

Mr. President, I ask unanimous consent that Senator BLANCHE LINCOLN of Arkansas be added as a cosponsor of the bill.

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

Mr. LEAHY. With that, Mr. President, I yield the floor and yield back the remainder of my time.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Alaska (Ms. MURKOWSKI), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from West Virginia (Mr. BYRD), the Senator from South Dakota (Mr. DASCHLE), the Senator from Florida (Mr. GRAHAM), the Senator from Vermont (Mr. JEFFORDS), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Florida (Mr. NELSON), the Senator from Nebraska (Mr. NELSON), the Senator from Rhode Island (Mr. REED), and the Senator from Oregon (Mr. WYDEN), are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN), the Senator from Massachusetts (Mr. KERRY), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Rhode Island (Mr. REED), and the Senator from Oregon (Mr. WYDEN) would each vote ''aye''.

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

The result was announced—yeas 84, nays 0, as follows:

[Rollcall Vote No. 35 Leg.]

YEAS—84

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

NOT VOTING—16

Biden	Jeffords	Nelson (NE)
Brownback	Kerry	Reed
Byrd	Lieberman	Stevens
Chafee	Lincoln	Wyden
Daschle	Murkowski	
Graham (FL)	Nelson (FL)	

The bill (S. 151), as amended, was passed, as follows:

S. 151

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 ''Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003'' or ''PROTECT Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment under Miller v. California, 413 U.S. 15 (1973) (obscenity), or New York v. Ferber, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. ''The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,'' New York v. Ferber, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. Osborne v. Ohio, 495 U.S. 103, 110 (1990).

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. ''[T]he most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.'' Ferber, 458 U.S. at 760.

(4) In 1982, when the Supreme Court decided Ferber, the technology did not exist to: (A) computer generate depictions of children that are indistinguishable from depictions of real children; (B) use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that prevents even an expert from concluding that parts of images of real children were used; or (C) disguise pictures of real children being abused by making the image look computer generated.

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer generated. The technology will soon exist, if it does not already, to computer generate realistic images of children.

(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, or related media.

(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since Ferber have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges increased significantly after the Ashcroft v. Free Speech Coalition decision.

(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic assessment may depend on the quality of the image scanned and the tools used to scan it.

(9) The impact on the government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in Free Speech Coalition. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

(10) Since the Supreme Court's decision in Free Speech Coalition, defendants in child pornography cases have almost universally raised the contention that the images in question could be virtual, thereby requiring the government, in nearly every child pornography prosecution, to find proof that the child is real. Some of these defense efforts have already been successful.

(11) In the absence of congressional action, this problem will continue to grow increasingly worse. The mere prospect that the technology exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution, for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable. Moreover, imposing an additional requirement that the Government prove beyond a reasonable doubt that the defendant knew that the image was in fact a real child—as some courts have done—threatens to result in the de facto legalization of the possession, receipt, and distribution of child pornography

for all except the original producers of the material.

(12) To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

(13) The Supreme Court's 1982 Ferber decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary now to ensure that open and notorious trafficking in such materials does not reappear, and even increase, on the Internet.

SEC. 3. CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.

Section 2252A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting the following:

''(3) knowingly—

''(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or

''(B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—

''(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

''(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;'';

(B) in paragraph (4), by striking ''or'' at the end;

(C) in paragraph (5), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

''(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;

''(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

''(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer,

for purposes of inducing or persuading a minor to participate in any activity that is illegal.'';

(2) in subsection (b)(1), by striking ''paragraphs (1), (2), (3), or (4)'' and inserting ''paragraph (1), (2), (3), (4), or (6)''; and

(3) by striking subsection (c) and inserting the following:

''(c) Affirmative Defense.—It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) that—

''(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

''(B) each such person was an adult at the time the material was produced; or

''(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that involves child pornography as described in section 2256(8)(C). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.''.

SEC. 4. ADMISSIBILITY OF EVIDENCE.

Section 2252A of title 18, United States Code, is amended by adding at the end the following:

''(e) ADMISSIBILITY OF EVIDENCE.—On motion of the government, in any prosecution under this chapter, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.''.

SEC. 5. DEFINITIONS.

Section 2256 of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting before the semicolon the following: ''and shall not be construed to require proof of the actual identity of the person'';

(2) in paragraph (2)—

(A) by striking ''means actual'' and inserting the following: ''means—

''(A) actual'';

(B) in subparagraphs (A), (B), (C), (D), and (E), by indenting the left margin 2 ems to the right and redesignating subparagraphs (A), (B), (C), (D), and (E) as clauses (i), (ii), (iii), (iv), and (v), respectively;

(C) in subparagraph (A)(v), as redesignated, by inserting ''or'' after the semicolon; and

(D) by adding at the end the following:

''(B)(i) actual sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;

''(ii) actual or lascivious simulated—

''(I) bestiality;

''(II) masturbation; or

''(III) sadistic or masochistic abuse; or

''(iii) actual lascivious or simulated lascivious exhibition of the genitals or pubic area of any person;'';

(3) in paragraph (8)—

(A) by striking subparagraph (B) and inserting the following:

''(B) the production of such visual depiction involves the use of an identifiable minor engaging in sexually explicit conduct; or'';

(B) in subparagraph (C)—

(i) by inserting after ''is engaging in sexually explicit conduct'' the following: '', except that the term 'identifiable minor' as used in this subparagraph shall not be construed to include the portion of the definition contained in paragraph (9)(B)''; and

(ii) by striking ''or'' at the end; and

(C) by striking subparagraph (D); and

(4) by striking paragraph (9), and inserting the following:

''(9) 'identifiable minor'—

''(A)(i) means a person—

''(I)(aa) who was a minor at the time the visual depiction was created, adapted, or modified; or

''(bb) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

''(II) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

''(ii) shall not be construed to require proof of the actual identity of the identifiable minor; or

''(B) means a computer image, computer generated image, or digital image—

''(i) that is of, or is virtually indistinguishable from that of, an actual minor; and

''(ii) that depicts sexually explicit conduct as defined in paragraph (2)(B); and

''(10) 'virtually indistinguishable'—

''(A) means that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor; and

''(B) does not apply to depictions that are drawings, cartoons, sculptures, diagrams, anatomical models, or paintings depicting minors or adults or reproductions of such depictions.''.

SEC. 6. OBSCENE VISUAL REPRESENTATIONS OF THE SEXUAL ABUSE OF CHILDREN.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2252A the following:

''§ 2252B. Obscene visual representations of the sexual abuse of children

''(a) IN GENERAL.—Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

''(1)(A) depicts a minor engaging in sexually explicit conduct; and

''(B) is obscene; or

''(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

''(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

''(b) ADDITIONAL OFFENSES.—Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

''(1)(A) depicts a minor engaging in sexually explicit conduct; and

''(B) is obscene; or

''(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

''(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(2), including the penalties provided for cases involving a prior conviction.

''(c) NONREQUIRED ELEMENT OF OFFENSE.—It is not a required element of any offense

under this section that the minor depicted actually exist.

''(d) CIRCUMSTANCES.—The circumstance referred to in subsections (a) and (b) is that—

''(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

''(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

''(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

''(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

''(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

''(e) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (b) that the defendant—

''(1) possessed less than 3 such visual depictions; and

''(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction—

''(A) took reasonable steps to destroy each such visual depiction; or

''(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

''(f) DEFINITIONS.—For purposes of this section—

''(1) the term 'visual depiction' includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;

''(2) the term 'sexually explicit conduct' has the meaning given the term in section 2256(2); and

''(3) the term 'graphic', when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2252A the following:

''2252B. Obscene visual representations of the sexual abuse of children.''.

(c) SENTENCING GUIDELINES.—

(1) CATEGORY.—Except as provided in paragraph (2), the applicable category of offense to be used in determining the sentencing range referred to in section 3553(a)(4) of title 18, United States Code, with respect to any person convicted under section 2252B of such title, shall be the category of offenses described in section 2G2.2 of the Sentencing Guidelines.

(2) RANGES.—The Sentencing Commission may promulgate guidelines specifically governing offenses under section 2252B of title 18, United States Code, if such guidelines do not result in sentencing ranges that are lower than those that would have applied under paragraph (1).

SEC. 7. RECORDKEEPING REQUIREMENTS.

Section 2257 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by striking ''of this section'' and inserting ''of this chapter or chapter 71,'';

(2) in subsection (h)(3), by inserting '', computer generated image, digital image, or picture,'' after ''video tape''; and

(3) in subsection (i)—

(A) by striking ''not more than 2 years'' and inserting ''not more than 5 years''; and

(B) by striking ''5 years'' and inserting ''10 years''.

SEC. 8. SERVICE PROVIDER REPORTING OF CHILD PORNOGRAPHY AND RELATED INFORMATION.

Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended—

(1) in subsection (b)(1), by inserting ''or a violation of section 2252B of that title'' after ''of that title)'';

(2) in subsection (c), by inserting ''or pursuant to'' after ''to comply with'';

(3) by amending subsection (f)(1)(D) to read as follows:

''(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.'';

(4) by redesignating paragraph (3) of subsection (b) as paragraph (4); and

(5) by inserting after paragraph (2) of subsection (b) the following new paragraph:

''(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2), the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.''.

SEC. 9. CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

Section 2702 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6)—

(i) in subparagraph (A)(ii), by inserting ''or'' at the end;

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B);

(C) by redesignating paragraph (6) as paragraph (7); and

(D) by inserting after paragraph (5) the following:

''(6) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''; and

(2) in subsection (c)—

(A) in paragraph (4), by striking ''or'' at the end;

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

''(5) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''.

SEC. 10. EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 of title 18, United States Code, is amended—

(1) by striking ''subsection (d)'' each place that term appears and inserting ''subsection (e)'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following:

''(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

''(2) The circumstance referred to in paragraph (1) is that—

''(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

''(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.''.

SEC. 11. CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''(f) CIVIL REMEDIES.—

''(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

''(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

''(A) temporary, preliminary, or permanent injunctive relief;

''(B) compensatory and punitive damages; and

''(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.''.

SEC. 12. ENHANCED PENALTIES FOR RECIDIVISTS.

Sections 2251(d), 2252(b), and 2252A(b) of title 18, United States Code, are amended by inserting ''chapter 71,'' before ''chapter 109A,'' each place it appears.

SEC. 13. SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct.

SEC. 14. MISCELLANEOUS PROVISIONS.

(a) APPOINTMENT OF TRIAL ATTORNEYS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice or to appropriate U.S. Attorney's Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography laws.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out this subsection.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.

SEC. 15. AUTHORIZATION OF INTERCEPTION OF COMMUNICATIONS IN THE INVESTIGATION OF SEXUAL CRIMES AGAINST CHILDREN.

Section 2516(1)(c) of title 18, United States Code, is amended—

(1) by inserting ''section 1591 (sex trafficking of children by force, fraud, or coercion),'' after ''section 1511 (obstruction of State or local law enforcement),''; and

(2) by inserting ''section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 2252B (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes),'' after ''sections 2251 and 2252 (sexual exploitation of children),''.

SEC. 16. INVESTIGATIVE AUTHORITY RELATING TO CHILD PORNOGRAPHY.

Section 3486(a)(1)(C)(i) of title 18, United States Code, is amended by striking ''the name, address'' and all that follows through ''subscriber or customer utilized,'' and inserting ''the information specified in section 2703(c)(2)''.

SEC. 17. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

● Mr. NELSON of Florida. Mr. President, I strongly support S. 151, the PROTECT Act. Unfortunately, I was detained in Florida earlier today and was not able to cast my vote in favor of this important legislation.

Current law not only provides a convenient defense for child pornographers, but also allows a practice to continue which endangers the Nation's kids regardless of whether actual children are used in the production of the pornographic materials in question.

Because of the Supreme Court's decision in Free Speech Coalition, defendants in child pornography cases are now arguing that the pornographic images at issue are computer generated and are therefore legal and harmless. This defense requires the government, in nearly every child pornography prosecution, to prove that the child portrayed in the image is in fact a minor. Unfortunately, those who would prey on our children have already successfully used this defense.

Even when pornographic materials are not generated using actual children, simply implying that the image is of child contributes to behaviors, which endanger the Nation's kids by encouraging exploitive practices.

The exploitation of children through child pornography is one of the most despicable crimes in our society. The government clearly has a compelling interest in curbing child pornography, whether virtual or real, and I believe this legislation was drafted narrowly enough to withstand constitutional scrutiny.

I hope the House will join the Senate in quickly passing this legislation, so that it can be sent to the President as soon as possible.●

Mr. LOTT. 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. FRIST. 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. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business.

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

FUNDING RESOLUTION OF THE COMMITTEE ON FINANCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that a copy of the funding resolution, adopted by the committee on Finance for the 108th Congress, be printed in the RECORD.

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

S. RES.—

Resolved, that, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rules XXVI of the Standing Rules of the Senate, the Committee on Finance is authorized from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2(a). The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this resolution shall not exceed $3,511,241, of which amount (1) not to exceed $17,500 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $5,833 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2003, through September 30, 2004, expenses of the committee under this resolution shall not exceed $6,179,693, of which amount (1) not to exceed $30,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2004, through February 28, 2005, expenses of the committee under this resolution shall not exceed $2,634,121, of which amount (1) not to exceed $12,500 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $4,167 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2005, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the Chairman of the Committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2003, through September 30, 2003; October 1, 2003 through September 30, 2004; and October 1, 2004 through February 28, 2005, to be paid from the appropriations account for ''Expenses of Inquiries and Investigations.''

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 May 4, 2002 in Alexandria, VA. A man threw a brick through the window of an Afghan man's car. The incident began when 28 year-old Michael Woolls approached the victim on the street and demanded to know his national origin. When the man said he was from Afghanistan, Woolls hit his car with a stick and threw a brick through the window, striking a passenger.

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.

DISTRICT OF COLUMBIA SOUTHWEST WATERFRONT, WASHINGTON MARINA

Mr. BREAUX. Mr. President, I thank Senator LANDRIEU and Ms. Kate Eltrich of her staff for their good work in crafting the District of Columbia provisions of the Omnibus Appropriations bill. I was very pleased to see that the bill included $2,800,000 to continue improvements on the historic Potomac Southwest Waterfront. It is my understanding that this appropriation will be used to fund certain improvements and repairs to the portion of the Southwest Waterfront currently leased to the Washington Marina.

Ms. LANDRIEU. The Senator's understanding of the purpose of this appropration is correct. Furthermore, through this appropriation a good-faith partnership between the Federal Government, the District of Columbia, the U.S. Army Corps of Engineers and the marina lessee, the marina will be restored for the benefit of all District of Columbia citizens.

Mr. BREAUX. I thank the Senator for providing her understanding and clarification of this issue.

RULES OF THE COMMITTEE ON FINANCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that a copy of the Rules of Procedure, adopted by the Committee on Finance for the 108th Congress, be printed in the RECORD.

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

COMMITTEE ON FINANCE

RULES OF PROCEDURE

(Adopted February 14, 2003)

Rule 1. *Regular Meeting Days.*—The regular meeting day of the committee shall be the second and fourth Tuesday of each month, except that if there be no business before the committee the regular meeting shall be omitted.

Rule 2. *Committee Meetings.*—(a) Except as provided by paragraph 3 of Rule XXVI of the Standing Rules of the Senate (relating to special meetings called by a majority of the committee) and subsection (b) of this rule, committee meetings, for the conduct of business, for the purpose of holding hearings, or for any other purpose, shall be called by the chairman after consultation with the ranking minority member. Members will be notified of committee meetings at least 48 hours in advance, unless the chairman determines that an emergency situation requires a meeting on shorter notice. The notification will include a written agenda together with materials prepared by the staff relating to that agenda. After the agenda for a committee meeting is published and distributed, no nongermane items may be brought up during that meeting unless at least two-thirds of the members present agree to consider those items.

(b) In the absence of the chairman, meetings of the committee may be called by the ranking majority member of the committee who is present, provided authority to call meetings has been delegated to such member by the chairman.

Rule 3. *Presiding Officer.*—(a) The chairman shall preside at all meetings and hearings of the committee except that in his absence the ranking majority member who is present at the meeting shall preside.

(b) Notwithstanding the rule prescribed by subsection (a) any member of the committee may preside over the conduct of a hearing.

Rule 4. *Quorums.*—(a) Except as provided in subsection (b) one-third of the membership of the committee, including not less than one member of the majority party and one member of the minority party, shall constitute a quorum for the conduct of business.

(b) Notwithstanding the rule prescribed by subsection (a), one member shall constitute a quorum for the purpose of conducting a hearing.

Rule 5. *Reporting of Measures or Recommendations.*—No measure or recommendation shall be reported from the committee unless a majority of the committee is actually present and a majority of those present concur.

Rule 6. *Proxy Voting; Polling.*—(a) Except as provided by paragraph 7(a)(3) of Rule XXVI of the Standing Rules of the Senate (relating to limitation on use of proxy voting to report a measure or matter), members who are unable to present may have their vote recorded by proxy.

(b) At the discretion of the committee, members who are unable to be present and whose vote has not been cast by proxy may be polled for the purpose of recording their vote on any rollcall taken by the committee.

Rule 7. *Order of Motions.*—When several motions are before the committee dealing with related or overlapping matters, the chairman may specify the order in which the motions shall be voted upon.

Rule 8. *Bringing a Matter to a Vote.*—If the chairman determines that a motion or amendment has been adequately debated, he may call for a vote on such motion or amendment, and the vote shall then be taken, unless the committee votes to continue debate on such motion or amendment, as the case may be. The vote on a motion to continue debate on any motion or amendment shall be taken without debate.

Rule 9. *Public Announcement of Committee Votes.*—Pursuant to paragraph 7(b) of Rule XXVI of the Standing Rules of the Senate (relating to public announcement of votes), the results of rollcall votes taken by the committee on any measure (or amendment thereto) or matter shall be announced publicly not later than the day on which such measure or matter is ordered reported from the committee.

Rule 10. *Subpoenas.*—Witnesses and memoranda, documents, and records may be subpoenaed by the chairman of the committee with the agreement of the ranking minority member or by a majority vote of the committee. Subpoenas for attendance of witnesses and the production of memoranda, documents, and records shall be issued by the chairman, or by any other member of the committee designated by him.

Rule 11. *Nominations.*—In considering a nomination, the Committee may conduct an investigation or review of the nominee's experience, qualifications, and suitability, to serve in the position to which he or she has been nominated. To aid in such investigation or review, each nominee may be required to submit a sworn detailed statement including biographical, financial, policy, and other information which the Committee may request. The Committee may specify which items in such statement are to be received on a confidential basis. Witnesses called to testify on the nomination may be required to testify under oath.

Rule 12. *Open Committee Hearings.*—To the extent required by paragraph 5 of Rule XXVI of the Standing Rules of the Senate (relating to limitations on open hearings), each hearing conducted by the committee shall be open to the public.

Rule 13. *Announcement of Hearings.*—The committee shall undertake consistent with the provisions of paragraph 4(a) of Rule XXVI of the Standing Rules of the Senate (relating to public notice of committee hearings) to issue public announcements of hearings it intends to hold at least one week prior to the commencement of such hearings.

Rule 14. *Witnesses at Hearings.*—(a) Each witness who is scheduled to testify at any hearing must submit his written testimony to the staff director not later than noon of the business day immediately before the last business day preceding the day on which he is scheduled to appear. Such written testimony shall be accompanied by a brief summary of the principal points covered in the written testimony. Having submitted his written testimony, the witness shall be allowed not more than ten minutes for oral presentation of his statement.

(b) Witnesses may not read their entire written testimony, but must confine their oral presentation to a summarization of their arguments.

(c) Witnesses shall observe proper standards of dignity, decorum and propriety while presenting their views to the committee. Any witness who violates this rule shall be dismissed, and his testimony (both oral and written) shall not appear in the record of the hearing.

(d) In scheduling witnesses for hearings, the staff shall attempt to schedule witnesses so as to attain a balance of views early in the hearings. Every member of the committee may designate witnesses who will appear before the committee to testify. To the extent that a witness designated by a member cannot be schedule to testify during the time set aside for the hearing, a special time will be set aside for the witness to testify if the member designating that witness is available at that time to chair the hearing.

Rule 15. Audiences.—Persons admitted into the audience for open hearings of the committee shall conduct themselves with the

dignity, decorum, courtesy and propriety traditionally observed by the Senate. Demonstrations of approval or disapproval of any statement or act by any statement or act by any member or witness are not allowed. Persons creating confusion or distractions or otherwise disrupting the orderly proceeding of the hearing shall be expelled from the hearing.

Rule 16. Broadcasting of Hearings.—(a) Broadcasting of open hearings by television or radio coverage shall be allowed upon approval by the chairman of a request filed with the staff director not later than noon of the day before the day on which such coverage is desired.

(b) If such approval is granted, broadcasting coverage of the hearing shall be conducted unobtrusively and in accordance with the standards of dignity propriety, courtesy and decorum traditionally observed by the Senate.

(c) Equipment necessary for coverage by television and radio media shall not be installed in, or removed from, the hearing room while the committee is in session.

(d) Additional lighting may be installed in the hearing room by the media in order to raise the ambient lighting level to the lowest level necessary to provide adequate television coverage of the hearing at the then current state of the art of television coverage.

(e) The additional lighting authorized by subsection (d) of this rule shall not be directed into the eyes of any members of the committee or of any witness, and at the request of any such member or witness, offending lighting shall be extinguished.

(f) No witness shall be required to be photographed at any hearing or to give testimony while the broadcasting (or coverage) of that hearing is being conducted. At the request of any such witness who does not wish to be subject to radio or television coverage, all equipment used for coverage shall be turned off.

Rule 17. Subcommittees.—(a) The chairman, subject to the approval of the committee, shall appoint legislative subcommittees. The ranking minority member shall recommend to the chairman appointment of minority members to the subcommittees. All legislation shall be kept on the full committee calendar unless a majority of the members present and voting agree to refer specific legislation to an appropriate subcommittee.

(b) The chairman may limit the period during which House-passed legislation referred to a subcommittee under paragraph (a) will remain in that subcommittee. At the end of that period, the legislation will be restored to the full committee calendar. The period referred to in the preceding sentences should be 6 weeks, but may be extended in the event that adjournment or a long recess is imminent.

(c) All decisions of the chairman are subject to approval or modification by a majority vote of the committee.

(d) The full committee may at any time by majority vote of those members present discharge a subcommittee from further consideration of a specific piece of legislation.

(e) Because the Senate is constitutionally prohibited from passing revenue legislation originating in the Senate, subcommittees may mark up legislation originating in the Senate and referred to them under Rule 16(a) to develop specific proposals for full committee consideration but may not report such legislation to the full committee. The preceding sentence does not apply to nonrevenue legislation originating in the Senate.

(f) The chairman and ranking minority members shall serve as nonvoting *ex officio* members of the subcommittees on which they do serve as voting members.

(g) Any member of the committee may attend hearings held by any subcommittee and question witnesses testifying before that subcommittee.

(h) Subcommittee meeting times shall be coordinated by the staff director to insure that—

(1) no subcommittee meeting will be held when the committee is in executive session, except by unanimous consent;

(2) no more than one subcommittee will meet when the full committee is holding hearings; and

(3) not more than two subcommittees will meet at the same time.

Notwithstanding paragraphs (2) and (3), a subcommittee may meet when the full committee is holding hearings and two subcommittees may meet at the same time only upon the approval of the chairman and the ranking minority member of the committee and subcommittees involved.

(i) All nominations shall be considered by the full committee.

(j) The chairman will attempt to schedule reasonably frequent meetings of the full committee to permit consideration of legislation reported favorably to the committee by the subcommittees.

Rule 18. *Transcripts of Committee Meetings.*—An accurate record shall be kept of all markups of the committee, whether they be open or closed to the public. This record, marked as ''uncorrected,'' shall be available for inspection by Members of the Senate, or members of the committee together with their staffs, at any time. This record shall not be published or made public in any way except:

(a) By majority vote of the committee after all members of the committee have had a reasonable opportunity to correct their remarks for grammatical errors or to accurately reflect statements made.

(b) Any member may release his own remarks made in any markup of the committee provided that every member or witness whose remarks are contained in the released portion is given a reasonable opportunity before release to correct their remarks.

Notwithstanding the above, in the case of the record of an executive session of the committee that is closed to the public pursuant to Rule XXVI of the Standing Rules of the Senate, the record shall not be published or made public in any way except by majority vote of the committee after all members of the committee have had a reasonable opportunity to correct their remarks for grammatical errors or to accurately reflect statements made.

Rule 19. *Amendment of Rules.*—The foregoing rules may be added to, modified, amended or suspended at any time.

BLACK HISTORY MONTH

Ms. CANTWELL. Mr. President, I rise today in honor of Black History Month. On February 1, 1960, four brave freshmen from North Carolina A&T conducted the first major sit-i9n protest of the civil rights movement. The ''Greensboro Four,'' as they came to be known, acted on the American principle that all people are created equal. Although the United States was founded on that premise, it is too often denied.

We know that when one person breaks a barrier to equality, the potential opportunities for all Americans are redefined. That is why every February, we teach our students about pioneers like Ralph J. Bunche, the first African American to win a Nobel Peace Prize, and Jackie Robinson, the first African American in the major leagues. We must also remember, however, that individual success does not assure universal progress.

My State is proud that the University of Washington accepted its first Black student in 1874. This was an important step towards equal access to education. At the time, the Puget Sound Dispatch declared, ''Every child of African descent born in this country has the same right of access to our public schools as the children of the most privileged of Caucasian blood. No teacher or school officer has any more legal right to exclude one than the other.'' However, it took 70 more years for the Supreme Court to endorse this standard. Now we face racial inequities in education and the resegregation of our schools. In fact, this year a study found that public schools have been undergoing a ''process of continuous resegregation'' since the early 1990s. We must ensure that our legal ideal of equality is a reality for every American.

Hiram Revels, the son of former slaves, became the first African-American Senator in 1870. He overcame many obstacles and forever changed this institution. Because of leaders such as Senator Revels, this is the most diverse Senate in the history of the United States. And yet at the same time, there is not a single African-American Senator serving in this body.

The American people want leaders who represent their values, ideas, and life experiences. For this reason, I am optimistic that as our country moves forward, we will continue to select leaders who value diversity and the representation of all people. It is the right way to protect our founding principle of equality, and the best way to ensure our prosperity. As Dr. Martin Luther King explained in his letter from Birmingham jail, we are bound by a ''single garment of destiny where whatever affects one directly, affects all indirectly.'' Our world is even more intertwined today. Like the great Americans before us, from Thomas Jefferson to the ''Greensboro Four,'' this month we reaffirm our commitment to the fundamental premise that all people are created equal, and must be treated equally.

ADDITIONAL STATEMENTS

TRIBUTE TO WINTON ''RED'' BLOUNT

● Mr. SHELBY. Mr. President, I rise today to pay tribute to a dear friend, a beloved family man, a successful business man, and a treasure to the State of Alabama. Winton 'Red' Blount, a native of Union Springs, AL passed on October 24, 2002. He was one of those people who everyone should emulate, because he took advantage of everything life had to offer—having a loving family, running a successful business, standing up for justice during the Civil Rights movement, enjoying the arts,

and pursuing civil service. It is my hope, that in this tribute, I can draw a bit of a picture to describe the kind of life that Red Blount lived.

During the 1960s civil rights movements, the State of Alabama was home to some tumultuous times. When Governor George Wallace blocked integration into the University of Alabama, Red Blount calmly and constructively worked with U.S. Attorney General Robert Kennedy and Governor Wallace to keep the peace and allow African-American students into the University. Blount, at that time, served as a member of the University's Board of Trustees, and, more importantly, served as a voice of reason during a time when reasonable voices were few and far between.

As a businessman, Blount was straight-forward, hard working, and honest in his practices. He founded Blount Brothers and quickly developed a reputation for delivering products on time and without unexpected costs. Blount's company can be credited with building the launch pad at the Kennedy Space Center in Cape Canaveral, FL, which sent the first space flight to the moon. Blount Brothers also built the Nation's first ballistic missile site, the New Orleans Superdome, and international projects including King Saud University, near Riyadh, Saudi Arabia.

Since I can remember, Red was a dedicated civil servant and a devoted member of the Republican Party. Known as Mr. Republican, he wanted to make a difference in Alabama and across the Nation. In 1960, Red headed up then-Vice President Richard Nixon's unsuccessful bid for the presidency as his southeastern campaign chairman. In 1968, Red became president of the U.S. Chamber of Commerce, and then he went on to serve as President Richard Nixon's Postmaster General. In this capacity, he advocated for and implemented massive reform, making the postal service less political and more efficient. Red even threw his hat into the ring for a bid to the U.S. Senate in 1972. Unfortunately, he lost, but there is no question that he would've made a great Senator.

Among Red Blount's many business and political achievements, having a family was his most important accomplishment. His five children are grown and successful in their own right, and there is no question that Blount instilled a strong work ethic into them and fostered their ability to succeed in whatever they chose to do. Blount's family expanded when he married his second wife, Carolyn Self Varner Blount, and he became step father to her two children. They enjoyed gathering at the holidays with all the children and grandchildren in the extended Blount family.

One of the things that Alabamians will remember most about Red Blount was his love of the arts. In 1982, Red discovered that the Alabama Shakespeare Festival, of which his wife, Carolyn served on the board, was very much in debt. He was able to assist them with their financial difficulties by building a theater on the 250-acre grounds behind his home. This became Montgomery's Blount Cultural Park, and the theater was named for his wife.

The theater grew with the support of State grants, but mostly because of the investment that Red and Carolyn made in it. They made nearly $15 million in donations of art work, which encouraged the Montgomery Museum of Fine Arts, which was looking to change locations, to move to the park grounds. The park continued to grow with gardens and an amphitheater, and Blount expanded the land by buying more acres. He made contributions totaling $21.5 million to the Alabama Shakespeare Festival, which remains the single-largest gift ever given to a regional theater in the country.

Blount's philanthropic heart turned Montgomery into a leading cultural center. Had Red and Carolyn not made the financial and creative investment, the theater, museum, and park would not be what it is today. They helped to create a priceless treasure for the area, encouraging the young and old to experience the arts.

There aren't too many people in the world who loved life as much as Red did. He was the kind of person we all want to be, and the State of Alabama is a better place for having Red Blount as part of our history. We are all grateful to Red and his family for giving so much of themselves, and allowing Red to leave us with a wonderful legacy we will never forget.●

TRIBUTE TO COMMANDER JUDI JO ROGERS

● Mr. INOUYE. Mr. President, I rise today to recognize a great American and a true military heroine who has honorably served our country for 22 years in the Navy Nurse Corps: CDR Judi J. Rogers. Commander Rogers began her career as a staff nurse at Naval Medical Center, San Diego, CA. She quickly rose through the ranks and served at Naval bases throughout the world, including Naval Hospital Okinawa, Japan, Naval Hospital Long Beach, CA, National Naval Medical Center Bethesda, MD, and Naval Medical Center Portsmouth, VA. Following in her father's footsteps, the late LCDR Kenneth Rogers, USN, Retired, Commander Rogers served aboard combatant ships independently providing anesthesia services as a certified registered nurse anesthetist, CRNA, to the sailors and marines aboard the U.S.S *Theodore Roosevelt,* CVN–71, and the U.S.S *WASP,* LHD–1, during all underway periods including two 6-month Mediterranean deployments. She was then assigned as the first woman to serve as the Assistant Group Surgeon for Combatant Amphibious Assault Group Two. In each assignment, Commander Rogers excelled and met every challenge, and was rewarded with greater responsibilities and opportunities.

Her talent for teaching and mentoring personnel, as well as her creativity and skill in management, were instrumental in providing Military Medicine the cadre of CRNAs serving today. As an advanced cardiac life support, ACLS, instructor, Commander Rogers continually supported mission readiness by providing ACLS courses to hundreds of active duty and reserve troops, and trauma skills and training vital for battlefield survival of our troops. Above all, she is a stellar leader and a compassionate nurse who always put the welfare of her staff and patients first.

Commander Rogers is a committed health care professional who has positively influenced the practice of nursing nationally. She is an active member of the American Association of Nurse Anesthetists, AANA. A faculty member for AANA's Education and Research Foundation since 1988, Commander Rogers personally provided 18 Special Epidural Workshops to 450 CRNAs across the country. She also authored a chapter of AANA's official text, The Clinical Techniques of Regional Anesthesia, titled ''Acute Pain Management.'' Commander Rogers always went the extra mile to serve her country and her fellow man. Her performance reflects greatly on herself, the U.S. Navy, the Department of Defense, and the United States of America. I extend my deepest appreciation to Commander Rogers on behalf of a grateful nation for her dedicated military service. Congratulations and I wish you Godspeed.●

TRIBUTE TO PAT KELLER

● Mr. BUNNING. Mr. President, I rise today to honor and pay tribute to one of Kentucky's finest educators. Pat Keller, a music teacher at Potter Gray Elementary School, was recently named Kentucky Elementary Music Teacher of the Year by the Kentucky Music Educators Association.

Pat Keller has done more than teach her south central Kentucky students the concepts of music. Through Pat's 15 years as an educator, her efforts have instilled a sense of self-confidence that her students have benefitted from well beyond the classroom. Pat's students have gained the same respect and love for music that their teacher has and have also been given the self-assurance to contribute to the field of music.

I am glad that Pat Keller chose to be a teacher in the Commonwealth of Kentucky and it is a source of great pride to call attention to her excellence. Her contributions have made all the difference in the lives of her students.

The citizens from the Potter Gray Elementary School community are fortunate to call Pat Keller one of their own. They should be privileged to be served by such a fine educator. Her example should be followed by teachers across Kentucky.●

REMEMBERING RUSS ROURKE

● Mr. MILLER. Mr. President, I note with deep regret the recent passing of a dedicated public official, defense leader, and a fellow Marine, Russell A. Rourke.

From his humble beginnings in the Bronx, Russ Rourke put himself through the University of Maryland and Georgetown Law School. Through hard work and perseverance, he went on to great success here on Capitol Hill, at the White House, the Pentagon, and later in the private sector.

He served as a top legislative aide in the Congress for 20 years, was a Special Assistant to President Ford, Assistant Secretary of Defense for Legislative Affairs, and Secretary of the Air Force under President Ronald Reagan.

Despite these many high honors, Russ made it clear that the highest honor he ever hoped to attain was when he earned the right to wear the eagle, globe and anchor. Throughout his life, nothing else transcended the honor and title of United States Marine. He revered the Marine Corps, its way of life, its traditions and values.

Russ was on active duty in the U.S. Marine Corps from 1953 to 1956, including service in Korea. He remained in an active capacity with the Marine Corps Reserve, and retired after 32 years of service with the rank of colonel in July 1985.

Throughout his career, Russ was recognized as a proponent for a strong national defense. When he served in the Reagan administration as Assistant Secretary of Defense for Legislative Affairs, he was once described by the New York Times as Defense Secretary Cap Weinberger's ''chief scout and musket loader in defending the military budget against a siege of skeptics in Congress.''

As in my life, Russ Rourke's life experience were embodied in the Marine Corps culture and ethos. In all that he did, he conducted himself at all times as foremost a Marine, with honesty and conviction, with a high sense of duty and great pride. His devotion to family, country, and Corps was legendary and an inspiration. His distinguished career demonstrated the highest standards of integrity, professionalism, and devotion to public service.

Russ died at the age of 71 on January 19 after a lengthy battle with malignant melanoma. He leaves his lovely wife and partner of 41 years, Judith Muller Rourke, of Annapolis, MD, their three married daughters, and four grandchildren. Russ also leaves a Marine Corps legacy. His nephew, Col. Arthur White, is the current State liaison for the Marine Corps.

I am extremely proud of my fellow Marine, the Honorable Russell A. Rourke. He will be greatly missed by his family and friends, many in the House and the Senate, and the men and women in the uniformed services. Our Nation's military might is stronger today because of his sterling leadership and his numerous contributions in service to his country.●

MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

Under the authority of the order of January 7, 2003, the Secretary of the Senate, on February 18, 2003, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill.

H.J. Res. 2. A joint resolution making consolidated appropriations for the fiscal year ending September 30, 2003, and for other purposes.

Under the authority of the order of January 7, 2003, the enrolled bill was signed by the Acting President pro tempore (Mr. FRIST) on February 19, 2003.

MEASURES REFERRED

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 337. An act to extend certain hydroelectric licenses in the State of Alaska.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 3. A bill to prohibit the procedure commonly known as partial-birth abortion.

S. 13. A bill to provide financial security to family farm and small business owners by ending the unfair practice of taxing someone at death.

S. 414. A bill to provide an economic stimulus package, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GRASSLEY, without amendment:

S. Res. 61. An original resolution authorizing expenditures by the Committee in Finance.

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. AKAKA:

S. 427. A bill to amend the Homeland Security Act of 2002 to assist States and communities in preparing for and responding to threats to the agriculture of the United States; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BAUCUS:

S. 428. A bill to provide for the distribution of judgment funds to the Assiniboine and Sioux Tribes of the Fort Peck Reservation; to the Committee on Indian Affairs.

By Mrs. FEINSTEIN (for herself, Mr. KENNEDY, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mr. DURBIN, and Mr. LEVIN):

S. 429. A bill to amend the Internal Revenue Code of 1986 to regulate certain 50 caliber sniper weapons in the same manner as machine guns and other firearms, and for other purposes; to the Committee on Finance.

By Mr. AKAKA:

S. 430. A bill to amend the Homeland Security Act of 2002 to enhance agricultural biosecurity in the United States through increased prevention, preparation, and response planning; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. VOINOVICH:

S. 431. A bill to amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste; to the Committee on Environment and Public Works.

By Mr. CRAIG:

S. 432. A bill to authorize the Secretary of the Interior and the Secretary of Agriculture to conduct and support research into alternative treatments for timber produced from public lands and lands withdrawn from the public domain for the National Forest System, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GRASSLEY:

S. Res. 61. An original resolution authorizing expenditures by the Committee in Finance; from the Committee on Finance; to the Committee on Rules and Administration.

By Mr. ENSIGN (for himself, Mr. GRAHAM of Florida, Mr. FRIST, Mr. LIEBERMAN, Mr. BROWNBACK, Mr. NELSON of Florida, Mr. KYL, Mr. ALLEN, Mr. SESSIONS, Mr. REID, and Mr. SANTORUM):

S. Res. 62. A resolution calling upon the Organization of American States (OAS) Inter-American Commission on Human Rights, the United Nations High Commissioner for Human Rights, the European Union, and human rights activists throughout the world to take certain actions in regard to the human rights situation in Cuba; to the Committee on Foreign Relations.

By Mr. INHOFE:

S. Res. 63. A resolution authorizing expenditures by the Committee on Environment and Public Works; to the Committee on Environment and Public Works.

ADDITIONAL COSPONSORS

S. 3

At the request of Mr. SANTORUM, the names of the Senator from New Hampshire (Mr. SUNUNU), the Senator from Mississippi (Mr. COCHRAN) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. 3, a bill to prohibit the procedure commonly known as partial-birth abortion.

S. 56

At the request of Mr. JOHNSON, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 56, a bill to restore health care coverage to retired members of the uniformed services.

S. 68

At the request of Mr. INOUYE, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 68, a bill to amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and for other purposes.

S. 83

At the request of Mr. DURBIN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 83, a bill to expand aviation capacity in the Chicago area, and for other purposes.

S. 98

At the request of Mr. ALLARD, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 98, a bill to amend the Bank Holding Company Act of 1956, and the Revised Statutes of the United States, to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 138

At the request of Mr. ROCKEFELLER, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 138, a bill to temporarily increase the Federal medical assistance percentage for the medicaid program.

S. 140

At the request of Mrs. FEINSTEIN, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 140, a bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers.

S. 150

At the request of Mr. ALLARD, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

S. 151

At the request of Mr. LEAHY, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 151, a bill to amend title 18, United States Code, with respect to the sexual exploitation of children.

S. 151

At the request of Mr. PRYOR, his name was added as a cosponsor of S. 151, supra.

S. 160

At the request of Mr. BURNS, the names of the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 160, a bill to amend the Internal Revenue Code of 1986 to allow the expensing of broadband Internet access expenditures, and for other purposes.

S. 227

At the request of Mrs. FEINSTEIN, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 227, a bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to certified or licensed teachers, to provide for grants that promote teacher certification and licensing, and for other purposes.

S. 229

At the request of Mr. JOHNSON, the names of the Senator from Minnesota (Mr. DAYTON) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 229, a bill to provide for the merger of the bank and savings association deposit insurance funds, to modernize and improve the safety and fairness of the Federal deposit insurance system, and for other purposes.

S. 238

At the request of Mr. REED, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 238, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 251

At the request of Mr. LOTT, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 251, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 253

At the request of Mr. CAMPBELL, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 253, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

S. 255

At the request of Mrs. FEINSTEIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 255, a bill to amend title 49, United States Code, to require phased increases in the fuel efficiency standards applicable to light trucks; to require fuel economy standards for automobiles up to 10,000 pounds gross vehicle weight; to increase the fuel economy of the Federal fleet of vehicles, and for other purposes.

S. 261

At the request of Mr. BINGAMAN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 261, a bill to amend part A of title IV of the Social Security Act to exclude child care from the determination of the 5-year limit on assistance under the temporary assistance to needy families program, and for other purposes.

S. 272

At the request of Mr. SANTORUM, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 272, a bill to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low income Americans to gain financial security by building assets, and for other purposes.

S. 298

At the request of Mr. BAUCUS, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 298, a bill to provide tax relief and assistance for the families of the heroes of the Space Shuttle *Columbia*, and for other purposes.

S. 314

At the request of Mr. KENNEDY, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 314, a bill to make improvements in the Foundation for the National Institutes of Health.

S. 315

At the request of Mr. LEAHY, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 315, a bill to support first responders to protect homeland security and prevent and respond to acts of terrorism.

S. 330

At the request of Mr. CAMPBELL, the names of the Senator from Louisiana (Ms. LANDRIEU), the Senator from Missouri (Mr. BOND) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. 330, a bill to further the protection and recognition of veterans' memorials, and for other purposes.

S. 342

At the request of Mr. GREGG, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 342, a bill to amend the Child Abuse Prevention and Treatment Act to make improvements to and reauthorize programs under that Act, and for other purposes.

S. 365

At the request of Mr. BINGAMAN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 365, a bill to amend title 23, United States Code, to establish a program to make allocations to States for projects to expand 2-lane highways in rural areas to 4-lane highways.

S. 372

At the request of Mr. THOMAS, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 372, a bill to amend the National Environmental Policy At of 1969 to require that Federal agencies consult with State agencies and county and local governments on environmental impact statements.

S. 378

At the request of Mr. DASCHLE, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 378, a bill to recruit and retain more qualified individuals to teach in Tribal Colleges or Universities.

S. 392

At the request of Mr. REID, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 392, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 397

At the request of Mr. ENSIGN, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 397, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for the old-age, survivors, and disability insurance taxes paid by employees and self-employed individuals, and for other purposes.

S.J. RES. 3

At the request of Mr. MCCAIN, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S.J. Res. 3, a joint resolution expressing the sense of Congress with respect to human rights in Central Asia.

S. CON. RES. 7

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. Con. Res. 7, a concurrent resolution expressing the sense of Congress that the sharp escalation of anti-Semitic violence within many participating States of the Organization for Security and Cooperation in Europe (OSCE) is of profound concern and efforts should be undertaken to prevent future occurrences.

S. CON. RES. 7

At the request of Mr. CAMPBELL, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. Con. Res. 7, supra.

S. RES. 46

At the request of Mr. BINGAMAN, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Mississippi (Mr. COCHRAN), the Senator from Idaho (Mr. CRAIG), the Senator from North Carolina (Mr. EDWARDS), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Maryland (Mr. SARBANES), the Senator from Michigan (Ms. STABENOW) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. Res. 46, a resolution designating March 31, 2003, as ''National Civilian Conservation Corps Day''.

S. RES. 48

At the request of Mr. AKAKA, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. Res. 48, a resolution designating April 2003 as ''Financial Literacy for Youth Month''.

S. RES. 52

At the request of Mr. CAMPBELL, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Hawaii (Mr. AKAKA) were added as cosponsors of S. Res. 52, a resolution recognizing the social problem of child abuse and neglect, and supporting efforts to enhance public awareness of the problem.

S. RES. 54

At the request of Mr. MCCAIN, the names of the Senator from Texas (Mr. CORNYN) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. Res. 54, a resolution to provide Internet access to certain Congressional documents, including certain Congressional Research Service publications, certain Senate gift reports, and Senate and Joint Committee documents.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA:

S. 427. A bill to amend the Homeland Security Act of 2002 to assist States and communities in preparing for and responding to threats to the agriculture of the United States; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. AKAKA:

S. 430. A bill to amend the Homeland Security Act of 2002 to enhance agricultural biosecurity in the United States through increased prevention, preparation, and response planning; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. AKAKA. Mr. President, I rise today to address the threat of bioterrorist attacks on American agriculture by introducing the Agriculture Security Preparedness Act, ASPA, and the Agriculture Security Assistance Act, ASAA.

Thomas Jefferson described the four pillars of American prosperity as agriculture, manufacturing, commerce and navigation. Two hundred years later, our government is working to protect and defend all critical sectors of our society. But are we doing enough to protect American agriculture from either deliberate or naturally occurring disease outbreaks?

Secretary of Health and Human Services Tommy Thompson stated in September 2002 that the administration has not paid enough attention to protecting agriculture while Secretary of Agriculture Ann Venneman stated that agricultural biosecurity is her highest priority.

What is at risk when I speak of ''agricultural security?'' Quite simply, a threat to agriculture is a threat to the Nation. My legislation will assist efforts by the U.S. Department of Agriculture, USDA, new Department of Homeland Security, DHS, to ensure the first pillar of American prosperity.

Agriculture terrorism can impact the safety of our food supply and public health. A large scale agricultural disaster, much like risks to our information and communication systems, also would undermine American economic security. Agricultural activity accounts for approximately 13 percent of the U.S. gross domestic product and nearly 17 percent of domestic employment. Based on the economic damage caused by the 2001 foot and mouth disease, FMD, epidemic in Great Britain, a single outbreak of FMD could cost the U.S. economy over $10 billion.

Every State has its own agricultural strengths and economy. My State of Hawaii generates more than $1.9 billion in agricultural sales. The agriculture sector employs, either directly or indirectly, 38,000 people in Hawaii. The State's crops range from sugarcane and pineapple to coffee and macadamia nuts. However, Hawaii also has to $28 million milk industry and nearly $25 million worth of cattle and hogs. When the additional losses in tourism and travel are considered, we can see the economic impact on Hawaii or any State from an agricultural disease emergency would be devastating.

Pests and diseases are difficult to control when they are introduced accidentally. According to a National Academy of Sciences study on agricultural security, a deliberate infestation demands even more precautions and research and development.

The Agriculture Security Preparedness Act and the Agriculture Security Assistance Act give Federal and State partners responsible for responding to threats against our agriculture the tools they need to operate efficiently and effectively. Moreover, my legislation amends the Homeland Security Act to give agriculture security the attention it deserves as a component of our critical infrastructure.

An agricultural disease outbreak, whether of natural or deliberate origin, will require coordinated efforts by the USDA, the Federal Emergency Management Agency, FEMA, and DHS, the Environmental Protection Agency, EPA, and the Departments of Health and Human Services, HHS, Defense, Transportation, and Justice. USDA is the lead agency in responding to agricultural emergencies and has created a homeland defense council and increased border inspection and research activities. These are promising steps. I am happy to see that the USDA and FEMA are in the process of drafting a national response plan for emerging agriculture diseases. My legislation will compliment these efforts and encourage coordination and preparedness on the Federal, State, regional, and local level.

The Agriculture Security Preparedness Act will enhance agricultural biosecurity through strengthened interagency and international coordination. The Act will establish senior level liaisons in DHS and HHS to coordinate with USDA on agriculture disease emergency management and response. My legislation also tasks DHS and USDA to work with the Department of Transportation to address one of the largest risk factors in controlling the spread of a plant or animal disease—the movement of animals, plants, and people between and around farms.

Agricultural disease outbreaks will continue to be rare occurrences in the United States. However, high-risk animal and plant diseases are endemic in some part of the world. The Agriculture Security Preparedness Act will help train American veterinarians and emergency responders, and provide much needed help overseas, through bilateral mutual aid agreements. The

Act also directs the Department of Justice and USDA to take a long-overdue look at local and State laws that may impede or contradict response plans for an agricultural disease emergency.

The Agricultural Security Assistance Act will assist States and communities preparing for and responding to threats to the Nation's agriculture. Rapid detection and swift response is imperative to contain the spread of any disease, and my bill will help remove delays and impediments for local and state officials responding to outbreaks.

The bill directs USDA to work with each State to develop and implement response plans. My legislation establishes grant programs for communities and states to incorporate modeling and geographic information systems into planning and response activities totaling over $15 million. This funding also will help animal health professionals participate in community emergency planning activities and assist farmers and ranchers strengthen the biosecurity measures on their own property.

In most cases of a suspected or actual agricultural disease outbreak, initial response will come from the impacted community and State. Federal resources, coordinated by USDA, will augment State capabilities. Federal assistance and guidance also is needed long before an outbreak occurs. My legislation will increase Federal, State, and local abilities to develop resources and response mechanisms to contain and eradicate agricultural diseases when they are discovered on U.S. soil.

I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 427

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 ''Agriculture Security Assistance Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) some agricultural diseases pose a direct threat to human health;

(2) economic sabotage, in the form of agroterrorism, is also a concern;

(3) the United States has an $80,000,000,000 livestock industry;

(4) an outbreak of an agricultural disease, whether naturally occurring or intentionally introduced, could—

(A) have a profound impact on the infrastructure, economy, and export markets of the United States; and

(B) erode consumer confidence in the Federal Government and the safety of the food supply of the United States;

(5) as with human health and bioterrorism preparedness, enhancing current monitoring and response mechanisms to deal with a deliberate act of agricultural terrorism would strengthen the ability of the United States to diagnose and respond quickly to any animal health crisis;

(6)(A) activities to ensure the biosecurity of farms are an important tool in preventing—

(i) the intentional or accidental introduction of an agricultural disease; and

(ii) the spread of an introduced agricultural disease into an outbreak; and

(B) most surveys of producers indicate discouraging and dangerous trends in basic elements of farm security activities;

(7)(A) a national response plan, developed by the Department of Agriculture and the Federal Emergency Management Agency, would determine how interdependent agricultural health and emergency management response functions will be coordinated to ensure an orderly, immediate, and unified response to all aspects of an outbreak of an agricultural disease;

(B) the Department of Agriculture, in cooperation with State and industry partners, would implement the plan as needed; and

(C) State and local partners would need assistance to implement their shares of the plan;

(8) States and communities also require assistance to prepare and plan for agricultural disasters;

(9)(A) rapid detection of an agricultural disease is imperative in containing the spread of the agricultural disease; and

(B) potential delays and difficulty in detection may complicate decisions regarding appropriate control measures; and

(10)(A) planning for a response to an outbreak of an agricultural disease will vary from State to State, reflecting—

(i) the level of awareness;

(ii) the perception of risk;

(iii) competing time demands; and

(iv) the availability of resources; and

(B) State response capability would be significantly enhanced if State agricultural and emergency management officials were to jointly develop a comprehensive agricultural disease response plan.

SEC. 3. AGRICULTURE SECURITY ASSISTANCE.

(a) IN GENERAL.—Title VIII of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2220) is amended by adding at the end the following:

''Subtitle J—Agriculture Security Assistance

''SEC. 899A. DEFINITIONS.

''In this subtitle:

''(1) AGRICULTURAL DISEASE.—The term 'agricultural disease' means an outbreak of a plant or animal disease, or a pest infestation, that requires prompt action in order to prevent injury or damage to people, plants, livestock, property, the economy, or the environment.

''(2) AGRICULTURAL DISEASE EMERGENCY.—The term 'agricultural disease emergency' means an outbreak of a plant or animal disease, or a pest infestation, that requires prompt action in order to prevent injury or damage to people, plants, livestock, property, the economy, or the environment, as determined by the Secretary of Agriculture under—

''(A) section 415 of the Plant Protection Act (7 U.S.C. 7715); or

''(B) section 10407(b) of the Animal Health Protection Act (7 U.S.C. 8306(b)).

''(3) AGRICULTURE.—The term 'agriculture' includes—

''(A) the science and practice of activities relating to food, feed, and fiber production, processing, marketing, distribution, use, and trade;

''(B) family and consumer science, nutrition, food science and engineering, agricultural economics, and other social sciences; and

''(C) forestry, wildlife science, fishery science, aquaculture, floraculture, veterinary medicine, and other environmental and natural resource sciences.

''(4) AGROTERRORISM.—The term 'agroterrorism' means the commission of an agroterrorist act.

''(5) AGROTERRORIST ACT.—The term 'agroterrorist act' means a criminal act consisting of causing or attempting to cause damage or harm to, or destruction or contamination of, a crop, livestock, farm or ranch equipment, a material, any other property associated with agriculture, or a person engaged in agricultural activity, that is committed with the intent—

''(A) to intimidate or coerce a civilian population; or

''(B) to influence the policy of a government by intimidation or coercion.

''(6) BIOSECURITY.—

''(A) IN GENERAL.—The term 'biosecurity' means protection from the risks posed by biological, chemical, or radiological agents to—

''(i) plant or animal health;

''(ii) the agricultural economy;

''(iii) the environment; and

''(iv) human health.

''(B) INCLUSIONS.—The term 'biosecurity' includes the exclusion, eradication, and control of biological agents that cause agricultural diseases.

''SEC. 899B. RESPONSE PLANS.

''(a) IN GENERAL.—

''(1) STATE PLANS.—The Secretary of Agriculture, in consultation with the Director of the Federal Emergency Management Agency, shall assist States in developing and implementing State plans for responding to outbreaks of agricultural diseases.

''(2) REQUIRED ELEMENTS.—Each State response plan shall include—

''(A) identification of available authorities and resources within the State that are needed to respond to an outbreak of an agricultural disease;

''(B) identification of—

''(i) potential risks and threats due to agricultural activity in the State; and

''(ii) the vulnerabilities to those risks and threats;

''(C) potential emergency management assistance compacts and other mutual aid agreements with neighboring States; and

''(D) identification of local and State legal statutes or precedents that may affect the implementation of a State response plan.

''(3) REGIONAL AND NATIONAL RESPONSE PLANS.—The Secretary of Agriculture shall work with States in developing regional and national response plans to carry out this subsection.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for fiscal year 2004 and each fiscal year thereafter.

''(b) MODELING AND STATISTICAL ANALYSES.—

''(1) IN GENERAL.—In consultation with the Steering Committee of the National Animal Health Emergency Management System and other stakeholders, the Secretary of Agriculture shall conduct a study—

''(A) to determine the best use of epidemiologists, computer modelers, and statisticians as members of emergency response task forces that handle foreign or emerging agricultural disease emergencies; and

''(B) to identify the types of data that are not collected but that would be necessary for proper modeling and analysis of agricultural disease emergencies.

''(2) REPORT.—Not later than 180 days after the date of enactment of this subtitle, the Secretary of Agriculture shall submit a report that describes the results of the study to—

''(A) the Secretary of Homeland Security; and

''(B) the heads of other appropriate governmental agencies involved in response planning for agricultural disease emergencies.

''(c) GEOGRAPHIC INFORMATION SYSTEM GRANTS.—

''(1) IN GENERAL.—The Secretary of Agriculture, in consultation with the Secretary of Homeland Security and the Secretary of the Interior, shall establish a program to provide grants to States to develop capabilities to use geographic information systems and statistical models for epidemiological assessments in the event of agricultural disease emergencies.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection—

''(A) $2,500,000 for fiscal year 2004; and

''(B) such sums as are necessary for each fiscal year thereafter.

''(d) GRANTS TO FACILITATE PARTICIPATION OF STATE AND LOCAL ANIMAL HEALTH CARE OFFICIALS.—

''(1) IN GENERAL.—The Secretary of Homeland Security, in coordination with the Secretary of Agriculture, shall establish a program to provide grants to communities to facilitate the participation of State and local animal health care officials in community emergency planning efforts.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for fiscal year 2004.

''SEC. 899C. BIOSECURITY AWARENESS AND PROGRAMS.

''(a) IN GENERAL.—The Secretary of Agriculture shall implement a public awareness campaign for farmers, ranchers, and other agricultural producers that emphasizes—

''(1) the need for heightened biosecurity on farms; and

''(2) the reporting of agricultural disease anomalies.

''(b) ON-FARM BIOSECURITY.—

''(1) IN GENERAL.—Not later than 240 days after the date of enactment of this subtitle, in consultation with associations of agricultural producers and taking into consideration research conducted under the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3101 et seq.), the Secretary of Agriculture shall—

''(A) develop guidelines—

''(i) to improve monitoring of vehicles and materials entering or leaving farm or ranch operations; and

''(ii) to control human traffic entering or leaving farm or ranch operations; and

''(B) disseminate the guidelines to agricultural producers through agricultural education seminars and biosecurity training sessions.

''(2) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There are authorized to be appropriated to carry out this subsection—

''(i) $5,000,000 for fiscal year 2004; and

''(ii) such sums as are necessary for each fiscal year thereafter.

''(B) EDUCATION PROGRAM.—Of the amounts made available under subparagraph (A), the Secretary of Agriculture may use such sums as are necessary to establish in each State an education program to distribute the biosecurity guidelines developed under paragraph (1).

''(c) BIOSECURITY GRANT PILOT PROGRAM.—

''(1) IN GENERAL.—Not later than 240 days after the date of enactment of this subtitle, the Secretary of Agriculture shall develop a pilot program to provide incentives, in the forms of grants or low-interest loans, each in an amount not to exceed $10,000, for agricultural producers to restructure farm and ranch operations (based on the biosecurity guidelines developed under subsection (b)(1))—

''(A) to control access to farms or ranches by persons intending to commit an agroterrorist act;

''(B) to prevent the introduction and spread of agricultural diseases; and

''(C) to take other measures to ensure biosecurity.

''(2) REPORT.—Not later than 3 years after the date of enactment of this subtitle, the Secretary of Agriculture shall submit to the appropriate committees of Congress a report that—

''(A) describes the implementation of the pilot program; and

''(B) makes recommendations on expansion of the pilot program.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection—

''(A) $5,000,000 for fiscal year 2004; and

''(B) such sums as are necessary for each of fiscal years 2005 through 2007.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2135) is amended by adding at the end of the items relating to title VIII the following:

''Subtitle J—Agriculture Security Assistance

''Sec. 899A. Definitions.
''Sec. 899B. Response plans.
''Sec. 899C. Biosecurity awareness and programs.''.

S. 430

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 ''Agriculture Security Preparedness Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS.

Congress finds that—

(1) the intentional use of agricultural disease agents to attack United States agriculture threatens an industry that accounts for approximately 13 percent of the gross domestic product of the United States;

(2) the economic impact of a worst-case agricultural disease affecting multiple farms in multiple States could be measured in billions of dollars, including the costs of eradication, production losses, and other market repercussions;

(3) agricultural diseases can be naturally occurring (such as the outbreak of foot-and-mouth disease in Great Britain during 2001) or intentionally created by malicious actors;

(4) risk factors affecting the spread of a plant or animal disease include—

(A) animal density;

(B) animal and plant concentration points (such as auction markets, sale barns, and grain lots);

(C) plant and animal movement;

(D) individuals moving on and off farms;

(E) wildlife; and

(F) weather conditions;

(5) the rapid and widespread movement of animals and crops is an integral part of United States agriculture and the principle means by which an agricultural disease will spread if an agricultural disease occurs;

(6) response planning and mitigation requires the coordination between the animal health and agricultural community, transportation officials, and representatives of the shipping and trucking industry;

(7) the United States Department of Agriculture and State departments of agriculture have responsibility for the protection of the agricultural resources of the United States;

(8) in the event of an agricultural disease, the Department of Agriculture and State departments of agriculture will need the support and resources of other Federal, State, and local agencies that carry out traditional emergency management and response functions;

(9) while the introduction of an infectious foreign animal disease (such as foot-and-mouth disease) will be the primary threat addressed by an agricultural security plan, the principles used to prevent, detect, control, or eradicate such a disease will apply to large-scale outbreaks of other diseases and other agricultural diseases that affect agriculture;

(10) numerous Federal agencies have authorities and responsibilities relating to public, animal, and wildlife health, safety, and management;

(11) the highest priority of the United States, in connection with agricultural diseases, is to prevent the introduction of, detect, control, and eradicate an agricultural disease as quickly as practicable and return the United States to a disease-free status;

(12)(A) the Incident Command System was adopted by the National Fire Academy as the model system of the Academy in 1987 and was later endorsed by the International Association of Chiefs of Police and the American Public Works Association;

(B) the Incident Command System is used by many Federal agencies, such as the Environmental Protection Agency and the United States Fire Administration, while responding to emergencies; and

(C) the Secretary of Agriculture, acting through the Animal and Plant Health Inspection Service, should incorporate the Incident Command System in all agricultural disaster emergency response plans; and

(13) since agricultural diseases will continue to be rare occurrences in the United States, the Department of Agriculture and Federal, State, and local partners will need to reinforce preparedness, training, and response mechanisms—

(A) through an all-hazard approach to all agricultural disaster emergencies; and

(B) by gaining field experience in foreign countries where high-risk agricultural diseases are endemic.

SEC. 3. AGRICULTURAL BIOSECURITY.

(a) IN GENERAL.—Title VIII of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2220) is amended by adding at the end the following:

"Subtitle J—Agricultural Biosecurity

"SEC. 899A. DEFINITIONS.

''In this subtitle:

''(1) AGRICULTURAL DISEASE.—The term 'agricultural disease' means an outbreak of a plant or animal disease, or a pest infestation, that requires prompt action in order to prevent injury or damage to people, plants, livestock, property, the economy, or the environment.

''(2) AGRICULTURE.—The term 'agriculture' includes—

''(A) the science and practice of activities relating to food, feed, and fiber production, processing, marketing, distribution, use, and trade;

''(B) family and consumer science, nutrition, food science and engineering, agricultural economics, and other social sciences; and

''(C) forestry, wildlife science, fishery science, aquaculture, floraculture, veterinary medicine, and other environmental and natural resource sciences.

''(3) AGROTERRORISM.—The term 'agroterrorism' means the commission of an agroterrorist act.

''(4) AGROTERRORIST ACT.—The term 'agroterrorist act' means a criminal act consisting of causing or attempting to cause damage or harm to, or destruction or contamination of, a crop, livestock, farm or ranch equipment, a material, any other property associated with agriculture, or a person engaged in agricultural activity, that is committed with the intent—

''(A) to intimidate or coerce a civilian population; or

''(B) to influence the policy of a government by intimidation or coercion.

''(5) BIOSECURITY.—

''(A) IN GENERAL.—The term 'biosecurity' means protection from the risks posed by biological, chemical, or radiological agents to—

''(i) plant or animal health;

''(ii) the agricultural economy;

''(iii) the environment; and

''(iv) human health.

''(B) INCLUSIONS.—The term 'biosecurity' includes the exclusion, eradication, and control of biological agents that cause plant or animal diseases.

''(6) ECOTERRORISM.—The term 'ecoterrorism' means the use of force or violence against a person or property to intimidate or coerce all or part of a government or the civilian population, in furtherance of a social goal in the name of an environmental cause.

"CHAPTER 1—INTERAGENCY COORDINATION

"SEC. 899D. AGRICULTURAL DISEASE LIAISONS.

''(a) AGRICULTURAL DISEASE MANAGEMENT LIAISON.—The Secretary shall establish a senior level position within the Federal Emergency Management Agency to serve, as a primary responsibility, as a liaison for agricultural disease management between—

''(1) the Department; and

''(2)(A) the Federal Emergency Management Agency;

''(B) the Department of Agriculture;

''(C) other Federal agencies responsible for agriculture disease emergency response;

''(D) the emergency management community;

''(E) State emergency officials and agricultural officials; and

''(F) affected industries.

''(b) ANIMAL HEALTH CARE LIAISON.—The Secretary of Health and Human Services shall establish within the Department of Health and Human Services a senior level position to serve, as a primary responsibility, as a liaison between—

''(1) the Department of Health and Human Services; and

''(2)(A) the Department of Agriculture;

''(B) the animal health community;

''(C) the emergency management community; and

''(D) affected industries.

"SEC. 899E. TRANSPORTATION.

''The Secretary of Transportation, in consultation with the Secretary of Agriculture and the Secretary, shall—

''(1) publish in the Federal Register proposed guidelines for restrictions on interstate transportation of an agricultural commodity or product in response to an agricultural disease;

''(2) provide for a comment period for the proposed guidelines of not less than 90 days;

''(3) establish the final guidelines, taking into consideration any comments received under paragraph (2); and

''(4) provide the guidelines to officers and employees of —

''(A) the Department of Agriculture;

''(B) the Department of Transportation; and

''(C) the Department .

"SEC. 899F. REGIONAL, STATE, AND LOCAL PREPARATION.

''(a) ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of Agriculture, shall cooperate with regional, State, and local disaster preparedness officials to include consideration of potential environmental impacts of response activities in planning responses to agricultural diseases.

''(b) DEPARTMENT OF AGRICULTURE.—The Secretary of Agriculture, in consultation with the Secretary, shall—

''(1) develop and implement information-sharing procedures to provide information to and share information among Federal, regional, State, and local officials regarding agricultural threats, risks, and vulnerabilities; and

''(2) cooperate with State agricultural officials, State and local emergency managers, representatives from State land grant colleges and research universities, agricultural producers, and agricultural trade associations to establish local response plans for agricultural diseases.

''(c) FEDERAL EMERGENCY MANAGEMENT AGENCY.—The Director of the Federal Emergency Management Agency, in consultation with the Secretary of Agriculture, shall—

''(1) establish a task force, consisting of agricultural producers and State and local emergency response officials, to identify best practices for regional and State agricultural disease programs;

''(2) distribute to States and localities a report that describes the best practices; and

''(3) design and distribute packages containing exercises for training, based on the identified best practices, in the form of printed materials and electronic media, for distribution to State and local emergency managers and State agricultural officials.

"SEC. 899G. STUDY ON FEASIBILITY OF ESTABLISHING A NATIONAL PLANT DISEASE LABORATORY.

''Not later than 270 days after the date of enactment of this subtitle, the Secretary of Agriculture shall submit to the appropriate committees of Congress a report on the feasibility of establishing a national plant disease laboratory, based on the model of the Centers for Disease Control and Prevention, with the primary task of—

''(1) integrating and coordinating a nationwide system of independent plant disease diagnostic laboratories, including plant clinics maintained by land grant colleges and universities; and

''(2) increasing the capacity, technical infrastructure, and information-sharing capabilities of laboratories described in paragraph (1).

"CHAPTER 2—INTERNATIONAL ACTIVITIES

"SEC. 899J. INTERNATIONAL AGRICULTURAL DISEASE SURVEILLANCE.

''Not later than 1 year after the date of enactment of this subtitle, the Secretary of Agriculture, in consultation with the Secretary of State and the Administrator of the United States Agency for International Development, shall submit to the appropriate committees of Congress a report on measures taken by the Secretary of Agriculture—

''(1) to streamline the process of notification by the Secretary of Agriculture to Federal agencies in the event of agricultural diseases in foreign countries; and

''(2) to cooperate with representatives of foreign countries, international organizations, and industry to devise and implement methods of sharing information on international agricultural diseases and unusual agricultural activities.

"SEC. 899K. INSPECTIONS OF IMPORTED AGRICULTURAL PRODUCTS.

''The Secretary shall—

''(1) cooperate with the Secretary of Agriculture and appropriate Federal intelligence officials to improve the ability of the Department of Agriculture to identify agricultural commodities and products, livestock, and other goods imported from suspect locations recognized by the intelligence community as having—

''(A) experienced agricultural terrorist activities or unusual agricultural diseases; or

''(B) harbored agroterrorists; and

''(2) use the information collected under paragraph (1) to establish inspection priorities.

"SEC. 899L. BILATERAL MUTUAL ASSISTANCE AGREEMENTS.

''The Secretary of State, in coordination with the Secretary of Agriculture and the Secretary, shall—

''(1) enter into mutual assistance agreements with other countries for assistance in the event of an agricultural disease—

''(A) to provide training to veterinarians and agriculture specialists of the United States in the identification, diagnosis, and control of foreign agricultural diseases;

''(B) to provide resources and personnel to foreign governments with limited resources to respond to agricultural diseases; and

''(C) to participate in bilateral training programs and exercises; and

''(2) provide funding for personnel to participate in related exchange and training programs.

"CHAPTER 3—RESPONSE ACTIVITIES

"SEC. 899O. STUDY ON FEASIBILITY OF ESTABLISHING A NATIONAL AGROTERRORISM AND ECOTERRORISM INCIDENT CLEARINGHOUSE.

''Not later than 240 days after the date of enactment of this subtitle, the Attorney General, in conjunction with the Secretary of Agriculture, shall submit to the appropriate committees of Congress a report on the feasibility and estimated cost of establishing and maintaining a national agroterrorism incident clearinghouse to gather information for use in coordinating and assisting investigations on incidents of—

''(1) agroterrorism committed against or directed at—

''(A) any plant or animal enterprise; or

''(B) any person, because of any actual or perceived connection of the person with, or support by the person of, agriculture; and

''(2) ecoterrorism.

''SEC. 899P. REVIEW OF LEGAL AUTHORITY.

''(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of Agriculture, shall conduct a review of State and local laws relating to agroterrorism and biosecurity to determine—

''(1) the extent to which those laws facilitate or impede the implementation of current or proposed response plans with respect to agricultural diseases;

''(2) whether an injunction issued by a State court could—

''(A) delay the implementation of a Federal response plan; or

''(B) affect the extent to which an agricultural disease spreads; and

''(3) the types and extent of legal evidence that may be required by State courts before a response plan may be implemented.

''(b) REPORT.—Not later than 1 year after the date of enactment of this subtitle, the Attorney General shall submit to the appropriate committees of Congress a report that describes the results of the review conducted under subsection (a) (including any recommendations of the Attorney General).

''SEC. 899Q. INFORMATION SHARING.

''The Secretary of Agriculture, in cooperation with the Attorney General, shall develop and implement a system to share information during all stages of an agroterrorist act.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2135) is amended by adding at the end of the items relating to title VIII the following:

''Subtitle J—Agricultural Biosecurity

''Sec. 899A. Definitions.

''CHAPTER 1—INTERAGENCY COORDINATION

''Sec. 899D. Agricultural disease liaisons.
''Sec. 899E. Transportation.
''Sec. 899F. Regional, State, and local preparation.
''Sec. 899G. Study on feasibility of establishing a national plant disease laboratory.

''CHAPTER 2—INTERNATIONAL ACTIVITIES

''Sec. 899J. International agricultural disease surveillance.
''Sec. 899K. Inspections of imported agricultural products.
''Sec. 899L. Bilateral mutual assistance agreements

''CHAPTER 3—LEGAL DEFINITIONS AND RESPONSE ACTIVITIES

''Sec. 899O. Study on feasibility of establishing a national agroterrorism and ecoterrorism incident clearinghouse.
''Sec. 899P. Review of legal authority.
''Sec. 899Q. Information sharing.''.

SEC. 4. INCLUSION OF AGROTERRORISM IN TERRORIST ACTS INVOLVING WEAPONS OF MASS DESTRUCTION.

Section 2332a(a) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the comma at the end and inserting ''; or''; and

(3) by inserting after paragraph (3) the following:

''(4) against private property, including property used for agricultural or livestock operations;''.

By Mr. BAUCUS:

S. 428. A bill to provide for the distribution of judgment funds to the Assiniboine and Sioux Tribes of the Fort Peck Reservation; to the Committee on Indian Affairs.

Mr. BAUCUS. Mr. President, I rise today to reintroduce a bill I had introduced during the 107th Congress, which will provide for the use and distribution of judgment funds awarded to the Assiniboine and Sioux Tribes of the Fort Peck Reservation in northeast Montana.

In 1987, the Assiniboine and Sioux Tribes of the Fort Peck Reservation brought suit against the United States to recover interest earned on their trust funds while those funds were in Special Deposit and IMPL-Agency accounts. The case was filed in the U.S. Claims court, and docketed as No. 773–87–L.

After the court ruled that the United States was liable to the Fort Peck Tribes and individual Indians for interest on those funds, the tribes and the United States reached an agreement for settling the claims in the case, for the sum of $4,522,551.84. The court approved the settlement agreement.

The settlement agreement further provided that the judgment be divided between the Fort Peck Tribes and those individual Indians who are found to be eligible to share in the judgment. On January 31, 2001, the court approved a stipulation between the parties that defined the procedures by which the Fort Peck Tribes' and individual Indians' respective shares in the judgment would be determined and distributed to them.

Pursuant to the court-approved stipulation in the case, on February 14, 2001, a portion of the tribe's share of the judgment was deposited into an account in Treasury for the use of the Fort Peck Tribes. As provided by the court-approved stipulation, those funds are to be available for immediate use by the tribe pursuant to a plan adopted under the Indian Tribal Judgment Funds Use or Distribution Act, 25 U.S.C. 1401 et seq. The court-approved stipulation further recognized that the tribe will most likely receive additional payments from this settlement once the work identifying all individuals eligible to share in the judgment is complete and the pro rata shares are finally computed. Those funds, too, are to be available for use by the tribe in accord with a plan adopted under the Tribal Judgment Funds Use or Distribution Act.

As required by the stipulation and the Tribal Judgment Funds Use or Distribution Act, the tribe developed a plan for the use of the tribe's share of the settlement. Under the plan, the Tribe's share of the judgment will be used for tribal health, education, housing, and social services programs.

The tribe submitted its plan to the Department of the Interior for review and approval. Public hearings were held during which the views and recommendations of tribal members were heard regarding the plan. The tribe has been advised that the Department of Interior has no objection to the tribe's plan and can approve it. However, although the plan was developed and public hearing held during 2001, the Interior Department did not complete its review of the plan, nor submit the approved plan to Congress within the 1-year deadline imposed by the Tribal Judgment Fund Use or Distribution Act. As a result, in order for the Fort Peck Tribe to make use of the judgment awarded to the tribe, it is necessary for Congress to formally adopt legislation approving the tribe's plan. The proposed bill language, would serve this purpose.

This judgment is based on money that rightfully belongs to the Fort Peck tribes and should be moved expeditiously through Congress. I look forward to working with the Committee on Indian Affairs to move this legislation forward.

By Mrs. FEINSTEIN (for herself, Mr. KENNEDY, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mr. DURBIN, and Mr. LEVIN):

S. 429. A bill to amend the Internal Revenue Code of 1986 to regulate certain 50 caliber sniper weapons in the same manner as machine guns and other firearms, and for other purposes; to the Committee on Finance.

Mrs. FEINSTEIN. Mr. President, I rise on behalf of myself and Senators KENNEDY, SCHUMER, CORZINE, LAUTENBERG, DURBIN, and LEVIN to introduce the ''Anti-Terrorism Military Sniper Weapon Reclassification Act of 2003.''

This bill, identical to legislation I have introduced in the last two Congresses, will reclassify powerful fifty-caliber military sniper rifles under the National Firearms Act, thus making it much more difficult for terrorists, doomsday cults, and criminals to obtain these guns for illegitimate use.

Fifty-caliber sniper rifles, manufactured by a small handful of companies and individuals, are deadly, military style assault weapons, designed for armed combat with wartime enemies. They weight up to 28 pounds and are capable of piercing light armor at more than 4 miles. The guns enable a single shooter to destroy enemy aircraft, jeeps, tanks, personnel carriers, bunkers, fuel stations, and even communication centers. As a result, their use by military organizations worldwide has been spreading rapidly.

But along with the increasing military use of the gun, we have also seen increased use of the weapon by violent criminals and terrorists around the world.

These weapons are deadly accurate up to 2,000 yards. This means that a shooter using a 50-caliber weapon can reliably hit a target more than a mile away. In fact, according to a training manual for military and police snipers published in 1993, a bullet from this gun ''even at one and a half miles crashes into a target with more energy than Dirty Harry's famous .44 magnum at point-blank'' range.

And the gun is ''effective'' up to 7,500 yards. In other words, although it may be hard to aim at this distance, the gun will have its desired destructive effect at that distance—more than 4 miles from the target.

The weapon can penetrate several inches of steel, concrete, or even light armor. In fact, many ranges used for target practice do not even have enough safety features to accommodate these guns—they are just too powerful.

Recent advances in weapons technology allow this gun to be used by civilians against armored limousines, bunkers, individuals, and even aircraft—in fact, one advertisement for the gun apparently promoted the weapon as able to ''wreck several million dollars' worth of jet aircraft with one or two dollars worth of cartridge.''

This gun is so powerful that one dealer told undercover GAO investigators ''You'd better buy one soon. It's only a matter of time before someone lets go a round on a range that travels so far, it hits a school bus full of kids. The government will definitely ban .50-calibers. This gun is just too powerful.''

When I first introduced this bill, I commented that a study by the General Accounting Office revealed some eye-opening facts about how and where this gun is used, and how easily it is obtained. The GAO reports that many of these guns wind up in the hands of domestic and international terrorists, religious cults, outlaw motorcycle gangs, drug traffickers, and violent criminals.

According to a special agent at ATF's Atlanta Field Division, the Barrett .50-caliber rifle is ''a devastatingly powerful weapon against which most troops, most law enforcement and no civilians have any means of defense.'' He added that the rifle is ''a tremendous threat'' for ''those most shocking and horrifying crimes, assassinations, murders, assaults on law enforcement officers.''

In 1998, Federal law enforcement apprehended three men belonging to a radical Michigan militia group. The three were charged with plotting to bomb Federal office buildings, destroy highways and utilities. They were also charged with plotting to assassinate the State's Governor, a U.S. Senator and Federal judges. A .50-caliber sniper rifle was found in their possession along with a cache of weapons that included three illegal machine guns.

One doomsday cult headquartered in Montana purchased 10 of these guns and stockpiled them in an underground bunker, along with thousands of rounds of ammunition and other guns.

At least one .50-caliber gun was recovered by Mexican authorities after a shoot-out with an international drug cartel in that country. The gun was originally purchased in Wyoming, so it is clear that the guns are making their way into the hands of criminals worldwide.

Another .50-caliber sniper rifle, smuggled out of the United States, was used by the Irish Republican Army to kill a large number of British soldiers.

Even more recently we have learned that Al Qaeda has received .50-caliber sniper rifles—rifles that were manufactured right here in the United States. Nearly 2 years ago today, Essam al Ridi, a U.S. agent for Al Qaeda, testified that he acquired 25 Barrett .50-caliber sniper rifles and shipped them to Al Qaeda members in Afghanistan. We have no way of knowing whether Al Qaeda has obtained more or who has supplied them with these weapons, but we can be sure that any .50-caliber weapon in the hands of Al Qaeda will almost certainly be used against Americans or American interests.

Ammunition for these guns is also readily available, even over the Internet. Bullets for these guns include ''armor piercing incendiary'' ammunition that explodes on impact, and even ''armor piercing tracing'' ammunition reminiscent of the ammunition that lit up the skies over Baghdad during the Persian Gulf war.

Several ammunition dealers were willing to sell armor piercing ammunition to an undercover GAO investigator even after the investigator said he wanted the ammunition to pierce an armored limousine or maybe to ''take down'' a helicopter. In fact, our own military helps to provide thousands of rounds of .50-caliber ammunition, by essentially giving away tons of spent cartridges, many of which are then refurbished and sold on the civilian market.

This bill will begin the process of making these guns harder to get and easier to track.

Current law classifies .50-caliber guns as ''long guns,'' subject to the least government regulation for any firearm. Sawed-off shotguns, machine guns, and even handguns are more highly regulated than this military sniper rifle. In fact, many States allow possession of .50-caliber guns by those as young as 14 years old, and there is no regulation on second-hand sales.

Essentially, this bill would reclassify .50-caliber guns under the National Firearms Act, which imposes far stricter standards on powerful and destruction weapons. For instance: NFA guns may only be purchased from a licensed dealer, and not second-hand. This will prevent the sale of these guns at gun shows and in other venues that make it hard for law enforcement to track the weapons.

Second, purchasers of NFA guns must fill out license transfer applications and provide fingerprints to be processed by the FBI in detailed criminal background checks. By reclassifying the .50-caliber, Congress will be making a determination that sellers should be more careful about to whom they give these powerful, military guns.

ATF reports that this background check process takes about 60 days, so prospective gun buyers will face some delay. However, legitimate purchasers of this $7,000 gun can certainly wait that long.

Clearly, placing a few more restrictions on who can get these guns and how is simply common sense. This bill will not ban the sale, use or possession of .50-caliber weapons. The .50-caliber shooting club will not face extinction, and ''legitimate'' purchasers of these guns will not lose their access—even though that, too, might be a reasonable step, since I cannot imagine a legitimate use of this gun.

I do not view the reclassification of .50-caliber weapons so much as an issue of firearm safety, but rather as a matter of national security. And I can say for a fact that I am not alone in that view.

Indeed the U.S. Air Force has studied the scenario of a potential terrorist attack with a .50-caliber weapon. According to a November 2001 article in the Air Force's official magazine, Airman, an antisniper assessment claimed that planes parked on a fully protected U.S. airbase are as vulnerable as ''ducks on a pond'' because the weapons can shoot from beyond most airbase perimeters. The Air Force has addressed the issue and the effectiveness of specially trained countersnipers to respond to a .50-caliber weapon attack on aircraft, fuel tanks, control towers, and personnel.

While I am glad to know our military has given due consideration to the threats posed by .50-caliber weapons, I have real concerns over the threats posed to civilian aviation.

Our Nation's airports in no way match the security measures at air force bases. These commercial facilities handle millions of passengers and tons of cargo each day and are especially vulnerable to the threats posed by .50-caliber weapons.

The threats to civilian aviation have been made abundantly clear over the last year and a half. The events of September 11 certainly showed the ability of terrorists to find loopholes in aviation security.

The recent attack on an Israeli airliner last November in Kenya serves as an example of the threat these weapons pose. Less than 4 months ago, an Israeli airliner, loaded with hundreds of innocent civilians, became the target of a terrorist attack. Two heat-seeking, Russian-made missiles known as SA–7s were launched at Arkia Flight 582 a few minutes after it took off from the Mombasa airport bound for Israel.

Fortunately, the two missiles passed by the jet, and the flight, with 271 people on board, was able to land safely in Tel Aviv a few hours later. A shoulder-fire missile launcher was found on the ground near the airport.

A previously unknown group calling itself the Army of Palestine claimed responsibility for the attacks, but government officials in Kenya and Israel, along with terrorism experts, said the operation was well coordinated and bore the trademarks of Al Qaeda or an affiliated group.

This type of attack, one on civilian aircraft, is exactly the sort that a .50-caliber weapon is capable of. Experts have agreed that .50-caliber weapons aimed at a plane while stationary, or

taking off or arriving could be just as disastrous as a hit from a missile launcher. Gal Luft, co-Director of the Institute for the Analysis of Global Security has described .50-caliber weapons as ''lethal to slow moving planes.''

For further assurance of the potential destruction of these weapons, simply listen to the manufacturers themselves. According to a Barrett Firearms Manufacturing Model 82A1 .50 caliber sniper rifle brochure.

''The cost effectiveness of the Model 82A1 cannot be overemphasized when a round of ammunition purchased for less than 10 U.S. dollars can be used to destroy or disable a modern jet aircraft. The compressor sections of jet engines or the transmissions of helicopters are likely targets for the weapon, making it capable of destroying multimillion dollar aircraft with a single hit delivered to a vital area.''

The Nordic Ammunition Company is the developer of the Raufoss multipurpose ammunition for .50-caliber weapons that combines armor-piercing, incendiary, and explosive features and was used by U.S. forces during the gulf war. According to the company, the ammunition can ignite military jet fuel and has ''the equivalent firing power of a 20-mm projectile to include such targets as helicopters, aircrafts, light armor vehicles, ships, and light fortifications.''

The bill will simply place stricter requirements on the way in which these guns can be sold, and to whom. The measure is meant to offer a reasoned solution to making it harder for terrorists, assassins, and other criminals to obtain these powerful weapons. If we are to continue to allow private citizens to own and use guns of this caliber, range, and destructive power, we should at the very least take greater care in making sure that these guns do no fall into the wrong hands.

I urge my colleagues to support this bill.

By Mr. VOINOVICH:

S. 431. A bill to amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste; to the Committee on Environment and Public Works.

Mr. VOINOVICH. Mr. President, I rise today to introduce legislation that will allow States to finally obtain relief from the seemingly endless stream of solid waste that is flowing into States like Ohio, Pennsylvania, Indiana, Michigan, Virginia and many others.

My bill, ''the Municipal Solid Waste Interstate Transportation and Local Authority Act,'' gives State and local governments the tools they need to limit garbage imports from other States and manage their own waste within their own States.

Ohio receives more than 1.5 million tons of municipal solid waste annually from other States and this number has been increasing regularly. In fact, estimates for 2001 indicate that Ohio imported almost 2 million tons of municipal solid waste, which is almost 600,000 more tons of waste than Ohio imported in 1997. While I am pleased that these shipments have been reduced since our record high of 3.7 million tons in 1989, I believe it is still entirely too high.

Because it is cheap and because it is expedient, communities in other States have simply put their garbage on trains or on trucks and shipped it to be landfilled in States like Ohio, Indiana, Michigan, Pennsylvania and Virginia. This is wrong and it has to stop.

Many State and local governments in importing States have worked hard to develop strategies to reduce waste and plan for future disposal needs. As Governor of Ohio, I worked aggressively to limit shipments of out-of-state waste into Ohio through voluntary cooperation of Ohio landfill operators and agreements with other States. We saw limited relief. Ohio has no assurance that our out-of-state waste numbers won't rise significantly, particularly in light of the closure of the Fresh Kills landfill on Staten Island in 2001. Unfortunately, the Federal courts have prevented States from enacting laws to protect our natural resources from being utilized as landfill space. What has emerged is an unnatural pattern where Ohio and other States—both importing and exporting—have tried to take reasonable steps to encourage conservation and local disposal, only to be undermined by a barrage of court decisions at every turn.

Quite frankly, State and local governments' hands are tied. Lacking a specific delegation of authority from Congress, States that have acted responsibly to implement environmentally sound waste disposal plans and recycling programs are still being subjected to a flood of out-of-state waste. In Ohio, this has undermined our recycling efforts because Ohioans continue to ask why they should recycle to conserve landfill space when it is being used for other States' trash. Our citizens already have to live with the consequences of large amounts of out-of-state waste—increased noise, traffic, wear and tear on our roads and litter that is blown onto private homes, schools and businesses.

Ohio and many other States have taken comprehensive steps to protect our resources and address a significant environmental threat. However, excessive, uncontrolled waste disposal from other States has limited the ability of Ohioans to protect their environment, health and safety. I do not believe the Commerce Clause requires us to service other States at the expense of our own citizens' efforts.

A national solution is long overdue. When I became Governor of Ohio in 1991, I joined a coalition with other Midwest Governors—Governor Bayh, now Senator BAYH, of Indiana, Governor Engler of Michigan and Governor Casey, and later Governors Ridge and O'Bannon, of Pennsylvania—to try to pass effective interstate waste and flow control legislation.

In 1996, Midwest Governors were asked by Congress to reach an agreement with Governors Whitman and Pataki on interstate waste provisions. Our States quickly came to an agreement with New Jersey—the second largest exporting State—on interstate waste provisions. We began discussions with New York, but these were put on hold indefinitely in the wake of their May, 1996 announcement to close the Fresh Kills landfill.

The bill that I am introducing today reflects the agreement that my State, along with Indiana, Michigan and Pennsylvania, reached with then-Governor Whitman.

For Ohio, the most important aspect of this bill is the ability for States to limit future waste flows. For instance, they would have the option to set a ''permit cap,'' which would allow a State to impose a percentage limit on the amount of out-of-state waste that a new facility or expansion of an existing facility could receive annually. Or, a State could choose a provision giving them the authority to deny a permit for a new facility if it is determined that there is not a local or in-state regional need for that facility.

These provisions provide assurances to Ohio and other States that new facilities will not be built primarily for the purpose of receiving out-of-state waste. For instance, in 1996, Ohio EPA had to issue a permit for a landfill that was bidding to take 5,000 tons of garbage a day—approximately 1.5 million tons a year—from Canada alone, which would have doubled the amount of out-of-state waste entering Ohio. Thankfully this landfill lost the Canadian bid. Ironically though, the waste company put their plans on hold to build the facility because there is not enough need for the facility in the State and they need to ensure a steady out-of-state waste flow to make the plan feasible.

In addition, this bill would ensure that landfills and incinerators could not receive trash from other States until local governments approve its receipt. States could also freeze their out-of-state waste at 1993 levels, while some States would be able to reduce these levels to 65 percent by the year 2008. This bill also allows States to reduce the amount of construction and demolition debris they receive by 50 percent in 2014 at the earliest.

States also could impose up to a $3-per-ton cost recovery surcharge on out-of-state waste. This fee would help provide States with the funding necessary to implement solid waste management programs.

Unfortunately, efforts to place reasonable restrictions on out-of-state waste shipments have been perceived by some as an attempt to ban all out-of-state trash. On the contrary, I am not asking for outright authority for States to prohibit all out-of-state waste, nor am I seeking to prohibit

waste from any one State. I am merely asking for reasonable tools that will enable State and local governments to act responsibly to manage their own waste and limit unreasonable waste imports from other States. Such measures would give substantial authority to limit imports and plan facilities around each States' needs.

I believe the time is right to consider and pass an effective interstate waste bill. The bill I am introducing today is a consensus of importing and exporting States—States that have willingly come forward to offer a reasonable solution.

Congress must act this year to give citizens in Ohio and other affected States the relief they need from the truckloads of waste that daily pass through their communities. We have waited too long for a solution. Congress must act now to prevent this problem from spreading further to our neighbors out West and to help our neighbors in the East better manage the trash they generate.

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. 431

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 ''Municipal Solid Waste Interstate Transportation and Local Authority Act of 2003''.

SEC. 2. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT EXISTING FACILITIES.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

''SEC. 4011. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT EXISTING FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) AFFECTED LOCAL GOVERNMENT.—The term 'affected local government', with respect to a facility, means—

''(A) the public body authorized by State law to plan for the management of municipal solid waste for the area in which the facility is located or proposed to be located, a majority of the members of which public body are elected officials;

''(B) in a case in which there is no public body described in subparagraph (A), the elected officials of the city, town, township, borough, county, or parish selected by the Governor and exercising primary responsibility over municipal solid waste management or the use of land in the jurisdiction in which the facility is located or proposed to be located; or

''(C) in a case in which there is in effect an agreement or compact under section 105(b), contiguous units of local government located in each of 2 or more adjoining States that are parties to the agreement, for purposes of providing authorization under subsection (b), (c), or (d) for municipal solid waste generated in the jurisdiction of 1 of those units of local government and received in the jurisdiction of another of those units of local government.

''(2) AUTHORIZATION TO RECEIVE OUT-OF-STATE MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'authorization to receive out-of-State municipal solid waste' means a provision contained in a host community agreement or permit that specifically authorizes a facility to receive out-of-State municipal solid waste.

''(B) SPECIFIC AUTHORIZATION.—

''(i) SUFFICIENT FORMULATIONS.—For the purposes of subparagraph (A), only the following, shall be considered to specifically authorize a facility to receive out-of-State municipal solid waste:

''(I) an authorization to receive municipal solid waste from any place within a fixed radius surrounding the facility that includes an area outside the State;

''(II) an authorization to receive municipal solid waste from any place of origin in the absence of any provision limiting those places of origin to places inside the State;

''(III) an authorization to receive municipal solid waste from a specifically identified place or places outside the State; or

''(IV) a provision that uses such a phrase as 'regardless of origin' or 'outside the State' in reference to municipal solid waste.

''(ii) INSUFFICIENT FORMULATIONS.—For the purposes of subparagraph (A), either of the following, by itself, shall not be considered to specifically authorize a facility to receive out-of-State municipal solid waste:

''(I) A general reference to the receipt of municipal solid waste from outside the jurisdiction of the affected local government.

''(II) An agreement to pay a fee for the receipt of out-of-State municipal solid waste.

''(C) FORM OF AUTHORIZATION.—To qualify as an authorization to receive out-of-State municipal solid waste, a provision need not be in any particular form; a provision shall so qualify so long as the provision clearly and affirmatively states the approval or consent of the affected local government or State for receipt of municipal solid waste from places of origin outside the State.

''(3) DISPOSAL.—The term 'disposal' includes incineration.

''(4) EXISTING HOST COMMUNITY AGREEMENT.—The term 'existing host community agreement' means a host community agreement entered into before January 1, 2003.

''(5) FACILITY.—The term 'facility' means a landfill, incinerator, or other enterprise that received municipal solid waste before the date of enactment of this section.

''(6) GOVERNOR.—The term 'Governor', with respect to a facility, means the chief executive officer of the State in which a facility is located or proposed to be located or any other officer authorized under State law to exercise authority under this section.

''(7) HOST COMMUNITY AGREEMENT.—The term 'host community agreement' means a written, legally binding agreement, lawfully entered into between an owner or operator of a facility and an affected local government that contains an authorization to receive out-of-State municipal solid waste.

''(8) MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'municipal solid waste' means—

''(i) material discarded for disposal by—

''(I) households (including single and multifamily residences); and

''(II) public lodgings such as hotels and motels; and

''(ii) material discarded for disposal that was generated by commercial, institutional, and industrial sources, to the extent that the material—

''(I) is essentially the same as material described in clause (i); or

''(II) is collected and disposed of with material described in clause (i) as part of a normal municipal solid waste collection service.

''(B) INCLUSIONS.—The term 'municipal solid waste' includes—

''(i) appliances;

''(ii) clothing;

''(iii) consumer product packaging;

''(iv) cosmetics;

''(v) disposable diapers;

''(vi) food containers made of glass or metal;

''(vii) food waste;

''(viii) household hazardous waste;

''(ix) office supplies;

''(x) paper; and

''(xi) yard waste.

''(C) EXCLUSIONS.—The term 'municipal solid waste' does not include—

''(i) solid waste identified or listed as a hazardous waste under section 3001, except for household hazardous waste;

''(ii) solid waste resulting from—

''(I) a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604, 9606);

''(II) a response action taken under a State law with authorities comparable to the authorities contained in either of those sections; or

''(III) a corrective action taken under this Act;

''(iii) recyclable material—

''(I) that has been separated, at the source of the material, from waste destined for disposal; or

''(II) that has been managed separately from waste destined for disposal, including scrap rubber to be used as a fuel source;

''(iv) a material or product returned from a dispenser or distributor to the manufacturer or an agent of the manufacturer for credit, evaluation, and possible potential reuse;

''(v) solid waste that is—

''(I) generated by an industrial facility; and

''(II) transported for the purpose of treatment, storage, or disposal to a facility (which facility is in compliance with applicable State and local land use and zoning laws and regulations) or facility unit—

''(aa) that is owned or operated by the generator of the waste;

''(bb) that is located on property owned by the generator of the waste or a company with which the generator is affiliated; or

''(cc) the capacity of which is contractually dedicated exclusively to a specific generator;

''(vi) medical waste that is segregated from or not mixed with solid waste;

''(vii) sewage sludge or residuals from a sewage treatment plant; or

''(viii) combustion ash generated by a resource recovery facility or municipal incinerator.

''(9) NEW HOST COMMUNITY AGREEMENT.—The term 'new host community agreement' means a host community agreement entered into on or after the date of enactment of this section.

''(10) OUT-OF-STATE MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'out-of-State municipal solid waste', with respect to a State, means municipal solid waste generated outside the State.

''(B) INCLUSION.—The term 'out-of-State municipal solid waste' includes municipal solid waste generated outside the United States.

''(11) RECEIVE.—The term 'receive' means receive for disposal.

''(12) RECYCLABLE MATERIAL.—

''(A) IN GENERAL.—The term 'recyclable material' means a material that may feasibly be used as a raw material or feedstock in place of or in addition to, virgin material in the manufacture of a usable material or product.

''(B) VIRGIN MATERIAL.—In subparagraph (A), the term 'virgin material' includes petroleum.

''(b) PROHIBITION OF RECEIPT FOR DISPOSAL OF OUT-OF-STATE WASTE.—No facility may receive for disposal out-of-State municipal solid waste except as provided in subsections (c), (d), and (e).

''(c) EXISTING HOST COMMUNITY AGREEMENTS.—

''(1) IN GENERAL.—Subject to subsection (f), a facility operating under an existing host community agreement may receive for disposal out-of-State municipal solid waste if—

''(A) the owner or operator of the facility has complied with paragraph (2); and

''(B) the owner or operator of the facility is in compliance with all of the terms and conditions of the host community agreement.

''(2) PUBLIC INSPECTION OF AGREEMENT.—Not later than 90 days after the date of enactment of this section, the owner or operator of a facility described in paragraph (1) shall—

''(A) provide a copy of the existing host community agreement to the State and affected local government; and

''(B) make a copy of the existing host community agreement available for inspection by the public in the local community.

''(d) NEW HOST COMMUNITY AGREEMENTS.—

''(1) IN GENERAL.—Subject to subsection (f), a facility operating under a new host community agreement may receive for disposal out-of-State municipal solid waste if—

''(A) the agreement meets the requirements of paragraphs (2) through (5); and

''(B) the owner or operator of the facility is in compliance with all of the terms and conditions of the host community agreement.

''(2) REQUIREMENTS FOR AUTHORIZATION.—

''(A) IN GENERAL.—Authorization to receive out-of-State municipal solid waste under a new host community agreement shall—

''(i) be granted by formal action at a meeting;

''(ii) be recorded in writing in the official record of the meeting; and

''(iii) remain in effect according to the terms of the new host community agreement.

''(B) SPECIFICATIONS.—An authorization to receive out-of-State municipal solid waste shall specify terms and conditions, including—

''(i) the quantity of out-of-State municipal solid waste that the facility may receive; and

''(ii) the duration of the authorization.

''(3) INFORMATION.—Before seeking an authorization to receive out-of-State municipal solid waste under a new host community agreement, the owner or operator of the facility seeking the authorization shall provide (and make readily available to the State, each contiguous local government and Indian tribe, and any other interested person for inspection and copying) the following:

''(A) A brief description of the facility, including, with respect to the facility and any planned expansion of the facility, a description of—

''(i) the size of the facility;

''(ii) the ultimate municipal solid waste capacity of the facility; and

''(iii) the anticipated monthly and yearly volume of out-of-State municipal solid waste to be received at the facility.

''(B) A map of the facility site that indicates—

''(i) the location of the facility in relation to the local road system;

''(ii) topographical and general hydrogeological features;

''(iii) any buffer zones to be acquired by the owner or operator; and

''(iv) all facility units.

''(C) A description of—

''(i) the environmental characteristics of the site, as of the date of application for authorization;

''(ii) ground water use in the area, including identification of private wells and public drinking water sources; and

''(iii) alterations that may be necessitated by, or occur as a result of, operation of the facility.

''(D) A description of—

''(i) environmental controls required to be used on the site (under permit requirements), including—

''(I) run-on and run off management;

''(II) air pollution control devices;

''(III) source separation procedures;

''(IV) methane monitoring and control;

''(V) landfill covers;

''(VI) landfill liners or leachate collection systems; and

''(VII) monitoring programs; and

''(ii) any waste residuals (including leachate and ash) that the facility will generate, and the planned management of the residuals.

''(E) A description of site access controls to be employed by the owner or operator and road improvements to be made by the owner or operator, including an estimate of the timing and extent of anticipated local truck traffic.

''(F) A list of all required Federal, State, and local permits.

''(G) Estimates of the personnel requirements of the facility, including—

''(i) information regarding the probable skill and education levels required for job positions at the facility; and

''(ii) to the extent practicable, a distinction between preoperational and postoperational employment statistics of the facility.

''(H) Any information that is required by State or Federal law to be provided with respect to—

''(i) any violation of environmental law (including regulations) by the owner or operator or any subsidiary of the owner or operator;

''(ii) the disposition of any enforcement proceeding taken with respect to the violation; and

''(iii) any corrective action and rehabilitation measures taken as a result of the proceeding.

''(I) Any information that is required by Federal or State law to be provided with respect to compliance by the owner or operator with the State solid waste management plan.

''(J) Any information that is required by Federal or State law to be provided with respect to gifts and contributions made by the owner or operator.

''(4) ADVANCE NOTIFICATION.—Before taking formal action to grant or deny authorization to receive out-of-State municipal solid waste under a new host community agreement, an affected local government shall—

''(A) notify the State, contiguous local governments, and any contiguous Indian tribes;

''(B) publish notice of the proposed action in a newspaper of general circulation at least 15 days before holding a hearing under subparagraph (C), except where State law provides for an alternate form of public notification; and

''(C) provide an opportunity for public comment in accordance with State law, including at least 1 public hearing.

''(5) SUBSEQUENT NOTIFICATION.—Not later than 90 days after an authorization to receive out-of-State municipal solid waste is granted under a new host community agreement, the affected local government shall give notice of the authorization to—

''(A) the Governor;

''(B) contiguous local governments; and

''(C) any contiguous Indian tribes.

''(e) RECEIPT FOR DISPOSAL OF OUT-OF-STATE MUNICIPAL SOLID WASTE BY FACILITIES NOT SUBJECT TO HOST COMMUNITY AGREEMENTS.—

''(1) PERMIT.—

''(A) IN GENERAL.—Subject to subsection (f), a facility for which, before the date of enactment of this section, the State issued a permit containing an authorization may receive out-of-State municipal solid waste if—

''(i) not later than 90 days after the date of enactment of this section, the owner or operator of the facility notifies the affected local government of the existence of the permit; and

''(ii) the owner or operator of the facility complies with all of the terms and conditions of the permit after the date of enactment of this section.

''(B) DENIED OR REVOKED PERMITS.—A facility may not receive out-of-State municipal solid waste under subparagraph (A) if the operating permit for the facility (or any renewal of the operating permit) was denied or revoked by the appropriate State agency before the date of enactment of this section unless the permit or renewal was granted, renewed, or reinstated before that date.

''(2) DOCUMENTED RECEIPT DURING 1993.—

''(A) IN GENERAL.—Subject to subsection (f), a facility that, during 1993, received out-of-State municipal solid waste may receive out-of-State municipal solid waste if the owner or operator of the facility submits to the State and to the affected local government documentation of the receipt of out-of-State municipal solid waste during 1993, including information about—

''(i) the date of receipt of the out-of-State municipal solid waste;

''(ii) the volume of out-of-State municipal solid waste received in 1993;

''(iii) the place of origin of the out-of-State municipal solid waste received; and

''(iv) the type of out-of-State municipal solid waste received.

''(B) FALSE OR MISLEADING INFORMATION.—Documentation submitted under subparagraph (A) shall be made under penalty of perjury under State law for the submission of false or misleading information.

''(C) AVAILABILITY OF DOCUMENTATION.—The owner or operator of a facility that receives out-of-State municipal solid waste under subparagraph (A)—

''(i) shall make available for inspection by the public in the local community a copy of the documentation submitted under subparagraph (A); but

''(ii) may omit any proprietary information contained in the documentation.

''(3) BI-STATE METROPOLITAN STATISTICAL AREAS.—

''(A) IN GENERAL.—A facility in a State may receive out-of-State municipal solid waste if the out-of-State municipal solid waste is generated in, and the facility is located in, the same bi-State level A metropolitan statistical area (as defined and listed by the Director of the Office of Management and Budget as of the date of enactment of this section) that contains 2 contiguous major cities, each of which is in a different State.

''(B) GOVERNOR AGREEMENT.—A facility described in subparagraph (A) may receive out-of-State municipal solid waste only if the Governor of each State in the bi-State metropolitan statistical area agrees that the facility may receive out-of-State municipal solid waste.

''(f) REQUIRED COMPLIANCE.—A facility may not receive out-of-State municipal solid waste under subsection (c), (d), or (e) at any time at which the State has determined that—

''(1) the facility is not in compliance with applicable Federal and State laws (including regulations) relating to—

''(A) facility design and operation; and

''(B)(i) in the case of a landfill—

''(I) facility location standards;

''(II) leachate collection standards;

''(III) ground water monitoring standards; and

''(IV) standards for financial assurance and for closure, postclosure, and corrective action; and

''(ii) in the case of an incinerator, the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429); and

''(2) the noncompliance constitutes a threat to human health or the environment.

''(g) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE.—

''(1) LIMITS ON QUANTITY OF WASTE RECEIVED.—

''(A) LIMIT FOR ALL FACILITIES IN THE STATE.—

''(i) IN GENERAL.—A State may limit the quantity of out-of-State municipal solid waste received annually at each facility in the State to the quantity described in paragraph (2).

''(ii) NO CONFLICT.—

''(I) IN GENERAL.—A limit under clause (i) shall not conflict with—

''(aa) an authorization to receive out-of-State municipal solid waste contained in a permit; or

''(bb) a host community agreement entered into between the owner or operator of a facility and the affected local government.

''(II) CONFLICT.—A limit shall be treated as conflicting with a permit or host community agreement if the permit or host community agreement establishes a higher limit, or if the permit or host community agreement does not establish a limit, on the quantity of out-of-State municipal solid waste that may be received annually at the facility.

''(B) LIMIT FOR PARTICULAR FACILITIES.—

''(i) IN GENERAL.—An affected local government that has not executed a host community agreement with a particular facility may limit the quantity of out-of-State municipal solid waste received annually at the facility to the quantity specified in paragraph (2).

''(ii) NO CONFLICT.—A limit under clause (i) shall not conflict with an authorization to receive out-of-State municipal solid waste contained in a permit.

''(C) EFFECT ON OTHER LAWS.—Nothing in this subsection supersedes any State law relating to contracts.

''(2) LIMIT ON QUANTITY.—

''(A) IN GENERAL.—For any facility that commenced receiving documented out-of-State municipal solid waste before the date of enactment of this section, the quantity referred to in paragraph (1) for any year shall be equal to the quantity of out-of-State municipal solid waste received at the facility during calendar year 1993.

''(B) DOCUMENTATION.—

''(i) CONTENTS.—Documentation submitted under subparagraph (A) shall include information about—

''(I) the date of receipt of the out-of-State municipal solid waste;

''(II) the volume of out-of-State municipal solid waste received in 1993;

''(III) the place of origin of the out-of-State municipal solid waste received; and

''(IV) the type of out-of-State municipal solid waste received.

''(ii) FALSE OR MISLEADING INFORMATION.—Documentation submitted under subparagraph (A) shall be made under penalty of perjury under State law for the submission of false or misleading information.

''(3) NO DISCRIMINATION.—In establishing a limit under this subsection, a State shall act in a manner that does not discriminate against any shipment of out-of-State municipal solid waste on the basis of State of origin.

''(h) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE TO DECLINING PERCENTAGES OF QUANTITIES RECEIVED DURING 1993.—

''(1) IN GENERAL.—A State in which facilities received more than 650,000 tons of out-of-State municipal solid waste in calendar year 1993 may establish a limit on the quantity of out-of-State municipal solid waste that may be received at all facilities in the State described in subsection (e)(2) in the following quantities:

''(A) In calendar year 2004, 95 percent of the quantity received in calendar year 1993.

''(B) In each of calendar years 2005 through 2008, 95 percent of the quantity received in the previous year.

''(C) In each calendar year after calendar year 2008, 65 percent of the quantity received in calendar year 1993.

''(2) UNIFORM APPLICABILITY.—A limit under paragraph (1) shall apply uniformly—

''(A) to the quantity of out-of-State municipal solid waste that may be received at all facilities in the State that received out-of-State municipal solid waste in calendar year 1993; and

''(B) for each facility described in clause (i), to the quantity of out-of-State municipal solid waste that may be received from each State that generated out-of-State municipal solid waste received at the facility in calendar year 1993.

''(3) NOTICE.—Not later than 90 days before establishing a limit under paragraph (1), a State shall provide notice of the proposed limit to each State from which municipal solid waste was received in calendar year 1993.

''(4) ALTERNATIVE AUTHORITIES.—If a State exercises authority under this subsection, the State may not thereafter exercise authority under subsection (g).

''(i) COST RECOVERY SURCHARGE.—

''(1) DEFINITIONS.—In this subsection:

''(A) COST.—The term 'cost' means a cost incurred by the State for the implementation of State laws governing the processing, combustion, or disposal of municipal solid waste, limited to—

''(i) the issuance of new permits and renewal of or modification of permits;

''(ii) inspection and compliance monitoring;

''(iii) enforcement; and

''(iv) costs associated with technical assistance, data management, and collection of fees.

''(B) PROCESSING.—The term 'processing' means any activity to reduce the volume of municipal solid waste or alter the chemical, biological or physical state of municipal solid waste, through processes such as thermal treatment, bailing, composting, crushing, shredding, separation, or compaction.

''(2) AUTHORITY.—A State may authorize, impose, and collect a cost recovery charge on the processing or disposal of out-of-State municipal solid waste in the State in accordance with this subsection.

''(3) AMOUNT OF SURCHARGE.—The amount of a cost recovery surcharge—

''(A) may be no greater than the amount necessary to recover those costs determined in conformance with paragraph (5); and

''(B) in no event may exceed $3.00 per ton of waste.

''(4) USE OF SURCHARGE COLLECTED.—All cost recovery surcharges collected by a State under this subsection shall be used to fund solid waste management programs, administered by the State or a political subdivision of the State, that incur costs for which the surcharge is collected.

''(5) CONDITIONS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a State may impose and collect a cost recovery surcharge on the processing or disposal within the State of out-of-State municipal solid waste if—

''(i) the State demonstrates a cost to the State arising from the processing or disposal within the State of a volume of municipal solid waste from a source outside the State;

''(ii) the surcharge is based on those costs to the State demonstrated under subparagraph (A) that, if not paid for through the surcharge, would otherwise have to be paid or subsidized by the State; and

''(iii) the surcharge is compensatory and is not discriminatory.

''(B) PROHIBITION OF SURCHARGE.—In no event shall a cost recovery surcharge be imposed by a State to the extent that—

''(i) the cost for which recovery is sought is otherwise paid, recovered, or offset by any other fee or tax paid to the State or a political subdivision of the State; or

''(ii) to the extent that the amount of the surcharge is offset by voluntary payments to a State or a political subdivision of the State, in connection with the generation, transportation, treatment, processing, or disposal of solid waste.

''(C) SUBSIDY; NON-DISCRIMINATION.—The grant of a subsidy by a State with respect to entities disposing of waste generated within the State does not constitute discrimination for purposes of subparagraph (A).

''(j) IMPLEMENTATION AND ENFORCEMENT.—A State may adopt such laws (including regulations), not inconsistent with this section, as are appropriate to implement and enforce this section, including provisions for penalties.

''(k) ANNUAL STATE REPORT.—

''(1) FACILITIES.—On February 1, 2004, and on February 1 of each subsequent year, the owner or operator of each facility that receives out-of-State municipal solid waste shall submit to the State information specifying—

''(A) the quantity of out-of-State municipal solid waste received during the preceding calendar year; and

''(B) the State of origin of the out-of-State municipal solid waste received during the preceding calendar year.

''(2) TRANSFER STATIONS.—

''(A) DEFINITION OF RECEIVE FOR TRANSFER.—In this paragraph, the term 'receive for transfer' means receive for temporary storage pending transfer to another State or facility.

''(B) REPORT.—On February 1, 2004, and on February 1 of each subsequent year, the owner or operator of each transfer station that receives for transfer out-of-State municipal solid waste shall submit to the State a report describing—

''(i) the quantity of out-of-State municipal solid waste received for transfer during the preceding calendar year;

''(ii) each State of origin of the out-of-State municipal solid waste received for transfer during the preceding calendar year; and

''(iii) each State of destination of the out-of-State municipal solid waste transferred from the transfer station during the preceding calendar year.

''(3) NO PRECLUSION OF STATE REQUIREMENTS.—The requirements of paragraphs (1) and (2) do not preclude any State requirement for more frequent reporting.

''(4) FALSE OR MISLEADING INFORMATION.—Documentation submitted under paragraphs (1) and (2) shall be made under penalty of perjury under State law for the submission of false or misleading information.

''(5) REPORT.—On March 1, 2004, and on March 1 of each year thereafter, each State to which information is submitted under paragraphs (1) and (2) shall publish and make available to the public a report containing information on the quantity of out-of-State

municipal solid waste received for disposal and received for transfer in the State during the preceding calendar year.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 4010 the following:

''Sec. 4011. Authority to prohibit or limit receipt of out-of-State municipal solid waste at existing facilities.''.

SEC. 3. AUTHORITY TO DENY PERMITS FOR OR IMPOSE PERCENTAGE LIMITS ON RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT NEW FACILITIES.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 2(a)), is amended by adding after section 4011 the following:

''SEC. 4012. AUTHORITY TO DENY PERMITS FOR OR IMPOSE PERCENTAGE LIMITS ON RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT NEW FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) TERMS DEFINED IN SECTION 4011.—The terms 'authorization to receive out-of-State municipal solid waste', 'disposal', 'existing host community agreement', 'host community agreement', 'municipal solid waste', 'out-of-State municipal solid waste', and 'receive' have the meaning given those terms, respectively, in section 4011.

''(2) OTHER TERMS.—The term 'facility' means a landfill, incinerator, or other enterprise that receives out-of-State municipal solid waste on or after the date of enactment of this section.

''(b) AUTHORITY TO DENY PERMITS OR IMPOSE PERCENTAGE LIMITS.—

''(1) ALTERNATIVE AUTHORITIES.—In any calendar year, a State may exercise the authority under either paragraph (2) or paragraph (3), but may not exercise the authority under both paragraphs (2) and (3).

''(2) AUTHORITY TO DENY PERMITS.—A State may deny a permit for the construction or operation of or a major modification to a facility if—

''(A) the State has approved a State or local comprehensive municipal solid waste management plan developed under Federal or State law; and

''(B) the denial is based on a determination, under a State law authorizing the denial, that there is not a local or regional need for the facility in the State.

''(3) AUTHORITY TO IMPOSE PERCENTAGE LIMIT.—A State may provide by law that a State permit for the construction, operation, or expansion of a facility shall include the requirement that not more than a specified percentage (which shall be not less than 20 percent) of the total quantity of municipal solid waste received annually at the facility shall be out-of-State municipal solid waste.

''(c) NEW HOST COMMUNITY AGREEMENTS.—

''(1) IN GENERAL.—Notwithstanding subsection (b)(3), a facility operating under an existing host community agreement that contains an authorization to receive out-of-State municipal solid waste in a specific quantity annually may receive that quantity.

''(2) NO EFFECT ON STATE PERMIT DENIAL.—Nothing in paragraph (1) authorizes a facility described in that paragraph to receive out-of-State municipal solid waste if the State has denied a permit to the facility under subsection (b)(2).

''(d) UNIFORM AND NONDISCRIMINATORY APPLICATION.—A law under subsection (b) or (c)—

''(1) shall be applicable throughout the State;

''(2) shall not directly or indirectly discriminate against any particular facility; and

''(3) shall not directly or indirectly discriminate against any shipment of out-of-State municipal solid waste on the basis of place of origin.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 1(b)) is amended by adding at the end of the items relating to subtitle D the following:

''Sec. 4012. Authority to deny permits for or impose percentage limits on new facilities.''.

SEC. 4. CONSTRUCTION AND DEMOLITION WASTE.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 3(a)), is amended by adding after section 4012 the following:

''SEC. 4013. CONSTRUCTION AND DEMOLITION WASTE.

''(a) DEFINITIONS.—In this section:

''(1) TERMS DEFINED IN SECTION 4011.—The terms 'affected local government', 'Governor', and 'receive' have the meanings given those terms, respectively, in section 4011.

''(2) OTHER TERMS.—

''(A) BASE YEAR QUANTITY.—The term 'base year quantity' means—

''(i) the annual quantity of out-of-State construction and demolition debris received at a State in calendar year 2004, as determined under subsection (c)(2)(B)(i); or

''(ii) in the case of an expedited implementation under subsection (c)(5), the annual quantity of out-of-State construction and demolition debris received in a State in calendar year 2003.

''(B) CONSTRUCTION AND DEMOLITION WASTE.—

''(i) IN GENERAL.—The term 'construction and demolition waste' means debris resulting from the construction, renovation, repair, or demolition of or similar work on a structure.

''(ii) EXCLUSIONS.—The term 'construction and demolition waste' does not include debris that—

''(I) is commingled with municipal solid waste; or

''(II) is contaminated, as determined under subsection (b).

''(C) FACILITY.—The term 'facility' means any enterprise that receives construction and demolition waste on or after the date of enactment of this section, including landfills.

''(D) OUT-OF-STATE CONSTRUCTION AND DEMOLITION WASTE.—The term 'out-of-State construction and demolition waste' means—

''(i) with respect to any State, construction and demolition debris generated outside the State; and

''(ii) construction and demolition debris generated outside the United States, unless the President determines that treatment of the construction and demolition debris as out-of-State construction and demolition waste under this section would be inconsistent with the North American Free Trade Agreement or the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501)).

''(b) CONTAMINATED CONSTRUCTION AND DEMOLITION DEBRIS.—

''(1) IN GENERAL.—For the purpose of determining whether debris is contaminated, the generator of the debris shall conduct representative sampling and analysis of the debris.

''(2) SUBMISSION OF RESULTS.—Unless not required by the affected local government, the results of the sampling and analysis under paragraph (1) shall be submitted to the affected local government for recordkeeping purposes only.

''(3) DISPOSAL OF CONTAMINATED DEBRIS.—Any debris described in subsection (a)(2)(B)(i) that is determined to be contaminated shall be disposed of in a landfill that meets the requirements of this Act.

''(c) LIMIT ON CONSTRUCTION AND DEMOLITION WASTE.—

''(1) IN GENERAL.—A State may establish a limit on the annual amount of out-of-State construction and demolition waste that may be received at landfills in the State.

''(2) REQUIRED ACTION BY THE STATE.—A State that seeks to limit the receipt of out-of-State construction and demolition waste received under this section shall—

''(A) not later than January 1, 2004, establish and implement reporting requirements to determine the quantity of construction and demolition waste that is—

''(i) disposed of in the State; and

''(ii) imported into the State; and

''(B) not later than March 1, 2005—

''(i) establish the annual quantity of out-of-State construction and demolition waste received during calendar year 2004; and

''(ii) report the tonnage received during calendar year 2004 to the Governor of each exporting State.

''(3) REPORTING BY FACILITIES.—

''(A) IN GENERAL.—Each facility that receives out-of-State construction and demolition debris shall report to the State in which the facility is located the quantity and State of origin of out-of-State construction and demolition debris received—

''(i) in calendar year 2003, not later than February 1, 2004; and

''(ii) in each subsequent calendar year, not later than February 1 of the calendar year following that year.

''(B) NO PRECLUSION OF STATE REQUIREMENTS.—The requirement of subparagraph (A) does not preclude any State requirement for more frequent reporting.

''(C) PENALTY.—Each submission under this paragraph shall be made under penalty of perjury under State law.

''(4) LIMIT ON DEBRIS RECEIVED.—

''(A) RATCHET.—A State in which facilities receive out-of-State construction and demolition debris may decrease the quantity of construction and demolition debris that may be received at each facility to an annual percentage of the base year quantity specified in subparagraph (B).

''(B) REDUCED ANNUAL PERCENTAGES.—A limit on out-of-State construction and demolition debris imposed by a State under subparagraph (A) shall be equal to—

''(i) in calendar year 2005, 95 percent of the base year quantity;

''(ii) in calendar year 2006, 90 percent of the base year quantity;

''(iii) in calendar year 2007, 85 percent of the base year quantity;

''(iv) in calendar year 2008, 80 percent of the base year quantity;

''(v) in calendar year 2009, 75 percent of the base year quantity;

''(vi) in calendar year 2010, 70 percent of the base year quantity;

''(vii) in calendar year 2011, 65 percent of the base year quantity;

''(viii) in calendar year 2012, 60 percent of the base year quantity;

''(ix) in calendar year 2013, 55 percent of the base year quantity; and

''(x) in calendar year 2014 and in each subsequent year, 50 percent of the base year quantity.

''(5) EXPEDITED IMPLEMENTATION.—

''(A) RATCHET.—A State in which facilities receive out-of-State construction and demolition debris may decrease the quantity of construction and demolition debris that may be received at each facility to an annual percentage of the base year quantity specified in subparagraph (B) if—

''(i) on the date of enactment of this section, the State has determined the quantity of construction and demolition waste received in the State in calendar year 2003; and

''(ii) the State complies with paragraphs (2) and (3).

''(B) EXPEDITED REDUCED ANNUAL PERCENTAGES.—An expedited implementation of a limit on the receipt of out-of-State construction and demolition debris imposed by a State under subparagraph (A) shall be equal to—

''(i) in calendar year 2004, 95 percent of the base year quantity;

''(ii) in calendar year 2005, 90 percent of the base year quantity;

''(iii) in calendar year 2006, 85 percent of the base year quantity;

''(iv) in calendar year 2007, 80 percent of the base year quantity;

''(v) in calendar year 2008, 75 percent of the base year quantity;

''(vi) in calendar year 2009, 70 percent of the base year quantity;

''(vii) in calendar year 2010, 65 percent of the base year quantity;

''(viii) in calendar year 2011, 60 percent of the base year quantity;

''(ix) in calendar year 2012, 55 percent of the base year quantity; and

''(x) in calendar year 2013 and in each subsequent year, 50 percent of the base year quantity.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 3(b)), is amended by adding at the end of the items relating to subtitle D the following:

''Sec. 4013. Construction and demolition debris.''.

SEC. 5. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL MUNICIPAL SOLID WASTE FLOW CONTROL.

(a) AMENDMENT OF SUBTITLE D.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 4(a)) is amended by adding after section 4013 the following:

''SEC. 4014. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL GOVERNMENT CONTROL OVER MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS.

''(a) FLOW CONTROL AUTHORITY FOR FACILITIES PREVIOUSLY DESIGNATED.—Any State or political subdivision thereof is authorized to exercise flow control authority to direct the movement of municipal solid waste and recyclable materials voluntarily relinquished by the owner or generator thereof to particular waste management facilities, or facilities for recyclable materials, designated as of the suspension date, if each of the following conditions are met:

''(1) The waste and recyclable materials are generated within the jurisdictional boundaries of such State or political subdivision, as such jurisdiction was in effect on the suspension date.

''(2) Such flow control authority is imposed through the adoption or execution of a law, ordinance, regulation, resolution, or other legally binding provision or official act of the State or political subdivision that—

''(A) was in effect on the suspension date;

''(B) was in effect prior to the issuance of an injunction or other order by a court based on a ruling that such law, ordinance, regulation, resolution, or other legally binding provision or official act violated the Commerce Clause of the United States Constitution; or

''(C) was in effect immediately prior to suspension or partial suspension thereof by legislative or official administrative action of the State or political subdivision expressly because of the existence of an injunction or other court order of the type described in subparagraph (B) issued by a court of competent jurisdiction.

''(3) The State or a political subdivision thereof has, for one or more of such designated facilities—

''(A) on or before the suspension date, presented eligible bonds for sale;

''(B) on or before the suspension date, issued a written public declaration or regulation stating that bonds would be issued and held hearings regarding such issuance, and subsequently presented eligible bonds for sale within 180 days of the declaration or regulation; or

''(C) on or before the suspension date, executed a legally binding contract or agreement that—

''(i) was in effect as of the suspension date;

''(ii) obligates the delivery of a minimum quantity of municipal solid waste or recyclable materials to one or more such designated waste management facilities or facilities for recyclable materials; and

''(iii) either—

''(I) obligates the State or political subdivision to pay for that minimum quantity of waste or recyclable materials even if the stated minimum quantity of such waste or recyclable materials is not delivered within a required timeframe; or

''(II) otherwise imposes liability for damages resulting from such failure.

''(b) WASTE STREAM SUBJECT TO FLOW CONTROL.—Subsection (a) authorizes only the exercise of flow control authority with respect to the flow to any designated facility of the specific classes or categories of municipal solid waste and voluntarily relinquished recyclable materials to which such flow control authority was applicable on the suspension date and—

''(1) in the case of any designated waste management facility or facility for recyclable materials that was in operation as of the suspension date, only if the facility concerned received municipal solid waste or recyclable materials in those classes or categories on or before the suspension date; and

''(2) in the case of any designated waste management facility or facility for recyclable materials that was not yet in operation as of the suspension date, only of the classes or categories that were clearly identified by the State or political subdivision as of the suspension date to be flow controlled to such facility.

''(c) DURATION OF FLOW CONTROL AUTHORITY.—Flow control authority may be exercised pursuant to this section with respect to any facility or facilities only until the later of the following:

''(1) The final maturity date of the bond referred to in subsection (a)(3)(A) or (B).

''(2) The expiration date of the contract or agreement referred to in subsection (a)(3)(C).

''(3) The adjusted expiration date of a bond issued for a qualified environmental retrofit. The dates referred to in paragraphs (1) and (2) shall be determined based upon the terms and provisions of the bond or contract or agreement. In the case of a contract or agreement described in subsection (a)(3)(C) that has no specified expiration date, for purposes of paragraph (2) of this subsection the expiration date shall be the first date that the State or political subdivision that is a party to the contract or agreement can withdraw from its responsibilities under the contract or agreement without being in default thereunder and without substantial penalty or other substantial legal sanction. The expiration date of a contract or agreement referred to in subsection (a)(3)(C) shall be deemed to occur at the end of the period of an extension exercised during the term of the original contract or agreement, if the duration of that extension was specified by such contract or agreement as in effect on the suspension date.

''(d) INDEMNIFICATION FOR CERTAIN TRANSPORTATION.—Notwithstanding any other provision of this section, no State or political subdivision may require any person to transport municipal solid waste or recyclable materials, or to deliver such waste or materials for transportation, to any active portion of a municipal solid waste landfill unit if contamination of such active portion is a basis for listing of the municipal solid waste landfill unit on the National Priorities List established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 unless such State or political subdivision or the owner or operator of such landfill unit has indemnified that person against all liability under that Act with respect to such waste or materials.

''(e) OWNERSHIP OF RECYCLABLE MATERIALS.—Nothing in this section shall authorize any State or political subdivision to require any person to sell or transfer any recyclable materials to such State or political subdivision.

''(f) LIMITATION ON REVENUE.—A State or political subdivision may exercise the flow control authority granted in this section only if the State or political subdivision limits the use of any of the revenues it derives from the exercise of such authority to the payment of one or more of the following:

''(1) Principal and interest on any eligible bond.

''(2) Principal and interest on a bond issued for a qualified environmental retrofit.

''(3) Payments required by the terms of a contract referred to in subsection (a)(3)(C).

''(4) Other expenses necessary for the operation and maintenance and closure of designated facilities and other integral facilities identified by the bond necessary for the operation and maintenance of such designated facilities.

''(5) To the extent not covered by paragraphs (1) through (4), expenses for recycling, composting, and household hazardous waste activities in which the State or political subdivision was engaged before the suspension date. The amount and nature of payments described in this paragraph shall be fully disclosed to the public annually.

''(g) INTERIM CONTRACTS.—A contract of the type referred to in subsection (a)(3)(C) that was entered into during the period—

''(1) before November 10, 1995, and after the effective date of any applicable final court order no longer subject to judicial review specifically invalidating the flow control authority of the applicable State or political subdivision; or

''(2) after the applicable State or political subdivision refrained pursuant to legislative or official administrative action from enforcing flow control authority expressly because of the existence of a court order of the type described in subsection (a)(2)(B) issued by a court of the same State or the Federal judicial circuit within which such State is located and before the effective date on which it resumes enforcement of flow control authority after enactment of this section,

shall be fully enforceable in accordance with State law.

''(h) AREAS WITH PRE-1984 FLOW CONTROL.—

''(1) GENERAL AUTHORITY.—A State that on or before January 1, 1984—

''(A) adopted regulations under a State law that required or directed transportation, management, or disposal of municipal solid waste from residential, commercial, institutional, or industrial sources (as defined under State law) to specifically identified waste management facilities, and applied those regulations to every political subdivision of the State; and

''(B) subjected such waste management facilities to the jurisdiction of a State public utilities commission,
may exercise flow control authority over municipal solid waste in accordance with the other provisions of this section.

''(2) ADDITIONAL FLOW CONTROL AUTHORITY.—A State or any political subdivision of a State that meets the requirements of paragraph (1) may exercise flow control authority over all classes and categories of municipal solid waste that were subject to flow control by that State or political subdivision on May 16, 1994, by directing municipal solid waste from any waste management facility that was designated as of May 16, 1994 to any other waste management facility in the State without regard to whether the political subdivision in which the municipal solid waste is generated had designated the particular waste management facility or had issued a bond or entered into a contact referred to in subparagraph (A) or (B) of subsection (a)(3), respectively.

''(3) DURATION OF AUTHORITY.—The authority to direct municipal solid waste to any facility pursuant to this subsection shall terminate with regard to such facility in accordance with subsection (c).

''(i) EFFECT ON AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS.—Nothing in this section shall be interpreted—

''(1) to authorize a political subdivision to exercise the flow control authority granted by this section in a manner inconsistent with State law;

''(2) to permit the exercise of flow control authority over municipal solid waste and recyclable materials to an extent greater than the maximum volume authorized by State permit to be disposed at the waste management facility or processed at the facility for recyclable materials;

''(3) to limit the authority of any State or political subdivision to place a condition on a franchise, license, or contract for municipal solid waste or recyclable materials collection, processing, or disposal; or

''(4) to impair in any manner the authority of any State or political subdivision to adopt or enforce any law, ordinance, regulation, or other legally binding provision or official act relating to the movement or processing of municipal solid waste or recyclable materials which does not constitute discrimination against or an undue burden upon interstate commerce.

''(j) EFFECTIVE DATE.—The provisions of this section shall take effect with respect to the exercise by any State or political subdivision of flow control authority on or after the date of enactment of this section. Such provisions, other than subsection (d), shall also apply to the exercise by any State or political subdivision of flow control authority before such date of enactment, except that nothing in this section shall affect any final judgment that is no longer subject to judicial review as of the date of enactment of this section insofar as such judgment awarded damages based on a finding that the exercise of flow control authority was unconstitutional.

''(k) STATE SOLID WASTE DISTRICT AUTHORITY.—In addition to any other flow control authority authorized under this section a solid waste district or a political subdivision of a State may exercise flow control authority for a period of 20 years after the enactment of this section, for municipal solid waste and for recyclable materials that is generated within its jurisdiction if—

''(1) the solid waste district, or a political subdivision within such district, is required through a recyclable materials recycling program to meet a municipal solid waste reduction goal of at least 30 percent by the year 2005, and uses revenues generated by the exercise of flow control authority strictly to implement programs to manage municipal solid waste and recyclable materials, other than incineration programs; and

''(2) prior to the suspension date, the solid waste district, or a political subdivision within such district—

''(A) was responsible under State law for the management and regulation of the storage, collection, processing, and disposal of solid wastes within its jurisdiction;

''(B) was authorized by State statute (enacted prior to January 1, 1992) to exercise flow control authority, and subsequently adopted or sought to exercise the authority through a law, ordinance, regulation, regulatory proceeding, contract, franchise, or other legally binding provision; and

''(C) was required by State statute (enacted prior to January 1, 1992) to develop and implement a solid waste management plan consistent with the State solid waste management plan, and the district solid waste management plan was approved by the appropriate State agency prior to September 15, 1994.

''(l) SPECIAL RULE FOR CERTAIN CONSORTIA.—For purposes of this section, if—

''(1) two or more political subdivisions are members of a consortium of political subdivisions established to exercise flow control authority with respect to any waste management facility or facility for recyclable materials;

''(2) all of such members have either presented eligible bonds for sale or executed contracts with the owner or operator of the facility requiring use of such facility;

''(3) the facility was designated as of the suspension date by at least one of such members;

''(4) at least one of such members has met the requirements of subsection (a)(2) with respect to such facility; and

''(5) at least one of such members has presented eligible bonds for sale, or entered into a contract or agreement referred to in subsection (a)(3)(C), on or before the suspension date, for such facility,
the facility shall be treated as having been designated, as of May 16, 1994, by all members of such consortium, and all such members shall be treated as meeting the requirements of subsection (a)(2) and (3) with respect to such facility.

''(m) RECOVERY OF DAMAGES.—

''(1) PROHIBITION.—No damages, interest on damages, costs, or attorneys' fees may be recovered in any claim against any State or local government, or official or employee thereof, based on the exercise of flow control authority on or before May 16, 1994.

''(2) APPLICABILITY.—Paragraph (1) shall apply to cases commenced on or after the date of enactment of the Municipal Solid Waste Interstate Transportation and Local Authority Act of 2003, and shall apply to cases commenced before such date except cases in which a final judgment no longer subject to judicial review has been rendered.

''(n) DEFINITIONS.—For the purposes of this section—

''(1) ADJUSTED EXPIRATION DATE.—The term 'adjusted expiration date' means, with respect to a bond issued for a qualified environmental retrofit, the earlier of the final maturity date of such bond or 15 years after the date of issuance of such bond.

''(2) BOND ISSUED FOR A QUALIFIED ENVIRONMENTAL RETROFIT.—The term 'bond issued for a qualified environmental retrofit' means a bond described in paragraph (4)(A) or (B), the proceeds of which are dedicated to financing the retrofitting of a resource recovery facility or a municipal solid waste incinerator necessary to comply with section 129 of the Clean Air Act, provided that such bond is presented for sale before the expiration date of the bond or contract referred to in subsection (a)(3)(A), (B), or (C) that is applicable to such facility and no later than December 31, 1999.

''(3) DESIGNATED.—The term 'designated' means identified by a State or political subdivision for receipt of all or any portion of the municipal solid waste or recyclable materials that is generated within the boundaries of the State or political subdivision. Such designation includes designation through—

''(A) bond covenants, official statements, or other official financing documents issued by a State or political subdivision issuing an eligible bond; and

''(B) the execution of a contract of the type described in subsection (a)(3)(C),
in which one or more specific waste management facilities are identified as the requisite facility or facilities for receipt of municipal solid waste or recyclable materials generated within the jurisdictional boundaries of that State or political subdivision.

''(4) ELIGIBLE BOND.—The term 'eligible bond' means—

''(A) a revenue bond or similar instrument of indebtedness pledging payment to the bondholder or holder of the debt of identified revenues; or

''(B) a general obligation bond,
the proceeds of which are used to finance one or more designated waste management facilities, facilities for recyclable materials, or specifically and directly related assets, development costs, or finance costs, as evidenced by the bond documents.

''(5) FLOW CONTROL AUTHORITY.—The term 'flow control authority' means the regulatory authority to control the movement of municipal solid waste or voluntarily relinquished recyclable materials and direct such solid waste or recyclable materials to one or more designated waste management facilities or facilities for recyclable materials within the boundaries of a State or political subdivision.

''(6) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given that term in section 4011, except that such term—

''(A) includes waste material removed from a septic tank, septage pit, or cesspool (other than from portable toilets); and

''(B) does not include—

''(i) any substance the treatment and disposal of which is regulated under the Toxic Substances Control Act;

''(ii) waste generated during scrap processing and scrap recycling; or

''(iii) construction and demolition debris, except where the State or political subdivision had on or before January 1, 1989, issued eligible bonds secured pursuant to State or local law requiring the delivery of construction and demolition debris to a waste management facility designated by such State or political subdivision.

''(7) POLITICAL SUBDIVISION.—The term 'political subdivision' means a city, town, borough, county, parish, district, or public service authority or other public body created by or pursuant to State law with authority to present for sale an eligible bond or to exercise flow control authority.

''(8) RECYCLABLE MATERIALS.—The term 'recyclable materials' means any materials that have been separated from waste otherwise destined for disposal (either at the source of the waste or at processing facilities) or that have been managed separately from waste destined for disposal, for the purpose of recycling, reclamation, composting of organic materials such as food and yard waste, or reuse (other than for the purpose of incineration). Such term includes scrap tires to be used in resource recovery.

''(9) SUSPENSION DATE.—The term 'suspension date' means, with respect to a State or political subdivision—

''(A) May 16, 1994;

''(B) the date of an injunction or other court order described in subsection (a)(2)(B) that was issued with respect to that State or political subdivision; or

''(C) the date of a suspension or partial suspension described in subsection (a)(2)(C) with respect to that State or political subdivision.

''(10) WASTE MANAGEMENT FACILITY.—The term 'waste management facility' means any facility for separating, storing, transferring, treating, processing, combusting, or disposing of municipal solid waste.''.

(b) TABLE OF CONTENTS.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 4(b)), is amended by adding at the end of the items relating to subtitle D the following:

''Sec. 4014. Congressional authorization of State and local government control over movement of municipal solid waste and recyclable materials.''.

SEC. 6. EFFECT ON INTERSTATE COMMERCE.

No action by a State or affected local government under an amendment made by this Act shall be considered to impose an undue burden on interstate commerce or to otherwise impair, restrain, or discriminate against interstate commerce.

By Mr. CRAIG:

S. 432. A bill to authorize the Secretary of the Interior and the Secretary of Agriculture to conduct and support research into alternative treatments for timber produced from public lands and lands withdrawn from the public domain for the National Forest System, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMITTED RESOLUTIONS

Mr. CRAIG. Mr. President, today I am introducing the Wood Preservation Safety Act of 2003 with my Idaho colleague Senator CRAPO and our friend from Nevada, Mr. ENSIGN. If enacted, this legislation would authorize the Forest Products Laboratory of the US Forest Service to study the effectiveness of silver-based biocides as a wood preservative treatment. This legislation was also introduced in the 107th Congress.

According to silver experts and academics, silver biocides could serve as a viable, safe and cost effective alternative wood preservative. Given silver's long-standing role as an effective biocide, testing should be undertaken to determine silver's suitability as a wood preservative. Thus, I feel it is important to study and fully explore the potential of silver as a wood preservative.

Mining has been an important part of Idaho's history since the late 1800s. It became Idaho's first industry and remains a critical part of Idaho and the nation's economy. Mining in Idaho has supplied the nation with minerals necessary for today's modern lifestyle which many of us take for granted. In 1985, the mines of Idaho's Coeur d'Alene mining district produced their one billionth ounce of silver. The Sunshine Mine was America's richest silver mine, producing over 300 million ounces of silver, more than the entire output of Nevada's famous Comstock Lode. Silver contributes to our quality of life in many ways, and its use as a biocide in wood products is an important application that must be explored.

I look forward to working with my colleagues to pass legislation that would create a comprehensive research program to test the viability of silver-based biocides for the treatment of wood products.

SENATE RESOLUTION 61—AUTHORIZING EXPENDITURES BY THE COMMITTEE IN FINANCE

Mr. GRASSLEY submitted the following resolution; from the Committee on Finance; which was referred to the Committee on Rules and Administration:

S. RES. 61

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under title XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rules XXVI of the Standing Rules of the Senate, the Committee on Finance is authorized from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2(a). The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this resolution shall not exceed $3,511,241, of which amount (1) not to exceed $17,500 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $5,833 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2003, through September 30, 2004, expenses of the committee under this resolution shall not exceed $6,179,693, of which amount (1) not to exceed $30,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2004, through February 28, 2005, expenses of the committee under this resolution shall not exceed $2,634,121, of which amount (1) not to exceed $12,500 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $4,167 may be expended for the training of the professional staff of such committee (under procedures specified by 202(j) of the Legislative Reorganization Act of 1946.)

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2005, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the Chairman of the Committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There authorized such sums as may be necessary for agency contributions related to the compensation of the committee from March 1, 2003, through September 30, 2003; October 1, 2003 through September 30, 2004; and October 1, 2004 through February 28, 2005, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations.''

SENATE RESOLUTION 62—CALLING UPON THE ORGANIZATION OF AMERICAN STATES (OAS) INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, THE EUROPEAN UNION, AND HUMAN RIGHTS ACTIVISTS THROUGHOUT THE WORLD TO TAKE CERTAIN ACTIONS IN REGARD TO THE HUMAN RIGHTS SITUATION IN CUBA

Mr. ENSIGN (for himself, Mr. GRAHAM of Florida, Mr. FRIST, Mr. LIEBERMAN, Mr. BROWNBACK, Mr. NELSON of Florida, Mr. KYL, Mr. ALLEN, Mr. SESSIONS, Mr. REID, and Mr. SANTORUM) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 62

Whereas the democracies of the Western Hemisphere have approved an Inter-American Democratic Charter that sets a regional standard regarding respect for human rights and fundamental freedoms;

Whereas the government of the Republic of Cuba approved and is bound to respect the Charter of the Organization of American States (OAS) and the American Declaration of the Rights and Duties of Man;

Whereas in 2001, 2000, 1999, 1998, and previous years, the government of the Republic of Cuba declined to reply to the OAS Inter-American Commission on Human Rights when it sought the government's views on human rights violations in the Republic of Cuba;

Whereas all countries have an obligation to promote and protect human rights and

fundamental freedoms as stated in the Charter of the United Nations and the Universal Declaration of Human Rights;

Whereas the United Nations Commission on Human Rights considered and passed a resolution in 2002 regarding the situation of human rights in the Republic of Cuba and called for the United Nations High Commissioner for Human Rights to send a personal representative to the Republic of Cuba;

Whereas the United States and other countries remain concerned about violations of human rights and fundamental freedoms in the Republic of Cuba, including the freedoms of expression, association, and assembly, and the rights associated with the administration of justice;

Whereas, according to the Department of State, Cuban authorities use exile as a means of repression and continue to harass, threaten, arbitrarily arrest, detain, imprison, and defame human rights advocates and members of independent professional associations, including journalists, economists, doctors, and lawyers with the goal of coercing them into leaving the country;

Whereas Cuban citizens are routinely jailed solely because their views do not coincide with those of the government;

Whereas Amnesty International in its 2002 report noted an increase in human rights violations in the Republic of Cuba, including short-term arbitrary arrests, threats, summonses, evictions, interrogations, losses of employment, restrictions on travel, house arrests, and other forms of harassment directed by the government against political dissidents, independent journalists, and other activists in an effort to limit their ability to exercise fundamental freedoms;

Whereas Amnesty International also noted with concern the beginning of a trend toward the increased use of violence by Cuban authorities in order to repress dissent;

Whereas Cuban political prisoners are deliberately exposed to harm and poor conditions as a means of punishment, including beatings, denial of medical treatment, forced labor against medical advice, unsanitary eating conditions, and coexistence with inmates carrying highly infectious diseases;

Whereas peaceful dissidents in the Republic of Cuba, such as Oscar Elias Biscet, who upon finishing more than 3 years in jail for ''instigation to commit a crime'' is again in police custody and facing a possible yearlong sentence, are subjected to ongoing harassment and imprisonment;

Whereas many Cubans, such as journalist Bernardo Arevalo Padron who is currently in jail serving a 6 year sentence, are routinely jailed under the charge of ''disrespect'' for making negative statements about the government of the Republic of Cuba;

Whereas many Cubans, such as Carlos Oquendo Rodriguez who is serving 2 years in prison, are routinely jailed under the charge of ''public disorder'' for criticizing the Castro regime;

Whereas many Cubans, such as Francisco Chaviano Gonzalez, the longest serving current Amnesty International prisoner of conscience in the Republic of Cuba, are imprisoned on charges of ''revealing state security secrets'' and ''falsifying public documents'' for promoting democratic practices and human rights;

Whereas many Cubans, such as Juan Carlos Gonzalez Leiva, a blind lawyer and president of the Cuban Foundation for Human Rights, are imprisoned on charges of ''disobedience'' and tortured while incarcerated for peacefully protesting the Republic of Cuba's brutal treatment of dissidents;

Whereas many Cubans, such as Leonardo Miguel Bruzon Avila, president of the 24th of February Movement (named for both a turning point in the Spanish-American War and the day in 1996 when 2 civilian aircraft carrying 4 members of the Cuban American Brothers to the Rescue movement were shot down over international waters by Cuban fighter jets), are charged with ''public disorder'' and held without trial for planning peaceful public ceremonies;

Whereas many Cubans, such as Nestor Rodriguez Lobaina, who is president of the Cuban Youth for Democracy Movement and currently serving a 6 year prison sentence, are charged with ''damages'' for denouncing violations of human rights by the Cuban government and communicating the brutality of the Cuban regime to Cuban citizens and the world;

Whereas many Cubans, such as Jorge Luis García Pérez, who is a founder of the Pedro Luis Boitel Political Prisoners Movement and serving a 15 year prison sentence, are charged with ''enemy propaganda'' and suffer systematic abuse and a lack of medical assistance while in prison, for criticizing communism;

Whereas Amnesty International reports that participants in Oswaldo Paya's Varela Project collecting the required 10,000 signatures on a petition for peaceful change to the legal system of the Republic of Cuba have been harassed, detained, subjected to confiscation of signed petitions, and ''kicked, punched, and threatened'' by Cuban state security officials; and

Whereas the European Parliament rightfully recognized Oswaldo Paya for his work on the Varela Project with the 2002 Sakharov Prize for his human rights work in the Republic of Cuba: Now, therefore, be it

Resolved, That the Senate calls upon—

(1) the Organization of American States Inter-American Commission on Human Rights to continue its reporting on the human rights situation in the Republic of Cuba and to request a visit to the Republic of Cuba for the purposes of reviewing and reporting to the international community on the human rights situation there;

(2) the United Nations High Commissioner for Human Rights and his newly appointed personal representative to vigorously pursue the implementation of the 2002 Resolution regarding the situation of human rights in the Republic of Cuba;

(3) the European Union, to build upon the European Parliament's recognition of Cuban dissidents and, through the appropriate bodies and mechanisms, request to visit the Republic of Cuba for the purpose of reviewing the human rights situation there and issue a report to the international community on its findings; and

(4) human rights organizations throughout the world to issue statements of solidarity with the Cuban human rights activists, political dissidents, prisoners of conscience, independent journalists, and other Cubans seeking to secure their internationally recognized human rights and fundamental freedoms.

Mr. ENSIGN. Mr. President, I rise today to submit a resolution expressing the grave concern of the United States Senate over the horrific human rights conditions in Cuba under the regime of Fidel Castro, and calling on the international community to take concrete steps to help the peaceful dissidents in Cuba who are pressing for democratic change, and being brutally repressed as a result.

The American and Cuban peoples share many things in common—a love of freedom, a fierce spirit of independence, and a desire that our two nations will one day live as friends and neighbors in a hemisphere where the scourge of tyranny has been eradicated.

There is one obstacle to the common aspirations of our two peoples—Fidel Castro. And because of him, our peoples share one more thing in common. Both of our countries have had innocent civilians killed on his orders by his brutal security apparatus.

Seven years ago, on this day, February 24, Cuban MIG fighters confronted three planes flying in international airspace by members of Brothers to the Rescue, a group whose principal mission was to search for rafters in the Florida Straits risking their lives to escape Castro's oppression. Three planes left. Only one plane returned. The other two—unarmed Cessnas—were shot down on the direct orders of Fidel Castro. Three American citizens and one legal resident were murdered in cold blood.

Here is how the Organization of American States Inter-American Commission on Human Rights described the incident: ''The Cuban Air Force never notified nor warned the civil small aircraft, did not attempt to make use of other methods of interception, and never gave them the opportunity to land. The first and only response of the MIGs was the international destruction of the civil aircraft and of their four occupants.''

This event seven years ago shocked our nation. But for Cubans living in Castro's tropical gulag, this sort of brutality is not shocking in the least—it is their every day reality.

And so we introduce this resolution today to express our solidarity with the families of the victims who perished that day, to be sure. However, we also do it to show our solidarity with all those still suffering in Fidel Castro's Cuba—and those brave dissidents who risk their lives each day to press for freedom, democracy and rule of law.

Leonardo Miguel Bruzon Avila, is one such dissident. He is president of the 24th of February Movement and is being held without trial by the Castro regime. His crime? Planning peaceful public ceremonies to commemorate the shoot-down of the Brothers to the Rescue planes.

It is a travesty that more than a decade after the Cold War has ended, a brutal communist dictator is still oppressing people in our hemisphere. Castro's Cuba is like a modern day Jurassic Park—a lost island, where the political dinosaurs of an earlier era still roam, leaving death and destruction in their wake. Our challenge, our mission, is to help the Cuban people escape—to join the 21st century as a free nation.

For some reason, there are still those who see Castro as a romantic revolutionary. It is an image he works hard to promote. But there is nothing romantic about life in Castro's Cuba.

Thus, it is important to call attention to the reality of the conditions he imposes on his people. The UN, the OAS, the EU, and non governmental organizations such as Amnesty International and Human Rights Watch

have done this, but exposing the truth is only the first step. This resolution calls on these entities to do more, because the situation in Cuba is not improving—it is deteriorating.

Amnesty International's 2002 report notes an increase in human rights violations, including short-term arbitrary arrests, threats, summonses, evictions, interrogations, losses of employment, restrictions on travel, and house arrests directed by the government against political dissidents, independent journalists, and other activists in an effort to limit their ability to exercise fundamental freedoms.

No one who disagrees with the Castro brothers' communist dictatorship can live peacefully in Cuba. No one who loves liberty is allowed to flourish. No one who dares to speak out against the Castro government's brutality and repression is permitted to remain free.

And once imprisoned, Cuban political prisoners are deliberately exposed to harm and poor conditions as a means of punishment, including beatings, denial of medical treatment, forced labor against medical advise, and coexistence with inmates carrying highly infectious diseases.

It is critical that we send a message—to Fidel Castro and the world—that we know what is happening under his rule. And we must make sure these peaceful freedom fighters know they are not forgotten.

Natan Sharansky tells the story about his time in the Soviet gulag, when word came that President Reagan had called the Soviet Union an ''Evil Empire.'' The Soviet press had reprinted his remarks, as evidence of his anti-Soviet attitudes. But for the prisoners in the Soviet gulag, it was the first sign that they had not been forgotten—that the leader of the world's most powerful democracy had no illusions about the true nature of that regime—that he knew of their plight and was ready to call the Soviet system what is was—evil.

He spoke about how Reagan and Senator Scoop Jackson became beacons of light to all the political prisoners through the long days and nights of their struggle against the Soviet Union. He said Jackson and Reagan knew the value of freedom and they understood the nature of totalitarian evil. They inspired all of the dissidents with their integrity, their values, and their courage.

With this resolution, we send a signal to all the dissidents and political prisoners in Cuba—that we have no illusions about the nature of Fidel Castro's regime—that we know of their plight and stand ready to help them.

Specifically, this resolution highlights the plight of eight Cuban dissidents who are currently in jail: Oscar Elias Biscet, Bernardo Arevalo Padron, Carlos Oquendo Rodriguez, Francisco Chaviano Gonzalez, Juan Carlos Gonzales Leiva, Leonardo Miguel Bruzon Avila, Nestor Rodriguez Lobaina and Jorge Luis Garíca Pérez.

Unfortunately, as the resolution makes, clear, there are many other political prisoners, charged with the same offenses, enduring the same horrible fate. It is my hope that by engaging the help of the international community, we will improve their condition, secure their release, and eliminate the harassment of human rights activists in the future.

Castro and his cronies must know that the world is watching; that Cuba will remain an international pariah until the human rights situation dramatically improves. And those suffering under the jackboot of his oppression must know that we are watching—and that we will not rest and will not tire and will keep working to support them until they are finally free.

SENATE RESOLUTION 63—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. INHOFE submitted the following resolution; which was referred to the Committee on Environment and Public Works:

S. RES. 63

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Environment and Public Works is authorized from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005 in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. (a) The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this resolution shall not exceed $2,516,590, of which amount (1) not to exceed $4,667 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(I) of the Legislative Reorganization Act of 1946), and (2) not to exceed $1,167 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2003, through September 30, 2004, expenses of the committee under this resolution shall not exceed $4,427,783 of which amount (1) not to exceed $8,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(I) of the Legislative Reorganization Act of 1946), and (2) not to exceed $2,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2004, through February 28, 2005, expenses of the committee under this resolution shall not exceed $1,886,876 of which amount (1) not to exceed $3,333 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(I) of the Legislative Reorganization Act of 1946), and (2) not to exceed $833 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2005.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2003, through September 30, 2003; October 1, 2003 through September 30, 2004; and October 1, 2004, through February 28, 2005, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations.''

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Tuesday, February 25, 2003, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 344, a bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, February 26, 2003, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a business meeting on pending Committee business, to be followed immediately by a hearing on the President's FY 2004 Budget for Indian Programs.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on

Wednesday, February 26, 2003, at 9:15 a.m. in room 301 of the Russell Office Building, to mark up an original resolution authorizing expenditures by committees of the Senate for the period March 1, 2003, through February 28, 2005.

For further information concerning this meeting, please contact Susan Wells at 202–224–6352.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. GRAHAM of South Carolina. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Monday, February 24, 2003, at 5:30 p.m. to conclude a business meeting regarding S. 195, Underground Storage Tank Compliance Act of 2003; Several Committee Resolutions on GSA Prospectuses; and Committee Funding Resolution.

The meeting will be held in the President's Room (S. 216).

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

PRIVILEGES OF THE FLOOR

Mr. LEAHY. Mr. President, I ask unanimous consent that Steven Dettelbach, a detailee to the Committee on the Judiciary, be granted the privilege of the floor during the rest of today and during any votes.

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

Mr. HATCH. Mr. President, I also ask unanimous consent to extend the privilege of the floor for the remainder of the first session of the 108th Congress to Michael Volkov, Wan Kim, and Reed O'Connor, three detailees from the Department of Justice to the majority staff of the Judiciary Committee.

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

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
John P. Dowd:									
Italy	Dollar		1,412.00		4,994.68				6,406.68
Gretchen Saries:									
Italy	Dollar		1,765.00		5,537.18				7,302.18
Total			3,177.00		10,531.86				13,708.86

TOM HARKIN,
Chairman, Committee on Agriculture, Nutrition and Forestry, Jan. 7, 2003.

AMENDMENT TO 3RD QUARTER 2002 CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Keith Luse:									
North Korea	Dollar		746.66		950.00		54.30		1,750.96
China	Dollar		676.53		367.61		225.77		1,269.91
Japan	Dollar		6.55						6.55
United States	Dollar		12.00		1,552.83		54.54		1,619.37
Total			1,441.74		2,870.44		334.61		4,646.79

TOM HARKIN,
Chairman, Committee on Agriculture, Nutrition, and Forestry, Nov. 22, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Daniel K. Inouye:									
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Brussels	Euro		299.00						299.00
Senator Ted Stevens:									
United States	Dollar				2,700.89				2,700.89
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Brussels	Euro		299.00						299.00
Senator Thad Cochran:									
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Brussels	Euro		299.00						299.00
Senator Patrick Leahy:									
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Brussels	Euro		299.00						299.00
Sid Ashworth:									
United States	Dollar				2,700.89				2,700.89
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Brussels	Euro		299.00						299.00
Jennifer Chartrand:									
Italy	Euro		804.12						804.12

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
France	Euro		878.66						878.66
Brussels	Euro		299.00						299.00
Kay Webber:									
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Brussels	Euro		299.00						299.00
Charles Houy:									
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Brussels	Euro		299.00						299.00
Lesley Kalan:									
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Brussels	Euro		299.00						299.00
Paul Grove:									
United States	Dollar				5,872.76				5,872.76
Hong Kong	Dollar		411.00						411.00
Cambodia	Dollar		675.00						675.00
Indonesia	Dollar		494.00						494.00
Thailand	Dollar		232.00						232.00
Christina Evans:									
United States	Dollar				4,269.16		70.00		4,339.16
South Korea	Won		1,256.00						1,256.00
Barry G. Wright:									
United States	Dollar				4,269.16				4,269.16
South Korea	Won		1,256.00						1,256.00
David Davis:									
United States	Dollar				4,269.16				4,269.16
South Korea	Won		1,256.00						1,256.00
Total			23,416.02		24,082.02		70.00		47,568.04

ROBERT C. BYRD,
Chairman, Committee on Appropriations, Jan. 15, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Ted Stevens:									
England	Pound		1,722.25						1,722.25
Senator Ben N. Campbell:									
England	Pound		1,722.25						1,722.25
Senator Thad Cochran:									
England	Pound		1,722.25						1,722.25
Senator Richard Shelby:									
England	Pound		1,722.25						1,722.25
Andy Givens:									
England	Pound		1,722.25						1,722.25
Steve Cortese:									
England	Pound		1,722.25						1,722.25
Charles Houy:									
England	Pound		1,722.25						1,722.25
Kraig Siracuse:									
England	Pound		1,722.25						1,722.25
Kathy Casey:									
England	Pound		1,722.25						1,722.25
Sid Ashworth:									
England	Pound		1,722.25						1,722.25
Jennifer Chartrand:									
England	Pound		1,722.25						1,722.25
Terry Sauvain:									
England	Pound		1,722.25						1,722.25
Kevin Linskey:									
Japan	Yen		596.00						596.00
China	Yuan		1,031.00						1,031.00
Katherine Hennessey:									
Japan	Yen		596.00						596.00
China	Yuan		1,031.00						1,031.00
James Morhard:									
Japan	Yen		596.00				443.15		1,039.15
China	Yuan		1,031.00						1,031.00
Barry G. Wright:									
United States	Dollar				5,015.70				5,015.70
Barry G. Wright:									
Italy	Euro		554.77						554.77
Austria	Euro		402.75						402.75
France	Euro		1,677.73						1,677.73
Total			28,183.25		5,015.70		443.15		33,642.10

ROBERT C. BYRD,
Chairman, Committee on Appropriations, Jan. 15, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Daniel K. Inouye:									
China	Yuan		839.00						839.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Singapore	Dollar		1,004.00						1,004.00
Phillipines	Peso		487.71						487.71
Senator Ted Stevens:									
China	Yuan		839.00						839.00
Singapore	Dollar		1,004.00						1,004.00
Phillipines	Peso		487.71						487.71
Charles Houy:									
China	Yuan		839.00						839.00
Singapore	Dollar		1,004.00						1,004.00
Phillipines	Peso		487.71						487.71
Tom Hawkins:									
China	Yuan		839.00						839.00
Singapore	Dollar		1,004.00						1,004.00
Phillipines	Peso		487.71						487.71
Steve Cortese:									
China	Yuan		839.00						839.00
Singapore	Dollar		1,004.00						1,004.00
Phillipines	Peso		487.71						487.71
Sid Ashworth:									
China	Yuan		839.00						839.00
Singapore	Dollar		1,004.00						1,004.00
Phillipines	Peso		487.71						487.71
Senator Arlen Specter:									
United Kingdom	Pound		688.00						688.00
Netherlands	Euro		221.00						221.00
Senator Arlen Specter:									
Saudi Arabia	Riyal		125.00						125.00
Israel	Shekel		362.00						362.00
Jordan	Dinar		235.00						235.00
Syria	Pound		186.00						186.00
Italy	Euro		334.00						334.00
Thomas Dower:									
United Kingdom	Pound		688.00						688.00
Netherlands	Euro		221.00						221.00
Saudi Arabia	Riyal		125.00						125.00
Israel	Shekel		362.00						362.00
Jordan	Dinar		235.00						235.00
Syria	Pound		472.00						472.00
Italy	Euro		334.00						334.00
Steve Cortese:									
United States	Dollar			4,938.46					4,938.46
Serbia	Dollar		426.00						426.00
Germany	Euro		924.42						924.42
Jennifer Chartrand:									
United States	Dollar			4,938.46					4,938.46
Serbia	Dollar		426.00						426.00
Germany	Euro		924.42						924.42
Sid Ashworth:									
United States	Dollar			4,938.46					4,938.46
Serbia	Dollar		426.00						426.00
Germany	Euro		924.42						924.42
Tom Hawkins:									
United States	Dollar			4,938.46					4,938.46
Serbia	Dollar		426.00						426.00
Germany	Euro		924.42						924.42
Paul Grove:									
United States	Dollar			5,189.37					5,189.37
Serbia	Dollar		990.00						990.00
Montenegro	Dollar		324.00		75.75				399.75
Total			25,287.94		25,018.96				50,306.90

ROBERT C. BYRD,
Chairman, Committee on Appropriations, Jan. 15, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Sid Ashworth:									
United States	Dollar				6,474.53				6,474.53
Singapore	Dollar		1,387.78						1,387.78
Cambodia	Riel		495.00						495.00
Vietnam	Dong		410.00						410.00
Hong Kong	Dollar		411.00						411.00
Charlie Houy:									
United States	Dollar				6,474.53				6,474.53
Singapore	Dollar		1,387.78						1,387.78
Cambodia	Riel		495.00						495.00
Vietnam	Dong		410.00						410.00
Hong Kong	Dollar		411.00						411.00
Jennifer Chartrand:									
United States	Dollar				6,474.53				6,474.53
Singapore	Dollar		1,387.78						1,387.78
Cambodia	Riel		495.00						495.00
Vietnam	Dong		410.00						410.00
Hong Kong	Dollar		411.00						411.00
Steve Cortese:									
United States	Dollar				6,474.53				6,474.53
Singapore	Dollar		1,387.78						1,387.78
Cambodia	Riel		495.00						495.00
Vietnam	Dong		410.00						410.00
Hong Kong	Dollar		411.00						411.00
Nicole Rutberg:									
United States	Dollar				393.30				393.30
Canada	Dollar		200.00				271.08		471.08
Howard Walgren:									
United States	Dollar				393.30				393.30

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Canada	Dollar		200.00				270.08		470.08
Cheh Kim:									
United States	Dollar				5,674.00				5,674.00
France	Euro		897.00						897.00
Italy	Euro		1,110.00						1,110.00
Tim Rieser:									
United States	Dollar				719.00				719.00
Colombia	Dollar		1,187.00						1,187.00
United States	Dollar				6,233.00				6,233.00
Lebanon	Dollar		60.00						60.00
Jordan	Dollar		340.00						340.00
Israel	Dollar		1,166.00						1,166.00
Egypt	Dollar		422.00						422.00
Netherlands	Dollar		220.00						220.00
Susan Hogan:									
United States	Dollar				5,481.74				5,481.74
Belgium	Dollar		257.00						257.00
Austria	Dollar		392.00						392.00
Germany	Dollar		588.00						588.00
Italy	Dollar		864.00						864.00
Paul Grove:									
United States	Dollar				6,233.00				6,233.00
Lebanon	Dollar		202.00						202.00
Jordan	Dollar		640.00						640.00
Israel	Dollar		1,466.00						1,466.00
Total			34,309.12		57,655.96		541.16		92,506.24

ROBERT C. BYRD,
Chairman, Committee on Appropriations, Jan. 15, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2001

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Ernest F. Hollings:									
Australia	Dollar		1,513.00						1,513.00
Singapore	Dollar		508.00						508.00
Thailand	Baht		464.00						464.00
Cambodia	Riel		225.00						225.00
Vietnam	Dong		410.00						410.00
China	Yuan		828.00						828.00
Lila Helms:									
Australia	Dollar		1,513.00						1,513.00
Singapore	Dollar		508.00						508.00
Thailand	Baht		464.00						464.00
Cambodia	Riel		225.00						225.00
Vietnam	Dong		410.00						410.00
China	Yuan		828.00						828.00
Elizabeth Pittleman:									
Australia	Dollar		1,513.00						1,513.00
Singapore	Dollar		508.00						508.00
Thailand	Baht		464.00						464.00
Cambodia	Riel		225.00						225.00
Vietnam	Dong		410.00						410.00
China	Yuan		828.00						828.00
Paul Grove:									
Ecuador	Dollar		672.00						672.00
Total			12,516.00						12,516.00

ROBERT C. BYRD,
Chairman, Committee on Appropriations, January 15, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Michael J. McCord:									
United States	Dollar				6,925.89		40.60		6,966.49
United Kingdom	Dollar		114.70						114.70
Germany	Dollar		122.15						122.15
Italy	Dollar		290.35						290.35
Portugal	Dollar		287.20						287.20
Senator E. Benjamin Nelson:									
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Belgium	Euro		299.00						299.00
Senator Pat Roberts:									
Italy	Euro		804.12						804.12
France	Euro		878.66						878.66
Belgium	Euro		299.00						299.00
Senator Bill Nelson:									
Belgium	Dollar		1,795.00						1,795.00
Bosnia	Dollar		254.00						254.00
Italy	Dollar		702.00						702.00
Senator Jack Reed:									
Korea	Won		419.00						419.00
Japan	Yen		129.00						129.00
Elizabeth King:									
Korea	Won		419.00						419.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Japan	Yen		77.00						77.00
Mark Powers:									
Ghana	Cedi		100.00						100.00
	Dollar		247.00						247.00
Senator Jim Inhofe:									
Ghana	Dollar		271.00						271.00
Benin	Dollar		167.58						167.58
Total			9,358.54		6,925.89		40.60		16,325.03

CARL LEVIN,
Chairman, Committee on Armed Services, Jan. 14, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Matthew Paxton:									
United Kingdom	Pound		1,050.00		728.99				1,778.99
Andrew Minkiewicz:									
Spain	Euro		1,000.00		1,936.46				2,936.46
Floyd DesChamps:									
India	Rupees		960.00		2,688.06				3,648.06
Marvin A. Nixon:									
United Kingdom	Pound		2,055.00		728.55				2,783.75
Gael E. Sullivan:									
United Kingdom	Pound		1,544.00		1,045.16				2,589.16
Samuel E. Whitehorn:									
United Kingdom	Pound		1,544.00		630.16				2,174.16
David G. Wonnenberg:									
United Kingdom	Pound		2,466.00		713.38				3,179.38
Robert M. Freeman:									
United Kingdom	Pound		4,878.97		729.18				5,608.35
Robert W. Chamberlin:									
United Kingdom	Pound		1,544.00		1,045.16				2,589.16
Carl W. Bentzel:									
United Kingdom	Pound		1,644.00		720.75				2,364.75
Total			18,685.97		10,966.25				29,652.22

ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, Jan. 15, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Bryan Hannegan:									
India	Rupee		960.00		7,326.06				8,286.06
Total			960.00		7,326.06				8,286.06

JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, Dec. 20, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1, TO DEC. 31, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Joseph R. Biden:									
Israel	Dollar		726.00						726.00
Qatar	Dollar		234.00						234.00
Saudi Arabia	Dollar		125.00						125.00
Turkey	Dollar		273.00						273.00
United States	Dollar				5,102.89				5,102.89
Senator Samuel Brownback:									
United Kingdom	Dollar		310.00						310.00
India	Dollar		240.00						240.00
China	Dollar		1,240.00						1,240.00
United States	Dollar				7,811.77				7,811.77
Senator Chuck Hagel:									
Israel	Dollar		726.00						726.00
Qatar	Dollar		234.00						234.00
Saudi Arabia	Dollar		125.00						125.00
Turkey	Dollar		273.00						273.00
United States	Dollar				8,849.89				8,849.89
Anthony Blinken:									
Israel	Dollar		726.00						726.00
Qatar	Dollar		234.00						234.00
Saudi Arabia	Dollar		125.00						125.00
Turkey	Dollar		273.00						273.00
United States	Dollar				5,376.89				5,376.89

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1, TO DEC. 31, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Robert Epplin:									
Egypt	Dollar		868.00						868.00
Turkey	Dollar		1,077.00						1,077.00
Germany	Dollar		330.00						330.00
United States	Dollar				5,777.19				5,777.19
Heather D. Flynn:									
Ethiopia	Dollar		550.00						550.00
Eritrea	Dollar		550.00						550.00
Zambia	Dollar		550.00						550.00
Zimbabwe	Dollar		550.00						550.00
Djibouti	Dollar		550.00						550.00
United States	Dollar				7,830.18				7,830.18
Michael H. Haltzel:									
Austria	Dollar		304.00						304.00
Czech Republic	Dollar		543.00						543.00
Lithuania	Dollar		431.00						431.00
United States	Dollar				6,257.50				6,257.50
Sara Hessenflow:									
United Kingdom	Dollar		620.00						620.00
India	Dollar		400.00						400.00
China	Dollar		1,060.00						1,060.00
United States	Dollar				8,334.27				8,334.27
Jamie Metzl:									
France	Dollar		665.00						665.00
United States	Dollar				6,090.00				6,090.00
Andrew Parasiliti:									
Turkey	Dollar		1,280.00						1,280.00
United States	Dollar				5,523.91				5,523.91
Israel	Dollar		726.00						726.00
Qatar	Dollar		234.00						234.00
Saudi Arabia	Dollar		125.00						125.00
Turkey	Dollar		273.00						273.00
United States	Dollar				5,376.89				5,376.89
Italy	Dollar		1,248.00						1,248.00
United States	Dollar				5,296.68				5,296.68
Puneet Talwar:									
Turkey	Dollar		1,280.00						1,280.00
United States	Dollar				5,523.91				5,523.91
Israel	Dollar		726.00						726.00
Qatar	Dollar		234.00						234.00
Saudi Arabia	Dollar		125.00						125.00
Turkey	Dollar		273.00						273.00
United States	Dollar				5,239.89				5,239.89
Italy	Dollar		1,248.00						1,248.00
United States	Dollar				5,356.69				5,356.69
Peter Zimmerman:									
Austria	Dollar		536.00						536.00
Netherlands	Dollar		536.00						536.00
United States	Dollar				6,474.84				6,474.84
Total			23,756.00		100,223.39				123,979.39

JOSEPH R. BIDEN, JR.,
Chairman, Committee on Foreign Relations, Jan. 13, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Robert Torricelli:									
Israel	Dollar		576.00						576.00
United States	Dollar				7,169.000				7,169.000
Jonah Blank:									
Pakistan	Dollar		1,350.00						1,350.00
Saudi Arabia	Dollar		880.00						880.00
Afghanistan	Dollar		1,050.00						1,050.00
United States	Dollar		120.00						120.00
United States	Dollar				7,784.27				7,784.27
John Bradshaw:									
Israel	Dollar		712.00						712.00
United States	Dollar				4,828.50				4,828.50
Robert Epplin:									
Thailand	Dollar		696.00						696.00
Vietnam	Dollar		1,227.00						1,227.00
Cambodia	Dollar		225.00						225.00
Hong Kong	Dollar		713.00						713.00
United States	Dollar				6,134.39				6,134.39
Deb Fiddelke:									
South Africa	Dollar		2,040.00						2,040.00
United States	Dollar				6,139.82				6,139.82
Walter Fischer:									
Saudi Arabia	Dollar								
Qatar	Dollar		513.80						513.80
United States	Dollar				6,979.38				6,979.38
Heather Flynn:									
Nigeria	Dollar		2,120.00						2,120.00
Nigeria	Dollar				55.40				55.40
Angola	Dollar		1,240.00						1,240.00
United States	Dollar				7,773.61				7,773.61
Michelle Gavin:									
Kenya	Dollar		600.00						600.00
Somalia	Dollar		125.00						125.00
Eritrea	Dollar		175.00						175.00
Ethiopia	Dollar		300.00						300.00
United States	Dollar				8,343.02				8,343.02
Michael H. Haltzel:									
Bulgaria	Dollar		512.00						512.00
Romania	Dollar		592.00						592.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				5,799.52				5,799.52
Frank Jannuzi:									
China	Dollar		4,577.00						4,577.00
United States	Dollar				6,402.50				6,402.50
Walter Lohman:									
China	Dollar		1,900.00						1,900.00
South Korea	Dollar		592.00						592.00
Taiwan	Dollar		720.00						720.00
United States	Dollar				2,240.89				2,240.89
Kenneth A. Myers III:									
United Kingdom	Dollar		772.00						772.00
Russian Federation	Dollar		2,240.00						2,240.00
United States	Dollar				4,985.34				4,985.34
David Andrew Olson:									
France	Dollar		119.76						119.76
Gabon	Dollar		580.00						580.00
Nigeria	Dollar		580.00						580.00
Ghana	Dollar		545.00						545.00
United Kingdom	Dollar		386.00						386.00
United States	Dollar				7,334.28				7,334.28
Maurice A. Perkins:									
South Africa	Dollar		672.00						672.00
United States	Dollar				6,421.82				6,421.82
Jedidiah Royal:									
Saudi Arabia	Dollar		213.33						213.33
Qatar	Dollar		234.00						234.00
United States	Dollar				6,483.61				6,483.61
Dallas Scholes:									
South Africa	Dollar		456.54						456.54
United States	Dollar				7,122.32				7,122.32
Kelly Siekman:									
Bosnia	Dollar		328.00						328.00
Austria	Dollar		183.37						183.37
Austria	Dollar				114.72				114.72
United States	Dollar				5,121.16				5,121.16
Puneet Talwar:									
Saudi Arabia	Dollar		160.00						160.00
Jordan	Dollar		185.00						185.00
Israel	Dollar		626.00						626.00
Turkey	Dollar		446.00						446.00
United States	Dollar				6,368.74				6,368.74
Brian Thomas:									
China	Dollar		2,506.00						2,506.00
United States	Dollar				5,728.50				5,728.50
Paul Unger:									
Bosnia	Dollar		144.76						144.76
United States	Dollar				4,522.59				4,522.59
Susan Williams:									
Chad	Dollar		850.00						850.00
Cameroon	Dollar		500.00						500.00
Nigeria	Dollar		550.00						550.00
France	Dollar		200.00						200.00
United States	Dollar				7,263.03				7,262.03
Peter D. Zimmerman:									
Norway	Dollar		1,045.00						1,045.00
United States	Dollar				4,611.09				4,611.09
Total			38,078.56		135,726.50				173,805.06

JOSEPH R. BIDEN, JR.,
Chairman, Committee on Foreign Relations, Jan. 13, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM OCT. 1, 2002 TO DEC. 31, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Kim Corthell:									
United States	Dollar				3,490.02				3,490.02
United Kingdom	Pound		565.90						565.90
Laura Stuber:									
United States	Dollar				873.75				873.75
United Kingdom	Pound		1,561.00						1,561.00
Dan Berkovitz:									
United States	Dollar				923.75				923.75
United Kingdom	Pound		1,462.54						1,462.54
Senator Durbin:									
United States	Dollar				1,964.00				1,964.00
Mexico	Peso		800.00						800.00
William Weber:									
United States	Dollar				1,499.41				1,499.41
Mexico	Peso		400.00						400.00
Clarisol Duque:									
United States	Dollar				1,486.60				1,486.60
Mexico	Peso			622.00					622.00
Total			5,411.44		10,237.53				15,648.97

JOSEPH I. LIEBERMAN,
Chairman, Committee on Governmental Affairs, Jan. 13, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM OCT. 1 TO DEC. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Shelby			3,648.00						3,648.00
Peter Dorn			3,648.00						3,648.00
Kathleen Casey			3,648.00						3,648.00
Ann Caldwell			3,648.00						3,648.00
Vicki Cox			3,648.00						3,648.00
Barbara Schenck			414.00						414.00
Steven Cash			576.69						576.69
	Dollar				5,928.40				5,928.40
Senator John Edwards			513.16						513.16
	Dollar				7,002.55				7,002.55
Vicki Divoll			426.00						426.00
	Dollar				7,002.55				7,002.55
Miles Lackey			513.16						513.16
	Dollar				7,002.55				7,002.55
Derek Chollet			513.16						513.16
	Dollar				7,002.55				7,002.55
Lorenzo Goco			1,775.00						1,775.00
	Dollar				5,830.26				5,830.26
Randy Bookout			2,358.00						2,358.00
	Dollar				5,830.26				5,830.26
Robert Filippone			1,811.00						1,811.00
	Dollar				5,830.26				5,830.26
Robert K. Johnson			874.00						874.00
	Dollar				5,386.05				5,386.05
Total			28,014.17		56,815.43				84,829.60

PAT ROBERTS,
Chairman, Committee on Intelligence, Jan. 23, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Janice Helwig:									
United States	Dollar				5,385.69				5,385.69
Austria	Dollar		16,872.93		1,125.15				17,998.08
Portugal	Dollar		1,380.00						1,380.00
Marlene Kaufmann:									
United States	Dollar				715.85				715.85
Canada	Dollar		460.78						460.78
Donald Kursch:									
United States	Dollar				5,455.38				5,455.38
Montenegro	Dollar		823.80						823.80
Ronald McNamara:									
United States	Dollar				6,448.80				6,448.80
Netherlands	Dollar		170.00						170.00
United States	Dollar				5,194.93				5,194.93
Portugal	Dollar		409.00						409.00
Michael Ochs:									
United States	Dollar				6,275.50				6,275.50
Azerbaijan	Dollar		1,692.00						1,692.00
Georgia	Dollar		660.00						660.00
Erika Schlager:									
United States	Dollar				4,545.85				4,545.85
Hungary	Dollar		1,237.91						1,237.91
Dorothy Taft:									
United States	Dollar				5,194.93				5,194.93
Portugal	Dollar		603.00						603.00
H. Knox Thames:									
United States	Dollar				6,971.39				6,971.39
Azerbaijan	Dollar		1,751.52						1,751.52
Georgia	Dollar		549.00						549.00
Hungary	Dollar		1,273.95						1,273.95
Total			27,883.89		47,313.47				75,197.36

BEN NIGHTHORSE CAMPBELLS,
Chairman, Committee on the Commission on Security and Cooperation in Europe, Jan. 15, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), MAJORITY LEADER FOR TRAVEL FROM JULY 1, TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Jon Corzine:									
Israel	Dollar						1,446.94		1,446.94
Simon Brandler:									
Israel	Dollar						1,446.94		1,446.94
Total							2,893.88		2,893.88

TOM DASCHLE,
Majority Leader.

UNANIMOUS-CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that there be an additional 6 hours for debate on the Estrada nomination; provided further that the time be equally divided between the chairman and ranking member or their designees; and that following the conclusion of that time the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, I modify my request to 8 additional hours.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I object.

Mr. FRIST. Mr. President, I was hoping that the recent Presidents Day recess would have convinced my colleagues that everything has been said and, thus, it is time now to vote. But we will continue to work with the other side with the hope that at some point they will allow an up-or-down vote on this qualified nominee.

MEASURE PLACED ON THE CALENDAR—S. 3

Mr. FRIST. Mr. President, I understand that S. 3 is at the desk and is due for a second reading.

The PRESIDING OFFICER. The Senator is correct. The clerk will read the title of the bill for the second time.

The legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

Mr. FRIST. Mr. President, I object to further proceedings.

The PRESIDING OFFICER. Objection having been heard, the bill will be placed on the calendar.

MEASURE PLACED ON THE CALENDAR—S. 13

Mr. FRIST. Mr. President, I understand that S. 13 is at the desk and is due for a second reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the second time.

The legislative clerk read as follows:

A bill (S. 13) to provide financial security to small farm and small business owners by ending the unfair practice of taxing someone at death.

Mr. FRIST. Mr. President, I object to further proceedings.

The PRESIDING OFFICER. Objection having been heard, the bill will be placed on the calendar.

MEASURE PLACED ON THE CALENDAR—S. 414

Mr. FRIST. Mr. President, I understand that S. 414 is at the desk and is due for a second reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the second time.

The legislative clerk read as follows:

A bill (S. 414) to provide an economic stimulus package, and for other purposes.

Mr. FRIST. Mr. President, I object to further proceedings.

The PRESIDING OFFICER. Objection having been heard, the bill will be placed on the calendar.

APPOINTMENTS

Mr. FRIST. Mr. President, I ask unanimous consent that the appointments at the desk appear separately in the RECORD as if made by the Chair.

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

The Chair announces on behalf of the Committee on Finance, pursuant to section 8002 of title 26, U.S. Code, the designation of the following Senators as members of the Joint Committee on Taxation:

The Senator from Iowa (Mr. GRASSLEY); the Senator from Utah (Mr. HATCH); the Senator from Oklahoma (Mr. NICKLES); the Senator from Montana (Mr. BAUCUS); the Senator from West Virginia (Mr. ROCKEFELLER).

ORDERS FOR TUESDAY, FEBRUARY 25, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Tuesday, February 25; I further ask that following the prayer and pledge the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate return to executive session and resume the consideration of the nomination of Miguel Estrada to be a circuit judge for the District of Columbia Circuit.

I further ask unanimous consent that the Senate recess from the hour of 12:30 p.m. to 2:30 p.m. for the weekly party caucuses.

The PRESIDING OFFICER. Is there objection?

Mr. REID. No objection.

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

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, tomorrow the Senate will begin its 9th day of consideration of the Estrada nomination. I believe that both sides of the debate have had adequate time and the Senate should now be able to work its will.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:44 p.m., adjourned until Tuesday, February 25, 2003, at 9:30 a.m.