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## Senate

The Senate met at 10 a.m. and was called to order by the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York.

### PRAYER

The guest Chaplain, Commissioner John Busby, of the Salvation Army, offered the following prayer:

Almighty God, we thank You for being the refuge and strength of our Nation during these last painful months. We praise You for the comfort You have given during our time of deepest need.

Faithful God, we ask Your blessing upon our Senators. Give them wisdom and compassion as they lead our country. Give them wisdom to see the deep physical and spiritual needs of many Americans. Give them courage to affirm that faith in You gives meaning to human life and that service to humanity is the best work we can do.

We humbly ask You to help the Members of the Senate make this great Nation greater. May we all realize that the prosperity we enjoy in the United States of America has come only by Your grace. Make us worthy stewards of that grace. Help us all to put into action Your greatest commandment to love God with all our heart, mind, strength and our neighbor as ourselves.

This we pray in the name of Jesus who set for us the example of service above self. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable HILLARY RODMAN CLINTON 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. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, May 9, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mrs. CLINTON thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE ACTING MAJORITY LEADER

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

### SCHEDULE

Mr. REID. Madam President, this morning the Senate will be in a period of morning business until 10:30 a.m., with the time under the control of Senator STABENOW or her designee.

At 10:30 a.m. the Senate will proceed to executive session to consider four judicial nominations. At approximately 11:30 a.m. the Senate will proceed to vote on these nominations.

Following disposition of these nominations, the Senate will resume consideration of the trade bill.

### MARY ANNE MOORE CLARKSON GIVES BIRTH

Mr. REID. Madam President, for all of us who work here on a daily basis, we congratulate Mary Anne Moore Clarkson who, last night had a baby weighing more than 10 pounds. Mary Anne is here every day. We are excited for her and her husband. Some of us

know she is Senator BYRD's granddaughter. We are excited for him and the entire family.

### MEASURE PLACED ON THE CALENDAR—S. 2485

Mr. REID. Madam President, I understand S. 2485 is at the desk and is due for a second reading.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. REID. I ask that the bill be read for a second time, and I will then object to any further proceedings at this time.

The ACTING PRESIDENT pro tempore. The clerk will read the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2485) entitled the "Andean Trade Promotion and Drug Eradication Act."

The ACTING PRESIDENT pro tempore. Objection having been heard, the bill will be placed on the calendar.

Mr. REID. When the Chair turns to a period for morning business, I ask unanimous consent the Senator from West Virginia, Mr. ROCKEFELLER, be recognized for up to 7 minutes. That will be out of Senator STABENOW's time.

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

### RESERVATION OF LEADER TIME

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

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak for up to 10

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



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minutes each and with the time to be under the control of the Senator from Michigan, Ms. STABENOW, or her designee.

Under the previous order, the Senator from West Virginia is recognized.

### STEEL

Mr. ROCKEFELLER. Madam President, yesterday the President made very clear what we have all known for a long time in steel country, and that is that he basically does not care whether the American steel industry goes to Japan, Korea, Brazil, Russia, or some other place; that he is willing to see it go as an industry but, much more importantly in terms of my comments, that he is willing to consider perhaps TAA health care benefits for workers who have been destroyed by illegal importing problems. But steelworkers do not count. He specifically, in his statement of administration policy, said: I don't want steelworkers to have any health care retirement—retirement in the sense they do not have any more health benefits. I don't care about them. I want the RECORD to be crystal clear on that.

It is a sad position. It is a terrible day for steel. Somebody is going to get up today, they are going to make a motion, and it is going to be a point of order probably. I don't know when it will happen, who will do it, or how it will happen, but I want my colleagues to be aware of the situation.

Abandoning steelworkers, not allowing them to have health care coverage—we are only talking about 125,000 people as we start the process, none of whom, incidentally, is from the State I represent, the State of West Virginia. But they are just being excluded from the process.

TAA is a wonderful program. We recognize when people are thrown out of work due to imports, they need certain protections. Health care certainly needs to be one of those protections. Unfortunately, TAA does not cover, under its definition, retirees. It only covers active workers, not retirees.

You say retirees, that must be somebody who is in their seventies or eighties, and we should not be doing that here. But it is a very different situation in steel. A retiree in steel might be 35 years old, but the company went chapter 7. That means they turned out the lights, closed the door, pink slips, no health benefits, everything shut down—no bankruptcy problems, just no more existence.

The steelworkers go. They are called retirees, but in fact they are people, younger than average age, but out of health care.

I think it is outrageous. The steelworkers in fact were subjected to import surges which broke American Federal law, the 1974 Trade Act. Other countries did it at will. Our administration has refused to enforce that. So we have dumped steel, which has thrown people out of work. The admin-

istration then says: No, steelworkers cannot have health care benefits.

I do not understand how people come to think that way, what their value system is. But it is very clear in steel country that the President of the United States has abandoned the steelworkers of America and that he has abandoned people who have been already thrown out of work and who have no health care benefits, and have children to feed, even as he contemplates reluctantly the idea of doing health care benefits for other eligible active workers.

Let me say this. The President got a lot of credit in steel country for doing something called section 201. It was taking the dumping crisis, the illegal dumping crisis, before the International Trade Commission. He got a lot of credit for that. He pretty much had to do that, I would say—on political grounds, No. 1. But more importantly, the Finance Committee had already voted to do it. The Finance Committee has the same standing legally under the law as does the President, so it was going to happen anyway. So the result would have been the same. The International Trade Commission would have voted unanimously the steel industry was grievously injured by imports and people were hurting badly.

He did that knowing that it would make him somewhat popular in steel country because people were saying: Gee, we just solved the problem. It is not even the beginning of the problem. All that did was buy us time.

We have three steps we have to accomplish. One is we have to do section 201, which buys us time to consider health care costs, which we have to consider if we are going to have consolidation in the steel industry to preserve an American steel industry. It is sort of one of the great basic industries of this country.

We just passed a farm bill yesterday dumping billions and billions of dollars on farms for the hundredth consecutive year. Yet there was no consideration whatsoever for steelworkers. I find that very odd, even as my colleagues make these kinds of judgments.

So, No. 1, he did section 2101. He had to do that. He had no choice politically or procedurally. It just bought us some time. But we have to go on to retirement health care costs. He has washed his hands of that. He says: I want nothing to do with it. He actually writes in the statement of administrative—whatever the word is—practice that he particularly opposes the majority leader's amendment which would include retired steelworkers. He makes that very clear. He wants them cut out of the deal. He wants them excluded.

That is only 125,000 and would probably cost \$200 million or \$300 million.

I think the farm bill we passed yesterday was \$100 billion over 10 years. The proportion in sort of the human dimension of this is rather extraordinary.

The President has also done a lot of tariff exclusions. He has taken a lot of

countries out of section 201 that had to pay tariffs because they were illegally dumping steel in the United States and putting our workers out of work. He started to exempt different countries. He has different requirements for that—again, I think in violation of the spirit, if not the letter, of the 1974 Trade Act.

All of us have asked him to stop that. Again, he has washed his hands of steel. He has washed his hands, more importantly, of the steelworkers who can also be called human beings with families—people. It doesn't have to be an industry. They are called human beings. They are Americans. They pay taxes. They do things right. They work in a very dangerous industry. So do farmers. Is a farmer more vulnerable than a steelworker? I do not know. Maybe a farmer is, but not where I come from.

I very much regret this action on his part. Let me conclude by saying this: We now know that the President doesn't have a commitment to steelworkers and to the steel industry. We know he has no regard for how people's lives and entire communities are going to be affected. I have believed that for a long time. Now it is proven. It is clear. He is moving aggressively with the help of some of our colleagues, unfortunately—most of them on the other side but a couple on this side—to simply walk away from steelworkers.

I think that is a kind of betrayal by somebody who claimed to be a friend of the steel industry. The President and the Vice President were in steel country in my part of the world a number of times saying how important steel was to the national defense, how it is basic to Americans, and how they were not going to let them down. When push came to shove, they let them down. They made it very clear.

I want to be incisively precise about that as we start this Thursday so that the people of America understand that.

I don't understand sometimes how people make decisions and what their value systems are, and what kind of fairness is within the fair trade or free trade system. But I do know this: The administration has abandoned any semblance of fairness toward some very decent people in this country called steelworkers.

I thank the Presiding Officer. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Ms. STABENOW. Madam President, I commend my colleague from West Virginia for his diligence and compassionate concern for our steelworkers.

Coming from Michigan, I share his deep disappointment and concern about the administration's position.

I know the Senator from West Virginia has been in the Chamber over and over again speaking up for our steelworkers. I thank him on behalf of the steelworkers in Michigan—those in the Upper Peninsula, those downriver in communities near Detroit, and those

who were laid off for several months over the Christmas holidays as a result of the mines having to shut down because of the unfair dumping from other countries. Our steelworkers and mills have been affected.

I can't think of a more passionate advocate, and I am so proud to join with him in his continuing fight. I will be here with him in the Chamber as we do everything possible to make sure we remember the steelworkers, who have been the backbone of building this country, to make sure their health care costs are covered and they are recognized as we look at how we make trade fair in this country.

I thank the Senator.

#### PRESCRIPTION DRUGS

Ms. STABENOW. Madam President, I want to speak to an issue that relates to health care. I am so honored to join with our colleagues, particularly on this side of the aisle in the Democratic caucus, who continue to work very hard to bring a sense of urgency to the question of health care for our families, to health care insurance, and to affordability for our small businesses and family farmers and the larger business community.

We know today that one of the major costs economically and from a business standpoint—and certainly for families, and particularly for our seniors—is the whole question of being able to provide health care and being able to afford health care for our families.

We also know the major reason we are seeing health care costs rise relates to the uncontrollable increase in prescription drug coverage.

Today, I once again come to the floor to speak about the need for real action now.

I challenge and invite our colleagues on the other side of the aisle and those in the other Chamber who have come forward with principles—the Speaker of the House and those who will be speaking today about a plan—to join with us in something that is real and tangible.

Words are not going to buy prescriptions for seniors. We know there are seniors watching right now who are deciding today whether to pay that utility bill or eat supper tonight or do they do those other things which they need to do in order to have the quality of life we want for our parents and grandparents and older Americans of this country—or do they put all of their money into paying for lifesaving medications? That is not a good choice.

Shame on us for having a situation where seniors have to make that choice. Yet when we come to the floor, we talk about the need for a real Medicare prescription drug benefit. And when we talk about the need to lower prices for all of our families and lower prices for everyone so we have health care available for everyone in this country, we get more words than we get actions.

I am deeply concerned today as we look at what has been proposed by our colleagues on the other side of the Congress, our Republican colleagues in the House have said that they wish to lower the cost of prescription drugs now. Yet at the same time we see old proposals to do minimal kinds of discounts through discount cards and so on—things that are already available which folks want to take political credit for, maybe change the name or maybe put it under Medicare. But it doesn't do anything to actually lower the prices and make prescription drugs more available.

I am very concerned when we come forward with proposals that will, in fact, lower prices that we are not yet seeing the support.

We want that support to be there to be able to use more generic drugs when they are available after the patent has run out—the same drug and the same formulation—and at a lower price.

We want to have the ability to open our borders so we can get the best price of American-made drugs regardless of where they are sold around the world.

In Michigan, simply crossing the bridge to Canada, which is a 5-minute drive, cuts the price in half on American-made drugs. It is not right. We think when we are talking about fair trade we should open the border to the one thing that we don't have fair and open trade on; that is, prescription drugs.

We also know the fastest growing part of the cost of that prescription bottle is advertising costs, and that the top 11 Fortune 500 companies, last year, spent 2½ times more on advertising than research.

I was pleased to join with my colleagues earlier this week in introducing legislation to simply say: If you are doing more advertising than research, taxpayers are not going to subsidize it. We will allow you to deduct the amount of advertising and marketing that you do up to the level that you spend in research. We want more research. We want more innovative drugs. We do not want more market research; we want more medical research. So we propose items to lower costs to help everyone, right now, to lower those prices.

We also come forward saying it is time to update Medicare for today's health care system. When Medicare was set up in 1965, it covered the way health care was provided in 1965. If you went into the hospital, maybe you had a little penicillin, or maybe you had an operation in the hospital, and Medicare covered it.

Medicare is a great American success story. But health care treatments have changed. I have a constituent who showed me a pill he takes once a month that has stopped him from having to have open-heart surgery. It is a great thing: One pill a month. The pill costs \$400. I said: I want to take a close look at that pill. I hope it is gold plated. But the reality is, that pill stops

expensive open-heart surgery and allows this person to be able to continue living and enjoying a wonderful quality of life with his wife and family.

If he went in for that surgery, Medicare would cover it. They don't cover the pill. So that is what we are talking about. But we need this to be comprehensive.

When our colleagues come forward, and their second principle is guaranteeing all senior citizens prescription drug coverage, we say: Yes, come join with us. Let's make it real. But, unfortunately, when we run the numbers on what is being talked about—and the bill has not been introduced yet, but we have all kinds of information about what appears to be coming. From what we know, let me share with you some of the numbers.

If you are a senior or if you are disabled and you have a \$300-a-month prescription drug bill, which is not uncommon, when you get all done with the copays and the premiums and the deductibles that they are talking about, you would end up, out of \$3,600 worth of prescriptions, paying, out of pocket, \$2,920. So less than 20 percent of your bill would be covered under Medicare.

That is not what we are talking about. That is not comprehensive coverage under Medicare. That is really a hoax. That is a proposal being put forward to guarantee all seniors prescription drug coverage that is words, not actions. Again, words will not pay the bills. Words will not guarantee that seniors get one more prescription covered, that they will get that blood pressure medicine, that they will get that cholesterol medicine, or make sure they have that pill that stops them from having to have that open-heart surgery.

So we come today to this Chamber to say: Yes, guarantee all seniors prescription drug coverage. But the proposal coming forward by the Speaker of the House, and those on the other side of this building, will not do it. Unfortunately, what is being talked about will add insult to injury because they are talking about paying for their less-than-20-percent coverage by another cut to hospitals.

I know the Presiding Officer from New York shares the same concern I have because I know hospitals in New York have been cut, hospitals in Michigan have been cut. My colleague from Florida is in the Chamber. I know he has the same stories—and our leader from Nevada. We know that whether it is rural hospitals or urban hospitals or suburban hospitals, they have had enough cuts under Medicare. It is unbelievable we would be talking about another cut for hospitals while they are proposing this minimal prescription drug benefit.

The other thing I find incredible is that they are talking about a copay of \$50 for home health visits. We already have seen dramatic cuts. We have had over 2,500 home health agencies close

across this country because of the excessive cuts in home health care payments since 1997. Many of us have been saying: Enough is enough.

We cannot say that the home health help you need will cost more when we are trying to give a little bit of help with prescription drugs because it is the combination of home health care and prescription drugs that allows people to live at home when they have health care needs. It allows families to take care of mom or dad or grandpa or grandma, to make sure if someone is disabled and needs care at home, that they are not inappropriately placed into a nursing home or out-of-home care. The combination of home health care and affordable prescription medications will help our families care for their loved ones and help people to live in dignity at home.

So I find it incredible that you would have, first of all, a minimal proposal on prescription drugs coming forward, and then it would be coupled with the fact they are talking about cutting hospitals and copays for home health care to pay for it. This is an amazing situation to me.

We need to be strengthening Medicare, not undermining it. Many of the other parts of this proposal would turn Medicare over to private insurance companies. It would basically create a situation where the drug companies or insurance companies may believe they benefit but at the expense of our seniors.

I am going to yield a moment to my colleague from Florida, who I know cares deeply about this subject. I thank him for coming to the floor today to join me, as we rise to say to our Republican colleagues in the House of Representatives: Come join with us. Come join with us to make sure we can, in fact, put the words into action. Words are not enough. We need comprehensive Medicare prescription drug coverage. We need to lower prices now.

I yield time to my colleague from Florida.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

Mr. NELSON of Florida. I thank the Senator from Michigan for yielding. I want to underscore a number of the remarks the Senator from Michigan made—this issue of health care, home health care, and prescription drugs.

I start my comments by saying, has the Bush administration taken leave of its senses with regard to a number of these proposals? What the Senator from Michigan has just said in relation to copayments for home health care, home health care is something we want to encourage. Home health care is certainly an alternative to being in a nursing home from a cost standpoint. It is certainly a cost incentive as an alternative to being in a hospital. But home health care, if it is the right kind of medical care, is also a lot better quality of life for the patient than having to be in a nursing home or a hospital, if that is the appropriate medical

care, because they are surrounded by family in their home.

The Bush administration now wants to propose a new copayment. Therefore, for senior citizens who are having difficulty paying medical bills as it is, because Medicare does not cover everything, now the Bush administration wants, in fact, them to pay more in order to be eligible for home health care? Have they taken leave of their senses?

Take, for example, what the Senator mentioned on prescription drugs. The Bush administration is saying: Oh, we want a prescription drug benefit. Well, certainly all of us do. Why? Because Medicare was set up in 1965 when health care was organized around acute care in hospitals. But 37 years later, health care is a lot different. Thank the Good Lord for the miracles of modern medicine.

So to provide those miracles of modern medicine—otherwise known as prescription drugs—to our senior citizens, we ought to be modernizing Medicare by adding a prescription drug benefit.

The administration says: Yes, we want it. But they are saying, \$190 billion over 10 years. That is a drop in the bucket.

The ACTING PRESIDENT pro tempore. Time for morning business has expired.

Mr. NELSON of Florida. Madam President, I ask unanimous consent that I may proceed for 5 additional minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. Madam President, that would be fine. It may necessitate having the vote at 5 after rather than on the hour.

Mr. LEAHY. I have no objection, provided we then still keep the period of time prior to the next vote the same amount of time and the vote will have to slip 5 minutes.

Mr. REID. I say to my friend from Florida, I also got a nod from the minority that that is fine. We will ask that the vote be scheduled for 5 after 11 and that the Senator from Florida be recognized for an additional 5 minutes—I am sorry, 11:35.

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

The Senator from Florida.

Mr. NELSON of Florida. I thank my colleagues. They are very generous with the time. I thank the Chair.

I was talking about prescription drugs and providing a realistic prescription drug benefit by modernizing Medicare. We talked about a level in the last campaign. This was a primary topic of concern. In every television debate I had, this issue came up. The level we were talking about was in the range of \$300 to \$350 billion for a prescription drug benefit over a 10-year period.

The fact is, the escalating cost of prescription drugs is going to be more than that. Of course, with a budget

that now has no surplus—we had about 14 months ago an ample surplus for the next decade—it is going to be very difficult. But we are going to have to face that fact. And don't talk about window dressing of \$190 billion over a decade because that is not going to cut it. For example, why don't we step up to the plate on Medicare reimbursement? Look at the doctors and the hospitals that are having difficulty making it because Medicare is not reimbursing on a realistic payment schedule. We are going to have to address that.

I say to my colleague from the great State of Michigan, the fact is, eventually this country is going to have to face the fact of health care reform in a comprehensive way. What are we going to do about 44 million people in this country who don't have health insurance? The fact is, they don't have health insurance, but they get health care. They get it at the most expensive place, at the most expensive time; that is, when they get sick. They end up in the emergency room, which is the most expensive place at the most expensive time because without preventative care, when the sniffles have turned into pneumonia, the consequence is that the costs are so much higher.

Ms. STABENOW. Will my colleague be willing to yield for a moment?

Mr. NELSON of Florida. Certainly.

Ms. STABENOW. He raises such an important point about prevention. That is why I know we care so much about the issue of prescription drugs. By making prescription drugs available on the front end, that is part of that prevention, along with comprehensive care, making sure that people are able to receive the medicine they need before they get deathly sick and need to go into a hospital or need an operation.

My colleague raises such an important point, and it is one of the reasons we are working so hard to make Medicare available with prescription drugs and to also lower the prices for everyone. Part of that prevention is making sure that seniors have access to the medicine they need to prevent more serious injuries and illnesses from happening.

Mr. NELSON of Florida. And comprehensive health care reform has to deal with the 40-plus million who don't have health insurance by creating a system whereby they are covered. That then allows the principle of insurance to work for you because the principle of insurance is that you take the largest possible group to spread the health risk, and when you do that, you bring down the per-unit cost. Thus, any comprehensive plan is going to have to have pooling of larger groups. It is going to have to have consumer choice. It is going to have to have free market competition to get the most efficiency, and it is going to have to have universal coverage.

I thank the Chair for the opportunity to join the debate on prescription drugs.

CONCLUSION OF MORNING  
BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

## EXECUTIVE SESSION

NOMINATIONS OF LEONARD E. DAVIS TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS; ANDREW S. HANEN TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; SAMUEL H. MAYS, JR. TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE; THOMAS M. ROSE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 10:35 having arrived, the Senate will now go into executive session and proceed to the consideration en bloc of Executive Calendar Nos. 811, 812, 813, and 814, which the clerk will report.

The assistant legislative clerk read the nominations of Leonard E. Davis, of Texas, to be U.S. District Judge for the Eastern District of Texas;

Andrew S. Hanen, of Texas, to be U.S. District Judge for the Southern District of Texas;

Samuel H. Mays, Jr., of Tennessee, to be U.S. District Judge for the Western District of Tennessee;

Thomas M. Rose, of Ohio, to be U.S. District Judge for the Southern District of Ohio.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 1 hour of debate on the nominations, to be equally divided between the chairman and ranking member of the Judiciary Committee or their designees.

The Senator from Vermont.

Mr. LEAHY. Madam President, today the Senate is considering, as the Chair has reported, four more of President Bush's judicial nominees. We will begin voting on those nominees in about an hour.

I rarely predict the outcome of votes in the Senate. Having been here 28 years, I have had enough chances to be wrong in my predictions, but I will predict, with a degree of certitude, that these will be another four of President Bush's judicial nominees that we will confirm.

These confirmations demonstrate, as has been demonstrated with each of the judges we have confirmed in the past ten months, with the exception of one, that we have taken up nominees in the Senate Judiciary Committee, that they have gone through the committee and, when they have reached the floor, have been confirmed.

Democrats have demonstrated over and over again that we are working with the President on fundamental issues that are important to this country, whether it is our support for the

war on terrorism, support for strong and effective law enforcement, or our effort to work collaboratively to lower judicial vacancies.

For a bit of history, when the Democrats took over the full Judiciary Committee in July of last year, there were 110 vacancies. My Republican colleagues had not held any judicial confirmation hearings at all prior to the time we took over, despite the fact that there were a number of pending nominations when they first came into power. Then there were, of course, nominations that President Bush sent to the Senate in May. But as of July, when we took over, the Republican-controlled committee had not held any hearings. Ten minutes after we took over the committee and I became chairman, we announced hearings on a number of the President's nominees.

I mention this to put in perspective that we have tried to move quickly. We inherited 110 vacancies. Interestingly enough, most of the vacancies occurred while the Republicans were in control of the Senate, notwithstanding the fact that former President Clinton had nominated people to fill most of those vacancies. But those nominees were never given a hearing. They were never allowed, under Republican leadership, to go forward.

Last Friday, when the Democratic Senators were out of town on a long planned meeting, President Bush spoke about what he now calls the "judicial vacancy crisis." I was disappointed that the White House speech writers chose a confrontational tone and tried to blame the Democratic Senate majority, which has actually been the majority in the Judiciary Committee for only about 10 months.

The fact is, we inherited 110 judicial vacancies on July 10, 2001. The fact is, the increase in vacancies had not occurred on the watch of the Democratic Senate majority but in the period between January 1995 and July 2001, when the Republican majority on the committee stalled President Clinton's moderate nominees and overall vacancies rose by almost 75 percent—from 63 to 110. That is what we inherited because the other side would not hold hearings. Vacancies on the courts of appeals rose even more. They more than doubled, from 16 to 33.

I don't expect President Bush to know these numbers or to be that involved with them. But his staff does, and when they write his speeches, they ought to do him the favor of being truthful. They ought to know that the Federal judiciary is supposed to be independent and outside of partisan political battles, and they should not have drawn him into one, which makes it even worse.

It is bad enough when Republicans in the Senate threaten and seek to intimidate on this issue, but we are now being threatened with a shutdown of the Senate's business, a shutdown of committee hearings, a refusal to work together on unemployment, trade, and

other important matters. It was bad enough when they utilized secret holds and stalling tactics in considering President Clinton's moderate judicial nominees, but now they bemoan the judicial vacancies that were created and take no responsibility for creating these vacancies. They seek to blame others. It is really too bad that the White House now appears to be rejecting all of our efforts—and they have been significant—at reconciliation and problem solving. Instead, the White House has joined the partisan attack.

The fact is, since last July, when we took over the majority, we have been working hard to fill judicial vacancies. We have had more hearings on more judicial nominees and confirmed more judges than our Republican predecessors ever did over any similar period of time. Actually, it is hard to know when there was a similar period in time. The Senate and the Judiciary Committee had to work in the aftermath of the attacks of September 11 and we kept on meeting. We were in this Chamber on September 12. We had the anthrax attacks on the Senate, on Majority Leader DASCHLE and, I hate to say, one on me, as chairman of the Senate Judiciary Committee. The New York Times reported it as the most deadly of all. While working to fill judicial vacancies, we were also approving executive branch nominees—Attorney General Ashcroft and others—and we were considering the Antiterrorism Act.

In my 28 years here, I have never known a time when the Judiciary Committee, or any committee, was hit with so many things that it had to do in such a short period of time and under so much pressure. The Hart Building, housing half of the Senators, was closed down. At times, this building was closed down. Senator DASCHLE and I and our staffs were under actual physical attacks with the anthrax letters. I mention that because this afternoon we are going to hold our 18th hearing for judicial nominees within 10 months—unless, of course, the other side objects to our proceeding.

By the end of today, the Senate will have confirmed 56 new judges, including 9 to the courts of appeals, within the last 10 tumultuous months—an all-time record.

I am sorry that the White House and our Republican colleagues do not acknowledge our achievements but choose, instead, to only criticize. I regret that the White House and our Republican colleagues will not acknowledge that the obstructionism of the Republican Senate majority between 1996 and 2001 is what created what they now term a "vacancy crisis."

When they were engaged in those tactics, some Republicans defended their record then by arguing that 103 vacancies was not a crisis. They actually did that. They said in an op-ed piece that having 103 vacancies was not a crisis. They let it go to 110.

The Democratic majority has cut back those vacancies. We have not only

kept up with attrition, we have cut them back. Under a Democratic President, some Republicans said 103 vacancies was not a crisis, but now, with a Republican President, they say that 84 vacancies is a crisis—even as we confirm judges at a record pace.

I have been here with six Presidents—Republican and Democrat. I have never seen a time when any White House has made the issue of the make-up of the Federal judiciary such a partisan issue. I am a lawyer, as is the distinguished Presiding Officer. I have argued cases before Federal courts, both at the district level and at the appellate level.

One thing I have always known when I walked into a Federal court in America is that it is an impartial court, where you are not looked at as a Republican or a Democrat, whether you are rich or poor, whether you are white or black, plaintiff or defendant, or liberal, conservative or moderate. You can always go into a Federal court here and think that you will be treated on the merits of your case. That is why I regret the lack of balance and the bipartisan perspective that was lacking in the President's speech and in the comments of some of my colleagues.

The Senate would do a disservice to the country if we allowed ideological court packing of the left or the right, if we were to put a stamp on Federal courts and say: "He who enters here, if you do not fit the ideological rubber stamp of this court, if you cannot respond and say you fit in a certain mold, according to the speeches of the President's advisers—a very narrow ideological spectrum—forget about it when you come in here." If anybody would take time to read a history book, they would understand that it is the Senate's role to ensure that the judges it confirms meet the standards for impartiality and fairness.

A very popular President, a wartime President, Franklin Delano Roosevelt, a revered President, tried to pack the courts, and the Senate said: no, you cannot do that. Every historian will tell you today: Thank goodness the Senate has stood up to a popular wartime President and said you cannot pack the courts because it would destroy the independence of the Federal judiciary.

I say this because sometimes we sit here and think we have to decide on issues just for today. We have a responsibility in the Senate to decide issues for history's sake and for the good of this country. I want to know that each one of us can go back to our constituents and say that we have preserved an independent judiciary. That does not mean just all one party. I have voted for hundreds upon hundreds of judges who stated that they were Republicans. I have voted for hundreds of judges nominated by Republican Presidents. But I will not allow an ideological shift one way or the other on the courts.

I have voted for judges whom I know have a different personal view on the

right-to-life issues than I and who have taken different positions on the death penalty. But I knew they would be fair judges. I will continue to do that. That is our responsibility as Senators to our country, to the judiciary, and to history.

With today's votes, the number of Federal judges confirmed since the change in Senate majority 10 months ago now totals 56. Under Democratic leadership, the Senate has confirmed more judges in 10 months than were confirmed by the Republican-controlled Senate in the 1996 and 1997 sessions combined. We have accomplished in less than 1 year what our predecessors and critics took 2 years to do. It took a staunchly Republican majority 15 months working closely with the Reagan administration to reach this number of confirmations, confirmations we have achieved in just 10 months.

Of course the "anniversary" of the reorganization of the Judiciary Committee after the shift in majority last year is not until July 10, more than 2 months from now. On July 10 last year we inherited 110 judicial vacancies, including 33 on the courts of appeals. Since then, 30 additional vacancies, including 5 on the courts of appeals have arisen. This is an unusually large number. Nonetheless, through hard work and great effort, the Democratic majority in the Senate has proceeded with 17 hearings involving 61 judicial nominees, the committee has voted on 59 nominees, and, today, the Senate is set to hold its 18th hearing involving four more judges and to approve four more new judges—bringing the working total to 56 confirmations in just 10 months.

The number of judicial confirmations over these past 10 months, 56, exceeds the number confirmed in 4 out of 6 full years under recent Republican leadership, during all 12 months of 2000, 1999, 1997, and 1996. And we have confirmed more judges at a faster pace than for all the years of Republican control.

Fifty-six confirmations exceeds the number of confirmations in the first year of the Reagan administration by a Republican Senate majority. It is almost double the number of confirmations in the first year of the Clinton administration by a Democratic Senate majority. And it is more than triple the number of judges confirmed for the George H.W. Bush administration by a Senate of the other party. In fact, with 56 confirmations for President George W. Bush, the Democratic-led Senate has confirmed more judges than were confirmed in 7 of the 8 whole years of the Reagan administration, that Senator HATCH acknowledges as the all-time leader in judicial appointments.

The confirmations of Justice Leonard Davis, Andrew Hanen, Samuel Mays, and Judge Thomas Rose today illustrate the progress being made under Democratic leadership, and the fair and expeditious way in which we have considered nominees. Many of the vacancies that will be filled by today's votes

arose during the Clinton administration and are a prime and unfortunate legacy of recent Republican obstructionist practices.

The confirmations of Justice Davis and Mr. Hanen will make the third and fourth district court judgeships we have filled in Texas and the eighth and ninth judgeships we have filled overall in the Fifth Circuit since I became chairman last summer. Included among those confirmations is the first new judge for the Fifth Circuit in 7 years.

On February 5, the Senate confirmed, by a vote of 93 to 0, Judge Philip Martinez of Texas to fill a judicial emergency vacancy on the District Court for the Western District of Texas. On March 18, the Senate confirmed, by a vote of 91 to 0, Robert (Randy) Crane to fill a judicial emergency vacancy on the District Court for the Southern District of Texas. The Senate has confirmed Judge Kurt Engelhardt and Judge Jay Zainey to fill vacancies on the District Court for the Eastern District of Louisiana. The Senate has confirmed Judge Michael Mills to fill a vacancy on the District Court for the Northern District of Mississippi. Despite the unfounded claim of some Republicans that the Senate will not confirm conservative Republicans, these nominees were all confirmed and treated more fairly and expeditiously than many of President Clinton's nominees for the Federal Bench.

Mr. Hanen was nominated to fill the vacancy created by the retirement of Judge Filemon B. Vela in May 2000. I recall just 2 years ago when Ricardo Morado, who served as mayor of San Benito, TX, was nominated to fill this vacancy in the Southern District of Texas and never received a hearing from the Republican-controlled Senate. President Clinton nominated Ricardo Morado on May 11, 2000, and his nomination was returned to President Clinton without any action on December 15, 2000. In filling a judicial emergency vacancy that has been pending for more than 700 days, Mr. Hanen will be the 17th judicial emergency vacancy that we have filled since July and the 10th since the beginning of this session.

With the confirmation of Mr. Hansen, there will no longer be any vacancies on the District Court for the Southern District of Texas, a Court which has faced an extraordinary caseload and has the third highest number of filings of criminal cases in the country. With Judge Crane and Judge Hanen, we have provided much needed help to this court.

It was not long ago when the Senate was under Republican control, that it took 943 days to confirm Judge Hilda Tagle to the United States District Court for the Southern District of Texas. She was first nominated in August 1995, but not confirmed until March 1998. When the final vote came, she was confirmed by unanimous consent and without a single negative vote, after having been stalled for almost 3 years. I recall the nomination of

Michael Schattman to a vacancy on the Northern District of Texas. He never got a hearing and was never acted upon, while his nomination languished for over two years. These are district court nominations that could have helped respond to increased filings in the trial courts if acted upon by the Senate over the last several years. In addition to these nominees, the Republican-led Senate failed to provide any hearings on nominees to the Court of Appeals for the Fifth Circuit, which includes Texas, during the entire 6 years of their majority in the Clinton administration.

Many of the vacancies in the Fifth Circuit are longstanding. For example, despite the fact that President Clinton nominated Jorge Rangel, a distinguished Hispanic attorney, to fill a fifth circuit vacancy in July 1997, Mr. Rangel never received a hearing and his nomination was returned to the President without Senate action at the end of 1998. On September 16, 1999, President Clinton nominated Enrique Moreno, another outstanding Hispanic attorney, to fill a vacancy on the fifth circuit but that nominee never received a hearing either. When President Bush took office last January, he withdrew the nomination of Enrique Moreno to the fifth circuit.

The surge of vacancies created on the Republicans' watch is being cleaned up under Democratic leadership in the Senate. The Senate received Justice Davis's and Mr. Hanen's nominations the last week in January. Their ABA peer reviews were not received by the committee until late March and early April. Both participated in a confirmation hearing on April 25, were considered and reported by the committee last week and are being considered and confirmed by the Senate today.

Justice Davis has been serving as Chief Justice of the Court of Appeals in Tyler, TX, since 2000 and has extensive experience practicing as a litigator before State and Federal courts. Mr. Hanen has legal experience working as a civil trial attorney and in private practice for over 20 years, and has been a leader in establishing programs to serve the needs of the disadvantaged.

The confirmations of Mr. Mays of Tennessee and Judge Rose of Ohio, will fill two judgeships in the sixth circuit. They will make the fourth and fifth district court judgeships we have filled overall in the sixth circuit since I became chairman last summer, including the three earlier confirmations from Kentucky.

The Sixth Circuit Court of Appeals currently has eight vacancies, many of which are longstanding. Six of those vacancies arose before the Judiciary Committee was permitted to reorganize after the change in majority last summer. None, zero, not one of the Clinton nominees to those vacancies on the sixth circuit received a hearing by the Judiciary Committee under Republican leadership.

One of those seats has been vacant since 1995, the first term of President

Clinton. Judge Helene White of the Michigan Court of Appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March of last year. Kathleen McCree Lewis, a distinguished lawyer from a prestigious Michigan law firm, also did not receive a hearing on her 1999 nomination to the sixth circuit during the years it was pending before it was withdrawn by President Bush in March 2001. Professor Kent Markus, another outstanding nominee to a vacancy on the sixth circuit that arose in 1999, never received a hearing on his nomination before his nomination was returned to President Clinton without action in December 2000.

Some on the other side of the aisle held these seats open for years for another President to fill, instead of proceeding fairly on consensus nominees. Some were unwilling to move forward knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is why there are now eight vacancies on the sixth circuit. That is why it is half empty or half full.

Long before some of the recent voices of concern were raised about the vacancies on that court, Democratic Senators in 1997, 1998, 1999, and 2000 implored the Republican majority to give the sixth circuit nominees hearings. Those requests, not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations. Fourteen former presidents of the Michigan State Bar pleaded for hearings on those nominations.

The former chief judge of the sixth circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee chairman years ago to ask that the nominees get hearings and that the vacancies be filled. The chief judge noted that, with four vacancies—the four vacancies that arose in the Clinton administration—the sixth circuit “is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court.” He predicted:

By the time the next President is inaugurated, there will be six vacancies on the court of appeals. Almost half of the court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them.

Nonetheless, no sixth circuit hearings were held in the last 3 years of the Clinton administration, despite these pleas. Not one. Since the shift in majority the situation has been exacerbated as two additional vacancies have arisen.

With our April 25 hearing on the nomination of Judge Gibbons to the

sixth circuit, we held the first hearing on a sixth circuit nomination in almost 5 years. And, with the confirmations of Judge Rose and Mr. Mays, we have now confirmed all the nominees to the district courts in the sixth circuit for whom we have received nominations. I note that the White House has still not sent nominees for the six remaining vacancies that exist on the district courts in the sixth circuit.

As our action today demonstrates, again, we are moving at a fast pace to fill judicial vacancies with nominees who have strong bipartisan support. Partisan critics of these accomplishments ignore the facts. The facts are that we are confirming President Bush's nominees at a faster pace than the nominees of prior presidents, including those who worked closely with a Senate majority of the same political party.

The rate of confirmation in the past 10 months actually exceeds the rates of confirmation in the past three presidencies. For example, in the first 15 months of the Clinton administration, 46 judicial nominees were confirmed, a pace on average of 3.1 per month. In the first 15 months of the first Bush administration, judges were confirmed at a pace of 1.8 judges per month. Even in the first 15 months of the Reagan administration, when a staunchly Republican majority in the Senate was working closely with a Republican President, 54 judges were confirmed, a pace of 3.6 per month. In fewer than 10 months since the shift to a Democratic majority in the Senate, President George W. Bush's judicial nominees have been confirmed at a rate of 5.6 judges per month, a faster pace than for any of the past three Presidents.

During the 6½ years of Republican control of the Senate, judicial confirmations averaged 38 per year—a pace of consideration and confirmation that we have already exceeded under Democratic leadership over these past 10 months in spite of all of the challenges facing Congress and the Nation during this period and all of the obstacles Republicans have placed in our path. As of today, we have confirmed 56 judicial nominees in fewer than 10 months. This is more than twice as many confirmations as George W. Bush's father had over a longer period—27 nominees in 15 months—than the period we have been in the majority in the Senate.

The Republican critics typically compare apples to oranges to mischaracterize the achievements of the last 10 months. They complain that we have not done 24 months of work in the 10 months we have been in the majority. Ironically, with today's confirmations, we even meet that unfair standard: Within the last 10 months we have confirmed more judges than were confirmed by the Republican majority in the entire 1996 congressional session and in all of 1997 combined—we have now exceeded their 2-year figure in 10 months.

A fair examination of the rate of confirmation shows that Democrats are



working harder and faster on judicial nominees, confirming judges at a faster pace than the rates of the past 20 years. The double standards asserted by Republican critics are just plain wrong and unfair, but that does not seem to matter to Republicans intent on criticizing and belittling every achievement of the Senate under a Democratic majority.

The Republican attack is based on the unfounded notion that the Senate has not kept up with attrition on the district courts and the courts of appeals. Well, the Democratic majority in the Senate has not only been keeping up with attrition but outpacing it, and we have started to move the vacancies numbers in the right direction—down. By contrast, from January 1995 when the Republican majority took over control of the Senate until July 2001, when the new Democratic majority was allowed to reorganize, Federal judicial vacancies rose by almost 75 percent, from 63 to 110. When Members were finally allowed to be assigned to committees on July 10, we began with 110 judicial vacancies.

With today's confirmations of Justice Davis, Mr. Hanen, Judge Rose, and Mr. Mays, we have reduced the overall number of judicial vacancies to 84. Already, in fewer than 10 months in the majority, we more than kept up with attrition and begun to close the judicial vacancies gap that grew so enormous under the Republican majority. Under Democratic leadership, we have reduced the number of district court vacancies by nearly 30 percent and the overall number of judicial vacancies by nearly 25 percent.

Overall, in 10 months, the Senate Judiciary Committee has held 17 hearings involving 61 judicial nominations and is scheduled this afternoon to hold its 18th hearing today involving four more judicial nominees. That is more hearings on judges than the Republican majority held in any year of its control of the Senate—twice as many as they held during some full years. Recall that one-sixth of President Clinton's judicial nominees—more than 50—never got a committee hearing and committee vote from the Republican majority, which perpetuated long-standing vacancies into this year.

Despite the new-found concern from across the aisle about the number of judicial vacancies, no nominations hearings were held while the Republicans controlled the Senate during the first half of last year. No judges were confirmed during that time from among the many qualified circuit court nominees received by the Senate on January 3, 2001, or from among the nominations received by the Senate on May 9, 2001.

The Democratic leadership acted promptly to address the number of district and circuit vacancies that had been allowed to grow when the Senate was in Republican control. The Judiciary Committee noticed the first hearing on judicial nominations within 10 min-

utes of the reorganization of the Senate and held that hearing on the day after the committee was assigned new members.

That initial hearing included two district court nominees and a court of appeal nominee on whom the Republican majority had refused to hold a hearing the year before. Within 2 weeks of the first hearing, we held a second hearing on judicial nominations that included another court of appeals nominee. I did try to schedule some district court nominees for that hearing, but none of the files of the seven district court nominees pending before the committee was complete. Similarly, in the unprecedented hearings we held for judicial nominees during the August recess, we attempted to schedule additional district court nominees but we could not do so if their paperwork was not complete. Had we had cooperation from the Republican majority and the White House in our efforts, we could have held even more hearings for more district court nominees. Nevertheless, including our hearing scheduled for this week, in 10 tumultuous months, the committee will have held 18 hearings involving 65 judicial nominations.

The Senate Judiciary Committee is holding regular hearings on judicial nominees and giving nominees a vote in committee, in contrast to the practice of anonymous holds and other obstructionist tactics employed by some during the period of Republican control. The Democratic majority has reformed the process and practices used in the past to deny committee consideration of judicial nominees. We are moving away from the anonymous holds that so dominated the process from 1996 through 2000. We have made home State Senators' blue slips public for the first time.

I do not mean by my comments to appear critical of Senator HATCH. Many times during the 6½ years he chaired the Judiciary Committee, I observed that, were the matter left up to us, we would have made more progress on more judicial nominees. I thanked him during those years for his efforts. I know that he would have liked to have been able to do more and not have to leave so many vacancies and so many nominees without action.

I hope to hold additional hearings and make additional progress on judicial nominees. In our efforts to address the number of vacancies on the circuit courts we inherited from the Republicans and to respond to what the President, Vice President CHENEY and Senator HATCH now call a vacancy crisis, the committee has focused on consensus nominees. This will help end the crisis caused by Republican delay and obstruction by confirming as many of the President's judicial nominees as quickly as possible.

Most Senators understand that the more controversial nominees require greater review. This process of careful review is part of our democratic process. It is a critical part of the checks

and balances of our system of government that does not give the power to make lifetime appointments to one person alone to remake the courts along narrow ideological lines, to pack the courts with judges whose views are outside of the mainstream of legal thought, and whose decisions would further divide our nation. The Senate should not and will not rubber stamp nominees who would undermine the independence and fairness of our Federal courts. It is our responsibility to preserve a fair, impartial and independent judiciary for all Americans, of all races, all religions, whether rich or poor, whether Democrat or Republican.

Some on the other side of the aisle have falsely charged that if a nominee has a record as a conservative Republican, he will not be considered by the committee. That is simply untrue. Take, for example, the nomination of Mr. Mays. Mr. Mays has been involved in more than 50 political campaigns on behalf of Republican candidates for President, Senate, Governor, and local offices. He is a member of the Republican National Lawyers Association. He was a delegate to the Republican National Convention in 2000, and he was on the Executive Committee of the Tennessee Republican Party from 1986 through 1990. Thus, it would be wrong to claim that we will not consider President George W. Bush's nominees with conservative credentials. We have done so repeatedly.

The next time Republican critics are bandying around charges that the Democratic majority has failed to consider conservative judicial nominees, I hope someone will ask those critics about Mr. Mays, or all the Federalist Society members and Republican Party activists this Senate has already confirmed. I certainly do not believe that President Bush has appointed 56 liberal judges and neither does the White House.

The committee continues to try to accommodate Senators from both sides of the aisle. The court of appeals nominees included at hearings so far this year have been at the request of Senators GRASSLEY, LOTT, SPECTER, ENZI, SMITH, and THOMPSON, six Republican Senators who each sought a prompt hearing on a court of appeals nominee who was not among those initially sent to the Senate in May 2001.

The whipsawing by the other side is truly remarkable. When we proceed on nominees that they support and on whom they seek action, we are criticized for not acting on others. When we direct our effort to trying to solve problems in one circuit, they complain that we are not acting in another. Since these multiple problems arose on their watch while they were in the majority, it is a bit like the arsonist who complains that the local fire department is not responding fast enough to all of his destructive antics.

I imagine that today we will be hearing a refrain about the most controversial of President Bush's nominees who



have not yet participated in a hearing. Some of them do not have the necessary home-State Senate support needed to proceed. Some will take a great deal of time and effort for the committee to consider. In spite of all we have done and all we are doing, our partisan critics will act as if we have not held a single hearing on a single judicial nominee. They will not acknowledge their role in creating what they now call a judicial vacancies crisis. They will not apologize for their harsh tactics in the 6½ years that preceded the shift in majority. They will not acknowledge that the Democratic majority has moved faster on more judges than they ever did. They will not acknowledge that we have been working at a record pace to seek to solve the problems they created.

Each of the 56 nominees confirmed by the Senate has received the unanimous, bipartisan backing of the committee. Today's confirmations make the 53rd through 56th judicial nominees to be confirmed since I became chairman last July. I would like to commend the members of the Judiciary Committee and our Majority Leader Senator DASCHLE and Assistant Majority Leader Senator REID for all of their hard work in getting us to this point. The confirmation of the 56th judge in 10 months, especially these last 10 months, in spite of the unfair and personal criticism to which they have each been subjected, is an extraordinary achievement and a real example of Democratic Senators acting in a bipartisan way even when some on the other side have continued to make our efforts toward progress as difficult as possible.

I again invite the President to join with us to fill the remaining judicial vacancies as quickly as possible with qualified, consensus nominees, nominees chosen from the mainstream and not for their ideological orientation, nominees who will be fair and impartial judges and will ensure that an independent judiciary is the people's bulwark against a loss of their freedoms and rights.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I am grateful for this opportunity to talk about some of the things that are going on with regard to judges.

I believe that my chairmanship of the Senate Judiciary Committee and the record we established during the Clinton administration have been viciously attacked through the last number of months. There seem to be a number of illusions floating around Capitol Hill relating to this committee's handling of judges during my tenure.

I am here to set the record straight. I am here to help everybody else know what that record is.

The Democrats are in power. They set the pace and agenda for such nomination hearings, and they have a right to do so. I want to shine a candle through five points that never seem to

have seen the light of day in past discussions of confirmations.

First, there is a seemingly immortal myth around here that it was the Republicans who created the current vacancy crisis by stalling President Clinton's nominees. That is purely and unmistakably false. The fact is, the number of judicial vacancies decreased by 3 during the 6 years of Republican leadership while I was chairman over what it was when the Democrats controlled.

There were 70 vacancies when I became chairman of the Judiciary Committee in January of 1995 and President Clinton was in office, and there were 67 at the close of the 106th Congress in December 2000 and the end of President Clinton's Presidency. The Republicans did not create or even add to the current vacancy crisis.

Each Member of this Senate is entitled to his or her opinion on what happened, but not to his or her own set of facts. Enron-type accounting should not be employed regardless of which liberal interest group is insisting on it when we are talking about something as serious as our independent judiciary.

Second, there has been considerable sleight of hand when it comes to the true overall record of President Clinton's nominations. I worked well with President Clinton. I did everything in my power to help him with his nominations. One person does not control everything, but I did everything I knew how.

The undisputed fact is that Republicans treated a Democratic President equally as well as they did a Republican. We did not use any litmus tests, regardless of our personal views, whether it was abortion, religion, race, or personal ideology. I am disappointed to note that seems to be precisely what is happening with the Democrat-controlled Senate now.

Let's be honest and look at the facts. During President Clinton's 8 years in office, the Senate confirmed 377 judges, essentially the same as, only 5 fewer than, the all-time confirmation champion, Ronald Reagan, who had 382. President Reagan enjoyed 6 years of his own party controlling the Senate, while President Clinton had only 2. President Clinton had to put up with 6 years of a Republican-controlled Senate.

This proves that the Republicans did not let partisanship get in the way of principle when it came to judicial nominations. True, there were individual instances where a handful of nominees did not move, but it was nothing like the systematic and calculated stalling tactics being employed by this Democratic Senate to stop President Bush's highly qualified nominees.

At this point, I should also add the Clinton nominees we confirmed were no mainstream moderates as some of us have been led to believe. We confirmed nominees—and I am going to mention four—in one circuit; all four were moved up to the Ninth Circuit

Court of Appeals. We confirmed Ninth Circuit nominees such as Judge Marcia Berzon, Judge Richard Paez, Judge Margaret Morrow, and Judge Willie Fletcher, and I could go on down the line. These nominees were confirmed with my support as chairman. I can tell you not a single one of these would be characterized, by any measure of the imagination, as nominees with political ideology within the moderate mainstream. I have personal political views almost completely opposite them, but they were confirmed.

I applied no litmus test to them. I reviewed them on their legal capabilities and qualifications to be a judge, and that is all I am asking from the Democrat majority. That is not what is happening. It is clear there is this wholesale, calculated, slow-walking of President Bush's nominees and particularly for the circuit court nominees.

Last year on this very day, May 9, we had 31 vacancies in the circuit courts of appeals. Today there are 29—2 fewer. We are not making a lot of headway on these very important circuit court nominations.

I might add, yes, it took a lengthy period to go through some of these nominees. Sometimes it was because objections were made; sometimes it was because of further investigation that had to occur; sometimes it was just because I had to fight with my own caucus to get them through. But they did get through.

The third point I wish to make is that an illusion has been created out of thin air that the Republicans left an undue number of nominees pending in a committee without votes at the end of the Clinton administration. Again, more Arthur Andersen accountings. Get ready for the truth.

There were 41 such nominees—I repeat, 41—which is 13 fewer than the 54 whom Democrats who controlled the Senate in 1992 left at the end of the first Bush administration. That is 41 under my chairmanship and 54 under the Democrat-controlled Senate in 1992, at the end of the first Bush administration.

My fourth point is, as you can see from this particular chart, I believe President Bush is being treated very unfairly. I will try to point this out.

President Reagan and the first President Bush got all of their first 11 circuit court nominees confirmed. All 11 were confirmed well within one year of their nominations. This is a stark contrast to today: 8 of current President Bush's first 11 nominations are still pending without a hearing, despite being here for a whole year at the end of yesterday. All have their ABA ratings. All are rated either well qualified, the highest rating possible, or qualified, a high rating, and all but one have their home State Senators' support, and that one is a North Carolina nominee for whom Senator EDWARDS has yet to return a blue slip.

I might add that the North Carolina nominee was nominated in the first

Bush administration. So he has been pending for over 10 years. John Roberts—who is considered one of the two or three greatest appellate lawyers in this country by everybody who knows intimately what he has done, both Democrats and Republicans—has been sitting here for 1 solid year.

My fifth point, shown in this chart, is that President Clinton had the privilege of seeing 97 of his first judicial nominees confirmed. The average time from nomination to confirmation was 93 days. Such a record was par for the course until the current Senate leadership took over last year. President Reagan got 97 of his first 100 judicial nominations confirmed in an average of 36 days. Again, he had 6 years of a Republican Senate to help him. President H.W. Bush saw 95 of his first 100 confirmed in an average of 78 days, and for most of his tenure he had a Democrat-controlled Senate.

The ground rules obviously have been changed as the extreme interest groups have reportedly instructed my Democratic colleagues. As we sit here today, the Senate has confirmed only 52—only 52—not the 97 President Clinton got, but only 52 of President Bush's first 100 nominees, and the average number of days to confirm these nominees is over 150 and increasing every day.

The reason I mention these five points is that there are some people who read the title of what we are doing today, and they hear what my colleagues have to say, and ignore the fact that, of President Bush's first 11 nominations, only 3 of them have gotten through. Those 11 were made on May 9 of last year. There is no historical justification for blocking President Bush's choices for the Federal judiciary. First, I do not want to accuse my colleagues on the other side of doing that.

Second, there simply is no historic justification for blocking President Bush's first 11 or first 100 judicial nominees. Nor is there any truth to the myth that the vacancies we have today were caused by the Republican Senate. They were caused by retiring judges. In other words, anything conjured up from the past and dressed up as a reason to thwart the requests of President Bush should be dismissed.

Now I want to switch gears a little bit and say something I consider to be personal, even though it has had—and still could have—a lot of bearing on this process. Back before I became chairman of the Judiciary Committee in 1995, I was personally affected by several events that occurred under the auspices of advise and consent. These events included the mistreatment of nominees including Sessions, Bork, Thomas, Ryskamp, Rehnquist, and others. In fact, even Justice Souter was not treated really well when he came before the committee, and the main reason was they thought he might be anti-abortion.

I saw how politics can affect the human spirit both in success and defeat. I saw how baseless allegations can

take on a life of their own and how they can take away the life from their victims.

By the time I became chairman, I was determined to change the process that had gotten so vicious. I worked to restore dignity back to the nominations process both in the Committee and the Senate. I championed the cause of President Clinton's Supreme Court nominee Ruth Bader Ginsburg, even though she was criticized by many as a liberal activist and was a former general counsel of the ACLU, nothing that bothered me. I used my influence to quiet her detractors. I helped secure her vote of 96 to 3.

Under my chairmanship, I ended the practice of inviting witnesses to come into hearings to disparage the district court and circuit court nominees. In other words, I would not allow an outside group to come in. And there were plenty of them that wanted to. I dealt with the FBI background issues in private conference with Senators, never mentioning them in public hearings. Now that is a practice I am concerned has not been followed.

It is a matter of great concern because sometimes we do have to delay a hearing. We may have to put off some things because of further investigation, which may turn out to be innocuous, or because of some serious charges that were raised, or because of something that has arisen that needs to be discussed. Anytime somebody indicates we have to put off a hearing because of an FBI report—that essentially comes down to telling everybody in the world. At the very least, it makes the public draw the conclusion that there must be something wrong with this nominee. Of course, in most cases there is not.

Now I told interest groups, even the ones with which I agree and whose work I like in other areas, that they were not welcome to come in and smear Clinton nominees. I refused to alter the 200-year tradition of deference to Presidents by shifting the burden onto nominees, and I informed the White House of problems that could, if made public, lead a nominee to a humiliating vote so that the nominee could withdraw rather than face that fate. These are the reasons we were able to confirm 377 Clinton nominees.

Anybody who thinks they were within the mainstream did not look at those nominees. We included some pretty contentious ones, such as the ones I have mentioned earlier in my remarks, and I only mentioned four because they were from the one circuit. I could mention many. If we had applied the same litmus tests as our colleagues are applying to President Bush's judges, very few of President Clinton's nominees would have gotten through.

I worked to get them confirmed. I stuck my neck out for them, and I still believe to this day I did the right thing, even though I am increasingly pessimistic that someone on the other side of the aisle will step up to the plate and reciprocate for any Bush

nominees who might be in the same circumstance.

I urge and call upon the Democratic majority to show some leadership and put partisanship and the politics of personal destruction behind. Give fair hearings and confirmations of qualified nominees and keep the judiciary independent, as our forefathers intended. Keep the left-wing interest groups out of the nominations process. Do not let them smear our people.

I will introduce some of the nominees that have been held hostage in the Judiciary Committee this whole year. John Roberts, who is one of the most qualified and respected appellate lawyers in this country, has argued 37 cases before the Supreme Court. He just won a Supreme Court case 2 weeks ago for environmentalists. That was a historic property rights case. Miguel Estrada, who is a true American success story, arrived in this country from Honduras as a teenager, taught himself English, graduated with high honors from both Columbia and Harvard Law School, and has argued 15 cases before the U.S. Supreme Court—an exceptional Hispanic young man.

Professor Michael McConnell, from my State of Utah, one of the greatest legal minds of our generation, is supported by top liberal legal scholars Laurence Tribe of Harvard, Cass Sunstein of Chicago Law School, and many others. He is widely known to possess all the intelligence, temperament, and personal qualities that can make for an outstanding judge.

Jeffrey Sutton, a top legal advocate who graduated first in his class at the Ohio State College of Law, served as a law clerk to the U.S. Supreme Court.

There they are: John Roberts, Miguel Estrada, Michael McConnell, and Jeffrey Sutton on the top of this chart.

I will go a little bit further. Then there is Deborah Cook at the Sixth Circuit, who has overcome formidable obstacles in her personal life and legal career, including breaking a glass ceiling when she became the first female attorney in her law firm. She has served with distinction on the Ohio State Supreme Court.

Then there is Judge Dennis Shedd. He has a long and admirable record in public service. He was chief of staff of the Senate Judiciary Committee, and he is now a judge on the Federal district court. He already knows his way around the Fourth Circuit Court of Appeals where he has been nominated to serve because he has already been designated by that court to hear over 30 of their cases and write a number of opinions. I should also note that Judge Shedd has the bipartisan support of both home State Senators.

Then there is Priscilla Owen of Texas, who is a litigator with 17 years' experience and currently serving her 7th year as a justice on the Texas Supreme Court. She is only the second woman even to sit on that bench. She has been sitting, as have all these others, for over a year now.

Last but certainly not least, there is Judge Terrence Boyle, a judge with 14 years' experience, who is a thoughtful, fair, and nonpartisan jurist who has been waiting for a hearing for 11 years, ever since the first President Bush nominated him in 1991, and who has been designated to sit with the Fourth Circuit Court during 12 terms and has written more than 20 circuit court opinions. That is how much they have honored him. He was nominated, as I say, over 10 years ago and still has not had a hearing.

These are all superbly qualified, mainstream jurists who are committed to the principle that judges should follow the law and not make it up from the bench. They are also President Bush's selections. They enjoy bipartisan support. They are not ideologues. The Senate Democrats who are blocking them from having hearings should treat these nominees and the President who nominated them with fairness. I do not think the process is fair now and have to speak out.

It is time for this Senate to examine the real situation in the Judiciary Committee rather than to listen to the more inventive ways of spinning. We have lots of work to do. Let us put the statistics judo game behind us and get to work. We have been elected to do a job and let's do it instead of making up excuses for why we are not doing it.

If we look at these eight nominees, John Roberts, unanimously well qualified by the gold standard according to our colleagues on the other side, the American Bar Association; Miguel Estrada, unanimously well qualified by the American Bar Association; Michael McConnell, unanimously well qualified by the American Bar Association; Jeffrey Sutton, a majority qualified, a minority well qualified; Deborah Cook, unanimously qualified; Priscilla Owen, unanimously well qualified; Dennis Shedd, a majority of the ABA committee found him well qualified; Terrence Boyle, unanimously qualified. There is no reason why they should have sat there for 1 solid year.

I think the American people are disappointed; they want the Senate to help, not hinder, President Bush. I urge my friend across the aisle to focus on this situation and step up the pace of hearings and votes and do what is right for the country.

Having said that, I understand there are only four of the six judges pending on the floor that will be voted on today. Unfortunately, one of them who will not be voted on is a judge we recommended from Utah who is truly beloved out there and by many throughout the country. He is one of the finest law professors in the country. He came out of the committee with a vote of only four of our committee voting against him. Whenever members of the committee had judges, I did everything in my power to put them to the head of the line and to get them through. These two judges, Judge Paul Cassell, who is already approved by the com-

mittee, has been here for almost a year and will not get a vote today; and Judge Michael McConnell, who some say is probably one of the two or three greatest legal geniuses in the country, is still without a hearing—and I am ranking member.

This is bothering me to a large degree because I do not treat my colleagues on the other side the way they are treating our nominees. I believe it has to change. I will do everything in my power to change it. Should we get back in the majority, I will move to do a lot better job than has ever been done before and, hopefully, we can correct some of the ills that we have all complained about in the past.

We have a 100-person body and it is not easy sometimes to get people through. I have to say, in comparison, we treated President Clinton's nominees fairly. There are some exceptions—I have to admit; there always are—whether the Democrats or Republicans are in control of the committee. Look at the figures and facts. They were treated very fairly.

It is interesting to note how much my colleagues have changed their tune in the last year or so. Moments ago, my colleague criticized our President, President Bush, for using the phrase "judicial vacancy crisis." My colleague called this "confrontational." Yet in June of 1998, the Democrat leader of the Senate said that the "vacancy crisis is the most serious problem." Has the phrase "judicial crisis" taken on a new connotation, or is this simply another example of the shoe being put on the other foot? I don't think we should be tit for tat in this body. Yes, we can always point to some nominees you wish could have gotten through, whether JOE BIDEN was chairman or whether ORRIN HATCH was chairman. I know we both worked very hard to get them through.

I am concerned. I don't think President Bush is being treated fairly. I don't think the courts are being treated fairly. I don't think litigants are being treated fairly when half of a circuit in the Sixth Circuit is without judges. That means the civil cases virtually cannot be heard because they have to go to the criminal cases first, and many of those cannot be heard.

Justice delayed is justice denied. That is happening all over our country. I believe we have to change that.

Madam President, I support the confirmation of Samuel "Hardy" Mays, Jr., to the United States District Court for the Western District of Tennessee.

I have had the pleasure of reviewing Mr. Mays' distinguished career, and I can say without hesitation that he will be an excellent addition to the Federal judiciary.

Mr. Mays graduated in 1961 from Amherst College and attended Yale Law School, where he served on the editorial board of the law journal. After receiving his Juris Doctorate, Mr. Mays began an over-20-year association with the law firm presently known as

Baker, Donelson, Bearman & Caldwell. Mr. Mays became a partner in 1979. His law practice ranged from trial work—where he represented clients such as small, family-owned businesses in litigation matters—to banking and health care transactions.

In 1995 Mr. Mays entered government service as Tennessee Governor Sunquist's legal counsel. Here his responsibilities included reviewing all legislation requiring the Governor's approval; reviewing all clemency matters and extraditions; advising the Governor on matters of judicial administration; reviewing and recommending all judicial appointments; and supervising, on behalf of the Governor, all litigation to which the State of Tennessee was a party.

In 1997, recognizing Mr. Mays' hard work and legal talents, Governor Sunquist promoted him to Deputy to the Governor and Chief of Staff. As Chief of Staff, Mr. Mays became, in effect, the Chief Operating Officer of a State with approximately \$19 billion in annual revenue. After leaving government service in 2000, he rejoined his old firm of Baker, Donelson.

No description of Mr. Mays' life would be complete without mentioning his active membership on numerous committees and boards, whose purpose is to enrich the lives of the people of Memphis.

Mr. Mays is eminently qualified to be a member of the Federal bench. I comment President Bush for another extraordinary judicial nominee, and I sincerely hope that the Senate will begin to deal with the growing judicial crisis that this Nation is facing.

Madam President, I support the nomination of Andrew Hanen to be U.S. District Judge for the Southern District of Texas.

It should be noted that in 1992 Mr. Hanen was nominated to the same position by the first President Bush, but, regrettably, he was not given a hearing by the Democratic Senate. Still, as was the case 10 years ago, I am confident he will serve with distinction on the Federal district court.

Following graduation from Baylor University School of Law, where he finished first in his class, Mr. Hanen clerked for a year with Chief Justice Joe Greenhill of the Texas Supreme Court. In 1979 Mr. Hanen joined the firm of Andrews & Kurth, handling medical malpractice defense cases, commercial litigation, products liability, and legal malpractice defense cases. In addition, he represented clients in cases in the areas of FELA, ERISA, lender liability, civil rights, and antitrust.

Following his unsuccessful nomination to the Federal bench in 1992, Mr. Hanen, along with two others, opened his own law firm, which is now composed of 17 employees. Mr. Hanen has represented clients in contract, patent litigation, toxic tort, mass tort, and personal injury matters.

Mr. Hanen is a leader in the Houston Volunteer Lawyers Program. While

serving as president of the Houston Bar Association, Mr. Hanen has led effort to raise funds for additional pro bono work. Mr. Hanen has also been active in promoting and instituting pro bono legal services for AIDS and HIV-affected individuals. He volunteers with Habitat for Humanity, ADR programs, and various nonprofit groups.

I am very proud of this nominee and I know he will make a great judge.

Madam President, I support the nomination of Leonard E. Davis to be United States District Judge for the Eastern District of Texas.

I have had the pleasure of reviewing Judge Davis' distinguished legal career, and I have concluded, as did President Bush, that he is a fine jurist who will add a great deal to the Federal bench in Texas.

Upon graduation from Baylor University School of Law, where he finished first in his class, Leonard Davis joined the Tyler, TX, law firm of Potter, Guinn, Minton & Roberts. He became a partner in 1979 and was managing partner from 1983 to 1990.

At the outset of his legal career, Judge Davis concentrated on insurance defense work. He also handled a diverse caseload including cases involving worker's compensation, section 1983, automobile accidents, deceptive trade practices, products liability, and malpractice. Later, as his practice developed, he focused primarily on commercial litigation. In addition, Judge Davis was appointed to defend several indigents in Federal and State criminal cases involving murder, aggravated assault, interstate transportation of stolen cattle, and tax evasion.

Judge Davis served on the Texas State Ethics Advisory Commission from 1983-88 and on the State Judicial Districts Board from 1988-92. Judge Davis was appointed by then-Governor George W. Bush as Chief Justice of the Twelfth Court of Appeals in Tyler, TX, where he has served since 2000.

I have every confidence that Judge Leonard E. Davis will serve with distinction on the Federal district court for the Eastern District of Texas.

Madam President, I rise in support of the confirmation of Judge Thomas Rose to the U.S. District Court for the Southern District of Ohio.

After reviewing Judge Rose's distinguished legal career, I can state without reservation that he is a man of integrity and honesty and will be a welcome addition to an already taxed judiciary.

Judge Rose graduated from Ohio University in 1970 with a Bachelors of Science in Education. He then went on to receive this Juris Doctorate from the University of Cincinnati College of Law in 1973.

After graduating law school, Judge Rose worked as a Greene County Assistant Prosecutor while maintaining a private practice. As a prosecutor, his responsibilities included addressing a wide range of issues from juvenile matters to capital murder cases. During

this period, my colleague and good friend, Senator DEWINE, was also a prosecutor for Greene County. Senator DEWINE discovered that one of his superiors had bugged his office. Senator DEWINE took the only honorable action available and resigned in protest. Judge Rose also resigned because he felt the office's integrity had been violated. Clearly, this shows that Judge Rose, who was not involved in this incident in any manner, is a man who will put the interests of justice and fairness above his own personal gain.

Judge Rose is also a man deeply devoted to his community. After leaving the prosecutor's office, he became Chief Juvenile Court Referee for the Greene County Court of Common Pleas. In this position, he was responsible for working with delinquent, neglected and abused children. Currently, he is a Board Member of the Xenia Rotary Club and a member of three local Chambers of Commerce.

Later, under a new Greene County Prosecutor, Judge Rose became Chief Assistant Prosecutor in Charge of the Civil Division. In 1991, he rose to the bench as a Judge for the Greene County Common Pleas Court, General Division. Currently, Judge Rose handles approximately 400 civil and 400 felony criminal cases annually.

Judge Rose's nomination is yet another example of the quality of judicial nominations that President Bush is making. I believe that we should all follow the example set by the President when he said that it is time to provide fair hearings and prompt votes to all nominees, no matter who controls the Senate or the White House. This is what I tried to do when I was chairman, and it is a standard to which we should now aspire.

Mr. EDWARDS. Madam President, I wanted to say just a few words on this subject of judicial nominations.

Not everyone realizes how important the Federal courts are. They are extraordinarily important. Once judges are confirmed by the Senate, they hold lifetime appointments. Although the focus tends to be on the Supreme Court, the reality is that well over 99 percent of all cases never reach that court. These cases are decided by district judges and circuit judges who most Americans have never heard of. The final decisions made by these judges resolve the most fundamental questions about our civil rights and individual rights. Every single day, these judges make decisions that literally make and break people's lives.

So it is critical that we examine nominations to the Federal bench very carefully, particularly when those nominations raise serious questions.

Of course, being deliberate does not mean being dilatory. But Madam President, the truth is that the Senate is confirming large numbers of nominees. As of today, the Senate will have confirmed 56 judges, including 9 to the courts of appeals. That is a faster pace than in the last 6 years of the Clinton

administration. In those six years, the number of vacancies in the Federal appeals courts more than doubled, from 16 to 33. Today, that vacancy level is down from 33 to 29.

To sum up, I believe that when it comes to judges, we are doing our job carefully, and we are doing our job well.

Mr. THOMPSON. Madam President, I am very pleased that the Senate is considering the nomination of Samuel Mays, whom everybody in Tennessee knows as "Hardy," to be a U.S. District Judge for the Western District of Tennessee.

I am grateful to Chairman LEAHY and the Judiciary Committee and its staff for moving Mr. Mays's nomination so quickly. The need is quite urgent. The Western District of Tennessee typically has four judges assigned to hear cases in Memphis, along with a fifth who hears cases in Jackson. Only two of those four seats are currently filled with judges hearing cases, and the nomination of one of those two judges to the Court of Appeals is now pending before the Senate. A third seat, the one to which Mr. Mays has been nominated, is vacant. The fourth judge is currently on disability leave. So moving Mr. Mays's nomination so promptly is imperative for litigants with cases pending in the Western District.

Hardy Mays is very well known to the bar of the Western District of Tennessee. He was born and raised in Memphis. He graduated from Amherst College in 1970 and in 1973 from Yale Law School, where he served as an editor of the law journal.

He returned home to Memphis, where he joined the law firm that is today known as Baker, Donelson, Bearman & Caldwell, at which he practiced law for over 20 years, and which was also the firm of our former colleague, Senator Howard Baker, now U.S. Ambassador to Japan. Although Mr. Mays started his practice as a tax and banking lawyer, he soon shifted his focus to litigation. He represented clients before the local, State, and Federal courts in west Tennessee in a wide variety of civil cases. While his practice continued to evolve into one primarily concentrated on banking law issues, Mr. Mays continued to try cases until 1985. During his time as a litigator, Mr. Mays tried over 25 cases to judgment. Many of these cases were in Federal court. His peers recognized his standing at the bar and selected him as a member of the board of directors of the Memphis Bar Association, a position he held from 1985 to 1987.

In 1987, he became managing partner of his firm, a move that forced him to give up litigation. He helped turn the firm into a regional law firm, opening offices in Nashville and Chattanooga. He gave up his position as managing partner of the firm in 1988 and returned to the full-time practice of law. By then, his practice had again evolved into one focused on health law and related practice areas.

In 1995, Mr. Mays joined the administration of Governor Don Sundquist as his legal counsel. Two years later, he became the Governor's chief of staff. In these positions, he served the people of Tennessee ably and tirelessly. He was highly regarded during his tenure with Governor Sundquist.

In 2000, he returned to his former law firm, where he has continued to practice law focused on representing health care providers.

Mr. Mays is highly regarded by the bar for his intellect, legal ability, fairness, and his unflinching good humor. I am confident that he has the ideal temperament to serve in the stressful position of a trial judge. Mr. Mays enjoys broad, bipartisan support. I know the Judiciary Committee has heard from a number of prominent Democrats, including Memphis Mayor Willie Herenton; President Clinton's U.S. Attorney in Memphis, Veronica Coleman-Davis; former Tennessee Governor Ned McWherter; and our former colleague, Senator Harlan Matthews, in support of the nomination of Mr. Mays.

In addition to his record of professional accomplishments, no recitation of Mr. Mays's career would be complete without reference to his extraordinary commitment to his community. While I will not take the time to detail the full scope of his community involvement, including his significant political activities, I do want to focus on one aspect of his involvement with his neighbors: the arts in Memphis would be far poorer without his contributions. He serves or has served as a director of the Memphis Orchestra, Opera Memphis, the Memphis Ballet, the Playhouse on the Square, the Decorative Arts Trust, and the Memphis Brooks Museum, and the Memphis Botanic Garden.

Hardy Mays is an excellent choice to serve as Federal district judge in Memphis. I appreciate the President's decision to nominate him, and I am grateful to the Judiciary Committee for considering his nomination so promptly. I urge my colleagues to support his nomination.

Ms. CANTWELL. Madam President, the Senate and the Judiciary Committee have been under Democratic leadership for 10 months. During that 10 months, Chairman LEAHY and the Judiciary Committee staff have worked overtime to establish a steady process to fill judicial vacancies. In the 10 months, each one of my Democratic colleagues has taken time from their busy schedules to chair multiple nominations hearings.

Hearings on nominees began less than a week after the Senate reorganized, and have continued on a monthly, or twice monthly basis, right up to this afternoon. As you have heard repeatedly today, in 10 months we have confirmed 52 judges, and have 4 more awaiting confirmation today. We have held hearings on 13 Court of Appeals nominees. This afternoon, I will convene a hearing on four additional nomi-

nees including one for the Ninth Circuit Court of Appeals. Our record on confirmations is good.

So it has been a continual surprise to me that my colleagues on the other side of the aisle have complained day after day, that the Senate was not confirming judges. This is particularly surprising as those doing the complaining sit beside me week after week as we continue to hold hearings and vote these nominees out of the Committee.

The problem is not that the Senate has not been confirming judges. Any reasonable examination of the record makes clear that the Committee is working hard to confirm more judges than in past years. We have confirmed many strong Republican judges who are impartial, ethical, and who bring to their decision making an open mindedness to the arguments presented. My own experience in reviewing the record of nominees who have come before me makes clear that judges who are qualified, moderate candidates, who are held in high esteem by lawyers in their community, and who have a record of fair-minded decision making will be promptly confirmed.

The problem is that a few controversial nominees have not yet received hearings. President Bush last year nominated individuals to the Circuit Court of Appeals who are among the most conservative the Senate has ever considered. Many of these nominees have long records of decisions and writings that are far outside mainstream thinking. They have records that call into question their commitment to upholding precedent, and to respecting individual rights. When questions like these are raised about a nominee, the Committee must undertake a thorough examination of the nominee, and that takes time.

The Supreme Court hears fewer than 100 cases per year and circuit court judges make the final decisions in hundreds of cases a year that set precedent for thousands of additional cases. Senate confirmation is the only check upon federal judges appointed for life. I take seriously the responsibility to carefully review these nominees and to reflect upon the power they will hold to affect the lives of ordinary Americans in the workplace, the voting booth, and in the privacy of their home.

When the Senate confirms nominees to fill the remaining existing vacancies, as I am confident that it will, 11 of the 13 Circuit Courts will be dominated by conservative jurists. These same courts have increasingly issued rulings that have curtailed the power of Congress to enact laws to protect women from domestic violence, prevent discrimination based on disabilities, and to protect the environment. Rulings have increasingly limited the ability and the opportunity for women to exercise their right to reproductive freedom; limited the opportunity for education and advancement by cur-

tailing programs promoting racial and ethnic diversity in our schools and workplaces; and overturned laws protecting workers. Balance in each of the branches of our government is a key precept of our democracy, and balance in the Federal judiciary is, in my opinion, crucial to ensure that the American public maintains its unquestioned respect for and deference to the rulings of our Federal judiciary.

Americans in huge numbers favor reproductive choice, and the right to work in a safe workplace free from injury and regardless of physical disability. They believe in the need for government to take steps to protect our environment for future generations, and to protect consumers from unfair and deceitful business practices. These are the values that are placed in jeopardy by extreme nominees. It is the responsibility of the Senate and of the members of the Judiciary Committee to ensure that the people we seat on the Federal bench share the same respect for these rights.

The reality is appointments to the judiciary have become more politicized over the past 20 years. If the Senate is truly interested in filling all the outstanding vacancies as quickly as possible, we must work together to find nominees who can help to correct the current imbalance on the courts. We need to see more cooperation and consultation between the White House and the members of the Senate, and a willingness to compromise on nominees who do not present a threat to values and rights that mainstream Americans accept and welcome. We have an amazing pool of talent in our legal community, and it would be a simple matter to nominate more mainstream nominees.

It is my hope that as we continue to work to fill existing vacancies, that it will become more possible to work together to find candidates for nomination who unite, not who seek to divide.

Mr. VOINOVICH. Madam President, today, May 9, 2002, marks one year to the date that I was at the White House when President Bush announced the nominations of Deborah Cook and Jeffrey Sutton for the Sixth Circuit Court of Appeals. However, one year later, no action has been taken on these Ohioans, as well as five other nominees to the Sixth Circuit. In fact, the entire judicial nominee process has been egregiously delayed over this past year.

There are currently over 96 vacancies in the Federal courts, enough that the Chief Justice of the Supreme Court, William Rehnquist, referred to the vacancy crisis is "alarming." It certainly is alarming to note that these vacancies exist despite the fact that President Bush has nominated nearly 100 judges in his first year of office, more judges than any President in history. At the same point in his administration, President Clinton had nominated only 74 judges. In addition, former President Bush had nominated 46 and President Reagan had nominated 59.

Despite this overwhelming number of nominees, as of April 12, 2002, the Senate has only confirmed 42 of President Bush's 98 nominees. More egregious is the fact that only 7 of President Bush's 29 nominees to the circuit courts have been confirmed. No circuit has felt this delay more powerfully than the Sixth.

Since 1998, the number of vacant judgeship months in the Sixth Circuit has increased from 13.7 to 60.9 and is currently the highest in the Nation. The median time from the filing of a notice of appeal to disposition of the case in the Sixth Circuit was 15.3 months in 2001, well above the 10.9 months national average, and second in the Nation only to the Ninth Circuit.

Clearly the Sixth Circuit is in crisis and the reason is the inaction of the Senate Judiciary Committee.

When I talk to Ohio practitioners, I hear many complaints about the overuse of visiting judges throughout the Sixth Circuit. One lawyer told me that one of the visiting judges on his panel was from as far away as the Western District of Louisiana. In fact, the Sixth Circuit has the highest number of visiting judges providing service: 59 visiting judges participated in the disposition of 1,626 cases for the 12-month period ending September 30, 2001.

It is time to put a stop to this logjam of Sixth Circuit nominees and allow our overburdened appeals courts to operate free of partisan wrangling. In particular, it is time to give Justice Deborah Cook and Jeffrey Sutton a hearing, and allow their nominations to be considered by the full Senate.

In all candor, I can not think of two individuals more qualified or better prepared to assume the solemn responsibilities of the Sixth Circuit bench than Deborah Cook and Jeffrey Sutton.

I have had the privilege of knowing Deborah Cook for over 25 years. Throughout, I have found her to be a woman of exceptional character and integrity. Her professional demeanor and thorough knowledge combine to make her truly an excellent candidate for an appointment to the Sixth Circuit. Deborah Cook has served with distinction on Ohio's Supreme Court since her election in 1994 and reelection in 2000. My only regret is that with her confirmation to the Sixth Circuit, we will lose her on the Supreme Court of Ohio.

With a combined 10 years of appellate judicial experience on the Ohio Court of Appeals and the Ohio Supreme Court, Deborah Cook uniquely combines keen intellect, legal scholarship and consistency in her opinions. She is a strong advocate of applying the law without fear or favor and not making policy towards a particular constituency. Deborah Cook is a committed individual and a trusted leader, and it is my pleasure to give her my highest recommendation.

I am also very pleased to speak on behalf of Jeffrey Sutton, a man of unquestioned intelligence and qualifications, with vast experience in commercial, constitutional and appellate liti-

gation. Jeffrey Sutton graduated first in his law school class, followed by two clerkships with the United States Supreme Court, as well as the Second Circuit. As he was the State Solicitor of Ohio when I was Governor, I worked with him extensively when he represented the Governor's office, and in my judgment, he never exhibited any predisposition with regard to an issue. He has contributed so much and his compassion for people and the law is so evident. In my opinion, Jeffrey Sutton is exactly what the federal bench needs: a fresh, objective perspective.

Jeffrey Sutton's qualifications for this judgeship are best evidenced through his experience. He has argued nine cases before the United States Supreme Court, including *Hohn v. United States*, in which the Court invited Mr. Sutton's participation, and *Becker v. Montgomery*, in which he represented a prisoner's interests pro bono. He has also argued twelve cases in the Ohio Supreme Court and six cases in the Sixth Circuit. While his participation in controversial cases has, in some instances, led to a clouding of his qualifications and accomplishments, what his detractors fail to mention is how he argued pro bono on behalf of a blind student seeking admission to medical school or how he filed an amicus curiae brief with the Ohio Supreme Court in support of Ohio's Hate Crimes law on behalf of the Anti-Defamation League, the NAACP and the Ohio Human Rights Bar Association. Jeffrey Sutton should not be criticized on assumptions that past legal positions reflect his personal views. Instead, he should be lauded for always zealously advocating his client's interests, no matter the issue. I know Jeff. He is a man of exceptional character and compassion. For these and many other reasons, Jeffrey Sutton will be an unquestioned asset to the Federal Bench.

As you may know, the Sixth Circuit is in desperate need of judicial appointments. Fourteen judicial vacancies now exist, one of which has been vacant since 1995. Furthermore, the Administrative Office of the U.S. Courts has declared five of these vacancies to be judicial emergencies within the U.S. federal court system.

Given the crisis in the Sixth Circuit and the exemplary records of Justice Cook and Jeffrey Sutton, I respectfully urge the Judiciary Committee to hold hearings on their nominations as soon as possible, and expeditiously move them to the floor of the Senate.

Mr. GRASSLEY. Madam President, I rise today to speak in support of President Bush's judicial nominees. President Bush says that we need to move these nominees swiftly and fairly. He wants our support for his nominees. I agree. The Senate needs to act to fill these vacancies and ensure that the Federal courts are operating at full strength.

Right now, President Bush has sent a number of extremely qualified men and women to the Senate for consideration

to the Federal bench. But unfortunately, many of these outstanding individuals are still waiting for a hearing by the Senate Judiciary Committee, I believe 47 nominees are still pending. We need to move these judicial nominations quickly, because they are all good men and women.

I want to talk about a few facts and figures. We've heard a lot of numbers being thrown around by both the Democrats and the Republicans about who delayed who the longest, who denied hearings to whom, and on and on, so we are left in a numbers daze. I get dizzy from all the numbers. But this what I think is the bottom line. When President Bush Sr., left office, he had 54 nominees pending with a Democratic Senate. The vacancy rate was 11.5 percent. When President Clinton left office, he had 41 nominees pending with a Republican Senate. The vacancy rate was 7.9 percent. So the way I see it, Senate Republicans gave the Democratic President a better deal. The other bottom line is that a year, 365 days, after President Bush nominated his first 11 circuit court nominees, only 3 have been confirmed. By contrast, each of the 3 previous Presidents enjoyed a 100 percent confirmation rate on their first 11 circuit nominees, and they were all confirmed within a year. The way I see it, President Bush is getting the short end of the stick with his nominees.

I'd like to talk about some of President Bush's nominees, specifically the 8 nominees of the 11 original circuit court nominees sent up last May who are still pending without action. Today a full year has gone by, 365 days, with only 3 of President Bush's first 11 nominees having seen any action at all. And of those 3, I understand 2 were judges previously nominated by President Clinton. The Senate needs to do better than that. These individuals of exceptional experience, intellect and character deserve to be treated fairly and considered by the Senate promptly.

Let me say a few words about each of these nominees. I know that some of my colleagues may have already given many details about these individuals, but I think that it is important that Americans see what quality individuals President Bush has sent up to the Senate. These individuals have all excelled in their legal careers and I'm sure, if confirmed, they will all make excellent judges.

Judge Terrence Boyle is President Bush's nominee for the Fourth Circuit Court of Appeals. He is currently the Chief Judge of the U.S. District Court for the Eastern District of North Carolina, appointed by President Reagan in 1984. He has served in this post with distinction. He was nominated to the Fourth Circuit in 1991 by President Bush Sr., but he did not receive a hearing from the Democrat-controlled Judiciary Committee.

Justice Deborah Cook is President Bush's nominee to the Sixth Circuit



Court of Appeals. After graduation from law school, Justice Cook became the first female attorney hired at the oldest law firm in Akron, OH, and just 5 years later, she was named a partner. She then served on the Ohio Court of Appeals for 4 years, and in 1994 she became a justice on the Ohio Supreme Court. Her pro bono work is laudable: Judge Cook is a founder and trustee of a mentored college scholarship program in Akron, and I understand she and her husband personally fund efforts to help inner-city children go to college.

Miguel Estrada is one of President Bush's nominees to the D.C. Circuit Court of Appeals. He has an incredible story, having immigrated to the United States when he was young without even speaking English, to then graduate with honors from Columbia College and Harvard Law School. He clerked for the Second Circuit and the U.S. Supreme Court, then served as an Assistant U.S. Attorney in the Southern District of New York, where he became Deputy Chief of the Appellate Section in the Office. Mr. Estrada acted as Assistant to the Solicitor General for 5 years in both the Bush and Clinton administrations. If he is confirmed, Mr. Estrada would be the first Hispanic judge on the D.C. Circuit Court of Appeals.

Michael McConnell is President Bush's nominee to the Tenth Circuit Court of Appeals. He graduated from the University of Chicago Law School and then clerked for Judge Skelly Wright on the D.C. Circuit, and Justice William J. Brennan on the U.S. Supreme Court. Professor McConnell was a tenured professor at the University of Chicago Law School for more than a decade before accepting the Presidential Professorship at the University of Utah College of Law in 1997. He has earned the reputation of being one of the top constitutional scholars in the country.

Justice Priscilla Owen is President Bush's nominee to the Fifth Circuit Court of Appeals. Justice Owen spent 17 years as a litigator with a top Houston law firm. Currently, Ms. Owen is serving her 7th year as Associate Justice on the Texas Supreme Court, she is only the second woman ever to sit on that bench. She has great professional credentials, and has demonstrated a strong commitment to her community.

John Roberts is President Bush's other outstanding nominee to the D.C. Circuit Court of Appeals. He is one of the most qualified and respected appellate lawyers in the country. Mr. Roberts has had a distinguished record in private practice, and he has performed a significant amount of pro bono legal service. He also served as Deputy Solicitor General of the United States. Mr. Roberts' background in public office and private office are outstanding.

Judge Dennis Shedd is President Bush's nominee to the Fourth Circuit Court of Appeals. He has a long and admirable record of public service, both

in the legislature and in the Federal courts, as well as in private practice and academia. Judge Shedd worked as the Chief Counsel and Staff Director for the Senate Judiciary Committee under then-Chairman STROM THURMOND. He was appointed a district court judge for the District of South Carolina in 1990, where he has served with distinction.

Jeffrey Sutton is President Bush's nominee to the Sixth Circuit Court of Appeals. Mr. Sutton clerked for Justices Scalia and Powell on the U.S. Supreme Court, then spent three distinguished years as Solicitor for the State of Ohio. Since that time, Jeffrey Sutton has worked in private practice and served as an adjunct professor of law at the Ohio State University College of Law.

These eight outstanding nominees are still waiting for a hearing, even though they are some of the most respected judges and lawyers and professors in the country. They have excellent qualifications, are of high moral character, and will serve our country well. They all have ratings of "well qualified" or "qualified" by the American Bar Association, the so-called "gold standard" by the Democrats on the Judiciary Committee. It's clear that the Senate Judiciary Committee needs to do its job and schedule them for a hearing and markup.

Let's give these good men and women what they deserve, to be treated with respect. They need a prompt hearing and markup. They have waited too long. The Senate has to act. Like the President said, the American people deserve better.

Mr. FRIST. Madam President, I rise today to thank my colleagues for the confirmation of Samuel Hardwicke Mays, Jr., of Memphis TN, as U.S. District Judge for the Western District of Tennessee. I am also grateful to President Bush for his nomination of an individual who I know will act with fairness to all in a way which will make all of us proud.

Hardy Mays is a Memphis institution. No one lives life more to the fullest than Hardy whose passion for the arts, a good book, the law and public service is known to all.

As have so many others, I first sought his counsel when I decided to run for the United States Senate. Since then, I have turned to Hardy for advice on a variety of occasions, and I value the thoughtful, balanced approach he can bring to any issue. And I am proud to call him my friend.

More importantly, he is an outstanding lawyer with a keen intellect. He is fair and impartial, and has enormous compassion for his fellow man. Hardy has demonstrated, both in his distinguished legal career with the Baker, Donelson firm in Memphis, and his life in public service as Legal Counsel and Chief of Staff to Governor Don Sundquist, his unique ability to hear all sides of an issue, to work with people from all walks of life, and to find

equitable solutions to virtually any challenge. His personal and professional integrity are above reproach, and his even temperament is ideally suited for the federal bench.

Many outstanding Tennesseans have added their support to Hardy's nomination. They most often have mentioned to me his brilliant mind, sense of fair play and lack of personal bias, good wit, and respect for other's views and opinions.

Thomas Jefferson wrote in 1776 that our judges "should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness and attention." Samuel Hardwicke Mays, Jr., certainly fits President Jefferson's description. He will serve our country with distinction, and his talent, experience and energy will be an asset to our Federal judicial system.

I ask unanimous consent after Senator FEINGOLD speaks that Senator HUTCHINSON be permitted to speak for up to 5 minutes.

Mr. LEAHY. Reserving the right to object, does the Senator have the time? How much time is remaining on both sides? I don't want to object, but I know the Republican and Democrat leader have 11:35 for the vote.

The PRESIDING OFFICER. The Senator from Utah has 5 minutes 41 seconds.

Mr. LEAHY. OK.

The PRESIDING OFFICER (Mrs. CARNAHAN). Without objection, it is so ordered.

The Senator from Wisconsin.

Mr. FEINGOLD: Madam President, today the Senate is going to confirm four more of President Bush's nominees to the Federal bench. While there is no controversy about these particular nominees, there has been much debate here on the floor about the pace of confirmations. And today, because this is the anniversary of President Bush's announcement of his first batch of judicial nominations, we have been told to expect a series of events designed to criticize the majority leader and the chairman of the Judiciary Committee for their conduct of the confirmation process and to pressure them to move this process along faster.

I am pleased to join my colleagues on the floor this morning to make a few points about this.

First, though I am sure the complaints will never stop, on the basis of the numbers alone, it is awfully hard to find fault with the pace of judicial confirmations. Since the Democrats took control of the Senate last June, we have confirmed 52 judges, not including the four whom we will vote on today, which will bring the total to 56. In under a year, that is more judges than were confirmed in four out of the six years of Republican control of the Senate under President Clinton.

Judiciary Committee Chairman PATRICK LEAHY has vowed not to treat President Bush's nominees as badly as our predecessors treated President



Clinton's nominees. I believe he is fulfilling that pledge, but frankly, he doesn't have to work all that hard to do that.

For example, our friends on the Republican side are complaining that some of President Bush's nominees from last May 9 have not yet been confirmed. On today's anniversary of those nominations, I'm sure we'll hear a lot about that. So let's just put that in perspective.

Let's assume for the sake of argument that these individuals have actually waited 365 days, a full year. We all know that at this time, that's not really accurate. First, Democrats took control of the Senate in June 2001. Our committee was not organized so that nominations hearings could be held until July 10, 2001. So it's really been only 10 months that we have been in a position to confirm any of the May 9 nominees.

Second, and just as significantly, under this administration, the American Bar Association can't start its review of a nomination until after the nomination is formally announced. During the Clinton administration, as under all previous administrations, Republican and Democrat, dating back to President Eisenhower, the ABA conducted its reviews of nominations before they were sent to the Senate. President Bush's unfortunate decision to change the way the White House handles the ABA review has added 30-60 days to the process as compared to prior years. That has to be factored into any claims. They are the result of the President's own choice of cutting the ABA out of the process.

Assume for the sake of argument that all these nominees have been waiting 365 days to be considered by the Senate. That is still 140 days shy of the 505 days that Richard Lazarra waited between his nomination by President Clinton and his confirmation by the Senate. And Judge Lazarra, now serving on the district court of Florida, didn't wait the longest. No, the period between his nomination and confirmation is only the 15th longest of the Clinton appointed judges. So when nominees of President Bush have been waiting a year, however that is calculated, they won't even crack the top 15 of the Clinton judges who waited the longest to be confirmed.

Actually, the longest wait during the Clinton administration was endured by Judge Richard Paez, now on the Ninth Circuit—1,520 days—over four years. That's in another league altogether from the delay, if you can call it that at this point, on some of President Bush's May 9 nominees. Nine Clinton judges waited more than 2 years before they were confirmed. If all of the May 9 judges still awaiting confirmation are still pending in the committee on May 9, 2003, then maybe we should talk about a delay. I am absolutely certain that will not be the case.

Now so far, I have been talking about judges who were ultimately confirmed.

But we all know that not all of President Clinton's nominees were confirmed. Far from it. In fact, 38 judicial nominees never even got a hearing in the last Congress, including 15 court of appeals nominees. Three other nominees received hearings but never made it out of committee. The nominations of eight court of appeals nominees who never got a hearing and one who got a hearing but no committee vote, were pending for more than a year at the end of the 106th Congress. In all, more than half of President Clinton's nominees to the circuit courts in 1999 and 2000 never received a hearing.

Those who are concerned about circuit court vacancies, if they are being honest, must lay the problem directly at the feet of the majority in the Senate during President Clinton's last term. Many of those who are now loudly criticizing Chairman LEAHY refused to recognize the results of the 1996 election and dragged their feet for 4 years on judicial nominations. Some of the vacancies that President Bush is now trying to fill actually date back to 1996 or even 1994.

So what are we to do about this? One alternative is to simply rubber stamp the President's nominees. That is what some would have us do. I, for one, am thankful that that is not the approach of Chairman LEAHY or Majority Leader DASHLE. We have a solemn constitutional obligation to advise and consent on nominations to these positions on the bench that carry with them a lifetime term. We must closely scrutinize the records of the nominees to these positions. It is our duty as Senators.

That duty is enhanced by the history I have just discussed. If we confirm the President's nominees without close scrutiny, we would simply be rewarding the obstructionism that the President's party engaged in over the last six years by allowing him to fill with his choices seats that his party held open for years, even when qualified nominees were advanced by President Clinton.

The most important part of the scrutiny we must do is to look at the records of these nominees. Many of them are already judges, at the State level or on a lower court. There is nothing wrong with examining their work product; indeed, that is the best indicator of how they will perform in the positions to which they have been nominated.

Some have complained that it is improper for the committee to ask to see copies of the unpublished opinions of judges nominated for the Circuit Court who are currently serving as District judges. I disagree. Let me be clear that we have not, as the Wall Street Journal editorial page recently stated, asked judges to go back and write ruling in cases where they have ruled orally from the bench. That is laughable. No, we simply asked for the judge's work product—the judge's written rulings. Unpublished opinions are binding on the parties in the case.

They are the law. They are the judge's decisions. And we who are charged with evaluating the fitness of a sitting judge for a higher court have every right to examine those decisions—before making our decision.

I commend Chairman LEAHY on his work on nominations thus far. Fifty-six confirmations in less than a year as chairman is an admirable record. I am sure he won't keep any nominee waiting for 4 years before getting a confirmation vote. I am sure we won't finish this Congress having held hearings for fewer than half of the President's circuit court nominees. Most of all, I'm sure he will continue to treat this confirmation process with the dignity and respect and care it deserves. The courts, our system of justice, and the American people deserve no less.

I reserve the remainder of our time and yield the floor.

Mr. HATCH. I yield time to the distinguished Senator from Texas.

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from Texas is recognized.

Mrs. HUTCHISON. Madam President, I have been listening to the debate today. I certainly want to say I have a very good friend who is a nominee for the Fifth Circuit, who was nominated 1 year ago today, Priscilla Owen, who I hope will get a fair hearing because she is one of the most qualified people who has ever been nominated for the Fifth Circuit.

But I want to use my time this morning to give the due accolades to two judges on whom we will vote who are district judges. The circuit court judges are the ones about whom everyone has been talking and about whom people are very concerned. But we have two very qualified district judges who are going to be confirmed today. I want to speak for them.

The first nominee is Andy Hanen. Andy Hanen was nominated in June of 2001 to serve as Federal judge for the Southern District of Texas. He was also nominated for this judgeship 10 years ago by former President Bush. His nomination expired at the end of the congressional session and was not renewed by President Clinton.

Andy is a 1975 cum laude graduate of Denison University in Ohio, where he studied economics and political science. In 1978 he earned his law degree from Baylor University School of Law. He ranked first in his class and was president of the Student Bar Association and a member of the Baylor Law Review.

As a founding partner of the Houston law firm Hanen, Alexander, Johnson & Spalding, he has gained extensive civil trial experience, half of which was in Federal court. He went on to win a number of accolades, including Outstanding Young Lawyer of Texas, awarded by the State bar. He was elected president of the Houston Bar Association in 1998 and is currently a director of the State Bar of Texas. He has distinguished himself throughout his

career through civic and volunteer committees. He is an active member of the community and contributes his time to charities such as Habitat for Humanity, Sunshine Kids, and the Red Cross.

The Southern District of Texas is one of those that are in dire need of all the judicial vacancies being filled. I am very pleased to support Andy Hanen.

Leonard Davis has been nominated to serve on the Eastern District of Texas. He is a judge on the Circuit Court of Appeals for Texas, with an outstanding record. He, too, was nominated by former President Bush, but the nomination expired and was not renewed by President Clinton.

He earned a mathematics degree from UT Arlington and a master's degree in management from Texas Christian University. He earned his law degree from Baylor University School of Law, where he graduated first in his class. He went on to practice civil and criminal law for 23 years and handled hundreds of cases in State and Federal courts. He was appointed to his current position as Chief Justice of the 12th Circuit Court of Appeals of the State of Texas by then-President George W. Bush and has enjoyed strong bipartisan support and no opposition to his reelection in November of 2000.

He has served on numerous boards and commissions, including the State Ethics Advisory Commission, the State Bar of Texas's Legal Publications Committee, and the American Heart Association's Board of Directors.

Judge Leonard Davis is a long-time friend of mine. I believe he, too, will serve our country well.

I urge my colleagues to support both of these Texas nominees for district court benches—Andy Hanen and Leonard Davis.

Madam President, I also would like to say one more thing about Judge Priscilla Owen, a justice of the supreme court, and ask that she be considered for her Fifth Circuit nomination.

Every newspaper in Texas endorsed Justice Owen for her reelection bid in 2000 for the Supreme Court of Texas. On February 10 of this year, a Dallas Morning News editorial said:

Justice Owen's lifelong record is one of accomplishment and integrity.

During her reelection campaign, the Houston Chronicle said, in a September 24, 2000, editorial:

A conservative, Owen has the proper balance of judicial experience, solid legal scholarship, and real world know-how to continue to be an asset on the high court.

I do hope Justice Owen will receive due consideration for her nomination to the Fifth Circuit, and certainly I hope the Senate will act on these circuit court judge nominees. We have many vacancies that need to be filled. I urge the Senate to take action.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Vermont.

Mr. LEAHY. How much time is remaining?

The PRESIDING OFFICER. The Senator from Vermont has 8 minutes 20 seconds.

Mr. LEAHY. And the Senator from Utah?

The PRESIDING OFFICER. The Senator has 30 seconds.

Mr. LEAHY. Madam President, the Senator from Ohio has asked for time to make a statement. I yield that time to him.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, I rise today in support of the confirmation of Judge Thomas M. Rose, whom the President has nominated for the post of U.S. District Judge for the Southern District of Ohio, Western Division. I first met Tom Rose 29 years ago when we were both serving as assistant county prosecuting attorneys in Greene County, OH. I can tell you without reservation that he is a man of great integrity, honor, and intelligence. I do not know a more qualified, more experienced candidate for this judgeship.

Tom, who comes from Laurelville, OH, graduated from Ohio University in 1970, and received his law degree from the University of Cincinnati's College of Law in 1973. Also in 1973, he was appointed as Assistant County Prosecutor in Greene County; he became the first Magistrate in the Greene County Juvenile Court in 1976; and he became the Chief Assistant Prosecutor in charge of the Civil Division in 1978. In 1991, he became the Judge of the Court of Common Pleas in Greene County.

During these last 11 years on the Common Pleas Court bench, Ohio's highest trial court, Judge Rose has presided over a wide range of cases from criminal cases to civil cases to administrative appeals. He has faced a tremendous volume of cases, many of which have been of unprecedented complexity. For example, Judge Rose recently presided over Ohio's first pro se murder case in which the defendant could have received the maximum sentence of death.

In addition, he has heard hundreds of the kinds of civil cases and administrative appeals that dominate a common pleas docket, tax appeals, annexation questions, school districting disputes, and insurance issues. In a particularly complex civil case, Judge Rose ruled on a case of first impression involving an ordinance enacted by a local Ohio city to put impact fees on developers.

In both criminal and civil cases, he has ruled on hundreds of motions to suppress and other constitutional issues, such as search and seizure and Miranda rights.

All of this demonstrates, that without question, Judge Rose is right for this job. His background and the depth of his wide-ranging experience on the bench, the experience that makes him so well qualified for the Ohio district judgeship. I am confident that he will discharge his duties of Federal judge

with the fairness, integrity, sound judgment, and energy that the people of Ohio and this Nation deserve. I wholeheartedly support his confirmation, and I encourage my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I truly believe, as I said in the debate, Democrats have been and will continue to be more fair than the Republicans were to President Clinton's judicial nominees. The fact is that more than 50 of President Clinton's nominees never got a vote. Many languished for years before they were returned without even having a hearing. Others waited for years, up to even 4 years to be confirmed.

We are moving through, as we have these last 10 months, in filling vacancies with consensus nominees.

I voted for the vast majority of these nominees. I voted for all but one of these nominees.

They are going to be Republicans. We know they are going to be conservatives. That is fine.

But I am not going to vote for somebody who will put a sign up over the Federal court saying this is no longer an independent court.

If the White House would only work with us instead of working against us, we could end the vacancy crisis by the end of next year.

Many partisans in the other party appear, unfortunately, to have decided to make judges a domestic agenda item on which this administration is intent on winning partisan, political, and ideological victories. Given the closely divided Senate—and the Congress—and the narrow electoral victory of the President, the better course would have been to work together on vacancies that we inherited from the Republican Senate.

Republicans held court of appeals judgeships open for years. Now they see their chance to pack the courts and stack the deck with conservative judicial activists in order to tilt the outcomes on these courts.

The American people do not want—and our justice system does not need—a finger on the scales of justice. It is up to the Senate to maintain the independence of the courts and the balance on them. That means resisting the appointment of ends-oriented and ideologically-driven nominees. Do not be fooled about what the fight over circuit court nominations is about.

Republicans, perhaps brilliantly from a political point of view, but disastrous from the point of view of the independence of the courts, kept vacancies on the Fifth, Sixth, and D.C. Circuits open for the last 5 years. Now they have a President with a list of what he views as "reliable nominees." They are trying to get these ideological nominees through.

This is not a political fight that we in my party have chosen. Indeed, the President's recent fundraising campaign swing through the South and the

antagonistic efforts of his political adviser, Karl Rove, make clear that the Republicans have chosen this fight because they think it serves their political advantage.

They are deadly serious about their efforts to gain control of the District of Columbia Circuit, the Sixth, and the Fifth Circuits, and others—even to the point of questioning the religious background of members of the Senate Judiciary Committee, something I have never seen in 28 years in the Senate. It is one of the most reprehensible tactics that I have seen in my time in the Senate. I respect the religious background of every Member. I do not know the background of most; it is none of my business. I would never question the religious background of any nominee.

I resent greatly people on the other side of the aisle questioning my religion or the religion of members of the Senate Judiciary Committee.

This battle is over whether the circuit courts have judges who will follow precedent, respect congressional action, and act to protect individual rights of Americans, or become dominated by ideologically-driven activists.

I will continue to evaluate all of President Bush's nominees fairly, and to work in spite of the obstructionism and unfair criticism coming from the Republican side.

In the weeks and months to come we will be called upon to vote on some very controversial activist nominees. The rights of all Americans are at stake.

We have to ask whether a fair-minded, independent judiciary will survive to protect our fundamental civil liberties and constitutional rights, and whether our children and grandchildren will be able to look to the Federal judiciary for even-handed justice and protection.

That is what hangs in the balance.

I again invite the President and all Republicans to join with us in working to fill the remaining judicial vacancies with qualified, consensus nominees chosen from the mainstream, and not chosen for their ideological orientation—nominees who will be fair and impartial judges, and who will ensure that an independent judiciary will be the bulwark against the loss of our freedoms and rights.

I reserve the remainder of my time.

Mr. HATCH. Mr. President, the American people are right to ask why this unprecedented departure from the past is happening. My colleague just accused me of accusing him of religious discrimination. He has mischaracterized my pleas for civility and fairness.

Some of my Democrat colleagues have made no bones about the fact that they are slowing down the President's nominees because they are imposing, for the first time, an ideological litmus test. This is something I can not accept.

Many Americans are concerned that the abortion litmus test that some

Democrats are imposing on judicial nominees would have the same effect as a religious test. Let me explain how. Most people who are pro-choice hold their position as a matter of ideology. Some even allow their chosen ideology to trump the tenets of their religion. They do so in good conscience no doubt, and I respect that and would not judge them for that.

But the great majority of people who are pro-life come to their positions as a result of their personal religious convictions. We view unborn life as sacred. Many Americans hold this view as a religious tenet, but this view does not affect their ability to interpret the law and precedent, just as skin color does not.

In effect, what is ideology to my Democrat friends is a matter of religious conviction to a large portion of the American people, regardless of their position on abortion. But many rightly fear that a judge with private pro-life views, which often derives from religious conviction, will ever again be confirmed in a Democrat-led Senate.

To impose an abortion litmus test on private views, call it ideological if you want to, is to exclude from our judiciary a large number of people of religious conviction, who are perfectly prepared to follow the law. I fear this is the door this Democrat-led Senate could be opening. If a nominee who was personally pro-life came before the committee and said they could not follow Supreme Court precedent because of their pro-life views, then I would have a problem with that nominee too. But to simply discriminate against them and say that we can not trust you, despite your assurances to the Senate, to follow precedent, because you hold certain personal view, is pure and simple religious discrimination.

I can understand why people would believe that a religious test is being imposed. They fear as I do that the result would be a federal judiciary that neither looks like America nor speaks to America.

I am afraid that what is now occurring is far beyond the mere tug-of-war politics that unfortunately surrounds Senate judicial confirmation since Robert Bork. Some of my colleagues are out to effect a fundamental change in our constitutional system, as they were reportedly instructed to do by noted liberal law professors at a retreat early last year.

Rather than seeking to determine the judiciousness of a nominee and whether a nominee will be able to rule on the law or the Constitution without personal bias, they want to guarantee that our judges all think in the same way, a way that is much further to the left of mainstream than most Americans.

The legitimacy of our courts, and especially the Supreme Court, comes from much more than black robes and a high bench. It comes from the people's belief that judges and justices will apply a judicial philosophy without regard to personal politics or bias.

So I am protecting the Senator's right to free religion, not disparaging his religion. This is nothing like the often-used and offensive race-card that the Democrats often used.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Madam President, I urge my colleagues to vote in favor of each of the four nominees.

I also urge the Senate and the administration to work at keeping the impartiality of the Federal judiciary.

I urge those on the other side of Pennsylvania Avenue to stop making this a political partisan game but to do what is best for the country.

I yield any time remaining that I may have.

Mr. HATCH. I yield whatever time I may have remaining.

VOICE ON NOMINATION OF LEONARD E. DAVIS

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Leonard E. Davis, of Texas, to be United States District Judge for the Eastern District of Texas?

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 104 Ex.]

#### YEAS—97

Akaka	Durbin	McCain
Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Feingold	Murkowski
Bennett	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Hollings	Schumer
Cantwell	Hutchinson	Sessions
Carnahan	Hutchison	Shelby
Carper	Inhofe	Smith (NH)
Chafee	Inouye	Smith (OR)
Cleland	Jeffords	Snowe
Clinton	Johnson	Specter
Cochran	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Domenici	Lott	
Dorgan	Lugar	

#### NOT VOTING—3

Corzine	Helms	Thomas
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The nomination was confirmed.

Mr. REID. Madam President, I ask unanimous consent that the three remaining votes be 10 minutes in duration.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid on the table, and the President shall be immediately notified of the Senate's action.

#### VOTE ON NOMINATION OF ANDREW S. HANEN

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Andrew S. Hanen, of Texas, to be United States District Judge for the Southern District of Texas.

The yeas and nays have been ordered, and the clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

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

The result was announced—yeas 97, nays 0, as follows:

#### [Rollcall Vote No. 105 Ex.]

##### YEAS—97

Akaka	Durbin	McCain
Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Feingold	Murkowski
Bennett	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Hollings	Schumer
Cantwell	Hutchinson	Sessions
Carnahan	Hutchison	Shelby
Carper	Inhofe	Smith (NH)
Chafee	Inouye	Smith (OR)
Cleland	Jeffords	Snowe
Clinton	Johnson	Specter
Cochran	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Domenici	Lott	
Dorgan	Lugar	

##### NOT VOTING—3

Corzine	Helms	Thomas
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The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid upon the table and the President shall be immediately notified of the Senate's action.

#### VOTE ON NOMINATION OF SAMUEL H. MAYS, JR.

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Samuel H. Mays, Jr., of Tennessee, to be U.S. District Judge for the Western District of Tennessee. On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

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

The result was announced—yeas 97, nays 0, as follows:

#### [Rollcall Vote No. 106 Ex.]

##### YEAS—97

Akaka	Durbin	McCain
Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Feingold	Murkowski
Bennett	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Hollings	Schumer
Cantwell	Hutchinson	Sessions
Carnahan	Hutchison	Shelby
Carper	Inhofe	Smith (NH)
Chafee	Inouye	Smith (OR)
Cleland	Jeffords	Snowe
Clinton	Johnson	Specter
Cochran	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Domenici	Lott	
Dorgan	Lugar	

##### NOT VOTING—3

Corzine	Helms	Thomas
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The nomination was confirmed.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. The majority leader has asked me to notify everyone that following this vote we are going to a period of morning business until about 2:30 today. I so ask unanimous consent.

The PRESIDING OFFICER. Is there objection? The Senator from Oklahoma.

Mr. NICKLES. Reserving the right to object, I would like to discuss this for a moment with my friend and colleague.

#### VOTE ON NOMINATION OF THOMAS M. ROSE

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Thomas M. Rose, of Ohio, to be a United States District Judge for the Southern District of Ohio?

On this question, the yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. CORZINE), the Senator from Vermont (Mr. JEFFORDS), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

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

The result was announced—yeas 95, nays 0, as follows:

#### [Rollcall Vote No. 107 Ex.]

##### YEAS—95

Akaka	Dorgan	McCain
Allard	Durbin	McConnell
Allen	Edwards	Mikulski
Baucus	Ensign	Miller
Bayh	Enzi	Murkowski
Bennett	Feingold	Murray
Biden	Feinstein	Nelson (FL)
Bingaman	Fitzgerald	Nelson (NE)
Bond	Frist	Nickles
Boxer	Graham	Reed
Breaux	Gramm	Reid
Brownback	Grassley	Roberts
Bunning	Gregg	Rockefeller
Burns	Hagel	Santorum
Byrd	Harkin	Sarbanes
Campbell	Hatch	Schumer
Cantwell	Hollings	Sessions
Carnahan	Hutchinson	Shelby
Carper	Hutchison	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Johnson	Specter
Cochran	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Leahy	Torricelli
Daschle	Levin	Voinovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wellstone
Dodd	Lott	Wyden
Domenici	Lugar	

##### NOT VOTING—5

Corzine	Jeffords	Thomas
Helms	Landrieu	

The nomination was confirmed.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The majority leader.

#### MORNING BUSINESS

Mr. DASCHLE. Mr. President, I have been in consultation with the distinguished Republican leader. We are continuing to discuss matters pertaining

to the trade package currently under consideration on the Senate floor.

In order to accommodate additional discussion, I ask unanimous consent that we proceed in morning business until 2:30, with the time equally divided between the two leaders or their designees.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

### STUDENT LOANS

Mr. DASCHLE. Mr. President, I want to talk briefly this afternoon in morning business about a matter that I know is of great importance to a number of people across the country, an issue that was the subject of some discussion in the health committee just this morning.

Students are borrowing too much, and students are working too much in order to finance rising college costs.

Sixty-four percent of all students borrow Federal student loans to finance a college education today. The typical undergraduate student graduates with about \$17,000 in Federal loan debt.

Student debt is skyrocketing. As a result, many students find themselves saddled with unimaginable levels of student loan debt and experience difficulty in repaying their loans. An estimated 39 percent of all student borrowers today graduate with unimaginable student loan debt.

The administration, in late April, proposed to exacerbate the current circumstances in ways that were inexplicable to many of us. They proposed to raise student loan interest rates for consolidated loans by changing the consolidation loan interest rate from a fixed to variable rates. This proposal has come along, as I noted, when millions of students are struggling to pay for college.

According to the Department of Education, the typical borrower now graduates with almost \$17,000 in Federal student loan debt, as I noted a moment ago. And more than half of all Pell grant recipients graduate with student loan debt as well. The typical Pell grant recipient who borrows graduates with almost \$19,000 in loan debt.

The Office of Management and Budget, on April 25, released a third "Offset Options for the Supplemental" appropriations bill that is currently pending in the House. Many of us were intrigued with the offset option that they chose to use involving student loan consolidation. I will quote from the document. It is under the category "For \$1.3 billion for the Pell Grant shortfall, Student loan consolidation proposal." And they stipulate that would raise \$1.3 billion. Now I am quoting from the OMB document:

Changing the interest rate formula from fixed to variable is a good thing as fixed rate consolidation loans: can result in significant Federal costs; have higher average costs to borrowers; needlessly penalize borrowers who

consolidate their loans when variable interest rates are high; and, can have a destabilizing effect in the guaranteed loan program.

The proposal that the administration made through the OMB would cost the typical student borrower \$2,800, and the typical Pell grant recipient, who borrows, \$3,100 over the life of their loans.

So in order to raise that \$1.3 billion for which they are proposing to offset, in part, the costs of the supplemental, what they want to do is charge the typical borrower an additional \$2,800 and the typical Pell grant recipient \$3,100 over the life of the loan.

Senator KENNEDY has held a hearing this morning. We were very pleased that the administration appears now to have had a change of heart, for they have announced they are reversing their position. They now recognize that this was a major error and that they will now no longer adhere to that offset as they look to ways in which to find the money to pay for the supplemental.

We are very pleased with the administration's announcement that they will not advocate this additional burden on students, both for student loans as well as Pell grants.

But I must say, I thank the distinguished chair of the HELP Committee for calling this to the attention of our colleagues, for calling it to the attention, really, of the educational community. Because of his stalwart advocacy, and the extraordinary attention that this issue has generated over the last couple of weeks, I am not surprised that the administration has now had a change of heart.

This was not a good idea. And, obviously, they have now come to that conclusion as well.

So it is good news for students. It is good news for education. And it is especially good news for those advocates, as Senator KENNEDY has personified, who have called for this change of heart from the day it was announced.

Mr. KENNEDY. Will the Senator yield?

Mr. DASCHLE. I am happy to yield to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I would like to preface my question with this observation: Under the leadership of Senator DASCHLE, there were 46 Members of the Senate—under his leadership and Senator REID's, and others—who wrote a letter to the President some 10 days ago, recognizing that if this policy of the administration went ahead, it would be like increasing taxes for the average working family by \$3,700. That would be the average increase if they did not consolidate. It could go as high as \$10,000.

I am wondering, I did not hear that we ever received a response to that letter requesting the deferral of that action.

As Senator pointed out, I think all of us in this body want to, first, give the assurances to young people in college that we are going to do everything we possibly can to make college affordable.

And this is my question to the leader: Doesn't the leader believe that we have a real responsibility to do everything we possibly can to make sure college is going to be more affordable for working families and for the middle income, and that we are also going to stand to make sure we meet our commitment we made to the American people and to the schoolchildren with regard to the early education bill, that we are going to try to meet our commitment to those students, to the families, to the parents, and to the local communities as well?

I am interested in hearing, as the majority leader of the Senate, how important you think it is that we continue the effort to ensure we are going to make the dreams of our young people attainable—through quality education in K-12, and through higher education—and how strongly the leader is committed to doing that, after thanking the administration for changing their position.

Mr. DASCHLE. Mr. President, no one knows more about the commitment we have made to the students who want to be involved in higher education than the distinguished Senator from Massachusetts. He can probably tell us the very day it was done. But in recent times, we have increased the cap, the availability of resources through both loans as well as the Pell grants to students in order to accommodate their additional costs.

We have recognized that their costs continue to go up. We have recognized how serious the financial problems are that many of these students have experienced. As a result, we have increased the caps. That is why the original OMB decision is so mystifying. Because as we raise the caps, if we raise the cost, then we have not done anything to help the students, so we have made this raise in eligibility for additional assistance virtually meaningless.

I might say, there is a trend here because that is basically what we did with the No Child Left Behind Act as well. We provided more opportunities for students in many respects, but then we underfund by more than \$1 billion the resources we should be providing to ensure that act is fully funded.

So there appears to be rhetoric, and then there is the reality. There is the rhetoric, and then there is the resources. The rhetoric is: We want to help all these students. The rhetoric is: We don't want to leave any child behind. The reality is, we do not provide the resources to see that it happens—whether it is an OMB decision on student loans or the decision that the budget implies on the part of the administration to fund the No Child Left Behind Act.

Ms. STABENOW. Will the Senator yield?

Mr. DASCHLE. I am happy to yield to the Senator from Michigan.

Ms. STABENOW. I would like to thank the leader personally on behalf of hundreds of thousands of students

and their families in Michigan for his leadership on this issue. And I also thank the Senator from Massachusetts for his leadership.

When I first heard about what the administration was proposing, I was astounded. I received calls from so many students and families in Michigan.

We all know, as you indicated, that Pell grants are important, particularly to lower income students. But so many middle-income families rely on the loan program, and rely on the ability to receive the lowest possible interest rate in order to be able to send their children to college.

I have to say, on a personal note, having had a son go through college and a daughter who is now in college, for myself with loans, I certainly appreciate what families feel.

When we saw the proposal to increase, essentially, the interest rates, it was nothing more than a tax on the ability of young people to be able to go to college and pursue the American dream. And we all certainly have a stake in making sure we do that.

So I thank the majority leader for his leadership. I know that the Senator from Massachusetts, as well, has been vigilant.

It is good news that they have appeared to change their minds, but we certainly know that minds can be changed again. As we go through this process, I know we will all stand together to make sure that this is an area we do not touch. I cannot imagine something more important than making sure the young people, the adults, and families of this country have the opportunity to get the skills they need to be successful in our economy. I am proud to stand with the majority leader in support of this goal.

Mr. DASCHLE. I thank the Senator from Michigan. She has been a tremendous advocate for education ever since the day she was sworn. I am grateful to her for her engagement and her willingness to continue to work with us. She was one of the signatories on the letter the Senator from Massachusetts has referenced. I thank her very much.

She made an interesting point. She said, what the administration has decided could be decided in another direction at some later date, and we might find ourselves in yet another set of circumstances involving the very same problem; that is, the rhetoric versus the reality, the rhetoric versus the resources. We will be going into appropriations. I worry about the rhetoric versus the resources once again. Are we going to be able to ensure that we can provide the commitment to students at all levels, that the resources will be there to match the rhetoric that we hear coming from the administration with regard to their commitment on education? I have my doubts.

We have at least two instances now so far—the student loan issue as well as the no child left behind question—where the rhetoric has far exceeded the results and the reality and the re-

sources. I appreciate her comment in that regard.

Mr. DAYTON. Will the majority leader yield for a question?

Mr. DASCHLE. I am happy to yield to the Senator from Minnesota.

Mr. DAYTON. I had been traveling around Minnesota a couple years ago while seeking this office, and I was stunned by the increasing number of students who were relying on loans and by the increased amount of money that undergraduates and graduates were building up in debt before they even got their first job in the workplace. It is \$25,000 for somebody attending a 4-year public institution in Minnesota; \$50,000, even in a couple cases over \$100,000, for people who have come out of graduate programs. Have you had that same experience in South Dakota in the last few years?

Mr. DASCHLE. The Senator from Minnesota is exactly right. I don't know what the amount is in South Dakota for the typical student, but the typical student nationally now graduates with about \$17,000 in Federal loan debt. My guess is, it is somewhat lower in South Dakota. I have talked to a lot of students who are very concerned about paying off that debt, very concerned about the debt service they have to pay on a regular basis when they graduate. This is something about which they are very concerned. Thirty-nine percent of all student borrowers graduate today with what is termed an unmanageable student loan debt.

There is no question, this is a matter that is of increased concern to students all over the country, especially those in the Upper Midwest such as Minnesota and South Dakota. This is why we were so mystified when they said, we are going to ask students, on top of all the debt they currently have, to pay an additional \$2,800 for a typical loan or \$3,100 for a Pell grant recipient. I can't imagine how we would want to exacerbate their problems by adding even further cost on to the overwhelming loan debt that many of them already have.

Mr. REID. Will the Senator yield for a question?

Mr. DASCHLE. I am happy to yield to the Senator from Nevada.

Mr. REID. I wanted the leader to be here because he mentioned it briefly. I wanted to pick up on the fact that we have all joined in the letter sent to the President. I say "joined" because we depend on the Senator from Massachusetts for so many things. I want to see if the leader will agree—and I know he does—the Senator, as we know, has a great pedigree, but there is no one who serves in the Senate—I am not too sure has ever served in the United States—who has been more interested and more concerned about the people who have no one here to represent them.

I made a couple of notes. On seniors, we have had no leader in the Senate such as the senior Senator from Massachusetts, whether it is Medicare, whether it is prescription drugs—you

list the issues seniors are interested in, including Social Security—he is always leading the charge in that regard.

If you talk about the poor, bankruptcy, food stamps, he is always out in front, as well as on the minimum wage, Medicaid. And then when you talk about education, of course, his committee has written legislation, not the least of which is the work that was done in leaving no child behind, which is a great piece of legislation. We need to make sure there is money there. The environment, hate crimes, nuclear victims, I am so impressed with the work the Senator from Massachusetts does.

And while people come to us all the time—you certainly more than I, deservedly—about the things we have done, we usually, on many of the issues I have mentioned, take the lead from the Senator from Massachusetts.

Would the Senator agree with me that, in the history of the Senate, there have been very few Ted Kennedys who have been able to do things such as this, and every college student and parent who is paying off a loan I am sure can understand what I am saying. Would the Senator agree?

Mr. DASCHLE. In the history of the Senate, I would say there has only been one TED KENNEDY. But the point is so well taken. For 35 years, this giant of the Senate has done remarkable things, probably has more legislation attributable to his contribution in this body than anybody in recent times. We certainly recognize his many accomplishments. It is not only the level of accomplishment and achievement but the manner in which he accomplishes them that is noteworthy. I appreciate very much his calling attention to this issue as well.

This is another example. This became an issue when the country, through his committee and his leadership, was put on notice about the implications of this \$1.3 billion offset. We are very grateful to him for his work in this regard.

Mr. KENNEDY. If the Senator will yield, I am grateful to both of my colleagues for their kind and overly generous remarks. I plan to be here for a while longer.

Let me just carry on and ask the majority leader, the President, with whom we worked on education, was in southern Wisconsin earlier this week talking about the Federal Government having a responsibility. He said: Generally that responsibility is to write a healthy check. We did so in 2002; \$22 billion for secondary, elementary education, a 25-percent increase. We have increased money 35 percent for teacher recruitment, teacher retention, and teacher pay.

Does the Senator not find it somewhat perplexing that we see in this chart the Bush proposed increase for 2002 is 3.5 percent? It increased in 2002 as a result of the leadership of the Senators from South Dakota and Nevada and the Democrats. We got it up to 20 percent. The President is taking credit



for it out here in the Midwest. And now we have this year 12.8 percent. Do we find that somewhat perplexing when we have the President saying we have our responsibilities to write a healthy check? Well, the check was written and we increased it, but the Bush proposal is at 2.8 percent.

I wanted to mention, in the area which is of such central importance to educational reform, that is, having a quality teacher in every classroom, of all the educational issues, and there are many—after-school programs, the construction issues, smaller class sizes—having a well-trained teacher in every classroom was key.

The President was out in the Midwest another day talking about all the work they have done, increasing teacher recruitment, retention, and pay, 35 percent. That is represented in this \$742 million. We supported every penny of it.

Well, now, look at this fiscal year's proposed budget for the very same function. Zero. Not even the cost of living. Zero. I am just wondering; when the Senator talks about the difference between rhetoric and reality, there must be people in the Senator's own State who have to wonder about that as well. I am just, again, wondering whether it isn't important for us, as we are coming into the debate and national elections in 2002—money doesn't solve everything, but money is a pretty clear indication of a nation's priorities. I know the leader reached his hand out to the Republican leader and we passed a strong bipartisan bill that had reform. I think most of us thought we needed reform and resources.

This is enormously troublesome to me in terms of the K through 12, as the efforts by the administration are to prohibit consolidation. I wonder whether the leader agrees with me that education is a key priority and that we are going to have to watch every aspect of it as we continue through this legislative session so that we are going to meet our responsibilities to families across the country and sharing quality education, K through 12, and even earlier education and college education.

Mr. DASCHLE. Mr. President, I heard someone say the other day: You can't fool all the people all the time, but why not give it a try.

I think that is, in essence, what we find the administration attempting to do when it comes to education—simply assert that they are for it and try to fool all the people all the time. But the Senator from Massachusetts points out the problems with that strategy. You can't fool all the people all the time, when the resources simply don't speak to the reality.

That is exactly the problem the administration continues to face. The resources don't speak to the reality. The resources fall far short of the reality. We can all assert we are for education and that we are not going to leave any child behind. But I can tell you, there are South Dakota children left behind,

there are Massachusetts children left behind, and Nevada and Minnesota children are left behind. I think that is the question we are going to continue to face throughout the remainder of the year: Will we leave these children behind because this administration refuses to provide the resources? I hope not.

Today, we got a good indication that, at least in one instance, they have changed their minds. When it comes to students, they will provide the resources that match the initial reality. We have a lot more of these instances in store, but I think we have made the first downpayment in the effort. I thank and applaud the Senator from Massachusetts for doing so.

I yield the floor.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I understand we are in morning business.

The PRESIDING OFFICER. The Senator is correct.

#### JUDICIAL NOMINATIONS

Mr. ALLARD. Mr. President, last week Senator CAMPBELL and I sent a letter to the chairman of the Senate Judiciary Committee expressing our concern about the state of the judicial confirmation process. We shared with the chairman our thoughts on the serious injustice being served on the American people by the committee's failure to provide hearings for the President's judicial nominations.

It is unfortunate that the citizens of the United States must bear the consequences of the Judiciary Committee's delaying tactics. It is unfortunate that the citizens must bear the burden of delayed justice. One year ago, President Bush forwarded his first 11 judicial circuit court nominees to the Judiciary Committee. Every person in this group of nominees received a "qualified" or "well-qualified" rating from the American Bar Association. Now, 365 days later, 8 of the original 11 nominees are yet to receive a hearing. One year later, we are still waiting to have a hearing for 8 of those 11 nominees.

This weekend also marks the 1-year anniversary since the President nominated Tim Tymkovich for the Tenth Circuit Court of Appeals. So, today, 1 year since he was nominated by the President, I stand before you still hoping Mr. Tymkovich will have a hearing, still hoping to fill the 3-year vacancy in the Tenth Circuit, and still hoping that the people of Colorado, Utah, New Mexico, Oklahoma, and Nebraska will no longer be victimized by a vacant bench—a bench paralyzed by a lack of personnel to move quickly through an overwhelming caseload.

So now Mr. Tymkovich, the former solicitor general of Colorado, waits indefinitely for the opportunity to serve his country. He waits indefinitely for his opportunity to help administer the justice that our constitutional Govern-

ment guarantees. And the people of the United States wait for the Senate to fulfill its constitutional duties.

The events of the past year clearly demonstrate an active effort by the enemies of the United States to destroy the liberties and freedom of our great Nation. The most basic of our country's values and traditions are under attack. Congress has responded by enacting new laws and by providing financial assistance to businesses and families and defense. We acted swiftly to suffocate terrorists and destroy the hateful organizations that work to undermine our society.

Yet the instruments through which justice is served are being denied their chance to serve by ugly, partisan politics. For a year, Mr. Tymkovich's nomination has languished in the committee without action. Today, once again, I urge you to move forward with his confirmation. Mr. Tim Tymkovich is highly qualified and will serve his country with the utmost of patriotism and respect for adherence to constitutional principles. The committee must provide a hearing for the Tenth Circuit seat because the seat has remained vacant entirely too long.

A necessary component of providing justice is an efficient court system—a system equipped with the personnel and resources that enable it to fulfill its role as a pillar of our constitutional system of government.

The current state of judicial nominations is simply unacceptable. It has evolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our great Nation depends. The simple fact remains: Justice cannot be delivered when one of every six judgeships on the appellate level remains vacant. I will repeat that: One out of every six judgeships on the appellate level remains vacant.

It is unfortunate—perhaps even shameful—that the confirmation stalemate continues. How much longer will the American people have to wait? How much longer? Many people across the country are asking this same question and responding by urging the chairman to act quickly and provide hearings for qualified judges. The sentiment is being echoed across the pages of every major newspaper in the Nation and the State of Colorado. They all agree that the Senate must act to fill judicial vacancies and end this vacancy crisis.

Mr. President, I wish to share with you some of the statements made in the editorial pages of these papers. They all recognize that the treatment of certain Bush nominees has established a pattern of political partisanship. I ask that these editorials be printed in the RECORD upon completion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.  
(See exhibit 1.)

Mr. ALLARD. The first article is by the Denver Post, dated Monday, May 6, 2002. The other article I ask to be



printed is an editorial by the Rocky Mountain News from May 8, 2002. Next is an editorial by the Colorado Springs Gazette, dated May 8, 2002. Next is an editorial by the Rocky Mountain News, dated May 9, 2002.

Mr. President, the Denver Post editorial states:

The U.S. Constitution grants to the president the power to appoint judges with the "advice and consent" of the Senate. There is nothing in that provision that anticipates a process in which a president nominates replacements to the federal bench and the Senate acts as if it has no responsibility to cooperate.

The Post continues in its editorial:

... it is difficult to think of a single reason why [Mr. Tim Tymkovich] has been denied a confirmation hearing and an up-or-down vote in the full Senate. Such a vote is the prescribed solution for cases where there is disagreement between the Senate and the president.

The Post also expresses the frustration that the American people are feeling:

Unless the Democrat leadership abandons its delay tactics, we think the treatment of judicial nominees ought to be a front-and-center issue in the upcoming elections.

If the Senate won't vote to end the judicial logjam, maybe the citizens should.

The Rocky Mountain News notes that Mr. Tim Tymkovich is not the only Tenth Circuit nominee awaiting a hearing, there are two vacancies, both of whom were appointed 1 year ago. This means the committee is depriving the court of two qualified judges. Unfortunately, it is the people of the United States who suffer, the people who turn to the courts to address their grievances. The committee does not face the daily injustice served on the people, nor does it face the costly court delays caused by an overwhelming docket. The committee does not face the frustration of citizens as they pursue justice in front of an empty bench.

The Rocky Mountain News reveals that the chairman is blaming the President for the delay. According to the chairman, "Controversial nominations take longer." But as the paper points out, there is little controversy regarding the nomination of Tim Tymkovich. Yet he still has not received a hearing.

Outside the city of Denver, newspaper headlines herald the same message, citing the stalemate as "justice delayed" and calling for action. The Colorado Springs Gazette states:

There is a slate of looming vacancies on the federal bench across the country thanks in large part to backlogged nominations, and its risks paralyzing the courts.

The Gazette concludes by adding that swift justice is supposed to be a hallmark of our system; its prospects do not look good while policymakers are making it harder to get before a judge at all.

Mr. Tymkovich is an outstanding choice for the Tenth Circuit Court of Appeals, and he will serve this Nation well, but he must be given the opportunity to do so. In Colorado, his nomi-

nation enjoys broad bipartisan support and the support of our State's legal community.

He has also passed the litmus test of the chairman of the Judiciary Committee, Senator LEAHY, and is deemed qualified by the American Bar Association. The committee must move to end the confirmation stalemate and restore the people's faith that our judicial system is, indeed, built to provide all the judicial resources that are needed to provide access to the courts of law.

It must diligently perform its duty to provide hearings so that the vacancies that plague our courts may be filled. The President has asked for the forging of a bipartisan consensus in favor of fair and efficient consideration of all judicial nominations—I do not think that is an unreasonable request—regardless of the pattern of party control of the political branches of Government. I urge the committee to answer this call and move forward with the judicial nomination process and prove to the American people that the committee is, indeed, interested in serving justice.

I thank the Chair. I yield the floor.

#### EXHIBIT 1

[From the Denver Post, May 6, 2002]

#### POLITICS AND THE BENCH

There is a fresh reminder of how political the judicial selection process has become. Colorado's two senators, Ben Nighthorse Campbell and Wayne Allard, both Republicans, have written a letter to Senate Judiciary Committee Chairman Patrick Leahy, D-Vermont, pointing out that it was a full year ago that President Bush nominated Denver attorney Timothy Tymkovich to a seat on the 10th Circuit Court of Appeals.

The two senators complained, and we agree, that "the current state of judicial nominations . . . devolved into a petty game of entrenchment" that has created a vacancy crisis.

The recent treatment of a Charles Pickering, a Bush nominee to the Fifth Circuit Court of Appeals, consumed a great deal of the committee's time and established a pattern of political partisanship.

The issue for the committee and the nation is whether such treatment—and ultimate rejection on a straight party-line vote in committee—is a pattern the Democratic leaders of the Senate want to repeat. It will be no bargain for the country if the Senate committee adopts a strategy of simply delaying all Bush judicial nominations.

The U.S. Constitution grants to the president the power to appoint judges with the "advice and consent" of the Senate. There is nothing in that provision that anticipates a process in which a president nominates replacements to the federal bench and the Senate acts as if it has no responsibility to cooperate.

Because Tymkovich is well-known in Colorado, having served as the state's solicitor general, it is difficult to think of a single reason why he has been denied a confirmation hearing and an up-or down vote in the full Senate. Such a vote is the prescribed solution for cases where there is disagreement between the Senate and the president.

Unless the Democratic leadership abandons its delay tactics, we think the treatment of judicial nominees ought to be a front-and-center issue in the upcoming elections.

If the Senate won't vote to end the judicial logjam, maybe the citizens should.

[From the Rocky Mountain News, May 8, 2002]

#### BUSH NOMINEES TO DENVER-BASED COURT STILL WAITING FOR HEARINGS

(By Robert Gehrke)

WASHINGTON.—A year ago, it looked like smooth sailing for Michael McConnell.

President Bush had made the conservative University of Utah law professor one of his first appeals court nominees, naming him to the 10 Circuit Court of Appeals in Denver. Approval by the Senate Judiciary Committee, then chaired by Sen. Orrin Hatch, R-Utah, seemed certain.

Bush also nominated Colorado attorney Tim Tymkovich to the 10th Circuit.

A year later, Democrats control the Senate, and McConnell, Tymkovich and five other judges Bush nominated last spring are still awaiting a hearing.

Hatch, McConnell's leading backer, has criticized Judiciary Chairman Patrick Leahy, D-Vt., for moving too slow on judicial nominees, and frequently cites McConnell's case as an example.

"They know that Mike McConnell is one of the truly great Constitutional scholars. They know he's on the fast track to the Supreme Court, so they're going to delay this as long as they can," said Hatch.

Keeping McConnell off the bench, Hatch said, keeps him from compiling the type of judicial experience he would need before moving up to the Supreme Court.

Sens. Wayne Allard and Ben Nighthorse Campbell, both R-Colo., urged Leahy last month to hold a hearing for Tymkovich.

"The current state of judicial nominations is unacceptable," they wrote in a letter to Leahy. "It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our great nation depends."

McConnell and Tymkovich would fill the only two vacancies on the 10th Circuit, which handles appeals from U.S. district courts in Utah, New Mexico, Colorado, Oklahoma and Nebraska. Other circuits have more vacancies.

Leahy spokesman David Carle defended the pace of nominations, saying Democrats confirmed 16 more justices in their first 10 months in control than the Republicans did in their first 10 months in 1995.

Women's groups, gay-rights advocates and church-state separationists have all voiced concerns about McConnell and Tymkovich's records.

McConnell, 46, has represented several groups that have claimed government discrimination because of their religious beliefs. He has argued against a secular government in favor of an arrangement that accepts all religious on an equal footing.

He opposes abortion and co-wrote a law review article challenging the constitutionality of legislation that prohibited protests blocking abortion clinics.

He represented the Boy Scouts of America when they argued they should not be forced to accept homosexual leaders.

As Colorado's solicitor general, Tymkovich defended a state constitutional amendment prohibiting municipalities from adopting ordinances outlawing discrimination against homosexuals.

He also defended a Colorado law prohibiting state financing of abortions in cases of rape or incest.

Adam Shah of the Alliance For Justice, which helped defeat the nomination of Judge Charles Pickering to the Fifth U.S. Circuit of Appeals in New Orleans, said the group has not worked against McConnell or Tymkovich but is examining their records.

"We understand that the president has the right to name nominees that he chooses," Shah said recently. "We are willing to look at the record and their political views and see if they will make good judges . . . and not turn back the clock on civil rights, women's rights and environmental protections."

[From the Colorado Springs Gazette, May 8, 2002]

#### JUSTICE DELAYED

#### BLOCKING NOMINEES IS AN OLD POLITICAL GAME—AND IT'S UNDERMINING OUR COURTS

Let's not be naive about how presidential picks, especially for the judiciary, quickly can become political pawns for members of Congress. Holding up a nominee to the bench or to any other office requiring the Senate's advice and consent has become nothing less than a venerated tradition. And it's a bipartisan affair even as each side howls with indignation when the other does it.

Sometimes it's indulged for philosophical reasons—a judicial nominee's stance on abortion or capital punishment, for example. Other times the stonewalling is mundanely political—perhaps some senators want a president to back off of a threatened veto of major legislation. A pending nomination can prove a useful bargaining chip. It all makes for a very old game, and it has been that way almost every time the White House has changed tenants over the years.

But that doesn't make it right. More to the point, the inclination of senators to make judicial appointees cool their heels interferes with the administration of justice. The latest joust between the Senate and the presidency is no exception.

To their credit, Colorado Republican U.S. Sens. Ben Nighthorse Campbell and Wayne Allard have written a letter to the Chairman of the Senate Judiciary Committee, Patrick Leahy, D-Vt., making just that point.

"The current state of judicial nominations is unacceptable. It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our nation depends," they wrote.

Of particular concern to the Colorado delegation is the status of Colorado's former solicitor general, Tim Tymkovich, who was nominated by President Bush in 2001 to fill the Colorado vacancy on the 10th Circuit Court of Appeals. Saturday will mark the one-year anniversary since Tymkovich's nomination was sent to the Judiciary Committee.

It's not as if there are some glaring blemishes on the man's resume. On the contrary, his nomination enjoys the broad support of our state's legal community, and he was deemed qualified when rated by the American Bar Association. and still he remains in limbo.

To reiterate, we're not being naive here. This is an old syndrome that conforms to no political boundaries. Indeed, a couple of years ago, it was Allard who for a time helped delay the nomination of a Clinton administration pick for the 10th Circuit bench.

But the underlying point the Senators make in their letter to Leahy is well taken. Quite simply, there's a slate of looming vacancies on the federal bench across the country thanks in large part to backlogged nominations, and it risks paralyzing the courts.

Whatever reservations members of either party might harbor about any given nominee, and however substantive those concerns may actually be on occasion, at some point they pale next to the need for any judge at all to attend to the logjam in federal courts.

Swift justice is supposed to be a hallmark of our system; its prospects don't look good while the likes of Leahy are making it harder to get before a judge at all.

[From the Rocky Mountain News, May 9, 2002]

#### GOP MAY PROTEST DELAY ON HEARINGS

#### COLORADAN IS AMONG BUSH JUDICIAL NOMINEES

(By M.E. Sprengelmeyer)

WASHINGTON.—Republicans might slow action in the U.S. Senate today to protest a yearlong delay in confirming President Bush's judicial nominees, including one from Colorado.

Saturday will be the one-year anniversary of Bush's nomination of Tim Tymkovich to the 10th Circuit Court of Appeals in Denver.

But he's still waiting for a confirmation hearing, as are eight of the first 11 judicial nominees Bush made a year ago today.

Republican Senators will call attention to the issue in a morning press conference, and then they are expected to invoke procedural maneuvers to slow the Senate's work throughout the day.

"It will be a slowdown in order to make their point," said Sean Conway, spokesman for Sen. Wayne Allard, R-Loveland.

Last week, President Bush called the situation a "vacancy crisis," especially in the 12 regional Courts of Appeals, where one in six judgeships remains vacant. The Denver-based 10th Circuit is still waiting for nominees Tymkovich and Michael McConnell of Utah to get hearings.

In response, Senate Judiciary Committee Chairman Sen. Pat Leahy, D-Vermont, pointed out that the Senate had confirmed 52 of Bush's nominees since Democrats took control 10 months ago. He said Bush should share the blame for other delays.

"Controversial nominations take longer, and the President can help by choosing nominees primarily for their ability instead of for their ideology," Leahy said in a release.

Some groups have questioned McConnell's nomination, claiming that the University of Utah professor would weaken the separation of church and state. They also question his views because he once represented the Boy Scouts of America in its bid to exclude homosexuals. McConnell backers say the fears are based on misunderstandings and that he has been endorsed by several Democratic academics.

But there is little controversy over Tymkovich, Colorado's former solicitor general.

Last month, Allard and Sen. Ben Nighthorse Campbell, R-Ignacio, wrote Leahy, demanding that Tymkovich get a hearing.

"It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our nation depends," they wrote.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. I thank the Chair.

I congratulate Senator ALLARD for an excellent statement. I have a similar story to tell of one of our nominees from the State of Arkansas.

#### THE PRESIDENT'S COMMITMENT TO EDUCATION

Mr. HUTCHINSON. Mr. President, before I begin discussing the judicial nomination, I wish to respond to the colloquy that took place on the other side of the aisle regarding our President's commitment to education.

I serve on the Education Committee, and I was privileged to serve on the conference committee on the Leave No

Child Behind legislation which reauthorized the Elementary and Secondary Education Act and which was signed into law in January. I saw for more than a year the President's and this administration's deep commitment and involvement to reforming and fully funding our education legislation and our commitment to our elementary and secondary education, special education under IDEA, and the bilingual and other programs that were reauthorized in this legislation.

We have incredible leadership in the White House, and that is why this bipartisan legislation passed by over 80 votes in the Senate. It disappoints me and hurts me to hear my colleagues on the other side of the aisle attack this administration and question its commitment to education. We saw in 30 years under Democrat control an education policy that got us nowhere, in which the learning gap between high-achieving and low-achieving students never narrowed, in which test scores, instead of rising, continued to fall.

Now we have a President who has said: Let's try something different; let's put real accountability into education; yes, let's increase funding, with dramatic increases in title I, dramatic increases in IDEA, special education, and dramatic reforms and increases in bilingual education; but let's accompany spending increases with accountability; let's not just spend more, let's spend smarter.

I, for one, stand and applaud the President for his leadership. I can only say as the President's poll numbers soar on leadership in education and Republicans in general score better on education than ever before, that is the only explanation for the misguided attack on the President on the education issue which we just heard today.

#### JUDICIAL NOMINATIONS

Mr. HUTCHINSON. Mr. President, I wish to speak about the tragic hold up of our circuit court nominees to the Federal bench. It takes only a few numbers to show the dramatic vacancy crisis we are facing in the Federal court system: 10 percent of Federal judgeships are vacant right now, 85; 20 percent of judicial seats at the Federal courts of appeals are vacant. With eight openings, half of the entire Sixth Circuit is now vacant. It is operating at half strength.

The Judiciary Committee has held a hearing on only one of President Bush's seven nominees for the Sixth Circuit, and that hearing was held just a week and a half ago after pending for over 6 months. Two of the Sixth Circuit nominees, Jeffrey Sutton and Deborah Cook, were nominated a year ago today but have not yet had a hearing.

Do they question their ability? The ABA rated both nominees as unanimously qualified, but they have languished for a year.

The numbers simply do not lie: 44 nominations are currently pending before the Judiciary Committee. Unfortunately, 22 of those unconfirmed nominees are for circuit courts, the court of last resort for most cases.

In 1996, the current Judiciary Committee chairman called a vacancy rate of only two-thirds as high as the one we face today a judicial emergency. It is even more so today, and we are doing even less about it.

Of the current 85 vacancies, 37 are considered judicial emergencies by the Administrative Office of the U.S. Courts. This is calculated based on the number of years the judgeship has been open and the size of the court's caseload.

Perhaps the most staggering fact is this: Of the President's first 11 circuit court nominees submitted to the Senate on May 9, 2001, only 3—Mr. President, only 3—have even received hearings by the Senate Judiciary Committee.

This is a crisis by any definition, by any measure, and it is inexcusable.

One of the nominees who has been waiting almost a year is from my home State of Arkansas.

He is a very distinguished, very qualified jurist named Lavenski Smith. This is my friend Lavenski Smith.

It is very easy to talk numbers. Numbers come and go. People come to the Chamber and argue numbers and statistics, but I want to put a face on what we are really talking about.

Judge Smith was nominated for the Eighth Circuit Court of Appeals almost a year ago, on May 22, 2001. I brought this picture of Lavenski Smith in the hopes this might put a human face on at least one of the people we are hurting by these unjust and inexcusable delays. Judge Smith has received broad support from both of his home State Senators, from colleagues on the bench in Arkansas, from colleagues from his days of practicing law. He has received the support of the American Bar Association. He has received the support of the president of the Arkansas NAACP. He has received the support of editorial boards of both the left and the right ends of the political spectrum in the State of Arkansas.

That is broad support. That is support from the left and the right. There is support from every colleague who has ever worked for him. There is support from his colleagues on the Arkansas Supreme Court. There is support from the American Bar Association. There is support across the board.

The NAACP president has written asking for a hearing. Yet Judge Smith's nomination languishes. Why? If he is confirmed, Judge Smith will be the first African-American Arkansan on the Eighth Circuit. I wonder what the ladies and gentlemen of the press would be saying about this nomination were the tables reversed, were Republicans in control and a Democrat nominee, an African American, who would be the first on the Eighth Circuit Court

of Appeals, had languished for almost a year without even a hearing.

Ever since this nomination, I have looked forward to the day when I could sit next to Judge Smith in the Senate Judiciary Committee and I could give a glowing introduction of my friend at that hearing. I have been waiting, I have been waiting, and I have been waiting. I have written Senator LEAHY over and over, and I have talked to Senator LEAHY. Others have written and pleaded for a hearing, and yet nothing has happened.

I would like to tell my colleagues about my friend. Lavenski Smith earned both his bachelor's degree and his law degree from the University of Arkansas. Following law school and 3 years working in private practice, Judge Smith served the poorest and the neediest citizens of Arkansas as the staff attorney for Ozark Legal Services. At Ozark Legal Services, he represented abused and neglected children. These were children whose own parents were unwilling or unable to act in their best interest, putting the children in danger. So Judge Smith stepped in.

Judge Smith helped these children. He represented them in our complex legal system and navigated the foster care system for them. He helped find the safest place for these children to grow and to thrive. So he is committed to the needy. He is committed to the poorest, and he has demonstrated that with his life, not just with his rhetoric.

In addition to this public service, Lavenski Smith has volunteered his spare time to charitable endeavors such as raising funds for the School of Hope, a school for handicapped children in his hometown of Hope, Arkansas. After Judge Smith spent years working at Ozark Legal Services, Judge Smith opened the first minority-owned law firm in Springdale, AR, handling primarily civil cases. He then taught business law at John Brown University and took several positions in public service, including working as the regulatory liaison for Governor Mike Huckabee in the Governor's office. He currently serves as a commissioner on our Public Service Commission.

Now I mentioned he has this very broad support, and indeed he has. So let me share some of the statements of support for Judge Lavenski Smith, former Arkansas Supreme Court Justice, who was nominated almost a year ago to the Eighth Circuit Court of Appeals and has not been granted even the courtesy of a hearing before our Judiciary Committee.

Dale Charles, the president of the Arkansas NAACP, President Charles wrote:

He's a fine person individually and in his time on the Supreme Court he represented himself and the court well. I encourage them to question him and let his record speak for itself. I do not foresee his confirmation being in jeopardy.

This is Dale Charles, president of the Arkansas NAACP. Dale Charles wrote

this letter some time back. He wrote more recently on April 8 a specific letter to Chairman LEAHY, and I ask unanimous consent that this letter be printed in the RECORD.

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

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,

*Little Rock, AR, April 8, 2002.*

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

DEAR CHAIRMAN LEAHY: As the President of the Arkansas State Conference of Branches NAACP, I am writing to express our concern that Attorney Lavenski Smith, who is from Arkansas, has not been given a confirmation hearing. President Bush nominated Mr. Smith approximately a year ago for the Eighth Circuit Court, however, he has not been given a hearing before the Judiciary Committee.

While I understand there are some partisan issues involved, I am asking you as Chairman of the Judiciary Committee to, immediately, schedule a hearing on behalf of the confirmation of Mr. Smith for the Eighth Circuit Court. It is my opinion that Mr. Smith is a fine individual and has served the people of Arkansas well in his capacity as a public official.

For additional information, you may contact me at (501) 227-7231 or by e-mail at dhcharles@prodigy.net.

Sincerely,

DALE CHARLES,  
President.

Mr. HUTCHINSON. I would like to share with my colleagues what the President of the Arkansas chapter of the NAACP wrote concerning my friend Lavenski Smith:

Dear Chairman Leahy, as the President of the Arkansas State Conference Branch of the NAACP, I am writing to express our concern that attorney Lavenski Smith, who is from Arkansas, has not been given a confirmation hearing. President Bush nominated Mr. Smith approximately a year ago for the Eighth Circuit Court of Appeals. However, he has not been given a hearing before the Judiciary Committee. While I understand there are some partisan issues involved—

That is the greatest understatement ever made—

I am asking you, as chairman of the Judiciary Committee, to immediately schedule a hearing on behalf of the confirmation of Mr. Smith for the Eighth Circuit Court of Appeals. It is my opinion that Mr. Smith is a fine individual and has served the people of Arkansas well in his capacity as a public official. Sincerely, Dale Charles, NAACP.

What kind of support does one have to have to get a hearing? How long does one have to wait to get a hearing?

In June of 2001, the American Bar Association, which has been called the gold standard of qualifications, agreed and made a unanimous qualified determination. Chief Justice of the Arkansas Supreme Court, W.H. "Dub" Arnold, well-respected jurist in the State of Arkansas, wrote on behalf of Lavenski Smith:

He is a great man. He is very intelligent. He did a great job for us on the Arkansas Supreme Court. I think he'll make a great Federal judge. I think President Bush made the best possible nomination he could have made.

Now, Justice Arnold is a Democrat, but he is a fair-minded Democrat and he is a distinguished jurist and he weighs in and says President Bush made the best possible nomination he could have made.

We put in a call to Judge Smith to let him know I would be making these remarks on his behalf in this Chamber. Judge Smith said: Well, go ahead. I do not think it will make much difference, but go ahead.

I was so crushed that he is so cynical about the process that has already delayed this nomination for a year and not even given him a hearing, that his attitude about pushing hard for it really will not accrue to any results.

Mike Huckabee, Governor of the State of Arkansas stated:

He just has all the equipment to be an outstanding jurist. I'll be the first to predict that his next stop will be the United States Supreme Court.

Governor Huckabee is a Republican. So we have Dub Arnold, a Democrat, and we have Mike Huckabee, a Republican. We have the NAACP. We have the American Bar Association in June of 2001 saying that a unanimous qualified determination has been made regarding Judge Smith's nomination. Yet he waits. It has now been almost 1 year since he was nominated.

I have thought and thought, why? I understand a nomination that is controversial, a nomination that has severe opposition within the State of Arkansas—perhaps if the letter from the president of the NAACP had been a critical letter or perhaps if his colleagues on the Arkansas Supreme Court had come out publicly and said they question his qualifications, perhaps then there would be some way to understand why there has not even been a hearing for Judge Smith.

So I have thought about why, and the only opposition I can find, I say to my distinguished colleagues and to our Presiding Officer today, to Judge Smith's nomination is found on two Web sites. One is NOW, the National Organization for Women, and the other is NARAL.

Judge Smith, for all of his qualifications, all of his distinguished service, all of his commitment to the poor, needy, and handicapped in our society, has one grave shortcoming: He is pro-life. There are those on the Judiciary Committee who have said: Don't send us a pro-life nominee. They are dead on arrival. That is tragic.

To those who for years have denounced the idea of a litmus test to the Federal bench, that we only look at whether one is qualified or not, no one raised the issue of whether Judge Smith is qualified. Yet the only opposition has been NARAL and the National Organization of Women, and they say he is pro-life; he has a record of being pro-life. How can we possibly consider him for the Eighth Circuit Court of Appeals? That is a litmus test if there ever was one, and they are blatant about it. So we wait. And Judge Smith waits.

Holding up judicial nominees is not just a political game. The confirmation process is not a payback opportunity for perceived wrongs of the past, nor should it be viewed as a chance to throw a roadblock before a new President's administration. The American people are watching the Senate's failure to fulfill its constitutional duty, and they are wondering if we understand what our role is.

Last week, I received a call from a constituent in Arkansas. She had previously written to me asking me why the President's very well-qualified nominee to the Eighth Circuit Court of Appeals, Lavenski Smith, has been waiting for close to a year without the courtesy of a hearing. I responded the way I am sure many Members do, by pointing out the letters I have written supporting Judge Smith's nomination, urging quick attention by the Judiciary Committee. I told her I was working hard to convince the committee to examine his qualifications, as I knew they would find his stellar record more than adequate for the job. I wrote to this lady, my constituent, that Senate procedure required the nominations to be reported out of the Judiciary Committee.

She received my letter and called me last week. She said she had looked through her Constitution and wanted to read to me article II, section 2.2, which states that the President shall appoint justices with the advice and consent of the Senate—not the Judiciary Committee. She wanted to know why the Senate was allowing a partisan hijacking of Senate procedure to prevent fulfillment of our constitutional duty.

I tell this story to illustrate that the vacancy crisis in the judiciary is having affects beyond the administration of justice. Our failure does not just create backlogs that allow dangerous criminals on the street longer, leaves the innocent waiting longer for vindication and slow victims access to justice. When we leave half of the bench of a court of appeals empty and another one only two-thirds full, the American people start to doubt our ability and our will to carry out our constitutional duties.

I know my colleagues on both sides of the aisle share my reverence and respect for the Constitution. I hope we will move forward and confirm, or at a very minimum, have hearings and votes on the 44 nominees still pending, including my very qualified and very dear friend, Lavenski Smith, who would be a very able jurist and judge on the Eighth Circuit Court of Appeals. This will set an important precedent for this circuit court of appeals by serving as the first African American on the Eighth Circuit Court of Appeals.

I ask once again, after nearly a year, for a hearing for my friend and for movement on these very important judicial nominations.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, there have been a couple of speeches on judges. I will say a few things pertinent to the discussion regarding judges.

There is no better place to start than a few statements made by the Republicans in recent days. In 1999, the Republican leader, Senator LOTT, said:

I am saying to you, I am trying to help move this thing along, but getting more Federal judges is not what I came here to do.

That is the Republican leader.

The Senator from Pennsylvania, Senator SANTORUM, said on November 11 of 2001:

The delays are a result of "rank partisanship by Tom Daschle."

But this is what he said on the 18th day of August the year 2000:

A number of my Republican colleagues are not likely to rush President Clinton's lifetime judicial nominees through the confirmation process when they think there is a chance another party could occupy the White House in January.

My friend, Senator CRAIG of Idaho, said in June of 1996:

There is a general feeling . . . that no more nominations should move. I think you'll see a progressive shutdown.

Now what he is saying:

There seems to be a concerted effort to operate very slowly around here.

My friend, ORRIN HATCH, the chairman of the committee, talked about his ideology. He said, when chairman of the committee a couple years ago:

I led the fight to oppose the confirmation of these two judges because their judicial records indicated they would be activists who would legislate from the bench.

A couple of months ago he said:

I would like to address some recent attempt to reinvent history by repeating this convenient myth that I, as chairman, blocked President Clinton's nominations on the basis of political ideology.

That is what he said.

Again, my friend, the Republican leader said:

The reason for the lack of action on the backlog of Clinton nominations was his steadily ringing office phone saying "no more Clinton Federal judges."

Senator LOTT said he received a lot of phone calls saying "No more Clinton judges." So that is what he did.

He said to the Bulletin's Frontrunner, a newspaper:

Until we get 12 appropriations bills done, there is no way any judge, of any kind, or any stripe, will be confirmed.

Senator HATCH said:

The claim that there is a vacancy crisis in the Federal courts is simply wrong. Using the Clinton administration's own standard, the Federal Judiciary currently has virtual full employment.

We have established the vacancies in the Federal judiciary created by Republicans. Senator HATCH said don't worry.

Although just a short time ago he said:

If we don't have the third branch of government staffed, we're all in trouble.

The Republicans say they want hearings. I heard my friend from Arkansas say they want hearings.

These are people President Clinton nominated who never ever got a hearing—not 2 days later, 2 weeks later, 2 months later, 2 years later. They never got a hearing. Fine people. In Illinois, Wenona Whitfield; in Missouri, Leland Shurin; in Pennsylvania, John Bingler; in South Dakota, Bruce Greer; in California, Sue Ellen Myerscough; Texas, Cheryl Wattlely; in Texas, Michael Schaffman.

Circuit judges in the Fourth Circuit, James Beaty; Richard Leonard, never got hearings; Annabelle Rodriguez. In the 105th Congress, Helene White, Ohio; Jorge Rangel in Texas; Jeffrey Coleman, North Dakota; James Klein, District of Columbia; Robert Freedberg, Pennsylvania; Cheryl Wattlely, Texas; Lynette Norton, Pennsylvania; Robert Raymar, Third Circuit; Legrome Davis, Pennsylvania; Lynne Lasry, California; Barry Goode, California. No hearings.

In the 106th Congress, 33 never got a hearing: H. Alston Johnson, Louisiana; James Duffy, Hawaii; Elana Kagan, District of Columbia; James Wynn, North Carolina; Kathleen McCree-Lewis, Ohio; Enrique Moreno, Texas; James Lyons, Colorado; Kent Markus, Ohio; Robert Cindeich, Pennsylvania; Stephen Orlofsky, New Jersey; Roger Gregory, Virginia; Christine Arguello, Colorado; Elizabeth Gibson, North Carolina; J. Rich Leonard, District of Columbia; Patricia Coan, Colorado; Dolly Gee, California; Steve Bell, Ohio; Rhonda Fields, District of Columbia; S. David Fineman, Pennsylvania; Linda Riegle, Nevada; Ricardo Morado, Texas; Gary Sebelius, Kansas; Ken Simon, Hawaii; David Cercone, Pennsylvania; Harry Litman, Oklahoma; Valerie Couch, Oklahoma; Marion Johnston, California; Steve Achelphol, Nebraska; Richard Anderson, Montana; Stephen Liberman, Pennsylvania; Melvin Hall, Oklahoma.

Before I sit down, they talk about Hispanic nominees. There is a Hispanic nominee they say has not moved quickly enough.

Jorge Rangel, who was nominated in July of 1997, never got anything. Enrique Moreno, Fifth Circuit, nominated in 1999, didn't get anything. Christine Arguello, July of 2000—nothing happened. Ricardo Morado, south Texas—nothing happened. Anabelle Rodriguez—these are just some of the names.

I suggest before the tears run too heavily down the cheeks of my Republican friends, they should go back and read their own statements given by their own Senators, and find out the States where people who were nominated by President Clinton never got a hearing.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Florida.

Mr. NELSON of Florida. Mr. President, how much time do we have remaining on this side?

The PRESIDING OFFICER. The Senator has 14 minutes.

Mr. LOTT. Mr. President, parliamentary inquiry, if the Senator will yield:

How much time is remaining on this side of the aisle?

The PRESIDING OFFICER. Fourteen minutes.

Mr. LOTT. On each side?

The PRESIDING OFFICER. Yes.

Mr. LOTT. Mr. President, the majority leader took some time at the beginning of this debate. Was that out of leader time?

Mr. REID. It was not out of leader time.

Mr. LOTT. It was not out of leader time?

The PRESIDING OFFICER. It came out of morning business time.

The Senator from Florida.

Mr. NELSON of Florida. I ask, of the remaining 14 minutes, that I have consent to have 5 minutes and the remaining time for my colleague from Minnesota, to be followed by me.

Mr. LOTT. I reserve the right to object, Mr. President. I believe the agreement was we would have it equally divided; we could go back and forth. So after 5 minutes I would like to then have an opportunity to speak out of our time on this side.

Mr. NELSON of Florida. Then, Mr. President, I will yield to the Senator from Minnesota. He has a time problem.

Mr. WELLSTONE. Mr. President, that is very gracious. The Senator from Florida will go now followed by the minority leader and then I will follow the minority leader.

The PRESIDING OFFICER. The Senator from Florida.

#### THE NEGRO LEAGUES

Mr. NELSON of Florida. Mr. President, last week I learned of the death of three men. They lived apart from each other—one in Florida, one in Virginia, and one in Maryland—but they shared a special past.

All three played in baseball's Negro Leagues. They did not receive million-dollar contracts. They did not get endorsement deals. They just played baseball.

Sadly, these three men were part of a group of about 165 players who never received a pension for their time in the leagues.

The Negro League was founded in 1920 by Andrew "Rube" Foster. With 72 teams and more than 4,000 players, the Negro Leagues lasted until 1960, when its last team folded.

For half a century, most of the Negro League players were denied the opportunity to play in the Majors.

Even though Jackie Robinson broke the color barrier in 1947, it took another decade for Major League Baseball to really become integrated. All the while, baseball had its antitrust exemption to unfairly compete against the Negro Leagues, and systemically discriminated against most Negro League players for many years after 1947.

That is the crux of the argument many of these old-timers have about not getting even a small pension.

Though Baseball Commissioner Bud Selig sought to fix some of the problems of the past when, a few years ago, he awarded an annual \$10,000 pension benefit to some of the Negro Leaguers, he left out those who played solely in the Negro Leagues from 1948 to 1960.

Major League Baseball contends they were left out because the sport was integrated during that time. But an accurate reading of history shows it took the Big Leagues many years to integrate following Jackie Robinson's debut. In fact, the Boston Red Sox didn't have a single black on its team until 1959—more than a decade after Robinson's move to the Majors.

The players still seeking a small retirement have been reaching out to Commissioner Selig now for 5 long years now. But their requests have been ignored. I joined them last year in trying to find some resolution to this dispute, but my efforts to meet with Commissioner Selig also have been ignored.

Meantime, these ex-players are getting old. Three of them died late last month—two on the same day.

On April 23, we lost James "Pee Wee" Jenkins, a native of Virginia. Jenkins pitched for the New York Black Cubans.

Just last year, Jenkins threw out the first pitch at Shea stadium, as the 2001 Mets—dressed in Black Cuban uniforms—paid tribute to Jenkins and the rest of his fellow 1947 Negro League World Series champions.

James Cohen, Sr., of Washington DC, also died on April 23. A World War II veteran, he pitched for the Indianapolis Clowns from 1946 to 1952, earning the nickname "Fireball."

In his last year with the Clowns, he played with the great, legendary Hank Aaron. Mr. Cohen went on to be a postal clerk for 35 years. And in 1994, he was honored at the White House by Vice President Al Gore. Mr. Cohen was survived by two sons, seven grandchildren and five great-grandchildren.

Back in Florida, we lost Eugene White, of Jacksonville, on April 26. He was an infielder for the Chicago American Giants and the Kansas City Monarchs. As a retiree, he coached little league. On the playing field, he taught more than baseball.

Rob Stafford, one of Mr. White's former players, recently recalled some of the lessons Mr. White taught the kids.

Said Mr. Stafford:

He taught me a lesson that I only learned to appreciate as a man—the lesson of tolerance.

He taught me never prejudge, minimize or marginalize a person. He taught me that every person deserves a chance to participate, to be included. . . .

He is now a star on God's level playing field.

Mr. White, Mr. Jenkins and Mr. Cohen were some of baseball's living legends. But these legends are dying.

And so today, to Mr. Selig and to Major League Baseball, I say this: time is running short for you to do the right

thing. Major League Baseball can choose to resolve this issue and, can give these players a small token for their achievements.

I sincerely hope Major League Baseball will.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank my colleague from Florida for his very eloquent statement. Second, I thank the minority leader, Senator LOTT from Mississippi, for his graciousness in letting me proceed. I will try to be brief.

#### HEALTH INSURANCE ASSISTANCE

Mr. WELLSTONE. Mr. President, last week I said to people in northern Minnesota—specifically northeast Minnesota on the Iron Range—that I thought we had a real breakthrough. I thought it was part of fast track on trade adjustment authority, including legacy costs, and a 1-year bridge where health care costs would be covered. Through no fault of any of the retirees, a lot of these companies, including LTV, declared bankruptcy and walked away from health care benefits, which is terrifying to people in their older age.

Yesterday, the administration came out with a statement about this trade adjustment assistance package:

Specifically, the administration opposes the Daschle substitute last-minute addition of health insurance assistance for steel retirees.

There is a nightmare. I say to my colleague from Mississippi that this is an absolute nightmare for people on the range.

The President talked about how concerned he is. But this is just a 1-year bridge to help pay for these retirees' health care costs until we put together a package that deals with the legacy costs for the future.

The President crushed the hopes of people with this position that the White House has now taken.

The President says: Look what I have done for the steel industry. He talks about section 201, but now there are 1,000 exceptions to the kind of trade relief we thought we were going to get through section 201.

In Minnesota, we were concerned about what was happening to the taconite industry. We were talking about the unfair competition from semi-finished slab steel.

Basically, the administration came up with a tariff quota, and it was 7 million tons of slab steel a year, which is what is being dumped right now on the range. It didn't give us any relief whatsoever.

But, most important of all, what is happening now with this statement of position by the administration is they are just walking away from dealing with the legacy costs.

Jerry Fowler, who testified before the HELP committee a couple of weeks ago, president of Local 4108, talked about the pain on the range, and talked

about all of these people. Gosh. You talk about what we say we believe in—people who have just worked their heads off all of their lives, taconite workers, helping to produce steel, which is so critical to our national security, and a part of all of our military efforts. People are really proud and are proud of their families. They are proud of the range. Through no fault of their own, 32 steel companies have declared bankruptcy, and then they walk away from these people.

They say they can no longer cover their health care benefits, nor their retiree benefits. Many people are afraid of no longer having prescription drug coverage.

People were really hopeful, and I was able to report last week, and I was proud. I thank Senators ROCKEFELLER, MIKULSKI, STABENOW, LEVIN, and certainly my colleague MARK DAYTON. We worked hard to have iron ore and taconite included.

This was a pragmatic part of the trade adjustment assistance—only a 1-year bridge, but it was a start. It would give people some security, and it was the right thing to do.

The President has talked about his concern for steelworkers. Over and over again, he professed his concern for steelworkers. Then, specifically, the administration opposes the Daschle substitute last-minute addition of health insurance assistance for steel retirees.

We know there is going to be a point of order and a budget challenge on this amendment. I believe what the White House has now done is basically sealed its fate. We are not going to be able to have this bridge. We are not going to be able to have this assistance for people.

I question this fast track for a lot of reasons, but, at the very minimum, when people are out of work through no fault of their own—or people work for an industry that has been besieged with unfair trade—the only thing they are asking for is a bridge to make sure retirees don't lose their benefits.

All of us have worked so hard together—Senator SPECTER and Senator DEWINE—to get this done. Now the administration comes out yesterday and torpedoed the whole thing.

Mr. President, are you for the taconite workers on the Iron Range? Are you for the steelworkers? You say you are.

We will be back on this over and over again. But this is a huge blow for the Iron Range in Minnesota and for me as a Senator from Minnesota trying to do my best to represent people.

Yesterday the President made it very clear that all of his talk about helping the hard-working men and women of the U.S. steel industry is just that—talk. His latest pronouncement is that steelworker retirees don't need the assistance this bill would have provided to help them for 1 year to pay for health insurance they are losing because their company has gone bankrupt.

This is outrageous—these are hard-working, decent, compassionate men and women who have devoted their lives to the steel industry—an industry that is essential to our national security—and now they find themselves without health insurance they were promised in their retirement because their companies have gone bankrupt, they're out in the cold without the resources to pay for health insurance, and the President says, oh, no, they don't need the 1-year lifeline this bill offers.

Frankly, President Bush talks about what he's done for the steel industry and for steel workers. But there is not a lot of substance there.

First, we had a section 201 decision that is looking more and more cosmetic. It may have brought relief to some sections of the steel industry, except that now the administration is entertaining all sorts of exceptions—there are over 1,000 exceptions to the President's section 201 decision and Secretary O'Neill is reported as saying that "a significant portion of them will be favorably decided."

Then there is the fact that the decision did nothing to help Minnesota's Iron Range—nor the iron industry as a whole—deal with import surges of semi-finished slab steel. While the President imposed tariffs on every other product category for which the International Trade Commission had found injury, for steel slab he decided to impose "tariff rate quotas." This brings us virtually no relief. Nearly 7 million tons of steel slab can continue to be dumped on our shores before any tariff is assessed. For folks on the Iron Range, the injury will continue.

Then, the President in his section 201 decision—and subsequently—has totally ducked the serious legacy cost problem that is suffocating the domestic steel industry. In the last 2 years, 32 U.S. steel companies have filed for bankruptcy, and these companies represent nearly 30 percent of our domestic steel making capacity. These failures weren't the fault of the workers at these companies. These failures resulted from unfair and predatory practices of our trading partners over an extended period. Yet despite the moral and economic imperative to do something about this legacy cost problem so that the steel industry, so essential to our national security, can rebuild and revitalize itself, the President has washed his hands of the matter. It is somebody else's problem he says.

And now there is the current bill. Those of us who are serious about this legacy cost problem, and it is a bipartisan group, have introduced S. 2189, the Steel Industry Retiree Benefits Protection Act of 2002, to address the legacy cost question in a comprehensive way. In the meantime, however, recognizing that every day steelworker retirees whose companies are going bankrupt are losing their health insurance, Senator DASCHLE introduced provisions to provide stop gap assistance—



1 year of health insurance to retirees who right now are losing their benefits—to tide folks over while we work on the larger problem.

And that, incredibly, is what President Bush yesterday announced his opposition to. It is now abundantly clear, if there had been any doubt, that this President is not interested in health and well-being of our steelworker families.

In Minnesota, on the Iron Range, there are several thousand retirees who find themselves in desperate need of assistance and this administration is turning its back on them.

Earlier this year, the HELP Committee held hearings on the need for legacy cost legislation both for retirees and for the industry. The testimony was riveting. The need compelling. My good friend, Jerry Fallos, president of Local 4108 of the United Steelworkers of America, testified at those hearings. The stories he had to tell were grim indeed.

As Jerry said, the people of the Iron Range are used to hard times. They have weathered any number of challenges over the years. They are good people, proud, hard working—the best you can find anywhere. They are survivors—and they will get through these difficult times as well. They have given much to their country, and now they need our help.

The good people of the range have responded to their country in its times of needs. Over the years our Nation's economy flourished and our manufacturing industries boomed from the iron ore produced through the labors of steelworkers on the range.

Yesterday, when President Bush announced his opposition to helping these steelworker retirees he said it would cost too much. We think his \$800 million estimate is way off, but even if you accept it at face value, it pales in comparison to the billions and billions of dollars of tax giveaways this administration is happy to make available to multinational corporations and the wealthy.

We are talking about \$120 billion over 10 years to make the estate tax permanent, and \$400 billion over 10 years to make all of the tax cuts permanent. Are these our priorities—\$400 billion to multinational corporations and wealthy individuals as opposed to \$400 million to help steelworker retirees keep their health insurance for 1 year?

I have asked many times before: Where are our priorities; where are our values? How can we tolerate such choices—tax breaks to help multinationals over health insurance for steelworker retirees?

These families need our help. I urge my colleagues not to turn our backs on these men and women who have served their country so well.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. Fourteen minutes.

#### JUDICIAL NOMINATIONS

Mr. LOTT. Mr. President, I have been wanting to speak about the situation with regard to the President's judicial nominations. I have a number of points I wish to make.

I know there were some discussions about the nominations earlier this morning and even this afternoon. The major point we are trying to make today is that today is the 1-year anniversary of eight of the President's nominations to serve on circuit courts. These minorities, men and women, have not even had the courtesy of a hearing, let alone a vote in the Judiciary Committee.

I have learned over the years that when you are talking about judges and judicial nominations each side will have their statistics about what happened in the Clinton years, what happened in the Reagan years, and what happens right now. But the fact is, these eight nominees have not even had a hearing; they have been pending for a full year.

There are actually 11 nominees who were sent forward in a group—the first nominations of President Bush. Three of those have been confirmed. Two of those, I might add, were recycled, in effect, because they were Democrats, or were selected by Democrats, and they were qualified. The President resubmitted their names. They got through the process. But these eight have not had any further consideration for a full year.

You can argue statistics. But usually Presidents get their circuit nominations confirmed within a year of having them sent forward.

The President sought men and women of great experience and who meet the highest standards of legal training, temperament, and judgment—for all of his nominations, but particularly for this first group of circuit court nominees.

He sought out nominees who respect the powers given to them by the Constitution and who will interpret the law—not make the law. He sought out nominees who have reputations as lawyers of skill, discernment, and high character. He even sought out nominees who had a great deal of experience in arguing cases before the Supreme Court. In this group of eight nominees, they have collectively appeared before the Supreme Court over 60 times. One of the nominees has alone argued before the Supreme Court 30 times. In terms of their education, their experience, and their integrity, this group is unimpeachable and quite remarkable.

Here are these individuals' pictures. I think a picture helps inform our debate, because it takes the debate away from the realm of just statistics or mere names.

Mr. President, when we are talking about judges who have been delayed, we are talking about Miguel Estrada, who was born in Honduras, and has lived the American dream. He has tremendous experience in his profession,

including serving as Assistant U.S. Solicitor General under President Clinton, a Supreme Court law clerk, arguing 15 cases before the Supreme Court, and working as a Federal prosecutor. He also graduated magna cum laude from Harvard Law School—not an institution known for turning out conservative lawyers, or judges—but certainly an eminently respected institution as far as quality, high standards, and academic rigor are concerned. Yet Estrada has been denied a fair hearing.

Why? Noone has suggested he is not qualified by education, by experience, or by professional or personal integrity.

Does he have a conservative philosophy? Does he believe in strict construction of the Founder's intent in interpreting the Constitution? Yes. Does that disqualify him? It should not.

I voted for Justice Ginsburg when she came before the Senate. I did not agree with her judicial or legal philosophy. I knew she would rule quite often in ways with which I would not agree. While most justices exercise discretion, you can't always count on how they may rule. But she was qualified by experience, by education, and by personal integrity and demeanor and I voted for her regardless of the fact that her philosophy was contrary to my own.

Unfortunately, I cannot think of any other reason than ideological prejudice for why Miguel Estrada has not had a hearing and an opportunity to be voted on—despite the fact that he was unanimously given the ABA's highest rating, "well qualified" by the American Bar Association which is supposed to be the Democrat's Gold Standard for evaluating nominees judicial qualifications. Yet, Miguel Estrada has not even had a hearing.

Another example, which is clearly one that is hard to understand, is the delay in considering Justice Priscilla Owen, a nominee to the Fifth Circuit Court of Appeals. I have a special feeling in my heart about this circuit because it does include my State of Mississippi. Judge Owen has served on the Texas Supreme Court since 1994. She has been involved in business in the private sector. She is an outstanding graduate of Baylor Law School in Texas.

Again, by education, by experience, and by personal integrity, this is a lady who should have been accorded a hearing and a vote by now in the Judiciary Committee and on the floor of the Senate.

Mr. President, why do we need another pound of flesh concerning the Fifth Circuit Court of Appeals? Is Judge Charles Pickering who has already been voted down in the Judiciary Committee not enough. If we are looking for tit for tat, how about just saying: OK, good, take that, Mr. President, TRENT LOTT, Republicans, we repaid you what you deserved from the past? But how does all of that apply to Priscilla Owen? Why has this lady not been accorded a hearing? Remember,



once again, that she has been pending for a full year.

One interesting thing of note, Mr. President, is that two of these nominees, were actually nominated by the first President Bush. So they in a sense have been waiting over 10 years to get a fair hearing and be confirmed to the circuit courts.

John Roberts is one of those two, and has again been nominated to the DC Circuit Court of Appeals. He is one of the Nation's leading appellate lawyers, having argued 36 cases before the U.S. Supreme Court, and serving as a Deputy Solicitor General for our Nation. He also graduated magna cum laude from Harvard. So again, by education, by incredible experience, and by personal integrity, he has stellar qualifications to serve as a circuit court judge. Yet, he too has been denied a fair hearing and an opportunity to be considered by the Senate by the majority of Democrats on the Judiciary Committee.

Mr. President, our Nation's fourth President, James Madison, was certainly correct when he said that the courts exist to "exercise not the will of men, but the judgment of law." This President has gone to great lengths to nominate the kind of men and women who will do that once they are confirmed.

Another nominee who has been delayed for over a year without cause or justification, is Justice Deborah Cook, nominated to the Sixth Circuit Court of Appeals. She has served as a justice on the Ohio Supreme Court since 1994. Before becoming a judge, she was the first woman partner at Akron's oldest law firm. She is a graduate of the University of Akron Law School.

This is the circuit where half of the judicial seats are vacant. There is a long history on why that is, but the fact is that again the nominee is an eminently qualified nominee. And she has been waiting 52 weeks for a hearing even though the ABA voted unanimously that she was qualified.

So what is the problem, Mr. President? There are no allegations of improper conduct. There are no allegations that she is not qualified by experience, by education, or by demeanor, yet she is still waiting on a hearing.

Yet another nominee unjustifiably delayed is Judge Terrence Boyle, a nominee to the Fourth Circuit Court of Appeals. He was unanimously confirmed to be a Federal district judge in 1984.

Mr. President, one of the things that struck me as very interesting about Judge Pickering's treatment by the Democrats was that he has been a sitting federal district court judge since 1990, over 12 years. And now we have a nominee who has been a Federal district judge for almost two decades, who was unanimously confirmed in 1984. The former chairman of the State Democratic Party in North Carolina even supports his nomination. He is a graduate of American University's Law

School. This is one of the two nominees, the other being John Roberts, who was first nominated to be a circuit court judge back during the first President Bush's administration. He was younger and well experienced then, and he now has another decade of experience as a Federal district court judge to his credit. And here he is back again, only to be denied a fair hearing by the Democrats.

So, in each and every one of these cases, there is no explanation for the year-long delay in giving President Bush's first group of nominees prompt and fair treatment.

Michael McConnell has been nominated to the Tenth Circuit Court of Appeals and again he is an eminently qualified legal scholar. He is one of the Nation's leading constitutional scholars, the author of legal books, and a prolific contributor to law journals. He has argued 11 cases before the Supreme Court. His reputation for fairness and integrity has generated support from numerous law professors. He is a graduate of the University of Chicago Law School. Again, on what possible grounds is such an extraordinarily qualified individual denied a hearing for over a year?

Judge Dennis Shedd, a nominee to the Fourth Circuit Court of Appeals, was another nominee unanimously confirmed to be a Federal district judge in 1990—yet another sitting Federal district judge, Mr. President. He is strongly supported in his home State by both Senators—Senator FRITZ HOLLINGS and Senator STROM THURMOND—and served in the past as chief counsel to the Senate Judiciary Committee. He is one of ours no less. Yet, he has been waiting unjustifiably for over a year for a fair hearing and a vote.

Mr. President, I believe I have talked about each one of the nominee's personal qualifications to serve on the circuit courts of America. I should note that, back in January, the chairman of the Judiciary Committee indicated there would be a hearing for Justice Priscilla Owen, Michael McConnell, and Miguel Estrada—and that they would have hearings this year. Now, I guess we have 4 more months that have expired, another 4 months in which they have not been given a hearing much less a vote.

I hope they will given more than the courtesy of a hearing, which seems the minimum they should have. They should have a vote in the Judiciary Committee and then a vote here in the full Senate.

Mr. President, the delay in confirming such well qualified nominees to be judges has had an adverse impact on the judicial system itself. The number of vacancies has gone up over the past year—there are now almost 100 judge-ships vacant—while 44 nominations languish in the Senate. As a result, justice is being delayed as the caseload burden increases for almost every current judge in the nation.

I would take a moment to note one curious thing about today's efforts re-

garding judges. We had six judges on the calendar ready to be voted on; but only four were moved, the other two were not. One of the two nominees has a very close association with Senator HATCH. The other one is the lone circuit judge on the calendar. So, once again, it appears circuit judges are receiving worse treatment by the Judiciary Committee than are the Federal district court nominees.

I realize around here we get to thinking: Well, wait a minute, circuit courts are more involved in the interpretation of the law. Maybe they are more important. But I will tell you what, if you ever practiced a day of law, the ones you see who really are dealing with the law every day are the Federal district judges. I do not understand the big dichotomy here and why the circuit judges are being delayed and treated so unfairly.

I want to point out what is happening in terms of these circuit judges nominated by President Bush as compared to the treatment that was afforded circuit court nominees during President Clinton's first two years in office.

First off, I should note that while President Bush sent his first nominations up on May 9, 2001, a year ago, President Clinton did not send up his first batch of nominations to the Senate until August of his first year in office.

So, there was actually less time to actually get President Clinton's nominees confirmed than there has been to get George Bush's out.

Yet you can see from the chart what is actually happening with Bush's nominees, particularly with respect to the circuit judges. President Clinton, in the 14 months after his first nominee was sent up, got 86 percent of them confirmed by the time Congress adjourned. Ultimately, over the course of the following Congress, Clinton ended up getting almost all of the judges he nominated during his first Congressional term. Again, I am not going to get into great arguments over the exact percentages or numbers, but there is clearly a problem here. While Clinton got 86 percent of his circuit judges by the time his first Congress adjourned, President Bush only has 30 percent so far. And at the current pace the judiciary is considering Bush's nominees, it looks like Bush is not going to break 50% by the end of this Congress.

It looks as if we might get two or three more circuit judges by the end of the year, but it surely is moving deliberately slowly. The American people recognize this is a problem for the country. When you have a circuit like the 6th circuit that has a 50-percent vacancy rate, then you begin to wonder, do we have enough judges to cover all the cases, even the truly important ones?

This is a question of law and order, Mr. President, drug cases, terrorist cases.

Justice Rehnquist, the Chief Justice, has decried the vacancy crisis as

"alarming." More than 10 percent of Federal judgeships are currently vacant. So this problem for our nation that is very serious, particularly after the terrorist attacks in New York and here in Washington.

I have talked to Senator DASCHLE about it. Senator NICKLES and I, along with Senator HATCH, have talked to Senator LEAHY and Senator REID. I know, having been majority leader, that sometimes these problems are hard to resolve. The Judiciary Committee doesn't always follow instructions even from the elected leaders. But this creates a problem. We have been trying to resist slowing down or blocking meetings or progress on the legislative process because we want to move forward on these important bills. But we have to point out that there is a blatant unfairness here, to the country and to the nominees. I can't help but think of the cliché that justice delayed is justice denied. That is what is happening here.

I know my time is running out. I probably will come back and talk more about this later. I ask for fairness, fairness for these eight circuit judges. We can argue about the others later, the other circuit nominees, other district judges, but after an entire year President Bush's first eight nominees should have a hearing. They should have a vote on the Senate floor. No criticisms have been raised against them other than un-attributed hints that they are conservative, and the current majority in the Senate is looking for some sort of a litmus test or conformance, I guess, based on philosophy and ideology. I don't think that either fair or appropriate. It is not what is called for under the Constitution. I hope that the Senate will ultimately find a way to make progress in this area and give these nominees the opportunity to be fairly considered based upon their temperament, professional and educational qualifications, and their personal integrity.

As President Bush has noted in making the case for getting his nominees confirmed, Federal judges are key to making sure America functions well. Every day they uphold the rights of an individual, they protect the innocent, they punish the guilty. Their rulings are essential to the rule of law in our nation. To discharge their responsibilities the federal courts must have judges."

Because of the number of vacancies in our nation's courts, Americans are being forced to wait for justice, and the burden on federal judges is growing heavier.

Mr. President, one newspaper, the Wichita Eagle, got it exactly right on the judges issue back in March in part I think because it is located in the heart of America when it said: "But just as presidents have an obligation not to nominate the incompetent or unqualified to the federal bench, presidents deserve the broad authority in making their choices for such judicial

posts. And the Senate has a responsibility to give those choices every possible consideration and, barring some glaring defect, confirm them quickly. Yet the backstabbing and stalling on judicial confirmations has escalated to the point of obstructing justice. It needs to stop."

This President's nominees are men and women of distinction and great accomplishment. They are solidly within the mainstream of American legal opinion, and they share a principled commitment to follow the law, not legislate it from the bench.

Mr. President, President Bush' nominees should be given fair hearings, voted on, and confirmed by the Senate as soon as possible.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, the people who have been discussing and negotiating the trade matter have asked for a little additional time. In order to accommodate their discussions, I ask unanimous consent that the period for morning business be extended until 3:45.

Mr. LOTT. Mr. President, at this point I would have to object. I don't know that I would want to. I just have not had a chance to discuss this with Senator DASCHLE.

The PRESIDING OFFICER. The Senator from Georgia.

(The remarks of Mr. CLELAND pertaining to the introduction of S. 1492 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Nevada is recognized.

#### EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the time for morning business expire at 3:45 today.

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

The Senator from Kansas is recognized.

#### JUDICIAL NOMINATIONS

Mr. BROWNBACK. Mr. President, I rise to speak about the past year's judicial nominations, which is something on which several people have spoken today. I just came from a meeting with the President where he was talking about his frustration in getting judicial nominees considered. He was quite animated and discouraged that we have not been getting more judicial nominees through the system—particularly circuit court judges. That is what he was stating. That is what the meeting

was about. He wants to see more happening and more of them occurring, and we need to do so. People have been pretty clear on the information of what technically and specifically has happened.

Since May 9 of last year, we have had 11 judicial nominees for the U.S. circuit courts of appeal. Those eleven were nominated 1 year ago. Since that time, only 3—including 2 Democrats—have been confirmed. Of the remaining 8, not one has even been scheduled for a hearing. We have not held hearings on these individuals. We need to get this done and start to move them forward. It is an issue that is engaging the country, and I think increasingly so, as we move into the fall. We have a number of pieces of legislation that I think, in the post 9-11 environment, will be considered and looked at by the courts and need to be reviewed. We need to have a fully staffed court. Right now we have a 20-percent vacancy on the circuit court; and within some of the circuits, it is even a much larger one.

In the Sixth Circuit there are 16 positions and only half of those are filled.

What is even more troubling is that we have had a long and established tradition of giving the President—regardless of his political affiliation—a good deal of deference on his nominees who might be unfairly targeted as being extremists.

However, as we found out during the Charles Pickering nomination and subsequent hearings, the real extremism is being employed by those people who are artfully using the terms "balance" and "moderation" to set the stage for ending deference to the President and excluding perfectly qualified judges. Judge Pickering was an individual nominated to go on the circuit court. He served on the Federal bench for over 10 years.

This practice does not bode well for the future of this committee when it may have to deal with Supreme Court nominees in the near future. To highlight just how bad it can be, it might be helpful to see how many Supreme Court Justices of the past would fare under the ideological litmus test that is now plainly evident and used on the committee.

Would some of our great Justices of the past survive the litmus test being put forward by the committee now?

John Marshall, the first Chief Justice of the Supreme Court and author of some of the most important legal decisions for this Nation, would likely be rejected today by the Judiciary Committee because his view on interstate commerce in the *Gibbons v. Odgen* would be seen as too pro-federalism.

Oliver Wendell Holmes, perhaps the greatest Supreme Court justice, would have trouble because he affirmed a state law providing for the sterilization of the mentally ill in *Buck v. Bell*. Felix Frankfurter, an ACLU member and a "liberal" Roosevelt appointee, would be rejected because he did not believe that the fourth amendment required the exclusion of evidence seized

by State police officers without a warrant in the 1961 Mapp v. Ohio case. Nor would his argument in West Virginia Board of Education v. Barnette that the first amendment prohibited schools from requiring students to salute the American flag pass muster with the committee today.

Even Earl Warren, the most liberal chief justice ever and author of Brown v. Board of Education, would have a tough confirmation battle under the committee's new standard. After all, he took the reactionary position of not supporting extension of the first amendment protection to flag burning.

Louis Brandeis, the great liberal craftsman, would no doubt be rejected because he supported federalism against New Deal legislation and voted to strike down legislation in the Schechter case as being beyond the power of Congress.

Byron White, President Kennedy's nominee, whose recent passing was mourned and elegantly eulogized around the Nation, would of course be rejected today because he committed the unpardonable sin of disagreeing with Roe v. Wade.

The question facing the President on this anniversary date is what he can do to move judges to the floor for swift confirmation. Given the extremist tactics of outside interest groups and their influence over committee members, the President could consider compromising on his philosophy of nominating judges, men and women of experience who meet the highest standards of legal training, temperament, and judgement. As history has shown, however, it would mean overlooking the kind of judges who have made our judiciary a model for the world. Unlike some issues, the integrity of the law and the qualifications of judges who will interpret and uphold them cannot be compromised.

I join my colleagues in urging Chairman LEAHY of the Judiciary Committee and Majority Leader DASCHLE in scheduling hearings and floor votes as soon as possible. I believe we have had ample time to make our points. It's now time to act.

I think if we do not act, this is going to continue to fester across the country, and that will embroil us even greater this fall, with the President leading the charge on this issue of why the Senate isn't acting. Why isn't the Senate moving these judges through—particularly circuit court judges? It will be a much more engaged and animated issue this fall, with the President leading the charge.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I rise to speak in morning business on the topic that has been the issue du jour—the question of Federal judges. It is my great honor to serve on the Senate Judiciary Committee. I have witnessed and experienced personally the Clinton administration and their efforts to fill

vacancies on the Federal bench, and the first Bush administration—President George W. Bush—and his efforts to fill vacancies on the Federal bench.

I find it extremely interesting that today appears to be the national day for members of the Republican Party to complain about the pace of approval of President Bush's judicial nominees. What I find interesting about that complaint is that, just on its face, it makes no sense because we just approved four more Federal nominees who were brought to us by President Bush, bringing the total to 56.

Now, 56 Federal judges—to put it into historic context—is more than the Republicans, in any similar period of time, approved while President Clinton was in the White House during his entire tenure. In any given year, the Republicans failed to approve as many judges for President Clinton as the Democrats have already approved for President Bush. Today, the total number came to 56.

Now, I understand where the Republicans are coming from on this. They want them all. They want to fill every vacancy with a proposed nominee from President Bush, and they want this to happen immediately. It is more than just rewarding their friends and giving them lifetime appointments to the Federal bench. What is at issue here, even more importantly, is putting people with a certain philosophy on these Federal courts. Of course, their decisions as Federal judges are going to be meaningful to the Nation for generations to come—whether we are talking about rights of privacy or the environment, all of these things decided by judges.

Historically, we think, when we talk about courts and their impact, that we should focus on the Supreme Court. Of course, we should. It is the highest court in the land. But just consider for a moment this statistic: Last year, the Supreme Court of the United States decided approximately 80 cases. The courts of appeal, circuit courts, decided over 57,000 cases.

For most people looking for justice through the Federal court system, the court of appeals for their region is the last stop, the final word. These courts make binding decisions relative to statutes that have been passed by Congress and issues that are important to the American people on a regular basis, on a daily basis.

So when we consider nominees by the Bush White House for lifetime appointments to these important appellate level courts, I hope you can understand that those of us on the Democratic side feel a responsibility to know something about the nominees, and, more importantly, to make certain those nominees come close to meeting several basic standards. One of those standards, of course, is legal skill. We insist on that. I hope that is something that is not debatable. Second is integrity, which is certainly not debatable. Third, and most important, we are looking for

people who take a moderate point of view.

There are lawyers who I have met that have extreme positions on the right and the left. The Republicans on the Senate Judiciary Committee sent word to the Clinton White House: Do not send us any left-wing judges because they are going nowhere. True to their word, anyone who looked like they were liberal did not have a chance when it came to the Senate Judiciary Committee in the Clinton years.

Interestingly enough, it appears the Bush White House believes they are not burdened by the same restriction. They are sending nominees for the Senate Judiciary Committee to consider who, frankly, are out of the mainstream, much more extreme in their points of view on the right than anyone ever nominated by President Clinton on the left.

When they send these controversial nominees to us, then we run into a position where it takes longer. We have to delve into their backgrounds, we have to establish their record, we have to answer the criticisms that have been raised within and without the committee about whether this person should be given a lifetime appointment to a critical Federal position.

This morning my colleague on the Senate Judiciary Committee, Senator SCHUMER of New York, held an interesting subcommittee hearing. His hearing related to what he calls the ghost of the nomination process from the Clinton years. I was glad Senator SCHUMER did that because on this day of national complaint by the Republicans, we brought to Washington four Clinton nominees who were not approved by that same Senate Judiciary Committee when Republicans controlled it. We did this so people who are following this debate could get an idea of the nominees rejected by the Republican Senate Judiciary Committee when President Clinton nominated them.

Frankly, as I look at the people who were brought before us, they are amazing in terms of their records and their backgrounds and what they brought to the job.

Let me speak for a moment about the Fifth Circuit which has become a focal point of discussion. Senator LOTT a few minutes ago was talking about the Fifth Circuit which, if I remember, includes the States of Texas, Louisiana, and Mississippi. This circuit has the highest minority population of any Federal circuit in America. The population of African Americans, Hispanics, and Asian Americans is larger in that circuit than any other circuit.

Naturally, when President Clinton was in office, he tried to address this by appointing people to the circuit court who represented the diversity of the circuit in which they would serve. Two of his nominees came before us today.

Jorge Rangel, 54 years of age, is currently an attorney in private practice in Corpus Christi, TX. He was nominated to the U.S. Court of Appeals for

the Fifth Circuit by President Clinton in 1997. Mr. Rangel was never granted a hearing by the Republican-controlled Judiciary Committee. Never. He graduated from the University of Houston and Harvard Law School. He went on to a distinguished career of 20 years in private practice with a Corpus Christi law firm where he had a mix of Federal and State work.

In 1983, he was appointed to a judgeship on the Texas State district court, and then was elected to serve for 2 years before returning to private practice. Jorge Rangel has also been very active in legal and community organizations, including time as an officer of the board of governors of the bar association of the Fifth Circuit and the American Board of Trial Advocates. He volunteered for many legal organizations, community organizations, and charitable organizations. He has written no controversial opinions or writings. He was affiliated with no liberal groups and gave no one any reason whatsoever to question his credentials and fitness for the Federal bench.

The American Bar Association took a look at Jorge Rangel and concluded he was "well qualified" to serve as a Federal appellate court judge. Yet, for purely political reasons, Jorge Rangel's nomination was held up more than a year from July 1997 until the end of 1998, a total of 15 months, with no explanation or hint of opposition to him.

Consider that for a minute. When you listen to this man's background, his rating of "well qualified" from the American Bar Association, why in the world would he be held up? It turns out that the two Senators from his home State opposed him, and because they were of opposite political faith with the President of the United States, they made certain he did not get a chance for even a hearing before the committee.

When you watch that happening, and when you listen to his testimony, you have to wonder: Where is the fairness? When you listen to the complaints today, even though the Senate Judiciary Committee under Democrat control has approved 56 nominees, many of whom are Hispanic and racial minorities, and rejected only 1, when you look at this you wonder: Why would we apply a different standard when it comes to Clinton nominees than we do to Bush nominees? That really has created the problem we face.

The simple fact is this: The nominees President Clinton sent to the Senate Judiciary Committee were held to a higher professional, political, and personal standard than the nominees being sent by the Bush White House, and many of them, even when they met those standards, were never given the courtesy of a hearing.

In that same Fifth Circuit was Enrique Moreno, 47 years old, an attorney in private practice in El Paso, a native of Mexico. Mr. Moreno graduated from Harvard University and Harvard Law School. He was nomi-

nated by President Clinton in September of 1999 to serve on the Fifth Circuit Court of Appeals. He was given the highest rating by the American Bar Association—"well qualified." He received significant support from community groups. He waited 15 months and, as had Mr. Rangel, he was never even given the courtesy of a hearing before the Senate Judiciary Committee.

Excuse me. When I hear my colleagues on the other side come to this Chamber and complain that we are not moving fast enough in approving the Bush nominees, consider what happened to Mr. Rangel and Mr. Moreno. What happened to them was sad, it was wrong, and it is unforgivable.

I could go through the long list of accomplishments of Mr. Moreno. Trust me, it is a long page of extraordinary accomplishments, and yet, when it came right down to it, Republicans on the Senate Judiciary Committee were determined he would never even receive a hearing, and he did not.

Let me refer to Kent Markus. Kent Markus was before our subcommittee today. He is 46 years old. He was nominated by President Clinton in February 2000 to serve on the U.S. Court of Appeals for the Sixth Circuit. The interesting thing about Mr. Markus is he had the approval of both his home State Senators, two Republicans: Senator MIKE DEWINE and Senator GEORGE VOINOVICH. Despite bipartisan support, despite being qualified by the American Bar Association and his excellent record of achievement and service, he was never, ever given the courtesy of a hearing before the Republican-controlled Senate Judiciary Committee. Finally, at the end of the 106th Congress, his nomination was returned to the White House.

Again, I will make it a matter of my official record in my statement, but trust me, his biography, his resume, are impeccable.

A final nominee I will mention today who testified before us is Bonnie Campbell. She was nominated by President Clinton in 2000 to serve on the U.S. Court of Appeals for the Eighth Circuit. She was supported by both of her Senators, Democrat TOM HARKIN of Iowa and Republican CHUCK GRASSLEY of Iowa. She was given a qualified rating by the American Bar Association. She was given a hearing before the Judiciary Committee a few months after she was nominated and given a chance at her hearing to answer any questions about her work. There were no objections voiced at all during her hearing before the Senate Judiciary Committee. No opposition surfaced in any quarter.

However, despite a noncontroversial, really unremarkable hearing, Ms. Campbell was never scheduled for a committee vote. No explanation was ever given to her. Her nomination languished until the end of the 106th Congress, and despite President Clinton's attempt to renominate her, President

Bush did not do the same. Her nomination died.

Consider those four people and what they went through at the hands of the Republican Senate Judiciary Committee and then put that in context of the Republican complaints which we hear today, when we have already, under Democratic control, approved 56 nominees. I think it really makes the case.

Judicial nominees have a right, whether the Judiciary Committee is controlled by Democrats or Republicans, to expect fair and impartial treatment. But, equally, the American people have a right to expect fair and impartial judges.

Now let us get down to the bottom line. The President will find that this Senate Judiciary Committee, under the control of Democrats, will provide more approvals of his judicial nominees than Republican Judiciary Committees have done for Democrat Presidents in the past. I think that is a standard we can live up to. We have already lived up to it.

We are going to treat people fairly. We are going to give them a chance. Does that mean President Bush will get every name he sends before the Judiciary Committee approved? No. That is not going to happen because if the President sends people who, frankly, do not meet the test of moderation, legal skill and integrity, there is going to be, of course, an investigation, as there is with every nominee. There will be hearings in many cases, and some will not survive that.

The message to the President is very clear: As long as he will send us people who are moderate and not too extreme, he will be very successful. He already has 56 judicial nominees approved.

I think the single best thing this White House could take from this all-day debate about judicial nominees is this: If the President decided and said, We are going to take these four nominees—Bonnie Campbell, Jorge Rangel, Enrique Moreno, and Kent Markus—all nominees under the Clinton White House, and we are going to send them to Capitol Hill in a show of bipartisan good faith, I think we could start to make progress. I think we could start having some balance in terms of the people who will be appointed to these critical positions. But if this is going to be confrontation after confrontation, then I am sorry to say it is going to continue almost indefinitely. I hope it does not.

Let me give a list of those who never received a hearing before Congress during the Clinton years, judicial nominees sent to Capitol Hill by President Clinton while there were Republicans in charge of the Senate Judiciary Committee: Wenona Whitfield of Illinois, Leland Shurin of Missouri, Bruce Greer of Florida—none of these received a hearing before the Republican-controlled Senate Judiciary Committee.

Sue Ellen Myerscough of Illinois; Cheryl Wattleby of Texas; Michael

Schattman of Texas; James Beaty and Rich Leonard of the Fourth Circuit, North Carolina; Annabelle Rodriguez of Texas—none of those received a hearing. Their names were sent to Capitol Hill, to the Republican-controlled Senate Judiciary Committee; no hearings.

Then in the next Congress, there were 10: Helene White of Michigan; Jorge Rangel I mentioned earlier, of Texas; Jeffrey Coleman of Illinois; James Klein of the District of Columbia; Robert Freedberg of Pennsylvania; Cheryl Wattleby of Texas; Lynette Norton of Pennsylvania; Robert Raymar for the Third Circuit; Legrome Davis, Pennsylvania; Lynne Lasry of California; Barry Goode of the Ninth Circuit, California—all of those names, judicial nominees, sent to Capitol Hill by President Clinton never even received the courtesy of a hearing before the Republican-controlled Senate Judiciary Committee.

In the 106th Congress, 33 names sent by the President who were not given the courtesy of a hearing: Alston Johnson of Louisiana; James Duffy of Hawaii; Elana Kagan of the D.C. Circuit; James Wynn of North Carolina; Kathleen McCree-Lewis of Michigan; Enrique Moreno of Texas; James Lyons of Colorado; Kent Markus of Ohio; Robert Cindrich of Pennsylvania; Stephen Orlofsky of New Jersey; Robert Gregory of Virginia; Christine Arguello of Colorado; Elizabeth Gibson, North Carolina; Rich Leonard of North Carolina; Patricia Coan of Colorado; Dolly Gee, California; Steve Bell, Ohio; Rhonda Fields, District of Columbia; David Fineman, Pennsylvania; Linda Riegle, Nevada; Ricardo Morado, Texas; Gary Sebelius, Kansas; Ken Simon, Hawaii; David Cercone, Pennsylvania; Harry Litman, Oklahoma; Valerie Couch, Oklahoma; Marion Johnston, California; Steve Achelphol of Nebraska; Richard Anderson of Montana; Stephen Liberman of Pennsylvania; and Melvin Hall of Oklahoma.

These 52 names of judicial nominees I have read were sent to the Republican-controlled Senate Judiciary Committee under President Clinton and they were never even given the opportunity for a public hearing, never given a chance for a vote. I knew some of them personally, and I can say it is a great hardship on a professional like an attorney, where their name is pending before a committee and there is uncertainty about their future.

Some of these went on for literally years. Some of them were never given a hearing, and during that period of uncertainty their family suffered, their law practice suffered, their efforts to be part of public service were never realized. I think that is unfortunate.

That is why we are back to the point I made earlier. President Bush and those working for him and with him in the White House want to break through this situation and want to see more cooperation and want to find more balance, as we do, in terms of the judiciary.

I submit to them the four names of the nominees from the Clinton White House which we considered today, people who came before the Judiciary Committee today. Earlier, the minority leader spoke of a nominee for the D.C. Circuit Court of Appeals who is Hispanic, and I certainly think we need more Hispanic Americans on the bench.

President Bush should have a chance. Jorge Rangel is prepared to serve on the Fifth Circuit. Enrique Moreno is also prepared to serve on the Fifth Circuit. These are Hispanic Americans who should be renominated and given a chance to serve.

At the current time, we have looked at Hispanic nominees and President Bush has sent us five nominees of Hispanic origin. Of those, three have already been confirmed by the Senate under Democratic control. Two are pending: Miguel Estrada in D.C. and Jose Martinez in Florida.

Under President Clinton, Hispanic nominees who were not confirmed by the Republican-controlled Senate Judiciary Committee include: Jorge Rangel of the Fifth Circuit; Enrique Moreno of the Fifth Circuit; Christine Arguello of the Tenth Circuit; Ricardo Morado of Texas; Anabelle Rodriguez, Puerto Rico.

I think that takes us to the point where we have to ask ourselves if our friends on the Republican side really do want to see balance and want to see fair treatment, whether they will give that same fair treatment to people who were summarily rejected when the Republicans controlled the Senate Judiciary Committee. I think we have a chance to be very careful in our selection, but also to meet our national needs and obligations.

Today, incidentally, during the course of a press conference on this subject, we brought in a number of people who have had bad experiences in court to dramatize what is at stake. This debate is not a matter of rewarding an attorney, who has skills, with a new title and an opportunity to serve on the bench. It is also to create an opportunity for public service where people can make decisions that really have an impact on families' lives across America.

Today, Denise Mercado came to see us. She is the mother of three from Fayetteville, NC. She is the legal guardian of her son, Danny, who has cerebral palsy and severe mental retardation. Due to his disabilities, Danny is eligible for Medicaid funding. Jane Perkins is an attorney at the National Health Law Program in Chapel Hill, NC. Jane has represented Denise and many other clients in efforts to compel States to fulfill their legal obligations under Medicaid, to cover children like Danny. Currently, four Federal courts of appeals are considering whether States have sovereign immunity from such lawsuits, as at least one district court has ruled.

So the men and women appointed to these court positions will make deci-

sions which have an impact on families with children with disabilities. That is just part of their responsibility, but it tells us about the gravity and seriousness of this decisionmaking process.

Rose Townsend and Bonnie Sanders are residents of South Camden, NJ. They live in a small neighborhood called Waterfront South. It contains 20 percent of the city's contaminated waste sites. The residents of this neighborhood suffer from a disproportionately high rate of asthma and other respiratory ailments. Last year, these two people joined with other residents to block the placement of a cement processing facility in their neighborhood. In December, the Third Circuit Court of Appeals ruled they could not compel the State to comply with Federal environmental regulations that implement the 1964 Civil Rights Act.

Whether it is a matter of public health, or environmental safety, these judges make critical decisions. These are just some of the people who were impacted by judges put on the Federal courts. These are important decisions. They should be handed out fairly and evenly, with some balance. The Judiciary Committee has met that standard. I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Kentucky.

Mr. McCONNELL. Madam President, I listened with interest to comments of the Senator from Illinois, looking at the whole 8 years of the Clinton administration. It is important to reiterate the only clear way to look at the 8 years of the Clinton administration is to compare them to the 8 years of the Reagan administration. President Reagan got more judges confirmed than any other President, 382. He had a distinct advantage because 6 of the 8 years he was President his party controlled the Senate. President Clinton came in a close second, 377 judges confirmed, 5 fewer, but he was in a disadvantage because his party only controlled the Senate for 2 of his 8 years. It is hard to make the case that President Clinton was treated unfairly by the Republican Congress.

What we want to talk about today is the first 2 years of any President's term—how were they treated at the beginning of their 8 years. Particularly, we focus on the circuit judge nominations.

During the first 2 years of President Clinton's term, when his party controlled the Senate, he got 86 percent of his nominees confirmed for the circuit courts. During the first President Bush's first 2 years, when his party did not control the Senate, he got 95 percent of his circuit court nominees confirmed in his first 2 years. President Reagan, in his first 2 years, got 95 percent, as well, 19 out of 20.

Let's focus on the first 2 years, the beginning of what I certainly hope will be an 8-year period of the Presidency of George W. Bush. George W. Bush has gotten a mere 30 percent of his circuit

court nominees confirmed, compared to 86 percent for President Clinton, 95 percent for the first President Bush, and 95 percent for President Reagan.

I call attention, since this is the 1-year anniversary of the first 11 nominations of President George W. Bush to the circuit courts. Only three have been confirmed, eight languish 1 year later without so much as a hearing to get a chance to explain their credentials to the Senate Judiciary Committee and to the larger Senate as well. Eleven distinguished and diverse men and women were nominated by President George W. Bush a year ago today. Only three have been confirmed. Of the remaining eight, none, not a single one, has even been afforded the courtesy of a hearing, not to mention a vote—a hearing by the Judiciary Committee.

Everyone in America is entitled to have their day in court. Even a judge is entitled to have their day in court. Our colleagues on the other side continually assure this side they are pushing fast to consider the President's judicial nominees, but my Republican colleagues and I have seen neither hide nor hair of these nominations in the Judiciary Committee. Frankly, some in the committee are worried about what might have happened to them. Where could they possibly be? A few people may recognize these individuals by sight. After all, none of them have even had a hearing. All most people know is a name attached to the nomination. No one knows what they look like; their whereabouts are a mystery. It is my hope citizens around the world would notify the Judiciary Committee if they spot these missing nominees somewhere out in America so maybe a hearing can be quickly scheduled on their behalf.

We have become accustomed to seeing missing children's pictures on milk cartons around America. We thought it might be appropriate to put the names of some of the nominees on milk cartons, so if any of our people across the country have seen any of them, maybe they could report them to the Judiciary Committee and the missing people could actually be given an opportunity to be heard.

A good first person to put on the milk carton is Miguel Estrada, nominated 365 days ago, this very day last year, to the D.C. Circuit Court. The ABA gave Miguel Estrada a unanimous well qualified. That is very hard to do. It is very tough to even get a partial well-qualified rating from the ABA but to get a unanimous rating of well qualified is truly extraordinary.

Miguel Estrada's life and his career is a great American success story. I am married to one of those immigrants who came to this country and didn't speak a word of English at 8, so I am very familiar with these wonderful stories of coming to America, particularly those who have been thrown into our public schools at an early age, not speaking English and coming to grips with that.

That is exactly what happened to Miguel Estrada. He came from Honduras, emigrated to the United States as a teenager, speaking virtually no English. Yet he graduated phi beta kappa from Columbia in New York and was editor of the Harvard Law Review. Miguel Estrada came to this country, not speaking a word of English, an honor student at Columbia, elected to the Law Review at Harvard, unanimously "well qualified" by the American Bar Association, an inspiration to immigrants all across America and particularly to Hispanic immigrants. He has argued 15 civil and criminal cases before the U.S. Supreme Court. But Americans do not know what he looks like. He has never had a hearing. He has never been able to show up in public and make his case that maybe this immigrant success story, an example to look up to by everyone in America, but particularly our immigrant population who came here and had to deal not only with learning the language but learning a new culture, this hero of the immigrant community has been languishing in the Judiciary Committee for 365 days. There is no indication in sight that he will be given a hearing.

To anyone who may be looking, if you have seen this man, you might want to report it to the Judiciary Committee so he can get a hearing.

Another nominee from a year ago, arguably pending for a decade, John Roberts has been waiting over 10 years for a hearing. He was nominated by the first President Bush over a decade ago to the D.C. Circuit Court and back then was pending for over a year without ever receiving a hearing. The current President Bush renominated Mr. Roberts 365 days ago, a year ago today, to the same court, the D.C. Circuit Court. Again, he has not had a hearing. This outstanding lawyer, again, unanimously rated "well qualified" by the ABA—and it is very tough to get a rating such as that—has actually been waiting for 2 years, 2 years just to get a hearing, an opportunity to tell his story. So we thought maybe he ought to be on the milk carton, too.

This unanimously well-qualified nominee has a long and distinguished career in public service, including serving as principal deputy to the Solicitor General from 1989 to 1993, and associate counsel to President Reagan from 1982 to 1986. The previous nominees had 15 arguments before the U.S. Supreme Court; this nominee has argued 36 cases before the U.S. Supreme Court and 20 cases in the U.S. appeals court across the country.

Has anyone seen John Roberts? Does anyone even know what he looks like? Has he been dropped into a black hole? Another great nominee of a year ago missing in action, not even given a hearing.

Also nominated a year ago today was Jeffrey Sutton. The ABA gave him—a majority—"qualified," and the rest gave him "well qualified." So it was a

split rating. The minority gave him "well qualified"; the majority gave him "qualified"—a very good rating.

Mr. Sutton graduated first in his class from Ohio State University College of Law. He has argued nine cases before the U.S. Supreme Court, both as a private attorney and as solicitor for the State of Ohio. He has taught constitutional law at Ohio State for the last 8 years.

Has anyone seen Jeffrey Sutton? Does anybody know what he looks like? He hasn't had an opportunity to be seen in public. Maybe he, too, should be put on a milk carton so somebody could recognize this guy and maybe report to the Senate Judiciary Committee that they have seen him. He really does exist. Maybe he ought to get an opportunity to be heard.

Jeffrey is a nominee for the Sixth Circuit, and I want to dwell on that for just a moment. Kentucky happens to be one of the States in the Sixth Circuit: Michigan, Ohio, Kentucky, and Tennessee. It is 50 percent vacant. That is not because the President has not sent up nominations. There are seven nominations up here. But not a single nominee from the Sixth Circuit has been confirmed. We have a judicial emergency. The Sixth Circuit is dysfunctional, not because the President has not made nominations.

I mentioned Miguel Estrada's success story. Here is a nominee from Michigan who, if confirmed, would become the first Arab American on a circuit court in American history, a nominee from the State of Michigan who, if confirmed, would become the first Arab American on a circuit court in the Nation's history. He has not yet had a hearing.

Jeffrey Sutton has been sitting there for 365 days, also for the Sixth Circuit. He is from the State of Ohio. If anybody sees Jeffrey Sutton, I want you know what he looks like. This is what he looks like. Send his picture in to the Judiciary Committee. Maybe he could at least get a hearing and an opportunity to state his qualifications for the court.

Deborah Cook: She has been a justice on the Ohio Supreme Court for the last 8 years—again, a Sixth Circuit nominee. This is the circuit that is 50 percent vacant—not because the President has not sent up nominations but because they have not been acted upon. Deborah Cook has been sitting there for 365 days. She was nominated a year ago today in the first batch sent up by President Bush.

Prior to her service on the Ohio Supreme Court, she was an appellate court judge for 4 years. She has been unanimously rated "qualified" by the American Bar Association. Has anybody seen Justice Cook? I wanted to make sure we could get a sense of what she looked like. This is a picture of Deborah Cook. If anyone wants to call her qualifications to the attention of the Judiciary Committee, they might take this opportunity to do that.



Terence Boyle is another nominee who arguably has been waiting 10 years for a hearing. He was nominated a decade ago by the first President Bush and waited for over a year without receiving a hearing at that time. He was nominated again 365 days ago, a year ago today, to the Fourth Circuit. The ABA unanimously rated him well qualified, just like Miguel Estrada—unanimously “well qualified.” That is as good as it gets. That means the committee of the ABA unanimously found this nomination to be of the highest order.

This nominee currently serves as the chief judge of the U.S. District Court for the Eastern District of North Carolina and has been on that court since 1984 when his nomination to that court was unanimously confirmed by the Senate.

Has anyone seen Judge Boyle? We know he exists. We have seen his name on paper. This is what he looks like. If anybody sees Judge Boyle, they might call the Judiciary Committee and say maybe this unanimously well qualified nominee ought at least to get an opportunity to be heard, a chance to be questioned by the members of the committee, so we can make a determination as to whether or not he deserves a chance to be voted upon.

Michael McConnell—I wish this fellow were related to me, but he is not. In fact, I found out after he was nominated that he is from my hometown. I went to high school in Louisville, KY. I never knew him. I am not related to him or his parents, but I wish I were. What an outstanding nominee.

He was nominated for the Tenth Circuit 365 days ago, a year ago today. Again, the ABA found him, unanimously, “well qualified.” Like Miguel Estrada, like several of the other nominees I have mentioned, that is as good as it gets—unanimously well qualified.

Mr. McConnell is a distinguished law professor at the University of Utah College of Law and has served as an Assistant Solicitor at the U.S. Department of Justice. He is widely regarded as an authority on constitutional law, particularly issues involving the first amendment and religious clauses.

Mr. McConnell has received the support of over 300 college law professors, including the noted liberal professors Cass Sunstein and Sanford Levinson. Support for Mr. McConnell is across the ideological spectrum from the people who know him best, law professors around America.

Has anybody seen Michael McConnell? I want you to be able to recognize him. This is his picture. This nominee, unanimously “well qualified” by the ABA, surely could at least be given a hearing before the committee to have an opportunity to state his qualifications and be asked questions.

Justice Priscilla Owen is on the Texas Supreme Court. She was nominated 365 days ago, a year ago today. She has served with distinction on the Texas Supreme Court for the past 8

years. Now she is being nominated for the Fifth Circuit. The ABA has unanimously rated her well qualified.

This is a situation where we have a judicial emergency. A judicial emergency has been declared here. Yet we have a nominee who has been languishing for a year with not even so much as a hearing.

So, this is what Justice Priscilla Owen looks like. She is an attractive, nice looking woman, smart lawyer.

If anybody sees her here in the hall, they might direct her down to the Senate Judiciary Committee. Maybe she could ask somebody for a hearing.

Dennis Shedd was nominated 365 days ago—1 year ago today—to the Fourth Circuit Court of Appeals. He served as a sitting Federal judge for the U.S. District Court for South Carolina since 1990. The ABA rated him “well qualified.” He taught at the University of South Carolina from 1989 to 1992 and has been chief counsel to the Senate Judiciary Committee right here in the Senate.

I am sure there are people over in the Senate Judiciary Committee who know what Dennis Shedd looks like because he used to run that committee staff. Maybe we don't need to send them a picture of Dennis Shedd. Maybe some of them actually remember him. You would think Dennis Shedd, as a matter of common courtesy, having formally been staff director over at the Judiciary Committee, could at least get a hearing so he could state his qualifications and have a chance to make his case.

The message for today is that it has been a year since the President sent up his first 11 nominations for the circuit courts. Eight of them have dropped into a black hole and have literally disappeared.

That is why we thought it might be a good idea to have a picture of some of them in case it might help in recognizing them and giving them an opportunity for fundamental fairness. We are in the first 2 years of George W. Bush's Presidency—not the last 2 years, not the last year, not the last 6 months. I think we can all concede that toward the end of a President's term, nominations frequently don't move. But there is no precedent—none—for this kind of slow walking and stonewalling in the beginning of a President's term. President Clinton got 86 percent of his circuit court nominees in the first 2 years. His party controlled the Senate. I am, frankly, surprised that it wasn't 100 percent because his party controlled the Senate in the first 4 years of his term. But he got 86 percent.

The first President Bush got 95 percent of his nominees in his first 2 years and his party did not control the Senate.

President Reagan got 95 percent of his circuit court nominees in his first 2 years and his party did control the Senate.

As you can see the pattern here, no matter who has been in the majority of

the Senate, and no matter who has been in the White House in the first 2 years, these games have not been played in the past. This is unprecedented. You can throw the statistics around as much as you want, but we are talking about the first 2 years of a President's administration. It has never been done before.

The good news is it is not too late. This is May 9. There is a month left. It is never too late for salvation.

It is my hope that these outstanding nominees missing in action and who have seemingly dropped down a black hole will get an opportunity to be heard as a matter of fundamental fairness.

I had an opportunity, along with others, to meet with the President earlier today on this issue. I heard some suggestions made on the other side of the aisle that this is really all about in effect telling the President who to send up. In other words, Mr. President, send up a certain kind of nominee or you won't get action. I can't speak for the President, but I have the clear impression that this President believes, as all other President's believe, that the business of selecting nominees to the circuit court level and to the Supreme Court level are Presidential prerogatives. I don't think this President is going to operate any differently on that issue than President Clinton or President Carter or President Roosevelt. We all know that Senators have an opportunity to make suggestions on district court nominees. That has not changed. But circuit court nominees and Supreme Court nominees have historically and will be forever the prerogative of the President.

The thought that any of us are going to be able to dictate to this President or any other President who those nominees might be is absurd. It is not going to happen tomorrow. It is not going to happen a month from now. It is not going to happen ever. No President—Republican or Democrat—is going to allow the Senate, no matter which party controls the Senate, to in effect tell him or her who they are going to pick for the circuit courts.

It is time for a fair hearing. And it is time to vote. If the members of the Judiciary Committee want to vote down these nominees, that is certainly their prerogative. They have done that already once this year. But it is time to quit hiding out. It is time to stand up and be counted. It is time to allow these missing people to be seen and heard, and to vote.

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. REID. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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



## ORDER OF PROCEDURE

Mr. REID. Madam President, I have spoken to my counterpart, Senator NICKLES. He wishes to speak for 15 minutes. That would go past the time set aside for morning business. I ask unanimous consent that the Senator from Oklahoma be recognized for whatever time is left, plus enough time to make it 15 minutes.

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

The Senator from Oklahoma.

## NOMINATIONS

Mr. NICKLES. Madam President, I rise today to join my colleagues in expressing real disappointment in the fact that we have eight nominees to the U.S. circuit courts of appeals, who were nominated a year ago, who have yet to have a hearing before the Senate Judiciary Committee.

Nineteen of 30 circuit court nominees have yet to have a hearing—19 out of 30. I have stated to my colleagues—and I state this on the floor of the Senate, just as sincerely as possible—we should treat all judicial nominees fairly.

Some people say: Well, we are having a little retribution because you didn't treat people well in President Clinton's last year.

The tradition of the Senate has always been to give a President his or her nominees pretty good access to the Senate for confirmation purposes in the first 2 or 3 years of their Presidency. The tradition of the Senate, also, is to kind of slow it down in a President's last year.

Certainly, if you look at what happened in the last three Presidencies, that is what has happened. Unfortunately, the current President Bush has not had fair treatment for his judicial nominees, especially circuit court nominees, in his first 2 years. That is just a fact.

The chart I have shows that we have only confirmed 9 out of 30. That is 30 percent. There is another nominee who is pending on the calendar. Hopefully, that will be cleared fairly quickly. That would be 10 out of 30. That is one out of three nominated judges confirmed.

If you look at President Clinton's first 2 years, he got 19 out of 22. If you look at President Bush I, he got 22 out of 23. President Reagan got 19 out of 20. So President Reagan and President Bush I got 95 percent of their circuit court nominees confirmed in their first 2 years. President Clinton got 19 out of 22. That is 86 percent.

We should always be confirming those kinds of percentages unless they nominate people who are totally unqualified and are undeserving of the position. But we are not doing that.

Also, if you look at the total numbers, President Reagan got 98 percent of all the judges that he nominated confirmed in his first 2 years. President Bush I got 93 percent of the judges he

nominated confirmed in his first 2 years. And President Clinton had more judges confirmed than either of the two by a considerable amount; he had 129 judges confirmed in his first 2 years, which is 90 percent.

For the current President Bush, we have now done 56 percent. We are moving along, at least now, at 60-some odd percent for district court judges. But the big discrepancy is, we are way behind in circuit court appellate judges—way behind—and these individuals are not being treated fairly. They are eminently qualified. And to think that eight were nominated a year ago.

Somebody said: Why are you making such a fuss now? Because enough is enough. Eight of these outstanding, qualified individuals were nominated a year ago today, and they have not had a hearing. Why? Are they not qualified? Well, let me just look at some of their qualifications.

John Roberts was nominated to the DC Circuit Court of Appeals. He has argued 37 cases before the U.S. Supreme Court. Evidently, the private sector thinks he is eminently qualified. He was unanimously rated "well qualified" by the ABA. He is a Harvard Law School graduate, magnum cum laude. He was managing editor of the Harvard Law Review. He was a law clerk to Supreme Court Justice Rehnquist. And he also was the Principal Deputy Solicitor General for the United States from 1989 to 1993.

You will be hard-pressed to find anybody more qualified than John Roberts anywhere in the country to sit on any bench. Yet, he cannot get a hearing, and he was nominated a year ago. I am embarrassed we have not been able to schedule a hearing for John Roberts.

I hope, in the course of this dialog, Senator LEAHY or Senator DASCHLE will join me. I would like to ask the question, why can't we get a hearing for him?

Miguel Estrada is also nominated to the DC Circuit, a partner of the DC firm of Gibson, Dunn & Crutcher. He has argued 15 cases before the U.S. Supreme Court. He was unanimously rated "well qualified" by the ABA. He immigrated to the United States as a teenager from Honduras and, at the time, hardly even spoke English. Yet, he graduated from Harvard Law School magnum cum laude. He was an editor of their Harvard Law Review. He was a law clerk to Justice Kennedy. And he is a former Assistant Solicitor General and Assistant U.S. Attorney. He has been a prosecutor. He worked as a law clerk for a Supreme Court Justice. He argued 15 cases before the Supreme Court. He is eminently qualified. He is Hispanic. And we can't get a hearing?

The District of Columbia Circuit Court of Appeals has four vacancies. A year ago, they were saying they really needed at least three judges. And we can't get a hearing for two of the most qualified people anywhere in the country for these two positions. This is unbelievable.

Priscilla Owen was nominated to the Fifth Circuit Court. She has served on the Texas Supreme Court since 1994. She was unanimously rated "well qualified" by the ABA. She is a Baylor Law School graduate, with honors, and a member of the Baylor Law Review. She had the highest score on her Texas bar exam, and 17 years of prior experience as a commercial litigator.

Just another example. Why is she not entitled to have a hearing? I think when these individuals have hearings, it is going to be obvious they are well-qualified. There will be no reason whatsoever to attack them or to vote no. So people do not want to have a hearing because they know if they have a hearing, they are going to be confirmed.

Terrence Boyle was nominated to the Fourth Circuit. He is presently the chief judge in the U.S. District Court in the Eastern District for North Carolina, and has been since 1997. He was unanimously rated "well qualified" by the ABA. He is a graduate from American University, Washington College of Law. He also served as minority counsel for the House Subcommittee on Housing, Banking, and Currency from 1970 to 1973, and legislative assistant to Senator HELMS.

We usually treat former Senate staffers with a little courtesy. We usually give them a hearing. This is a person who has had a little experience in the Senate working on the Judiciary Committee, in addition to serving as a district court judge from 1984 to 1997. We can't even give him a hearing? I don't think that is right.

Michael McConnell is nominated to the Tenth Circuit Court of Appeals. He is presently a Presidential professor of law at the University of Utah. He was unanimously rated "well qualified" by the ABA. He is a renowned constitutional law expert. He has argued 11 cases before the U.S. Supreme Court. He graduated at the top of his class from the Chicago Law School. He was a law clerk for Justice Brennan, and also served as a prior Assistant Solicitor General. Michael McConnell was nominated a year ago and has yet to even have a hearing.

Deborah Cook is nominated to the Sixth Circuit Court of Appeals. She is presently serving as a justice on the Supreme Court of Ohio, and has since 1994. She was unanimously rated "well qualified" by the ABA. She is an Akron School of Law graduate, and practiced with Akron's oldest law firm. She sat on the Ohio District Court of Appeals from 1991 to 1995. She also chaired the Commission on Public Legal Education, and has also been a member of the Ohio Commission on Dispute Resolution. She is more than qualified.

Jeffrey Sutton is also nominated to the Sixth Circuit Court.

On the Sixth Circuit, there are 8 vacancies out of the 16. One-half of the circuit court of appeals is vacant, desperately needing some assistance.

Mr. Sutton a partner in the law firm of Jones, Day. He is rated well qualified by the ABA minority and qualified

by the ABA majority. He graduated first in his class from Ohio University College of Law. He is a former law clerk to Supreme Court Justices Powell and Scalia. He has argued 9 cases and over 50 merits and amicus briefs before the U.S. Supreme Court, and he is a prior State solicitor in the State of Ohio.

Dennis Shedd, nominated to the Fourth Circuit Court, is a U.S. district court judge in South Carolina and has been since 1991. He is rated well qualified by the ABA and had 20 years of private practice and public service prior to becoming a district judge. His law degree is from the University of South Carolina, and he has a master of law degree from Georgetown. He is a former chief counsel and staff director of the Senate Judiciary Committee and counsel to the President pro tempore from 1978 to 1988. He is supported by both of South Carolina's Senators. Again, he is a former staffer.

The Senator from Nevada knows, as I mentioned this before—we used to have a tradition that we would give former staffers an expeditious hearing. But Dennis Shedd was nominated a year ago.

These are eight of the most qualified individuals you will find anywhere in the country for any such position. The fact that they have not had a hearing when they were nominated a year ago brings real disrespect and disrepute on this body. Shame on us. Shame on the Senate. We have only confirmed one-third of the district court of appeals judges nominated by President Bush. Eight people have to wait a year for a hearing? We are making these nominees wait around while their friends and associates are asking: When will you be confirmed? I understand you were nominated. You were nominated a year ago. You haven't even had a hearing.

How disrespectful of the judicial process can we be? I am ashamed of this record. I will state for the record now that I believe at various points we may well be back in the majority. I have been in the Senate—majority, minority, majority, minority. I think we will be back in the majority. I am committed to making sure that all judicial nominees are treated fairly regardless of who is in the White House and regardless of who runs the Senate. I think we owe it to the nominees. I think we owe it to the process. We owe it to the division of power between the executive branch, the judicial branch, and the legislative branch.

The legislative branch is wrecking this balance of power by not staffing and not allowing judicial nominations to be heard, to be voted on, to be confirmed. We have checks and balances. I believe the forefathers would be rolling over if they realized how slowly we were going on certain judges, circuit court appellate judges especially.

With all sincerity, there are ways we can go in this body to get people's attention to make sure these individuals

get fair consideration. My hope and desire is to give them fair consideration without exhibiting a pattern of "we will hold this up and hold this up; you will not be able to mark this up; not be able to get a quorum; you will not be able to do business." I hope we don't have to resort to that.

Senator REID is one of my very dear friends, Senator DASCHLE, Senator LEAHY. I urge them, give these people a chance. Give these eight people who were nominated to the appellate level a year ago, give them a hearing, and let's vote. There is no question they are eminently qualified. We should be voting. That is our constitutional responsibility. Let's do it. I will commit we will do it in the future as well.

I hope people will hear these comments made by myself and others and listen to us. Let's work together and treat judicial nominees fairly so we don't have to resort to various types of threats and intimidation and lack of cooperation to make our point to get these individuals consideration on the floor of the Senate.

I yield the floor.

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

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

#### ORDER OF PROCEDURE

Mr. REID. Madam President, I was waiting to hear from the two leaders. Senator LOTT and Senator DASCHLE have spoken on a number of occasions. Senator DASCHLE is extremely anxious to get on with some substantive legislation in the Senate. The trade bill is pending. We virtually have been waiting all day for some Senators to come up with a proposal.

I have been told by the Republican leader that that answer will come at 4:15 today. I hope that is the case. I would therefore ask unanimous consent that the Senator from Pennsylvania, Mr. SPECTER, be recognized to speak as in morning business for up to 10 minutes, and then the Senator from Arizona, Mr. MCCAIN, although I think Senator MCCAIN may have been here first.

Mr. MCCAIN. I don't wish to speak as in morning business.

Mr. REID. It is my understanding the Senator from Arizona wishes to be recognized for purposes of a unanimous consent request. I ask that he be recognized for up to 5 minutes to make whatever statement he wishes in regard to that unanimous consent request and that, after that time, morning business be concluded.

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

The Senator from Pennsylvania.

#### JUDICIAL PROCEDURES

Mr. SPECTER. Madam President, I thank the Senator from Nevada for working this out for morning business. I have sought recognition to comment about two matters.

First, I compliment my colleague from Oklahoma for the comments he has made about the need to move ahead with nominees. It would be my hope that from the current disagreement we might work out a permanent protocol to solve the problem which exists when the White House is controlled by one party and the Senate by another party. The delays in taking up judges has been excessive.

This is the 1-year anniversary where some nine circuit judges, well qualified, have not even had hearings. But in all candor, a similar problem existed when President Clinton, a Democrat, was in the White House and we Republicans controlled the Senate.

I have advocated a protocol. Within a certain number of days after a nomination, the hearing would be held; within a certain number of additional days, there would be action by the Judiciary Committee on a vote; and within another specified time, there would be floor action, all of which could be expanded for cause. And an additional provision, not indispensable, is that if there were a strict party-line vote in committee, the matter would automatically go to the floor.

I thank the Chair.

I yield back the remainder of that time, and I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized.

#### UNANIMOUS CONSENT REQUEST— H.R. 3529 and S. 2485

Mr. MCCAIN. Mr. President, I intend to propose a unanimous consent request that we take up the Andean Trade Promotion and Drug Eradication Act.

It is vital that we address this issue. ATPA expired on December 4 because Congress had not taken action on the legislation. The House of Representatives passed an extension on November 16, and the Senate has failed to do its work on this issue.

These countries need our help. It is in the United States' national interest not to see these countries degenerate into economic, political and, in the case of Colombia, armed chaos. We need to act on this issue. Why it has been tied to TPA and TAA is something I do not understand.

Perhaps the Trade Promotion Act and the Trade Adjustment Assistant Act are important. I think they are of the highest priority, but the Andean Trade Preferences Act—referred to as ATPA—is of time criticality. It expired. There are tariffs that these countries will have to pay.

These are poor countries. They have unemployment rates of 30, 40, 50 percent. Colombia is degenerating into

chaos. Peru is in a situation—if I might quote from the Christian Science Monitor:

Rebel groups' presence growing near Peru's capital. The Shining Path wants to show that democracy is weak, it can't handle problems with crime and corruption, and the government's inability to improve the country's economy.

Andres Pastrana wrote in the Washington Post on April 15:

Finally, continued U.S. support for planned Colombia and final Congressional passage of the Andean Trade Preferences Act will strengthen Colombia's economic security. The trade act will have a minuscule impact in the United States but will create tens of thousands of jobs in Colombia and across the Andean region. Enhanced ATPA now being considered in Congress will foster new business investment in Colombia.

These countries are in trouble. If these countries are not allowed to engage in economic development, are not given our assistance, with which we have provided them since 1991—this Trade Preference Act—then we are going to pay a very heavy penalty. We have already had to allocate a billion dollars to Colombia to help them militarily. Situations now are arguably worse than 2 years ago when we first began this matter. Every objective observer will tell you Colombia is in terrible shape. In Peru, people are losing confidence in democracy. In Ecuador—I have read stories about Hezbollah and other terrorist entities locating in these countries.

We don't have the time to waste fooling around with aid to steelworkers, or adjustments to health care, which are directly related to the Trade Promotion Act, not to the Andean Trade Promotion and Drug Eradication Act. I hope we can have some debate and discussion about that.

I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 3529; further, I ask unanimous consent that the Senate immediately proceed to its consideration, all after the enacting clause be stricken, and the text of S. 2485, the Andean Trade Promotion and Drug Eradication Act, be inserted in lieu thereof. I further ask consent that the bill be read the third time and the Senate proceed to a vote on passage of the bill, with no other intervening action or debate.

Mr. NICKLES. Mr. President, reserving the right to object, I want to clarify the request that my colleague from Arizona made.

The request is we would move immediately to the Andean Trade Preference Act, which is a continuation of the current law going back to 1991 which would assist four countries—the Senator mentioned the four countries: Colombia, Peru, Ecuador and Bolivia, all of which desperately need our help.

The Senator's intention is to continue to assist those countries so we do not have punitive tariffs hit, I believe, by the 15th of this month, next week; is that correct?

Mr. MCCAIN. That is correct.

Mr. NICKLES. Mr. President, I compliment my colleague from Arizona. I hope we can do this and pass an Andean trade bill. I believe the vote on it will be 90-plus votes in favor of it. If we are successful in passing this, then we can continue to wrestle with and hopefully pass trade promotion authority and trade adjustment assistance. Correct me if I am wrong, this in no way would keep us from passing trade promotion and trade adjustment assistance in the future.

Mr. MCCAIN. It would have no impact.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I understand the frustration of the Senator from Arizona. Magnify that 1,000 percent for the majority leader. We have a bill on the floor—

Mr. LOTT. Regular order, Mr. President.

Mr. REID. The underlying vehicle is the Andean trade bill. I think we should move on to the trade bill.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

#### CONSTITUTIONAL RESPONSIBILITIES OWED TO THE JUDICIAL BRANCH

Mr. WARNER. Mr. President, Article II, Section 2 of the Constitution provides that 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 . . ."

The debate before us today involves this clause of the Constitution, and this debate is a very important one. We should put aside partisanship and examine the very roots of our Republic to determine the respective responsibilities of the three branches of our government.

The magnificence of the "Great Experiment," a term used by the skeptics of the work of our founding fathers, is what has enabled our Republic to stand today, after over 200 years, as the longest surviving democratic form of government still in existence.

But, the survival of that "Great Experiment" is dependent upon the continuous fulfillment of the balanced, individual responsibilities of the three branches of our government.

Let's reflect on the historical roots of the "advice and consent" clause.

During the Constitutional Convention, the Framers labored extensively over this clause, deferring a final decision on how to select federal judges for several months.

Some of the Framers argued that the President should have total authority

to choose the members of the Judiciary. Others thought that both the House of Representatives and the Senate should be involved in providing "advice and consent."

Ultimately, a compromise plan, put forth by James Madison, won the day—where the President would nominate judges and only the Senate would render "advice and consent."

Such a process is entirely consistent with the system of checks and balances that the Framers carefully placed throughout the Constitution. Presidents select those who should serve on the Judiciary, thereby providing a philosophical composition in the judicial branch. However, the Senate has a "check" on the President because it is the final arbiter with respect to a nominee.

Throughout the debates of the Constitutional Convention, there appears to have been little debate on what factors the Senate should actually use when evaluating presidential nominees. It is likely that this silence was intentional.

The first test case arose with our First President! Soon after the Constitution was ratified it became clear that the Senate did not take its "advice and consent" role as one of simply rubber-stamping judicial nominees. This became evident when the Senate rejected a nomination put forward by our first President and a founding father, President George Washington.

President Washington nominated John Rutledge to serve on the U.S. Supreme Court. And, even though Mr. Rutledge had previously served as a delegate to the Constitutional Convention, the Senate rejected his nomination. It is interesting to note that many of those Senators who voted against the Rutledge nomination were also delegates to the Constitutional Convention.

From the earliest days of our Republic, the nomination process has worked. We must now reconcile and make sure it continues to work.

Based on history, it is clear to me that the Senate's role in the confirmation process is more than just a mere rubber-stamp of a President's nomination; but it is the Senate's Constitutional responsibility to render "advice and consent" after a fair process of evaluating a President's nominee.

This process illustrates well how our three branches of government are interconnected yet independent.

Thomas Jefferson remarked on the independence of our three branches of government by stating, "The leading principle of our Constitution is the independence of the Legislature, Executive, and Judiciary of Each other."

But, I would add that each branch of government must perform its respective responsibilities in a fair and timely manner to ensure that the three branches remain independent.

In my view, we must ask ourselves, is the current Senate posture of the nomination and "advice and consent" process during the early days of the Bush

Administration consistent with our country's experience over the last 200 plus years since our Constitution was ratified? That is for each Senator to decide.

Currently, more than 10 percent of Federal judgeships are vacant. And, for the 12 Circuit Court of Appeals, nearly 20 percent of the seats are vacant. Is our federal Judiciary able to fulfill its obligations? That is for each Senator to decide.

In day to day court workloads, judicial vacancies result in each of the active and senior status judges having a greater caseload. This, in turn, often results in a longer time period for cases to be decided.

The ultimate effect is that Americans who have turned to the court system seeking justice in both civil and criminal matters are left waiting for a resolution of their case. And, all too often, justice delayed is justice denied.

Our current Chief Justice of the Supreme Court, Judge William Rehnquist, has expressed his views on this subject several times during both the Clinton and Bush Administrations. Judge Rehnquist recently reiterated remarks he made first in 1997 when he stated, "the President should nominate candidates with reasonable promptness, and the Senate should act within a reasonable time to confirm or reject them. Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote."

I am in complete agreement with the Chief Judge. We must act in a timely fashion to fill judicial vacancies.

Mr. DASCHLE. Mr. President, our friends on the other side of the aisle are right about one thing: it is important to fill vacancies on the Federal bench in a timely manner.

In his remarks last week, President Bush cited Chief Justice Rehnquist's report about the alarming number of vacancies in the federal courts.

He's right. Let me read some of Chief Justice Rehnquist's report: "vacancies cannot remain at such high levels indefinitely without eroding the quality of justice."

Except that's from the report he wrote in 1997.

Democrats, independent-minded observers, and the Chief Justice of the United States Supreme Court have all raised concerns about the judicial vacancy crisis for years.

But our Republican colleagues never seemed to hear those concerns when they ran the Senate. The fact that they now recognize the seriousness of the situation is—I suppose—progress.

It appears, however, that there are some facts on which they are still unclear. I'd like to take a few minutes to set the record straight:

First, the judicial crisis developed when Republicans ran the Senate.

Under Republicans, total court vacancies rose by 75 percent—from 63 at the beginning of 1995 to 110 by the time Democrats took control of the Senate.

Circuit court vacancies more than doubled—from 16 to 33.

As the vacancy rate was skyrocketing, more than half—56 percent—of President Clinton's circuit nominees in 1999 and 2000 never received a hearing or a vote.

Second, Democrats have reduced the number of vacancies.

The judicial nominations process has significantly improved under Democratic leadership.

As of this afternoon, in only 10 months, the Democratically controlled Senate has confirmed 56 nominees—more judicial nominees than the Republican-controlled Senate confirmed for President Reagan in his first 12 months in office.

Our 10-month number is also greater than the number of judicial nominations confirmed in four of the 6 years Republicans controlled the Senate during the Clinton administration.

It also exceeds the average number of judicial nominees the Republicans confirmed during the time they controlled the Senate—when, from 1995–2001, confirmations averaged only 38 per year.

But Democrats aren't just improving the numbers, we're improving the nomination process. Under Senator LEAHY's stewardship, the process is now faster, fairer—and more productive.

Senator LEAHY has restored a steady pace to the judicial nominations process by holding regular hearings and giving nominees a vote in committee. Despite the chaos of September 11 and the disruption caused by anthrax, the Judiciary Committee has held 15 hearings involving 48 judicial nominations in the past 10 months, and is planning an additional hearing this week to consider another 7 nominations.

In addition to increasing the total number of hearings, Senator LEAHY is reducing the amount of time it takes to confirm a nomination. The Judiciary Committee has been able to confirm nominations, on average, within 86 days after a nominee was eligible for a hearing. This is more than twice as fast as the confirmation process under the most recent Republican-controlled Senate.

Senator LEAHY has also made the process more fair.

Unlike our Republican colleagues, who would sit on nominations for years—many never receiving a hearing, Senator LEAHY has ensured that President Bush's judicial nominees are treated evenhandedly. Senator LEAHY has also eliminated the practice of secret holds within the judiciary, that were often used to delay and defeat nominees for political reasons.

Third, the confirmation of judges is part of a constitutional obligation we take very seriously.

Democrats have been clear: We will make the process move more fairly, and more quickly—but we will not abdicate our constitutional responsibility to advise and consent.

I believe the President has a right to appoint to his cabinet and administra-

tion men and women with whom he is personally and ideologically comfortable.

But Federal judges and Supreme Court justices do not serve at the pleasure of the President. Their term does not end when the President leaves office. These are lifetime positions. Their decisions will have profound consequences for years, possible decades, to come. For that reason, they deserve special scrutiny. The Constitution requires the Senate to evaluate the President's judicial nominees, nominees, offer advice, and grant—or withhold—its consent.

Fourth, I'm concerned that the real issue isn't numbers, but using Judiciary to achieve a political agenda.

Appointing judges that are out of the mainstream is a way that the right-wing can achieve through the judiciary what they can't get through Congress, the President, or any other office represented by those who reflect the will of the people, and need to stand for election before them.

Most Americans simply don't want to see a judiciary that will turn back the clock on decades of progress for civil rights, women's rights, workers rights, and the environment. Most of us don't either.

Senator LOTT and Senator NICKLES both hinted after Judge Pickering's nomination was defeated in committee that they would find ways to retaliate. The irony is: By shutting down the Senate today, they are preventing the Senate from doing the very thing they claim to want.

Right now, their tactics are preventing the Judiciary Committee from holding hearings on 4 of the President's nominees. And last August they wouldn't give us consent to carry pending nominees over the recess—further slowing the process. Amazingly, their judges are falling victim to their own tactics.

There are 77 days left in this Congress—only 46 days if you don't include Mondays and Fridays.

Shutting down the Senate at a time when there are so many major questions facing our nation, and so few working days left in this Congress—is not the way to achieve their stated goal of confirming judges.

When all the facts are thoroughly examined and honest comparisons are made, it is clear that the judicial nominations process has significantly improved under Senator LEAHY's stewardship, and Democratic leadership.

There are real differences between our parties on many issues.

We have shown time and time again, on issue after issue, that we can work through those differences for the good of the nation.

Today, I ask our Republican friends to join with us in helping—and not obstructing—the Senate as we work to meet the needs of the American people, and perform our constitutional obligation regarding federal judges.

CONCLUSION OF MORNING  
BUSINESS

The PRESIDING OFFICER. Morning business is closed.

ANDEAN TRADE PREFERENCE  
EXPANSION ACT—Resumed

Mr. LOTT. What is the pending business?

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

Pending:

Daschle amendment No. 3386, in the nature of a substitute.

The PRESIDING OFFICER. The Republican leader

AMENDMENT NO. 3399

Mr. LOTT. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 3399.

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

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

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

CLOTURE MOTION

Mr. LOTT. I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending Lott amendment:

Trent Lott, Don Nickles, Phil Gramm, Chuck Grassley, Rick Santorum, Mitch McConnell, Bill Frist, Craig Thomas, Judd Gregg, Frank H. Murkowski, Jon Kyl, Michael D. Crapo, James M. Inhofe, Thad Cochran, Chuck Hagel, Pat Roberts.

Mr. LOTT. Mr. President, the Daschle amendment—

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. 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. LOTT. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LOTT. Mr. President, our goal this afternoon is to get to a process or an agreement that allows the Senate to

deal with the very important issues pending before the Senate: trade promotion authority, the Andean Trade Preservation Act, the GSP, as well as the trade adjustment assistance. These are four very big issues, very important for our country and other countries—in the case of the Andean area—and for the workers of this country.

The way it has been put together, it is very difficult to work through all of these issues and get a result. Serious efforts are underway to see if we can achieve an agreement that produces a result.

We also have to deal with a process issue, how to make that happen. A few moments ago, I filed a first-degree amendment to the Andean Trade Preference Act and filed cloture. I think that is the way to proceed. I think we need a showing of who wants to get trade promotion authority and how we will move this to a conclusion. I want to do that and I know Senator DASCHLE wants to do that, too—find a way to get to conclusion and produce a result.

I was within my rights to seek that recognition and offer that amendment. I did so in good faith with the recognition that if I didn't, some further motion or procedure might have been offered by Senator DASCHLE or Senator REID.

Having said that, Senator REID and Senator NICKLES and others were in the Chamber. They had an agreement on how to proceed, and they felt this was not fair under the understanding that had been worked out. I always try to make sure we play above board and fair with everybody. Senator REID has always been fair with both sides, and he felt this was not the right way to proceed at this point.

After a lot of discussion, I will move to vitiate that action. But I do want to emphasize—and then I presume Senator DASCHLE may announce we would have a period of further discussion as we continue to work on this issue—I do think this is the correct way to proceed. We should not get off the trade legislation and go to any other issue. We are on the verge of beginning to make progress. If we let up, I think the momentum will stop.

I had to explain what happened and why I am doing this. I have heard stories from the past of how Senators have come to the aid of Senators on the other side of the aisle saying, no, this was not the fair way to do it, even if it might have appeared to be fair. We want to always try to do that with each other.

AMENDMENT NO. 3399 WITHDRAWN

Therefore, I ask to vitiate the cloture motion I filed and withdraw the amendment I filed.

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

The amendment (No. 3399) was withdrawn.

The PRESIDING OFFICER. The majority leader.

## MORNING BUSINESS

Mr. DASCHLE. Mr. President, I thank the distinguished Republican leader for his understanding and his willingness to act in good faith. I appreciate very much the explanation that he has made. I know it was not his intention and he was not aware of the circumstances that had been agreed to prior to the time he came to the floor. We certainly know how these things work and appreciate his willingness to rescind his actions.

There are a number of Senators who would want to be heard on issues that are important to them. As we continue to await further word about the progress of the discussions and negotiations underway, I see no reason we cannot continue to allow the Senate to proceed as if in morning business.

I ask unanimous consent the Senate proceed as in morning business under the arrangements previously authorized in the Senate for a period not to exceed 90 minutes.

Mr. MCCAIN. Reserving the right to object, I will not object.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. The majority leader understands the point I was trying to make. Next week at this time, the Andean Trade Preference Act expires and back tariffs will be levied on four impoverished countries, one which is experiencing a revolution. The majority leader does understand the reason for the cloture motion, but I understand there will be an objection if we wanted to move to ATPA, and that is why the Republican leader filed the cloture motion.

I hope the majority leader understands this is an issue that is pressing in time. We need to move forward with it. That may require a cloture motion either by the majority leader or the Republican leader.

I do not object.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask for 2 minutes prior to Senator BYRD.

Mr. DASCHLE. I ask unanimous consent my consent request be amended in that fashion.

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

Mr. DASCHLE. Mr. President, again I ask unanimous consent the Senate be in morning business for 90 minutes and accommodate Senator REID's request for 2 minutes prior to the time Senator BYRD is recognized.

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

## ATPA

Mr. DASCHLE. Let me respond briefly to the Senator from Arizona. Nobody wants ATPA passed more than I do. I have attempted in many different ways over the last several weeks to

find the right formula to bring this about. I have talked about it, literally, for months. I will work with the Senator from Arizona and others. We are very aware of the May 16 deadline. I am very hopeful we can find a way with which to accommodate that deadline and make sure this job can be done.

We are sensitive to the tremendous economic repercussions that will result if we are not successful. The stakes get higher with each passing hour, which is why I have been frustrated in my effort to move the process along all week.

We spent a lot of time on the farm bill. We spent a lot of time waiting for some sort of negotiation when I think sometimes the best thing to do is just offer amendments. That is what we do in the Senate if there is a disagreement: At some point you offer an amendment, have a vote, and move on to the next amendment.

There are those in the Senate who want the package to be just so, prior to the time they even allow us to move forward on a package.

We will continue to work with those who have been in negotiation. I hope we can resolve this matter soon.

Mr. LOTT. Will the Senator yield?

Mr. DASCHLE. I yield.

Mr. LOTT. We did vitiate the cloture, withdraw the first-degree amendment, but I ask that we consider filing cloture on the underlying amendment, just ATPA.

My cloture and amendment had been both trade promotion and Andean trade. If we file cloture on just the Andean Trade Preservation Act, that would ripen Monday night or Tuesday if we got an agreement, and it would at least guarantee we would be able to get that issue resolved and hopefully sent to the President by Tuesday or Wednesday, thus dealing with this problem that Senator McCain addresses. If we don't, we are going to have this deadline that we are facing.

I say this in a bipartisan, non-partisan spirit. It would be one way to make sure we get a vote on that. We could still get an agreement and vitiate if we had to and get the trade promotion authority and trade assistance also.

I might say that I understand we need to try to make progress. But we have only spent about 12 hours on this bill and really only one serious amendment has been offered.

I know you, Senator DASCHLE, would have liked to have had more amendments offered. Certainly we assume that will occur, perhaps even still. But we have not spent much time on the trade bill itself. I would address the question—urge you to consider, even today, within the next hour, filing cloture on the underlying ATPA. We could still get progress on these other bills without prejudicing this particular provision.

That is the kind of thing I think Senator McCain would like to see us do. He is pressing me to file cloture on the underlying Andean Trade Preference Ex-

pansion Act. Would you consider that as we proceed this afternoon?

Mr. DASCHLE. Mr. President, we are trying to make the most of what few days we have before the Memorial Day recess. That is an option. We have entertained it in the past. We have talked about it in the past. That would mean, of course, that TAA and TPA would fall if cloture is invoked, and I am not sure we would be able to get to it again prior to the Memorial Day recess, given all the other things we have to do. But that is an option. So we will weigh that carefully and consider what other choices we have, subject to some report from our colleagues. We will continue to negotiate.

Mr. NICKLES. If my colleague will yield, I think Senator LOTT and Senator McCain have a good idea. I urge you to seriously consider that. I hope it will not take cloture to pass any of the three bills. I likewise tell the majority leader, I think you will find Members on this side of the aisle—I think the majority leader has complicated his process by trying to put three bills together.

Historically, we have passed Andean trade, passed trade promotion or fast track, and we passed trade adjustment assistance—independently and overwhelmingly, usually with 70-some votes. I believe there are still 70-some votes. The Senate historically has pretty much favored free trade.

I think we would be happy to assist the majority leader to pass all three. We may have some differences, particularly on trade adjustment assistance. Maybe we will have to have a few amendments on each side. We will help you get a time agreement where we can pass all three bills by the Memorial Day recess. Maybe by separating the three bills we can accommodate the Andean countries that are in desperate shape. It would be a shame if we imposed tariffs on those poor countries, a tariff increase that they have not had for 10 years, if we do not get our work done on that bill by next week, by the 15th or 16th.

Likewise, it would be a real mistake if this Senate doesn't pass trade promotion and trade adjustment assistance, however this Senate defines it.

I tell the majority leader, I think if he breaks the three up, we could come up with time agreements and a limitation of amendments to finish all three bills.

Mr. DASCHLE. I thank the Senator from Oklahoma for his generous offer of assistance. I would love nothing more than to get time agreements.

I am told there is opposition to time agreements on both sides on each bill. As we know, given the time it takes to get through a motion to proceed if there is a filibuster, given the time it takes to get through a bill itself, procedurally, if there is a filibuster—each bill will take over a week if you did nothing more than move as expeditiously as you can given our Senate rules.

Instead of doing three sequential filibuster-cloture, filibuster-cloture, filibuster-cloture motions, we thought it might be better to do one and accommodate all the procedural impediments at once.

That may or may not prove to have been the right strategy. But, clearly, we know it will take a long time. If it is the case, we will have to take these bills up sequentially, as I am told is the case right now. Maybe time will prove Senators will reconsider and be willing to move into a time agreement, at least on ATPA.

We will try to vet that and perhaps we can move that. I think we ought to explore that possibility. But a sequential effort on each one of these will take us well into the middle of June, and I am not sure we have that kind of time.

I appreciate the Senator's interest in working with us.

Mr. NICKLES. If the Senator will yield a little further, I will be happy to shop it on our side. I do happen to think there are overwhelming majorities—probably on both sides of the aisle. We passed TPA out of the Finance Committee 18 to 3. Andean trade passed unanimously, I believe, in the Finance Committee. Trade adjustment assistance was considered and, frankly, the trade adjustment assistance that is in this bill never passed committee and some of us object to that. We are willing to have amendments to it. We are willing to find out where the votes are, if that is the way we have to go. Hopefully, some of the negotiations that are taking place today can help solve some of those problems. But we all know we need to move forward on all three pieces of legislation. I urge our colleagues, let's do it.

I do question the wisdom of putting all three together. Historically—I remember Senator BYRD and I having a big debate on line-item veto and I used to say we should have a bill veto. Is it fair to the President of the United States to submit all three bills, each different, and say take it all or leave it all? He loses his Executive power or ability to sign or veto individual pieces of legislation.

I hope we will consider trying to expedite this, come up with time agreements, pass all three bills, and let's see if we can get all three done by the Memorial Day break.

Mr. DASCHLE. If the distinguished Senator from Oklahoma will be prepared to work with us on his side, we will see what prospects there are for doing something like that on one or more of the bills in the Senate in the next day.

I am happy to yield to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I think it sounds good to have some cooperation with respect to time. But there is frustration on all sides with respect to this legislation. The issue of trade promotion authority, for example, came to



the floor. Then we had to go off, I believe for 12 hours, debating the Agriculture conference report, which took the better part of 2 full days.

We have now, I believe, voted on only one amendment on trade promotion authority. That was the amendment I offered. And that was held over. We couldn't clear it after we had a tabling amendment. That was held over several days in order to clear that.

Senator DAYTON has an amendment. I have two additional amendments. I know other colleagues have amendments to trade promotion authority, but we have not been able to get at that, and my understanding was we had people on the floor on the other side saying they were not going to let us do anything until all of this gets negotiated to some successful conclusion.

I think the way to legislate, I say to the majority leader, would be to allow us to proceed with the amendments. If there are those on the floor who are blocking it, perhaps the Senator from Oklahoma and the Senator from Mississippi, if it is on your side, might help us remove that block and let us get to the amendments and have votes on the amendments.

Trade promotion authority is a reasonably controversial measure. People will have a fair number of amendments, but we have had one so far. It seems to me we ought to get at them and have votes on them.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. DASCHLE. I am happy to yield to the Senator.

Mr. LOTT. I will respond to that. I think that is what we should do. That is what I just did; I offered an amendment. But because of concern about the fact we were in morning business, I withdrew it.

I think that is the way to go. Hopefully, maybe we will come to an agreement this afternoon that will allow us to move forward on all three bills. If we do not, then what I urge we do is stay on the trade bill, have amendments, and go forward.

I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. DASCHLE. Senator BYRD informed me, while he intended to speak as in morning business today, he is going to postpone his speech on Mother's Day until tomorrow. So the floor is open, I notify all Senators.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. While the leaders are still on the floor, especially the Republican leader, I want everyone to know that what he did was entirely within his rights. What he did not know when he came on the floor is my counterpart, Senator NICKLES, and I had an agreement. The majority leader had asked I keep us in a quorum call. That is what I intended to do.

What Senator LOTT did was in keeping with the rules of the Senate. What

he did following, to vitiate his request, is not in the rules of the Senate. He did that because of the goodness of his heart, and I appreciate that very much. We have to work here, recognizing that no matter in what situation you may find yourself, it may not be one of total understanding at the time you do it. I appreciate very much Senator LOTT withdrawing the cloture motion. I also appreciate his withdrawing the amendment. He did not have to do that. No one could have forced him to do that. We could have gotten into a procedural situation where we would move to table his amendment and things of that nature, but that would not have gotten us to the goal we wanted.

I also express my appreciation to my friend from Oklahoma who expressed to the Republican leader what the arrangement was he and I had.

Of course, I appreciate very much the majority leader working his way through this. I think it will be better for us all that we approach it in this manner.

The PRESIDING OFFICER. The Senator from Pennsylvania.

#### JUDICIAL NOMINATIONS

Mr. SANTORUM. Mr. President, I thank Senator BYRD. He came over to me a few minutes ago. He was in line to take the next slot, and I appreciate his willingness to give me the opportunity to speak.

I am here on the anniversary of the President's first nominations to the circuit court to, once again, focus the Senate on what really is a great obstruction of justice that is occurring as a result of the actions within the Judiciary Committee.

We have seen the first 11 nominees the President put up for the circuit court—which is the appellate court in this country at the Federal level, and then you have the Supreme Court, obviously. We have 11 nominees the President put forward. Three were moved. But they were three holdovers from the prior administration. The first original, if you will, Bush nominees have not even had a hearing. If they were eight people who had very little to account for, if they were people who were not considered well qualified, if they were people who had clouds hanging over their nominations, that would be one thing. But not one of them has received anything but well qualified, and the vast majority were well qualified by Senator LEAHY's and the Judiciary Committee's standard, which is the American Bar Association, which is not necessarily friendly to Republican nominees for the court.

We have a situation where we have preeminent jurists and litigators who are being held in committee for a year without a hearing, and without explanation. That is sort of the remarkable thing throughout this entire discussion. There is no explanation as to why any one of these nominees is being held up.

We haven't had any discussion, to my knowledge, on the floor or in the press as to the specific reason any one of these nominees has been held back. There is no cloud that I am aware of. It is simply stopping the President's judicial nominees, and stopping qualified jurists from serving.

These are people who have been nominated, and when you are nominated for a position such as this—the Presiding Officer knows; he was Governor—in State office or Federal office, they have to begin to sort of unwind their affairs. They have to begin the process of setting themselves up, because who knows how quickly they could be considered and moved through the Senate?

In the case of Nebraska, I guess there is one house in which they go through in the process.

We have eight people of impeccable integrity who began that process a year ago. Where are they? They are hanging out there. Their lives are in limbo. That is not fair to them. It is not fair to the people who are not getting justice and not having their cases heard on appeal, or are having long delays in getting the resolution of their cases.

That is not fair either. That impacts the administration of justice, particularly on the civil side, which tends to suffer. We are getting criminal cases through because they are a high priority. But you have people whose lives are almost in limbo because they are not getting the quickest administration of justice that they deserve in our court system.

I want to talk about one particular nominee. He is from Pennsylvania. I will give you sort of the rundown of where we are in Pennsylvania.

We had 11 openings on the district court level in Pennsylvania. We have two circuit nominees who are Third Circuit nominees—who are sort of Pennsylvanian, assigned to Pennsylvania in this informal agreement we have across the country. One of the nominees for the circuit court—the only nominee so far, because the other circuit vacancy just occurred a few weeks ago—is Judge D. Brookes Smith. Judge Smith is the present judge of the Western District in Pennsylvania. He is a very distinguished jurist. He has been on the court for over 10 years and has served on the Common Pleas Court in Blair County and Altoona. But he is from Altoona. He is from just an impeccable law firm and practiced before he was judge. He has great reputation as a common pleas court judge in Pennsylvania, and now as a district court judge.

Again, he has a flawless reputation. He is a man of highest integrity. He is rated well qualified unanimously by the ABA. Thankfully, we had a hearing on Judge Smith. But that hearing was roughly 3 months ago. Judge Smith continues to be held in committee. Again, if you look at what I said before about your life being held in limbo,

here is someone who has already had a hearing and is being held for months without being moved through the process.

Are there serious allegations about any actions Judge Smith has taken while he has been a member of the Western District of Pennsylvania? Are there any decisions out there that have been seriously attacked? The answer is no. There is no "gotcha" case, or line of cases, or opinions Judge Smith has offered that has caused any problems.

The only issue I am aware of with respect to Judge Smith is that he belonged to a rod and gun club in Pennsylvania. We are very proud of our sportsmen activities in Pennsylvania. We are a great hunting and fishing State. He belonged to the Spruce Creek Rod and Gun Club.

Some of you who can think 20-odd years ago and of Spruce Creek, you think of Jimmy Carter. That is where Jimmy Carter used to go. You may remember the incident about the rabbit on the boat. That was in Spruce Creek.

Judge Smith was an avid fisherman and someone who belonged to this club for years, and belonged to it when he was confirmed as a judge in the first Bush administration.

Comments were made that this club did not allow women members. They allow women to go to the club and participate in activities, but they don't allow them to be voting members of the club. When asked about that, Judge Smith said he would try to change that policy.

There is a woman who is a county commissioner who served with him when he was a common pleas judge in Blair County who is a member of NOW, a Democrat, who came out and said she knew of nobody who had done more to help women and to promote women in the legal profession than Judge Smith—he has an impeccable record on women's issues—and the promotion of women within the legal system and the court system.

We had five litigators come to Washington, DC, most of whom were Democrats, and all of them practiced in front of Judge Smith. They went through story after story about how he, unlike, unfortunately, some other members of the bench, treated women with particular dignity and respect and was very accommodating to some of their concerns. One of them happened to be pregnant during the trial. He was very accommodating to her particular needs.

So he has a great record.

What is NOW saying? They opposed Judge Smith because he belonged to a gun club that didn't permit women members. It permitted women on the premises. It permitted women to participate in their activities. But it did not permit them to be members.

Judge Smith during his initial confirmation said he would go back and try to change that. He did. Every time there was a meeting and the bylaws were reviewed, Judge Smith attempted

to change it. He tried I think four or five times. When he felt that he could no longer stay in the club because he didn't see any hope that in fact they would change that policy, he left.

I will make the argument against NOW's position—that he stayed there after he had been made aware of that and he should have left right away. Had he left right away, there would have been no chance that the club would have changed. Judge Smith did stay in there to fight to change it.

If you wanted to argue anything, you could argue that Judge Smith should be faulted for not still being in the club trying to change it. By walking away from the club, you could make the argument that he walked away from a fight he shouldn't have walked away from. That is not their argument. The argument is he shouldn't have fought in the first place, he should have just gotten up and left.

That is not how we change things in America. We change things by standing up for principles and fighting for them. And Judge Smith fought for women membership. And now, because he did, he is not qualified to be a Federal appeals court judge?

He has been a judge for over 15 years. They have looked at all his cases. There are no complaints about any of the cases. The reason they oppose him is because he stayed in a gun club too long, fighting for allowing women to become members. That is the great sin. That is the reason why. Although we will have no admission of this, so far, publicly, I am told the reason Judge Smith is still in committee is because of that—a man who has incredible credentials, a man who has been a fighter for women in the legal profession, a man who has fought in the "Old Boys Club" to admit women as members.

We are saying now that he should not be elevated to the third circuit because he fought for women. How remarkable a place this can be sometimes. How remarkable a place this can be. I would suspect that maybe had he quit, they would have come back and argued: See, he quit. He should have stayed and fought. And they would oppose him for that reason.

This is wrong. This is a man of incredible integrity, terrific credentials, great judicial temperament, who is scholarly, gentlemanly, and he is being subjected to being called anti-women. Even though he has staked out, in his judgeship in the Common Pleas in Blair County, in his judgeship in the Western District, and now as one of the President's nominees, that one of his highest priorities has always been the promotion of women in the court, he has been targeted as anti-women.

This is wrong. This is wrong. This is what is going on here. These are the attacks that are leveled at people who want to serve.

His nomination is being held in committee, and has been for months. It is wrong. This is a man who has worked diligently for women. We had lawyer

after lawyer after lawyer from the Western District come here, the Women's Bar Association, supporting Judge Smith. We have not heard anybody from the Western District, who has appeared before Judge Smith, who is a woman saying anything negative. It is just the opposite. I received letter after letter in support of Judge Smith.

So you say: Well, that seems unfair. Yes, it is. If you were Judge Smith, imagine how you would be dealing with this. This is a human being. I know we all put these charts up in the Chamber, and we show the numbers—such and such percent get through, and such and such do not—but we are talking about a human being who has dedicated his life to serve, with a particular emphasis on the inclusion of women in the legal profession.

I have to tell you, I come from western Pennsylvania. At times, I have to say that our area of the country has not always been the most progressive when it comes to promoting women to the bench. He has bucked a lot of the "Old Boy" network in doing what he's done for women. And this is what he gets rewarded with, these kinds of outrageous charges which are not based on fact. It is based on the fact that Judge Smith happens to be moderate to conservative.

You see, if you are anywhere right of center here, and if you are looking at the third circuit or you are looking at the sixth circuit or you are looking at any other circuit, you need not apply because we will find some reason—some outrageous, silly reason—that has nothing to do with the incredible track record that you put together through your career; we will find some bogus reason to hold you up and tar you—the politics of personal destruction on decent people who are working hard to make this country better, all for this agenda that no one will talk about. No excuse will be given.

This is one example. I am sure you heard earlier today about others. We have eight people nominated for the circuits that have been sitting out here for a year and, unlike Judge Smith, have not even been given a hearing, have not even been given the decency of presenting their credentials to the committee and saying: Evaluate me based on me, my merits, my record, my temperament, and my ability. The committee has said: No, we are not going to give you the opportunity. The President has selected you, we understand. But we don't even believe you deserve the opportunity to convince us.

Why? That is the question I keep asking. Why? Don't we have to ask ourselves why the chairman of the Judiciary Committee and the committee have decided not to even give these people the opportunity to present themselves to the committee? What are they afraid of?

Let's be very honest about this. If these eight people are that bad, if they are that "out there," if they are that dangerous, if they are that destructive

to the judicial system, then it would be in your favor to bring them up here and show how bad they are, how subversive they would be to the laws of the country, how dangerous they would be to the litigants who would come to their court—but nothing.

What are you afraid of? Are you afraid if you put Miguel Estrada up there, and you listen to this articulate, brilliant, competent, well-tempered man, that this charade that you have been putting on will come collapsing down upon you? Is that what you are afraid of? That is a legitimate fear.

But what you are doing to these people, what you are doing to the litigants in this country, what you are doing to the President is wrong, it is unfair, it is unjust. If you have a case against them, present the case. Bring them before the committee. Present the case. If you don't have a case against them, then treat them justly.

These are outstanding men and women who deserve their day in court, who deserve the opportunity to present themselves to the committee and the Senate. They have earned it because they have earned the trust of the President of the United States, who has nominated them for these positions.

What are you afraid of? Or is it something even more sinister than that? I hope not.

It has been a year. It has been a year in the lives of these people that I am sure they will never forget. It has not been a year that has reflected particularly well on the Judiciary Committee or this Senate.

We have an opportunity, on this anniversary, to begin to start anew. We saw, just a few minutes ago, the two leaders have a little bump in the road. When we have bumps in the road here in the Senate—we often do—we always sort of step back and say: OK, for the good of the Senate, for the long-term health of the Senate, can't we put some of these partisan one-upmanships aside and do what is right for the Senate? Because this place will be here, God willing, much longer than we will be. What we do here does set precedent. And the precedent the Senate Judiciary Committee is setting right now is dangerous to this country, because now there will always be this precedent that we will be able to look back to and say: See, they did it. The precedent has been set. When you set a precedent, particularly a precedent that is damaging to the rights of Presidential nominees to be considered, you lower that bar, you harm the entire judicial system in the future.

We have a chance yet, before the end of this session, to fix this.

We have a chance to get a proper, a sufficient number of circuit court nominees approved by the Senate that comports with the historical precedent. It is still possible to do that. It is also possible that we won't do that. That will set a precedent here, a precedent that, unfortunately, once set will be revisited by somebody somewhere down

the road. I don't know which party it will be. It may be our party; it may be your party. The point is, it is not good for this institution, and it is horrible for the country.

I understand the partisan advantage. I understand you don't like the philosophy of some of these people the President nominated. I have voted for judges whose philosophy I hated. But the President won the election. He has the right to nominate good, decent people with whom you disagree on philosophy. He has that right. If they were good, decent people who were qualified and had the proper temperament, I approved them, whether I agreed with their philosophy or not.

That is the role of the Senate. What is going on here may fundamentally change the role of the Senate for the worse. You can't think about the next election or the partisan advantage or even the set of issues we are dealing with today in America. Those sets of issues 40 years from now will be different. The precedent you set now will have a huge impact on those issues. Don't do it. Don't do it. Don't open up a hole in the precedents of the Senate that somewhere down the road will drive a truck over something you may care very deeply about. It is not the right thing to do.

You still have a chance to change it. I pray that you do.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Arizona.

Mr. KYL. Madam President, I compliment the Senator from Pennsylvania for the remarks he has just made, especially in relationship to a judge that means a lot to him, Brooks Smith, who has been nominated by the President to serve on one of our Nation's highest courts. There is no reason, as Senator SANTORUM has said, for this fine individual to be held up. It may be that for purely partisan reasons, someone will try to find a pretext such as the business about the club. I have heard that, too. But I can't believe at the end of the day anybody would actually use that, at least publicly, as a reason to oppose the nomination. There is nothing to it.

When people get so caught up in the politics of it, as the Senator from Pennsylvania has said, they begin to do things that in cool, collected thought maybe they would not ordinarily do. They get carried away and even refuse to consider a judge based upon a pretext such as this. When that kind of precedent is set, it does begin to not only demean this institution but degrade the court system and fundamentally alter the relationship between the Senate and the President and our responsibility of advise and consent to the nominees.

The Senator has made a very good general point; unfortunately, a point well taken with respect to a nominee pending before the committee, Judge Smith.

I want to make the clarifying point that it is not just the Judiciary Com-

mittee involved here. The Republican members of the Judiciary Committee, of which I am one, would very much like to move forward on Judge Smith and other nominees.

We were called by the President today to join him at the White House because today is an anniversary of sorts. There are three anniversaries today that mean something to me personally. It is my father's birthday; he is 83 years old today. It is the Attorney General's birthday, John Ashcroft, who is 60 years old today. And, unfortunately, the other reason it has meaning is, as the President reminded us, it has been exactly 1 year since he nominated some very fine individuals to serve on the circuit courts of appeals—1 year and not a single hearing on eight of these nominees, all very fine individuals.

There has been no hearing scheduled, no hearing held, let alone moving the process forward so that they could be confirmed.

I don't know of any reason any of these judges or lawyers nominated to the circuit courts should be held up. As a matter of fact, they have all been rated by the American Bar Association as "qualified" or "well qualified" to serve on the circuit court. That was, according to our Democratic colleagues, the so-called gold standard by which these candidates would be judged. So if it is to apply in these cases, then all of these individuals should be confirmed, and at a minimum, of course, the committee should begin to hold hearings on them.

Why aren't the hearings being held? It could be one of two different reasons. The first has to do with an attempt to change the standard by which we historically have judged judicial nominees.

This morning, the Senator from New York, who chairs a subcommittee of the Judiciary Committee, held a hearing in which he was very clear about his belief that ideology should play a role in the Senate's confirmation of the President's nominees. He expressed a view that nominees of President Clinton were all mainstream or mostly mainstream; whereas President Bush keeps on nominating ideological conservatives, people who, in his view, are out of the mainstream.

The Senator from New York is certainly entitled to his views. He noted, and I agreed, that he and I probably would disagree philosophically on a lot of things. He probably would call himself a liberal Democrat. I would proudly call myself a conservative Republican. We respect each other's rights to believe in what we believe and to pursue those positions. But I don't think either one of us should therefore suggest that we are the best ones to judge what a balance on the court would be. We probably would both want to shade it a little bit toward our particular point of view.

The Senator from New York says he believes it is our job as the Senate to

restore balance to the courts. I pointed out that, of course, balance is all in the eye of the beholder; that probably the President of the United States, elected by all of the people of the country, was a better judge of the mood of the country, especially a President who, by the way, has an approval rating of well over 70 percent.

When he ran for President, it was clear that if he won, he would be the person nominating the judges. As a matter of fact, Vice President Gore made a point during his campaign to warn voters that if they elected President Bush, then-Governor Bush, he would be making the nominees to the court. He was right about that. When President Bush was declared the winner, he had every right to make these nominations.

If the people are not well qualified, then the Senate should vote them down. On occasion that has happened, but it is quite rare. As the Senator from Pennsylvania pointed out, the test has been, for most of us over the years, even if you don't like the person ideologically, if that is the President's choice and the individual is otherwise well qualified, then you really ought to vote to confirm.

All of us have done that. I have swallowed hard and voted for people I didn't particularly care for and whose ideology I very definitely didn't care for. I voted for them nonetheless because I couldn't find anything wrong with them. They graduated high from their law schools. They had done a good job in a law practice or on some other bench. Even though I figured they would probably be quite ideologically liberal—and by the way, some have turned out to be ideologically liberal—I felt it was my obligation, since that was the President's choice, and there was no question about qualification, that we should approve them. That I did.

That has been the tradition in this body for a very long time. I don't think it is appropriate for us to try to define what a proper balance of ideology is and to turn down the President's nominee because of that.

I especially think it is wrong not to give them a hearing and find out. These eight nominees to the circuit court the President made exactly a year ago have never had an opportunity to come before the committee and answer any questions about their ideology.

There is a presumption that has not necessarily been backed up by reality or by facts.

I would think that, as the Senator from Pennsylvania said, if there is no reason to be afraid of these judges, then we ought to have a hearing. And if there is, I would think people would want to bring those reasons out to demonstrate why they are not qualified to sit on the bench. But, in fact, there has been no suggestion that there is a reason why any of these eight candidates are not qualified.

In fact, I don't think even most of them could be fairly characterized as somehow ideologically way out of the American mainstream. The other thing that might be offered as an excuse not to hold hearings is—and I have heard this often from my Democratic colleagues—they believe that some of the Clinton nominees for courts were not treated fairly because they were not given hearings. It is true there were a few that, for one reason or another, did not get a hearing. Of course, in the case of those nominated at the end of the last year of the Presidency, there is good reason for that because there is no time to do it. But there were still probably some who could have had a hearing and did not.

A hearing was held this morning by the Senator from New York in which four of those individuals were called to testify. And each one of them made the point that they were disappointed—actually, one had gotten a hearing but had not been confirmed. They all made the point they were disappointed and they didn't think it was fair. Two of them, particularly, I thought, made a very good point that when you get right down to it, it is very unfair for a nominee not to have a hearing. They believe that all nominees should have a hearing. That, of course, applies today as much as it applied to them. If it was wrong for them to be denied a hearing, it is just as wrong for President Bush's nominees to be denied a hearing.

The second reason that sometimes is offered up to me why President Bush's nominees are not being given a hearing or moved forward through the process for confirmation, it seems to me, is based upon a false premise; that is, in effect, saying two wrongs make a right. It is wrong not to give somebody a hearing. Some of President Clinton's nominees were not given a hearing, so we are not going to give President Bush's nominees a hearing. If it is wrong, it is wrong. If it is wrong, it should stop.

I heard one colleague say, but we need to go back and fix the wrong. To my knowledge, there is only one President who has gone back and nominated people his predecessor of another party had nominated who were not confirmed. President Bush has actually gone the extra step and renominated two of the Clinton nominees who have been confirmed already by this body. To my knowledge, President Clinton didn't renominate any of the 40-some—I believe that is the correct number—nominees pending at the end of the Bush 41 administration. President Bush 43 has done that.

So I think it is wrong to say we are not going to have a hearing on these individuals because some other candidates didn't get a hearing and that was wrong. Again, two wrongs don't make a right.

Today, President Bush told us that he called upon the Senate, and specifically the Senate Judiciary Committee, to move forward with these nominees.

He told us he thought it was very unfair to the fine people he had nominated that their lives, in effect, are in limbo at the moment because they don't know whether they are going to get a hearing, whether they are going to be confirmed. In the meantime, their law practices are suffering, if they are still in the practice of law. Their reputations are hanging in the balance.

Let me tell you a little bit about a couple of them. Of these eight nominees who have languished before the committee and have not had a hearing, one is John Roberts, a nominee to the DC Circuit Court of Appeals. He is one of the country's leading appellate lawyers. He has argued 36 cases before the Supreme Court. He served as Deputy Solicitor General. He has a great track record. There is nothing wrong with this nominee. He is one of the smartest people and one of the most experienced people we could put on the DC Circuit Court. Nobody denies that. So why hasn't he had a hearing? Why?

You can cite all kinds of statistics about how many Clinton nominees were approved and this and that. But when you get right down to it, there is absolutely no reason this fine man hasn't had a hearing now in a year.

Miguel Estrada has been nominated to the DC Circuit and he has a great story to tell. He would be the first Hispanic ever to serve on the DC Circuit. He has argued 15 cases before the U.S. Supreme Court. By the way, this is a big deal for a lawyer to argue before the Supreme Court. I have had three cases there in my law career, and it is a great honor for a lawyer. When you can say you have argued 15 cases—and I argued 1—and when you can say you argued 36 cases, that is something very few lawyers have ever had the opportunity to do. It shows that you are an extraordinary lawyer. So why isn't Miguel Estrada even getting a hearing? He would be the first Hispanic to serve on this court. He was an Assistant U.S. Solicitor General. He was a Supreme Court law clerk. He has been a Federal prosecutor. No one can say he is not qualified.

In fact, the Bar Association unanimously recognized both of these individuals are well qualified, with their highest rating.

Justice Pricilla Owen, a nominee to the Fifth Circuit, has served on the Texas Supreme Court since 1994. Every newspaper in Texas endorsed her in her last run for reelection. So why isn't Justice Pricilla Owen even receiving a hearing? There is no reason she should not receive a hearing—or at least no fair reason.

I am told Michael McConnell is one of the most intelligent people ever to be nominated to a circuit court. He is nominated to the Tenth Circuit, and he is one of the country's leading constitutional scholars and lawyers. He has an incredible reputation for fairness, as has been illustrated by the support he has received from literally

hundreds of Democrat and Republican law professors around the country. He is clearly one of the outstanding jurists in the country. He hasn't even gotten a hearing. Why?

Jeffrey Sutton is another of the country's leading appellate lawyers. He has been nominated to the Sixth Circuit. He graduated from Ohio State Law School and was first in his class. He has argued over 20 cases before the U.S. Supreme Court and State supreme courts, and he served as solicitor of the State of Ohio.

Justice Deborah Cook, a nominee to the Sixth Circuit, has served as a justice on the Ohio Supreme Court since 1994, a State supreme court justice. She was the first woman partner in Akron's oldest law firm. This is another extraordinarily qualified individual. There is no reason for her not to have a hearing. Why hasn't this nominee even had a hearing?

Judge Dennis Shedd has been nominated to the Fourth Circuit. He was unanimously confirmed by the Senate as a Federal district judge in 1990. He is strongly supported by both home State Senators—one a Democrat and the other a Republican. In fact, he is past chief counsel to the Senate Judiciary Committee. He, too, has a great number of friends on both sides of the aisle. He would be a great judge on the circuit court. Why hasn't he even received a hearing? Is there anything wrong with him?

Judge Terrence Boyle, also nominated to the Fourth Circuit, was unanimously confirmed to be a Federal district judge in 1984. He has served all of this time, and I haven't seen anybody come forward with anything that would suggest he is not qualified. As a matter of fact, the State Democratic Party chairman supports Judge Boyle's nomination. He says that he gives everyone a fair trial.

If the former chairman of the Democratic Party in the State can endorse a Republican President's nominee to the circuit court, that is a pretty good thing. You would think partisan consideration could be laid aside. Why hasn't this individual even received a hearing?

It is not too much to ask that, after 365 days, the first step in the confirmation process be taken. A year ago, President Bush said: There are over 100 vacancies on the Federal courts causing backlogs, frustration, and delay of justice.

Today, a year later, he is asking us to begin the process of clearing up this backlog. He has done his part. Chief Justice Rehnquist recently stated that the present judicial vacancy crisis is "alarming," and on behalf of the judiciary, he implored the Senate to grant prompt hearings and have up-or-down votes on these individuals.

I noted that the chairman of the Senate Judiciary Committee, Senator LEAHY, in 1998, at a time when there were 50 vacancies, said that number of vacancies represented a "judicial va-

cancy crisis." Those were his words. Today, there are 89 vacancies. We are getting close to twice as many. It is a 10-percent vacancy rate. The Judicial Conference of the United States classified 38 of these court vacancies as judicial emergencies.

The President has 18 individuals nominated to fill a seat designated as a judicial emergency. What that means is that litigants cannot get to court. There are delays of 6 and 8 years of people not being able to get to court or have their cases resolved—in the case of some criminal cases. This is unfair to litigants, and it has been said many times that justice delayed is justice denied. There are many situations in which that is true, but that is what is happening as a result of not being able to fill these positions, especially with regard to those denominated as judicial emergencies.

The 12 regional circuit courts of appeals are the last resort, other than the Supreme Court. There are 30 vacancies, which is a 19-percent vacancy rate. Filings in the 12 regional courts of appeals reached an all-time high last year. They have increased 22 percent since 1992, and I could quote from former presidents of the American Bar Association and others who have expressed grave concern about the ability to do justice when these kinds of vacancies exist.

I will read one quotation from one letter:

I urge you to heed President Bush's call and not as Republicans and Democrats, but as Americans. It's time for the Senate to act for the good of our judicial system.

In the Sixth Circuit Court of Appeals, half of the court is vacant. Of the 16 authorized judges, 8 stand vacant today. At a time when there were only four vacancies on that court, Chief Judge Merritt of that court wrote to the Senate Judiciary Committee and said this:

The court is hurting badly and will not be able to keep up with its workload. Our court should not be treated in this fashion. The public's business should not be treated this way. The litigants in the Federal courts should not be treated this way. The situation in our court is rapidly deteriorating due to the fact that 25 percent of our judgeships are vacant.

Now it is 50 percent. The caseloads in Federal court can be expected to increase because of the war on terrorism and in my area because of the extraordinary amount of illegal contraband and illegal immigration coming across the border.

It is sad that the Senate cannot bring itself to even hold hearings on people who have now been sitting for a year since their nomination, individuals who by any measure are extraordinarily well qualified, are among the most qualified in the country. There is nothing wrong with them, and yet no hearing.

As of this date, the Senate has confirmed only 9 of the President's 30 circuit court nominees. By contrast, President Clinton had 42 percent of his

circuit court nominees confirmed by this same date in his term.

I know we can quote statistics, and that is not really the most important issue. I quote from the Washington Post editorial of November 30 of last year:

The Judiciary Committee chairman, Democratic Senator Patrick Leahy, has offered no reasonable justification for stalling on these nominations.

The point is, anybody can cite statistics, and most of us are pretty good lawyers and can argue the case, but at the end of the day, there is no reasonable justification for stalling on these nominations. There is no reasonable justification for stalling, unless—I think the Post might have gone on to say—you are trying to get even because of some perceived slight. That is beneath the Senate of the United States of America, and it should not be the motive of anyone, and I cannot believe it would be. This is no reason why these nominees should be denied a hearing.

Lloyd Cutler, who was President's Clinton's White House counsel, and former Congressman Mickey Edwards recently wrote an op-ed in the Washington Post. They said:

Delay in confirming judges means justice delayed for individuals and businesses, and combined with the bitter nature of some confirmation battles, it may deter many qualified candidates from seeking Federal judgeships.

That is the unfortunate additional result of what is happening here. More and more good candidates are going to say: Why should I put myself and my family through all of this? And that is going to be a real shame.

Historically, Presidents were able to get their nominees, especially their first nominees, confirmed. President Reagan, President Bush 1, and President Clinton all enjoyed a 100-percent confirmation rate on their first 11 circuit court nominees—100 percent. All were confirmed within a year of their nomination. Remember, these eight we are talking about have not even had a hearing within a year.

The broader picture is no different. The history of the last three Presidents' first 100 nominations shows that, one, President Reagan got 97 of his first 100 judicial nominations confirmed in an average of 36 days; President George Herbert Walker Bush saw 95 of his first 100 confirmed in an average of 78 days; and President Clinton saw 97 of his first 100 confirmed in an average of 93 days. But to date, this Senate has confirmed only 52 of President Bush's first 100 nominees, and the average number of days to confirm has exploded to 150.

It is not possible to say that nothing is happening, that nothing is different, that this is no different than in previous administrations, that President Bush's nominees are being treated the same as any others. It is just not true. The statistics belie that.

Madam President, even if you do not want to talk about the statistics, I just

ask you to focus on what President Bush focused on today. He said: I nominated 11 good people a year ago today, and only 3 of them have even had the courtesy of a hearing. Would you please go back to your colleagues and implore them to treat these people fairly? He said: It is not for me; it is for the American people. He made that point a couple times. And it is for justice and for the American people. I also think that it is going to say something about the Senate.

The PRESIDING OFFICER. The time controlled by the minority in morning business has expired.

Mr. KYL. Madam President, if we do not move on these nominations, it is going to cause a significant decline in the reputation of the Senate.

The PRESIDING OFFICER. The Senator from Minnesota.

#### IMPORTS OF FOREIGN LUMBER AND WOOD PRODUCTS

Mr. DAYTON. I thank the Chair.

Madam President, I rise in morning business to discuss an amendment which Senator CRAIG from Idaho and I are going to offer when we resume consideration of the trade bill. I wish to take a few minutes in morning business now to talk about it.

It is an amendment that I believe will complement the intent of TPA. Others may view it differently. It is one Senator CRAIG and I developed out of our shared experiences working with and representing members of our respective States, Idaho and Minnesota, who have lost jobs, farms, and farm income because of trade policies.

I first had the opportunity to work with the Senator from Idaho when Minnesota loggers and small business owners running sawmills were being harmed seriously—some put out of business, some losing their jobs—as the result of imports of foreign lumber and wood products coming into this country and to our State. I found that Senator CRAIG had been working on these problems for years before I arrived.

I actually took his lead. He spearheaded a group of us working on the impact of sugar coming into this country on sugar beet growers in Minnesota and Idaho. I know he is someone who has a deep and abiding commitment to do what is right for the citizens of his State, as I hope I can demonstrate for the people of Minnesota.

Madam President, you probably had this experience in your State as well. The trade policies of this country which have been in effect over the last couple of decades from one Republican administration to a Democratic administration and now to a Republican administration have relatively consistently encouraged the expansion of trade, the expansion of exports upon which a lot of jobs in Minnesota depend and on which a lot of businesses in Minnesota, large and small, have successfully and profitably expanded markets across this country and the

world—grain traders, commodity traders, those who provide that transportation, those who finance the businesses engaged in all of this. There are a lot of winners in Minnesota, a lot of beneficiaries through jobs, through expanding businesses, through rising stock portfolios, who say, hey, more trade is better for us, who frankly cannot even imagine why I am torn on this subject.

I find in the presentations and the discussions about trade authority, there is very seldom a recognition, even an acknowledgment, of the thousands of men and women whose jobs, whose farms, whose businesses, have been lost. And lost is not even the right word; they have really been taken away from them because of the impact of these trade policies.

So recognizing that this legislation, the so-called trade promotion authority, is a high priority for the administration, that was passed by the House of Representatives, that, as the Senator from Oklahoma said earlier, the tradition of the Senate has been to support free trade in anticipation of the probability that final legislation will pass the Senate if we get to that point, I think this amendment is a crucial addition to standing beside and with those men and women in my State anyway, and I think elsewhere across the country, who are being harmed by these policies or who will be in the future.

This amendment says if an agreement comes back that has been negotiated by trade representatives, acting at the behest of the President but not elected by the people of this country—comes back with changes in the trade remedy laws, which change—in most cases weaken—these laws that have been passed by the Congress, signed into law by the President of the United States, for the purpose of protecting those who will be harmed by these trade agreements, by illegal dumping of products—it has certainly been devastating to northeastern Minnesota, to the steelworkers there and across this country—that before those laws and their provisions can be altered or weakened or negotiated away or used as bargaining chips to get some other purpose achieved, the Congress has the authority—it is not required but it has the option—to remove those sections of the bill and put the rest of the agreement through the fast track, so-called, the procedures that will have been enacted into law, but to reserve the prerogative to review these changes, these measures, that are going to affect the kind of protection, the kind of safety net, the kind of assistance that Americans think they can depend on, cannot be taken away, cannot be altered, except by more careful consideration by the Senate and Congress.

The fact that we have 26 Members of the Senate who are cosponsors and are in support of this legislation, 13 Republicans, 13 Democrats, men and women from all different parts of the country

with all different perspectives and philosophies, says to me they have had this same experience in their own States with their own constituents, that they too have recognized that these trade policies have very mixed results in their States, and particularly those who are not the beneficiaries, who are going to be the casualties of expanded trade, the increased imports which have been, I think, really tilting our trade policies out of balance in a way that is detrimental to this country.

Last year, the trade imbalance, the deficit in our trade, was \$436 billion. We owed other nations \$436 billion more from their imports than we received from our exports. In agriculture, well, there is still a positive trade balance, but that positive balance has been reduced. We have seen from NAFTA a flood of imports of food, of automobiles, of other manufactured goods, and our trade imbalance with Mexico has gone from being a slight positive in 1993 to a negative balance in the year 2000. Our trade balance with Canada has gone from being slightly in the negative to seriously in the negative in those 7 years.

Again, I have seen in Minnesota men and women, farmers, workers, business owners, who have lost all of that, lost their hopes, lost their livelihoods, lost their homes, lost their pensions, lost their health care as a result of this. To me, it would be unconscionable to hand that over to an unelected representative of any President, any administration—previous administration, this administration, a future administration—and allow that situation to develop where that agreement would come back and we would be told, take it or leave it, up or down; either make that decision that is going to benefit people but disregard those who are going to be most harmed.

I see the Senator from Nevada has returned, hopefully with some illumination for us. We have taken this opportunity to talk about the amendment.

Mr. REID. If the Senator will yield, the majority leader is on his way.

Mr. DAYTON. I will yield even more so when the majority leader arrives.

I thank the Senator from Idaho for his work on this. I think he has heard more about it from other parties than I have.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, we are in morning business, are we not?

The PRESIDING OFFICER. That is correct.

Mr. CRAIG. I ask unanimous consent that I be allowed to speak for 15 minutes.

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

#### TRADE MUST BE BALANCED AND FAIR

Mr. CRAIG. Madam President, I am pleased my colleague from Minnesota,



Senator DAYTON, would speak to an amendment he and I have coauthored that has gained some concern in a variety of quarters as to the impact it might have on a trade promotion authority we might be able to pass out of the Senate. I think the Senator from Minnesota has spoken very clearly and articulately about the problems he and I and all States face—the frustration we have with blending domestic markets and international markets.

I certainly am a strong advocate of trade. I always have been. At the same time, I want it to be balanced and I want it to be fair. When there are disadvantages—and we have just seen one that this administration has spoken to in an area that is of great concern to the Senator from Minnesota and myself, and that is in timber, where Canadians had a unique advantage and were dumping in our market, and we finally spoke up, stepped up, put a duty on, and said back off, let us see if we can find an agreement. It is only with the use of the tool of trade remedy that we are now able to get the Canadians to blink and to think about possibly coming to the table to craft a fair and equitable agreement. That is exactly what our amendment would do.

Some would suggest, at least by rhetoric, it is a very damaging amendment to trade promotion authority. What I thought I would do is read a letter that 62 Members of the Senate signed and sent to the President on May 7 of last year, when in fact our trade representatives have been in Doha, Qatar, negotiating new trade agreements and the rest of the world said: You have to put your remedies on the table, you have to negotiate them down or away or we are not going to deal with you.

What we are saying is bring it all to the table, talk about it. We believe that as the legislative branch of Government that crafts public policy, we ought to have a right at some point to be able to speak to it, instead of taking it all or take none of it, which is, of course, what happens under TPA or fast-track authority.

Once a trade agreement is negotiated and if the executive branch of government in some way has negotiated down or altered trade remedy authority, and the package comes to the floor, then the pressure of the world is upon the Senate. Take it all or take none of it. Those are the only two options. Of course, the pressure is to take all of it because it is believed the advantages gained by these trade agreements are so powerful to the American economy—and in many instances they are—that we cannot deny it. Ultimately they pass, even though the administration, Democrat or Republican, may well have negotiated away some of our authority and our ability under the law.

This is what we said to the President May 7:

We are writing to state our strong opposition to any international trade agreement that would weaken U.S. trade laws, key U.S.

trade laws including antidumping law, countervailing duty law. Section 201 and section 301 are critical elements in U.S. trade policy. A wide range of agricultural and industrial sectors have successfully employed these statutes to address trade problems. Unfortunately, experience suggests that many other industries are likely to have occasion to rely upon them in future years. Each of these laws is fully consistent with U.S. obligations under the World Trade Organization and other trade agreements. Moreover, these laws actually promote free trade by countering practices that both distort trade and are condemned by international trading rules. U.S. trade law provides American workers and industries the guarantee that if the United States pursues trade liberalization, it will also protect them against unfair foreign trade practices and allow time for them to address serious import surges. They are part of a political bargain struck with Congress and the American people under which the United States has pursued market opening agreements in the past.

What does the Craig-Dayton/Dayton-Craig amendment do? It guarantees we can speak to that if those kinds of relaxations or changes in the laws come back to the Senate. And we can speak to it without dumping the entire trade agreement.

I don't think we want to do that. Ours is to promote an ever-expanding, freer trading world market. At the same time, we do not want to disadvantage our own economy, destroy our own producers' capability, damage the workhorses of this country, all in pursuit of the idealism or the goal.

We went on to say:

Congress has made it clear its position on this matter. In draft fast-track consideration considered in 1997, both the House and Senate have included strong provisions directing trade negotiators not to weaken U.S. trade laws. Congress has restated this position in resolutions, letters, and through other matters. Unfortunately, some of our trading partners, many of which maintain serious unfair trade practices, continue to seek to weaken these laws.

Why? They want access to the largest, richest consumer market in the world. They don't want us to force them to be fair, for them to be balanced, and for them to come in in a transparent negotiated environment. That is what we are asking. That is what this amendment requires.

We went on to say:

This may simply be postponing by those who oppose further market opening. But whatever the motive, the United States should no longer use its trade laws as bargaining chips in trade negotiations nor agree to any provision that weakens or undermines U.S. trade laws.

Now, that is May 7, 2001; 62 Senators signed, Republican and Democrat.

The amendment we bring to the floor, or hope we have the opportunity to bring to the floor, is supported equitably. We have 26 cosponsors, 13 Democrats and 13 Republicans.

What do we do? We simply create a point of order that says if the administration changes trade remedy laws, they, by the current proposal, must notice us that they have done so, and in so doing they have to come back and fully defend it. If they can convince us,

then we support it. If they cannot, then a point of order rests against it. Why? Because we are the ones who craft public policy. We will not deny or walk away from our constitutional right to do so. At the same time, we are fully willing to allow our negotiators to engage all of the rest of the trading countries of the world to bring any trade agreement with any proposed changes in it because ultimately it is our job in the Senate under our constitutional form of government to accept or deny that by ratification or by voting it down.

Mr. DAYTON. Will the Senator yield?

Mr. CRAIG. I am happy to yield.

Mr. DAYTON. There have been certain characterizations made about those who are advocates for this amendment. I ask the Senator if he believes these characterizations apply to himself: That those who support the amendment are against trade of almost any kind, that we are against the administration, we want to be obstructionists to the administration's trade policies, and that we are xenophobic, against the rest of the world. Does the Senator consider himself as fitting in any of those categories? I don't consider myself to fit into those categories.

Mr. CRAIG. I don't know how anyone serving the Senate, which is for an expanding economy, for greater revenues, for workers and for producers—and of course we will tax a little of that—would be against trade.

Clearly, the future of our economy is trading in a world market. I have watched my State of Idaho grow from an agrarian economy of agriculture, timber and mining, to a very diverse economy today of electronics, the high-tech industry, and food processing. Almost half of everything an Idaho worker produces has to sell on the world market to be profitable, to allow that person his or her job and to continue the success of that company. That is also true in Minnesota. It is also true everywhere else in the country.

What the Senator is saying and what I am saying is, in the case of Canada and softwood lumber—and they have a distinct advantage and dump in our markets, putting our people out of work—we say, wait a minute, stop; balance this field out a little bit and create fair trade by that kind of balance. That is what our amendment allows—a balancing of the process. What is most important that our amendment allows us, as policymakers, is a right to have a voice in that process. Not the take-it-or-leave-it strategy that doesn't work in the end.

I wanted to vote for NAFTA. I voted against NAFTA. Why? Extraneous environmental, extraneous labor agreements that should not have been part of a trade agreement. It had no choice. There was no flexibility. Take it or leave it.

Instead of working to create a balanced economic environment that would have allowed freer but fair and

balanced trade across the Mexican and Canadian border, we did not have that opening. That is an opening we ought to have.

What I do not want to deny, and I think the Senator from Minnesota agrees, I don't want to deny our negotiators from going to the table and being able to negotiate any agreement. They ought to have the full freedom and flexibility to put anything and everything on the table and to bring anything and everything back to us. In the end, under our constitutional form of government, we are the ones who have to make the decision. They are the ones who negotiate. That is the kind of balance that I think is important.

The PRESIDING OFFICER. The Senator from Maryland.

### STEEL TRADE POLICY

Ms. MIKULSKI. Madam President, I am very concerned about some actions that were taken yesterday. Guess what. On May 8, the administration issued its statement of administration policy on the trade bill. I was looking forward to that because I thought George Bush was a friend of the American steel industry. I was absolutely shocked to read that policy and find out the administration opposes the provision to provide a safety net for American steel retirees. I was shocked because just a few months ago, President Bush stood up for steel when he issued those temporary steel tariffs, and I thought we could count on him now as we were working our way through the Trade Adjustment Act.

I was taken aback to hear the opposition to the amendment that Senator ROCKEFELLER and I have, that provides a very modest temporary bridge to help steel retirees keep their health benefits until we can work out a larger compromise.

This statement is terrible. It abandons the steelworkers. It abandons steel retirees. It is just plain wrong. We do need steel and we do need steelworkers. They are suffering at the hands of unfair trade competition, and George Bush's own administration helped us document that. That is what is so breathtaking.

On one hand we have done it, and then on the other hand we said even though steel companies are in bankruptcy because of unfair trade practices, we will not help the steelworker retirees keep their health benefits.

I am fighting for American steel, those steelworkers and those retired steelworkers who, after years of hard work, believed that by working down in the mills they would have security for their families in retirement. Those widows who sent their husband off to the mills every day, like Bethlehem Steel in my own hometown, with pride and love and a lunch bucket thought that they could count on their pension and their health care.

These are the true victims of years of unfair trade practices. Year after year,

we debate trade and people say: Well, I am for fair trade. I don't know when trade gets fair. I just never know when trade is going to get fair. I have been a Member of the U.S. Congress for 25 years and I have never seen a trade deal that came out fair yet.

What are the consequences of that? People losing their pensions, people losing their health care, and people losing their jobs—this is unfair trade. People have been injured by these practices and I want to help them.

I heard the stories of my steelworkers and the retirees. I have been to the rallies. I have been to the meetings. I have been down to the union halls. I even held a hearing on this topic. I heard their stories about their fear of losing their health care and their pensions.

I met, at my hearing, Gertrude Misterka. She is a woman my own age, from my own hometown of Baltimore, who is terrified she is going to lose her health care. Her husband Charlie died 5 years ago. He worked at Bethlehem Steel for 35 years. He was loved by his wife, a friend to his fellow steelworkers. He is greatly missed.

The Misterkas thought that after 35 years of working at Bethlehem Steel, they would have a secure future. Charlie thought his wife would be taken care of even after his death. He was a good, kind guy.

Let me tell you about her. She has diabetes, high blood pressure, and asthma. She pays \$78 a month for her health care premium. Even with this coverage she pays \$100 monthly for her prescriptions.

But let me tell you, because of being a diabetic, because of having complications around diabetes, guess what her prescription drug bill is every year: \$6,716.16. You tell me what is going to happen to her if she loses her health insurance.

Oh, yes, let's give somebody a tax credit or a voucher to go into the private market. You tell me how Gertrude, at age 65, with diabetes and all the complications, is going to go shopping. Medicare Choice has already collapsed. HMOs are not of any value to her. Nobody will take her because of her preexisting condition.

Listen, we have to do something to help her and to help all others like her. I promised that I would fight to help her keep her health care. Families who worked hard for America and spent all those years at backbreaking work should be able to count on us.

These costs will only go up as prescription drug costs continue to skyrocket.

I listened to Mrs. Misterka that day, and my heart went out to her and all the women like her. I promised her that I would fight to help current and retired steelworkers and their families—families that need a safety net so they don't lose their healthcare overnight if their companies go under; families who worked hard for America, some for nearly 50 years of back-break-

ing work in the hot mills and the cold mills; and families that now need our help.

America's steel industry is in crisis. American steel companies are filing for bankruptcy protection—31 since 1997, including 17 in the last year alone.

Steel mills are shutting down. In the last year, at least 40 mills and related facilities have been shut down or idled. The closed mills represent nearly one-fifth of America's steelmaking capacity.

Steelworkers are losing their jobs. Nearly 47,000 steelworkers have lost their jobs since 1998, including about 30,000 in the last year alone. We now have less than half as many steelworkers as we did in 1980. Most of these jobs are gone for good.

The cause of this crisis is well-known. Unfair foreign competition has brought American steel to its knees. Foreign steel companies are subsidized by their governments, and they dump excess steel into America's open market at fire sale prices.

This isn't rhetoric. This is fact.

Last year, the International Trade Commission unanimously found that "a substantial part of the industry is being injured by increased imports" under section 201 of the Trade Act.

As Commerce Secretary Evans said last June:

For over 50 years, foreign governments have distorted the market through subsidies of their steel industries.

The Russian Government keeps about 1,000 unprofitable steel plants open through subsidies. South Korea has nearly doubled its production capacity since 1990 without the domestic demand to support the increase.

Millions of tons of foreign steel are sold in the United States every year below the cost of production to keep these subsidized foreign mills in business.

America's steel industry is under siege and has been under siege for decades. They've been fighting an uphill battle against competitors that don't play by the rules.

The true cost of foreign steel sold at "bargain" prices is lost American jobs, is broken promises to American workers, and threats to American security.

Why is steel important?

Steel built America, the railroads and bridges that keep our country connected, the cars and trucks and buses and trains that make our Nation move, the buildings where we live and work and shop and worship, and the ships, tanks and weapons that we need during times of war. Yet saving steel is not an exercise in nostalgia.

President Bush said:

Steel is an important jobs issue, it is also an important national security issue.

I couldn't agree more.

The distinguished ranking member of the Appropriations Committee and of its Defense subcommittee, Senator STEVENS, recently made this point eloquently here on the Senate floor:

During World War II, he said, 'we produced steel for the world. We produced the steel for

the allies. We rebuilt Europe. We built the tanks in the United States, and the planes and the ships that saved the world.' Could we do it again?

That is a serious question.

Bethlehem Steel's Sparrows Point plant near Baltimore recently produced the steel plate to repair the USS *Cole*. It is the only mill in America that still produces the armor plate for Navy ships.

America must never become dependent on foreign suppliers—like Russia and China—for the steel we need to defend our nation and freedom around the world. But we are headed in that direction. Already, the United States is one of the few steel-producing countries that is a net importer of steel.

America imported more than 30 million tons of steel last year.

President Bush took an important first step to help America's steel industry by imposing broad temporary tariffs on imported steel.

I was disappointed that the tariffs are 30 percent or less—phased out over the 3 years they are in effect rather than 40 percent tariffs for 4 years the steel industry and steelworkers sought. I was disappointed that the tariffs don't cover slab steel. But I appreciate the President's action under section 201.

Tariffs are an important step to give America's steel industry a chance to restructure and recover with some protection from the deluge of below-cost foreign steel, but they are not the only step needed to help American steel.

The tariffs help the industry. Now it is time to help the workers and retirees who will lose their healthcare if their companies go under.

The Daschle amendment provided a temporary 1-year extension of health benefits to qualified steel retirees.

The health care extensions for steel retirees are similar to TAA health care benefits for workers who lose their jobs as a result of trade agreements. Workers could have 2 years of health care benefits. Retirees would only have 1 year of benefits.

Just like the temporary tariffs give the companies breathing room to recover, a temporary extension of benefits give workers and retirees breathing room to find a long-term plan. It gives them time to plan—time that the workers and retirees of LTV didn't have. They lost their benefits overnight.

Supporting producers is in the national interest. The policy of our Government is to support producers when it is in the national interest. National interest means national responsibility. It is important to support farmers to make sure we have the producers to be food-independent.

I am happy to stand up for our farmers whether they are chicken producers on the Eastern Shore or corn growers in the Midwest.

We spend about \$19 billion a year on farmers—\$656 billion over the past 10 years. This does not include \$17 billion

in emergency appropriations for our farmers, and it looks like these subsidies are increasing.

Congress passed a \$100 billion farm bill. The President said he will sign it. It calls for a \$73 billion increase in farm subsidies over the next 6 years.

This farm bill includes a \$3 billion subsidy for peanuts, up to \$30,000 per farmer for livestock subsidies, and a \$3 billion subsidy for cotton.

Since 1996, we have provided over \$5 billion for cotton producers—three-quarters of those funds went to just 18,000 farmers. I love cotton. It is the fabric of our lives. But cotton is not more important than steel.

I have supported aid to farmers. So have most of the opponents of steel. I would ask them why. Why do farmers get bail-out after bail-out, yet our steel workers can't get this modest help?

Farmers work hard, but no harder than steelworkers. Farmers provide vital commodities. So do steelworkers. Our Nation must never be dependent on foreign food, and it must never be dependent on foreign steel.

It is not just farmers. Congress gave the airlines \$15 billion after September 11 because of a national emergency. That was the right thing to do. Now, we need to stand up for steel.

Make no mistake, this is a national emergency for steel. Standing up for steel is in the national interest just like farmers, just like airlines.

I was moved by the stories of Mrs. Misterka and others at the hearing a few weeks ago as was everyone in the hearing room. I feel very close to these workers and retirees. I grew up down the road from the Beth Steel mill in Baltimore. My dad had a grocery store that he opened extra early so the steelworkers on the morning shift could come in and buy their lunch. The workers at Beth Steel weren't units of production, they were our neighbors. They are our neighbors.

And what did we know about the Bethlehem Steel Plant? It was a union job with good wages and good benefits so our neighbors could go to work, put in an honest day, and get fair pay back to raise their families and pursue the American dream.

We were all proud of our workers at Bethlehem Steel. In World War II and Vietnam they rolled gun barrels, made steel for grenades, provided steel for the shipyards that turned out Liberty ships very 3 weeks. Today, Beth Steel made the steel plates to repair the USS *Cole* after the terrorist bombing damaged the ship.

Most of Beth Steel workers are Beth Steel workers for their entire careers—30, 40, 50 years on the job, every day despite the aches and pains, the bad back, the varicose veins that age steelworkers beyond their years. Their commitment to Beth Steel is a commitment to America doing the work that needs to get done for fair pay and a secure future. The futures that once looked secure are now at risk through no fault of their own. It is time we

stand up for steelworkers and help them in their time of need just like they helped America every step of the way.

This is not the end of the story. I will continue to fight for America's steel workers.

Mr. DASCHLE. Mr. President, I thank the Senator from Maryland for accommodating both Senator LOTT and me as we talk about the current circumstances involving the pending legislation.

Let me also say how much I share her point of view. Maybe I am not able to demonstrate the same passion as Senator MIKULSKI has indicated, the strength of feeling that she has about the issue involving her steelworker retirees—but I certainly share her conviction.

#### TRADE ADJUSTMENT ASSISTANCE AGREEMENT

Mr. DASCHLE. Mr. President, as we have been noting throughout the last several hours, a number of our colleagues have been in discussion and negotiation involving the trade adjustment assistance part of the package that is pending before us. I am very pleased to announce that an agreement has been reached. The agreement is one that involved the administration, Republicans, and Democrats who have been involved in this issue for some time now.

I might just briefly outline it. I will leave to the manager of the bill and the ranking member to discuss the matter in greater detail tomorrow morning.

As I understand it, they intend to lay down the amendment tomorrow. It will be, then, the pending business.

I also encourage Senators to offer amendments tomorrow and Monday. Senator LOTT and I have discussed the schedule. I am prepared to say as a result of this agreement that there will be no votes tomorrow, but I encourage Senators to avail themselves of the opportunity they now have, tonight or tomorrow or Monday, to offer amendments.

We will consider votes for those amendments on Monday night. We have already announced there will be a vote on a judge at 6 o'clock on Monday. We can accommodate additional votes immediately following that vote, should amendments be offered and should we be in a position, then, to dispose of them by Monday afternoon.

But the agreement has a number of components. The trade adjustment assistance for more workers—that will provide at least 65,500 new workers with trade adjustment assistance, according to the reports that I have just been given, unprecedented health care coverage for harmed workers, a 70-percent COBRA subsidy for tax credit for employers and other institutions, and benefits that match the 2-year training period. Workers would receive income assistance for at least 18 months while they were retraining for up to 2 years.

Then there also would be wage insurance for older workers as well.

There are a number of components. I will not speak at length about the specifics of the package until the agreement is ready to be presented tomorrow morning. But I hope the final formulation of the language to accommodate this agreement can be prepared so that the amendment will be provided for all colleagues tomorrow, will be offered, and will be part of the pending business as we consider amendments to this, and other amendments.

Senator LOTT and I have agreed that there would be an understanding that as this package is agreed to as it relates to those issues involving TAA, we would entertain it.

There is also an understanding that an amendment that would allow for consideration of assistance for retired steelworkers for health purposes would be entertained. And we will have that debate, and an amendment will be offered. A point of order, of course, will be made against my language. And we understand that. Once that point of order has been made, this compromise package will be offered.

I am appreciative of the work that has gone into reaching this agreement. I am disappointed, obviously, that we couldn't do more. But I am also appreciative of the fact that we have to move on and that Senators who wish to offer other legislation are entitled to do so.

I thank all of my colleagues for the effort that has been made. I hope this will now accelerate our prospects for completing this bill and allowing us to address the deadline that exists for the Andean Trade Preference Act especially.

I yield.

Mr. LOTT. Mr. President, just a couple of clarifications, and a statement of what I believe our understanding is:

First of all, I believe—we talked about this earlier—there still needs to be a point of order made against the package that was filed, and there would be enough votes to sustain that point of order.

Mr. DASCHLE. Mr. President, in response to the Republican leader, it would not be my desire to challenge the point of order.

Mr. LOTT. When the point of order is made, at that point we will move forward with the agreement we have in regard to TAA. Amendments would be in order on the rest of the underlying package, TPA, trade promotion authority, and the Andean Trade Preference Act. Is that the Senator's understanding?

Mr. DASCHLE. Mr. President, the Senator is correct.

Mr. LOTT. We have had an opportunity to quickly review the components of this compromise agreement. It has been a bipartisan effort. The administration has had input. I believe all parties are agreed to support it. There could still be amendments that would be offered, or entertained, as

Senator DASCHLE said. But I believe the negotiators are prepared to defend the agreement and oppose amendments that would change that.

I want to state very firmly that it would be my intent to do the same thing. If we don't do that, we begin to pick apart the agreement, and then there is no agreement.

But I believe good work has been done. All parties have made some concessions. I think, though, that it is going to have significant assistance for those who need this transition assistance, and this will set a process up that can get us a bill.

I hope Senator DASCHLE will join me in opposing amendments that could undermine the agreement which we have.

Further, I observe that I am glad we will be having votes on Monday. I think we are going to have to do serious work. I understand Senators have amendments on both sides that will be offered. But we do need to try to finish the bill next week. I think we are going to have to look at how we are guaranteed that is done while Senators have a chance to make their case. That is a delicate balance, as is everything in the Senate. It always takes understanding and cooperation, and we are going to do that.

Senator DASCHLE and I both are going to have to provide leadership with which our entire caucuses won't always agree. But that is how business is done. I think we have done the right thing here. I intend to support this agreement and work on getting this very important legislation completed.

I yield the floor.

Mr. DASCHLE. Mr. President, I wish to make one clarification which Senator LOTT and I have already made. I said this privately, but I want to say for the record that I will oppose an amendment to improve this package or to detract from this package on trade adjustment assistance.

Obviously, we are open to consider amendments on other matters relating to the bill. But on this particular package, the one additional part of the agreement that I stated—and I want to reiterate again—is there is an understanding that Senators would be free to offer amendments having to do with steelworkers. I intend to support that amendment. I have indicated that to Senator LOTT. But that is outside of this agreement. That was part of the understanding we had as this negotiation was completed.

I wanted to make that clarification.

I will say for the record what I said privately to Senator LOTT. That amendment will be part of the overall debate on the bill, and I do intend to support it.

I yield to the Senator from Maryland.

Ms. MIKULSKI. Mr. President, I think the majority leader stated or clarified what my questions were.

As I understand it, there is a compromise but the compromise does not include a bridge to help steel retirees.

But part of the conversation was that a steel retiree amendment would be in order. I believe we will have the support and votes. Senator ROCKEFELLER and I intend to offer an amendment at an appropriate time.

I also support the majority leader when he said he would not ask for a rollcall vote on the point of order.

As of yesterday, I wanted a rollcall vote, to drag it out, and raise the roof. But then it would be parliamentary tactics.

I think this topic is so serious that for the good of the Nation, and for the way I feel about my steelworkers and those who have been hurt, I don't want to engage in a time-consuming and dilatory practice.

I will not ask for a rollcall vote now that we have an assurance that we will be able to offer our amendment. I thank the leader for his advocacy on that.

I wanted to be clear that I will not ask for a rollcall on the point of order, so that we can get to the compromise and get to the amendments, and maybe get to really helping those people who have been injured by trade.

I have other comments I want to make about steel. I think I will save those for my statement later on about why they are in this crisis, why this is a national security issue, and why it is an economic security issue.

I think we are going to have a framework for proceeding on an amendment. Senator ROCKEFELLER and I will be able to offer that, if not tomorrow, over the next coming days.

I yield the floor.

Mr. LOTT. Mr. President, I don't want to dice and slice there too closely, but I want to clarify that the negotiators and I believe Senator DASCHLE and I are prepared to support the components of this compromise agreement even though not all of it was in the TAA area. Obviously, other amendments may be offered on trade promotion assistance, and we will have an opportunity to offer those. But we will defend the components of the compromise.

Mr. DASCHLE. Mr. President, that is true. I said a moment ago that it is my intention to oppose amendments—with the clarification I made on the steel issue—that would alter this agreement with all of its components. I think Senator LOTT and I are in agreement on that. That is the intention of leadership as amendments are offered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, what is the pending business?

CONCLUSION OF MORNING  
BUSINESS

The PRESIDING OFFICER. Morning business is closed.

ANDEAN TRADE PREFERENCE  
EXPANSION ACT—Continued

Mr. LOTT. Now, Mr. President, the pending business will be the trade bill?

The PRESIDING OFFICER. The Senator is correct. The pending business is the trade bill.

## AMENDMENT NO. 3386

Mr. LOTT. Mr. President, the Daschle amendment No. 3386 exceeds the Finance Committee's allocation of budget authority and outlays for fiscal year 2002 and breaches the revenue floor for fiscal year 2002, fiscal years 2002 through 2006, and fiscal years 2002 through 2011. I raise points of order against this amendment under sections 302(f) and 311(a)(2)(b) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The point of order is well taken, and the amendment falls.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 10 minutes each.

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

## FARM BILL

Mr. SPECTER. Mr. President, once again, the principal reason I have sought recognition has been to comment on my "no" vote on the farm bill, which was passed yesterday. Even though there are some parts of the farm bill which I liked, I have, on balance, decided to vote "No" because of the excessive cost which favors big corporate farmers and provides unreasonable subsidies to cotton, soybean, wheat, rice and corn.

When I voted for the farm bill in the Senate, the cost was \$73.5 billion over current spending for farm programs. However, the conference report came in at \$82.8 billion for a total of approximately \$190 billion total over 10 years which is, simply stated, far too expensive. The United States no longer enjoys a projected surplus of \$5.6 trillion over the next 10 years. In fact, there is a deficit of \$130 billion expected by the end of this fiscal year.

Projecting the costs of this farm bill, it may be necessary to invade the Social Security trust fund, probably abandon plans for adequate prescription drugs for senior citizens and encroach on necessary appropriations for many priority items, including defense, education and health care. When I chaired the Appropriations Subcommittee for Labor, Health & Human Services and Education, and now in my capacity as ranking member, I have seen the great need for funding for the National Institutes of Health and other health programs as well as education and worker safety. Without enumerating many other programs, there are obviously high priorities which will be impacted by the costs of this Farm Bill.

I am especially concerned about payments to large corporate farmers. The distinguished ranking member of the Agriculture Committee, Senator LUGAR, has stated that more than \$100 billion will go to farm subsidy payments over the next 10 years, with two-thirds of payments going to just 10 percent of the largest farmers who grow primarily corn, soybean, wheat, rice and cotton. This policy will likely encourage further market concentration.

This bill encourages over-production with the resultant consequence of yet lower prices leading to more subsidies. This Bill will further have an adverse impact on international trade by providing expanded and unpredictable levels of support, which increase the likelihood that the United States might breach the farm subsidy limitations it agreed to in the 1994 world trade agreements. Further, the bill's expanded supports have caused our trading partners to question our sincerity on future reductions in farm spending.

There are some portions of the bill which I favor, such as the new national dairy program, expanded Food Stamp Program, including providing food stamps to legal immigrants, and the many positive environmental and conservation measures that are very effective in Pennsylvania. I am pleased to see the new national dairy program, but it falls short of the proper legislation which is embodied in my bill, S. 1157, which would create permanent dairy compacts in the Northeast, as well as the South, Northwest and Inter-Mountain regions. While the dairy provisions will be of help, Congress is missing an opportunity to create a long-term dairy policy through the compacts which would have no cost to the taxpayers.

## GUN TRAFFICKING IN AMERICA

Mr. LEVIN. Mr. President, I have spoken previously about the problem of gun trafficking. In June of 2000, the Bureau of Alcohol, Tobacco and Firearms released "Following the Gun: Enforcing Federal Laws Against Firearms Traffickers." This report examined 1,500 ATF gun trafficking investigations documenting that more than

84,000 guns were diverted to the illegal market and were often later used by criminals to commit violent crimes. In addition this report showed that investigations involving gun shows and corrupt gun dealers involved the highest numbers of trafficked guns. However, some good news did come out of this report. At the time of its publication, the report concluded that ATF gun trafficking investigations led to the prosecutions of more than 1,700 defendants. Of these cases, 812 defendants were sentenced in federal court to a total of 7,420 years in prison, with an average sentence of nine years.

Gun trafficking has also been a problem in my home state of Michigan. According to Americans for Gun Safety's analysis of ATF Trace Data from 1996–1999, over 40 percent of the guns traced to crimes committed in Michigan in 1998 and 1999 originated in other states, a much higher rate than the national average. The largest number of out of state suppliers of guns to Michigan during the same period were from Ohio, Kentucky, Georgia and Alabama.

The ATF's report and these statistics demonstrate that criminals are not only gaining access to guns, but are able to smuggle them into the hands of other criminals who use them to commit violent crimes. This kind of activity can be stopped by vigorously enforcing our gun laws, providing law enforcement with more tools to crack down on gun trafficking, corrupt gun dealers and other armed criminals, and by passing sensible gun safety legislation.

FARM SECURITY AND RURAL  
INVESTMENT ACT OF 2002

Ms. SNOWE. Mr. President, I rise today in support of the Farm Security and Rural Development Act of 2002. While previous farm bills have provided very little for the State of Maine and the New England region, I am pleased that the conference report before us, while by no means perfect, provides for a more equitable treatment for the farmers in Maine and the Northeast. I have been in touch with the farmers and growers in Maine throughout the development of the 2002 Farm bill, and they, like I, believe the Northeast has been shortchanged in past Farm bills.

The State groups, such as the Maine Potato Board, the Maine Wild Blueberry Commission, the Maine Farm Bureau, the Maine Apple Growers, the Northeast Dairy Coalition, the Directors of the State's Farm Service Agency and Maine Rural Development, and the State Conservationist at the National Resource Conservation Service, believe that this conference report starts us down a path toward regional equity from which I would hope we will not stray in the future development of farm policies.

In addition, on May 6, Commissioner Robert Spear of the Maine Department of Agriculture wrote me similar thoughts, stating that, "I believe it is

a good improvement over the so-called Freedom to Farm. The bill strengthens the safety net for all farmers, it more equitably distributes Federal farm dollars and it provides strong incentives to improve stewardship". I would like to submit Commissioner Spears' entire letter for the RECORD.

First and foremost, this past year, I made a pledge to the dairy farmers of Maine that I was committed to see that the safety net they had through the now expired Northeast Interstate Dairy Compact would not be pulled out from under them. This has been my top priority for maintaining a way of life in our rural communities, and I am pleased that the Farm bill provides for a dairy program modeled on our Dairy Compact.

I have stated numerous times on this floor that I would have much preferred that the Northeast Interstate Dairy Compact be reauthorized along with the inclusion of those Northeast States that surround New England that want to join the compact to ensure that people in the region can get fresh, low-priced fluid milk in their grocery stores. In contrast to the provisions contained in the conference report, the beauty of the Northeast Dairy Compact was that it required no Federal funding.

Under the conference report, dairy farmers will get monthly payments over the next 3½ years when the price of fluid milk drops, not yearly as other commodity programs, but monthly checks that come only when prices are low, and at the very time the producers need a better cash flow to keep the farm and their dairy herds going, as the Northeast Dairy Compact provided.

I am very pleased that the dairy funding provided is retroactive to December 1, 2001, as it corresponds with the time when milk prices started to drop in New England and continue to remain low. The dairy farmers in my State will be able to count on approximately \$3.2 million in added income from last December through this coming July, when it is predicted that prices may start to climb. These payments may literally save some of our small family farms as the Northeast Compact has done in past years, and I urge the USDA to get these retroactive payments out to the dairy farmers just as soon as possible.

In the future, when the price of fresh fluid milk drops below \$16.94 per hundredweight, our dairy farmers will receive 45 percent of the difference of that price and the current price of the fluid milk. This will apply to the first 2.4 million pounds of production of fluid milk or for a dairy herd of around 135-140 cows, a small family farm that has forged a way of life in New England for three and four generations.

Not only has the dairy safety net been an important provision for me, but a substantial increase in funding for voluntary agriculture conservation programs has been a priority as well. Like the environmental groups I have

worked with, such as Environmental Defense and the Environmental Working Group, I am disappointed that the conferees did not keep the Senate's higher funding numbers for funding to farmers to promote conservation in each of our States. But, I am pleased that there is still an 80-percent increase overall for conservation funding in this conference report.

The funds going to Maine will at the very least be quadrupled, estimated to be close to \$23 million by 2005. This is very important funding for a State that is facing pressures from the environmental impacts of growth and sprawl and pressures to preserve open spaces, and also the need to conserve our water resources, in some cases to restore the habitats of the now endangered Atlantic salmon in eight Downeast rivers, a few which flow through the heart of our Maine Wild Blueberry fields where water is important to both.

The conference report also provides \$1.03 billion in mandatory funding for rural development programs. Under the Rural Development Community Water Assistance Grant Program, for instance, Maine will receive \$3 million of the \$30 million in mandatory funding through 2011 to address drought conditions by making rural areas and small communities eligible for grant funding where there is a significant decline in quantity and quality of water.

This funding is particularly critical when considering that, like many States on the East Coast, Maine has been experiencing an extended period of drought, so the funding that helps residents deal with drought conditions is of great importance. There are, according to the Maine Emergency Management Agency, 1,700 wells that have now gone dry in the State. Total precipitation for 2001 was the driest in 108 years of precipitation monitoring in the State. Precipitation has actually been below average for 22 of the last 24 months, and while we have been helped somewhat by recent snow and rain, NOAA's National Weather Service climate forecasters see limited relief from the drought in the months to come.

Also, the Rural Water and Waste Facility Grants will provide Maine with up to \$90 million over 10 years of additional resources to assist small rural communities with their drinking water and wastewater needs. Reauthorization of Rural Development Programs through 2011 will provide Maine with at least \$1.5 million over 10 years for regional planning activities and technical assistance to small businesses.

Grants to non-profit organizations will be provided to finance the construction, refurbishing, and servicing of individually-owned household water well systems in rural areas for low or moderate income individuals by providing resources to community based organizations to help families with severe drinking water problems.

There are provisions to train rural firefighters and emergency personnel

to assist small communities in Maine with homeland security issues, to support the rural business investment program, and \$80 million for loan guarantees to provide local TV signals to rural areas.

In regard to the Rural Empowerment Zones, Rural Enterprise Communities, and Champion Communities for Direct and Guaranteed Loans for Essential Community facilities, the city of Lewiston, ME, will now be eligible to take advantage of the benefits of Community Facility Direct and Guaranteed Loan Programs. Lewiston was one of only two communities nationwide specifically named in the Farm Bill Conference Report.

For agricultural research, the conference report expands the Initiative for Future Agriculture and Foods Systems, important to the University of Maine as a real new source of research and development funding. The University has competed successfully for these grants in the past and currently has a \$2 million IFAFS grant for looking at small integrated farm systems, along with being cooperators of several other IFAFS grants around the country.

For the promotion of Maine value-added agricultural products around the world, the Market Access Program will be increased to \$200 million annually by 2006, which is up from the current funding of \$90 million. The MAP has been invaluable in helping to advertise the quality of our Maine potatoes and wild blueberries, helping growers to market their products abroad. Another \$20 million is provided to help growers of fruits and vegetables and other specialty crops combat trade barriers. In addition, \$200 million is provided to purchase agriculture products for the School Lunch Program, and products listed as eligible for the program are potatoes, blueberries, and cranberries, all grown in the State.

Funding for 15 underserved States, of which Maine is one, is doubled, now set at \$20 million annually for fiscal years 2003-2007 for marketing assistance, organic farming, pesticide reduction projects, and conservation assistance to help farmers sustain their working lands.

Somewhat overlooked in the conference report is a newly created title that was included in the Senate-passed bill for energy efficiency and conservation, providing \$450 million for research on bio-based fuels, a Federal biofuels purchasing program and efficiency measures that can make renewable energy the cash crop for the 21st Century.

To help decrease the country's reliance on foreign oil imports, a competitive grant program will support development of biorefineries for conversion of biomass into fuels, chemicals and electricity. A biodiesel fuel education program will be funded at \$1 million a year. The conference report will also establish a competitive grants program for energy audits and renewable energy



development assessments for farmers and rural small businesses.

In addition, \$23 million a year from 2003 to 2007 is provided for a loan, loan-guarantee and grant program to help farmers, ranchers and rural small businesses purchase renewable energy systems and make energy efficiency improvements. Also authorized is the continuation of the Commodity Credit Corporation bioenergy program and includes animal byproducts and fat, oils and greases as eligible commodities.

A competitive grant program is established to support development of biorefineries for conversion of biomass into fuels, chemicals and electricity. A biodiesel fuel education program would be funded at \$1 million a year.

Of great interest to many small forest landowners in Maine is a provision in the conference report's forestry title for \$100 million in obligated funds for the Forest Lands Enhancement Program, which will provide financial and technical assistance to small, private, non-industrial forest landowners for a variety of good management practices.

The conference report also includes critical increases and updates to the nutritional safety net for America's families. The food stamp program fulfills an important need for millions of people nationwide and, thanks to the \$6.3 billion in new dollars over the next 10 years for this program that is included in the conference report, countless additional needy families in Maine will be served by this program.

I am certain that I am not alone when I hear complaints from my State about the administrative difficulties and barriers inherent in Federal programs, and the food stamp program is certainly one that has been in need of simplification. The conference report allows States to simplify and reduce their reporting requirements, and allows States to use a common definition of what counts as income similar to other public assistance programs, and are two essential components for streamlining the administrative burden associated with these benefits.

Through the last farm bill established in 1996, which is better known as the Freedom to Farm Act, Congress tried to establish a new system of price and income supports for commodities that would lead to a shift toward a more market-oriented agricultural policy by gradually reducing financial support. Unfortunately, we had no crystal ball to tell us that export markets and farm prices would decline. This precipitous situation had Congress enacting four different supplemental measures from 1998 through 2001 that provided an additional \$23 billion in non-disaster related farm income commodity assistance. We simply are not being fiscally responsible by continuing to do commodity farm bills on an ad hoc basis, and the conference report will hopefully prevent the need for ad hoc non-disaster supplementals in the future.

For the 2002 farm bill, I strongly supported the amendment that passed in

the Senate farm bill that capped farmers' payment limitations on commodity crops at \$275,000 over the House version that had payments capped at \$550,000, and I am not pleased that the limitation was raised in conference to \$360,000 and the language was weakened on eligibility. I do not represent a State that raises an appreciable amount of commodity crops, so I cannot speak to the funding importance for those in the heartland of the Nation and in the South, but I do know what is important for my State and everywhere I look in this Farm Bill Conference Report in the non-commodity titles, I see funding provisions that will bring opportunities to every corner of the State of Maine.

Specifically, I ask unanimous consent that a letter of support from the Maine Potato Board be printed in the RECORD, that expresses my feelings well about how important the increased funding for conservation, rural development, and the Market Access Program are to Maine. Part of what Don Flannery, executive director said was "... there are concerns that we all have with the bill but we also believe there are many direct benefits to Maine potato growers and Maine agriculture."

On balance, I would be remiss to the agricultural and conservation communities in Maine to dismiss this bill or to dismiss President Bush's commitment to U.S. agriculture to sign the 2002 farm bill into law. I am casting a yes vote for the rural communities and for the farmers of Maine who are the backbone of the State's economy.

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

MAINE POTATO BOARD,  
*Presque Isle, ME, May 8, 2002.*

Hon. OLYMPIA J. SNOWE,  
*Russell Senate Office Building,*  
*Washington, DC.*

DEAR SENATOR SNOWE: I would like to take the opportunity to express our support for the Farm Security Act of 2002 "Farm Bill". While we understand that there are issues that remain contentious and it does not include some of the programs we had hoped for, the Farms Savings Account to name one, we encourage support of the bill and vote for passage.

As I stated, there are concerns that we all have with the bill, but we also believe there are many direct benefits to Maine potato growers and Maine agriculture. If we are to develop new markets for potatoes and potatoes products, export markets will need to be a major area of development. The increased funding in the Market Access Program is a step in the right direction and potentially will benefit the potato industry in Maine. Another element of the bill that will help develop export markets is the Technical Assistance for Specialty Crops (TASC).

Conservation is an area that is of the greatest concern for all of agriculture, and this bill will provide an increase in funding to help producers in Maine continue to implement sound conservation practices. The Water Conservation Program will aid agriculture in dealing with an ever increasing demand for water to produce quality crops.

The Rural Development Title includes funding under existing programs that will be

a benefit to the Maine potato industry and Maine agriculture. To remain competitive in a world market place, we must continue to develop products that meet the consumer's demands. The Value-Added Agriculture Market Development Program will do just that. It will allow Maine producers access to funds to develop value-added agriculture products to meet these demands.

Again, I hope you will support the bill; it will have a positive impact on Maine agriculture. If you should have any questions or if I can provide any additional information, please contact me at 207-769-5061.

Sincerely,  
DONALD E. FLANNERY,  
*Executive Director.*

DEPARTMENT OF AGRICULTURE,  
FOOD & RURAL RESOURCES,  
*Augusta, ME, May 6, 2002.*

Senator OLYMPIA J. SNOWE,  
*Russell Senate Office Building,*  
*Washington, DC.*

DEAR OLYMPIA: I want to thank you for the time and effort you and your staff spend ensuring the Federal programs and laws work for Maine farmers. This has been especially true over the past year as Congress worked on the Farm Bill.

The Farm Security and Rural Investment Act of 2002 has some flaws, primarily the lack of payment caps and the bias toward growers in the south. However the legislation provides many benefits to Maine agriculture.

Whatever disappointment Maine dairy farmers may have over losing the Compact has to be tempered by the provisions establishing the National Dairy Program. Farmers receive a monthly payment of 45 percent of the difference whenever the Class 1 price falls below \$16.94. It is retroactive to December 2001. Our calculations show the retroactive clause alone will provide our farmers payments totaling about \$3 million.

The bill spends \$15 million annually on the Senior Farmers' Market Nutrition Program. Implemented in Maine through our Senior FarmShare it has proven wildly successful with both farmers and seniors. This year, with funds from a combination of sources, including U.S. Department of Agriculture, we are providing nearly \$1 million worth of locally grown fresh fruit and vegetables to low-income elderly in Maine.

Another program with direct benefits to Maine is one I know you have worked on in the past, financial assistance for apple producers who have suffered from low market prices. The bill provides \$94 million for losses in the 2000 crop year.

The \$17.1 billion in conservation funds contained in the bill represents a dramatically increased commitment to the environment.

Among the highlights for Maine are \$985 million for the Farmland Protection Program, a 20-fold increase. Maine leverages state money with funds from this Federal pot through the Land for Maine's Future Program to preserve open space and keep families on working farms.

The bill sets aside \$50 million, to continue conservation and risk management programs authorized in the Agricultural Risk Protection Act of 2000. These programs have already provided money to farmers in Maine for irrigation projects and organic certification. Maine is one of the 15 underserved states eligible for these funds.

For Maine farmers raising specialty crops, almost all the growers in the state, the bill has a couple of benefits. It substantially increases funding for the Market Access Program, which subsidizes efforts to increase non-branded export promotion. The bill also continues the restrictions on planting fruits and vegetables on program acres, a critical

restriction for our potato farmers. They face unfair competition from Canadian growers; they don't need it from western growers who also raise program crops.

I could continue. The list I have provided you are just the highlights of the reasons I support the Farm Bill. I believe it is a good improvement over the so-called Freedom to Farm. The bill strengthens the safety net for all farmers, it more equitably distributes federal farm dollars and it provides strong incentives to improve stewardship.

Thank you and I look forward to continue working with you on issues of importance to Maine farmers.

Sincerely,

ROBERT W. SPEAR,  
*Commissioner.*

#### NUCLEAR AND TERRORISM THREAT REDUCTION ACT OF 2002

Mr. SMITH of Oregon. Mr. President, I am pleased to introduce this week, with Senator MARY LANDRIEU, the Nuclear and Terrorism Threat Reduction Act of 2002 NTTRA. The NTTRA addresses one of the most serious security challenges facing the United States today: the possibility that a portion of the Russian nuclear weapons arsenal and other weapons of mass destruction (WMD) will fall into the hands of terrorists or terrorist states.

Over a decade after the end of the cold war, Russian still possesses about 95 percent of the world's nuclear weapons and materials outside of the United States. These weapons and materials are stored in over 400 locations across Russia and many are not fully secure. To understand the need to help the Russians on this front, one fact bears noting: Each year, the Russians spend approximately 2 percent of the amount that we spend to operate and secure our nuclear weapons arsenal.

The members of this body know that addressing this challenge is not a partisan issue. It is an issue of deep concern to all Americans. Early last year, a bipartisan task force led by former Senate majority leader and current U.S. Ambassador to Japan, Howard Baker, and former White House Counsel Lloyd Cutler reached three primary conclusions: First, the most urgent unmet national security threat to the United States today is the danger that weapons of mass destruction or weapons-usable material in Russia can be stolen and sold to terrorists or hostile nation States and used against American troops abroad or citizens at home; second, current nonproliferation programs in the Department of Defense, Department of Energy, and related agencies have achieved impressive results thus far, but their limited mandate and funding fall short of what is required to address adequately the threat; and third, the President and the leaders of the 107th Congress face the urgent national security challenge of devising an enhanced response proportionate to the threat.

It bears repeating that these conclusions were reached months in advance of the September 11 attacks. This legislation will address each of the Baker-Cutler Task Force conclusions.

The Bush administration has devoted considerable time and effort to increase cooperation between the United States and Russia on these matters, as exemplified by U.S.-Russia cooperation in the war against terrorism, the Bush-Putin summit in November 2001, and the May 2002 U.S.-Russia summit in Russia. Also, late last year, the administration completed a thorough review of U.S. efforts to help Russia secure its nuclear and other WMD arsenal. The review concluded that, "most U.S. programs to assist Russia in threat reduction and nonproliferation work well, are focused on priority tasks, and are well managed." At the time, the White House also noted: "The President has made clear repeatedly that his administration is committed to strong, effective cooperation with Russia and the other states of the Former Soviet Union to reduce weapons of mass destruction and prevent their proliferation." The President wisely realizes that only through greater cooperation with Russia can we deal effectively with this problem. The NTTRA supports the President's desire to strengthen U.S.-Russia cooperative efforts.

Senator LANDRIEU and I are carrying on the tradition of Senators like Sam Nunn and RICHARD LUGAR, who along with other of our colleagues were responsible for the U.S. effort to help the Russians secure, account for, and, where possible, dispose of their nuclear weapons and other WMD. The United States must make every effort to defeat global terrorism. One of the most important actions we can take is to deny terrorists the means to kill tens of thousands, if not hundreds of thousands, of people.

The NTTRA will address this serious national security challenge in the following ways:

First, the NTTRA states that it is the policy of the United States to work cooperatively with the Russian Federation in order to prevent the diversion of weapons of mass destruction and material, including nuclear, biological and chemical weapons, as well as scientific and technical expertise necessary to design and build weapons of mass destruction. As I noted earlier, the administration's recent review of U.S.-Russia programs concluded: "most U.S. programs to assist Russia in threat reduction and nonproliferation work well, are focused on priority tasks, and are well managed." The NTTRA proposals complement the increases and proposed organizational changes that the Bush administration has proposed for these programs.

The NTTRA also calls for the President to deliver to Congress, no later than 6 months after the enactment of the NTTRA, a series of recommendations on how to enhance the implementation of U.S.-Russia non-proliferation and threat reduction programs, including suggestions on how to improve and streamline the contracting and procurement practices of these programs

and a list of impediments to the efficient and effective implementation of these programs.

Second, this bill addresses the shortcomings in the Russian system in accounting for nuclear warheads and weapons-grade material: The NTTRA states that it is the policy of the United States to establish with Russia comprehensive inventories and data exchanges of Russian and U.S. weapons-grade material and assembled warheads with particular attention to tactical, or "non-strategic," warheads—one of the most likely weapons a terrorist organization or state would attempt to acquire—and weapons which have been removed from deployment. Only through such an accounting system will we be able to reliably say that Russian warheads and materials are sufficiently secure.

Third, the NTTRA calls for the establishment of a joint U.S.-Russia Commission on the Transition from Mutually Assured Destruction to Mutually Assured Security. The U.S. side of the Commission would be composed of private citizens who are experts in the field of U.S.-Russia strategic stability. The NTTRA also calls upon the President to make every effort to encourage the Russian Government to establish a complementary Commission that would jointly meet and discuss how to preserve strategic stability during this time of rapid and positive change in the U.S.-Russia relationship.

The United States and Russia have made great strides to reshape our countries' relationship since the end of the cold war. I am encouraged by the work of President Bush and President Putin regarding the reduction of U.S. and Russian nuclear arsenals and I have been pleased to see Russia's understanding and support of our war on terrorism. I hope that this bill will support our countries' working relationship by encouraging further movement towards arms reductions and helping build trust and expand dialogue and cooperation between our nations. This relationship is critical to protecting both Russia and the United States from nuclear terrorism.

I call upon the members of this body to join Senator LANDRIEU and me as we work against nuclear terrorism by supporting the Nuclear and Terrorism Threat Reduction Act of 2002.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in May 1996 in Lake Charles, LA. A gay man was robbed and beaten to death after being

abducted from a rest stop. The attackers, four men, said that they had gone to the rest area to "roll a queer."

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 of 2001 is now 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.

#### DEATH OF NORMAN JOHNSON

Mr. HATCH. Mr. President, one of the finest attorneys in the country, Norman Johnson, one of the great attorneys and leaders from my home state of Utah, died last Saturday.

The loss of Norm is a personal loss to me. He has been one of my best friends. Norm was not only a fine lawyer, a fine businessman, a fine husband and father, a fine Christian, and a wonderful friend.

Norm was a partner in one of Utah's most prestigious law firms. He was one of the most informed authorities in the field of securities law and nationally recognized both before and after appointment as one of the five commissioners on the United States Security and Exchange Commission. As S.E.C. Commissioner, Norm held one of the most prestigious and high-level positions in the Federal Government. Norm served well and was highly respected. I know. I watched his service and was so proud of him.

Norm loved his wife Carol and his children, all of whom are beautiful and exemplary in their own lives. I'm sure they are very grieved at his death. He was so proud of them.

Norm was one of the most soft-spoken people I ever knew. He was kind, generous to a fault, and a friend to all.

We lived in the same neighborhood in Salt Lake City, when I was Bishop of the Salt Lake Mt. Olympus 10th Ward. We became instant friends and our friendship has endured over thirty years.

Norm courageously battled esophageal cancer for a lengthy time. I remember visiting him in the hospital many times. He beat one of the worst of all cancers and then went on to his exceptional government service. I never heard him complain and he bore his difficulties with grace and humor, but the suffering took its toll.

I loved Norm as a brother and have always and will always be a friend of his family.

His funeral is today and I deeply regret that, because of pressing Senate business and an important meeting with the President of the United States at the White House, I have not been able to attend. My beloved wife, Elaine, will be in attendance. She left for Utah this morning. As usual, Elaine will represent me well.

#### ADDITIONAL STATEMENTS

##### THE 60TH ANNIVERSARY OF THE BATTLESHIP MASSACHUSETTS

• Mr. KERRY. Mr. President, I rise today to join the people of *Massachusetts* and Navy veterans across the country in celebrating the 60th anniversary of the Battleship *Massachusetts*' commission. This historic ship, the heaviest craft ever launched from Quincy's Fore River Shipyard, served with distinction in theaters ranging from North Africa to the Marshall Islands, and I join its crew in celebrating the anniversary of this storied vessel.

The Battleship *Massachusetts* entered combat on November 8, 1942 in Operation Torch on the shores of North Africa and saw its first action on the shores off Casablanca, Morocco. In that first engagement, the 16" shells from the *Massachusetts* helped sink two destroyers, two merchant ships, visit heavy damage to buildings along the coast, and render a dry dock inoperable. One year later the ship came back to Boston for refitting before heading off to a new assignment in the Pacific, where she would remain for the duration of the war. During its Pacific service, the *Massachusetts* engaged the enemy in the New Guinea-Solomons in the southwest, raided Japanese bases in the west, and helped invade the Marshall Islands.

As the war built to a bloody crescendo the *Massachusetts* proved itself repeatedly. Carrying its nickname of "Big Mamie," the *Massachusetts* took center stage in the preliminary actions against Okinawa and Iwo Jima, shelling each island in preparation for the decisive land combat that began the final chapters of the long struggle. Together with the Third Fleet, the *Massachusetts* approached Japan in the summer of 1945. Its engagements at Kamaishi and Hamamatsu helped cripple the country's infrastructure and expedite the war's conclusion.

After de-activation in 1946, the battleship remained in the Reserve Fleet until being struck from the Navy record in 1962. Despite being ordered to be sold for scrap, her wartime crew lobbied to save the ship as a memorial. Schoolchildren around *Massachusetts* rallied for the ship named for their state, and "Big Mamie," was brought to Fall River in 1965 as a result of these tireless civic efforts. It now serves as the central attraction in Fall River's thriving waterfront; standing as a reminder of its service and inspiring young people to find their own ways to serve.

Through it all, the ship beared the name of our Commonwealth with a pride that we match today, and I am honored to join the Navy, the citizens of Fall River, and people across our State in celebrating the 60th anniversary of the *Massachusetts*' receiving its commission. •

#### HONORING DR. GEORGE RUPP, PRESIDENT OF COLUMBIA UNIVERSITY

• Mr. GREGG. Mr. President, I rise today to honor Dr. George Rupp, a man who has served higher education and the city of New York well over his 9 years as President of Columbia University.

As a proud alumnus of Columbia University, I wanted to share with Members of Congress some of the accomplishments of this fine leader, and to take this opportunity to salute Dr. Rupp. Columbia is one of the nation's most prestigious universities, and under Dr. Rupp's leadership it has only grown more so. In every area of the university's existence, from academic to administrative, fundraising and quality of life, Dr. Rupp has made a major impact. The legacy he has created sets a new standard in university administration.

When he joined the administration in 1993, Dr. Rupp promised to put undergraduate education at the center of the institution. He committed his energies and the university's resources to doing precisely that, and Columbia College is in a much stronger position as a consequence of his efforts. High school students are applying to Columbia in record numbers and undergraduate admissions have more than doubled since 1993.

Dr. Rupp introduced fellowships to attract professors to teach its celebrated core curriculum for undergraduates, anchored by contemporary civilization and humanities literature. Columbia's graduate programs in law, business, medicine, journalism, and the liberal arts have grown more competitive and are among the best in the world. Over the past nine years, four Columbia faculty members have been Nobel prize winners.

Columbia has raised its profile in New York City and significantly improved relations with the surrounding communities of Morningside Heights, Harlem, and Washington Heights. Dr. Rupp has striven to make Columbia a good neighbor and involves community leadership in major construction projects. He also established a housing assistance program to encourage Columbia staff to purchase homes in these neighborhoods, which are part of the Upper Manhattan Empowerment Zone.

Under Dr. Rupp's leadership, the university has added an architecturally distinguished student center, expanded student housing and built world-class research facilities. Columbia has also taken over the management of the Biosphere 2 Center in Oracle, AZ to expand the science of its Earth Institute. In addition, he has established the International Research Institute for Climate Prediction, a facility to direct advances in climate sciences to the benefit of societies around the world.

Dr. Rupp, an ordained Presbyterian minister and a religious scholar, became Dean of Harvard Divinity School

at age 37, and then president of Rice University and president of Columbia University. He is a man of many talents and interests.

For all these and many more reasons, I stand now to applaud his leadership at Columbia University, his dedication to this great institution, and to wish him great luck in the future. Columbia today embodies substantial forward momentum and is poised to achieve further advances in the years ahead.●

#### TRIBUTE TO RICHARD M. SCULLION

● Mr. FEINGOLD. Mr. President, today, I would like to honor the life of a dedicated public servant, Richard M. Scullion. Dick passed away at the end of April following a brief illness.

Dick started out as a farmer near Highland, WI. He married his wife, Marian, in 1945, and worked to raise their family. In the 1950s, during a typical Wisconsin blizzard, friends of Dick's nominated him to serve on the Iowa County Board and in 1965, he became the chair of the board, a seat he would hold until 2000. At that time, he was the longest serving County Chair in Wisconsin history. Dick simultaneously served as the Highland township chairman and as a member of the Memorial Hospital of Iowa County Board.

In addition to his over 40 years of service to Iowa County, Dick demonstrated a strong commitment to his home state. He was a member of the Wisconsin State Soil and Water Conservation Board, Committee Land Preservation Board, Water Resources Committee, Wisconsin River Rail Transit Commission, Farmland Preservation Board, and was the chairman of the Southwest Regional Planning Commission.

His work made him an invaluable citizen of the State of Wisconsin; he was recognized for his achievements in 1995, when the Iowa County Courthouse addition was named in his honor. Dick was also named the Soil Conservationist of the Year in 1976 and received the Wisconsin Master Agriculturist Award in 1979. In 1983, the University of Wisconsin College of Agriculture and Life Sciences awarded him an honorary degree.

Dick Scullion was an important part of Iowa County, and the State of Wisconsin, and will hold a special place in our State's history. He will be dearly missed.●

#### RETIREMENT OF ALDRED AMES

● Mr. CRAPO. Mr. President, I rise today to commend one of the key figures in Idaho's economic development efforts, Aldred Ames. For over two decades Mr. Ames has made a positive impact in virtually every one of Idaho's 201 incorporated communities, 44 counties, and 5 tribal nations. He has brought not only technical expertise and access to financial resources, but

perhaps even more important a positive attitude that kept his constituents in economic distress from giving up hope.

Government employees are often accused of being process oriented rather than results oriented. Mr. Ames, with his single-minded focus on results, is an excellent example of the kind of Federal employee of whom we should all be proud.

As he is about to retire, I congratulate Mr. Ames on his outstanding record of accomplishment and wish him every success in his future endeavors.●

#### TRIBUTE TO THE UNIVERSITY OF HAWAII MEN'S VOLLEYBALL TEAM

● Mr. INOUE. Mr. President, I am proud to rise and pay tribute to the University of Hawaii men's volleyball team for winning the 2002 National Collegiate Athletic Association, NCAA, Championship this past weekend in Pennsylvania. The Warrior Volleyball squad made history by winning the first National Championship for any men's athletic program at the University of Hawaii.

I salute all of the athletes and coaches of the NCAA Championship tournament. I commend them for their sacrifice and determination; they should all be proud of their achievements as student-athletes.

I also commend the people of Hawaii for their support of the University's athletic programs. Indeed, they are the greatest volleyball fans in the nation.

The success of the men's volleyball team is indicative of the depth of the community's support, and the caliber of students, faculty, and staff at the University. As our nation's only public institution of higher learning in the Pacific, the University of Hawaii has many unique strengths and comparative advantages. It offers premiere science, math, business, art, social science, and, as it has now demonstrated irrefutably, athletic programs. The people of Hawaii should be proud of their University.

I applaud Head Coach Mike Wilton who, for the past decade, has worked tirelessly to successfully build and strengthen the men's volleyball program, and I commend the members of his coaching staff for their commitment to preparing the athletes for success both on and off the court.

Finally, I extend my sincerest congratulations to the Warrior Volleyball players for capturing the national title. I am pleased to note that the team is comprised of young men from Hawaii, Arizona, California, Oregon, Guam, Canada, Cuba, Israel, Puerto Rico, and Serbia. Despite their cultural differences and language barriers, they remained unified in their mission and goal. The team has proven that all things are possible through hard work.

I submit the team's roster of players and coaches for the RECORD:

Players: Dejan Miladinovic, Geronimo Chala, Robert Drew, Kimo Tuyay, Jake

Muise, Eyal Zimet, Vernon Podlewski, Jeffrey Gleason, Costas Theocharidis, Jose Delgado, Kyle Denitz, Marvin Yamada, John Bender, Ryan Woodward, Tony Ching, Brian Nordberg, Delano Thomas, and Daniel Rasay. Coaches: Mike Wilton, Tino Reyes, Aaron Wilton, and Marlo Torres.●

#### IN RECOGNITION THE RETIREMENT OF INSPECTOR FREDERICH A. GREENSLATE

● Mr. LEVIN. Mr. President, I ask that the Senate join me today in acknowledging the retirement of Inspector Frederick A. Greenslate of West Bloomfield, MI, who retired on April 27th of this year after serving in the Michigan State Police for 41 years. Mr. Greenslate is one of the longest serving officers in departmental history and people will be gathering on May 17th to celebrate his distinguished career.

I cannot overstate the debt we owe our men and women in uniform for putting their lives on the line as guardians of peace. Every day they protect the people of our great Nation and keep our cities safe. Frederick Greenslate has been part of this great tradition of service, dedication and honor.

Mr. Greenslate joined the Michigan State Police in 1961 after receiving an Associate's Degree in Criminal Justice from Macomb Community College. Originally posted as a Trooper at the Newaygo Post, he moved up the ranks and concluded his career as an Assistant District Commander in the 2nd District Headquarters. Over this period, he received four Meritorious Citations for service above the call of duty as well as an Unit Citation. He also assisted with several events of national and international significance including the visit of Pope John Paul II to Detroit, Super Bowl XVI, United States Cup Soccer, World Cup Soccer, The Detroit Grand Prix, and the National Governors' Conference.

Despite the long hours and stressful atmosphere associated with being a police officer, Mr. Greenslate has been devoted husband to his wife Susan and father of six children: Adam, Bethany, Douglas, Jason, Jeffrey, and Melanie. In addition, his children have blessed him with three grandchildren, Jack, Joe, and Connor. He is also a member of the South-East, Oakland County, Macomb County, Wayne County, and St. Clair County Police Chief's Associations.

Our Nation's public servants play a vital role in preserving the public good. However, few public servants do more to ensure our Nation's peace and stability than our police officers. I know my Senate Colleagues will join me in thanking Mr. Greenslate for his distinguished career as a Michigan State Trooper and wish him well in the years ahead.●

#### HONORING THE GIRL SCOUTS OF RHODE ISLAND

● Mr. REED. Mr. President, I rise in recognition of the 90th Anniversary of

the Girl Scouts of America. The Girl Scout tradition began on March 12, 1912, when founder Juliette Gordon Low assembled 18 girls in Savannah, GA for the first-ever Girl Scout meeting. Today, the organization offers girls of all races, ages, ethnicities, socioeconomic backgrounds, and abilities the chance to thrive by building the real-life skills they will need as adults.

I am especially honored to acknowledge the activities of the Girl Scouts of Rhode Island, which currently serves over 13,700 girls in my home State and several bordering towns of Massachusetts and Connecticut. The Girl Scouts of Rhode Island has created several enriching programs and activities over the years that truly help girls grow strong. One such program is Girls on the Go, which serves low-income girls at free lunch sites throughout the State during the summer months, allowing them to participate in Girl Scout activities. Other examples include the City Summer Camps program in both Providence and Central Falls which provides 6 weeks of training and recreational activities, and the Girls at the Center program which has provided numerous scouts and adults with opportunities to explore science and technology.

I am truly proud of the achievements of the Rhode Island Girl Scouts and their mission to help young women achieve high ideals of character, conduct, patriotism and service. I wish them continued success in the future.●

#### REPORT TO RESTORE NON-DISCRIMINATORY TRADE TREATMENT (NORMAL TRADE RELATIONS TREATMENT) TO THE PRODUCTS OF AFGHANISTAN—PM 83

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on May 3, 2002, during the recess of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

*To the Congress of the United States:*

Public Law 99-190, 99 Stat. 1319, which took effect on December 19, 1985, authorized the President to deny normal trade relations (NTR) tariff treatment to the products of Afghanistan. On January 31, 1986, President Reagan issued a proclamation denying NTR treatment to Afghanistan.

I have determined that it is appropriate to restore NTR treatment to the products of Afghanistan. Restoration of NTR treatment will support U.S. efforts to normalize relations with Afghanistan and facilitate increased trade with the United States, which could contribute to economic growth and assist Afghanistan in rebuilding its economy. Therefore, in accordance with section 118 of Public Law 99-190, I hereby provide notice that I have

issued the attached proclamation restoring NTR tariff treatment to the products of Afghanistan. The Proclamation shall take effect 30 days after it is published in the *Federal Register*.

GEORGE W. BUSH.  
THE WHITE HOUSE, May 3, 2002.

#### REPORT RELATIVE TO TWO DEFERRALS OF BUDGET AUTHORITY, TOTALING \$2 BILLION—PM 84

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on May 3, 2002, during the recess of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred jointly, pursuant to the order of January 30, 1975 as modified by the order of April 11, 1986; to the Committee on Appropriations; the Budget; and Foreign Relations:

*To the Congress of the United States:*

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report two deferrals of budget authority, totaling \$2 billion.

The proposed deferrals affect the Department of State and International Assistance Programs.

GEORGE W. BUSH.  
THE WHITE HOUSE, May 3, 2002.

#### MESSAGES FROM THE HOUSE

At 12:59 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 87. A joint resolution approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982.

At 4:03 p.m., a message from the House of Representatives, delivered by M. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3801. An act to provide for improvement of Federal education research, statistics, evaluation, information, and dissemination, and for other purposes.

#### MEASURES REFERRED

The following bills, previously received from the House of Representatives for concurrence, were read the first and second times by unanimous consent, and referred as indicated:

H.R. 4486. An act to designate the facility of the United States Postal Service located at 1590 East Joyce Boulevard in Fayetteville, Arkansas, as the "Clarence B. Craft Post Office Building"; to the Committee on Governmental Affairs.

H.R. 4028. An act to designate the United States courthouse located at 600 West Capitol Avenue in Little Rock, Arkansas, as the

"Richard S. Arnold United States Courthouse"; to the Committee on Environment and Public Works.

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 3801. An act to provide for improvement of Federal education research, statistics, evaluation, information, and dissemination, and for other purposes; to the committee on Health, Education, Labor, and Pensions.

#### MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2485. A bill entitled the "Andean Trade Promotion and Drug Eradication Act."

The following joint resolution was read the first and second times by unanimous consent, and placed on the calendar pursuant to 42 U.S.C. 10135(d)(5)(A):

H. J. Res. 87. Joint resolution approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982.

#### MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 4560. An act to eliminate the deadlines for spectrum auctions of spectrum previously allocated to television broadcasting.

#### EXECUTIVE AND OTHER COMMUNICATIONS

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

EC-6801. A communication from the Executive Vice President of Communications and Government Relations, Tennessee Valley Authority, transmitting, pursuant to law, the report of a vacancy in the position of Inspector General, receive on May 1, 2002; referred jointly, pursuant to the order of January 30, 1975 as modified by the order of April 11, 1986; to the Committees on Environment and Public Works; and Governmental Affairs.

EC-6802. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a nomination confirmed for the position of Inspector General, received on May 1, 2002; referred jointly, pursuant to the order of January 30, 1975 as modified by the order of April 11, 1986; to the Committees on Banking, Housing, and Urban Affairs; and Governmental Affairs.

EC-6803. A communication from the Under Secretary of Defense, Comptroller, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 01-03; to the Committee on Appropriations.

EC-6804. A communication from the Director, Office of Congressional Affairs, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled "10 CFR Part 63: Disposal of High-Level Radioactive Wastes in a Proposed Geological Repository at Yucca Mountain, Nevada" (RIN3150-AG04) received on April 30, 2002; to

the Committee on Environment and Public Works.

EC-6805. A communication from the Chairman of the Federal Financial Institutions Examination Council, transmitting, pursuant to law, the Council's Annual Report for 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC-6806. A communication from the Attorney General, transmitting, pursuant to law, a report on the Plan for the Transfer of Functions of the United States Parole Commission; to the Committee on the Judiciary.

EC-6807. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, a draft of proposed legislation entitled "The Child Obscenity and Pornography Prevention Act of 2002"; to the Committee on the Judiciary.

EC-6808. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, a report on the intent to obligate funds for purposes of Nonproliferation and Disarmament Fund (NDF) activities; to the Committee on Foreign Relations.

EC-6809. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, the report of a delay of the Department's annual report on terrorism; to the Committee on Foreign Relations.

EC-6810. A communication from the Managing Director, Federal Housing Finance Board, transmitting, pursuant to law, the report of a rule entitled "Rules of Practice and Procedure" (RIN3069-AB03) received on April 30, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC-6811. A communication from the Managing Director, Federal Housing Finance Board, transmitting, pursuant to law, the report of a rule entitled "Technical Amendments to Federal Housing Finance Board Regulations" (RIN3069-AB05) received on May 1, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC-6812. A communication from the Secretary of Energy, transmitting, pursuant to Section 3134 of the Fiscal Year 2002 Defense Authorization Act, a report detailing the purposes for which the Department of Energy plans to execute the National Security Programs Administrative Support funding in Fiscal Year 2002, and a report on the feasibility of using an energy savings performance contract for a new office building at the Albuquerque Operations Office; to the Committee on Armed Services.

EC-6813. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to P.L. 107-117, a report on terrorism response funding that is of an ongoing and recurring nature; to the Committee on Armed Services.

EC-6814. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Corrections to Rev. Proc. 2002-9 (Automatic consent to change a method of accounting)" (Ann. 2002-17) received on April 30, 2002; to the Committee on Finance.

EC-6815. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Dealers in Securities Futures Contracts" (Rev. Proc. 2002-11, 2002-7) received on April 30, 2002; to the Committee on Finance.

EC-6816. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Bureau of Labor Statistics Price

Indexes for Department Stores—December 2001" (Rev. Rul. 2002-7) received on April 30, 2002; to the Committee on Finance.

EC-6817. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Definition of Disqualified Person" ((RIN1545-AY19)(TD8982)) received on April 30, 2002; to the Committee on Finance.

EC-6818. A communication from the Secretary of Health and Human Services, transmitting, a report concerning the level of coverage and expenditures for religious nonmedical health care institutions (RNHCIs) under both Medicare and Medicaid for the previous fiscal year (FY); estimated levels of expenditure for the current FY; and, trends in those expenditure levels including an explanation of any significant changes in expenditure levels from previous years; to the Committee on Finance.

EC-6819. A communication from the Attorney-Advisor, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Interior Trunk Release; Petition for Reconsideration" (RIN2127-AI69) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6820. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airspace Actions Revision of VOR Federal Airway 105 and Jet Route 86, AZ and the establishment of Jet Routes 614 and 616" ((RIN2120-AA66)(2002-0066)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6821. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airspace Action Establishment of Class E Airspace; Elkton, MD" ((RIN2120-AA66)(2002-0067)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6822. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airspace Actions Modification of Santa Ana Class C Airspace Area, CA" ((RIN2120-AA66)(2002-0065)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6823. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives Fairchild Aircraft, Inc. Models SA226 and SA227 Series Airplanes" ((RIN2120-AA64)(2002-0208)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6824. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airspace Actions Establishment of Class E Airspace; EWT 4 Heliport, Honey Grove, PA" ((RIN2120-AA66)(2002-0061)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6825. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airspace Revision to Class E Surface Area at Marysville Yuba County Airport, CA" ((RIN2120-AA66)(2002-0062)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6826. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airspace Actions Admt. to Caruthersville, MO Class E Airspace Area" ((2120-AA66)(2002-0064)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6827. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Fairchild Aircraft, Inc. SA226 and SA227 Series Airplanes" ((RIN2120-AA64)(2002-0204)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6828. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Bombardier Model DHC-8-400, 401, and 402 Series Airplanes" ((RIN2120-AA64)(2002-0205)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6829. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 777-200 and 300 Series Airplanes" ((RIN2120-AA64)(2002-0206)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6830. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 767-200, 300, and 300F Series Airplanes" ((RIN2120-AA64)(2002-0207)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6831. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 737-200, 200C, 300, 400 and 500 Series Airplanes" ((RIN2120-AA64)(2002-0200)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6832. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 727, 727C, 727-100, 727-100C, 727-200 and 727-200F Series Airplanes" ((RIN2120-AA64)(2002-0201)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6833. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 737-200, 200C, 300, 400, and 500 Series Airplanes" ((RIN2120-AA64)(2002-0202)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6834. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 737-200 and 200C Series Airplanes" ((RIN2120-AA64)(2002-0203)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6835. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives:



Pratt and Whitney JT9D-7R4 Series Turbofan Engines" ((RIN2120-AA64) (2002-0196)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6836. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 777-200 Series Airplanes Equipped with General Electric GE90 Series Engines" ((RIN2120-AA64) (2002-0197)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6837. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: McDonnell Douglas Model DC-9-10, 20, 30, 40 and 50 Series Airplanes and C-9 Airplanes" ((RIN2120-AA64) (2002-0198)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6838. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Airbus Model A300 B2, A300 B4, A300 B4-600 and A300 B4-600R Series Airplanes, and Model A300 F4-605R Airplanes" ((RIN2120-AA64) (2002-0199)) received on April 30, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6839. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Notice of Solicitation for Applications; Request for Research Proposals" (RIN0648-ZB14) received on May 1, 2002; to the Committee on Commerce, Science, and Transportation.

EC-6840. A communication from the Director, Office of Federal Housing Enterprise Oversight, transmitting, pursuant to law, the Office's Fiscal Year 2001 Performance Report; to the Committee on Governmental Affairs.

EC-6841. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the Commission's Annual Program Performance Report for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC-6842. A communication from the Secretary of Labor and Chairman of the Board, with the Executive Director of the Pension Benefit Guaranty Corporation, transmitting jointly, pursuant to law, the Corporation's Financial Statements and Performance Report for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC-6843. A communication from the Acting Chairman of the National Endowment for the Arts, transmitting, the National Endowment for the Arts Performance Reports for Fiscal Years 1999, 2000, 2001, and 2003; to the Committee on Governmental Affairs.

EC-6844. A communication from the Assistant Administrator, Bureau for Legislative and Public Affairs, Agency for International Development, transmitting, the Agency's Accountability Report for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC-6845. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the Office of the Inspector General Financial and IT Operations Audit Report for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC-6846. A communication from the Director of Selective Service, transmitting, pursuant to law, the Service's Performance Report for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC-6847. A communication from the Director, National Science Foundation, transmitting, pursuant to law, the Foundation's Performance Report for Fiscal Year 2001; to the Committee on Governmental Affairs.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary:

Report to accompany S. 625, a bill to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes. (Rept. No. 107-147).

## 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. BIDEN (for himself, Mr. HELMS, Mr. KENNEDY, and Mr. FRIST):

S. 2487. A bill to provide for global pathogen surveillance and response; to the Committee on Foreign Relations.

By Mr. BROWNBACK (for himself, Mr. MILLER, Mr. FITZGERALD, Mr. SMITH of New Hampshire, Mr. INHOFE, Mr. HELMS, Mr. SESSIONS, and Mr. ENZI):

S. 2488. A bill to establish a commission to conduct a comprehensive review of Federal agencies and programs and to recommend the elimination or realignment of duplicative, wasteful, or outdated functions, and for other purposes; to the Committee on Governmental Affairs.

By Mrs. CLINTON (for herself, Ms. SNOWE, Ms. MIKULSKI, and Mr. BREAUX):

S. 2489. A bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. TORRICELLI (for himself and Mr. SMITH of Oregon):

S. 2490. A bill to amend title XVIII of the Social Security Act to ensure the quality of, and access to, skilled nursing facility services under the medicare program; to the Committee on Finance.

By Mr. INHOFE:

S. 2491. A bill to authorize the President to award a gold medal on behalf of Congress to the Choctaw and Comanche code talkers in recognition of the contributions provided by those individuals to the United States; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CLELAND:

S. 2492. A bill to amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes; to the Committee on Governmental Affairs.

By Mr. DASCHLE (for himself, Mr. KENNEDY, and Mr. DODD):

S. 2493. A bill to amend the Immigration and Nationality Act to provide a limited extension of the program under section 245(i) of that Act; to the Committee on the Judiciary.

By Mr. MCCAIN:

S. 2494. A bill to revise the boundary of the Petrified Forest National Park in the State of Arizona, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself, Mr. BIDEN, Mr. LOTT, Mr. DASCHLE, Mr.

SHELBY, Mr. REID, Mr. NICKLES, Mr. TORRICELLI, Mr. BURNS, Mr. SCHUMER, Mr. GREGG, Mrs. CLINTON, Mr. DEWINE, Mr. MCCAIN, Mr. MCCONNELL, Mr. CHAFFEE, Mr. ALLARD, Mr. BROWNBACK, Mr. CRAPO, Mr. SANTORUM, Mr. COCHRAN, Mr. BOND, Mrs. HUTCHISON, Mr. THOMPSON, Ms. COLLINS, Mr. CRAIG, Mr. KYL, Mr. ENSIGN, Mr. INHOFE, Mr. ALLEN, Mr. HAGEL, Mr. VOINOVICH, Mr. STEVENS, Mr. WARNER, Mr. SPECTER, Mr. SMITH of Oregon, Mr. BUNNING, Mr. SMITH of New Hampshire, and Mr. INOUE):

S. 2495. A bill to designate the United States courthouse located at 100 Federal Plaza in Central Islip, New York, as the "Alfonse M. D'Amato United States Courthouse"; to the Committee on Environment and Public Works.

By Mrs. CLINTON (for herself, Mr. SCHUMER, and Mr. LIEBERMAN):

S. 2496. A bill to provide for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HOLLINGS:

S. 2497. A bill to prohibit the opening of cockpit doors in flight; to the Committee on Commerce, Science, and Transportation.

By Mr. BAUCUS (for himself and Mr. GRASSLEY):

S. 2498. A bill to amend the Internal Revenue Code of 1986 to require adequate disclosure of transactions which have a potential for tax avoidance or evasion, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY (for himself and Mrs. CLINTON):

S. 2499. A Bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 2500. A bill to authorize the use of certain funds to compensate New York City public schools for operating and education-related expenses (including expenses relating to the provision of mental health and trauma counseling and other appropriate support services) resulting from the terrorist attack on that city on September 11, 2001; to the Committee on Environment and Public Works.

By Mr. ALLARD (for himself, Mr. SESSIONS, and Mrs. HUTCHISON):

S. 2501. A bill to establish requirements arising from the delay or restriction on the shipment of special nuclear materials to the Savannah River Site, Aiken, South Carolina; to the Committee on Armed Services.

By Mr. GRASSLEY:

S. 2502. A bill to improve the provision of health care in all areas of the United States; to the Committee on Finance.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CHAFFEE (for himself and Mr. FEINGOLD):

S. Con. Res. 109. A concurrent resolution commemorating the independence of East Timor and expressing the sense of Congress that the President should establish diplomatic relations with East Timor, and for

other purposes; to the Committee on Foreign Relations.

#### ADDITIONAL COSPONSORS

S. 77

At the request of Mr. DASCHLE, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 77, a bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

S. 264

At the request of Ms. SNOWE, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 264, a bill to amend title XVIII of the Social Security Act to expand coverage of bone mass measurements under part B of the medicare program to all individuals at clinical risk for osteoporosis.

S. 326

At the request of Ms. COLLINS, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 326, a bill to amend title XVIII of the Social Security Act to eliminate the 15 percent reduction in payment rates under the prospective payment system for home health services and to permanently increase payments for such services that are furnished in rural areas.

S. 454

At the request of Mr. BINGAMAN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 454, a bill to provide permanent funding for the Bureau of Land Management Payment in Lieu of Taxes program and for other purposes.

S. 603

At the request of Mr. LIEBERMAN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 603, a bill to provide for full voting representation in the Congress for the citizens of the District of Columbia to amend the Internal Revenue Code of 1986 to provide that individuals who are residents of the District of Columbia shall be exempt from Federal income taxation until such full voting representation takes effect, and for other purposes.

S. 830

At the request of Mr. CHAFEE, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 830, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 969

At the request of Mr. DODD, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 969, a bill to establish a Tick-Borne Disorders Advisory Committee, and for other purposes.

S. 999

At the request of Mr. BINGAMAN, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1152

At the request of Mr. DURBIN, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 1152, a bill to ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes.

S. 1370

At the request of Mr. MCCONNELL, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1370, a bill to reform the health care liability system.

S. 1394

At the request of Mr. ENSIGN, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1711

At the request of Mr. CAMPBELL, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 1711, a bill to designate the James Peak Wilderness and the James Peak Protection Area in the State of Colorado, and for other purposes.

S. 1792

At the request of Mr. BAYH, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1792, a bill to further facilitate service for the United States, and for other purposes.

S. 1864

At the request of Mr. BIDEN, his name was added as a cosponsor of S. 1864, a bill to amend the Public Health Service Act to establish a Nurse Corps and recruitment and retention strategies to address the nursing shortage, and for other purposes.

S. 1992

At the request of Mr. KENNEDY, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1992, a bill to amend the Employee Retirement Income Security Act of 1974 to improve diversification of plan assets for participants in individual account plans, to improve disclosure, account access, and accountability under individual account plans, and for other purposes.

S. 2017

At the request of Mr. CAMPBELL, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 2017, a bill to amend the In-

dian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

S. 2070

At the request of Mr. BINGAMAN, the names of the Senator from South Dakota (Mr. DASCHLE) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 2070, a bill to amend part A of title IV 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. 2079

At the request of Mr. ROCKEFELLER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2079, a bill to amend title 38, United States Code, to facilitate and enhance judicial review of certain matters regarding veteran's benefits, and for other purposes.

S. 2117

At the request of Mr. DODD, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 2117, a bill to amend the Child Care and Development Block Grant Act of 1990 to reauthorize the Act, and for other purposes.

S. 2200

At the request of Mr. BAUCUS, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 2200, a bill to amend the Internal Revenue Code of 1986 to clarify that the parsonage allowance exclusion is limited to the fair rental value of the property.

S. 2210

At the request of Mr. BIDEN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2210, a bill to amend the International Financial Institutions Act to provide for modification of the Enhanced Heavily Indebted Poor Countries (HIPC) Initiative.

S. 2221

At the request of Mr. ROCKEFELLER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2221, a bill to temporarily increase the Federal medical assistance percentage for the medicaid program.

S. 2246

At the request of Mr. DODD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2246, a bill to improve access to printed instructional materials used by blind or other persons with print disabilities in elementary and secondary schools, and for other purposes.

S. 2328

At the request of Mr. HARKIN, the names of the Senator from North Carolina (Mr. EDWARDS) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 2328, a bill to amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act to ensure a safe pregnancy for all women in the United States, to

reduce the rate of maternal morbidity and mortality, to eliminate racial and ethnic disparities in maternal health outcomes, to reduce pre-term, labor, to examine the impact of pregnancy on the short and long term health of women, to expand knowledge about the safety and dosing of drugs to treat pregnant women with chronic conditions and women who become sick during pregnancy, to expand public health prevention, education and outreach, and to develop improved and more accurate data collection related to maternal morbidity and mortality.

S. 2448

At the request of Mr. HOLLINGS, the names of the Senator from Georgia (Mr. CLELAND) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 2448, a bill to improve nationwide access to broadband services.

S. 2458

At the request of Mrs. HUTCHISON, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2458, a bill to enhance United States diplomacy, and for other purposes.

S. 2461

At the request of Mr. FEINGOLD, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 2461, a bill to terminate the Crusader artillery system program of the Army, and for other purposes.

S. 2484

At the request of Mr. BAUCUS, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2484, a bill to amend part A of title IV of the Social Security Act to reauthorize and improve the operation of temporary assistance to needy families programs operated by Indian tribes, and for other purposes.

S. RES. 253

At the request of Mr. SMITH of Oregon, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. Res. 253, a resolution reiterating the sense of the Senate regarding Anti-Semitism and religious tolerance in Europe.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BIDEN (for himself, Mr. HELMS, Mr. KENNEDY, and Mr. FRIST):

S. 2487. A bill to provide for global pathogen surveillance and response; to the Committee on Foreign Relations.

Mr. BIDEN. Mr. President, Senator HELMS and I are proud to introduce today the Global Pathogen Surveillance Act of 2002. Senator HELMS is recovering from his heart surgery and is unable to be here today, but let me note our joint efforts in recognizing the importance of disease surveillance and preparing this bill for introduction. In recent years, we have joined forces on a number of sensible foreign policy initiatives and I am proud that

we are doing so once again. I am also especially pleased that Senators KENNEDY and FRIST, the chairman and ranking member of the Public Health Subcommittee of the Senate Health, Education, Labor, and Pensions Committee, have also agreed to be original cosponsors of this bill.

This bill authorizes \$150 million over the next 2 years to provide assistance to developing nations to improve global disease surveillance to help prevent and contain both biological weapons attacks and naturally occurring infectious disease outbreaks around the world. As the ranking member and chairman of the Foreign Relations Committee, respectively, Senator HELMS and I recognize all too well that biological weapons are a global threat with no respect for borders. A terrorist group could launch a biological weapons attack in Mexico in the expectation that the epidemic would quickly spread to the United States. A rogue state might experiment with new disease strains in another country, intending later to release them here. A biological weapons threat need not begin in the United States to reach our shores.

For that reason, our response to the biological weapons threat cannot be limited to the United States alone. Global disease surveillance, a systematic approach to tracking disease outbreaks as they occur and evolve around the world, is essential to any real international response.

This country is making enormous advances on the domestic front in bioterrorism defense. \$3 billion has been appropriated for this purpose in FY 2002, including \$1.1 billion to improve State and local public health infrastructure. Delaware's share will include \$6.7 million from the Centers for Disease Control and Prevention to improve the public health infrastructure and \$548,000 to improve hospital readiness in my State.

The House and Senate are currently in conference to reconcile competing versions of a comprehensive bioterrorism bill drafted last fall following the anthrax attacks via the U.S. postal system. Those attacks, which killed five individuals and infected more than twenty people, highlighted our domestic vulnerabilities to a biological weapons attack. We need to further strengthen our Nation's public health system, improve Federal public health laboratories, and fund the necessary research and procurement for vaccines and treatments to respond better to future bioterrorist attacks. As an original co-sponsor of the Senate bill, I know the final package taking shape in conference will achieve those goals and I look forward to its enactment into law.

Nevertheless, any effective response to the challenge of biological weapons must also have an international component. Limiting our response to U.S. territory would be shortsighted and doomed to failure. A dangerous patho-

gen released on another continent can quickly spread to the United States in a matter of days, if not hours. This is the dark side of globalization. International trade, travel, and migration patterns offer unlimited opportunities for pathogens to spread across national borders and to move from one continent to another. Moreover, an overseas epidemic could give us our first warning of a new disease strain that was developed by a country or by terrorists for use as a biological weapon, or that could be used by others for that purpose.

We should make no mistake: in today's world, all infectious disease epidemics, wherever they occur and whether they are deliberately engineered or are naturally occurring, are a potential threat to all nations, including the United States.

How does disease surveillance fit into all of this? A biological weapons attack succeeds partly through the element of surprise. As Dr. Alan P. Zelicoff of the Sandia National Laboratory testified before the Foreign Relations Committee in March, early warning of a biological weapons attack can prevent illness and death in all but a small fraction of those infected. A cluster of flu-like symptoms in a city or region may be dismissed by individual physicians as just the flu when in fact it may be anthrax, plague, or another biological weapon. Armed with the knowledge, however, that a biological weapons attack has in fact occurred, doctors and nurses can examine their patients in a different light and, in many cases, effectively treat infected individuals.

Disease surveillance, a comprehensive reporting system to quickly identify and communicate abnormal patterns of symptoms and illnesses, can quickly alert doctors across a region that a suspicious disease outbreak has occurred. Epidemiological specialists can then investigate and combat the outbreak. And if it's a new disease or strain, we can begin to develop treatments that much earlier.

A good surveillance system requires trained epidemiological personnel, adequate laboratory tools for quick diagnosis, and communications equipment to circulate information. Even in the United States today, many States and localities rely on old-fashioned pencil and paper methods of tracking disease patterns. Thankfully, we are addressing those domestic deficiencies through the bioterrorism bill in conference.

For example, in Delaware, we are developing the first, comprehensive, state-wide electronic reporting system for infectious diseases. This system will be used as a prototype for other states, and will enable much earlier detection of infectious disease outbreaks, both natural and bioterrorist. I and my congressional colleagues in the delegation have been working for over two years to get this project up and running, and we were successful in obtaining \$2.6 million in funding for this

project over the past 2 years. I and my colleagues have requested \$1.4 million for additional funding in FY 2003, and we are extremely optimistic that this funding will be forthcoming.

It is vitally important that we extend these initiatives into the international arena. However, as many developing countries are way behind us in terms of public health resources, laboratories, personnel, and communications, these countries will need help just to get to the starting point we have already reached in this country.

An effective disease surveillance system is beneficial even in the absence of biological weapons attacks. Bubonic plague is bubonic plague, whether it is deliberately engineered or naturally occurring. Just as disease surveillance can help contain a biological weapons attack, it can also help contain a naturally occurring outbreak of infectious disease. According to the World Health Organization, 30 new infectious diseases have emerged over the past thirty years; between 1996 and 2001 alone, more than 800 infectious disease outbreaks occurred around the world, on every continent. With better surveillance, we can do a better job of mitigating the consequences of these disease outbreaks.

In 2000, the World Health Organization established the first truly global disease surveillance system, the Global Alert and Response Network, to monitor and track infectious disease outbreaks in every region of the world. The WHO has done an impressive job so far with this initiative, working on a shoestring budget. But this global network is only as good as its components, individual nations. Unfortunately, developing nations, those nations most likely to experience rapid disease outbreaks, simply do not possess the trained personnel, the laboratory equipment, or the public health infrastructure to track evolving disease patterns and detect emerging pathogens.

According to a report by the National Intelligence Council, developing nations in Africa and Asia have established only rudimentary systems, if any at all, for disease surveillance, response, and prevention. The World Health Organization reports that more than sixty percent of laboratory equipment in developing countries is either outdated or non-functioning.

This lack of preparedness can lead to tragic results. In August 1994 in Surat, a city in western India, a surge of complaints on flea infestation and a growing rat population was followed by a cluster of reports on patients exhibiting the symptoms of pneumonic plague. However, authorities were unable to connect the dots until the plague had spread to seven states across India, ultimately killing 56 people and costing the Indian economy \$600 million. Had the Indian authorities employed better surveillance tools, they may well have contained the epidemic, limited the loss of life, and surely avoided the panic that led to

economically disastrous embargoes on trade and travel. An outbreak of pneumonic plague in India this February was detected more quickly and contained with only a few deaths, and no costly panic.

Developing nations are the weak links in any comprehensive global disease surveillance network. Unless we take action to shore up their capabilities to detect and contain disease outbreaks, we leave the entire world vulnerable to a deliberate biological weapons attack or a virulent natural epidemic.

It is for these reasons that Senator HELMS and I have worked together in recent months to craft the Global Pathogen Surveillance Act of 2002. This bill will authorize \$150 million in FY 2003 and FY 2004 to strengthen the disease surveillance capabilities of developing nations. First, the bill seeks to ensure in developing nations a greater number of personnel trained in basic epidemiological techniques. It offers enhanced in-country training for medical and laboratory personnel and the opportunity for select personnel to come to the United States to receive training in our Centers for Disease Control laboratories and Master of Public Health programs in American universities. Second, the bill provides assistance to developing nations to acquire basic laboratory equipment, including items as mundane as microscopes, to facilitate the quick diagnosis of pathogens. Third, the bill enables developing nations to obtain communications equipment to quickly transmit data on disease patterns and pathogen diagnoses, both inside a nation and to regional organizations and the WHO. Again, we're not talking about fancy high-tech equipment, but basics like fax machines and Internet-equipped computers. Finally, the bill gives preference to countries that agree to let experts from the United States or international organizations investigate any suspicious disease outbreaks.

If passed, the Global Pathogen Surveillance Act of 2002 will go a long way in ensuring that developing nations acquire the basic disease surveillance capabilities to link up effectively with the WHO's global network. This bill offers an inexpensive and common sense solution to a problem of global proportions, the dual threat of biological weapons and naturally occurring infectious diseases. The funding authorized is only a tiny fraction of what we will spend domestically on bioterrorism defenses, but this investment will pay enormous dividends in terms of our national security.

Let me close with an excerpt of testimony from the Foreign Relations Committee hearing last September on bioterrorism. Dr. D.A. Henderson, the man who spearheaded the successful international campaign to eradicate smallpox in the 1970's, recently stepped down from a short-term position as the director of the Office of Emergency Pre-

paredness in the Department of Health and Human Services. In that position, he was vested with the responsibility for helping organize the U.S. government's response to future bioterrorist attacks. Dr. Henderson, who at the time of the hearing was the head of the Johns Hopkins University Center for Civilian Biodefense Strategies, was very clear on the value of global disease surveillance:

In cooperation with the WHO and other countries, we need to strengthen greatly our intelligence gathering capability. A focus on international surveillance and on scientist-to-scientist communication will be necessary if we are to have an early warning about the possible development and production of biological weapons by rogue nations or groups.

Dr. Henderson is exactly right. We cannot leave the rest of the world to fend for itself in combating biological weapons and infectious diseases if we are to ensure America's security.

I ask unanimous consent that the text of the Global Pathogen Surveillance Act of 2002 be printed in the the RECORD.

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

S. 2487

*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 "Global Pathogen Surveillance Act of 2002".

#### SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Bioterrorism poses a grave national security threat to the United States. The insidious nature of the threat, the likely delayed recognition in the event of an attack, and the underpreparedness of the domestic public health infrastructure may produce catastrophic consequences following a biological weapons attack upon the United States.

(2) A contagious pathogen engineered as a biological weapon and developed, tested, produced, or released in another country can quickly spread to the United States. Given the realities of international travel, trade, and migration patterns, a dangerous pathogen released anywhere in the world can spread to United States territory in a matter of days, before any effective quarantine or isolation measures can be implemented.

(3) To effectively combat bioterrorism and ensure that the United States is fully prepared to prevent, diagnose, and contain a biological weapons attack, measures to strengthen the domestic public health infrastructure and improve domestic surveillance and monitoring, while absolutely essential, are not sufficient.

(4) The United States should enhance cooperation with the World Health Organization, regional health organizations, and individual countries to help detect and quickly contain infectious disease outbreaks or bioterrorism agents before they can spread.

(5) The World Health Organization (WHO) has done an impressive job in monitoring infectious disease outbreaks around the world, particularly with the establishment in April 2000 of the Global Outbreak Alert and Response network.

(6) The capabilities of the World Health Organization are inherently limited in that its

disease surveillance and monitoring is only as good as the data and information the World Health Organization receives from member countries and are further limited by the narrow range of diseases (plague, cholera, and yellow fever) upon which its disease surveillance and monitoring is based, and the consensus process used by the World Health Organization to add new diseases to the list. Developing countries in particular often cannot devote the necessary resources to build and maintain public health infrastructures.

(7) In particular, developing countries could benefit from—

(A) better trained public health professionals and epidemiologists to recognize disease patterns;

(B) appropriate laboratory equipment for diagnosis of pathogens;

(C) disease reporting that is based on symptoms and signs (known as “syndrome surveillance”) enabling the earliest possible opportunity to conduct an effective response;

(D) a narrowing of the existing technology gap in syndrome surveillance capabilities, based on reported symptoms, and real-time information dissemination to public health officials; and

(E) appropriate communications equipment and information technology to efficiently transmit information and data within national and regional health networks, including inexpensive, Internet-based Geographic Information Systems (GIS) for early recognition and diagnosis of diseases.

(8) An effective international capability to monitor and quickly diagnose infectious disease outbreaks will offer dividends not only in the event of biological weapons development, testing, production, and attack, but also in the more likely cases of naturally occurring infectious disease outbreaks that could threaten the United States. Furthermore, a robust surveillance system will serve to deter terrorist use of biological weapons, as early detection will help mitigate the intended effects of such malevolent uses.

(b) **PURPOSE.**—The purposes of this Act are as follows:

(1) To enhance the capability of the international community, through the World Health Organization and individual countries, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

(2) To enhance the training of public health professionals and epidemiologists from eligible developing countries in advanced Internet-based syndrome surveillance systems, in addition to traditional epidemiology methods, so that they may better detect, diagnose, and contain infectious disease outbreaks, especially those due to pathogens most likely to be used in a biological weapons attack.

(3) To provide assistance to developing countries to purchase appropriate public health laboratory equipment necessary for infectious disease surveillance and diagnosis.

(4) To provide assistance to developing countries to purchase appropriate communications equipment and information technology, including appropriate computer equipment and Internet connectivity mechanisms, to facilitate the exchange of Geographic Information Systems-based syndrome surveillance information and to effectively gather, analyze, and transmit public health information for infectious disease surveillance and diagnosis.

(5) To make available greater numbers of United States Government public health professionals to international health organizations, regional health networks, and United States diplomatic missions where appropriate.

(6) To establish “lab-to-lab” cooperative relationships between United States public health laboratories and established foreign counterparts.

(7) To expand the training and outreach activities of overseas United States laboratories, including Centers for Disease Control and Prevention and Department of Defense entities, to enhance the public health capabilities of developing countries.

(8) To provide appropriate technical assistance to existing regional health networks and, where appropriate, seed money for new regional networks.

### SEC. 3. DEFINITIONS.

In this Act:

(1) **ELIGIBLE DEVELOPING COUNTRY.**—The term “eligible developing country” means any developing country that—

(A) has agreed to the objective of fully complying with requirements of the World Health Organization on reporting public health information on outbreaks of infectious diseases;

(B) has not been determined by the Secretary, for purposes of section 40 of the Arms Export Control Act (22 U.S.C. 2780), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405), to have repeatedly provided support for acts of international terrorism, unless the Secretary exercises a waiver certifying that it is in the national interest of the United States to provide assistance under the provisions of this Act; and

(C) is a state party to the Biological Weapons Convention.

(2) **ELIGIBLE NATIONAL.**—The term “eligible national” means any citizen or national of an eligible developing country who does not have a criminal background, who is not on any immigration or other United States watch list, and who is not affiliated with any foreign terrorist organization.

(3) **INTERNATIONAL HEALTH ORGANIZATION.**—The term “international health organization” includes the World Health Organization and the Pan American Health Organization.

(4) **LABORATORY.**—The term “laboratory” means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(5) **SECRETARY.**—Unless otherwise provided, the term “Secretary” means the Secretary of State.

(6) **SELECT AGENT.**—The term “select agent” has the meaning given such term for purposes of section 72.6 of title 42, Code of Federal Regulations.

(7) **SYNDROME SURVEILLANCE.**—The term “syndrome surveillance” means the recording of symptoms (patient complaints) and signs (derived from physical examination) combined with simple geographic locators to track the emergence of a disease in a population.

### SEC. 4. PRIORITY FOR CERTAIN COUNTRIES.

Priority in the provision of United States assistance for eligible developing countries under all the provisions of this Act shall be given to those countries that permit personnel from the World Health Organization and the Centers for Disease Control and Prevention to investigate outbreaks of infectious diseases on their territories.

### SEC. 5. RESTRICTION.

Notwithstanding any other provision of this Act, no foreign nationals participating in programs authorized under this Act shall

have access, during the course of such participation, to select agents that may be used as, or in, a biological weapon, except in a supervised and controlled setting.

### SEC. 6. FELLOWSHIP PROGRAM.

(a) **ESTABLISHMENT.**—There is established a fellowship program (in this section referred to as the “program”) under which the Secretary, in consultation with the Secretary of Health and Human Services, and, subject to the availability of appropriations, award fellowships to eligible nationals of developing countries to pursue public health education or training, as follows:

(1) **MASTER OF PUBLIC HEALTH DEGREE.**—Graduate courses of study leading to a master of public health degree with a concentration in epidemiology from an institution of higher education in the United States with a Center for Public Health Preparedness, as determined by the Centers for Disease Control and Prevention.

(2) **ADVANCED PUBLIC HEALTH EPIDEMIOLOGY TRAINING.**—Advanced public health training in epidemiology for public health professionals from eligible developing countries to be carried out at the Centers for Disease Control and Prevention (or equivalent State facility), or other Federal facility (excluding the Department of Defense or United States National Laboratories), for a period of not less than 6 months or more than 12 months.

(b) **SPECIALIZATION IN BIOTERRORISM.**—In addition to the education or training specified in subsection (a), each recipient of a fellowship under this section (in this section referred to as a “fellow”) may take courses of study at the Centers for Disease Control and Prevention or at an equivalent facility on diagnosis and containment of likely bioterrorism agents.

(c) **FELLOWSHIP AGREEMENT.**—

(1) **IN GENERAL.**—In awarding a fellowship under the program, the Secretary, in consultation with the Secretary of Health and Human Services, shall require the recipient to enter into an agreement under which, in exchange for such assistance, the recipient—

(A) will maintain satisfactory academic progress (as determined in accordance with regulations issued by the Secretary and confirmed in regularly scheduled updates to the Secretary from the institution providing the education or training on the progress of the recipient’s education or training);

(B) will, upon completion of such education or training, return to the recipient’s country of nationality or last habitual residence (so long as it is an eligible developing country) and complete at least four years of employment in a public health position in the government or a nongovernmental, not-for-profit entity in that country or, with the approval of the Secretary and the government concerned, in an international health organization; and

(C) agrees that, if the recipient is unable to meet the requirements described in subparagraph (A) or (B), the recipient will reimburse the United States for the value of the assistance provided to the recipient under the fellowship, together with interest at a rate determined in accordance with regulations issued by the Secretary but not higher than the rate generally applied in connection with other Federal loans.

(2) **WAIVERS.**—The Secretary may waive the application of paragraph (1)(B) and (1)(C) if the Secretary determines that it is in the national interest of the United States to do so.

(d) **IMPLEMENTATION.**—The Secretary, in consultation with the Secretary of Health and Human Services, is authorized to enter into an agreement with any eligible developing country under which the developing country agrees—

(1) to establish a procedure for the nomination of eligible nationals for fellowships under this section;

(2) to guarantee that a fellow will be offered a professional public health position within the developing country upon completion of his studies; and

(3) to certify to the Secretary when a fellow has concluded the minimum period of employment in a public health position required by the fellowship agreement, with an explanation of how the requirement was met.

(e) **PARTICIPATION OF UNITED STATES CITIZENS.**—On a case-by-case basis, the Secretary may provide for the participation of United States citizens under the provisions of this section if the Secretary determines that it is in the national interest of the United States to do so. Upon completion of such education or training, a United States recipient shall complete at least five years of employment in a public health position in an eligible developing country or the World Health Organization.

#### **SEC. 7. IN-COUNTRY TRAINING IN LABORATORY TECHNIQUES AND SYNDROME SURVEILLANCE.**

(a) **IN GENERAL.**—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, support short training courses in-country (not in the United States) to laboratory technicians and other public health personnel (who are eligible persons) from developing countries in laboratory techniques relating to the identification, diagnosis, and tracking of pathogens responsible for possible infectious disease outbreaks. Training under this section may be conducted in overseas facilities of the Centers for Disease Control and Prevention or in Overseas Medical Research Units of the Department of Defense, as appropriate. The Secretary shall coordinate such training courses, where appropriate, with the existing programs and activities of the World Health Organization.

(b) **TRAINING IN SYNDROME SURVEILLANCE.**—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, establish and support short training courses in-country (not in the United States) for health care providers and other public health personnel from eligible developing countries in techniques of syndrome surveillance reporting and rapid analysis of syndrome information using Geographic Information System (GIS) tools. Training under this subsection may be conducted via the Internet or in appropriate facilities as determined by the Secretary. The Secretary shall coordinate such training courses, where appropriate, with the existing programs and activities of the World Health Organization.

#### **SEC. 8. ASSISTANCE FOR THE PURCHASE AND MAINTENANCE OF PUBLIC HEALTH LABORATORY EQUIPMENT.**

(a) **AUTHORIZATION.**—The President is authorized, on such terms and conditions as the President may determine, to furnish assistance to eligible developing countries to purchase and maintain public health laboratory equipment described in subsection (b).

(b) **EQUIPMENT COVERED.**—Equipment described in this subsection is equipment that is—

(1) appropriate, where possible, for use in the intended geographic area;

(2) necessary to collect, analyze, and identify expeditiously a broad array of pathogens, including mutant strains, which may cause disease outbreaks or may be used as a biological weapon;

(3) compatible with general standards set forth by the World Health Organization and,

as appropriate, the Centers for Disease Control and Prevention, to ensure interoperability with regional and international public health networks; and

(4) not defense articles, defense services, or training as defined under the Arms Export Control Act.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

(d) **LIMITATION.**—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment that, if made in the United States, would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 (or successor statutes).

(e) **PROCUREMENT PREFERENCE.**—In the use of grant funds authorized under subsection (a), preference should be given to the purchase of equipment of United States manufacture. The use of amounts appropriated to carry out this section shall be subject to section 604 of the Foreign Assistance Act of 1961.

(f) **HOST COUNTRY'S COMMITMENTS.**—The assistance provided under this section shall be contingent upon the host country's commitment to provide the resources, infrastructure, and other assets required to house, maintain, support, secure, and maximize use of this equipment and appropriate technical personnel.

#### **SEC. 9. ASSISTANCE FOR IMPROVED COMMUNICATION OF PUBLIC HEALTH INFORMATION.**

(a) **ASSISTANCE FOR PURCHASE OF COMMUNICATION EQUIPMENT AND INFORMATION TECHNOLOGY.**—The President is authorized to provide, on such terms and conditions as the President may determine, assistance to eligible developing countries for the purchase and maintenance of communications equipment and information technology described in subsection (b), and supporting equipment, necessary to effectively collect, analyze, and transmit public health information.

(b) **COVERED EQUIPMENT.**—Equipment described in this subsection is equipment that—

(1) is suitable for use under the particular conditions of the area of intended use;

(2) meets appropriate World Health Organization standards to ensure interoperability with like equipment of other countries and international organizations; and

(3) is not defense articles, defense services, or training as defined under the Arms Export Control Act.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

(d) **LIMITATION.**—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment that, if made in the United States, would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 (or successor statutes).

(e) **PROCUREMENT PREFERENCE.**—In the use of grant funds under subsection (a), preference should be given to the purchase of communications (and information technology) equipment of United States manufacture. The use of amounts appropriated to carry out this section shall be subject to section 604 of the Foreign Assistance Act of 1961.

(f) **ASSISTANCE FOR STANDARDIZATION OF REPORTING.**—The President is authorized to provide, on such terms and conditions as the President may determine, technical assistance and grant assistance to international health organizations (including regional international health organizations) to facilitate standardization in the reporting of public health information between and among developing countries and international health organizations.

(g) **HOST COUNTRY'S COMMITMENTS.**—The assistance provided under this section shall be contingent upon the host country's commitment to provide the resources, infrastructure, and other assets required to house, support, maintain, secure, and maximize use of this equipment and appropriate technical personnel.

#### **SEC. 10. ASSIGNMENT OF PUBLIC HEALTH PERSONNEL TO UNITED STATES MISSIONS AND INTERNATIONAL ORGANIZATIONS.**

(a) **IN GENERAL.**—Upon the request of a United States chief of diplomatic mission or an international health organization, and with the concurrence of the Secretary of State, the head of a Federal agency may assign to the respective United States mission or organization any officer or employee of the agency occupying a public health position within the agency for the purpose of enhancing disease and pathogen surveillance efforts in developing countries.

(b) **REIMBURSEMENT.**—The costs incurred by a Federal agency by reason of the detail of personnel under subsection (a) may be reimbursed to that agency out of the applicable appropriations account of the Department of State if the Secretary determines that the relevant agency may otherwise be unable to assign such personnel on a non-reimbursable basis.

#### **SEC. 11. LABORATORY-TO-LABORATORY EXCHANGE PROGRAM.**

(a) **AUTHORITY.**—The head of a Federal agency, with the concurrence of the Secretary, is authorized to provide by grant, contract, or otherwise for educational exchanges by financing educational activities—

(1) of United States public health personnel in approved public health and research laboratories in eligible developing countries; and

(2) of public health personnel of eligible developing countries in United States public health and research laboratories.

(b) **APPROVED PUBLIC HEALTH LABORATORIES DEFINED.**—In this section, the term "approved public health and research laboratories" means non-United States Government affiliated public health laboratories that the Secretary determines are well-established and have a demonstrated record of excellence.

#### **SEC. 12. EXPANSION OF CERTAIN UNITED STATES GOVERNMENT LABORATORIES ABROAD.**

(a) **IN GENERAL.**—Subject to the availability of appropriations, the Centers for Disease Control and Prevention and the Department of Defense shall each—

(1) increase the number of personnel assigned to laboratories of the Centers or the Department, as appropriate, located in eligible developing countries that conduct research and other activities with respect to infectious diseases; and

(2) expand the operations of those laboratories, especially with respect to the implementation of on-site training of foreign nationals and activities affecting neighboring countries.

(b) **COOPERATION AND COORDINATION BETWEEN LABORATORIES.**—Subsection (a) shall be carried out in such a manner as to foster cooperation and avoid duplication between and among laboratories.



(c) RELATION TO CORE MISSIONS AND SECURITY.—The expansion of the operations of overseas laboratories of the Centers or the Department under this section shall not—

- (1) detract from the established core missions of the laboratories; or
- (2) compromise the security of those laboratories, as well as their research, equipment, expertise, and materials.

**SEC. 13. ASSISTANCE FOR REGIONAL HEALTH NETWORKS AND EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.**

(a) AUTHORITY.—The President is authorized, on such terms and conditions as the President may determine, to provide assistance for the purposes of—

- (1) enhancing the surveillance and reporting capabilities for the World Health Organization and existing regional health networks; and
- (2) developing new regional health networks.

(b) EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.—The Secretary of Health and Human Services is authorized to establish new country or regional Foreign Epidemiology Training Programs in eligible developing countries.

**SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Subject to subsection (c), there are authorized to be appropriated \$70,000,000 for the fiscal year 2003 and \$80,000,000 for fiscal year 2004, to carry out this Act.

(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1)—

(A) \$50,000,000 for the fiscal year 2003 and \$50,000,000 for the fiscal year 2004 are authorized to be available to carry out sections 6, 7, 8, and 9;

(B) not more than \$2,000,000 shall be available for each of the fiscal years 2003 and 2004 for the specific training programs authorized in section 6, of which not more than \$500,000 shall be available to carry out subsection (a)(1) of such section and not more than \$1,500,000 shall be available to carry out subsection (a)(2) of such section;

(C) \$5,000,000 for the fiscal year 2003 and \$5,000,000 for the fiscal year 2004 are authorized to be available to carry out section 10;

(D) \$2,000,000 for the fiscal year 2003 and \$2,000,000 for the fiscal year 2004 are authorized to be available to carry out section 11;

(E) \$8,000,000 for the fiscal year 2003 and \$18,000,000 for the fiscal year 2004 are authorized to be available to carry out section 12; and

(F) \$5,000,000 for the fiscal year 2003 and \$5,000,000 for the fiscal year 2004 are authorized to be available to carry out section 13.

(b) AVAILABILITY OF FUNDS.—The amount appropriated pursuant to subsection (a) is authorized to remain available until expended.

(c) REPORTING REQUIREMENT.—

(1) REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit a report, in conjunction with the Secretary of Health and Human Services and the Secretary of Defense, containing—

(A) a description of the implementation of programs under this Act; and

(B) an estimate of the level of funding required to carry out those programs at a sufficient level.

(2) LIMITATION ON OBLIGATION OF FUNDS.—Not more than 10 percent of the amount appropriated pursuant to subsection (a) may be obligated before the date on which a report is submitted, or required to be submitted, whichever first occurs, under paragraph (1).

Mr. FRIST. Mr. President, I rise to join with my colleagues Senators

BIDEN, HELMS, and KENNEDY in introducing the Global Pathogen Surveillance Act of 2002. This bipartisan legislation will help ensure that we are better prepared globally to deal with biological threats and attacks.

The Global Pathogen Surveillance Act of 2002 authorizes enhanced bilateral and multilateral activities to improve the capacity of the United States and our partners in the international community to detect and contain infectious diseases and biological weapons. The Global Pathogen Surveillance Act will enhance the training, upgrade equipment and communications systems, and provide additional American expertise and assistance in international surveillance.

To better prepare our nation to meet the growing threat of bioterrorism, we must put in place and maintain a comprehensive framework including prevention, preparedness and consequence management. To accomplish this goal, we not only need to strengthen our local public health infrastructure domestically, but to work with our friends and neighbors in the global community to prevent, detect, and appropriately contain and respond to bioterrorist activities outside our borders. This is truly a global responsibility. Infectious diseases, such as smallpox, do not respect borders. If we can prevent their spread in other countries around the world, we can better protect our citizens here at home.

I applaud Senators HELMS and BIDEN for their leadership in this area. I look forward to working with them, and all of my colleagues to ensure that we provide appropriate authorities and funding to improve our international efforts to detect and contain infectious diseases and offensive biological threats.

By Mrs. CLINTON (for herself,  
Ms. SNOWE, Ms. MIKULSKI, and  
Mr. BREAU):

S. 2489. A bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, 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. 2489

*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 “Lifespan Respite Care Act of 2002”.

**SEC. 2. LIFESPAN RESPITE CARE.**

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

**“TITLE XXVIII—LIFESPAN RESPITE CARE**

**“SEC. 2801. FINDINGS AND PURPOSES.**

“(a) FINDINGS.—Congress finds that—

“(1) an estimated 26,000,000 individuals in the United States care each year for 1 or more adult family members or friends who are chronically ill, disabled, or terminally ill;

“(2) an estimated 18,000,000 children in the United States have chronic physical, developmental, behavioral, or emotional conditions that demand caregiver monitoring, management, supervision, or treatment beyond that required of children generally;

“(3) approximately 6,000,000 children in the United States live with a grandparent or other relative because their parents are unable or unwilling to care for them;

“(4) an estimated 165,000 children with disabilities in the United States live with a foster care parent;

“(5) nearly 4,000,000 individuals in the United States of all ages who have mental retardation or another developmental disability live with their families;

“(6) almost 25 percent of the Nation’s elders experience multiple chronic disabling conditions that make it necessary to rely on others for help in meeting their daily needs;

“(7) every year, approximately 600,000 Americans die at home and many of these individuals rely on extensive family caregiving before their death;

“(8) of all individuals in the United States needing assistance in daily living, 42 percent are under age 65;

“(9) there are insufficient resources to replace family caregivers with paid workers;

“(10) if services provided by family caregivers had to be replaced with paid services, it would cost approximately \$200,000,000,000 annually;

“(11) the family caregiver role is personally rewarding but can result in substantial emotional, physical, and financial hardship;

“(12) approximately 75 percent of family caregivers are women;

“(13) family caregivers often do not know where to find information about available respite care or how to access it;

“(14) available respite care programs are insufficient to meet the need and are directed at primarily lower income populations and family caregivers of the elderly, leaving large numbers of family caregivers without adequate support; and

“(15) the limited number of available respite care programs find it difficult to recruit appropriately trained respite workers.

“(b) PURPOSES.—The purposes of this title are—

“(1) to encourage States to establish State and local lifespan respite care programs;

“(2) to improve and coordinate the dissemination of respite care information and resources to family caregivers;

“(3) to provide, supplement, or improve respite care services to family caregivers;

“(4) to promote innovative, flexible, and comprehensive approaches to—

“(A) the delivery of respite care;

“(B) respite care worker and volunteer recruitment and training programs; and

“(C) training programs for family caregivers to assist such family caregivers in making informed decisions about respite care services;

“(5) to support evaluative research to identify effective respite care services that alleviate, reduce, or minimize any negative consequences of caregiving; and

“(6) to promote the dissemination of results, findings, and information from programs and research projects relating to respite care delivery, family caregiver strain, respite care worker and volunteer recruitment and training, and training programs for family caregivers that assist such family caregivers in making informed decisions about respite care services.

**“SEC. 2802. DEFINITIONS.**

“In this title:

“(1) **ASSOCIATE ADMINISTRATOR.**—The term ‘Associate Administrator’ means the Associate Administrator of the Maternal and Child Health Bureau of the Health Resources and Services Administration.

“(2) **CONDITION.**—The term ‘condition’ includes—

“(A) Alzheimer’s disease and related disorders;

“(B) developmental disabilities;

“(C) mental retardation;

“(D) physical disabilities;

“(E) chronic illness, including cancer;

“(F) behavioral, mental, and emotional conditions;

“(G) cognitive impairments;

“(H) situations in which there exists a high risk of abuse or neglect or of being placed in the foster care system due to abuse and neglect;

“(I) situations in which a child’s parent is unavailable due to the parent’s death, incapacitation, or incarceration; or

“(J) any other conditions as the Associate Administrator may establish by regulation.

“(3) **ELIGIBLE RECIPIENT.**—The term ‘eligible recipient’ means—

“(A) a State agency;

“(B) any other public entity that is capable of operating on a statewide basis;

“(C) a private, nonprofit organization that is capable of operating on a statewide basis;

“(D) a political subdivision of a State that has a population of not less than 3,000,000 individuals; or

“(E) any recognized State respite coordinating agency that has—

“(i) a demonstrated ability to work with other State and community-based agencies;

“(ii) an understanding of respite care and family caregiver issues; and

“(iii) the capacity to ensure meaningful involvement of family members, family caregivers, and care recipients.

“(4) **FAMILY CAREGIVER.**—The term ‘family caregiver’ means an unpaid family member, a foster parent, or another unpaid adult, who provides in-home monitoring, management, supervision, or treatment of a child or adult with a special need.

“(5) **LIFESPAN RESPITE CARE.**—The term ‘lifespan respite care’ means a coordinated system of accessible, community-based respite care services for family caregivers of individuals regardless of the individual’s age, race, ethnicity, or special need.

“(6) **RESPITE CARE.**—The term ‘respite care’ means planned or emergency care provided to an individual with a special need—

“(A) in order to provide temporary relief to the family caregiver of that individual; or

“(B) when the family caregiver of that individual is unable to provide care.

“(7) **SPECIAL NEED.**—The term ‘special need’ means the particular needs of an individual of any age who requires care or supervision because of a condition in order to meet the individual’s basic needs or to prevent harm to the individual.

**“SEC. 2803. LIFESPAN RESPITE CARE GRANTS AND COOPERATIVE AGREEMENTS.**

“(a) **PURPOSES.**—The purposes of this section are—

“(1) to expand and enhance respite care services to family caregivers;

“(2) to improve the statewide dissemination and coordination of respite care; and

“(3) to provide, supplement, or improve access and quality of respite care services to family caregivers, thereby reducing family caregiver strain.

“(b) **AUTHORIZATION.**—Subject to subsection (f), the Associate Administrator is authorized to award grants or cooperative agreements to eligible recipients who submit an application pursuant to subsection (d).

“(c) **FEDERAL LIFESPAN APPROACH.**—In carrying out this section, the Associate Administrator shall work in cooperation with the National Family Caregiver Support Program Officer of the Administration on Aging, and respite care program officers in the Administration for Children and Families, the Administration on Developmental Disabilities, and the Substance Abuse and Mental Health Services Administration, to ensure coordination of respite care services for family caregivers of individuals of all ages with special needs.

“(d) **APPLICATION.**—

“(1) **SUBMISSION.**—Each eligible recipient desiring to receive a grant or cooperative agreement under this section shall submit an application to the Associate Administrator at such time, in such manner, and containing such information as the Associate Administrator shall require.

“(2) **CONTENTS.**—Each application submitted under this section shall include—

“(A) a description of the applicant’s—

“(i) understanding of respite care and family caregiver issues;

“(ii) capacity to ensure meaningful involvement of family members, family caregivers, and care recipients; and

“(iii) collaboration with other State and community-based public, nonprofit, or private agencies;

“(B) with respect to the population of family caregivers to whom respite care information or services will be provided or for whom respite care workers and volunteers will be recruited and trained, a description of—

“(i) the population;

“(ii) the extent and nature of the respite care needs of the population;

“(iii) existing respite care services for the population, including numbers of family caregivers being served and extent of unmet need;

“(iv) existing methods or systems to coordinate respite care information and services to the population at the State and local level and extent of unmet need;

“(v) how respite care information dissemination and coordination, respite care services, respite care worker and volunteer recruitment and training programs, or training programs for family caregivers that assist such family caregivers in making informed decisions about respite care services will be provided using grant or cooperative agreement funds;

“(vi) a plan for collaboration and coordination of the proposed respite care activities with other related services or programs offered by public or private, nonprofit entities, including area agencies on aging;

“(vii) how the population, including family caregivers, care recipients, and relevant public or private agencies, will participate in the planning and implementation of the proposed respite care activities;

“(viii) how the proposed respite care activities will make use, to the maximum extent feasible, of other Federal, State, and local funds, programs, contributions, other forms of reimbursements, personnel, and facilities;

“(ix) respite care services available to family caregivers in the applicant’s State or locality, including unmet needs and how the applicant’s plan for use of funds will improve the coordination and distribution of respite care services for family caregivers of individuals of all ages with special needs;

“(x) the criteria used to identify family caregivers eligible for respite care services;

“(xi) how the quality and safety of any respite care services provided will be monitored, including methods to ensure that respite care workers and volunteers are appropriately screened and possess the necessary skills to care for the needs of the care recipi-

ent in the absence of the family caregiver; and

“(xii) the results expected from proposed respite care activities and the procedures to be used for evaluating those results; and

“(C) assurances that, where appropriate, the applicant shall have a system for maintaining the confidentiality of care recipient and family caregiver records.

“(e) **REVIEW OF APPLICATIONS.**—

“(1) **ESTABLISHMENT OF REVIEW PANEL.**—The Associate Administrator shall establish a panel to review applications submitted under this section.

“(2) **MEETINGS.**—The panel shall meet as often as may be necessary to facilitate the expeditious review of applications.

“(3) **FUNCTION OF PANEL.**—The panel shall—

“(A) review and evaluate each application submitted under this section; and

“(B) make recommendations to the Associate Administrator concerning whether the application should be approved.

“(f) **AWARDING OF GRANTS OR COOPERATIVE AGREEMENTS.**—

“(1) **IN GENERAL.**—The Associate Administrator shall award grants or cooperative agreements from among the applications approved by the panel under subsection (e)(3).

“(2) **PRIORITY.**—When awarding grants or cooperative agreements under this subsection, the Associate Administrator shall give priority to applicants that show the greatest likelihood of implementing or enhancing lifespan respite care statewide.

“(g) **USE OF GRANT OR COOPERATIVE AGREEMENT FUNDS.**—

“(1) **IN GENERAL.**—

“(A) **MANDATORY USES OF FUNDS.**—Each eligible recipient that is awarded a grant or cooperative agreement under this section shall use the funds for, unless such a program is in existence—

“(i) the development of lifespan respite care at the State and local levels; and

“(ii) an evaluation of the effectiveness of such care.

“(B) **DISCRETIONARY USES OF FUNDS.**—Each eligible recipient that is awarded a grant or cooperative agreement under this section may use the funds for—

“(i) respite care services;

“(ii) respite care worker and volunteer training programs; or

“(iii) training programs for family caregivers to assist such family caregivers in making informed decisions about respite care services.

“(C) **EVALUATION.**—If an eligible recipient uses funds awarded under this section for an activity described in subparagraph (B), the eligible recipient shall use funds for an evaluation of the effectiveness of the activity.

“(2) **SUBCONTRACTS.**—Each eligible recipient that is awarded a grant or cooperative agreement under this section may use the funds to subcontract with a public or nonprofit agency to carry out the activities described in paragraph (1).

“(h) **TERM OF GRANTS OR COOPERATIVE AGREEMENTS.**—

“(1) **IN GENERAL.**—The Associate Administrator shall award grants or cooperative agreements under this section for terms that do not exceed 5 years.

“(2) **RENEWAL.**—The Associate Administrator may renew a grant or cooperative agreement under this section at the end of the term of the grant or cooperative agreement determined under paragraph (1).

“(i) **SUPPLEMENT, NOT SUPPLANT.**—Funds made available under this section shall be used to supplement and not supplant other Federal, State, and local funds available for respite care services.

“(j) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section—

- “(1) \$90,500,000 for fiscal year 2003;
- “(2) \$118,000,000 for fiscal year 2004;
- “(3) \$145,500,000 for fiscal year 2005;
- “(4) \$173,000,000 for fiscal year 2006; and
- “(5) \$200,000,000 for fiscal year 2007.

**“SEC. 2804. NATIONAL LIFESPAN RESPITE RESOURCE CENTER.**

“(a) ESTABLISHMENT.—From funds appropriated under subsection (c), the Associate Administrator shall award a grant or cooperative agreement to a public or private nonprofit entity to establish a National Resource Center on Lifespan Respite Care (referred to in this section as the ‘center’).

“(b) PURPOSES OF THE CENTER.—The center shall—

“(1) maintain a national database on lifespan respite care;

“(2) provide training and technical assistance to State, community, and nonprofit respite care programs; and

“(3) provide information, referral, and educational programs to the public on lifespan respite care.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$500,000 for each of fiscal years 2003 through 2007.”.

By Mr. TORRICELLI (for himself and Mr. SMITH of Oregon):

S. 2490. A bill to amend title XVIII of the Social Security Act to ensure the quality of, and access to, skilled nursing facility services under the Medicare Program; to the Committee on Finance.

Mr. SMITH of Oregon. Mr. President, I rise today to join my colleague, Senator TORRICELLI, in introducing the Medicare Skilled Nursing Beneficiary Protection Act of 2002, a bill that will bring better care to thousands of Oregon seniors.

Nursing homes across America are in trouble, and it's not just Wall Street analysts who will tell you that. The people who rely on nursing home services the most can share with you their concerns about the future of skilled nursing care. Impending cuts to Medicare benefits for skilled nursing facilities will jeopardize the health and safety of some of our most vulnerable seniors and people with disabilities, and we cannot in good conscience allow these cuts to occur. The Medicare Skilled Nursing Beneficiary Protection Act of 2002 will prevent cuts to Medicare funding for nursing homes and will ensure that Medicare pays for the full cost of care rather than short-changing nursing facilities.

This bill will be particularly important for Oregon. My State of Oregon is home to an ever growing population of senior citizens, and we are predicted to be the 4th oldest State in the union by the year 2020. As our citizens age, and I am among that aging group, it will be essential that we have the capacity to care for our most needy seniors. Unfortunately, instead of increasing capacity we are seeing skilled nursing facilities close all over the country. This could have disastrous consequences for an already over-taxed health care system.

Without the Medicare Skilled Nursing Beneficiary Protection Act, Oregon's nursing homes will lose \$37.58

per patient per day, and it is difficult to offer high quality services under those circumstances. We must work together to pass this important legislation to protect our seniors, and to ensure that skilled nursing facilities will still be there when the rest of us need them in only a few short years.

By Mr. INHOFE:

S. 2491. A bill to authorize the President to award a gold medal on behalf of Congress to the Choctaw and Comanche code talkers in recognition of the contributions provided by those individuals to the United States; to the Committee on Banking, Housing, and Urban Affairs.

Mr. INHOFE. Mr. President, today I rise to introduce a bill to honor a group of men who bravely served this country. I am proud to recognize the Choctaw and Comanche Code Talkers who joined the United States Armed Forces on foreign soil in the fight for freedom in two world wars.

During World War I, the Germans began tapping American lines, creating the need to provide secure communications. Despite the fact that American Indians were not citizens, 18 members of the Choctaw Nation enlisted to become the first American Indian soldiers to use their native language to transmit messages between the Allied forces.

At least one Choctaw man was placed in each field company headquarters. He would translate radio messages into the Choctaw language and then write field orders to be carried by messengers between different companies on the battle line. Fortunately, because Choctaw was an unwritten language only understood by those who spoke it, the Germans were never able to break the code.

The 18 Choctaw Code Talkers who served in the 142nd Infantry Company of the 36th Division were: Albert Billy, Victor Brown, Mitchell Bobb, Ben Carterby, George Davenport, Joe Davenport, James Edwards, Tobias Frazier, Ben Hampton, Noel Johnson, Otis Leader, Solomon Louis, Pete Maytubby, Jeff Nelson, Joseph Oklahombi, Robert Taylor, Walter Veach, and Calvin Wilson.

Similarly, the Comanche Code Talkers played an important role during World War II. Once again, the enemy began tapping American lines. In order to establish the secure transmission of messages, the United States enlisted fourteen Comanche Code Talkers who served overseas in the 4th Signal Company of the 4th Infantry Division. They were: Charles Chibitty, Haddon Codynah, Robert Holder, Forrest Kassaravoid, Wellington Mihecoby, Albert Nahquaddy, Jr., Clifford Otativo, Simmons Parker, Melvin Permansu, Elgin Red Elk, Roderick Red Elk, Larry Saupitty, Morris Tabbyetchy, and Willis Yackeshi.

The Army chose the Comanches because their language was thought to be the least known to the Germans. Sec-

ond Lieutenant Hugh Foster worked with them to develop their own unique code for military words. He gave the Indians a list of military words and then worked with them to develop a Comanche word or phrase for those words.

On June 6, 1944, just after landing in Normandy, a Comanche trained by Lt. Foster and serving as a driver and radio operator under Brigadier General Theodore Roosevelt, Jr., sent one of the first messages from Utah Beach. These communications efforts, by the Comanches, helped the Allies win the war in Europe.

It is time Congress officially recognizes these men. My bill directs the Secretary of the Treasury to award the Choctaw and Comanche Code Talkers a gold medal as a result of their great commitment and service on behalf of the United States during World Wars I and II. I welcome my colleagues to join me in saluting this group of heroes for contributing to the fight for freedom for our country and around the world.

By Mr. CLELAND:

S. 2492. A bill to amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes; to the Committee on Governmental Affairs.

Mr. CLELAND. Mr. President, I rise today to introduce legislation, the Federal Agency Protection of Privacy Act, that will require Federal agencies to carefully consider the impact of proposed regulations on individual privacy. In the aftermath of the terrorist attacks of September 11, we are being forced to fight a new kind of war; a war in which we have not only physical battlefields, but battlefields of principle.

Not only must we have troops on the ground protecting our physical well-being, but we must also insure that we protect the American way of life. Ours is a country based on individual rights—rights to pursue life, liberty, and happiness, as Thomas Jefferson mentioned in the manner in which each of us sees fit.

While we are obligated, as a Government, to protect the physical safety of the American people, we also are obligated to remember our history, our struggles, and the principles for which our great Nation stands. While we enhance and strengthen our investigatory tools and physical arsenal, we cannot allow the terrorists to prevail in undermining our civil liberties.

Therefore, today, I am introducing the Federal Agency Protection of Privacy Act in the Senate as companion legislation to H.R. 4561, which was introduced by Representative BOB BARR, a long-time champion of civil liberties in the U.S. Congress. It will impose a mandate that when Federal agencies are required to publish a general notice of proposed rulemaking, they must publish an accompanying “privacy impact statement.” This initial privacy

impact statement, written in terms which all of us can understand, would be subject to public notice and comment. After receiving and evaluating any comments, the agency would then be required to include a final privacy impact statement with the regulation.

These initial and final privacy impact statements would include: the type of information to be collected and how it would be used; mechanisms through which individuals could correct inaccuracies in the collected information; assurances that the information would not be used for a purpose other than initially specified; and a description of how the information will be secured by the agency. For example, the Financial Crime Enforcement Network of the Department of the Treasury has proposed a rule implementing provisions of the USA PATRIOT Act of 2001 which would encourage financial institutions and Federal law enforcement agencies to share information in order to identify and deter money laundering and terrorist activity. While I fully support the Patriot Act and recognize the benefits of such a rule, the sensitivity of such information necessitates that we insure that the agency consider the ramifications of such an invasion on an individual's privacy. The American people must know specifically how this financial information would be used and how it would be protected. The purpose, importance, and timeliness of this legislation have brought together a wide variety of supporting organizations, ranging from the American Civil Liberties Union to the National Rifle Association to Public Citizen.

While I have been and continue to be a strong supporter of the war on terrorism, I am also well aware that we face a multi-faceted enemy. My experience has taught me that diverse threats necessitate diverse responses. We have planned for our offensives on the ground and in the air, and we have begun to mount a stronger homeland defense. But our efforts will be incomplete and will indeed run the risk of undermining all else we may accomplish in the fight against terrorism if we neglect to mount a successful defense of the American way. I believe that this legislation is necessary to protect the American people from attacks seen and unseen, and I encourage other Senators to join me in protecting the liberties for which I know we all stand.

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. 2492

*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 "Federal Agency Protection of Privacy Act".

#### SEC. 2. REQUIREMENT THAT AGENCY RULE-MAKING TAKE INTO CONSIDERATION IMPACTS ON INDIVIDUAL PRIVACY.

(a) IN GENERAL.—Title 5, United States Code, is amended by adding after section 553 the following:

##### "§ 553a. Privacy impact analysis in rule-making

"(a) INITIAL PRIVACY IMPACT ANALYSIS.—

"(1) IN GENERAL.—Whenever an agency is required by section 553 of this title, or any other law, to publish a general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial privacy impact analysis. Such analysis shall describe the impact of the proposed rule on the privacy of individuals. The initial privacy impact analysis or a summary shall be signed by the senior agency official with primary responsibility for privacy policy and be published in the Federal Register at the time of the publication of a general notice of proposed rulemaking for the rule.

"(2) CONTENTS.—Each initial privacy impact analysis required under this subsection shall contain the following:

"(A) A description and assessment of the extent to which the proposed rule will impact the privacy interests of individuals, including the extent to which the proposed rule—

"(i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;

"(ii) allows access to such information by the person to whom the personally identifiable information pertains and provides an opportunity to correct inaccuracies;

"(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

"(iv) provides security for such information.

"(B) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant privacy impact of the proposed rule on individuals.

"(b) FINAL PRIVACY IMPACT ANALYSIS.—

"(1) IN GENERAL.—Whenever an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States, the agency shall prepare a final privacy impact analysis, signed by the senior agency official with primary responsibility for privacy policy.

"(2) CONTENTS.—Each final privacy impact analysis required under this subsection shall contain the following:

"(A) A description and assessment of the extent to which the final rule will impact the privacy interests of individuals, including the extent to which the proposed rule—

"(i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;

"(ii) allows access to such information by the person to whom the personally identifiable information pertains and provides an opportunity to correct inaccuracies;

"(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

"(iv) provides security for such information.

"(B) A summary of the significant issues raised by the public comments in response to the initial privacy impact analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such issues.

"(C) A description of the steps the agency has taken to minimize the significant privacy impact on individuals consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the privacy interests of individuals was rejected.

"(3) AVAILABILITY TO PUBLIC.—The agency shall make copies of the final privacy impact analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

"(c) PROCEDURE FOR WAIVER OR DELAY OF COMPLETION.—An agency head may waive or delay the completion of some or all of the requirements of subsections (a) and (b) to the same extent as the agency head may, under section 608, waive or delay the completion of some or all of the requirements of sections 603 and 604, respectively.

"(d) PROCEDURES FOR GATHERING COMMENTS.—When any rule is promulgated which may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that individuals have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advance notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals;

"(2) the publication of a general notice of proposed rulemaking in publications of national circulation likely to be obtained by individuals;

"(3) the direct notification of interested individuals;

"(4) the conduct of open conferences or public hearings concerning the rule for individuals, including soliciting and receiving comments over computer networks; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by individuals.

"(e) PERIODIC REVIEW OF RULES.—

"(1) IN GENERAL.—Each agency shall carry out a periodic review of the rules promulgated by the agency that have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals. Under such periodic review, the agency shall determine, for each such rule, whether the rule can be amended or rescinded in a manner that minimizes any such impact while remaining in accordance with applicable statutes. For each such determination, the agency shall consider the following factors:

"(A) The continued need for the rule.

"(B) The nature of complaints or comments received from the public concerning the rule.

"(C) The complexity of the rule.

"(D) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules.

“(E) The length of time since the rule was last reviewed under this subsection.

“(F) The degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since the rule was last reviewed under this subsection.

“(2) PLAN REQUIRED.—Each agency shall carry out the periodic review required by paragraph (1) in accordance with a plan published by such agency in the Federal Register. Each such plan shall provide for the review under this subsection of each rule promulgated by the agency not later than 10 years after the date on which such rule was published as the final rule and, thereafter, not later than 10 years after the date on which such rule was last reviewed under this subsection. The agency may amend such plan at any time by publishing the revision in the Federal Register.

“(3) ANNUAL PUBLICATION.—Each year, each agency shall publish in the Federal Register a list of the rules to be reviewed by such agency under this subsection during the following year. The list shall include a brief description of each such rule and the need for and legal basis of such rule and shall invite public comment upon the determination to be made under this subsection with respect to such rule.

“(f) JUDICIAL REVIEW.—

“(1) IN GENERAL.—For any rule subject to this section, an individual who is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

“(2) JURISDICTION.—Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

“(3) LIMITATIONS.—

“(A) An individual may seek such review during the period beginning on the date of final agency action and ending 1 year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of 1 year, such lesser period shall apply to an action for judicial review under this subsection.

“(B) In the case where an agency delays the issuance of a final privacy impact analysis pursuant to subsection (c), an action for judicial review under this section shall be filed not later than—

“(i) 1 year after the date the analysis is made available to the public; or

“(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

“(4) RELIEF.—In granting any relief in an action under this subsection, the court shall order the agency to take corrective action consistent with this section and chapter 7, including, but not limited to—

“(A) remanding the rule to the agency; and

“(B) deferring the enforcement of the rule against individuals, unless the court finds that continued enforcement of the rule is in the public interest.

“(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof

under any other provision of law or to grant any other relief in addition to the requirements of this subsection.

“(6) RECORD OF AGENCY ACTION.—In an action for the judicial review of a rule, the privacy impact analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (4), shall constitute part of the entire record of agency action in connection with such review.

“(7) EXCLUSIVITY.—Compliance or non-compliance by an agency with the provisions of this section shall be subject to judicial review only in accordance with this subsection.

“(8) SAVINGS CLAUSE.—Nothing in this subsection bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

“(g) DEFINITION.—In this section, the term ‘personally identifiable information’—

“(1) means information that can be used to identify an individual, including such individual’s name, address, telephone number, photograph, social security number or other identifying information; and

“(2) includes information about such individual’s medical or financial condition.”

(b) PERIODIC REVIEW TRANSITION PROVISIONS.—

(1) INITIAL PLAN.—For each agency, the plan required by subsection (e) of section 553a of title 5, United States Code (as added by subsection (a)), shall be published not later than 180 days after the date of enactment of this Act.

(2) PRIOR RULES.—In the case of a rule promulgated by an agency before the date of the enactment of this Act, such plan shall provide for the periodic review of such rule before the expiration of the 10-year period beginning on the date of the enactment of this Act. For any such rule, the head of the agency may provide for a 1-year extension of such period if the head of the agency, before the expiration of the period, certifies in a statement published in the Federal Register that reviewing such rule before the expiration of the period is not feasible. The head of the agency may provide for additional 1-year extensions of the period pursuant to the preceding sentence, but in no event may the period exceed 15 years.

(c) CONGRESSIONAL REVIEW.—Section 801(a)(1)(B) of title 5, United States Code, is amended—

(1) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(2) by inserting after clause (ii) the following new clause:

“(iii) the agency’s actions relevant to section 553a;”

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 5 of title 5, United States Code, is amended by adding after the item relating to section 553 the following:

“553a. Privacy impact analysis in rule-making.”

By Mr. DASCHLE (for himself,  
Mr. KENNEDY, and Mr. DODD):

S. 2493. A bill to amend the immigration and Nationality Act to provide a limited extension of the program under section 245(i) of that Act; to the Committee on the Judiciary.

Mr. DASCHLE. Mr. President, yesterday, the House passed the border security legislation, and I expect it will become law very soon. Passage of the border security bill was an important first step in moving forward with comprehensive immigration reform, and it

was one of the Democratic Principles that Representative GEPHARDT and I introduced last fall.

Unfortunately, another important provision was not included in the border security legislation, the extension of section 245(i). It would allow families to stay together in this country while waiting to become permanent residents.

As I have said on many occasions, I am strongly committed to a meaningful 245(i) extension. Regrettably, the House waited 6 months to act on 245(i) legislation that the Senate passed last September. This delay meant that key provisions in the bill became unworkable. The House-passed version contained hard deadlines that would have required applicants to have established familial or employment relationships before August 2001. These deadlines would have imposed impractical hurdles for immigrant families to overcome.

Today, I am pleased to announce that I am introducing a new 245(i) extension bill that would remove these hard deadlines. My bill would move the application deadline to April 30, 2003, and maintain current prohibitions against fraudulent marriages and national security protections.

This bill mirrors the version that was introduced by Senators HAGEL and KENNEDY last spring, and it should receive strong bipartisan support. I know both the President and Senator LOTT have repeatedly expressed their desire to pass 245(i) legislation. It is my hope that they will work with me to help get it passed very soon.

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. 2493

*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 “Uniting Families Act of 2002”.

#### SEC. 2. LIMITED EXTENSION OF SECTION 245(i) PROGRAM.

(a) EXTENSION OF FILING DEADLINE.—Section 245(i)(1)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1255(i)(1)(B)(i)) is amended by striking “on or before April 30, 2001” and inserting “on or before April 30, 2003”.

(b) EXCLUSION OF CERTAIN INADMISSIBLE AND DEPORTABLE ALIENS.—The amendment made by subsection (a) shall not apply to any alien who is—

(1) inadmissible under section 212(a)(3), or deportable under section 237(a)(4), of the Immigration and Nationality Act (relating to security and related grounds); or

(2) deportable under section 237(a)(1)(G) of such Act (relating to marriage fraud).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to applicants for adjustment of status who are beneficiaries of petitions for classification or applications for labor certifications filed before, on, or after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, since September 11, Congress has taken significant steps to strengthen the security of our borders and improve our immigration system. Last month, the Senate passed important legislation to strengthen border security, improve our ability to screen foreign nationals, and enhance our ability to deter potential terrorists. In addition, Senator BROWNBACK and I recently introduced legislation to restructure the Immigration and Naturalization Service so that the agency is better prepared to address security concerns.

As we work to respond to the security issues before us, we can't lose sight of the other immigration issues that are still a priority. I'm pleased to join Senator DASCHLE in moving forward with one of those issues today by introducing the Uniting Families Act of 2002. This legislation extends section 245(i), a vital provision of U.S. immigration law which allows individuals who already legally qualify for permanent residency to process their applications in the United States, without returning to their homes countries.

Without 245(i), immigrants are forced to leave their families here in the U.S. and risk separation from them for up to 10 years. Seventy-five percent of the people who have used 245(i) are the spouses and children of U.S. citizens and permanent residents. Extending this critical provision will help keep families together and help businesses retain critical workers. In addition, the INS will receive millions of dollars in additional revenues, at no cost to taxpayers.

Extending 245(i) does not provide any loopholes for potential terrorists. Instead, it will improve the monitoring of immigrants already residing in this country. Individuals who qualify for permanent residency and process their applications in the U.S. are subject to rigorous background checks and interviews. This process provides the government a good opportunity to investigate individuals who are in this country and determine whether they should be allowed to remain here.

Section 245(i) does not provide amnesty to immigrants or any benefits to anyone suspected of marriage fraud. The provision provides no protection from deportation if someone is here illegally and no right to surpass other immigrants waiting for visas.

The House passed legislation recently to extend section 245(i), but it was too restrictive to provide any meaningful assistance. The Uniting Families Act will extend the filing deadline to April 30, 2003, and provide needed and well-deserved relief to members of our immigrant communities.

I urge my colleagues to join us in supporting this needed extension.

By Mr. MCCAIN:

S. 2494. A bill to revise the boundary of the Petrified Forest National Park in the State of Arizona and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MCCAIN. Mr. President, I rise to introduce legislation to authorize expansion of the Petrified Forest National Park in Arizona.

The Petrified Forest National Park is a national treasure among the Nation's parks, renowned for its large concentration of highly colored petrified wood, fossilized remains, and spectacular landscapes. However, it is much more than a colorful, scenic vista, for the Petrified Forest has been referred to as "one of the world's greatest storehouses of knowledge about life on earth when the Age of the Dinosaurs was just beginning."

For anyone who has ever visited this Park, one is quick to recognize the wealth of scenic, scientific, and historical values of this Park. Preserved deposits of petrified wood and related fossils are among the most valuable representations of Triassic-period terrestrial ecosystems in the world. These natural formations were deposited more than 220 million years ago. Scenic vistas, designated wilderness areas, and other historically significant sites of pictographs and Native American ruins are added dimensions to the Park.

The Petrified Forest was originally designated as a National Monument by former President Theodore Roosevelt in 1906 to protect the important natural and cultural resources of the Park, and later re-designated as a National Park in 1962. While several boundary adjustments were made to the Park, a significant portion of unprotected resources remain in outlying areas adjacent to the Park.

A proposal to expand the Park's boundaries was recommended in the Park's General Management Plan in 1992, in response to concerns about the long-term protection needs of globally significant resources and the Park's viewshed in nearby areas. For example, one of the most concentrated deposits of petrified wood is found within the Chinle encampment, of which only thirty percent is included within the current Park boundaries.

Increasing reports of theft and vandalism around the Park have activated the Park, local communities, and other interested entities to seek additional protections through a proposed boundary expansion. It has been estimated that visitors to the Park steal about 12 tons of petrified wood every year. Other reports of destruction to archaeological sites and gravesites have also been documented. Based on these continuing threats to resources intrinsic to the Park, the National Parks Conservation Association listed the Petrified Forest National Park on its list of Top Ten Most Endangered Parks in 2000.

Support for this proposed boundary expansion is extraordinary, from the local community of Holbrook, scientific and research institutions, state tourism agencies, and environmental groups, such as the National Park Conservation Association, NPCA. I ask unanimous consent that a resolution

from the City of Holbrook and a letter of support from NPCA be printed in the RECORD.

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

#### RESOLUTION NO. 00-15

A RESOLUTION OF THE CITY OF HOLBROOK, ARIZONA ENDORSING THE EXPANSION OF PETRIFIED FOREST NATIONAL PARK

Whereas, Petrified Forest National Park, first established in 1906, is a priceless and irreplaceable part of America's heritage; and

Whereas, Petrified Forest National Park contains a variety of significant natural and cultural resources, including portions of the Painted Desert and some of the most valuable paleontological resources in the world; and

Whereas, Petrified Forest National Park has inspired and educated millions of visitors from all over the world, and is cherished as a national treasure to be protected for the benefit and enjoyment of present and future generations; and

Whereas, the Chinle Formation which creates the spectacularly beautiful landscapes of the Painted Desert, Blue Mesas, and other park features, is probably the best place in the world for studying the Triassic period of the earth's history; and

Whereas, globally and nationally significant paleontological, archaeological, and scenic resources directly related to the resource values of Petrified Forest National Park, including approximately 70 percent of the Chinle Formation, are not included within the current boundary; and

Whereas, the newly approved General Management Plan for the park, prepared by the National Park Service with broad public input, has identified about 97,000 acres of land that, if included as part of the park, would lead to protection of the remainder of this globally significant Chinle Formation, along with highly significant archaeological resources, and would protect the beautiful, expansive vistas seen from the park; and

Whereas, land use patterns in the area of the park are beginning to change, potentially threatening the protection of the park and the broader setting in which it is placed; and

Whereas, implementing the General Management Plan is essential to carry out a vision for Petrified Forest National Park that will better protect park resources, enhance research opportunities, broaden and diversify visitor experiences, improve visitor service, and help contribute to the sustainability of the regional economy into the 21st century; and

Whereas, an excellent opportunity now exists to include adjacent areas of significant resources inside the park boundary because other landowners in the region, including the State of Arizona, and the Bureau of Land Management, and other private landowners recognize the significance of the resources on their lands and have expressed interest in seeing them preserved in perpetuity for the benefit and inspiration of this and future generations: Now, therefore, be it

*Resolved*, That the City of Holbrook, Arizona, hereby recommends and supports the inclusion within Petrified Forest National Park of all lands identified in the park's General Management Plan as desirable boundary additions, and supports all continuing efforts to enact legislation to accomplish this task and to complete the federal acquisition of this land. Be it further

*Resolved*, That the Clerk of the City of Holbrook is directed to immediately transmit this Resolution to the Governor of the State of Arizona, Arizona's Congressional delegation, and the Director of the National Park



Service, together with a letter requesting prompt and ongoing support for completing the park expansion.

NATIONAL PARKS  
CONSERVATION ASSOCIATION,  
Washington, DC, May 9, 2002.

Hon. JOHN MCCAIN,  
U.S. Senate, Russell Senate Office Bldg., Wash-  
ington, DC.

DEAR SENATOR MCCAIN: The National Parks Conservation Association (NPCA) commends you for your leadership and vision in introducing the Petrified Forest National Park Expansion Act of 2002. Ever since NPCA published a Park Boundary Study for various national parks in 1988, we have been advocating the need for this expansion. With private landowners anxious to sell their land, we believe the time is ripe for this expansion.

It is hard to imagine a better example of an outdoor classroom than Petrified Forest National Park. This boundary expansion will ensure long-term protection of globally significant paleontological resources, potentially nationally significant archaeological resources where there is substantial evidence of early habitation, and the park's viewshed. It will also alleviate the threat of encroaching incompatible development and will greatly enhance the National Park Service's capability to protect the resources from vandalism and illegal pothunting.

Just as Theodore Roosevelt recognized the importance of preserving this land when he proclaimed Petrified Forest a national monument in 1906, your legislation would ensure that future generations can learn even more from this amazing landscape that captures the world's best record of Triassic-period terrestrial ecosystems and prehistoric human occupation through an array of artifacts and "trees turned to stone."

NPCA looks forward to working with you and your staff to advance this legislation.

Sincerely,

THOMAS C. KIERNAN.

Mr. MCCAIN. Mr. President, editorials from Arizona State newspapers also encourage a boundary expansion for the Park. I ask unanimous consent that articles from the Arizona Republic and the Holbrook Tribune News regarding the park expansion proposal be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Arizona Republic, May 3, 2002]

EXPANDING PETRIFIED FOREST CAN SAVE  
TREASURES—POTHUNTERS, LOOTERS RAV-  
AGING PARK AREA

Looters and pothunters are ravaging the land around Petrified Forest National Park.

The property should be inside the park. A decade ago, the Park Service decided Petrified Forest's boundaries should be expanded to include the priceless paleontology, archaeology and other resources in adjoining areas.

But the proposal has rarely gotten off the congressional back burner.

Until now.

Arizona Republicans Rep. J.D. Hayworth and Sen. John McCain are preparing bills to expand Petrified Forest. The plan is to add 140,000 acres, more than doubling the 93,500-acre park.

They can't move too fast.

The assets they're trying to protect are under heavy assault.

A pothunter recently smashed through an 800-year-old prehistoric Indian site while searching for booty. Someone else unearthed a massive petrified tree, nearly 5 feet in diameter, and prepared to hack it into marketable chunks.

Last year, we urged Congress to approve the park expansion. Since then, looters have wrecked about 400 gravesites near the park's eastern boundary.

Congress has been understandably preoccupied with other issues. But a critical window of opportunity is about to close.

Elections are coming up, and Arizona's new, larger delegation could take time to come together on this issue. Landowners around Petrified Forest are tired of waiting to sell to the government and are beginning to subdivide their land. The National Parks Conservation Association, and Albuquerque-based non-profit group, is running out of resources to push for the expansion.

And the destruction, of course, continues unabated.

#### BOUNDARIES MISJUDGED

When Petrified Forest was protected almost a century ago, originally as a national monument, the goal was simple: Save some pretty fossilized wood. And that's how the boundaries were picked.

Now we realize that area in northeastern Arizona is a treasure chest, with world-class paleontology, pueblo ruins, striking petroglyphs and, of course, the marvelous trees that turned to stone millions of years ago.

But without a park expansion, many of these treasures will remain outside the protection of federal law. Among them:

The Chinle Escarpment, now only partially within the park, has the world's best terrestrial fossils of plants and animals from the late Triassic period, including early dinosaurs. The escarpment has yielded the earliest known sample of amber.

Rainbow Forest Badlands are rich in fossils and include grazing land for the national park's herd of pronghorn antelope.

Dead Wash Petroglyphs has panels of rock art and pueblo sites of prehistoric people.

Canyon Butte, a dramatic landmark, includes pueblo ruins with signs of warfare.

Expanding the park's boundaries appears unlikely to stir controversy in Congress. Sen. Jon Kyl, R-Ariz., previously landed \$2 million in federal funding for land purchases. But we all know that the best ideas can get lost in the blizzard of bills in Congress.

We applaud Hayworth and McCain for pressing forward with the park expansion. While there's still something left to save.

[From the Holbrook (AZ) Tribune-News, Oct. 27, 2000]

#### PARK'S PROPOSED EXPANSION

Now under study is a plan to expand the Petrified Forest National Park's boundaries by about 97,000 acres to afford protection to this priceless natural treasure. It deserves our interest and support.

Thanks to the efforts of President Theodore Roosevelt and others back in 1906, the park has been preserved for us to enjoy nearly a century later. Now it is time to take the necessary steps to protect the park for our posterity.

The land involved surrounds the existing park. Some of it is publicly owned, and some is privately owned.

Presumably the public agencies owning property adjacent to the park understand how important it is to enlarge the park and offer protection to its resources. It is my understanding that most, if not all, of the major private property owners also support this expansion plan.

The problem is that as these privately owned parcels are subdivided, it makes it more and more difficult to acquire the property for the expansion. And each year, the issue will become more difficult, with more owners to deal with.

The addition of this acreage to the Petrified Forest National Park will help preserve these natural and cultural heritage

areas, and it is my hope that necessary steps will be taken to accomplish this program.

We have been fortunate to have foresighted people in the past who have maintained this wonderful place for us, and we must be equally diligent now to see that our children and grandchildren will have it to enjoy for years in the future.

Mr. MCCAIN. The legislation I am introducing today is intended to serve as a placeholder bill for further development of a boundary expansion proposal. Several key issues remain that require resolution, including the exact definition of the expanded boundary acreage, and the disposition, and possible acquisition, of private, Federal, and State lands within the proposed expansion area.

It's encouraging to note that the four major landowners within the proposed boundary expansion area have expressed interest in the Park expansion. Other public landowners, primarily the State of Arizona and the Bureau of Land Management, have recognized the significance of the paleontological resources on its lands adjacent to the Park. The Arizona State Trust Land Department closed nearby State trust lands to both surface and subsurface applications. Additionally, the Bureau of Land Management has identified its land-holdings within the proposed expansion area for disposal and possible transfer to the Park.

Other issues involving additional private landholders and State trust lands must still be resolved. In particular, the State of Arizona has specific concerns which must be addressed as the legislation moves through the process, particularly with regard to compensation to the State for any acquisitions of State trust lands by the Secretary of Interior, in keeping with the requirements of State law.

I fully intend to address these issues in consultation with affected entities and resolve any additional questions within a reasonable time-frame. A historic opportunity exists to alleviate major threats to these nationally significant resources and preserve them for our posterity.

I look forward to working with my colleagues on both sides of the aisle to ensure swift consideration and enactment of this proposal. Time is of the essence to ensure the long-term protection of these rare and important resources for the enjoyment and educational value for future generations.

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. 2494

*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 "Petrified Forest National Park Expansion Act of 2002".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds that—

(1) the Petrified Forest National Park was established—

(A) to preserve and interpret the globally significant paleontological resources of the Park that are generally regarded as the most important record of the Triassic period in natural history; and

(B) to manage those resources to retain significant cultural, natural, and scenic values;

(2) significant paleontological, archaeological, and scenic resources directly related to the resource values of the Park are located in land areas adjacent to the boundaries of the Park;

(3) those resources not included within the boundaries of the Park—

(A) are vulnerable to theft and desecration; and

(B) are disappearing at an alarming rate;

(4) the general management plan for the Park includes a recommendation to expand the boundaries of the Park and incorporate additional globally significant paleontological deposits in areas adjacent to the Park—

(A) to further protect nationally significant archaeological sites; and

(B) to protect the scenic integrity of the landscape and viewshed of the Park; and

(5) a boundary adjustment at the Park will alleviate major threats to those nationally significant resources.

(b) PURPOSE.—The purpose of this Act is to authorize the Secretary of the Interior to acquire 1 or more parcels of land—

(1) to expand the boundaries of the Park; and

(2) to protect the rare paleontological and archaeological resources of the Park.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) MAP.—The term “map” means the map entitled “Proposed Boundary Adjustments, Petrified Forest National Park”, numbered \_\_\_\_\_, and dated \_\_\_\_\_.

(2) PARK.—The term “Park” means the Petrified Forest National Park in the State.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) STATE.—The term “State” means the State of Arizona.

**SEC. 4. BOUNDARY REVISION.**

(a) IN GENERAL.—The boundary of the Park is revised to include approximately \_\_\_\_\_ acres, as generally depicted on the map.

(b) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

**SEC. 5. ACQUISITION OF ADDITIONAL LAND.**

(a) PRIVATE LAND.—The Secretary may acquire from a willing seller, by purchase, exchange, or by donation, any private land or interests in private land within the revised boundary of the Park.

(b) STATE LAND.—

(1) IN GENERAL.—The Secretary may, with the consent of the State and in accordance with State law, acquire from the State any State land or interests in State land within the revised boundary of the Park by purchase or exchange.

(2) PLAN.—Not later than 2 years after the date of enactment of this Act, the Secretary shall, in coordination with the State, develop a plan for acquisition of State land or interests in State land identified for inclusion within the revised boundary of the Park.

**SEC. 6. ADMINISTRATION.**

(a) IN GENERAL.—Subject to applicable laws, all land and interests in land acquired under this Act shall be administered by the Secretary as part of the Park.

(b) TRANSFER OF JURISDICTION.—The Secretary shall transfer to the National Park

Service administrative jurisdiction over any land under the jurisdiction of the Secretary that—

(1) is depicted on the map as being within the boundaries of the Park; and

(2) is not under the administrative jurisdiction of the National Park Service on the date of enactment of this Act.

(c) GRAZING.—

(1) IN GENERAL.—The Secretary shall permit the continuation of grazing on land transferred to the Secretary under this Act, subject to applicable laws (including regulations) and Executive orders.

(2) TERMINATION OF LEASES OR PERMITS.—Nothing in this subsection prohibits the Secretary from accepting the voluntary termination of a grazing permit or grazing lease within the Park.

(d) AMENDMENT TO GENERAL MANAGEMENT PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary shall amend the general management plan for the Park to address the use and management of any additional land acquired under this Act.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. DOMENICI (for himself, Mr. BIDEN, Mr. LOTT, Mr. DASCHLE, Mr. SHELBY, Mr. REID, Mr. NICKLES, Mr. TORRICELLI, Mr. BURNS, Mr. SCHUMER, Mr. GREGG, Mrs. CLINTON, Mr. DEWINE, Mr. MCCAIN, Mr. MCCONNELL, Mr. CHAFEE, Mr. ALLARD, Mr. BROWNBACK, Mr. CRAPO, Mr. SANTORUM, Mr. COCHRAN, Mr. BOND, Mrs. HUTCHISON, Mr. THOMPSON, Ms. COLLINS, Mr. CRAIG, Mr. KYL, Mr. ENSIGN, Mr. INHOFE, Mr. ALLEN, Mr. HAGEL, Mr. VOINOVICH, Mr. STEVENS, Mr. WARNER, Mr. SPECTER, Mr. SMITH of Oregon, Mr. BUNNING, Mr. SMITH of New Hampshire, and Mr. INOUE):

S. 2495. A bill to designate the United States courthouse located at 100 Federal Plaza in Central Islip, New York, as the “Alfonse M. D’Amato United States Courthouse”; to the Committee on Environment and Public Works.

Mr. DOMENICI. Mr. President, I rise today to introduce a bill in honor of former Senator Alfonse M. D’Amato on behalf of myself and 40 of my colleagues thus far. I am sure there will be more.

It recently came to my attention that the Federal courthouse in Central Islip, Long Island, did not have a name so I thought to myself: What a shame. This beautiful new courthouse does not even have a name, and I concluded that it was time to rectify the oversight. Who better than Alfonse D’Amato, a great Senator from New York, who had more than a little bit to do with providing the people of the Empire State with public buildings to conduct the business of government and justice. Forty of my colleagues concur that we ought to name this U.S. courthouse the “Alfonse M. D’Amato United States Courthouse.” I believe that is the right thing to do. I understand the U.S. Representatives from New York are mov-

ing similar legislation through their body.

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. 2495

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DESIGNATION.**

The United States courthouse located at 100 Federal Plaza in Central Islip, New York, shall be known and designated as the “Alfonse M. D’Amato United States Courthouse”.

**SEC. 2. REFERENCES.**

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in section 1 shall be deemed to be a reference to the “Alfonse M. D’Amato United States Courthouse”.

By Mr. BAUCUS (for himself and Mr. GRASSLEY):

S. 2498. A bill to amend the Internal Revenue Code of 1986 to require adequate disclosure of transactions which have a potential for tax avoidance or evasion, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, Garrison Keillor is quoted as saying, “I believe in looking reality straight in the eye and denying it.” That approach is perhaps what some would like us to do with respect to the increasing problem of the use of abusive tax shelters to avoid or evade taxes. But I do not agree.

The Tax Shelter Transparency Act that I introduce today doesn’t deny reality, rather, it shines some transparency on reality so that we have a better understanding of what is going on out there. Following Enron’s bankruptcy, I think that all Americans have a greater appreciation for the need for greater transparency in complex tax transactions.

The legislation is the product of over 2 years of review and public comment. The Tax Shelter Transparency Act also incorporates tax shelter proposals released by the Department of the Treasury the day before the Senate Finance Committee’s March 21, 2002 hearing on the subject.

As I stated at the hearing, “the Finance Committee is committed to helping combat these carefully engineered transactions. These transactions have little or no economic substance, are designed to achieve unwarranted tax benefits rather than business profit, and place honest corporate competitors at a disadvantage.”

The proliferation of tax shelters has been called “the most significant compliance problem currently confronting our system of self-assessment.” Less than 2 years ago, there was a more positive outlook regarding the Government’s ability to curb the promotion and use of abusive tax shelters. The Department of the Treasury and the IRS

issued regulations requiring disclosure of certain transactions and requiring developers and promoters of tax-engineered transactions to maintain customer lists. Also, the IRS had prevailed in several court cases against the use of transactions lacking in economic substance.

Unfortunately, the honesty and integrity of our tax system has suffered significant blows over the past 2 years. Court decisions have shifted from decisions tough on tax avoidance and evasion to court defeats for the IRS. Also, there appears to be a lack of compliance with the disclosure legislation passed in 1997 and the subsequent regulations.

The corporate tax returns filed in 2001 are the first returns filed under the new tax shelter disclosure requirements. The administration provided the Finance Committee with the results of their analysis of the disclosure data, including their analysis of what was not disclosed.

Only 272 transactions were disclosed by 99 corporate taxpayers. There are approximately 100,000 corporate taxpayers under the Large and Midsize Business Division at the IRS yet only 99 of them made a disclosure under the current regime. Based on the Finance Committee hearing, it is safe to say that the administration, as did Congress, thought the number of disclosures would be much greater.

Clearly, the past method of reactive, ad-hoc closing down of abusive transactions does little to discourage the creation and exploitation of many shelters.

These transactions may be good for a corporation's bottom line, but they are bad for the economy. Here's why: abusive corporate tax shelters create a tax benefit without any corresponding economic benefit. There's no new product. No technological innovation. Just a tax break.

As with the Senate Finance Committee draft legislation released last August, the Tax Shelter Transparency Act emphasizes disclosure. Disclosure is critical to the Government's ability to identify and address abusive tax avoidance and evasion arrangements. Under the bill, if the taxpayer has entered into a questionable transaction and fails to disclose the transaction, then the taxpayer is subject to tough penalties for not disclosing and higher penalties if an understatement results.

The legislation separates transactions into one of three types of transactions for purposes of disclosure and penalties: Reportable Listed Transactions, Reportable Avoidance Transactions, and a catch-all category for Other Transactions. The legislation also addresses the role of each of the players involved in abusive tax shelters: including the taxpayer who buys, the promoter who markets, and the tax advisor who provides an opinion "endorsing" the tax-engineered arrangement. The legislation focuses on each of these participants and contains pro-

posals to discourage their participation in abusive tax transactions.

Reportable Listed Transactions are transactions specifically identified by the Department of the Treasury as "tax avoidance transactions." These are transactions specifically classified by Treasury as bad transactions, essentially the worst of the worst. Failure by the taxpayer to disclose the transaction results in a separate strict liability, nonwaivable flat dollar penalty of \$200,000 for large taxpayers and \$100,000 for small taxpayers.

Additionally, if the taxpayer is required to file with the Securities and Exchange Commission, the penalty must be reported to the SEC. If the taxpayer discloses the questionable transaction, they are not subject to the flat dollar penalty or the SEC reporting. The SEC reporting requirement is a critical element to improving the disclosure of transactions. The amount of tax penalty is relatively insignificant to the tax benefits generated by abusive tax shelter transactions. Corporations, however, have a strong incentive not to trigger a penalty that must be reported to the SEC.

Failure to disclose a reportable listed transaction that results in a tax understatement will be subject to a higher, 30 percent, strict liability, nonwaivable accuracy-related penalty which must be reported to the SEC.

Reportable Avoidance Transactions are transactions that fall into one of the several objective criteria established by the Department of the Treasury which have a potential for tax avoidance or evasion. Based on current regulations and the proposals put forward by the administration, we anticipate these transactions would include but would not be limited to: significant loss transactions; transactions with brief asset holding periods; transactions marketed under conditions of confidentiality; transactions subject to indemnification agreements; and transactions with a certain amount of book-tax difference.

Failure by the taxpayer to disclose the questionable reportable avoidance transaction results in a separate strict liability, nonwaivable flat dollar penalty of \$100,000 for large taxpayers and \$50,000 for small taxpayers.

Reportable Avoidance Transactions are then subject to a filter to determine whether there is a significant purpose of tax avoidance. Transactions entered into with a significant purpose of tax avoidance are subject to harsher treatment in the form of higher penalties.

The legislation enhances the Government's ability to enjoin promoters. Most significantly, the legislation increases the penalty imposed on tax shelter promoters who refuse to maintain lists of their tax shelter investors. If a promoter fails to provide the IRS with a list of investors in a reportable transaction within 20 days after receipt of a written request by the IRS to provide such a list, the promoter would be

subject to a penalty of \$10,000 for each additional business day that the requested information is not provided.

The legislation adds a provision authorizing the Treasury Department to censure tax advisors or impose monetary sanctions against tax advisors and firms that participate in tax shelter activities and practice before the IRS.

I am pleased that this legislation is the product of working closely with my good friend, and the ranking member of the Finance Committee, Senator GRASSLEY. I appreciate Senator GRASSLEY's cosponsorship of the Tax Shelter Transparency Act and his commitment to work as a bipartisan front to shine some light on these abusive tax shelter transactions.

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. 2498

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Tax Shelter Transparency Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 code; table of contents.

#### TITLE I—TAXPAYER-RELATED PROVISIONS

Sec. 101. Penalty for failing to disclose reportable transaction.

Sec. 102. Increase in accuracy-related penalties for listed transactions and other reportable transactions having a tax avoidance purpose.

Sec. 103. Modifications of substantial understatement penalty for non-reportable transactions.

Sec. 104. Tax shelter exception to confidentiality privileges relating to taxpayer communications.

#### TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS

##### Subtitle A—Provisions Relating To Reportable Transactions

Sec. 201. Disclosure of reportable transactions.

Sec. 202. Modifications to penalty for failure to register tax shelters.

Sec. 203. Modification of penalty for failure to maintain lists of investors.

Sec. 204. Modification of actions to enjoin specified conduct related to tax shelters and reportable transactions.

##### Subtitle B—Other Provisions

Sec. 211. Understatement of taxpayer's liability by income tax return preparer.

Sec. 212. Report on effectiveness of penalty on failure to report interests in foreign financial accounts.

Sec. 213. Frivolous tax submissions.

Sec. 214. Regulation of individuals practicing before the Department of Treasury.

Sec. 215. Penalty on promoters of tax shelters.

# **TITLE I—TAXPAYER-RELATED PROVISIONS**

## **SEC. 101. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.**

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

### **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.**

“(a) IMPOSITION OF PENALTY.—Any person who fails to include with any return or statement any information required to be included under subchapter A of chapter 61 with respect to a reportable transaction shall pay a penalty in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be \$50,000.

“(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be \$100,000.

“(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

“(A) IN GENERAL.—In the case of a failure under subsection (a) by—

“(i) a large entity, or

“(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

“(B) LARGE ENTITY.—For purposes of subparagraph (A), the term ‘large entity’ means, with respect to any taxable year, a person (other than a natural person) with gross receipts for the taxable year or the preceding taxable year in excess of \$10,000,000. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(C) HIGH NET WORTH INDIVIDUAL.—The term ‘high net worth individual’ means a natural person whose net worth exceeds \$2,000,000.

“(c) DEFINITIONS.—For purposes of this section—

“(1) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ means any transaction with respect to which information is required under subchapter A of chapter 61 to be included with a taxpayer’s return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction—

“(A) which is the same as, or similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011, or

“(B) which is expected to produce a tax result which is the same as, or similar to, the tax result in a transaction which is so specified.

“(d) PENALTY REPORTED TO SEC.—In the case of a person—

“(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

“(2) which—

“(A) is required to pay a penalty with respect to a listed transaction under this section, or

“(B) is required to pay a penalty under section 6662(a)(2) with respect to any reportable

transaction at a rate prescribed under section 6662(i)(3),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

“(e) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under section 6662.”

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

“Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

## **SEC. 102. INCREASE IN ACCURACY-RELATED PENALTIES FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A TAX AVOIDANCE PURPOSE.**

(a) INCREASE IN PENALTY.—Subsection (a) of section 6662 (relating to imposition of penalty) is amended to read as follows:

“(a) IMPOSITION OF PENALTY.—

“(1) IN GENERAL.—If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

“(2) UNDERSTATEMENT OF INCOME TAX ATTRIBUTABLE TO LISTED TRANSACTIONS OR OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.—If a taxpayer has a reportable transaction income tax understatement (as defined in subsection (i)) for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of the understatement. Except as provided in subsection (i)(4)(B), such understatement shall not be taken into account for purposes of paragraph (1).”

(b) REPORTABLE TRANSACTION INCOME TAX UNDERSTATEMENT.—Section 6662 (relating to imposition of accuracy-related penalty) is amended by adding at the end the following new subsection:

“(i) UNDERSTATEMENT OF INCOME TAX ATTRIBUTABLE TO LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.—

“(1) REPORTABLE TRANSACTION INCOME TAX UNDERSTATEMENT.—For purposes of subsection (a)(2), the term ‘reportable transaction income tax understatement’ means the sum of—

“(A) the product of—

“(i) the amount of the increase (if any) in taxable income which results from a difference between the taxpayer’s treatment of items to which this subsection applies (as shown on the taxpayer’s return of tax) and the proper tax treatment of such items, and

“(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

“(B) the amount of the decrease (if any) in the credits allowed against the tax imposed by subtitle A which results from a difference between the taxpayer’s treatment of items to which this subsection applies (as shown on the taxpayer’s return of tax) and the proper tax treatment of such items.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of

capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

“(2) ITEMS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any item which is attributable to—

“(A) any listed transaction, or

“(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

“(3) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—In the case of any portion of a reportable transaction income tax understatement attributable to a transaction to which section 6664(c)(1) does not apply by reason of section 6664(c)(2)(A), the rate of tax under subsection (a)(2) shall be increased by 5 percent (10 percent in the case of a listed transaction).

“(4) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) REPORTABLE AND LISTED TRANSACTIONS.—The terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

“(B) COORDINATION WITH DETERMINATIONS OF WHETHER OTHER UNDERSTATEMENTS ARE SUBSTANTIAL.—Reportable transaction income tax understatements shall be taken into account under subsection (d)(1) in determining whether any understatement (which is not a reportable transaction income tax understatement) is a substantial understatement.

“(C) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction income tax understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.”

(c) REASONABLE CAUSE EXCEPTION.—Subsection (c) of section 6664 (relating to reasonable cause exception) is amended by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following new paragraphs:

“(2) SPECIAL RULES FOR UNDERSTATEMENTS ATTRIBUTABLE TO LISTED AND CERTAIN OTHER TAX AVOIDANCE TRANSACTIONS.—Paragraph (1) shall not apply to the portion of any reportable transaction income tax understatement attributable to an item referred to in section 6662(i)(2) unless—

“(A) the relevant facts affecting the tax treatment of such item are adequately disclosed in accordance with the regulations prescribed under section 6011,

“(B) there is or was substantial authority for such treatment, and

“(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

“(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

“(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

“(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

“(ii) relates solely to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on

audit, or such treatment will be resolved through settlement if it is raised.

“(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

“(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

“(I) the tax advisor is described in clause (ii), or

“(II) the opinion is described in clause (iii).

“(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor is a material advisor (within the meaning of section 6111(b)(1)) who—

“(I) is compensated directly or indirectly by another material advisor with respect to the transaction,

“(II) has a contingent fee arrangement with respect to the transaction,

“(III) has any type of referral agreement or other similar agreement or understanding with another material advisor which relates to the transaction, or

“(IV) has any other characteristic which, as determined under regulations prescribed by the Secretary, is indicative of a potential conflict of interest or compromise of independence.

“(iii) DISQUALIFIED OPINIONS.—An opinion is described in this clause if the opinion—

“(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

“(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

“(III) does not identify and consider all relevant facts, or

“(IV) fails to meet any other requirement as the Secretary may prescribe.”

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking “(as defined in section 6662(d)(2)(C)(iii))” in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

“(C) TAX SHELTER.—For purposes of subparagraph (B), the term ‘tax shelter’ means—

“(i) a partnership or other entity,

“(ii) any investment plan or arrangement, or

“(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.”

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

#### SEC. 103. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NON-REPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

“(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

“(i) 10 percent of the tax required to be shown on the return for the taxable year, or

“(ii) \$10,000,000.”

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

“(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or”.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

“(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(c)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions—

“(A) for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment, and

“(B) which affect a significant number of taxpayers.

Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

#### SEC. 104. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

“(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

“(1) between a federally authorized tax practitioner and—

“(A) any person,

“(B) any director, officer, employee, agent, or representative of the person, or

“(C) any other person holding a capital or profits interest in the person, and

“(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

#### TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS

##### Subtitle A—Provisions Relating To Reportable Transactions

#### SEC. 201. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

“(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

“(1) information identifying and describing the transaction,

“(2) information describing the advice provided by such advisor, including any potential tax benefits represented to result from the transaction, and

“(3) such other information as the Secretary may prescribe.

Such return shall be filed on the first business day following the earliest date on which such advisor provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or

carrying out the transaction (or such later date as the Secretary may prescribe).

“(b) DEFINITIONS.—For purposes of this section—

“(1) MATERIAL ADVISOR.—The term ‘material advisor’ means any person—

“(A) who provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction, and

“(B) who directly or indirectly derives gross income from such advice or assistance.

“(2) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ has the meaning given to such term by section 6707A(c).

“(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

“(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

“(2) exemptions from the requirements of this section, and

“(3) such rules as may be necessary or appropriate to carry out the purposes of this section.”

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

#### “SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

“(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain (in such manner as the Secretary may by regulations prescribe) a list—

“(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

“(2) containing such other information as the Secretary may by regulations require.”

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b)(1)(A), as redesignated by subparagraph (B), is amended by inserting “written” before “request”.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.”

(3)(A) The heading for section 6708 is amended to read as follows:

#### “SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.”

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

#### SEC. 202. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

**“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.**

“(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

“(1) fails to file such return on or before the date prescribed therefor, or

“(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be \$50,000.

“(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

“(A) \$200,000, or

“(B) 50 percent of the fees paid to such person with respect to aid, assistance, or advice which is provided with respect to the reportable transaction before the date the return is filed under section 6111.

Subparagraph (B) shall be applied by substituting ‘75 percent’ for ‘50 percent’ in the case of an intentional failure or act described in subsection (a).

“(c) REPORTABLE AND LISTED TRANSACTIONS.—The terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).”

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking “tax shelters” and inserting “reportable transactions”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring after the date of the enactment of this Act.

**SEC. 203. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.**

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

“(a) IMPOSITION OF PENALTY.—

“(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available to the Secretary in accordance with section 6112(b)(1)(A) within 20 days after the date of the Secretary’s request, such person shall pay a penalty of \$10,000 for each day of such failure after such 20th day.

“(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to failures occurring after the date of the enactment of this Act.

**SEC. 204. MODIFICATION OF ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.**

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

“(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in

specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

“(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

“(1) that the person has engaged in any specified conduct, and

“(2) that injunctive relief is appropriate to prevent recurrence of such conduct, the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

“(c) SPECIFIED CONDUCT.—For purposes of this section, the term ‘specified conduct’ means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.”

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

**“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.”**

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

**Subtitle B—Other Provisions**

**SEC. 211. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY INCOME TAX RETURN PREPARER.**

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking “realistic possibility of being sustained on its merits” in paragraph (1) and inserting “reasonable belief that the tax treatment in such position was more likely than not the proper treatment”,

(2) by striking “or was frivolous” in paragraph (3) and inserting “or there was no reasonable basis for the tax treatment of such position”, and

(3) by striking “UNREALISTIC” in the heading and inserting “IMPROPER”.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking “\$250” in subsection (a) and inserting “\$1,000”, and

(2) by striking “\$1,000” in subsection (b) and inserting “\$5,000”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

**SEC. 212. REPORT ON EFFECTIVENESS OF PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.**

The Secretary of the Treasury or his delegate shall report each year to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

(1) the number of civil and criminal penalties imposed on failures to meet the reporting and recordkeeping requirements of section 5314 of title 31, United States Code, with respect to interests held in foreign financial accounts, and

(2) the average amount of monetary penalties so imposed.

The Secretary shall include with such report an analysis of the effectiveness of such reporting and recordkeeping requirements in preventing the avoidance or evasion of Federal income taxes and any recommendations

to improve such requirements and the enforcement of such requirements.

**SEC. 213. FRIVOLOUS TAX SUBMISSIONS.**

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

**“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

“(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of \$5,000 if—

“(1) such person files what purports to be a return of a tax imposed by this title but which—

“(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

“(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

“(2) the conduct referred to in paragraph (1)—

“(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(B) reflects a desire to delay or impede the administration of Federal tax laws.

“(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

“(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

“(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

“(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—

“(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(ii) reflects a desire to delay or impede the administration of Federal tax laws.

“(B) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—

“(i) a request for a hearing under—

“(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

“(II) section 6330 (relating to notice and opportunity for hearing before levy), and

“(ii) an application under—

“(I) section 7811 (relating to taxpayer assistance orders),

“(II) section 6159 (relating to agreements for payment of tax liability in installments), or

“(III) section 7122 (relating to compromises).

“(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission promptly after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

“(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

“(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

“(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.”

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—



(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

“(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking “(A)” and inserting “(A)(i)”;

(B) by striking “(B)” and inserting “(ii)”;

(C) by striking the period at the end of the first sentence and inserting “; or”; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

“(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).”

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”, and

(2) in subsection (c), by striking “and (e)” and inserting “(e), and (g)”.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

“(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

“Sec. 6702. Frivolous tax submissions.”

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

#### SEC. 214. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting “, or censure,” after “Department”, and

(B) by adding at the end the following new flush sentence:

“The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or

reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure.”

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

“(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”

#### SEC. 215. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

Mr. GRASSLEY. Mr. President, I rise today to co-sponsor legislation, the “Tax Shelter Transparency Act” which will arrest the proliferation of tax shelters.

We have known for many years that abusive tax shelters, which are structured to exploit unintended consequences of our complicated Federal income tax system, erode the Federal tax base and the public’s confidence in the tax system. Such transactions are patently unfair to the vast majority of taxpayers who do their best to comply with the letter and spirit of the tax law. As a result, the Finance Committee has worked exceedingly hard over the past several years to develop three legislative discussion drafts for public review and comment. Thoughtful and well-considered comments on these drafts have been greatly appreciated by the staff and members of the Finance Committee. The collaborative efforts of those involved in the discussion drafts combined with the recent request for legislative assistance from the Treasury Department and IRS produced today’s revised approach for dealing with abusive tax avoidance transactions.

Above all, the Tax Shelter Transparency Act encourages taxpayer disclosure of potentially abusive tax avoidance transactions. It is surprising and unfortunate that taxpayers, though required to disclose tax shelter transactions under present law, have refused to comply. The Treasury Department and IRS report that the 2001 tax filing season produced a mere 272 tax shelter return disclosures from only 99 corporate taxpayers, a fraction

of transactions requiring such disclosure. The Tax Shelter Transparency Act will curb non-compliance by providing clearer and more objective rules for the reporting of potential tax shelters and by providing strong penalties for anyone who refuses to comply with the revised disclosure requirements.

The legislation has been carefully structured to reward those who are forthcoming with disclosure. I wholeheartedly agree with the remarks offered by the recent Treasury Assistant Secretary for Tax Policy, that “if a taxpayer is comfortable entering into a transaction, a promoter is comfortable selling it, and an advisor is comfortable blessing it, they all should be comfortable disclosing it to the IRS.” Transparency is essential to an evaluation by the IRS and ultimately by the Congress of the United States as to whether the tax benefits generated by complex business transactions are appropriate interpretations of existing tax law. To the extent such interpretations were unintended, the bill allows Congress to amend or clarify existing tax law. To the extent such interpretations are appropriate, all taxpayers, from the largest U.S. multinational conglomerate to the smallest local feedstore owner in Iowa, will benefit when transactions are publicly sanctioned in the form of an “angel list” of good transactions. This legislation accomplishes both of these objectives.

By Mr. KENNEDY (for himself and Mrs. CLINTON):

S. 2499. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I am pleased today to join my colleagues Senator CLINTON and Congresswoman NITA LOWEY in introducing legislation to improve the labeling of allergens in food.

American families deserve to feel confident about the safety of the food on their tables. The Food Allergen Consumer Protection Act will allow the seven million Americans with food allergies to identify more easily a product’s ingredients, avoid foods that may harm them, and stay healthy. We anticipate that this legislation will reduce the number, currently estimated to be 150 yearly, of Americans who die due to the ingestion of allergenic foods.

The Food Allergen Consumer Production Act will require that food ingredient statements on food packages identify in common language when an ingredient, including a flavoring, coloring, or other additive, is itself, or is derived from, one of the eight main food allergens, or from grains containing gluten. This legislation will also make the ingredient label on foods easier to read, and require it to include a working telephone number, including one for telecommunication devices for deaf persons.

The Food Allergen Consumer Protection Act will require food manufacturers to minimize cross-contamination with food allergens between foods produced in the same facility or on the same production line. It will require the use of "may contain" or other advisory language in food labeling when steps to reduce such cross-contamination will not eliminate it. This legislation also preserves the Food and Drug Administration's current authority to regulate the safety of certain products that are bioengineered to contain proteins that cause allergic reactions.

The Food Allergen Consumer Protection Act will also require the Centers for Disease Control and Prevention to track deaths related to food allergies, and it will direct the National Institutes of Health to develop a plan for research activities concerning food allergies.

I urge my colleagues in the Senate to support this legislation that will do so much to improve the lives of those with food allergies. 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. 2499

*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 "Food Allergen Consumer Protection Act".

#### SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Approximately 7,000,000 Americans suffer from food allergies. Every year roughly 30,000 people receive emergency room treatment due to the ingestion of allergenic foods, and an estimated 150 Americans die from anaphylactic shock caused by a food allergy.

(2) Eight major foods—milk, egg, fish, Crustacea, tree nuts, wheat, peanuts, and soybeans—cause 90 percent of allergic reactions. At present, there is no cure for food allergies. A food allergic consumer depends on a product's label to obtain accurate and reliable ingredient information so as to avoid food allergies.

(3) Current Food and Drug Administration regulations exempt spices, flavorings, and certain colorings and additives from ingredient labeling requirements that would allow consumers to avoid those to which they are allergic. Such unlabeled food allergens may pose a serious health threat to those susceptible to food allergies.

(4) A recent Food and Drug Administration study found that 25 percent of bakery products, ice creams, and candies that were inspected failed to list peanuts and eggs, which can cause potentially fatal allergic reactions. The mislabeling of foods puts those with a food allergy at constant risk.

(5) In that study, the Food and Drug Administration found that only slightly more than half of inspected manufacturers checked their products to ensure that all ingredients were accurately reflected on the labels. Furthermore, the number of recalls because of unlabeled allergens rose to 121 in 2000 from about 35 a decade earlier. In part, mislabeling occurs because potentially fatal allergens are introduced into the manufacturing process when production lines and cooking utensils are shared or used to produce multiple products.

(6) Individuals who have food allergies may outgrow their allergy if they strictly avoid consuming the allergen. However, some scientists believe that because low levels of allergens are unintentionally present in foods, those with an allergy are unable to keep from being repeatedly exposed to the very foods they are allergic to. Good manufacturing practices can minimize the unintentional presence of food allergens. In addition, when good manufacturing practices cannot eliminate the potential for cross-contamination, an advisory label on the product can provide additional consumer protection.

(7) The Food and Drug Administration is the Nation's principal consumer protection agency, charged with protecting and promoting public health through premarket and postmarket regulation of food. The agency must have both the necessary authority to ensure that foods are properly labeled and produced using good manufacturing practices and the ability to penalize manufacturers who violate our food safety laws.

(8) Americans deserve to have confidence in the safety and labeling of the food on their tables.

#### SEC. 3. FOOD LABELING; REQUIREMENT OF INFORMATION REGARDING ALLERGENIC SUBSTANCES.

(a) IN GENERAL.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

"(1) If it is not a raw agricultural commodity and it is, or it intentionally bears or contains, a known food allergen, unless its label bears, in bold face type, the common or usual name of the known food allergen and the common or usual name of the food source described in subparagraph (3)(A) from which the known food allergen is derived, except that the name of the food source is not required when the common or usual name of the known food allergen plainly identifies the food source.

"(2) The information required under this paragraph may appear in labeling other than the label only if the Secretary finds that such other labeling is sufficient to protect the public health. A finding by the Secretary under this subparagraph is effective upon publication in the Federal Register as a notice (including any change in an earlier finding under this subparagraph).

"(3) For purposes of this Act, the term 'known food allergen' means any of the following:

"(A) Milk, egg, fish, Crustacea, tree nuts, wheat, peanuts, and soybeans.

"(B) A proteinaceous substance derived from a food specified in clause (A), unless the Secretary determines that the substance does not cause an allergic response that poses a risk to human health.

"(C) Other grains containing gluten (rye, barley, oats, and triticale).

"(D) In addition, any food that the Secretary by regulation determines causes an allergic or other adverse response that poses a risk to human health.

"(4) Notwithstanding paragraph (g), (i), or (k), or any other law, the labeling requirement under this paragraph applies to spices, flavorings, colorings, or incidental additives that are, or that bear or contain, a known food allergen.

"(u) If it is a raw agricultural commodity that is, or bears or contains, a known food allergen, unless it has a label or other labeling that bears in bold face type the common or usual name of the known food allergen and the Secretary has found that the label or other labeling is sufficient to protect the public health. A finding by the Secretary under this paragraph is effective upon publication in the Federal Register as a notice (including any change in an earlier finding under this paragraph).

"(w) If the labeling required under paragraphs (g), (i), (k), (t), (u), or (v)—

"(1) does not use a single, easy-to-read type style that is black on a white background, using upper and lower case letters and with no letters touching;

"(2) does not use at least 8 point type with at least one point leading (i.e., space between two lines of text), provided the total surface area of the food package available to bear labeling exceeds 12 square inches; or

"(3) does not comply with regulations issued by the Secretary to make it easy for consumers to read and use such labeling by requiring a format that is comparable to the format required for the disclosure of nutrition information in the food label under section 101.9(d)(1) of title 21, Code of Federal Regulations."

(b) CIVIL PENALTIES.—Section 303(g)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(g)(2)) is amended—

(1) in subparagraph (A), by striking "section 402(a)(2)(B) shall be subject" and inserting the following: "section 402(a)(2)(B) or regulations under this chapter to minimize the unintended presence of allergens in food, or that is misbranded within the meaning of section 403(t), 403(u), 403(v), or 403(w), shall be subject"; and

(2) in subparagraph (B), by inserting "or misbranded" after "adulterated" each place such term appears.

(c) CONFORMING AMENDMENT.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

"(1) The term 'known food allergen' has the meaning given such term in section 403(t)(3)."

(d) EFFECTIVE DATE.—The amendments made by this section take effect upon the expiration of the 180-day period beginning on the date of the enactment of this Act.

#### SEC. 4. UNINTENTIONAL PRESENCE OF KNOWN FOOD ALLERGENS.

(a) FOOD LABELING OF SUCH FOOD ALLERGENS.—Section 403 of the Federal Food, Drug, and Cosmetic Act, as amended by section 3(a) of this Act, is amended by inserting after paragraph (u) the following:

"(v) If the presence of a known food allergen in the food is unintentional and its labeling bears a statement that the food may bear or contain the known food allergen, or any similar statement, unless the statement is made in compliance with regulations issued by the Secretary to provide for advisory labeling of the known food allergen."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect upon the expiration of the four-year period beginning on the date of the enactment of this Act, except with respect to the authority of the Secretary of Health and Human Services to engage in rulemaking in accordance with section 5.

#### SEC. 5. REGULATIONS.

(a) IN GENERAL.—

(1) REGULATIONS.—Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall issue a proposed rule under sections 402, 403, and 701(a) of the Federal Food, Drug, and Cosmetic Act to implement the amendments made by this Act. Not later than two years after such date of enactment, the Secretary shall promulgate a final rule under such sections.

(2) EFFECTIVE DATE.—The final rule promulgated under paragraph (1) takes effect upon the expiration of the four-year period beginning on the date of the enactment of this Act. If a final rule under such paragraph has not been promulgated as of the expiration of such period, then upon such expiration the proposed rule under such paragraph

takes effect as if the proposed rule were a final rule.

(b) UNINTENTIONAL PRESENCE OF KNOWN FOOD ALLERGENS.—

(1) GOOD MANUFACTURING PRACTICES; RECORDS.—Regulations under subsection (a) shall require the use of good manufacturing practices to minimize, to the extent practicable, the unintentional presence of allergens in food. Such regulations shall include appropriate record keeping and record inspection requirements.

(2) ADVISORY LABELING.—In the regulations under subsection (a), the Secretary shall authorize the use of advisory labeling for a known food allergen when the Secretary has determined that good manufacturing practices required under the regulations will not eliminate the unintentional presence of the known food allergen and its presence in the food poses a risk to human health, and the regulations shall otherwise prohibit the use of such labeling.

(c) INGREDIENT LABELING GENERALLY.—In regulations under subsection (a), the Secretary shall prescribe a format for labeling, as provided for under section 403(w)(3) of the Federal Food, Drug, and Cosmetic Act.

(d) REVIEW BY OFFICE OF MANAGEMENT AND BUDGET.—If the Office of Management and Budget (in this section referred to as “OMB”) is to review proposed or final rules under this Act, OMB shall complete its review in 10 working days, after which the rule shall be published immediately in the Federal Register. If OMB fails to complete its review of either the proposed rule or the final rule in 10 working days, the Secretary shall provide the rule to the Office of the Federal Register, which shall publish the rule, and it shall have full effect (subject to applicable effective dates specified in this Act) without review by OMB. If the Secretary does not complete the proposed or final rule so as to provide OMB with 10 working days to review the rule and have it published in the Federal Register within the time frames for publication of the rule specified in this section, the rule shall be published without review by OMB.

**SEC. 6. FOOD LABELING; INCLUSION OF TELEPHONE NUMBER.**

(a) IN GENERAL.—Section 403(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(e)) is amended—

(1) by striking “and (2)” and inserting the following: “(2) in the case of a manufacturer, packer, or distributor whose annual gross sales made or business done in sales to consumers equals or exceeds \$500,000, a toll-free telephone number (staffed during reasonable business hours) for the manufacturer, packer, or distributor (including one to accommodate telecommunications devices for deaf persons, commonly known as TDDs); or in the case of a manufacturer, packer, or distributor whose annual gross sales made or business done in sales are less than \$500,000, the mailing address or the address of the Internet site for the manufacturer, packer, or distributor; and (3)”; and

(2) by striking “clause (2)” and inserting “clause (3)”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect upon the expiration of the 180-day period beginning on the date of the enactment of this Act.

**SEC. 7. DATA ON FOOD-RELATED ALLERGIC RESPONSES.**

(a) IN GENERAL.—Consistent with the findings of the study conducted under subsection (b), the Secretary of Health and Human Services (in this section referred to as the “Secretary”), acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Commissioner of Foods and Drugs, shall improve the

collection of, and (beginning 18 months after the date of the enactment of this Act) annually publish, national data on—

(1) the prevalence of food allergies, and  
(2) the incidence of deaths, injuries, including anaphylactic shock, hospitalizations, and physician visits, and the utilization of drugs, associated with allergic responses to foods.

(b) STUDY.—Not later than one year after the date of the enactment of this Act, the Secretary, in consultation with consumers, providers, State governments, and other relevant parties, shall complete a study for the purposes of—

(1) determining whether existing systems for the reporting, collection and analysis of national data accurately capture information on the subjects specified in subsection (a); and

(2) identifying new or alternative systems, or enhancements to existing systems, for the reporting collection and analysis of national data necessary to fulfill the purpose of subsection (a).

(c) PUBLIC AND PROVIDER EDUCATION.—The Secretary shall, directly or through contracts with public or private entities, educate physicians and other health providers to improve the reporting, collection, and analysis of data on the subjects specified in subsection (a).

(d) CHILD FATALITY REVIEW TEAMS.—Insofar as is practicable, activities developed or expanded under this section shall include utilization of child fatality review teams in identifying and assessing child deaths associated with allergic responses to foods.

(e) REPORTS TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the progress made with respect to subsections (a) through (d).

(f) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated \$10,000,000 for fiscal year 2003, and such sums as may be necessary for each subsequent fiscal year.

(g) EFFECTIVE DATE.—This section takes effect on the date of the enactment of this Act.

By Mr. ALLARD (for himself, Mr. SESSIONS, and Mrs. HUTCHISON):  
S. 2501. A bill to establish requirements arising from the delay or restriction on the shipment of special nuclear materials to the Savannah River Site, Aiken, South Carolina; to the Committee on Armed Services.

Mr. ALLARD. Mr. President, 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. 2501

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REQUIREMENTS RELATING TO DELAY, RESTRICTION, OR PROHIBITION ON SHIPMENT OF SPECIAL NUCLEAR MATERIALS TO SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA.**

(a) REQUIREMENTS.—Subject to subsection (c), if as of the date of the enactment of this Act, or at any time after that date, the State of South Carolina acts to delay or restrict, or seeks or enforces a judgment to prohibit, the shipment of special nuclear materials (SNM) to the Savannah River Site, Aiken, South Carolina, for processing by the proposed mixed oxide (MOX) fuel fabrication facility at the Savannah River Site, the Secretary of Energy shall—

(1) reopen the Record of Decision (ROD) on the mixed oxide fuel fabrication facility for purposes of identifying and evaluating alternative locations for the mixed oxide fuel fabrication facility; and

(2) conduct a study of the costs and implications for the national security of the United States of—

(A) converting the Savannah River site to an environmental management (EM) closure site; and

(B) transferring all current and proposed national security activities at the Savannah River Site from the Savannah River Site to other facilities of the National Nuclear Security Administration or the Department of Energy, as appropriate.

(b) REPORT ON STUDY.—If the Secretary conducts a study under subsection (a)(2), the Secretary shall submit to the congressional defense committees a report on the study not later than six months after the commencement of the study.

(c) CONTINGENT SUSPENSION OF APPLICABILITY OF REQUIREMENTS.—If at any time before the requirements in subsection (a) otherwise go into effect, the Secretary and the State of South Carolina enter into an agreement regarding the shipment of special nuclear materials to the Savannah River Site for processing by the proposed mixed oxide fuel fabrication facility at the Savannah River Site, the requirements in subsection (a) shall not go into effect as long, as determined by the Secretary, as the Secretary and the State of South Carolina comply with the agreement.

(d) SPECIAL NUCLEAR MATERIALS.—In this section, the term “special nuclear materials” includes weapons grade plutonium.

**SUBMITTED RESOLUTIONS**

**SENATE CONCURRENT RESOLUTION 109—COMMEMORATING THE INDEPENDENCE OF EAST TIMOR AND EXPRESSING THE SENSE OF CONGRESS THAT THE PRESIDENT SHOULD ESTABLISH DIPLOMATIC RELATIONS WITH EAST TIMOR, AND FOR OTHER PURPOSES**

Mr. CHAFEE (for himself and Mr. FEINGOLD) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 109

Whereas on May 20, 2002, East Timor will become the first new country of the millennium;

Whereas the perseverance and strength of the East Timorese people in the face of daunting challenges has inspired the people of the United States and around the world;

Whereas in 1974 Portugal acknowledged the right of its colonies, including East Timor, to self-determination, including independence;

Whereas East Timor has been under United Nations administration since October, 1999, during which time international peace-keeping forces, supplemented by forces of the United States Group for East Timor (USGET), have worked to stabilize East Timor and provide for its national security;

Whereas the people of East Timor exercised their long-sought right of self-determination on August 30, 1999, when 98.6 percent of the eligible population voted, and 78.5 percent chose independence, in a United Nations-administered popular consultation, despite systematic terror and intimidation;

Whereas a constitution for East Timor was adopted in March, 2002;

Whereas East Timor is emerging from more than 400 years of colonization and occupation;

Whereas the East Timorese people again demonstrated their strong commitment to democracy when 91.3 percent of eligible voters peacefully participated in East Timor's first democratic, multiparty election for a Constituent Assembly on August 30, 2001, and when 86.3 percent of those eligible participated in the first presidential election on April 14, 2002, electing Xanana Gusamo as their first President;

Whereas, as the people of East Timor move proudly toward independence, many still struggle to recover from the scars of the military occupation and 1999 anti-independence violence that resulted in displacement which, according to United Nations and other independent reports, exceed 500,000 in number, and widespread death, rape and other mistreatment of women, family separation, large refugee populations, and the destruction of 70 percent of the country's infrastructure;

Whereas efforts are ongoing by East Timorese officials and others to seek justice for the crimes against humanity and war crimes that have been perpetrated in recent years, efforts that include the work of the Serious Crimes Investigation Unit of the United Nations and the East Timorese Commission for Reception, Truth, and Reconciliation to document and assess responsibility;

Whereas Indonesian National Human Rights Commission and United Nations Security Council recommendations to investigate and prosecute senior Indonesian military and civilian officials for their roles in promoting the 1999 anti-independence violence in East Timor have not yet been fully implemented;

Whereas, although the people of East Timor are working toward a plan for vigorous economic growth and development, the Government of East Timor will face a substantial shortfall in its recurrent and development budgets over the first 3 years of independence, and is seeking to fill the gap entirely with grants from donor countries; and

Whereas a large percentage of the population of East Timor lives below the poverty line, with inadequate access to health care and education, the unemployment rate is estimated at 80 percent, and the life expectancy is only 57 years: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That (a) Congress—*

(1) congratulates and honors the courageous people of East Timor and their leaders;

(2) welcomes East Timor into the community of nations as a sovereign state and looks forward to working with East Timor as an equal partner;

(3) supports United Nations and other multilateral efforts to support reconstruction and development in East Timor, and United Nations and other multilateral peacekeeping forces to safeguard East Timor's security, including continuing the periodic visits by United States military forces;

(4) remains committed to working toward a debt-free start to East Timor and just, sustainable, and secure development programs as well as adequate resources for the judicial system for East Timor for the foreseeable future beyond independence;

(5) expresses continued concern over deplorable humanitarian conditions and an environment of intimidation among the East Timorese refugees living in West Timor;

(6) strongly supports the prompt, safe, and voluntary repatriation and reintegration of East Timorese refugees, in particular those East Timorese still held in militia-controlled refugee camps in West Timor, especially

children separated from their parents through coercion or force;

(7) expresses a commitment to maintaining appropriate restrictions and prohibitions in law on military assistance, training, relations, and technical support to the Indonesian Armed Forces; and

(8) acknowledges that a United Nations International Commission of Inquiry found in January 2000 that justice is "fundamental for the future social and political stability of East Timor", and remains deeply concerned about the lack of justice in the region.

(b) It is the sense of Congress that the President should—

(1) immediately extend to East Timor the diplomatic relations afforded to other sovereign nations, including the establishment of an embassy in East Timor;

(2) maintain a robust level of United States assistance for East Timor commensurate with the challenges this new nation faces after independence;

(3) work to fund in a generous and responsible way East Timor's financing gap in its recurrent and development budgets, and coordinate with other donors to ensure the budget gap is addressed;

(4) focus bilateral assistance on the areas of employment creation, job training, rural reconstruction, micro-enterprise, environmental protection, health care, education, refugee resettlement, reconciliation and conflict resolution, and strengthening the role of women in society;

(5) strongly urge the Government of Indonesia to step up efforts to disarm and disband all militia, hold them accountable to the rule of law, ensure stability along the border, and promptly reunite East Timorese children separated from their parents through coercion or force; and

(6) review thoroughly information from the East Timorese Commission for Reception, Truth, and Reconciliation, and use all diplomatic resources at the disposal of the President to ensure that—

(A) those officials responsible for crimes against humanity and war crimes against the East Timorese people are held accountable; and

(B) the Government of Indonesia fully cooperates with the East Timorese judicial system.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3398. Mr. BAUCUS (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes; which was ordered to lie on the table.

SA 3399. Mr. LOTT proposed an amendment to the bill H.R. 3009, *supra*.

SA 3400. Mr. BAYH (for himself, Mr. DURBIN, Mr. DAYTON, Ms. MIKULSKI, and Mr. ROCKEFELLER) submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) *supra*; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

**SA 3398.** Mr. BAUCUS (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 244, line 23, strike all through "United States," on line 25, and insert the following: "foreign investors in the United States are not accorded greater rights than United States investors in the United States.".

**SA 3399.** Mr. LOTT proposed an amendment to the bill H.R. 3009, to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes; as follows:

Strike all after the first word in the bill and add the following:

#### DIVISION A—BIPARTISAN TRADE PROMOTION AUTHORITY

##### TITLE I—TRADE PROMOTION AUTHORITY

##### SEC. 1101. SHORT TITLE; FINDINGS.

(a) **SHORT TITLE.**—This division may be cited as the "Bipartisan Trade Promotion Authority Act of 2002".

(b) **FINDINGS.**—The Congress makes the following findings:

(1) The expansion of international trade is vital to the national security of the United States. Trade is critical to the economic growth and strength of the United States and to its leadership in the world. Stable trading relationships promote security and prosperity. Trade agreements today serve the same purposes that security pacts played during the Cold War, binding nations together through a series of mutual rights and obligations. Leadership by the United States in international trade fosters open markets, democracy, and peace throughout the world.

(2) The national security of the United States depends on its economic security, which in turn is founded upon a vibrant and growing industrial base. Trade expansion has been the engine of economic growth. Trade agreements maximize opportunities for the critical sectors and building blocks of the economy of the United States, such as information technology, telecommunications and other leading technologies, basic industries, capital equipment, medical equipment, services, agriculture, environmental technology, and intellectual property. Trade will create new opportunities for the United States and preserve the unparalleled strength of the United States in economic, political, and military affairs. The United States, secured by expanding trade and economic opportunities, will meet the challenges of the twenty-first century.

(3) Support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Nevertheless, in several cases, dispute settlement panels and the WTO Appellate Body have added to obligations and diminished rights of the United States under WTO Agreements. In particular, dispute settlement panels and the Appellate Body have—

(A) given insufficient deference to the expertise and fact-finding of the Department of Commerce and the United States International Trade Commission;

(B) imposed an obligation concerning the causal relationship between increased imports into the United States and serious injury to domestic industry necessary to support a safeguard measure that is different from the obligation set forth in the applicable WTO Agreements;

(C) imposed an obligation concerning the exclusion from safeguards measures of products imported from countries party to a free trade agreement that is different from the obligation set forth in the applicable WTO Agreements;

(D) imposed obligations on the Department of Commerce with respect to the use of facts

available in antidumping investigations that are different from the obligations set forth in the applicable WTO Agreements; and

(E) accorded insufficient deference to the Department of Commerce's methodology for adjusting countervailing duties following the privatization of a subsidized foreign producer.

#### SEC. 1102. TRADE NEGOTIATING OBJECTIVES.

(a) OVERALL TRADE NEGOTIATING OBJECTIVES.—The overall trade negotiating objectives of the United States for agreements subject to the provisions of section 1103 are—

(1) to obtain more open, equitable, and reciprocal market access;

(2) to obtain the reduction or elimination of barriers and distortions that are directly related to trade and that decrease market opportunities for United States exports or otherwise distort United States trade;

(3) to further strengthen the system of international trading disciplines and procedures, including dispute settlement;

(4) to foster economic growth, raise living standards, and promote full employment in the United States and to enhance the global economy;

(5) to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;

(6) to promote respect for worker rights and the rights of children consistent with core labor standards of the International Labor Organization (as defined in section 1113(2)) and an understanding of the relationship between trade and worker rights;

(7) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade; and

(8) to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small business.

(b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—

(1) TRADE BARRIERS AND DISTORTIONS.—The principal negotiating objectives of the United States regarding trade barriers and other trade distortions are—

(A) to expand competitive market opportunities for United States exports and to obtain fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for United States exports or otherwise distort United States trade; and

(B) to obtain reciprocal tariff and nontariff barrier elimination agreements, with particular attention to those tariff categories covered in section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).

(2) TRADE IN SERVICES.—The principal negotiating objective of the United States regarding trade in services is to reduce or eliminate barriers to international trade in services, including regulatory and other barriers that deny national treatment and market access or unreasonably restrict the establishment or operations of service suppliers.

(3) FOREIGN INVESTMENT.—Recognizing that United States law on the whole provides a high level of protection for investment, consistent with or greater than the level required by international law, the principal negotiating objectives of the United States re-

garding foreign investment are to reduce or eliminate artificial or trade-distorting barriers to trade-related foreign investment, while ensuring that United States investors in the United States are not accorded lesser rights than foreign investors in the United States, and to secure for investors important rights comparable to those that would be available under United States legal principles and practice, by—

(A) reducing or eliminating exceptions to the principle of national treatment;

(B) freeing the transfer of funds relating to investments;

(C) reducing or eliminating performance requirements, forced technology transfers, and other unreasonable barriers to the establishment and operation of investments;

(D) seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practice;

(E) seeking to establish standards for fair and equitable treatment consistent with United States legal principles and practice, including the principle of due process;

(F) providing meaningful procedures for resolving investment disputes;

(G) seeking to improve mechanisms used to resolve disputes between an investor and a government through—

(i) mechanisms to eliminate frivolous claims and to deter the filing of frivolous claims;

(ii) procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims;

(iii) procedures to enhance opportunities for public input into the formulation of government positions; and

(iv) establishment of a single appellate body to review decisions in investor-to-government disputes and thereby provide coherence to the interpretations of investment provisions in trade agreements; and

(H) ensuring the fullest measure of transparency in the dispute settlement mechanism, to the extent consistent with the need to protect information that is classified or business confidential, by—

(i) ensuring that all requests for dispute settlement are promptly made public;

(ii) ensuring that—

(I) all proceedings, submissions, findings, and decisions are promptly made public;

(II) all hearings are open to the public; and

(iii) establishing a mechanism for acceptance of amicus curiae submissions from businesses, unions, and nongovernmental organizations.

(4) INTELLECTUAL PROPERTY.—The principal negotiating objectives of the United States regarding trade-related intellectual property are—

(A) to further promote adequate and effective protection of intellectual property rights, including through—

(i) ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)), particularly with respect to meeting enforcement obligations under that agreement; and

(ii) ensuring that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States reflect a standard of protection similar to that found in United States law;

(iii) providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property;

(iv) preventing or eliminating discrimination with respect to matters affecting the availability, acquisition, scope, mainte-

nance, use, and enforcement of intellectual property rights;

(v) ensuring that standards of protection and enforcement keep pace with technological developments, and in particular ensuring that rightsholders have the legal and technological means to control the use of their works through the Internet and other global communication media, and to prevent the unauthorized use of their works; and

(vi) providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative, and criminal enforcement mechanisms; and

(B) to secure fair, equitable, and non-discriminatory market access opportunities for United States persons that rely upon intellectual property protection.

(5) TRANSPARENCY.—The principal negotiating objective of the United States with respect to transparency is to obtain wider and broader application of the principle of transparency through—

(A) increased and more timely public access to information regarding trade issues and the activities of international trade institutions;

(B) increased openness at the WTO and other international trade fora by increasing public access to appropriate meetings, proceedings, and submissions, including with regard to dispute settlement and investment; and

(C) increased and more timely public access to all notifications and supporting documentation submitted by parties to the WTO.

(6) ANTI-CORRUPTION.—The principal negotiating objectives of the United States with respect to the use of money or other things of value to influence acts, decisions, or omissions of foreign governments or officials or to secure any improper advantage in a manner affecting trade are—

(A) to obtain high standards and appropriate domestic enforcement mechanisms applicable to persons from all countries participating in the applicable trade agreement that prohibit such attempts to influence acts, decisions, or omissions of foreign governments; and

(B) to ensure that such standards do not place United States persons at a competitive disadvantage in international trade.

(7) IMPROVEMENT OF THE WTO AND MULTILATERAL TRADE AGREEMENTS.—The principal negotiating objectives of the United States regarding the improvement of the World Trade Organization, the Uruguay Round Agreements, and other multilateral and bilateral trade agreements are—

(A) to achieve full implementation and extend the coverage of the World Trade Organization and such agreements to products, sectors, and conditions of trade not adequately covered; and

(B) to expand country participation in and enhancement of the Information Technology Agreement and other trade agreements.

(8) REGULATORY PRACTICES.—The principal negotiating objectives of the United States regarding the use of government regulation or other practices by foreign governments to provide a competitive advantage to their domestic producers, service providers, or investors and thereby reduce market access for United States goods, services, and investments are—

(A) to achieve increased transparency and opportunity for the participation of affected parties in the development of regulations;

(B) to require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence;

(C) to establish consultative mechanisms among parties to trade agreements to promote increased transparency in developing guidelines, rules, regulations, and laws for

government procurement and other regulatory regimes; and

(D) to achieve the elimination of government measures such as price controls and reference pricing which deny full market access for United States products.

(9) **ELECTRONIC COMMERCE.**—The principal negotiating objectives of the United States with respect to electronic commerce are—

(A) to ensure that current obligations, rules, disciplines, and commitments under the World Trade Organization apply to electronic commerce;

(B) to ensure that—

(i) electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and

(ii) the classification of such goods and services ensures the most liberal trade treatment possible;

(C) to ensure that governments refrain from implementing trade-related measures that impede electronic commerce;

(D) where legitimate policy objectives require domestic regulations that affect electronic commerce, to obtain commitments that any such regulations are the least restrictive on trade, nondiscriminatory, and transparent, and promote an open market environment; and

(E) to extend the moratorium of the World Trade Organization on duties on electronic transmissions.

(10) **RECIPROCAL TRADE IN AGRICULTURE.**—

(A) **IN GENERAL.**—The principal negotiating objective of the United States with respect to agriculture is to obtain competitive opportunities for United States exports of agricultural commodities in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in bulk, specialty crop, and value-added commodities by—

(i) reducing or eliminating, by a date certain, tariffs or other charges that decrease market opportunities for United States exports—

(I) giving priority to those products that are subject to significantly higher tariffs or subsidy regimes of major producing countries; and

(II) providing reasonable adjustment periods for United States import-sensitive products, in close consultation with the Congress on such products before initiating tariff reduction negotiations;

(ii) reducing tariffs to levels that are the same as or lower than those in the United States;

(iii) seeking to eliminate all export subsidies on agricultural commodities while maintaining bona fide food aid and preserving United States agricultural market development and export credit programs that allow the United States to compete with other foreign export promotion efforts;

(iv) allowing the preservation of programs that support family farms and rural communities but do not distort trade;

(v) developing disciplines for domestic support programs, so that production that is in excess of domestic food security needs is sold at world prices;

(vi) eliminating Government policies that create price-depressing surpluses;

(vii) eliminating state trading enterprises whenever possible;

(viii) developing, strengthening, and clarifying rules and effective dispute settlement mechanisms to eliminate practices that unfairly decrease United States market access opportunities or distort agricultural markets to the detriment of the United States, particularly with respect to import-sensitive products, including—

(I) unfair or trade-distorting activities of state trading enterprises and other administrative mechanisms, with emphasis on requiring price transparency in the operation of state trading enterprises and such other mechanisms in order to end cross subsidization, price discrimination, and price undercutting;

(II) unjustified trade restrictions or commercial requirements, such as labeling, that affect new technologies, including biotechnology;

(III) unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements;

(IV) other unjustified technical barriers to trade; and

(V) restrictive rules in the administration of tariff rate quotas;

(ix) eliminating practices that adversely affect trade in perishable or cyclical products, while improving import relief mechanisms to recognize the unique characteristics of perishable and cyclical agriculture;

(x) ensuring that the use of import relief mechanisms for perishable and cyclical agriculture are as accessible and timely to growers in the United States as those mechanisms that are used by other countries;

(xi) taking into account whether a party to the negotiations has failed to adhere to the provisions of already existing trade agreements with the United States or has circumvented obligations under those agreements;

(xii) taking into account whether a product is subject to market distortions by reason of a failure of a major producing country to adhere to the provisions of already existing trade agreements with the United States or by the circumvention by that country of its obligations under those agreements;

(xiii) otherwise ensuring that countries that accede to the World Trade Organization have made meaningful market liberalization commitments in agriculture;

(xiv) taking into account the impact that agreements covering agriculture to which the United States is a party, including the North American Free Trade Agreement, have on the United States agricultural industry;

(xv) maintaining bona fide food assistance programs and preserving United States market development and export credit programs; and

(xvi) strive to complete a general multilateral round in the World Trade Organization by January 1, 2005, and seek the broadest market access possible in multilateral, regional, and bilateral negotiations, recognizing the effect that simultaneous sets of negotiations may have on United States import-sensitive commodities (including those subject to tariff-rate quotas).

(B) **CONSULTATION.**—

(i) **BEFORE COMMENCING NEGOTIATIONS.**—Before commencing negotiations with respect to agriculture, the United States Trade Representative, in consultation with the Congress, shall seek to develop a position on the treatment of seasonal and perishable agricultural products to be employed in the negotiations in order to develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.

(ii) **DURING NEGOTIATIONS.**—During any negotiations on agricultural subsidies, the United States Trade Representative shall seek to establish the common base year for calculating the Aggregated Measurement of Support (as defined in the Agreement on Agriculture) as the end of each country's Uruguay Round implementation period, as reported in each country's Uruguay Round market access schedule.

(iii) **SCOPE OF OBJECTIVE.**—The negotiating objective provided in subparagraph (A) applies with respect to agricultural matters to be addressed in any trade agreement entered into under section 1103 (a) or (b), including any trade agreement entered into under section 1103 (a) or (b) that provides for accession to a trade agreement to which the United States is already a party, such as the North American Free Trade Agreement and the United States-Canada Free Trade Agreement.

(11) **LABOR AND THE ENVIRONMENT.**—The principal negotiating objectives of the United States with respect to labor and the environment are—

(A) to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party after entry into force of a trade agreement between those countries;

(B) to recognize that parties to a trade agreement retain the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor or environmental matters determined to have higher priorities, and to recognize that a country is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection;

(C) to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 1113(2));

(D) to strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development;

(E) to reduce or eliminate government practices or policies that unduly threaten sustainable development;

(F) to seek market access, through the elimination of tariffs and nontariff barriers, for United States environmental technologies, goods, and services; and

(G) to ensure that labor, environmental, health, or safety policies and practices of the parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against United States exports or serve as disguised barriers to trade.

(12) **DISPUTE SETTLEMENT AND ENFORCEMENT.**—The principal negotiating objectives of the United States with respect to dispute settlement and enforcement of trade agreements are—

(A) to seek provisions in trade agreements providing for resolution of disputes between governments under those trade agreements in an effective, timely, transparent, equitable, and reasoned manner, requiring determinations based on facts and the principles of the agreements, with the goal of increasing compliance with the agreements;

(B) to seek to strengthen the capacity of the Trade Policy Review Mechanism of the World Trade Organization to review compliance with commitments;

(C) to seek improved adherence by panels convened under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes and by the WTO Appellate Body to the standard of review applicable under the WTO Agreement involved in the dispute, including greater deference, where appropriate, to the fact finding and technical



expertise of national investigating authorities;

(D) to seek provisions encouraging the early identification and settlement of disputes through consultation;

(E) to seek provisions to encourage the provision of trade-expanding compensation if a party to a dispute under the agreement does not come into compliance with its obligations under the agreement;

(F) to seek provisions to impose a penalty upon a party to a dispute under the agreement that—

(i) encourages compliance with the obligations of the agreement;

(ii) is appropriate to the parties, nature, subject matter, and scope of the violation; and

(iii) has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism; and

(G) to seek provisions that treat United States principal negotiating objectives equally with respect to—

(i) the ability to resort to dispute settlement under the applicable agreement;

(ii) the availability of equivalent dispute settlement procedures; and

(iii) the availability of equivalent remedies.

(13) **BORDER TAXES.**—The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.

(14) **WTO EXTENDED NEGOTIATIONS.**—The principal negotiating objectives of the United States regarding trade in civil aircraft are those set forth in section 135(c) of the Uruguay Round Agreements Act (19 U.S.C. 3355(c)) and regarding rules of origin are the conclusion of an agreement described in section 132 of that Act (19 U.S.C. 3552).

(c) **PROMOTION OF CERTAIN PRIORITIES.**—In order to address and maintain United States competitiveness in the global economy, the President shall—

(1) seek greater cooperation between the WTO and the ILO;

(2) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 1113(2)), and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms;

(3) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to develop and implement standards for the protection of the environment and human health based on sound science, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms;

(4) conduct environmental reviews of future trade and investment agreements, consistent with Executive Order 13141 of November 16, 1999 and the relevant guidelines, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such reviews;

(5) review the impact of future trade agreements on United States employment, modeled after Executive Order 13141, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review;

(6) take into account other legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, and consumer interests and the law and regulations related thereto;

(7) have the Secretary of Labor consult with any country seeking a trade agreement with the United States concerning that country's labor laws and provide technical assistance to that country if needed;

(8) in connection with any trade negotiations entered into under this division, the President shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating, on a time frame determined in accordance with section 1107(b)(2)(E);

(9)(A) preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, or that lessen the effectiveness of domestic and international safeguard provisions, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions; and

(B) address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

(10) continue to promote consideration of multilateral environmental agreements and consult with parties to such agreements regarding the consistency of any such agreement that includes trade measures with existing environmental exceptions under Article XX of the GATT 1994;

(11) report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, not later than 12 months after the imposition of a penalty or remedy by the United States permitted by a trade agreement to which this division applies, on the effectiveness of the penalty or remedy applied under United States law in enforcing United States rights under the trade agreement; and

(12) seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade. The report required under paragraph (11) shall address whether the penalty or remedy was effective in changing the behavior of the targeted party and whether the penalty or remedy had any adverse impact on parties or interests not party to the dispute.

(d) **CONSULTATIONS.**—

(1) **CONSULTATIONS WITH CONGRESSIONAL ADVISERS.**—In the course of negotiations conducted under this division, the United States Trade Representative shall consult closely and on a timely basis with, and keep fully apprised of the negotiations, the Congressional Oversight Group convened under section 1107 and all committees of the House of Representatives and the Senate with jurisdiction over laws that would be affected by a trade agreement resulting from the negotiations.

(2) **CONSULTATION BEFORE AGREEMENT INITIALED.**—In the course of negotiations conducted under this division, the United States Trade Representative shall—

(A) consult closely and on a timely basis (including immediately before initialing an

agreement) with, and keep fully apprised of the negotiations, the congressional advisers for trade policy and negotiations appointed under section 161 of the Trade Act of 1974 (19 U.S.C. 2211), the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Congressional Oversight Group convened under section 1107; and

(B) with regard to any negotiations and agreement relating to agricultural trade, also consult closely and on a timely basis (including immediately before initialing an agreement) with, and keep fully apprised of the negotiations, the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(e) **ADHERENCE TO OBLIGATIONS UNDER URUGUAY ROUND AGREEMENTS.**—In determining whether to enter into negotiations with a particular country, the President shall take into account the extent to which that country has implemented, or has accelerated the implementation of, its obligations under the Uruguay Round Agreements.

#### SEC. 1103. TRADE AGREEMENTS AUTHORITY.

(a) **AGREEMENTS REGARDING TARIFF BARRIERS.**—

(1) **IN GENERAL.**—Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, priorities, and objectives of this division will be promoted thereby, the President—

(A) may enter into trade agreements with foreign countries before—

(i) June 1, 2005; or

(ii) June 1, 2007, if trade authorities procedures are extended under subsection (c); and

(B) may, subject to paragraphs (2) and (3), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties,

as the President determines to be required or appropriate to carry out any such trade agreement.

The President shall notify the Congress of the President's intention to enter into an agreement under this subsection.

(2) **LIMITATIONS.**—No proclamation may be made under paragraph (1) that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of the enactment of this Act) to a rate of duty which is less than 50 percent of the rate of such duty that applies on such date of enactment;

(B) reduces the rate of duty below that applicable under the Uruguay Round Agreements, on any agricultural product which was the subject of tariff reductions by the United States as a result of the Uruguay Round Agreements, for which the rate of duty, pursuant to such Agreements, was reduced on January 1, 1995, to a rate which was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994; or

(C) increases any rate of duty above the rate that applied on the date of the enactment of this Act.

(3) **AGGREGATE REDUCTION; EXEMPTION FROM STAGING.**—

(A) **AGGREGATE REDUCTION.**—Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a

trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if—

(i) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed under paragraph (1) to carry out such agreement with respect to such article; and

(ii) a reduction equal to the amount applicable under clause (i) had taken effect at 1-year intervals after the effective date of such first reduction.

(B) EXEMPTION FROM STAGING.—No staging is required under subparagraph (A) with respect to a duty reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) ROUNDING.—If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by an amount equal to the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) OTHER LIMITATIONS.—A rate of duty reduction that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction is included within an implementing bill provided for under section 1105 and that bill is enacted into law.

(6) OTHER TARIFF MODIFICATIONS.—Notwithstanding paragraphs (1)(B), (2)(A), (2)(C), and (3) through (5), and subject to the consultation and layover requirements of section 115 of the Uruguay Round Agreements Act, the President may proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX, as defined in section 2(5) of that Act, if the United States agrees to such modification or staged rate reduction in a negotiation for the reciprocal elimination or harmonization of duties under the auspices of the World Trade Organization.

(7) AUTHORITY UNDER URUGUAY ROUND AGREEMENTS ACT NOT AFFECTED.—Nothing in this subsection shall limit the authority provided to the President under section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).

(b) AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) IN GENERAL.—

(A) DETERMINATION BY PRESIDENT.—Whenever the President determines that—

(i) one or more existing duties or any other import restriction of any foreign country or the United States or any other barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy; or

(ii) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect;

and that the purposes, policies, priorities, and objectives of this division will be promoted thereby, the President may enter into a trade agreement described in subparagraph (B) during the period described in subparagraph (C).

(B) AGREEMENT TO REDUCE OR ELIMINATE CERTAIN DISTORTION.—The President may enter into a trade agreement under subparagraph (A) with foreign countries providing for—

(i) the reduction or elimination of a duty, restriction, barrier, or other distortion described in subparagraph (A), or

(ii) the prohibition of, or limitation on the imposition of, such barrier or other distortion.

(C) TIME PERIOD.—The President may enter into a trade agreement under this paragraph before—

(i) June 1, 2005; or

(ii) June 1, 2007, if trade authorities procedures are extended under subsection (c).

(2) CONDITIONS.—A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 1102 (a) and (b) and the President satisfies the conditions set forth in section 1104.

(3) BILLS QUALIFYING FOR TRADE AUTHORITIES PROCEDURES.—

(A) APPLICATION OF EXPEDITED PROCEDURES.—The provisions of section 151 of the Trade Act of 1974 (in this division referred to as “trade authorities procedures”) apply to a bill of either House of Congress which contains provisions described in subparagraph (B) to the same extent as such section 151 applies to implementing bills under that section. A bill to which this paragraph applies shall hereafter in this division be referred to as an “implementing bill”.

(B) PROVISIONS DESCRIBED.—The provisions referred to in subparagraph (A) are—

(i) a provision approving a trade agreement entered into under this subsection and approving the statement of administrative action, if any, proposed to implement such trade agreement; and

(ii) if changes in existing laws or new statutory authority are required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

(c) EXTENSION DISAPPROVAL PROCESS FOR CONGRESSIONAL TRADE AUTHORITIES PROCEDURES.—

(1) IN GENERAL.—Except as provided in section 1105(b)—

(A) the trade authorities procedures apply to implementing bills submitted with respect to trade agreements entered into under subsection (b) before July 1, 2005; and

(B) the trade authorities procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under subsection (b) after June 30, 2005, and before July 1, 2007, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before June 1, 2005.

(2) REPORT TO CONGRESS BY THE PRESIDENT.—If the President is of the opinion that the trade authorities procedures should be extended to implementing bills described in paragraph (1)(B), the President shall submit to the Congress, not later than March 1, 2005, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under subsection (b) and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this division, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) OTHER REPORTS TO CONGRESS.—

(A) REPORT BY THE ADVISORY COMMITTEE.—The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of the President's decision to submit a report to the Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but not later than May 1, 2005, a written report that contains—

(i) its views regarding the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this division; and

(ii) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(B) REPORT BY ITC.—The President shall promptly inform the International Trade Commission of the President's decision to submit a report to the Congress under paragraph (2). The International Trade Commission shall submit to the Congress as soon as practicable, but not later than May 1, 2005, a written report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this Act and the date on which the President decides to seek an extension requested under paragraph (2).

(4) STATUS OF REPORTS.—The reports submitted to the Congress under paragraphs (2) and (3), or any portion of such reports, may be classified to the extent the President determines appropriate.

(5) EXTENSION DISAPPROVAL RESOLUTIONS.—

(A) DEFINITION.—For purposes of paragraph (1), the term “extension disapproval resolution” means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: “That the \_\_\_\_\_ disapproves the request of the President for the extension, under section 1103(c)(1)(B)(i) of the Bipartisan Trade Promotion Authority Act of 2002, of the trade authorities procedures under that Act to any implementing bill submitted with respect to any trade agreement entered into under section 1103(b) of that Act after June 30, 2005.”, with the blank space being filled with the name of the resolving House of the Congress.

(B) INTRODUCTION.—Extension disapproval resolutions—

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be referred, in the House of Representatives, to the Committee on Ways and Means and, in addition, to the Committee on Rules.

(C) APPLICATION OF SECTION 152 OF THE TRADE ACT OF 1974.—The provisions of section 152 (d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192 (d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) LIMITATIONS.—It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution after June 30, 2005.

(d) COMMENCEMENT OF NEGOTIATIONS.—In order to contribute to the continued economic expansion of the United States, the President shall commence negotiations covering tariff and nontariff barriers affecting any industry, product, or service sector, and

expand existing sectoral agreements to countries that are not parties to those agreements, in cases where the President determines that such negotiations are feasible and timely and would benefit the United States. Such sectors include agriculture, commercial services, intellectual property rights, industrial and capital goods, government procurement, information technology products, environmental technology and services, medical equipment and services, civil aircraft, and infrastructure products. In so doing, the President shall take into account all of the principal negotiating objectives set forth in section 1102(b).

#### SEC. 1104. CONSULTATIONS AND ASSESSMENT.

(a) NOTICE AND CONSULTATION BEFORE NEGOTIATION.—The President, with respect to any agreement that is subject to the provisions of section 1103(b), shall—

(1) provide, at least 90 calendar days before initiating negotiations, written notice to the Congress of the President's intention to enter into the negotiations and set forth therein the date the President intends to initiate such negotiations, the specific United States objectives for the negotiations, and whether the President intends to seek an agreement, or changes to an existing agreement;

(2) before and after submission of the notice, consult regarding the negotiations with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, such other committees of the House and Senate as the President deems appropriate, and the Congressional Oversight group convened under section 1107; and

(3) upon the request of a majority of the members of the Congressional Oversight Group under section 1107(c), meet with the Congressional Oversight Group before initiating the negotiations or at any other time concerning the negotiations.

(b) NEGOTIATIONS REGARDING AGRICULTURE AND FISHING INDUSTRY.—

(1) IN GENERAL.—Before initiating or continuing negotiations the subject matter of which is directly related to the subject matter under section 1102(b)(10)(A)(i) with any country, the President shall assess whether United States tariffs on agricultural products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In addition, the President shall consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than United States tariffs and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.

(2) SPECIAL CONSULTATIONS ON IMPORT SENSITIVE PRODUCTS.—

(A) IN GENERAL.—Before initiating negotiations with regard to agriculture, and, with respect to the Free Trade Area for the Americas and negotiations with regard to agriculture under the auspices of the World Trade Organization, as soon as practicable after the date of enactment of this Act, the United States Trade Representative shall—

(i) identify those agricultural products subject to tariff-rate quotas on the date of enactment of this Act, and agricultural prod-

ucts subject to tariff reductions by the United States as a result of the Uruguay Round Agreements, for which the rate of duty was reduced on January 1, 1995, to a rate which was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994;

(ii) consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning—

(I) whether any further tariff reductions on the products identified under clause (i) should be appropriate, taking into account the impact of any such tariff reduction on the United States industry producing the product concerned;

(II) whether the products so identified face unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements; and

(III) whether the countries participating in the negotiations maintain export subsidies or other programs, policies, or practices that distort world trade in such products and the impact of such programs, policies, and practices on United States producers of the products;

(iii) request that the International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the United States industry producing the product concerned and on the United States economy as a whole; and

(iv) upon complying with clauses (i), (ii), and (iii), notify the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate of those products identified under clause (i) for which the Trade Representative intends to seek tariff liberalization in the negotiations and the reasons for seeking such tariff liberalization.

(B) IDENTIFICATION OF ADDITIONAL AGRICULTURAL PRODUCTS.—If, after negotiations described in subparagraph (A) are commenced—

(i) the United States Trade Representative identifies any additional agricultural product described in subparagraph (A)(i) for tariff reductions which were not the subject of a notification under subparagraph (A)(iv), or

(ii) any additional agricultural product described in subparagraph (A)(i) is the subject of a request for tariff reductions by a party to the negotiations,

the Trade Representative shall, as soon as practicable, notify the committees referred to in subparagraph (A)(iv) of those products and the reasons for seeking such tariff reductions.

(3) NEGOTIATIONS REGARDING THE FISHING INDUSTRY.—Before initiating, or continuing, negotiations which directly relate to fish or shellfish trade with any country, the President shall consult with the Committee on Ways and Means and the Committee on Resources of the House of Representatives, and the Committee on Finance and the Committee on Commerce, Science, and Transportation of the Senate, and shall keep the Committees apprised of negotiations on an ongoing and timely basis.

(c) NEGOTIATIONS REGARDING TEXTILES.—Before initiating or continuing negotiations the subject matter of which is directly related to textiles and apparel products with any country, the President shall assess whether United States tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country and wheth-

er the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.

(d) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO.—

(1) CONSULTATION.—Before entering into any trade agreement under section 1103(b), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate;

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement; and

(C) the Congressional Oversight Group convened under section 1107.

(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of this division; and

(C) the implementation of the agreement under section 1105, including the general effect of the agreement on existing laws.

(3) REPORT REGARDING UNITED STATES TRADE REMEDY LAWS.—

(A) CHANGES IN CERTAIN TRADE LAWS.—The President, at least 90 calendar days before the day on which the President enters into a trade agreement, shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate in writing of any amendments to title VII of the Tariff Act of 1930 or chapter 1 of title II of the Trade Act of 1974 that the President proposes to include in a bill implementing such trade agreement.

(B) EXPLANATION.—On the date that the President transmits the notification, the President also shall transmit to the Committees a report explaining—

(i) the President's reasons for believing that amendments to title VII of the Tariff Act of 1930 or to chapter 1 of title II of the Trade Act of 1974 are necessary to implement the trade agreement; and

(ii) the President's reasons for believing that such amendments are consistent with the purposes, policies, and objectives described in section 1102(c)(9).

(C) REPORT TO HOUSE.—Not later than 60 calendar days after the date on which the President transmits the notification described in subparagraph (A), the Chairman and ranking member of the Ways and Means Committee of the House of Representatives, based on consultations with the members of that Committee, shall issue to the House of Representatives a report stating whether the proposed amendments described in the President's notification are consistent with the purposes, policies, and objectives described in section 1102(c)(9). In the event that the Chairman and ranking member disagree with respect to one or more conclusions, the report shall contain the separate views of the Chairman and ranking member.

(D) REPORT TO SENATE.—Not later than 60 calendar days after the date on which the President transmits the notification described in subparagraph (A), the Chairman and ranking member of the Finance Committee of the Senate, based on consultations with the members of that Committee, shall issue to the Senate a report stating whether

the proposed amendments described in the President's report are consistent with the purposes, policies, and objectives described in section 1102(c)(9). In the event that the Chairman and ranking member disagree with respect to one or more conclusions, the report shall contain the separate views of the Chairman and ranking member.

(e) **ADVISORY COMMITTEE REPORTS.**—The report required under section 135(e)(1) of the Trade Act of 1974 regarding any trade agreement entered into under section 1103 (a) or (b) of this division shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 1103(a)(1) or 1105(a)(1)(A) of the President's intention to enter into the agreement.

(f) **ITC ASSESSMENT.**—

(1) **IN GENERAL.**—The President, at least 90 calendar days before the day on which the President enters into a trade agreement under section 1103(b), shall provide the International Trade Commission (referred to in this subsection as "the Commission") with the details of the agreement as it exists at that time and request the Commission to prepare and submit an assessment of the agreement as described in paragraph (2). Between the time the President makes the request under this paragraph and the time the Commission submits the assessment, the President shall keep the Commission current with respect to the details of the agreement.

(2) **ITC ASSESSMENT.**—Not later than 90 calendar days after the President enters into the agreement, the Commission shall submit to the President and the Congress a report assessing the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.

(3) **REVIEW OF EMPIRICAL LITERATURE.**—In preparing the assessment, the Commission shall review available economic assessments regarding the agreement, including literature regarding any substantially equivalent proposed agreement, and shall provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

#### **SEC. 1105. IMPLEMENTATION OF TRADE AGREEMENTS.**

(a) **IN GENERAL.**—

(1) **NOTIFICATION AND SUBMISSION.**—Any agreement entered into under section 1103(b) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which the President enters into an agreement—

(i) notifies the House of Representatives and the Senate of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register; and

(ii) transmits to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the notification and report described in section 1104(d)(3) (A) and (B);

(B) within 60 days after entering into the agreement, the President submits to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the

United States into compliance with the agreement;

(C) after entering into the agreement, the President submits to the Congress, on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill described in section 1103(b)(3);

(ii) a statement of any administrative action proposed to implement the trade agreement; and

(iii) the supporting information described in paragraph (2); and

(D) the implementing bill is enacted into law.

(2) **SUPPORTING INFORMATION.**—The supporting information required under paragraph (1)(C)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives of this division; and

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i);

(II) whether and how the agreement changes provisions of an agreement previously negotiated;

(III) how the agreement serves the interests of United States commerce;

(IV) how the implementing bill meets the standards set forth in section 1103(b)(3);

(V) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in section 1102(c) regarding the promotion of certain priorities; and

(VI) in the event that the reports described in section 1104(b)(3) (C) and (D) contain any findings that the proposed amendments are inconsistent with the purposes, policies, and objectives described in section 1102(c)(9), an explanation as to why the President believes such findings to be incorrect.

(3) **RECIPROCAL BENEFITS.**—In order to ensure that a foreign country that is not a party to a trade agreement entered into under section 1103(b) does not receive benefits under the agreement unless the country is also subject to the obligations under the agreement, the implementing bill submitted with respect to the agreement shall provide that the benefits and obligations under the agreement apply only to the parties to the agreement, if such application is consistent with the terms of the agreement. The implementing bill may also provide that the benefits and obligations under the agreement do not apply uniformly to all parties to the agreement, if such application is consistent with the terms of the agreement.

(4) **DISCLOSURE OF COMMITMENTS.**—Any agreement or other understanding with a foreign government or governments (whether oral or in writing) that—

(A) relates to a trade agreement with respect to which Congress enacts implementing legislation under trade authorities procedures, and

(B) is not disclosed to Congress before legislation implementing that agreement is introduced in either House of Congress,

shall not be considered to be part of the agreement approved by Congress and shall have no force and effect under United States law or in any dispute settlement body.

(b) **LIMITATIONS ON TRADE AUTHORITIES PROCEDURES.**—

(1) **FOR LACK OF NOTICE OR CONSULTATIONS.**—

(A) **IN GENERAL.**—The trade authorities procedures shall not apply to any implementing bill submitted with respect to a trade agreement or trade agreements entered into under section 1103(b) if during the 60-day period beginning on the date that one House of Congress agrees to a procedural disapproval resolution for lack of notice or consultations with respect to such trade agreement or agreements, the other House separately agrees to a procedural disapproval resolution with respect to such trade agreement or agreements.

(B) **PROCEDURAL DISAPPROVAL RESOLUTION.**—(i) For purposes of this paragraph, the term "procedural disapproval resolution" means a resolution of either House of Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002 on negotiations with respect to \_\_\_\_\_ and, therefore, the trade authorities procedures under that Act shall not apply to any implementing bill submitted with respect to such trade agreement or agreements.", with the blank space being filled with a description of the trade agreement or agreements with respect to which the President is considered to have failed or refused to notify or consult.

(ii) For purposes of clause (i), the President has "failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002" on negotiations with respect to a trade agreement or trade agreements if—

(I) the President has failed or refused to consult (as the case may be) in accordance with section 1104 or 1105 with respect to the negotiations, agreement, or agreements;

(II) guidelines under section 1107(b) have not been developed or met with respect to the negotiations, agreement, or agreements;

(III) the President has not met with the Congressional Oversight Group pursuant to a request made under section 1107(c) with respect to the negotiations, agreement, or agreements; or

(IV) the agreement or agreements fail to make progress in achieving the purposes, policies, priorities, and objectives of this division.

(C) **PROCEDURES FOR CONSIDERING RESOLUTIONS.**—(i) Procedural disapproval resolutions—

(I) in the House of Representatives—

(aa) may be introduced by any Member of the House;

(bb) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(cc) may not be amended by either Committee; and

(II) in the Senate—

(aa) may be introduced by any Member of the Senate.

(bb) shall be referred to the Committee on Finance; and

(cc) may not be amended.

(ii) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to a procedural disapproval resolution introduced with respect to a trade agreement if no other procedural disapproval resolution with respect to that trade agreement has previously been considered under such provisions of section 152 of the Trade Act of 1974 in that House of Congress during that Congress.

(iii) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.

(iv) It is not in order for the Senate to consider any procedural disapproval resolution not reported by the Committee on Finance.

(2) **FOR FAILURE TO MEET OTHER REQUIREMENTS.**—Prior to December 31, 2002, the Secretary of Commerce shall transmit to Congress a report setting forth the strategy of the United States for correcting instances in which dispute settlement panels and the Appellate Body of the WTO have added to obligations or diminished rights of the United States, as described in section 1101(b)(3). Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the WTO, unless the Secretary of Commerce has issued such report in a timely manner.

(c) **RULES OF HOUSE OF REPRESENTATIVES AND SENATE.**—Subsection (b) of this section and section 1103(c) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

**SEC. 1106. TREATMENT OF CERTAIN TRADE AGREEMENTS FOR WHICH NEGOTIATIONS HAVE ALREADY BEGUN.**

(a) **CERTAIN AGREEMENTS.**—Notwithstanding the prerenegotiation notification and consultation requirement described in section 1104(a), if an agreement to which section 1103(b) applies—

- (1) is entered into under the auspices of the World Trade Organization,
- (2) is entered into with Chile,
- (3) is entered into with Singapore, or
- (4) establishes a Free Trade Area for the Americas,

and results from negotiations that were commenced before the date of the enactment of this Act, subsection (b) shall apply.

(b) **TREATMENT OF AGREEMENTS.**—In the case of any agreement to which subsection (a) applies—

(1) the applicability of the trade authorities procedures to implementing bills shall be determined without regard to the requirements of section 1104(a) (relating only to 90 days notice prior to initiating negotiations), and any procedural disapproval resolution under section 1105(b)(1)(B) shall not be in order on the basis of a failure or refusal to comply with the provisions of section 1104(a); and

(2) the President shall, as soon as feasible after the date of enactment of this Act—

(A) notify the Congress of the negotiations described in subsection (a), the specific United States objectives in the negotiations, and whether the President is seeking a new agreement or changes to an existing agreement; and

(B) before and after submission of the notice, consult regarding the negotiations with the committees referred to in section 1104(a)(2) and the Congressional Oversight Group.

**SEC. 1107. CONGRESSIONAL OVERSIGHT GROUP.**

(a) **MEMBERS AND FUNCTIONS.**—

(1) **IN GENERAL.**—By not later than 60 days after the date of the enactment of this Act, and not later than 30 days after the convening of each Congress, the chairman of the Committee on Ways and Means of the House of Representatives and the chairman of the Committee on Finance of the Senate shall convene the Congressional Oversight Group.

(2) **MEMBERSHIP FROM THE HOUSE.**—In each Congress, the Congressional Oversight Group shall be comprised of the following Members of the House of Representatives:

(A) The chairman and ranking member of the Committee on Ways and Means, and 3 additional members of such Committee (not more than 2 of whom are members of the same political party).

(B) The chairman and ranking member, or their designees, of the committees of the House of Representatives which would have, under the Rules of the House of Representatives, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this division would apply.

(3) **MEMBERSHIP FROM THE SENATE.**—In each Congress, the Congressional Oversight Group shall also be comprised of the following members of the Senate:

(A) The chairman and ranking Member of the Committee on Finance and 3 additional members of such Committee (not more than 2 of whom are members of the same political party).

(B) The chairman and ranking member, or their designees, of the committees of the Senate which would have, under the Rules of the Senate, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this division would apply.

(4) **ACCREDITATION.**—Each member of the Congressional Oversight Group described in paragraph (2)(A) and (3)(A) shall be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegation in negotiations for any trade agreement to which this division applies. Each member of the Congressional Oversight Group described in paragraph (2)(B) and (3)(B) shall be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegation in the negotiations by reason of which the member is in the Congressional Oversight Group. The Congressional Oversight Group shall consult with and provide advice to the Trade Representative regarding the formulation of specific objectives, negotiating strategies and positions, the development of the applicable trade agreement, and compliance and enforcement of the negotiated commitments under the trade agreement.

(5) **CHAIR.**—The Congressional Oversight Group shall be chaired by the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate.

(b) **GUIDELINES.**—

(1) **PURPOSE AND REVISION.**—The United States Trade Representative, in consultation with the chairmen and ranking minority members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(A) shall, within 120 days after the date of the enactment of this Act, develop written guidelines to facilitate the useful and timely exchange of information between the Trade Representative and the Congressional Oversight Group established under this section; and

(B) may make such revisions to the guidelines as may be necessary from time to time.

(2) **CONTENT.**—The guidelines developed under paragraph (1) shall provide for, among other things—

(A) regular, detailed briefings of the Congressional Oversight Group regarding negotiating objectives, including the promotion of certain priorities referred to in section 1102(c), and positions and the status of the applicable negotiations, beginning as soon as

practicable after the Congressional Oversight Group is convened, with more frequent briefings as trade negotiations enter the final stage;

(B) access by members of the Congressional Oversight Group, and staff with proper security clearances, to pertinent documents relating to the negotiations, including classified materials;

(C) the closest practicable coordination between the Trade Representative and the Congressional Oversight Group at all critical periods during the negotiations, including at negotiation sites;

(D) after the applicable trade agreement is concluded, consultation regarding ongoing compliance and enforcement of negotiated commitments under the trade agreement; and

(E) the time frame for submitting the report required under section 1102(c)(8).

(c) **REQUEST FOR MEETING.**—Upon the request of a majority of the Congressional Oversight Group, the President shall meet with the Congressional Oversight Group before initiating negotiations with respect to a trade agreement, or at any other time concerning the negotiations.

**SEC. 1108. ADDITIONAL IMPLEMENTATION AND ENFORCEMENT REQUIREMENTS.**

(a) **IN GENERAL.**—At the time the President submits to the Congress the final text of an agreement pursuant to section 1105(a)(1)(C), the President shall also submit a plan for implementing and enforcing the agreement. The implementation and enforcement plan shall include the following:

(1) **BORDER PERSONNEL REQUIREMENTS.**—A description of additional personnel required at border entry points, including a list of additional customs and agricultural inspectors.

(2) **AGENCY STAFFING REQUIREMENTS.**—A description of additional personnel required by Federal agencies responsible for monitoring and implementing the trade agreement, including personnel required by the Office of the United States Trade Representative, the Department of Commerce, the Department of Agriculture (including additional personnel required to implement sanitary and phytosanitary measures in order to obtain market access for United States exports), the Department of the Treasury, and such other agencies as may be necessary.

(3) **CUSTOMS INFRASTRUCTURE REQUIREMENTS.**—A description of the additional equipment and facilities needed by the United States Customs Service.

(4) **IMPACT ON STATE AND LOCAL GOVERNMENTS.**—A description of the impact the trade agreement will have on State and local governments as a result of increases in trade.

(5) **COST ANALYSIS.**—An analysis of the costs associated with each of the items listed in paragraphs (1) through (4).

(b) **BUDGET SUBMISSION.**—The President shall include a request for the resources necessary to support the plan described in subsection (a) in the first budget that the President submits to the Congress after the submission of the plan.

**SEC. 1109. COMMITTEE STAFF.**

The grant of trade promotion authority under this division is likely to increase the activities of the primary committees of jurisdiction in the area of international trade. In addition, the creation of the Congressional Oversight Group under section 1107 will increase the participation of a broader number of Members of Congress in the formulation of United States trade policy and oversight of the international trade agenda for the United States. The primary committees of jurisdiction should have adequate staff to accommodate these increases in activities.

**SEC. 1110. CONFORMING AMENDMENTS.**

(a) IN GENERAL.—Title I of the Trade Act of 1974 (19 U.S.C. 2111 et seq.) is amended as follows:

**(1) IMPLEMENTING BILL.—**

(A) Section 151(b)(1) (19 U.S.C. 2191(b)(1)) is amended by striking “section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988, or section 282 of the Uruguay Round Agreements Act” and inserting “section 282 of the Uruguay Round Agreements Act, or section 1105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002”.

(B) Section 151(c)(1) (19 U.S.C. 2191(c)(1)) is amended by striking “or section 282 of the Uruguay Round Agreements Act” and inserting “, section 282 of the Uruguay Round Agreements Act, or section 1105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002”.

(2) ADVICE FROM INTERNATIONAL TRADE COMMISSION.—Section 131 (19 U.S.C. 2151) is amended—

**(A) in subsection (a)—**

(i) in paragraph (1), by striking “section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988,” and inserting “section 123 of this Act or section 1103 (a) or (b) of the Bipartisan Trade Promotion Authority Act of 2002,”; and

(ii) in paragraph (2), by striking “section 1102 (b) or (c) of the Omnibus Trade and Competitiveness Act of 1988” and inserting “section 1103(b) of the Bipartisan Trade Promotion Authority Act of 2002”;

(B) in subsection (b), by striking “section 1102(a)(3)(A)” and inserting “section 1103(a)(3)(A) of the Bipartisan Trade Promotion Authority Act of 2002”; and

(C) in subsection (c), by striking “section 1102 of the Omnibus Trade and Competitiveness Act of 1988,” and inserting “section 1103 of the Bipartisan Trade Promotion Authority Act of 2002”.

(3) HEARINGS AND ADVICE.—Sections 132, 133(a), and 134(a) (19 U.S.C. 2152, 2153(a), and 2154(a)) are each amended by striking “section 1102 of the Omnibus Trade and Competitiveness Act of 1988,” each place it appears and inserting “section 1103 of the Bipartisan Trade Promotion Authority Act of 2002”.

(4) PREREQUISITES FOR OFFERS.—Section 134(b) (19 U.S.C. 2154(b)) is amended by striking “section 1102 of the Omnibus Trade and Competitiveness Act of 1988” and inserting “section 1103 of the Bipartisan Trade Promotion Authority Act of 2002”.

(5) ADVICE FROM PRIVATE AND PUBLIC SECTORS.—Section 135 (19 U.S.C. 2155) is amended—

(A) in subsection (a)(1)(A), by striking “section 1102 of the Omnibus Trade and Competitiveness Act of 1988” and inserting “section 1103 of the Bipartisan Trade Promotion Authority Act of 2002”;

**(B) in subsection (e)(1)—**

(i) by striking “section 1102 of the Omnibus Trade and Competitiveness Act of 1988” each place it appears and inserting “section 1103 of the Bipartisan Trade Promotion Authority Act of 2002”; and

(ii) by striking “not later than the date on which the President notifies the Congress under section 1103(a)(1)(A) of such Act of 1988 of his intention to enter into that agreement” and inserting “not later than the date that is 30 days after the date on which the President notifies the Congress under section 1105(a)(1)(A) of the Bipartisan Trade Promotion Authority Act of 2002 of the President's intention to enter into that agreement”; and

(C) in subsection (e)(2), by striking “section 1101 of the Omnibus Trade and Competitiveness Act of 1988” and inserting “section 1102 of the Bipartisan Trade Promotion Authority Act of 2002”.

(6) TRANSMISSION OF AGREEMENTS TO CONGRESS.—Section 162(a) (19 U.S.C. 2212(a)) is amended by striking “or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988” and inserting “or under section 1103 of the Bipartisan Trade Promotion Authority Act of 2002”.

(b) APPLICATION OF CERTAIN PROVISIONS.—For purposes of applying sections 125, 126, and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137)—

(1) any trade agreement entered into under section 1103 shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 1103 shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 102 of the Trade Act of 1974.

**SEC. 1111. REPORT ON IMPACT OF TRADE PROMOTION AUTHORITY.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the International Trade Commission shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the economic impact on the United States of the trade agreements described in subsection (b).

(b) AGREEMENTS.—The trade agreements described in this subsection are:

(1) The United States-Israel Free Trade Agreement.

(2) The United States-Canada Free Trade Agreement.

(3) The North American Free Trade Agreement.

(4) The Uruguay Round Agreements.

(5) The Tokyo Round of Multilateral Trade Negotiations.

**SEC. 1112. IDENTIFICATION OF SMALL BUSINESS ADVOCATE AT WTO.**

(a) IN GENERAL.—The United States Trade Representative shall pursue the identification of a small business advocate at the World Trade Organization Secretariat to examine the impact of WTO agreements on the interests of small- and medium-sized enterprises, address the concerns of small- and medium-sized enterprises, and recommend ways to address those interests in trade negotiations involving the World Trade Organization.

(b) ASSISTANT TRADE REPRESENTATIVE.—The Assistant United States Trade Representative for Industry and Telecommunications shall be responsible for ensuring that the interests of small business are considered in all trade negotiations in accordance with the objective described in section 1102(a)(8). It is the sense of Congress that the small business functions should be reflected in the title of the Assistant United States Trade Representative assigned the responsibility for small business.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the United States Trade Representative shall prepare and submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the steps taken by the United States Trade Representative to pursue the identification of a small business advocate at the World Trade Organization.

**SEC. 1113. DEFINITIONS.**

In this division:

(1) AGREEMENT ON AGRICULTURE.—The term “Agreement on Agriculture” means the agreement referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(2)).

(2) CORE LABOR STANDARDS.—The term “core labor standards” means—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(3) GATT 1994.—The term “GATT 1994” has the meaning given that term in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

(4) ILO.—The term “ILO” means the International Labor Organization.

(5) UNITED STATES PERSON.—The term “United States person” means—

(A) a United States citizen;

(B) a partnership, corporation, or other legal entity organized under the laws of the United States; and

(C) a partnership, corporation, or other legal entity that is organized under the laws of a foreign country and is controlled by entities described in subparagraph (B) or United States citizens, or both.

(6) URUGUAY ROUND AGREEMENTS.—The term “Uruguay Round Agreements” has the meaning given that term in section 2(7) of the Uruguay Round Agreements Act (19 U.S.C. 3501(7)).

(7) WORLD TRADE ORGANIZATION; WTO.—The terms “World Trade Organization” and “WTO” mean the organization established pursuant to the WTO Agreement.

(8) WTO AGREEMENT.—The term “WTO Agreement” means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

**DIVISION B—ANDEAN TRADE PREFERENCE****TITLE XXI—ANDEAN TRADE PREFERENCE****SEC. 2101. SHORT TITLE.**

This division may be cited as the “Andean Trade Preference Expansion Act”.

**SEC. 2102. FINDINGS.**

Congress makes the following findings:

(1) Since the Andean Trade Preference Act was enacted in 1991, it has had a positive impact on United States trade with Bolivia, Colombia, Ecuador, and Peru. Two-way trade has doubled, with the United States serving as the leading source of imports and leading export market for each of the Andean beneficiary countries. This has resulted in increased jobs and expanded export opportunities in both the United States and the Andean region.

(2) The Andean Trade Preference Act has been a key element in the United States counternarcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca.

(3) Notwithstanding the success of the Andean Trade Preference Act, the Andean region remains threatened by political and economic instability and fragility, vulnerable to the consequences of the drug war and fierce global competition for its legitimate trade.

(4) The continuing instability in the Andean region poses a threat to the security interests of the United States and the world. This problem has been partially addressed through foreign aid, such as Plan Colombia, enacted by Congress in 2000. However, foreign aid alone is not sufficient. Enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region.



(5) The Andean Trade Preference Act constitutes a tangible commitment by the United States to the promotion of prosperity, stability, and democracy in the beneficiary countries.

(6) Renewal and enhancement of the Andean Trade Preference Act will bolster the confidence of domestic private enterprise and foreign investors in the economic prospects of the region, ensuring that legitimate private enterprise can be the engine of economic development and political stability in the region.

(7) Each of the Andean beneficiary countries is committed to conclude negotiation of a Free Trade Area of the Americas by the year 2005, as a means of enhancing the economic security of the region.

(8) Temporarily enhancing trade benefits for Andean beneficiary countries will promote the growth of free enterprise and economic opportunity in these countries and serve the security interests of the United States, the region, and the world.

#### SEC. 2103. TEMPORARY PROVISIONS.

(a) IN GENERAL.—Section 204(b) of the Andean Trade Preference Act (19 U.S.C. 3203(b)) is amended to read as follows:

“(b) IMPORT-SENSITIVE ARTICLES.—

“(1) IN GENERAL.—Subject to paragraphs (2) through (5), the duty-free treatment provided under this title does not apply to—

“(A) textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on that date;

“(B) footwear not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

“(C) tuna, prepared or preserved in any manner, in airtight containers;

“(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

“(E) watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

“(F) articles to which reduced rates of duty apply under subsection (c);

“(G) sugars, syrups, and sugar containing products subject to tariff-rate quotas; or

“(H) rum and tafia classified in subheading 2208.40 of the HTS.

“(2) TRANSITION PERIOD TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES.—

“(A) ARTICLES COVERED.—During the transition period, the preferential treatment described in subparagraph (B) shall apply to the following articles:

“(i) APPAREL ARTICLES ASSEMBLED FROM PRODUCTS OF THE UNITED STATES AND ATPEA BENEFICIARY COUNTRIES OR PRODUCTS NOT AVAILABLE IN COMMERCIAL QUANTITIES.—Apparel articles sewn or otherwise assembled in 1 or more ATPEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following:

“(I) Fabrics or fabric components formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in the United States), provided that apparel articles sewn or otherwise assembled from materials described in this subclause are assembled with thread formed in the United States.

“(II) Fabric components knit-to-shape in the United States from yarns wholly formed

in the United States and fabric components knit-to-shape in 1 or more ATPEA beneficiary countries from yarns wholly formed in the United States.

“(III) Fabrics or fabric components formed or components knit-to-shape, in 1 or more ATPEA beneficiary countries, from yarns wholly formed in 1 or more ATPEA beneficiary countries, if such fabrics (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in 1 or more ATPEA beneficiary countries) or components are in chief weight of llama, alpaca, or vicuna.

“(IV) Fabrics or yarns that are not formed in the United States or in 1 or more ATPEA beneficiary countries, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA.

“(ii) KNIT-TO-SHAPE APPAREL ARTICLES.—Apparel articles knit-to-shape (other than socks provided for in heading 6115 of the HTS) in 1 or more ATPEA beneficiary countries from yarns wholly formed in the United States.

“(iii) REGIONAL FABRIC.—

“(I) GENERAL RULE.—Knit apparel articles wholly assembled in 1 or more ATPEA beneficiary countries exclusively from fabric formed, or fabric components formed, or components knit-to-shape, or any combination thereof, in 1 or more ATPEA beneficiary countries from yarns wholly formed in the United States, in an amount not exceeding the amount set forth in subclause (II).

“(II) LIMITATION.—The amount referred to in subclause (I) is 70,000,000 square meter equivalents during the 1-year period beginning on March 1, 2002, increased by 16 percent, compounded annually, in each succeeding 1-year period through February 28, 2006.

“(iv) CERTAIN OTHER APPAREL ARTICLES.—

“(I) GENERAL RULE.—Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the ATPEA beneficiary countries, or both.

“(II) LIMITATION.—During the 1-year period beginning on March 1, 2003, and during each of the 2 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabric components formed in the United States that are used in the production of all such articles of that producer or entity that are entered during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

“(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.—The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States used in the production of such articles of that producer or entity that are entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that

are entered during the preceding 1-year period.

“(v) APPAREL ARTICLES ASSEMBLED FROM FABRICS OR YARN NOT WIDELY AVAILABLE IN COMMERCIAL QUANTITIES.—At the request of any interested party, the President is authorized to proclaim additional fabrics and yarn as eligible for preferential treatment under clause (i)(IV) if—

“(I) the President determines that such fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner;

“(II) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

“(III) within 60 days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the action proposed to be proclaimed and the reasons for such actions, and the advice obtained under subclause (II);

“(IV) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclause (III), has expired; and

“(V) the President has consulted with such committees regarding the proposed action during the period referred to in subclause (III).

“(vi) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—A handloomed, handmade, or folklore article of an ATPEA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

“(vii) SPECIAL RULES.—

“(I) EXCEPTION FOR FINDINGS AND TRIMMINGS.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, ‘bow buds’, decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and are used in the production of brassieres.

“(bb) In the case of an article described in clause (i)(I) of this subparagraph, sewing thread shall not be treated as findings or trimmings under this subclause.

“(II) CERTAIN INTERLININGS.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

“(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, ‘hymo’ piece, or ‘sleeve header’, of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

“(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

“(III) DE MINIMIS RULE.—An article that would otherwise be ineligible for preferential treatment under this paragraph because the article contains yarns not wholly formed in

the United States or in 1 or more ATPEA beneficiary countries shall not be ineligible for such treatment if the total weight of all such yarns is not more than 7 percent of the total weight of the good. Notwithstanding the preceding sentence, an apparel article containing elastomeric yarns shall be eligible for preferential treatment under this paragraph only if such yarns are wholly formed in the United States.

“(IV) SPECIAL ORIGIN RULE.—An article otherwise eligible for preferential treatment under clause (i) of this subparagraph shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

“(V) CLARIFICATION OF CERTAIN KNIT APPAREL ARTICLES.—Notwithstanding any other provision of law, an article otherwise eligible for preferential treatment under clause (iii)(I) of this subparagraph, shall not be ineligible for such treatment because the article, or a component thereof, contains fabric formed in the United States from yarns wholly formed in the United States.

“(viii) TEXTILE LUGGAGE.—Textile luggage—

“(I) assembled in an ATPEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

“(II) assembled from fabric cut in an ATPEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

“(B) PREFERENTIAL TREATMENT.—Except as provided in subparagraph (E), during the transition period, the articles to which subparagraph (A) applies shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels.

“(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—For purposes of subparagraph (A)(vi), the President shall consult with representatives of the ATPEA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

“(D) PENALTIES FOR TRANSSHIPMENTS.—

“(i) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile or apparel articles from an ATPEA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

“(ii) PENALTIES FOR COUNTRIES.—Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the ATPEA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

“(iii) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (B) has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (B).

“(E) BILATERAL EMERGENCY ACTIONS.—

“(i) IN GENERAL.—The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from an ATPEA beneficiary country if the application of tariff treatment under subparagraph (B) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

“(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

“(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

“(II) the term ‘transition period’ in section 4 of the Annex shall have the meaning given that term in paragraph (5)(D) of this subsection; and

“(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the ATPEA beneficiary country in question and the country does not agree to consult within the time period specified under section 4.

“(3) TRANSITION PERIOD TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN BENEFICIARY COUNTRIES.—

“(A) EQUIVALENT TARIFF TREATMENT.—

“(i) IN GENERAL.—Subject to clause (ii), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B), (D) through (F), or (H) of paragraph (1) that is an ATPEA originating good, imported directly into the customs territory of the United States from an ATPEA beneficiary country, shall be identical to the tariff treatment that is accorded at such time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States.

“(ii) EXCEPTION.—Clause (i) does not apply to—

“(I) any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS; or

“(II) any article described in subheading 6401.10.00, 6401.91.00, 6401.92.90, 6401.99.30, 6401.99.60, 6401.99.90, 6402.30.50, 6402.30.70, 6402.30.80, 6402.91.50, 6402.91.80, 6402.91.90, 6402.99.20, 6402.99.30, 6402.99.80, 6402.99.90, 6403.91.60, 6404.11.50, 6404.11.60, 6404.11.70, 6404.11.80, 6404.11.90, 6404.19.20, 6404.19.35, 6404.19.50, or 6404.19.70 of the HTS.

“(B) RELATIONSHIP TO SUBSECTION (C) DUTY REDUCTIONS.—If at any time during the transition period the rate of duty that would (but for action taken under subparagraph (A)(i) in regard to such period) apply with respect to any article under subsection (c) is a rate of duty that is lower than the rate of duty resulting from such action, then such lower rate of duty shall be applied for the purposes of implementing such action.

“(C) SPECIAL RULE FOR SUGARS, SYRUPS, AND SUGAR CONTAINING PRODUCTS.—Duty-free

treatment under this Act shall not be extended to sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas.

“(D) SPECIAL RULE FOR CERTAIN TUNA PRODUCTS.—

“(i) IN GENERAL.—The President may proclaim duty-free treatment under this Act for tuna that is harvested by United States vessels or ATPEA beneficiary country vessels, and is prepared or preserved in any manner, in airtight containers in an ATPEA beneficiary country. Such duty-free treatment may be proclaimed in any calendar year for a quantity of such tuna that does not exceed 20 percent of the domestic United States tuna pack in the preceding calendar year. As used in the preceding sentence, the term ‘tuna pack’ means tuna pack as defined by the National Marine Fisheries Service of the United States Department of Commerce for purposes of subheading 1604.14.20 of the HTS as in effect on the date of enactment of the Andean Trade Preference Expansion Act.

“(ii) UNITED STATES VESSEL.—For purposes of this subparagraph, a ‘United States vessel’ is a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46, United States Code.

“(iii) ATPEA VESSEL.—For purposes of this subparagraph, an ‘ATPEA vessel’ is a vessel—

“(I) which is registered or recorded in an ATPEA beneficiary country;

“(II) which sails under the flag of an ATPEA beneficiary country;

“(III) which is at least 75 percent owned by nationals of an ATPEA beneficiary country or by a company having its principal place of business in an ATPEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of such boards are nationals of an ATPEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPEA beneficiary country or by public bodies or nationals of an ATPEA beneficiary country;

“(IV) of which the master and officers are nationals of an ATPEA beneficiary country; and

“(V) of which at least 75 percent of the crew are nationals of an ATPEA beneficiary country.

“(4) CUSTOMS PROCEDURES.—

“(A) IN GENERAL.—

“(i) REGULATIONS.—Any importer that claims preferential treatment under paragraph (2) or (3) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

“(ii) DETERMINATION.—

“(I) IN GENERAL.—In order to qualify for the preferential treatment under paragraph (2) or (3) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)—

“(aa) has implemented and follows; or

“(bb) is making substantial progress toward implementing and following, procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

“(II) COUNTRY DESCRIBED.—A country is described in this subclause if it is an ATPEA beneficiary country—

“(aa) from which the article is exported; or

“(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the

article is eligible for preferential treatment under paragraph (2) or (3).

“(B) CERTIFICATE OF ORIGIN.—The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (2) or (3) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

“(C) REPORT BY USTR ON COOPERATION OF OTHER COUNTRIES CONCERNING CIRCUMVENTION.—The United States Commissioner of Customs shall conduct a study analyzing the extent to which each ATPEA beneficiary country—

“(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

“(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning fiber content, quantities, description, classification, or origin of textile and apparel goods; and

“(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Trade Representative shall submit to Congress, not later than October 1, 2002, a report on the study conducted under this subparagraph.

“(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ANNEX.—The term ‘the Annex’ means Annex 300-B of the NAFTA.

“(B) ATPEA BENEFICIARY COUNTRY.—The term ‘ATPEA beneficiary country’ means any ‘beneficiary country’, as defined in section 203(a)(1) of this title, which the President designates as an ATPEA beneficiary country, taking into account the criteria contained in subsections (c) and (d) of section 203 and other appropriate criteria, including the following:

“(i) Whether the beneficiary country has demonstrated a commitment to—

“(I) undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

“(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

“(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

“(iii) The extent to which the country provides internationally recognized worker rights, including—

“(I) the right of association;

“(II) the right to organize and bargain collectively;

“(III) a prohibition on the use of any form of forced or compulsory labor;

“(IV) a minimum age for the employment of children; and

“(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

“(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

“(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

“(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

“(vii) The extent to which the country—

“(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act; and

“(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

“(C) ATPEA ORIGINATING GOOD.—

“(i) IN GENERAL.—The term ‘ATPEA originating good’ means a good that meets the rules of origin for a good set forth in chapter 4 of the NAFTA as implemented pursuant to United States law.

“(ii) APPLICATION OF CHAPTER 4.—In applying chapter 4 of the NAFTA with respect to an ATPEA beneficiary country for purposes of this subsection—

“(I) no country other than the United States and an ATPEA beneficiary country may be treated as being a party to the NAFTA;

“(II) any reference to trade between the United States and Mexico shall be deemed to refer to trade between the United States and an ATPEA beneficiary country;

“(III) any reference to a party shall be deemed to refer to an ATPEA beneficiary country or the United States; and

“(IV) any reference to parties shall be deemed to refer to any combination of ATPEA beneficiary countries or to the United States and one or more ATPEA beneficiary countries (or any combination thereof).

“(D) TRANSITION PERIOD.—The term ‘transition period’ means, with respect to an ATPEA beneficiary country, the period that begins on the date of enactment, and ends on the earlier of—

“(i) February 28, 2006; or

“(ii) the date on which the FTAA or another free trade agreement that makes substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of Public Law 103-182 (19 U.S.C. 3317(b)(5)) enters into force with respect to the United States and the ATPEA beneficiary country.

“(E) ATPEA.—The term ‘ATPEA’ means the Andean Trade Preference Expansion Act.

“(F) FTAA.—The term ‘FTAA’ means the Free Trade Area of the Americas.”

(b) DETERMINATION REGARDING RETENTION OF DESIGNATION.—Section 203(e) of the Andean Trade Preference Act (19 U.S.C. 3202(e)) is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting “(A)” after “(1)”; and

(C) by adding at the end the following:

“(B) The President may, after the requirements of paragraph (2) have been met—

“(i) withdraw or suspend the designation of any country as an ATPEA beneficiary country; or

“(ii) withdraw, suspend, or limit the application of preferential treatment under sec-

tion 204(b) (2) and (3) to any article of any country,

if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 204(b)(5)(B).”; and

(2) by adding after paragraph (2) the following new paragraph:

“(3) If preferential treatment under section 204(b) (2) and (3) is withdrawn, suspended, or limited with respect to an ATPEA beneficiary country, such country shall not be deemed to be a ‘party’ for the purposes of applying section 204(b)(5)(C) to imports of articles for which preferential treatment has been withdrawn, suspended, or limited with respect to such country.”.

(c) REPORTING REQUIREMENTS.—Section 203(f) of the Andean Trade Preference Act (19 U.S.C. 3202(f)) is amended to read as follows:

“(f) REPORTING REQUIREMENTS.—

“(1) IN GENERAL.—Not later than December 31, 2002, and every 2 years thereafter during the period this title is in effect, the United States Trade Representative shall submit to Congress a report regarding the operation of this title, including—

“(A) with respect to subsections (c) and (d), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

“(B) the performance of each beneficiary country or ATPEA beneficiary country, as the case may be, under the criteria set forth in section 204(b)(5)(B).

“(2) PUBLIC COMMENT.—Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 204(b)(5)(B).”.

(d) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—

(A) Section 202 of the Andean Trade Preference Act (19 U.S.C. 3201) is amended by inserting “(or other preferential treatment)” after “treatment”.

(B) Section 204(a)(1) of the Andean Trade Preference Act (19 U.S.C. 3203(a)(1)) is amended by inserting “(or otherwise provided for)” after “eligibility”.

(C) Section 204(a)(1) of the Andean Trade Preference Act (19 U.S.C. 3203(a)(1)) is amended by inserting “(or preferential treatment)” after “duty-free treatment”.

(2) DEFINITIONS.—Section 203(a) of the Andean Trade Preference Act (19 U.S.C. 3202(a)) is amended by adding at the end the following new paragraphs:

“(4) The term ‘NAFTA’ means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

“(5) The terms ‘WTO’ and ‘WTO member’ have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).”.

#### SEC. 2104. TERMINATION.

(a) IN GENERAL.—Section 208(b) of the Andean Trade Preference Act (19 U.S.C. 3206(b)) is amended to read as follows:

“(b) TERMINATION OF PREFERENTIAL TREATMENT.—No preferential duty treatment extended to beneficiary countries under this Act shall remain in effect after February 28, 2006.”.

(b) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (3), the entry—

(A) of any article to which duty-free treatment (or preferential treatment) under the Andean Trade Preference Act (19 U.S.C. 3201

et seq.) would have applied if the entry had been made on December 4, 2001.

(B) that was made after December 4, 2001, and before the date of the enactment of this Act, and

(C) to which duty-free treatment (or preferential treatment) under the Andean Trade Preference Act did not apply,

shall be liquidated or reliquidated as if such duty-free treatment (or preferential treatment) applied, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

(2) ENTRY.—As used in this subsection, the term “entry” includes a withdrawal from warehouse for consumption.

(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.

(4) PAYMENT.—No more than 75 percent of the amount due as a result of a liquidation or reliquidation filed under this subsection shall be paid in fiscal year 2002.

#### TITLE XXII—MISCELLANEOUS TRADE PROVISIONS

##### SEC. 2201. WOOL PROVISIONS.

(a) SHORT TITLE.—This section may be cited as the “Wool Manufacturer Payment Clarification and Technical Corrections Act”.

(b) CLARIFICATION OF TEMPORARY DUTY SUSPENSION.—Heading 9902.51.13 of the Harmonized Tariff Schedule of the United States is amended by inserting “average” before “diameters”.

(c) PAYMENTS TO MANUFACTURERS OF CERTAIN WOOL PRODUCTS.—

(1) PAYMENTS.—Section 505 of the Trade and Development Act of 2000 (Public Law 106-200; 114 Stat. 303) is amended as follows:

(A) Subsection (a) is amended—

(i) by striking “In each of the calendar years” and inserting “For each of the calendar years”; and

(ii) by striking “for a refund of duties” and all that follows through the end of the subsection and inserting “for a payment equal to an amount determined pursuant to subsection (d)(1).”.

(B) Subsection (b) is amended to read as follows:

“(b) WOOL YARN.—

“(1) IMPORTING MANUFACTURERS.—For each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).”

“(2) NONIMPORTING MANUFACTURERS.—For each of the calendar years 2001 and 2002, any other manufacturer of worsted wool fabrics of imported wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).”

(C) Subsection (c) is amended to read as follows:

“(c) WOOL FIBER AND WOOL TOP.—

“(1) IMPORTING MANUFACTURERS.—For each of the calendar years 2000, 2001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

“(2) NONIMPORTING MANUFACTURERS.—For each of the calendar years 2001 and 2002, any other manufacturer of wool yarn or wool fabric of imported wool fiber or wool top of the kind described in heading 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).”

(D) Section 505 is further amended by striking subsection (d) and inserting the following new subsections:

“(d) AMOUNT OF ANNUAL PAYMENTS TO MANUFACTURERS.—

“(1) MANUFACTURERS OF MEN’S SUITS, ETC. OF IMPORTED WORSTED WOOL FABRICS.—

“(A) ELIGIBLE TO RECEIVE MORE THAN \$5,000.—Each annual payment to manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than \$5,000 for each of the calendar years 2000, 2001, and 2002, shall be in an amount equal to one-third of the amount determined by multiplying \$30,124,000 by a fraction—

“(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the manufacturer making the claim, and

“(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than \$5,000 for each such calendar year under this section as it was in effect on that date.

“(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term ‘eligible wool products’ refers to imported worsted wool fabrics described in subsection (a).

“(C) OTHERS.—All manufacturers described in subsection (a), other than the manufacturer’s to which subparagraph (A) applies, shall each receive an annual payment in an amount equal to one-third of the amount determined by dividing \$1,665,000 by the number of all such other manufacturers.

“(2) MANUFACTURERS OF WORSTED WOOL FABRICS OF IMPORTED WOOL YARN.—

“(A) IMPORTING MANUFACTURERS.—Each annual payment to an importing manufacturer described in subsection (b)(1) shall be in an amount equal to one-third of the amount determined by multiplying \$2,202,000 by a fraction—

“(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

“(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (b)(1).

“(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term ‘eligible wool products’ refers to imported wool yarn described in subsection (b)(1).

“(C) NONIMPORTING MANUFACTURERS.—Each annual payment to a nonimporting manufacturer described in subsection (b)(2) shall be in an amount equal to one-half of the amount determined by multiplying \$141,000 by a fraction—

“(i) the numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

“(ii) the denominator of which is the total amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (b)(2).

“(3) MANUFACTURERS OF WOOL YARN OR WOOL FABRIC OF IMPORTED WOOL FIBER OR WOOL TOP.—

“(A) IMPORTING MANUFACTURERS.—Each annual payment to an importing manufacturer described in subsection (c)(1) shall be in an amount equal to one-third of the amount determined by multiplying \$1,522,000 by a fraction—

“(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

“(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (c)(1).

“(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term ‘eligible wool products’ refers to imported wool fiber or wool top described in subsection (c)(1).

“(C) NONIMPORTING MANUFACTURERS.—Each annual payment to a nonimporting manufacturer described in subsection (c)(2) shall be in an amount equal to one-half of the amount determined by multiplying \$597,000 by a fraction—

“(i) the numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

“(ii) the denominator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (c)(2).

“(4) LETTERS OF INTENT.—Except for the nonimporting manufacturers described in subsections (b)(2) and (c)(2) who may make claims under this section by virtue of the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, only manufacturers who, according to the records of the Customs Service, filed with the Customs Service before September 11, 2001, letters of intent to establish eligibility to be claimants are eligible to make a claim for a payment under this section.

“(5) AMOUNT ATTRIBUTABLE TO PURCHASES BY NONIMPORTING MANUFACTURERS.—

“(A) AMOUNT ATTRIBUTABLE.—For purposes of paragraphs (2)(C) and (3)(C), the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by a nonimporting manufacturer shall be the amount the nonimporting manufacturer paid for eligible wool products in calendar year 1999, as evidenced by invoices. The nonimporting manufacturer shall make such calculation and submit the resulting amount to the Customs Service, within 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, in a signed affidavit that attests that the information contained therein is true and accurate to the best of the affiant’s belief and knowledge. The nonimporting manufacturer shall retain the records upon which the calculation is based for a period of five years beginning on the date the affidavit is submitted to the Customs Service.

“(B) ELIGIBLE WOOL PRODUCT.—For purposes of subparagraph (A)—

“(i) the eligible wool product for nonimporting manufacturers of worsted wool fabrics is wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States purchased in calendar year 1999; and

“(ii) the eligible wool products for nonimporting manufacturers of wool yarn or wool fabric are wool fiber or wool top of the kind described in heading 9902.51.14 of such Schedule purchased in calendar year 1999.

“(6) AMOUNT ATTRIBUTABLE TO DUTIES PAID.—For purposes of paragraphs (1), (2)(A), and (3)(A), the amount attributable to the duties paid by a manufacturer shall be the amount shown on the records of the Customs Service as of September 11, 2001, under this section as then in effect.

“(7) SCHEDULE OF PAYMENTS; REALLOCATIONS.—

“(A) SCHEDULE.—Of the payments described in paragraphs (1), (2)(A), and (3)(A), the Customs Service shall make the first installment on or before December 31, 2001, the second installment on or before April 15, 2002, and the third installment on or before April 15, 2003. Of the payments described in paragraphs (2)(C) and (3)(C), the Customs Service shall make the first installment on or before April 15, 2002, and the second installment on or before April 15, 2003.

“(B) REALLOCATIONS.—In the event that a manufacturer that would have received payment under subparagraph (A) or (C) of paragraph (1), (2), or (3) ceases to be qualified for such payment as such a manufacturer, the amounts otherwise payable to the remaining manufacturers under such subparagraph shall be increased on a pro rata basis by the amount of the payment such manufacturer would have received.

“(8) REFERENCE.—For purposes of paragraphs (1)(A) and (6), the ‘records of the Customs Service as of September 11, 2001’ are the records of the Wool Duty Unit of the Customs Service on September 11, 2001, as adjusted by the Customs Service to the extent necessary to carry out this section. The amounts so adjusted are not subject to administrative or judicial review.

“(e) AFFIDAVITS BY MANUFACTURERS.—

“(1) AFFIDAVIT REQUIRED.—A manufacturer may not receive a payment under this section for calendar year 2000, 2001, or 2002, as the case may be, unless that manufacturer has submitted to the Customs Service for that calendar year a signed affidavit that attests that, during that calendar year, the affiant was a manufacturer in the United States described in subsection (a), (b), or (c).

“(2) TIMING.—An affidavit under paragraph (1) shall be valid—

“(A) in the case of a manufacturer described in paragraph (1), (2)(A), or (3)(A) of subsection (d) filing a claim for a payment for calendar year 2000, only if the affidavit is postmarked no later than 15 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act; and

“(B) in the case of a claim for a payment for calendar year 2001 or 2002, only if the affidavit is postmarked no later than March 1, 2002, or March 1, 2003, respectively.

“(f) OFFSETS.—Notwithstanding any other provision of this section, any amount otherwise payable under subsection (d) to a manufacturer in calendar year 2001 and, where applicable, in calendar years 2002 and 2003, shall be reduced by the amount of any payment received by that manufacturer under this section before the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act.

“(g) DEFINITION.—For purposes of this section, the manufacturer is the party that owns—

“(1) imported worsted wool fabric, of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States, at the time the fabric is cut and sewn in the United States into men's or boys' suits, suit-type jackets, or trousers;

“(2) imported wool yarn, of the kind described in heading 9902.51.13 of such Schedule, at the time the yarn is processed in the United States into worsted wool fabric; or

“(3) imported wool fiber or wool top, of the kind described in heading 9902.51.14 of such Schedule, at the time the wool fiber or wool top is processed in the United States into wool yarn.”.

(2) FUNDING.—There is authorized to be appropriated such sums as are necessary to carry out the amendments made by paragraph (1).

#### SEC. 2202. CEILING FANS.

(a) IN GENERAL.—Notwithstanding any other provision of law, ceiling fans classified under subheading 8414.51.00 of the Harmonized Tariff Schedule of the United States imported from Thailand shall enter duty-free and without any quantitative limitations, if duty-free treatment under title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.) would have applied to such entry had the competitive need limitation been waived under section 503(d) of such Act.

(b) APPLICABILITY.—The provisions of this section shall apply to ceiling fans described in subsection (a) that are entered, or withdrawn from warehouse for consumption—

(1) on or after the date that is 15 days after the date of enactment of this Act; and

(2) before July 30, 2002.

#### SEC. 2203. CERTAIN STEAM OR OTHER VAPOR GENERATING BOILERS USED IN NUCLEAR FACILITIES.

(a) IN GENERAL.—Subheading 9902.84.02 of the Harmonized Tariff Schedule of the United States is amended—

(1) by striking “4.9%” and inserting “Free”; and

(2) by striking “12/31/2003” and inserting “12/31/2006”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002.

#### SEC. 2204. REVENUE PROVISIONS.

(a) DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 67 of the Internal Revenue Code of 1986 (relating to interest on underpayments) is amended by adding at the end the following new section:

##### “SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

“(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

“(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

“(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

“(d) PAYMENT OF INTEREST.—

“(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

“(2) DISPUTABLE TAX.—

“(A) IN GENERAL.—For purposes of this section, the term ‘disputable tax’ means the

amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

“(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

“(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

“(A) DISPUTABLE ITEM.—The term ‘disputable item’ means any item of income, gain, loss, deduction, or credit if the taxpayer—

“(i) has a reasonable basis for its treatment of such item, and

“(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

“(B) 30-DAY LETTER.—The term ‘30-day letter’ means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

“(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

“(e) USE OF DEPOSITS.—

“(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

“(B) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.”.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 of such Code is amended by adding at the end the following new item:

“Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.”.

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to deposits made after the date of the enactment of this Act.

(B) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84-58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84-58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

(b) PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.—

(1) IN GENERAL.—

(A) Section 6159(a) of the Internal Revenue Code of 1986 (relating to authorization of agreements) is amended—

(i) by striking “satisfy liability for payment of” and inserting “make payment on”, and

(ii) by inserting “full or partial” after “facilitate”.

(B) Section 6159(c) of such Code (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting “full” before “payment”.

(2) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 of such Code is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

“(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of

an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.”.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to agreements entered into on or after the date of the enactment of this Act.

(c) **EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.**—

(1) **IN GENERAL.**—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

**“SEC. 7527. INTERNAL REVENUE SERVICE USER FEES.**

“(a) **GENERAL RULE.**—The Secretary shall establish a program requiring the payment of user fees for—

“(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

“(2) other similar requests.

“(b) **PROGRAM CRITERIA.**—

“(1) **IN GENERAL.**—The fees charged under the program required by subsection (a)—

“(A) shall vary according to categories (or subcategories) established by the Secretary,

“(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

“(C) shall be payable in advance.

“(2) **EXEMPTIONS, ETC.**—

“(A) **IN GENERAL.**—The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

“(B) **EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS.**—No fee shall be imposed under this section for any request to which section 620(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001 applies.

“(3) **AVERAGE FEE REQUIREMENT.**—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

Category	Average Fee
Employee plan ruling and opinion ..	\$250
Exempt organization ruling .....	\$350
Employee plan determination .....	\$300
Exempt organization determination .....	\$275
Chief counsel ruling .....	\$200.

“(c) **TERMINATION.**—No fee shall be imposed under this section with respect to requests made after September 30, 2005.”

(2) **CONFORMING AMENDMENTS.**—

(A) The table of sections for chapter 77 of such Code is amended by adding at the end the following new item:

“Sec. 7527. Internal Revenue Service user fees.”

(B) Section 10511 of the Revenue Act of 1987 is repealed.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to requests made after the date of the enactment of this Act.

**SA 3400.** Mr. BAYH (for himself, Mr. DURBIN, Mr. DAYTON, Ms. MIKULSKI, and Mr. ROCKEFELLER) submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page A-35, line 1, strike all through page A-36, line 3, and insert the following:

**“SEC. 225. NOTIFICATION BY INTERNATIONAL TRADE COMMISSION.**

“(a) **NOTIFICATION OF INVESTIGATION.**—Whenever the International Trade Commission begins an investigation under section 202 with respect to an industry, the Commission shall immediately notify the Secretary of that investigation.

“(b) **NOTIFICATION OF AFFIRMATIVE FINDING.**—Whenever the International Trade Commission makes a report under section 202(f) containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the Commission shall immediately notify the Secretary of that finding.

On page A-45, between lines 16 and 17, insert the following:

“(2) **INDUSTRY-WIDE CERTIFICATION.**—If the Secretary receives a petition under subsection (b)(2)(E) on behalf of all workers in a domestic industry producing an article or receives 3 or more petitions under subsection (b)(2) within a 180-day period on behalf of groups of workers producing the same article, the Secretary shall make a determination under subsections (a)(1) and (c)(1) of this section with respect to the domestic industry as a whole in which the workers are or were employed.

On page A-45, line 15, strike “(2)” and insert “(3)”.

On page A-45, line 20, strike “(3)” and insert “(4)”.

On page A-46, line 1, strike “(4)” and insert “(5)”.

On page A-95, between lines 5 and 6, insert the following:

**SEC. 113. COORDINATION WITH OTHER TRADE PROVISIONS.**

(a) **RECOMMENDATIONS BY ITC.**—

(1) Section 202(e)(2)(D) of the Trade Act of 1974 (19 U.S.C. 2252(e)(2)(D)) is amended by striking “, including the provision of trade adjustment assistance under chapter 2”.

(2) Section 203(a)(3)(D) of the Trade Act of 1974 (19 U.S.C. 2252(a)(3)(D)) is amended by striking “, including the provision of trade adjustment assistance under chapter 2”.

(b) **ASSISTANCE FOR WORKERS.**—Section 203(a)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2252(a)(1)(A)) is amended to read as follows:

“(A) After receiving a report under section 202(f) containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry—

“(i) the President shall take all appropriate and feasible action within his power; and

“(ii) the Secretary of Labor, the Secretary of Agriculture, or the Secretary of Commerce, as appropriate, shall certify as eligible for trade adjustment assistance under section 231(a), 292, or 299B, workers, farmers, or fishermen who are or were employed in the domestic industry defined by the Commission if such workers, farmers, or fishermen become totally or partially separated, or are threatened to become totally or partially separated not more than 1 year before or not more than 1 year after the date on which the Commission made its report to the President under section 202(f).”.

(c) **SPECIAL LOOK-BACK RULE.**—Section 203(a)(1)(A) of the Trade Act of 1974 shall apply to a worker, farmer, or fisherman if not more than 1 year before the date of enactment of the Trade Adjustment Assistance Reform Act of 2002 the Commission notified the President of an affirmative determination under section 202(f) of such Act with respect to the domestic industry in which such worker, farmer, or fisherman was employed.

Beginning on page A-120, line 7, strike all through page A-121, line 9, and insert the following:

**“SEC. 294. NOTIFICATION BY INTERNATIONAL TRADE COMMISSION.**

“(a) **NOTIFICATION OF INVESTIGATION.**—Whenever the International Trade Commission (in this chapter referred to as the ‘Commission’) begins an investigation under section 202 with respect to an agricultural commodity, the Commission shall immediately notify the Secretary of the investigation.

“(b) **NOTIFICATION OF AFFIRMATIVE DETERMINATION.**—Whenever the Commission makes a report under section 202(f) containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry producing an agricultural commodity, the Commission shall immediately notify the Secretary of that finding.

Beginning on page A-136, line 3, strike all through page A-137, line 2, and insert the following:

**“SEC. 299C. NOTIFICATION BY INTERNATIONAL TRADE COMMISSION.**

“(a) **NOTIFICATION OF INVESTIGATION.**—Whenever the International Trade Commission (in this chapter referred to as the ‘Commission’) begins an investigation under section 202 with respect to fish or a class of fish, the Commission shall immediately notify the Secretary of the investigation.

“(b) **NOTIFICATION OF AFFIRMATIVE DETERMINATION.**—Whenever the Commission makes a report under section 202(f) containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry producing fish or a class of fish, the Commission shall immediately notify the Secretary of that finding.

**AUTHORITY FOR COMMITTEES TO MEET**

**COMMITTEE ON ARMED SERVICES**

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, May 9, 2002, at 9:30 a.m., in closed session to mark up the Department of Defense Authorization Act for Fiscal Year 2003.

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

**COMMITTEE ON FINANCE**

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, May 9, 2002, at 9:30 a.m., to hear testimony on revenue issues related to the Highway Trust Fund.

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

**COMMITTEE ON THE JUDICIARY**

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on “judicial nominations” on Thursday, May 9, 2002, in the Dirksen Room 226 at 2 p.m.

**Witness List**

Panel I: The Honorable Daniel K. Inouye; the Honorable Arlen Specter; the Honorable Daniel Akaka; the Honorable Rick Santorum; the Honorable Christopher Cox; the Honorable Tim Holden; and the Honorable Melissa Hart.

Panel II: Richard R. Clifton to be a U.S. Circuit Court Judge for the 9th Circuit.



Panel III: Christopher C. Conner to be a U.S. District Court Judge for the Middle District of Pennsylvania; Joy Flowers Conti to be a U.S. District Court Judge for the Western District of Pennsylvania; and John E. Jones, III to be a U.S. District Court Judge for the Middle District of Pennsylvania.

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

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT  
AND THE COURTS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Administrative Oversight and the Courts be authorized to meet to conduct a hearing on "Ghosts of Nominations Past: Setting the Record Straight" on Thursday, May 9, 2002, at 10 a.m., in Dirksen 226.

Witness List

Panel I: The Honorable Jorge Rangel, the Rangel Law Firm, Corpus Christi, Texas; Kent Markus, Esq., Director, Dave Thomas Center for Adoption Law, Capital University Law School, Columbus, Ohio; Enrique Moreno, Esq., Law Offices of Enrique Moreno, EL Paso, Texas; and Bonnie Campbell, Esq., Former Attorney General of Iowa, Washington, DC.

Panel II: The Honorable C. Boyden Gray, Former White House Counsel, Washington, DC, and the Honorable Carlos Bea, Superior Court, San Francisco, CA.

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

SUBCOMMITTEE ON OCEANS, ATMOSPHERE, AND  
FISHERIES

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Oceans, Atmosphere and Fisheries be authorized to meet on Thursday, May 9, 2002, at 9:30 a.m., on oversight of management issues at the National Marine Fisheries Service.

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

UNANIMOUS CONSENT AGREE-  
MENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that on Monday, May 13, at 4 p.m., the Senate proceed to executive session to consider the following nomination: Calendar No. 815, Paul Cassell, to be a United States District Judge; that there be 2 hours for debate on the nomination equally divided between the chairman and the ranking member of the Judiciary Committee or their designees; that at 6 p.m., on Monday, the Senate vote on confirmation of the nomination; the motion to reconsider be laid upon the table; the President be immediately notified of the Senate's action; any statements thereon be printed in the RECORD; and the Senate return to legislative session, without any intervening action or debate.

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

EXPORT-IMPORT BANK  
REAUTHORIZATION ACT OF 2002

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives with respect to S. 1372.

The Presiding Officer laid before the Senate a message from the House, as follows:

*Resolved*, That the bill from the Senate (S. 1372) entitled "An Act to reauthorize the Export-Import Bank of the United States", do pass with the following amendment:

Strike out all after the enacting clause and insert:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) *SHORT TITLE*.—This Act may be cited as the "Export-Import Bank Reauthorization Act of 2002".

(b) *TABLE OF CONTENTS*.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Clarification that purposes include United States employment.

Sec. 3. Extension of authority.

Sec. 4. Administrative expenses.

Sec. 5. Increase in aggregate loan, guarantee, and insurance authority.

Sec. 6. Activities relating to Africa.

Sec. 7. Small business.

Sec. 8. Technology.

Sec. 9. Tied Aid Credit Fund.

Sec. 10. Expansion of authority to use Tied Aid Credit Fund.

Sec. 11. Renaming of Tied Aid Credit Program and Fund as Export Competitive-ness Program and Fund.

Sec. 12. Annual competitiveness report.

Sec. 13. Renewable energy sources.

Sec. 14. GAO reports.

Sec. 15. Human rights.

Sec. 16. Steel.

Sec. 17. Correction of references.

Sec. 18. Authority to deny application for assistance based on fraud or corruption by the applicant.

Sec. 19. Consideration of foreign country helpfulness in efforts to eradicate terrorism.

Sec. 20. Outstanding orders and preliminary injury determinations.

Sec. 21. Sense of the Congress relating to renewable energy targets.

Sec. 22. Requirement that applicants for assistance disclose whether they have violated the Foreign Corrupt Practices Act; maintenance of list of violators.

Sec. 23. Sense of the Congress.

**SEC. 2. CLARIFICATION THAT PURPOSES INCLUDE UNITED STATES EMPLOYMENT.**

Section 2(a)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(a)(1)) is amended by striking the 2nd sentence and inserting the following: "The objects and purposes of the Bank shall be to aid in financing and to facilitate exports of goods and services, imports, and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals of any such country, and in so doing to contribute to the employment of United States workers. To further meet the objective set forth in the preceding sentence, the Bank shall ensure that its loans, guarantees, insurance, and credits are contributing to maintaining or increasing employment of United States workers."

**SEC. 3. EXTENSION OF AUTHORITY.**

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) and section 1(c) of Public Law 103-428 (12 U.S.C. 635 note; 108 Stat. 4376) are each amended by striking "2001" and inserting "2005".

**SEC. 4. ADMINISTRATIVE EXPENSES.**

(a) *LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS*.—Section 3 of the Export-Import Bank Act of 1945 (12 U.S.C. 635a) is amended by adding at the end the following:

"(f) *LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATIVE EXPENSES*.—

"(1) *IN GENERAL*.—For administrative expenses incurred by the Bank, including technology-related expenses to carry out section 2(b)(1)(E)(x), there are authorized to be appropriated to the Bank not more than—

"(A) for fiscal year 2002, \$80,000,000; and

"(B) for each of fiscal years 2003 through 2005, the amount authorized by this paragraph to be appropriated for the then preceding fiscal year, increased by the inflation percentage (as defined in section 6(a)(2)(B)) applicable to the then current fiscal year.

"(2) *OUTREACH TO SMALL BUSINESSES WITH FEWER THAN 100 EMPLOYEES*.—Of the amount appropriated pursuant to paragraph (1), there shall be available for outreach to small business concerns (as defined under section 3 of the Small Business Act) employing fewer than 100 employees, not more than—

"(A) \$2,000,000 for fiscal year 2002; and

"(B) for each of fiscal years 2003 through 2005, the amount required by this paragraph to be made available for the then preceding fiscal year, increased by the inflation percentage (as defined in section 6(a)(2)(B)) applicable to the then current fiscal year."

(b) *REQUIRED BUDGET SUBCATEGORIES*.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

"(34) with respect to the amount of appropriations requested for use by the Export-Import Bank of the United States, a separate statement of the amount requested for its program budget, the amount requested for its administrative expenses, and of the amount requested for its administrative expenses, the amount requested for technology expenses and the amount requested for expenses for outreach to small business concerns (as defined under section 3 of the Small Business Act) employing fewer than 100 employees."

(c) *SENSE OF THE CONGRESS ON THE IMPORTANCE OF TECHNOLOGY IMPROVEMENTS*.—

(1) *FINDINGS*.—The Congress finds that—

(A) the Export-Import Bank of the United States is in great need of technology improvements;

(B) part of the amount budgeted for administrative expenses of the Export-Import Bank is used for technology initiatives and systems upgrades for computer hardware and software purchases;

(C) the Export-Import Bank is falling behind its foreign competitor export credit agencies' proactive technology improvements;

(D) small businesses disproportionately benefit from improvements in technology;

(E) small businesses need Export-Import Bank technology improvements in order to export transactions quickly, with as great paper ease as possible, and with a quick Bank turn-around time that does not overstrain the tight resources of such businesses;

(F) the Export-Import Bank intends to develop a number of e-commerce initiatives aimed at improving customer service, including web-based application and claim filing procedures which would reduce processing time, speed payment of claims, and increase staff efficiency;

(G) the Export-Import Bank is beginning the process of moving insurance applications from an outdated mainframe system to a modern, web-enabled database, with new functionality including credit scoring, portfolio management, work flow and e-commerce features to be added; and

(H) the Export-Import Bank wants to continue its e-commerce strategy, including web site development, expanding online applications and establishing a public/private sector technology partnership.

(2) *SENSE OF THE CONGRESS.*—The Congress emphasizes the importance of technology improvements for the Export-Import Bank of the United States, which are of particular importance for small businesses.

**SEC. 5. INCREASE IN AGGREGATE LOAN, GUARANTEE, AND INSURANCE AUTHORITY.**

Section 6(a) of the Export-Import Bank Act of 1945 (12 U.S.C. 635e(a)) is amended to read as follows:

“(a) *LIMITATION ON OUTSTANDING AMOUNTS.*—

“(1) *IN GENERAL.*—The Export-Import Bank of the United States shall not have outstanding at any one time loans, guarantees, and insurance in an aggregate amount in excess of the applicable amount.

“(2) *APPLICABLE AMOUNT.*—

“(A) *IN GENERAL.*—In paragraph (1), the term ‘applicable amount’ means—

“(i) during fiscal year 2002, \$100,000,000,000, increased by the inflation percentage applicable to fiscal year 2002;

“(ii) during fiscal year 2003, \$110,000,000,000, increased by the inflation percentage applicable to fiscal year 2003;

“(iii) during fiscal year 2004, \$120,000,000,000, increased by the inflation percentage applicable to fiscal year 2004; and

“(iv) during fiscal year 2005, \$130,000,000,000, increased by the inflation percentage applicable to fiscal year 2005.

“(B) *INFLATION PERCENTAGE.*—For purposes of subparagraph (A) of this paragraph, the inflation percentage applicable to any fiscal year is the percentage (if any) by which—

“(i) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the 12-month period ending on December 31 of the immediately preceding fiscal year; exceeds

“(ii) the average of the Consumer Price Index (as so defined) for the 12-month period ending on December 31 of the 2nd preceding fiscal year.

“(3) *SUBJECT TO APPROPRIATIONS.*—All spending and credit authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.”.

**SEC. 6. ACTIVITIES RELATING TO AFRICA.**

(a) *EXTENSION OF ADVISORY COMMITTEE FOR SUB-SAHARAN AFRICA.*—Section 2(b)(9)(B)(iii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(9)(B)(iii)) is amended by striking “4 years after the date of enactment of this subparagraph” and inserting “on September 30, 2005”.

(b) *COORDINATION OF AFRICA ACTIVITIES.*—Section 2(b)(9)(A) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(9)(A)) is amended by inserting “, in consultation with the Department of Commerce and the Trade Promotion Coordinating Council,” after “shall”.

(c) *CONTINUED REPORTS TO THE CONGRESS.*—Section 7(b) of the Export-Import Bank Reauthorization Act of 1997 (12 U.S.C. 635 note) is amended by striking “4” and inserting “8”.

(d) *CREATION OF OFFICE ON AFRICA.*—Section 3 of the Export-Import Bank Act of 1945 (12 U.S.C. 635a) is further amended by adding at the end the following:

“(g) *OFFICE ON AFRICA.*—

“(1) *ESTABLISHMENT.*—There is established in the Bank an Office on Africa.

“(2) *FUNCTION.*—The Office on Africa shall focus on increasing Bank activities in Africa and increasing visibility among United States companies of African markets for exports.

“(3) *REPORTS.*—The Office on Africa shall, from time to time not less than annually, report to the Board on the matters described in paragraph (2).”.

**SEC. 7. SMALL BUSINESS.**

(a) *IN GENERAL.*—Section 2(b)(1)(E)(v) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(E)(v)) is amended—

(1) by striking “10” and inserting “20”; and

(2) by inserting “, and from such amount, not less than 8 percent of such authority shall be

made available for small business concerns employing fewer than 100 employees” before the period.

(b) *OUTREACH TO BUSINESSES OWNED BY SOCIALLY DISADVANTAGED INDIVIDUALS OR WOMEN.*—Section 2(b)(1)(E)(iii)(II) of such Act (12 U.S.C. 635(b)(1)(E)(iii)(II)) is amended by inserting after “Bank” the following: “, with particular emphasis on conducting outreach and increasing loans to businesses not less than 51 percent of which are directly and unconditionally owned by 1 or more socially disadvantaged individuals (as defined in section 8(a)(5) of the Small Business Act) or women.”.

(c) *OFFICE FOR SMALL BUSINESS EXPORTERS.*—Section 3 of such Act (12 U.S.C. 635a) is further amended by adding at the end the following:

“(h) *OFFICE FOR SMALL BUSINESS EXPORTERS.*—

“(1) *ESTABLISHMENT.*—There is established in the Bank an Office for Small Business Exporters.

“(2) *FUNCTION.*—The Office for Small Business Exporters shall focus on increasing Bank activities to enhance small business exports and to meet the unique trade finance needs of small business exporters.

“(3) *REPORTS.*—The Office for Small Business Exporters shall, from time to time not less than annually, report to the Board on the how the Office for Small Business Exporters is achieving the goals as described in paragraph (2).

“(4) *SENSE OF CONGRESS.*—It is the sense of the Congress that the Bank should redirect and prioritize existing resources and personnel to establish the Office for Small Business Exporters.”.

**SEC. 8. TECHNOLOGY.**

(a) *SMALL BUSINESS.*—Section 2(b)(1)(E) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(E)) is amended by adding at the end the following:

“(x) The Bank shall implement technology improvements which are designed to improve small business outreach, including allowing customers to use the Internet to apply for all Bank programs.”.

(b) *ELECTRONIC TRACKING OF PENDING TRANSACTIONS.*—Section 2(b)(1) of such Act (12 U.S.C. 635(b)(1)) is amended by adding at the end the following:

“(J) The Bank shall implement an electronic system designed to track all pending transactions of the Bank.”.

(c) *REPORTS.*—

(1) *IN GENERAL.*—During each of fiscal years 2002 through 2005, the Export-Import Bank of the United States shall submit to the Committees on Financial Services and on Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and on Appropriations of the Senate an interim report and a final report on the efforts made by the Bank to carry out subsections (E)(x) and (J) of section 2(b)(1) of the Export-Import Bank Act of 1945, and on how the efforts are assisting small businesses.

(2) *TIMING.*—The interim report required by paragraph (1) for a fiscal year shall be submitted April 30 of the fiscal year, and the final report so required for a fiscal year shall be submitted on November 1 of the succeeding fiscal year.

**SEC. 9. TIED AID CREDIT FUND.**

(a) *PRINCIPLES, PROCESS, AND STANDARDS.*—Section 10(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635i-3(b)) is amended—

(1) in paragraph (2), by striking subparagraph (A) and inserting the following:

“(A) in consultation with the Secretary and in accordance with the principles, process, and standards developed pursuant to paragraph (5) of this subsection and the purposes described in subsection (a)(5);”;

(2) by adding at the end the following:

“(5) *PRINCIPLES, PROCESS, AND STANDARDS GOVERNING USE OF THE FUND.*—

“(A) *IN GENERAL.*—The Secretary and the Bank jointly shall develop a process for, and the principles and standards to be used in, determining how the amounts in the Tied Aid Credit Fund could be used most effectively and efficiently to carry out the purposes of subsection (a)(6).

“(B) *CONTENT OF PRINCIPLES, PROCESS, AND STANDARDS.*—

“(i) *CONSIDERATION OF CERTAIN PRINCIPLES AND STANDARDS.*—In developing the principles and standards referred to in subparagraph (A), the Secretary and the Bank shall consider administering the Tied Aid Credit Fund in accordance with the following principles and standards:

“(I) The Tied Aid Credit Fund should be used to leverage multilateral negotiations to restrict the scope for aid-financed trade distortions through new multilateral rules, and to police existing rules.

“(II) The Tied Aid Credit Fund will be used to counter a foreign tied aid credit confronted by a United States exporter when bidding for a capital project.

“(III) Credible information about an offer of foreign tied aid will be required before the Tied Aid Credit Fund is used to offer specific terms to match such an offer.

“(IV) The Tied Aid Credit Fund will be used to enable a competitive United States exporter to pursue further market opportunities on commercial terms made possible by the use of the Fund.

“(V) Each use of the Tied Aid Credit Fund will be in accordance with the Arrangement unless a breach of the Arrangement has been committed by a foreign export credit agency.

“(VI) The Tied Aid Credit Fund may only be used to defend potential sales by United States companies to a project that is environmentally sound.

“(VII) The Tied Aid Credit Fund may be used to preemptively counter potential foreign tied aid offers without triggering foreign tied aid use.

“(ii) *LIMITATION.*—The principles, process and standards referred to in subparagraph (A) shall not result in the Secretary having the authority to veto a specific deal.

“(C) *INITIAL PRINCIPLES, PROCESS, AND STANDARDS.*—As soon as is practicable but not later than 6 months after the date of the enactment of this paragraph, the Secretary and the Bank shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a copy of the principles, process, and standards developed pursuant to subparagraph (A).

“(D) *TRANSITIONAL PRINCIPLES AND STANDARDS.*—The principles and standards set forth in subparagraph (B)(i) shall govern the use of the Tied Aid Credit Fund until the principles, process, and standards required by subparagraph (C) are submitted.

“(E) *UPDATE AND REVISION.*—The Secretary and the bank jointly should update and revise, as needed, the principles, process, and standards developed pursuant to subparagraph (A), and, on doing so, shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a copy of the principles, process, and standards so updated and revised.”.

(b) *RECONSIDERATION OF BOARD DECISIONS ON USE OF FUND.*—Section 10(b) of such Act (12 U.S.C. 635i-3(b)) is further amended by adding at the end the following:

“(6) *RECONSIDERATION OF DECISIONS.*—

“(A) *IN GENERAL.*—Taking into consideration the time sensitivity of transactions, the Board of Directors of the Bank shall expeditiously pursuant to paragraph (2) reconsider a decision of the Board to deny an application of the use of the Tied Aid Credit Fund if the applicant submits the request for reconsideration within 3 months of the denial.

“(B) PROCEDURAL RULES.—In any such reconsideration, the applicant may be required to, provide new information on the application.”.

**SEC. 10. EXPANSION OF AUTHORITY TO USE TIED AID CREDIT FUND.**

(a) UNTIED AID.—

(1) NEGOTIATIONS.—The Secretary of the Treasury shall seek to negotiate an OECD Arrangement on Untied Aid. In the negotiations, the Secretary should seek agreement on subjecting untied aid to the rules governing the Arrangement, including the rules governing disclosure.

(2) REPORT TO THE CONGRESS.—Within 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the successes, failures, and obstacles in initiating negotiations, and if negotiations were initiated, in reaching the agreement described in paragraph (1).

(b) MARKET WINDOWS.—

(1) NEGOTIATIONS.—The Secretary of the Treasury shall seek to negotiate an OECD Arrangement on Market Windows. In the negotiations, the Secretary should seek agreement on subjecting market windows to the rules governing the Arrangement, including the rules governing disclosure.

(2) REPORT TO THE CONGRESS.—Within 2 years after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the successes, failures, and obstacles in initiating negotiations, and if negotiations were initiated, in reaching the agreement described in paragraph (1).

(c) USE OF TIED AID CREDIT FUND TO COMBAT UNTIED AID.—Section 10 of the Export-Import Bank Act of 1945 (12 U.S.C. 635i–3) is amended in subsection (a)—

(A) in paragraph (4), by striking “and” at the end;

(B) in paragraph (5), by inserting “, or untied aid,” before “for commercial” the 1st and 3rd places it appears; and

(C) by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following:

“(5) the Bank has, at a minimum, the following two tasks:

“(A)(i) First, the Bank should match, and even overmatch, foreign export credit agencies and aid agencies when they engage in tied aid outside the confines of the Arrangement and when they exploit loopholes, such as untied aid;

“(ii) such matching and overmatching is needed to provide the United States with leverage in efforts at the OECD to reduce the overall level of export subsidies;

“(iii) only through matching or bettering foreign export credit offers can the Bank buttress United States negotiators in their efforts to bring these loopholes within the disciplines of the Arrangement; and

“(iv) in order to bring untied aid within the discipline of the Arrangement, the Bank should sometimes initiate highly competitive financial support when the Bank learns that foreign untied aid offers will be made; and

“(B) Second, the Bank should support United States exporters when the exporters face foreign competition that is consistent with the letter and spirit of the Arrangement and the Subsidies Code of the World Trade Organization, but which nonetheless is more generous than the terms available from the private financial market; and”.

(d) DEFINITION OF MARKET WINDOW.—Section 10(h) of such Act (12 U.S.C. 635i–3(h)) is amended by adding at the end the following:

“(7) MARKET WINDOW.—The term ‘market window’ means the provision of export financing through an institution (or a part of an institu-

tion) that claims to operate on a commercial basis while benefiting directly or indirectly from some level of government support.”.

**SEC. 11. RENAMING OF TIED AID CREDIT PROGRAM AND FUND AS EXPORT COMPETITIVENESS PROGRAM AND FUND.**

Section 10 of the Export-Import Bank Act of 1945 (12 U.S.C. 635i–3) is further amended—

(1) by striking all that precedes paragraph (1) of subsection (a) and inserting the following:

**“SEC. 10. EXPORT COMPETITIVENESS FUND.**

“(a) FINDINGS.—The Congress finds that—”;

(2) in subsection (a)(6) (as so redesignated by section 9(c)(1)(D) of this Act), by striking “tied aid program” and inserting “export competitiveness program”;

(3) in the heading of subsection (b), by striking “TIED AID CREDIT” and inserting “EXPORT COMPETITIVENESS”;

(4) in subsection (b)(1)—

(A) by striking “tied aid credit program” and inserting “export competitiveness program”; and

(B) by striking “Tied Aid Credit fund” and inserting “Export Competitiveness Fund”;

(5) in subsection (b)(2), by striking “tied aid credit program” and inserting “export competitiveness program”;

(6) in subsection (b)(3)—

(A) by striking “tied aid credit program” and inserting “export competitiveness program”; and

(B) by striking “Tied Aid Credit Fund” and inserting “Export Competitiveness Fund”;

(7) in subsection (b)(5) (as added by section 9(a)(2) of this Act), by striking “Tied Aid Credit Fund” each place it appears and inserting “Export Competitiveness Fund”;

(8) in subsection (b)(6) (as added by section 9(b) of this Act), by striking “Tied Aid Credit Fund” and inserting “Export Competitiveness Fund”;

(9) in subsection (c)—

(A) in the subsection heading, by striking “TIED AID CREDIT” and inserting “EXPORT COMPETITIVENESS”; and

(B) in paragraph (1), by striking “Tied Aid Credit” and inserting “Export Competitiveness”;

(10) in subsection (d), by striking “tied aid credit” and inserting “export competitiveness”; and

(11) in subsection (g)(2)(C), by striking “Tied Aid Credit” and inserting “Export Competitiveness”.

**SEC. 12. ANNUAL COMPETITIVENESS REPORT.**

(a) TIMING.—

(1) IN GENERAL.—Section 2(b)(1)(A) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(A)) is amended in the 4th sentence by striking “on an annual basis” and inserting “on June 30 of each year”.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply to reports for calendar years after calendar year 2000.

(b) ADDITIONAL MATTERS TO BE ADDRESSED.—Section 2(b)(1)(A) of such Act (12 U.S.C. 635(b)(1)(A)) is amended by adding at the end the following: “The Bank shall include in the annual report a description of the volume of financing provided by each foreign export credit agency, and a description of all Bank transactions which shall be classified according to their principal purpose, such as to correct a market failure or to provide matching support.”.

(c) NUMBER OF SMALL BUSINESS SUPPLIERS OF BANK USERS.—Section 2(b)(1)(A) of such Act (12 U.S.C. 635(b)(1)(A)) is further amended by adding at the end the following: “The Bank shall estimate on the basis of an annual survey or tabulation the number of entities that are suppliers of users of the Bank and that are small business concerns (as defined under section 3 of the Small Business Act) located in the United States, and shall include the estimate in the annual report.”.

(d) OUTREACH TO BUSINESSES OWNED BY SOCIALLY DISADVANTAGED INDIVIDUALS OR BY WOMEN.—Section 2(b)(1)(A) of such Act (12

U.S.C. 635(b)(1)(A)) is further amended by adding at the end the following: “The Bank shall include in the annual report a description of outreach efforts made by the Bank to any business not less than 51 percent of which is directly and unconditionally owned by 1 or more socially disadvantaged individuals (as defined in section 8(a)(5) of the Small Business Act) or women, and any data on the results of such efforts.”.

**SEC. 13. RENEWABLE ENERGY SOURCES.**

(a) PROMOTION.—Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)), as amended by section 8(b) of this Act, is amended by adding at the end the following:

“(K) The Bank shall promote the export of goods and services related to renewable energy sources.”.

(b) DESCRIPTION OF EFFORTS TO BE INCLUDED IN ANNUAL COMPETITIVENESS REPORT.—Section 2(b)(1)(A) of such Act (12 U.S.C. 635(b)(1)(A)) is further amended by adding at the end the following: “The Bank shall include in the annual report a description of the efforts undertaken under subparagraph (K).”.

**SEC. 14. GAO REPORTS.**

(a) POTENTIAL OF WTO TO REMEDY UNTIED AID AND MARKET WINDOWS.—Within 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that examines—

(1) whether a case could be brought by the United States in the World Trade Organization seeking relief against untied aid and market windows, and if so, the kinds of relief that would be available if the United States were to prevail in such a case; and

(2) the scope of penalty tariffs that the United States could impose against imports from a country that uses untied aid or market windows.

(b) COMPARATIVE RESERVE PRACTICES OF EXPORT CREDIT AGENCIES AND PRIVATE BANKS.—Within 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that examines the reserve ratios of the Export-Import Bank of the United States as compared with the reserve practices of private banks and foreign export credit agencies.

**SEC. 15. HUMAN RIGHTS.**

Section 2(b)(1)(B) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(B)) is amended by inserting “(as provided in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948)” after “human rights”.

**SEC. 16. STEEL.**

(a) REEVALUATION.—The Export-Import Bank of the United States shall re-assess the effects of the approval by the Bank of an \$18,000,000 medium-term guarantee to support the sale of computer software, control systems, and main drive power supplies to Benxi Iron & Steel Company, in Benxi, Liaoning, China, for the purpose of evaluating whether the adverse impact test of the Bank sufficiently takes account of the interests of United States industries.

(b) REPORT TO THE CONGRESS.—Within 1 year after the date of the enactment of this Act, the Export-Import Bank of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the re-assessment required by subsection (a).

**SEC. 17. CORRECTION OF REFERENCES.**

(a) Section 2(b)(1)(B) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(B)) is amended by striking “Banking and”.

(b) Each of the following provisions of the Export-Import Bank Act of 1945 is amended by striking "Banking, Finance and Urban Affairs" and inserting "Financial Services":

(1) Section 2(b)(6)(D)(i)(III) (12 U.S.C. 635(b)(6)(D)(i)(III)).

(2) Section 2(b)(6)(H) (12 U.S.C. 635(b)(6)(H)).

(3) Section 2(b)(6)(I)(i)(II) (12 U.S.C. 635(b)(6)(I)(i)(II)).

(4) Section 2(b)(6)(I)(iii) (12 U.S.C. 635(b)(6)(I)(iii)).

(5) Section 10(g)(1) (12 U.S.C. 635i-3(g)(1)).

**SEC. 18. AUTHORITY TO DENY APPLICATION FOR ASSISTANCE BASED ON FRAUD OR CORRUPTION BY THE APPLICANT.**

Section 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635) is amended by adding at the end the following:

"(f) **AUTHORITY TO DENY APPLICATION FOR ASSISTANCE BASED ON FRAUD OR CORRUPTION BY PARTY TO THE TRANSACTION.**—In addition to any other authority of the Bank, the Bank may deny an application for assistance with respect to a transaction if the Bank has substantial credible evidence that any party to the transaction has committed an act of fraud or corruption in connection with a transaction involving a good or service that is the same as, or substantially similar to, a good or service the export of which is the subject of the application."

**SEC. 19. CONSIDERATION OF FOREIGN COUNTRY HELPFULNESS IN EFFORTS TO ERADICATE TERRORISM.**

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is further amended by adding at the end the following:

"(L) It is further the policy of the United States that, in considering whether to guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or information by a national or agency of any nation, the Bank shall take into account the extent to which the nation has been helpful or unhelpful in efforts to eradicate terrorism. The Bank shall consult with the Department of State to determine the degree to which each relevant nation has been helpful or unhelpful in efforts to eradicate terrorism."

**SEC. 20. OUTSTANDING ORDERS AND PRELIMINARY INJURY DETERMINATIONS.**

Section 2(e) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(e)) is amended—

(1) in paragraph (2), by striking "Paragraph (1)" and inserting "Paragraphs (1) and (2)"; and

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) and by inserting after paragraph (1) the following:

"(2) **OUTSTANDING ORDERS AND PRELIMINARY INJURY DETERMINATIONS.**—

"(A) **ORDERS.**—The Bank shall not provide any loan or guarantee to an entity for the resulting production of substantially the same product that is the subject of—

"(i) a countervailing duty or antidumping order under title VII of the Tariff Act of 1930; or

"(ii) a determination under title II of the Trade Act of 1974.

"(B) **AFFIRMATIVE DETERMINATION.**—Within 60 days after the date of the enactment of this Act, the Bank shall establish procedures regarding loans or guarantees provided to any entity that is subject to a preliminary determination of a reasonable indication of material injury to an industry under title VII of the Tariff Act of 1930. The procedures shall help to ensure that these loans and guarantees are likely to not re-

sult in a significant increase in imports of substantially the same product covered by the preliminary determination and are likely to not have a significant adverse impact on the domestic industry. The Bank shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the implementation of these procedures.

"(C) **COMMENT PERIOD.**—The Bank shall establish procedures under which the Bank shall notify interested parties and provide a comment period with regard to loans or guarantees reviewed pursuant to subparagraph (B)."

**SEC. 21. SENSE OF THE CONGRESS RELATING TO RENEWABLE ENERGY TARGETS.**

(a) **ALLOCATION OF ASSISTANCE AMONG ENERGY PROJECTS.**—It is the sense of the Congress that, of the total amount available to the Export-Import Bank of the United States for the extension of credit for transactions related to energy projects, the Bank should, not later than the beginning of fiscal year 2006, use—

(1) not more than 95 percent for transactions related to fossil fuel projects; and

(2) not less than 5 percent for transactions related to renewable energy and energy efficiency projects.

(b) **DEFINITION OF RENEWABLE ENERGY.**—In this section, the term "renewable energy" means projects related to solar, wind, biomass, fuel cell, landfill gas, or geothermal energy sources.

**SEC. 22. REQUIREMENT THAT APPLICANTS FOR ASSISTANCE DISCLOSE WHETHER THEY HAVE VIOLATED THE FOREIGN CORRUPT PRACTICES ACT; MAINTENANCE OF LIST OF VIOLATORS.**

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is further amended by adding at the end the following:

"(M) The Bank shall require an applicant for assistance from the Bank to disclose whether the applicant has been found by a court of the United States to have violated the Foreign Corrupt Practices Act, and shall maintain a list of persons so found to have violated such Act."

**SEC. 23. SENSE OF THE CONGRESS.**

It is the sense of the Congress that, when considering a proposal for assistance for a project that is worth \$10,000,000 or more, the management of the Export-Import Bank of the United States should have available for review a detailed assessment of the potential human rights impact of the proposed project.

Mr. REID. Mr. President, I ask unanimous consent that the Senate disagree to the House amendment, agree to the request for a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate, without intervening action or debate.

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

The PRESIDING OFFICER (Mr. WELLSTONE) appointed Mr. SARBANES, Mr. DODD, Mr. JOHNSON, Mr. BAYH, Mr. GRAMM, Mr. SHELBY, and Mr. HAGEL conferees on the part of the Senate.

**STAR PRINT—S. 2430**

Mr. REID. Mr. President, I ask unanimous consent that S. 2430 be star printed with the changes at the desk.

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

**MEASURE READ THE FIRST TIME—H.R. 4560**

Mr. REID. Mr. President, it is my understanding that H.R. 4560 has been received from the House and is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The senior assistant bill clerk read as follows:

A bill (H.R. 4560) to eliminate the deadlines for spectrum auctions of spectrum previously allocated to television broadcasting.

Mr. REID. Mr. President, I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard.

The bill will receive its second reading on the next legislative day.

**ORDERS FOR FRIDAY, MAY 10, 2002**

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it recess until 10 a.m., Friday, May 10; that following the prayer and the pledge, the time for the two leaders be reserved for their use later in the day, and the Senate be in a period of morning business until 11 a.m., with Senators permitted to speak for up to 10 minutes each, with the time equally divided between the majority leader and the Republican leader or their designees; further, at 11 a.m., the Senate resume consideration of the trade bill.

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

**RECESS UNTIL 10 A.M. TOMORROW**

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in recess under the previous order.

There being no objection, the Senate, at 6:28 p.m., recessed until Friday, May 10, 2002, at 10 a.m.

**CONFIRMATIONS**

Executive nominations confirmed by the Senate May 9, 2002:

**THE JUDICIARY**

LEONARD E. DAVIS, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS.

ANDREW S. HANEN, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS.

SAMUEL H. MAYS, JR., OF TENNESSEE, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE.

THOMAS M. ROSE, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO.