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No. 168

Senate

The Senate met at 8 p.m. and was called to order by the Honorable JOHN WARNER, a Senator from the State of Virginia.

PRAYER

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

Let us pray.

Spirit of Holiness, we thank You for the joyous gift of the holidays that are beyond price. For friends who grow dearer through the passing years, for the homes we call our own, for loyal

devotion and patient understanding, for all these we lift our voices in praise.

Lord, as we observe the traditions and keep the customs of this season, make us thankful and keep us humble. Keep us mindful of our many spiritual blessings so we will not forget the reason for this season. Give us eyes to see Your stars and ears to hear the song of the angels.

Bless our Senators with generous hearts. Let the kindly holiday spirit penetrate all our deeds in the days to

come. We pray in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN WARNER 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.

NOTICE

If the 109th Congress, 1st Session, adjourns sine die on or before December 22, 2005, a final issue of the Congressional Record for the 109th Congress, 1st Session, will be published on Friday, December 30, 2005, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT-60 or S-123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Thursday, December 29. The final issue will be dated Friday, December 30, 2005, and will be delivered on Tuesday, January 3, 2006. Both offices will be closed Monday, December 26, 2005.

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

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

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at <http://clerk.house.gov/forms>. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT-60.

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By order of the Joint Committee on Printing.

TRENT LOTT, *Chairman*.

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



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S14423

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, December 22, 2005.

To the Senate:

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

TED STEVENS,
President pro tempore.

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

USA PATRIOT ACT

The ACTING PRESIDENT pro tempore. In my capacity as the senior Senator from Virginia, I ask unanimous consent that the Chair now lay before the Senate the House message to accompany S. 2167.

The legislative clerk read as follows:
S. 2167

Resolved, That the bill from the Senate (S. 2167) entitled "An Act to amend the USA PATRIOT ACT to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to July 1, 2006", do pass with the following amendment:

(1) Page 2, line 10 of the Senate engrossed bill, strike out [July 1, 2006] and insert: *February 3, 2006*.

The ACTING PRESIDENT pro tempore. I ask unanimous consent that the Senate concur in the House amendment and the motion to reconsider be laid upon the table.

Without objection, it is so ordered.

EXTENSION OF SIGNING AND APPOINTMENT AUTHORITIES

The ACTING PRESIDENT pro tempore. In my capacity as the senior Senator from Virginia, I now ask unanimous consent that all applicable signing and appointment authorities be extended through the adjournment of the Senate, and that the senior Senator from Virginia be authorized to sign duly enrolled bills and joint resolutions.

Without objection, it is so ordered.

PRINTING OF S. 1783

The ACTING PRESIDENT pro tempore. In my capacity as the senior Senator from Virginia, I ask unanimous consent that the text of S. 1783, as passed by the Senate be printed.

Without objection, it is so ordered.

DEPARTMENT OF DEFENSE AP- PROPRIATIONS CONFERENCE RE- PORT

Mr. REID. Mr. President, last night we passed the Department of Defense

Appropriations Conference Report. We all know how important that bill is to our country and our troops. Prior to passing that bill, we were successful in removing provisions to allow drilling in the Arctic National Wildlife Refuge. Those provisions had no place in that bill.

As was noted on the floor last night, there were other provisions that did not belong in the conference report. They were not included in the House- or Senate-passed bills. They were not at all related to the Department of Defense's appropriations. In fact, conferees had been assured that these provisions would not be included at all.

But Republican leaders swept in and declared that they would be included, in violation of promises and the rules. And that is not the worst part. The provisions themselves bestow on drug companies sweeping immunity from the consequences of reckless wrongdoing. It was the Republican leadership's big Christmas present to their friends in the drug industry.

This immunity extends to all aspects of the development and production of drugs or vaccines so long as they are used to prevent, treat, or diagnose what the administration declares an "epidemic." Republican leaders have insisted that these provisions are about preparing for pandemic flu or bioterrorist attack. They are exploiting our fears to go well beyond that.

What is an "epidemic"? Secretary Leavitt recently said obesity is an "epidemic." Many have said diabetes, heart disease, and methamphetamine addiction are epidemics. And it gets worse. The provisions also apply to any product that mitigates the side effects of a drug used to counteract an epidemic. That could include pain or high blood pressure medication.

Even reckless or grossly negligent drug companies will not be held responsible for the injuries they cause. The provisions in the conference report only allow for an injured patient to hold a drug company responsible if he or she can prove using clear and convincing evidence that the company acted with "willful misconduct." This burden is virtually impossible to meet.

This gift to the drug companies comes at the expense of injured patients and the success of our future programs to ensure vaccinations. The provisions establish a "compensation fund," but provide no money for it. Patients who are injured by products covered under this legislation will find that because there is no money in the fund, there is no compensation.

Under this administration's watch, the absence of a promise of compensation resulted in the failure of the program to vaccinate first responders for smallpox. The legislation we passed last night creates the same problem and condemns future similar vaccination programs to failure. Who can blame people for saying no when we are asking to take the risks of what may be an adverse effect if they are not assured that we will take care of them?

Mr. President, the inclusion of these policies in the DOD Appropriations bill was not just bad form, it was bad for Americans. I strongly opposed their inclusion. And I am strongly committed to revisiting this damage in the first days of our return.

ADDITIONAL STATEMENTS

DEPARTMENT OF DEFENSE APPROPRIATIONS

• Mr. BAUCUS. Mr. President, I wholeheartedly support the provisions of the Department of Defense appropriations bill that provide money for our brave military men and women. I support the much needed 3.1 percent pay increase. And I support the Blackhawk MEDEVAC and Utility Helicopters, and Wireless Communication Systems for Montana's National Guard.

But this was not a clean bill. Although I voted for the bill, I take offense to a number of provisions that have nothing to do with our troops. These additions should never have been included in the Defense bill in the first place. They don't belong here.

We have focused our discussion over the past few days on drilling in Alaska. And I am proud that our defense bill does not include ANWR.

But in objecting to ANWR, we have forgotten other changes in the conference report, last minute additions that have no place in a defense bill. I am referring to the Public Readiness and Emergency Preparedness Act.

The Emergency Preparedness Act virtually eliminates liability for pharmaceutical companies. Now drug companies have wholesale immunity except in the case of "willful misconduct." Drug companies will no longer be held responsible for negligence or recklessness. Only if they had actual knowledge that their product would injure or kill someone would we hold them accountable.

The Emergency Preparedness Act also sets up an unfunded compensation fund. Without any money appropriated to the fund, the fund is inoperable. This could allow drug companies to remove themselves from responsibility without providing the American people with the recourse they deserve.

Although I support the Defense bill we passed, I do not support the Emergency Preparedness Act. This section was added at the last minute. And it only passed because all of us in the Senate wanted to provide support for our troops.●

MESSAGE FROM THE HOUSE

At 8:03 p.m., a message from the House of Representatives, delivered by

Mr. Hays, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4647. An act to amend the USA PATRIOT ACT to extend the sunset of certain provisions of such Act.

The message also announced that the House has passed the bill (S. 2170) to amend the USA PATRIOT ACT to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to July 1, 2006, with an amendment.

The message further announced that the House has passed the concurrent resolution (S. Con. Res. 74) correcting the enrollment of H.R. 2863, without amendment.

ENROLLED BILL SIGNED

The message also announced that the Speaker pro tempore of the House of Representatives (Mr. WOLF) has signed the following enrolled bill:

S. 1281. An act to authorize the programs of the National Aeronautics and Space Administration.

Under authority of the order of the Senate of December 21, 2005, the enrolled bill was signed subsequently on today, December 22, 2005, by the Acting President pro tempore (Mr. WARNER).

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, December 22, 2005, she had presented to the President of the United States the following enrolled bills:

S. 205. An act to authorize the American Battle Monuments Commission to establish in the State of Louisiana a memorial to honor the Buffalo Soldiers.

S. 652. An act to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin.

S. 1238. An act to amend the Public Lands Corps Act of 1993 to provide for the conduct of projects that protect forests, and for other purposes.

S. 1310. An act to authorize the Secretary of the Interior to allow the Columbia Gas Transmission Corporation to increase the di-

ameter of a natural gas pipeline located in the Delaware Water Gap National Recreation Area, to allow certain commercial vehicles to continue to use Route 209 within the Delaware Water Gap National Recreation Area, and to extend the termination date of the National Park System Advisory Board to January 1, 2007.

S. 1418. An act to amend the Indian Land Consolidation Act to provide for probate reform.

S. 1892. An act to amend Public Law 107-153 to modify a certain date.

S. 1988. An act to authorize the transfer of items in the War Reserves Stockpile for Allies, Korea.

ADJOURNMENT SINE DIE

The ACTING PRESIDENT pro tempore. In my capacity as the senior Senator from Virginia, I ask unanimous consent that the Senate now stand in adjournment sine die under the provisions of H. Con. Res. 326.

There being no objection, the Senate, at 8:04 p.m. adjourned sine die.

NOMINATIONS RETURNED TO THE PRESIDENT

Returned to the President, Thursday, December 22, 2005:

THE FOLLOWING NOMINATIONS TRANSMITTED BY THE PRESIDENT OF THE UNITED STATES TO THE SENATE DURING THE FIRST SESSION OF THE 109TH CONGRESS, AND UPON WHICH NO ACTION WAS HAD AT THE TIME OF THE SINE DIE ADJOURNMENT OF THE SENATE, FAILED OF CONFIRMATION UNDER THE PROVISIONS OF RULE XXXI, PARAGRAPH 6, OF THE STANDING RULES OF THE SENATE.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

JAMES H. BILBRAY, OF NEVADA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

PHILIP COYLE, OF CALIFORNIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

ADMIRAL HAROLD W. GEHMAN, JR., UNITED STATES NAVY, RETIRED, OF VIRGINIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

JAMES V. HANSEN, OF UTAH, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

GENERAL JAMES T. HILL, UNITED STATES ARMY, RETIRED, OF FLORIDA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

SAMUEL KNOX SKINNER, OF ILLINOIS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

BRIGADIER GENERAL SUE ELLEN TURNER, UNITED STATES AIR FORCE, RETIRED, OF TEXAS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

JAMES H. BILBRAY, OF NEVADA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

PHILIP COYLE, OF CALIFORNIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COM-

MISSION, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

ADMIRAL HAROLD W. GEHMAN, JR., UNITED STATES NAVY, RETIRED, OF VIRGINIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

JAMES V. HANSEN, OF UTAH, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

GENERAL JAMES T. HILL, UNITED STATES ARMY, RETIRED, OF FLORIDA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

GENERAL LLOYD W. NEWTON, UNITED STATES AIR FORCE, RETIRED, OF CONNECTICUT, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

ANTHONY JOSEPH PRINCIPI, OF CALIFORNIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

SAMUEL KNOX SKINNER, OF ILLINOIS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

BRIGADIER GENERAL SUE ELLEN TURNER, UNITED STATES AIR FORCE, RETIRED, OF TEXAS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

DEPARTMENT OF JUSTICE

STEVEN G. BRADBURY, OF MARYLAND, TO BE AN ASSISTANT ATTORNEY GENERAL.

THE JUDICIARY

BRETT M. KAVANAUGH, OF MARYLAND, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT.

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING WITH BRIGADIER GENERAL DANA T. ATKINS AND ENDING WITH BRIGADIER GENERAL JOHNNY A. WEIDA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 9, 2005.

AIR FORCE NOMINATION OF COLONEL JAMES A. BUNTYN TO BE BRIGADIER GENERAL.

AIR FORCE NOMINATIONS BEGINNING WITH COLONEL BROCK JOHN T. STROM AND ENDING WITH COLONEL RICHARD J. UTECHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 6, 2005.

AIR FORCE NOMINATIONS BEGINNING WITH COLONEL GREGORY A. BISONE AND ENDING WITH COLONEL TOD D. WOLTERS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 4, 2005.

IN THE ARMY

ARMY NOMINATION OF COLONEL FREDDIE R. WAGGONER TO BE BRIGADIER GENERAL.

ARMY NOMINATION OF COL. JULIA A. KRAUS TO BE BRIGADIER GENERAL.

ARMY NOMINATION OF MAJ. GEN. ERIC T. OLSON TO BE LIEUTENANT GENERAL.

ARMY NOMINATION OF COL. GILBERTO S. PENA TO BE BRIGADIER GENERAL.

ARMY NOMINATION OF COL. RODNEY J. BARHAM TO BE BRIGADIER GENERAL.

ARMY NOMINATION OF COL. LARRY L. ARNETT TO BE BRIGADIER GENERAL.

ARMY NOMINATION OF COL. OTIS P. MORRIS TO BE BRIGADIER GENERAL.

IN THE NAVY

NAVY NOMINATION OF CAPTAIN DAVID J. MERCER TO BE REAR ADMIRAL (LOWER HALF).

NAVY NOMINATION OF TITO P. DUA TO BE CAPTAIN.

NAVY NOMINATION OF LANCE C. ESSWEIN TO BE COMMANDER.