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Senate

The Senate met at 10:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Rev. John David Kistler, of Hickory, NC.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

Lord, Your holy word says in the Book of Romans that those who serve in the halls of government are actually Your ''ministers.'' Remind us that the work to be done here today is larger than any particular individual or political party.

Grant wisdom, O Lord, to this assembly that they might understand their responsibility not only to the people of this great Nation, but primarily to You.

May we understand what former President Grover Cleveland said, that ''those who manage the affairs of government . . . should be courageously true to the interest of the people, and that the Ruler of the Universe will require of them a strict account of their stewardship.''

Turn us, O Lord, back to you in humble contrition and acknowledgment of Your will and Your ways, for it is in the name of Jesus, our Redeemer, and Saviour that we humbly pray.

Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will immediately resume consideration of the Defense authorization bill. Under the order, we will resume debate on the Kennedy amendment relating to the earth penetrator. There will be 50 minutes of debate per side prior to the vote in relation to that amendment. Members should expect the first vote today prior to the policy luncheon recess.

As a reminder, the Senate will recess from 12:30 to 2:15 for the weekly policy meetings.

Last night, the Senate debated several amendments, and others are waiting in the queue to be offered. I anticipated that we would have votes today throughout the afternoon on some of the pending amendments. I have also previously mentioned the need to set votes on some of the pending judicial nominations. We expect to set three of those judicial nominations for votes late this afternoon, and we will alert Senators as to the precise time when the agreement is locked in.

As I have stated previously, it will be helpful if we can vote on some of these noncontroversial nominations by voice vote and not consume valuable Senate time with rollcall votes that result in unanimous confirmations. I will reiterate the importance of finishing the Defense bill this week. We have a number of scheduling requests, and we are doing our very best to work around those specific requests. However, Members should be prepared for busy days and evenings, if necessary, to finish this important defense legislation.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I will use my leader time to make a relatively brief statement.

The PRESIDENT pro tempore. The Democratic leader is recognized for that purpose.

Mr. DASCHLE. Mr. President, over the past 4 years, our nation has gained a renewed awareness of the bravery and sacrifice of America's service men and women.

And through the exceptional valor they have routinely displayed, America has also gained a renewed sense of gratitude for the service of our veterans.

So it was with a heightened sense of respect and appreciation that America commemorated the recent anniversary of D-Day and Memorial Day, and dedicated the long-overdue memorial to the generation that fought and won World War II.

The veterans who came to Washington expecting to find one tribute cast in stone, encountered many living tributes, just as meaningful, and just as enduring.

Americans of all ages, of all backgrounds, said ''thank you'' to the veterans who fought for them. Some gave gifts of American flags. Others asked for pictures.

I recently heard a story about two World War II veterans who were eating dinner at a restaurant, when a young man they had never met thanked them, and struck up a conversation.

He asked about their service, and told them that two of his relatives didn't make it home from Europe.

When it came time for the two older men to pay the tab, they found that the young man had already paid it. He left a card that said, ''To two old guys who paid the price, but who are not going to pay today.''

The memory of our veterans' achievements will live on long after them, and all Americans should feel proud that, in this way, we have kept faith with our veterans.

But a shadow is cast over the tributes now paid to our veterans, and indeed, to our soldiers fighting in uniform today.

There seems to be a gap between the thanks America offers its veterans in word, and the thanks our government shows veterans in deed.

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

The waits at the VA hospital are too long.

Veterans are paying record amounts out-of-pocket for VA health services.

In recent days, we have learned that the White House is planning new cuts for FY06, even as the VA faces an influx of war veterans from Iraq.

This year, as in every election year, Americans will ask themselves, am I better off than I was four years ago? Am I safer? Am I more financially secure? Do I have better access to prescription drugs and health care than before?

In the coming months, America's 26 million veterans will be asking themselves those same questions. All America would do well to listen to their answers.

Recently, I heard from a South Dakotan named Howard Anderson.

Howard is 77 years old, a veteran of World War II. Howard is grateful to the doctors and nurses at the VA, but feels squeezed by the rising cost of prescription drugs.

On average, he pays around $90 per month for medicine to treat his lung condition.

The VA won't pay for his medications because he makes too much money even though he and his wife live on their Social Security. ''At the end of the month,'' he said, ''I couldn't write you a check for a dollar.''

Not long ago, the VA sent Howard a letter notifying him that he owed another $300 for prescriptions.

After the shock wore off, Howard went back through his receipts and found he was being double-charged.

It had happened before, but he didn't have the patience to battle through the bureaucracy to make it right again, so he just paid the bill. This time, he just couldn't afford it.

The VA ultimately admitted it was making a mistake. But Howard is beginning to get the sense that tight budgets have forced the VA to become more aggressive about denying care or sending the bill to the veteran.

''They say these benefits are there for you,'' he says, ''but when you go to get them, they don't give them to you.''

Let me say that the problems with the VA health system are not the fault of the doctors and nurses and the other men and women who work at VA hospitals and clinics.

They are among the most talented, most dedicated health professionals in this country. But they can only do so much with the resources they are given.

And from the first days of this Administration, the White House has systematically tried to reduce veterans benefits, cut funding to the VA, and shortchange the health care of America's veterans.

Over the past four years, the budget for veterans' health has risen far less than the rate of health care inflation, forcing VA hospitals to meet rising demand with shrinking resources.

The White House's 2005 budget deepens this trend by including only a 1.9 percent funding increase, barely one-sixth of the rate at which health care costs are increasing nationwide.

Overall, the White House budget falls over $4.1 billion short of veterans' needs, according to the Independent Budget created by leading nonpartisan veterans groups.

Not only would the White House's budget strain VA hospital budgets to the breaking point, it would drive nearly 800,000 veterans out of the VA health system.

Eight-hundred thousand Americans who were promised health care in exchange for their service to their country will be denied and kicked off the rolls for no reason other than the Administration's refusal to adequately fund veterans' health.

This would be on top of a recent decision by President Bush to deny our obligations to 200,000 Priority 8 veterans and keep them from enrolling in the VA health care system.

Those veterans who remain in the system have been forced to pay more, much more. Over the course of the last three years, the amount veterans have paid toward their own care has increased a staggering 340 percent, or $561 million.

And if the White House gets its way, veterans would need to pick up over a half-billion dollars more of their care in 2005, if the budget proposals as we have now witnessed them go through.

Some within this administration seem to believe that our responsibility to our soldiers is when they come home, but we couldn't disagree more.

If it were not for the efforts of many in Congress, the story would be much worse. Since President Bush took office, we have led the charge to add a total of almost $2 billion in funding for veterans health care beyond what the President proposed.

Moreover, in each of the last 3 years, Democrats have blocked Bush administration attempts to increase copayments and enrollment fees even higher. Is this the same President who ran for election with a pledge to veterans that ''help is on the way''?

In the next few days, some of us will offer an amendment to make a simple promise to our veterans: If you wore the uniform of our Nation, if you fought under our flag, your health care needs will be met for life. The full funding of veterans health care would be made mandatory under the law.

For too long, the VA budget has been subject to the give-and-take of budget politics. It is time we set things straight.

Funding for the VA should no longer be set by political convenience, backroom deals, or zero sum game of budget politics. One thing, and one thing alone, should govern the care of our veterans: the needs of care for those veterans.

Senate Democrats have also been fighting, and we will continue to fight, for full concurrent receipt of all disabled veterans under the remarkable leadership of my colleague, the distinguished assistant Democratic leader from Nevada.

The Bush administration has repeatedly threatened to veto concurrent receipt, and last year the White House called together leading veterans organizations to propose a compromise: We will give you full concurrent receipt but only if you agree to end disability benefits for two-thirds of all veterans.

Veterans organizations and their allies in Congress rejected the inadequate proposal. Instead, thanks in large part to Senator REID, Democrats were able to pass a provision to allow veterans rated 50-percent disabled or more to receive full concurrent receipt.

We have made progress on concurrent receipt since the last election, but it has been in spite of the administration, not because of it. What we have achieved so far is just a downpayment on what disabled veterans have been promised and what they deserve. How could we do otherwise? How could we let our country move forward and leave behind the men and women whose bravery has won our freedom and prosperity?

The debt we owe our veterans is unending. But just because we could never hope to repay fully our obligations to our veterans does not excuse us from trying. Today we are further away from doing right by our veterans than ever before.

America's veterans are not better off than they were 4 years ago. When he signed the GI Bill of Rights in 1944, President Roosevelt noted that ''the members of our Armed Forces have been compelled to make greater . . . sacrifices than the rest of us, and they are entitled to definite action to take care of their special problems.''

The current White House has allowed ''definite action'' to give way to little more than indefinite praise. Veterans deserve better. The soldiers fighting this very day, at this very moment, deserve better.

I think back to that young man 2 weeks ago who looked upon two men to whom he owed his freedom and way of life, and he knew enough to say thank you.

Then I think of Howard Anderson who did pay the price but is being denied help by the Government because it refuses to fully fund veterans health. Howard Anderson and all veterans are owed a debt.

We should acknowledge that debt every day, not just in stone monuments or in lofty speeches or bright parades. It should be repaid in a real and concrete commitment to care for veterans in the days when veterans need it the most.

These men and women risked their lives to defend our own. They stood up for us, and now we must stand up for them, not just with words but with action.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time that has not been used is reserved.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2400, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and other purposes.

Pending:

Kennedy amendment No. 3263, to prohibit the use of funds for the support of new nuclear weapons development under the Stockpile Services Advanced Concepts Initiative or for the Robust Nuclear Earth Penetrator (RNEP).

Reid (for Leahy) amendment No. 3292, to amend title 18, United States Code, to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts.

Dodd modified amendment No. 3313, to prohibit the use of contractors for certain Department of Defense activities and to establish limitations on the transfer of custody of prisoners of the Department of Defense.

Smith/Kennedy amendment No. 3183, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes.

The PRESIDENT pro tempore. The Senator from Colorado.

AMENDMENT NO. 3263

Mr. ALLARD. Mr. President, I understand we now have the Defense authorization bill before us and an amendment to that bill, which is the Kennedy-Feinstein amendment; is that the regular order?

The PRESIDENT pro tempore. The Senator is correct.

Mr. ALLARD. I thank the Chair. I yield the floor. The sponsor of that amendment wishes to make a few comments, and I wish to follow with a few comments.

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that Senator AKAKA be added as a cosponsor of the Kennedy-Feinstein amendment No. 3263.

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

Mr. KENNEDY. Mr. President, I understand we have a time allocation of 50 minutes.

The PRESIDENT pro tempore. There is an allocation of 50 minutes on each side on the Kennedy amendment.

Mr. KENNEDY. On our side, the Senator from Michigan, our ranking member, has been allocated 10 minutes.

The PRESIDENT pro tempore. The Senator from Michigan is allocated 10 minutes; the Senator is correct.

Mr. KENNEDY. Mr. President, I yield myself 12 minutes.

We face many different issues in foreign policy, national defense, and the war on terrorism. But one issue is crystal clear: America should not launch a new nuclear arms race.

We want our children and grandchildren to live in a world that is less dangerous, not more dangerous—with fewer nuclear weapons, not more. But that is not the course that the Bush administration is taking. Even as we try to persuade North Korea to pull back from the brink—even as we try to persuade Iran to end its nuclear weapons program—even as we urge the nations of the former Soviet Union to secure their nuclear materials and arsenals from terrorists—the Bush administration now wants to escalate the nuclear threat by developing two new kinds of nuclear weapons for the United States—mini-nukes that can be used more easily on the battlefield, and bunker busters to attack sites buried deeply underground.

As President Reagan would say, ''There you go again''—another major blunder in foreign policy. Our goal is to prevent nuclear proliferation. How does it help for us to start developing a new generation of nuclear weapons?

It's a shameful double standard. As Mohammed El Baradei, the director of the International Atomic Energy Agency, said in an address to the Council of Foreign Relations in New York City said last month, ''there are some who have continued to dangle a cigarette from their mouth and tell everybody else not to smoke.''

The specter of nuclear war looms even larger with the ominous statements of senior officials in the Bush administration that they in fact consider these new weapons more ''usable.'' If the Bush administration has its way, the next war could very well be a nuclear war, started by a nuclear first strike by the United States.

It is hard to imagine a dumber idea. The amendment that the Senator from California and I are offering will put a halt to the Bush administration's plan to develop these new nuclear weapons. Just as ''lite'' cigarettes still cause deadly cancer, lower yield nuclear weapons will still cause massive death and destruction. No matter what you call them, a nuclear weapon is a nuclear weapon.

They still incinerate everything in their path. They still kill and injure hundreds of thousands of people. They still scatter dangerous fallout over hundreds of miles. They still leave vast areas that are radioactive and uninhabitable for years to come.

There are few more vivid examples of the misguided priorities of the Bush administration. For the past 15 months, our troops in Iraq have been under fire every day. They were sent into battle without the latest and best bulletproof vests and without armored Humvees. They were placed at greater risk, denied the basic equipment they needed to protect themselves and do their jobs. Meanwhile, the Bush administration is urging Congress to provide hundreds of millions of dollars for new nuclear weapons.

The mini-nuke has a yield of five kilotons or less. That's still half the size of the atomic bomb dropped on Hiroshima that killed more than 100,000 people—at least a third of the city's population. Is it somehow more acceptable to produce a modern nuclear bomb that kills only tens of thousands instead of a hundred thousand?

The Bush administration also has extensive plans to develop the ''bunker buster,'' or, as the administration calls it, the Robust Nuclear Earth Penetrator. It would carry a nuclear warhead of around 100 kilotons—ten times the size of the bomb dropped on Hiroshima. It would be placed in a hardened cone capable of burrowing deep underground before exploding.

Even with today's advanced technology, they would still spew thousands of tons of radioactive ash into the atmosphere.

There are more effective ways to disable underground bunkers. Using today's highly accurate conventional weapons, we can destroy the intake valves for air and water. We can knock out their electricity. And we can destroy the entrances, preventing people and supplies from going in or getting out.

In fact, by rushing to develop these weapons, the Bush administration misses the point. The challenge of destroying deep underground bunkers is not solved with nuclear weapons. It will be solved by developing missile cones that can penetrate deeper into the earth without being destroyed on impact.

The bill before us authorizes a study of these two new nuclear weapons systems. It provides $9 million for the development of advanced concepts for nuclear weapons, the so-called ''mini-nukes,'' and more than $27 million for the robust nuclear earth penetrator, the so-called bunker busters.

Those who support the development of these weapons suggest that it is only research and that the research will have little effect on the rest of the world. The supporters of these weapons argue that since the funds are limited to research, the administration will not go on to produce these weapons without congressional approval. That is what Secretary Rumsfeld claimed when he testified before the House Appropriations Committee in February. He said that what has been proposed is some funds be used to study and determine the extent to which a deep earth penetrator conceivably could be developed, what it would look like, and whether it makes sense to do it. There are no funds in here to do it. There are no funds in here to deploy it since it does not exist.

The administration's own budget contradicts that statement. Its budget assumes we will spend $485 million on

these weapons over the next 5 years. It has a detailed plan for their development and production. I have in my hand their projection by the Congressional Budget Office of the development of this program for some $485 million from now through 2009, and it anticipates the completion of the development phase in fiscal year 2007. We can see it right in their proposals. Then it has the continued development of the program itself.

This is the clear indication of what the administration is intending. It is in their budget. It is $485 million, and it is right there just with regard to the bunker buster just as it is with regard to the nuke. We will see that it goes on through fiscal year 2009 as well. So if we do not adopt this amendment, we can be confident that the administration will build them. After that, as the administration's own nuclear experts have said, they will ultimately deploy them and use them.

In fact, in our debate 2 weeks ago, my colleague from Arizona described a situation in which he believed they should be used. He claimed conventional bunker busters were incapable of knocking out Saddam Hussein in those early days of the war and that only nuclear weapons could have destroyed his deeply buried hardened bunkers.

If that is the plan for these weapons, then the prospect is even more frightening for our troops, for America, and for the world. Is the Senator from Arizona truly suggesting we should have used a nuclear weapon to hit Saddam Hussein's bunkers last May? Baghdad is a city of over 5 million Iraqis. We would have killed hundreds of thousands of people, including American aid workers and journalists. We would have turned the entire area into a radioactive wasteland. And all to capture the person we captured with conventional means a few months later?

Using a nuclear weapon to strike Saddam Hussein would have inflamed the hatred of America in Iraq and the Arab world far beyond anything we have seen in response to the prison scandal at Abu Ghraib. It would have poisoned our relations with the rest of the world and turned us into an international pariah for generations to come.

The President told us this winter that there is a consensus among nations that proliferation cannot be tolerated. He added that this consensus means little unless it is translated into action. But the administration's idea of action is preposterous. It only encourages a dangerous new arms race and promotes proliferation. By building new nuclear weapons, the President would be rekindling the nuclear arms race that should have ended with the end of the cold war.

He has given inadequate support to nonproliferation efforts with Russia. With the Moscow treaty, the deep cuts in our nuclear arsenals would not be permanent since we could keep a large number of such weapons in storage, capable of being activated and used in the future.

In January 2002, the Pentagon released a document called the Nuclear Posture Review, and despite subsequent efforts to downplay its significance, its tone of recommendations revealed the dangerous new direction in our nuclear policy. The double standard is clear. The rest of the world must abandon the development of nuclear weapons, but the United States can continue to build new weapons.

As is pointed out in the Nuclear Posture Review, it talks about the second principal finding is the United States requires a much smaller nuclear arsenal under the present circumstances, but first the nuclear weapons are playing a smaller role in U.S. security than at any other time in the nuclear age. Then it goes on to talk about the alternatives that are being developed with the smaller nuclear weapons.

The Bush administration thinks the United States can move the world in one direction while we move in another; that we can continue to prevail on other countries not to develop nuclear weapons while we develop new tactical applications for these weapons and possibly resume nuclear testing.

The PRESIDING OFFICER (Mr. ENZI). The Senator's time has expired.

Mr. KENNEDY. I yield myself 2 additional minutes.

The decision the administration has made on nuclear posture reverses 50 years of bipartisan commitment to arms control. Over the past 50 years, we have halted and reversed the nuclear arms race, and now we are starting to escalate it again. It makes no sense to undermine half a century of progress on nuclear arms control and start going backward. And all for what? To deal with emerging threats we can already handle with conventional weapons.

Even the House Republicans have acknowledged the flaw in the administration's plan. Chairman Hobson eliminated all funding for these mini-nukes and bunker busters, saying that the National Nuclear Security Administration needs to take a time out on new initiatives until it completes a review of its weapons complex in relation to security needs and budget constraints, and the administration's own new plan to eliminate half of our stockpiled warheads. That is the conclusion of the House of Representatives after extensive hearings.

The Bush administration is asking Congress to buy something that we do not need and we will never use, that makes our goals for a peaceful world much more difficult to achieve, and that endangers us by its mere existence.

Over the period of this last half century, Democrats and Republicans have pursued sensible arms control, engaged the world in nearly a global commitment to nonproliferation, and demonstrated the will of the United States to pursue counterproliferation when diplomacy failed to stop illicit flows of weapons of mass destruction.

President Kennedy started the process that would lead to the nonproliferation treaty, but he could not finish it. President Johnson picked up where he left off and signed it, but he did not have time to ratify it before his term ended. President Nixon ratified it. Presidents Ford, Carter, and Reagan negotiated SALT and START. President Bush signed START I and START II. President Clinton signed START III and led America through the massive post-cold-war reduction in its nuclear arsenal. That is the record: Democrat and Republican alike moving us away from nuclear escalation, and that is what this amendment will continue.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I rise today in opposition to the Kennedy-Feinstein amendment that would strip the authorization for funding for the robust nuclear earth penetrator and the advanced concepts. Again, we have heard the argument of how somehow or another we would have further world peace if we just weakened America, and I could not disagree more with that.

I believe we do have peace through strength, and what we have in this particular legislation is a study to study where the strengths are of our adversaries and where the proper response to those strengths would be. I do not think anybody has any preconceived notion of how this study should come out; we just think we need to know some vital information to make sure America remains strong.

I am disappointed once again by the efforts of those on the other side of the aisle to eliminate altogether this administration's effort to study options for modernizing our nuclear deterrent. To me, it seems that sponsors of this amendment may not fully understand how important it is for the United States to maintain a credible deterrent, or how a modernized deterrent could result in a substantial reduction in our nuclear stockpile.

Over the last several years, the Department of Defense closely examined our nuclear weapons posture. It became apparent that the cold-war paradigm of mutually assured destruction was no longer an appropriate response for the United States. Increasingly, irrational rogue nations and nonstate actors have emerged as a greater threat to U.S. security than historical adversaries. As part of this examination, it was discovered that many of our adversaries are building increasingly hardened and more deeply buried facilities in order to protect high-value targets such as command and control nodes, ballistic missiles, and, in some cases, the actual development of facilities for weapons of mass destruction.

Many of these buried targets are immune to our conventional weapons. Therefore, our ability to deter such undesired activities is greatly eroded.

The need to hold these targets at risk became so apparent that in 1994 U.S. Strategic Command and Air Combat Command issued a mission needs statement for a capability to defeat hardened and deeply buried targets.

In 1997, the Department conducted an analysis of alternatives to address intelligence and strike capabilities related to defeating hardened and deeply buried targets. To almost everyone's surprise, the analysis of alternatives found that not all hardened and deeply buried targets could be defeated by current or conceptual conventional weapons.

Then, in 1999, the Vice Chairman of the Joint Chief of Staff requested that a capstone requirements document for hardened and deeply buried targets be developed. Again, this document provided additional justification for a requirement for both conventional and nuclear weapons capable of defeating these targets.

Meanwhile, during these military studies and analyses, the Clinton administration was already building and deploying an interim nuclear earth penetrator.

I have noticed that the advocates of the Kennedy-Feinstein amendment have tried to place the blame on the Bush administration. But here we are—the Clinton administration building and deploying an interim nuclear earth penetrator. Even he recognized the need and the changing environment in which we must act in order to maintain a strong America.

The modified nuclear weapon was designated the B61–11 and entered service in April 1997. While this weapon provided a limited capability, it does not have capability to defeat all types of hard and deeply buried targets.

With this history in mind, it surprises me that once again we are here to debate whether we should go forward with a feasibility study on a modified nuclear weapon and whether our scientists can explore nuclear weapon concepts.

Let me take a moment to respond to clear up some misconceptions that have been suggested by the supporters of Kennedy amendment.

First, opponents of RNEP argue that conventionally armed ''bunker buster'' weapons are sufficiently effective to destroy hardened and deeply buried targets. Clearly, advanced conventional earth penetrators are the weapon of choice for most hardened and deeply buried facilities, but according to the Department of Defense, they are not effective against a growing class of hardened and deeply buried targets. Moreover, the precise location of surface support facilities are not always known, and at best, we can only hope to disrupt the operation of a hardened or deeply buried target for a few hours or days at most.

The second argument used by opponents of RNEP is that any modifications to the U.S. nuclear weapons arsenal will encourage other nations to develop new nuclear weapons. This argument suggests that there is a direct correlation between our activities and those of other nations. I could not disagree more with this notion.

Over the last 10 years, we have conducted very little work on new nuclear weapons. Yet Pakistan and India have conducted nuclear tests. Russia and China continue to develop nuclear weapons. And, countries such as Iran and North Korea are secretly working to build new nuclear weapons. All of this activity has taken place without the U.S. taking any action with regard to our nuclear stockpile.

In response to our mini-nukes, first, ''battlefield nuclear weapons'' would be tactical, not strategic. Second, President George H.W. Bush's Presidential Nuclear Initiative, announced September 27, 1991, did away with all U.S. battlefield nuclear weapons. In fact the Pantex plant in Amarillo, TX, dismantled the last battlefield nuclear weapon, the W–79 artillery shell in 2003. The administration has no plans to change that decision. Nor are there plans by the Department of Defense or Department of Energy to research or develop ''battlefield nuclear weapons.'' The administration believes that nuclear weapons are strategic weapons of last resort.

In fact, if the United States does not show that it is serious about ensuring the viability of our entire military capability, including our weapons of last resort, we might not be able to dissuade potential adversaries from developing weapons of mass destruction and deter those adversaries from using those weapons they already have.

The third argument used by opponents of RNEP is that the administration has already decided to develop, build, and test a new robust nuclear earth penetrator. They point to a Congressional Research Service report that seems to suggest that the RNEP is not merely a study because the budget projections over the next 5 years are nearly $500 million for the program.

To be clear, it was Congress that directed the Department of Energy to prepare 5-year budget profiles. The nearly $500 million outlined in the latest profile is only a projection of what the costs might be if the results of the feasibility study are reasonable, the administration opts to proceed, and the Congress approves the development of such a weapon.

We must keep in mind that the administration cannot begin the development, much less build or test, a new robust nuclear earth penetrator without the expressed approval from Congress. Section 3117 of the Fiscal Year 2004 National Defense Authorization bill makes this clear. It specifically states that ''the Secretary of Energy may not commence the engineering development phase of the nuclear weapons development process, or any subsequent process, of a Robust Nuclear Earth Penetrator weapons unless specifically authorized by Congress.''

The fourth argument used by opponents of RNEP, and perhaps the most egregious, is that the RNEP will lower the nuclear threshold. Crossing the nuclear threshold represents a momentous decision for any President. A nuclear weapon's size or purpose does not alter the gravity of the decision for using a nuclear weapon. No President would use a nuclear weapon unless it was the option of last resort.

Therefore, to suggest that simply modernizing a nuclear weapon automatically lowers the rigor and deliberation in deciding to employ that weapon is unfounded.

The success of our goal of assuring our allies and dissuading potential adversaries is dependent upon a modern, effective nuclear detterent that can counter today's threats. We must keep in mind that the current U.S. stockpile was developed for very different purposes than the threats that exist today. It was developed for a massive nuclear exchange with one nation. Today, these weapons are too powerful and may result in greater damage than necessary to neutralize a target.

Moreover, these weapons continue to age, making it increasingly more difficult to predict their reliability. We depend upon their reliability, as do our allies and our troops in the field.

We must also recognize that a modernized nuclear stockpile will result in significant reductions in our stockpile. If we have specific weapons that can hold certain targets at risk, it will not be necessary to have a vast inventory of strategic nuclear warheads. This path forward would yield substantial cost savings and, more importantly, demonstrate our country's commitment to reducing nuclear stockpiles around the world.

For over 50 years, we, as a Congress, and every President have agreed that nuclear weapons are a critical element of our national security strategy. They remain so today. I believe a modernized detterent will help ensure that our adversaries are deterred tomorrow.

Therefore, I will oppose this amendment and urge my colleagues to oppose it as well.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 5 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 5 minutes.

Mr. DORGAN. Mr. President, perhaps I do not understand all I should, and I certainly do not understand the term ''modernization of nuclear weapons.'' We have thousands of nuclear weapons in this world. We control thousands of them in this country. Modernization? It appears now in this debate to be a euphemism for building new nuclear weapons, designer nuclear weapons, usable nuclear weapons, the kinds of weapons you might use, for example, to bust into caves, the ground, bunker busters.

That is the purpose of this amendment, to stop this march toward production of more nuclear weapons. This country ought to be leading in exactly the other direction.

Let me read from Time magazine in March of 2002.

For a few harrowing weeks last fall, a group of U.S. officials believed that the worst nightmare of their lives—something even more horrific than 9/11—was about to come true. In October an intelligence alert went out to a small number of government agencies, including the Energy Department's top-secret Nuclear Emergency Search Team, based in Nevada. The report said that terrorists were thought to have obtained a 10-kiloton nuclear weapon from the Russian arsenal and planned to smuggle it into New York City. The source of the report was a mercurial agent code-named DRAGONFIRE, who intelligence officials believed was of ''undetermined'' reliability. But DRAGONFIRE's claim tracked with a report from a Russian general who believed his forces were missing a 10-kiloton device. Since the mid-'90s, proliferation experts have suspected that several portable nuclear devices might be missing from the Russian stockpile. That made the DRAGONFIRE report alarming. So did this: detonated in lower Manhattan, a 10-kiloton bomb would kill some 100,000 civilians and irradiate 700,000 more, flattening everything in a half-mile diameter. And so counterterrorist investigators went on their highest state of alert.

''It was brutal,'' a U.S. official told TIME. It was also highly classified and closely guarded. Under the aegis of the White House's Counterterrorism Security Group, part of the National Security Council, the suspected nuke was kept secret so as not to panic the people of New York. Senior FBI officials were not in the loop. Former mayor Rudolph Giuliani says he was never told about the threat. In the end, the investigators found nothing and concluded that DRAGONFIRE's information was false. But few of them slept better. They had made a chilling realization: if terrorists did manage to smuggle a nuclear weapon into the city, there was almost nothing anyone could do about it.

Our experts thought, based on some evidence from some folks in the intelligence community, that one nuclear weapon was missing from the Russian arsenal and might be detonated in the middle of an American city. Now, there are tens of thousands of nuclear weapons in the world. We think, probably, between 25,000 and 30,000 nuclear weapons. One missing would be devastating. One of them acquired by terrorists would be devastating.

Our job is not to come to the Senate these days with the Defense authorization bill and parrot the line of those who are reckless on this entire subject, saying what we really need to do is to build more nuclear weapons, to build bunker busters, earth-penetrator weapons, to talk about using them, to talk about testing nuclear weapons. That is not our job. It is not our responsibility.

Our responsibility is to move in exactly the opposite direction. It is our responsibility to lead the way to stop the spread of nuclear weapons, especially to stop the spread of nuclear weapons, No. 1; No. 2, to safeguard the stockpiles of nuclear weapons that already exist—yes, with us, with Russia and elsewhere; and then No. 3, and very importantly, to begin the long march toward the reduction of nuclear weapons.

It ought to be our responsibility as a world leader to say we are going to try to do everything we can to see that a nuclear weapon is never again used in conflict and that we begin to reduce the stockpiles of nuclear weapons in this world.

For months now, as I have heard people in positions of responsibility talk about the potential of designing new lower yield nuclear weapons or earth-penetrator nuclear weapons so that we can use them, I have shook my head and thought, what on Earth are they thinking about? Our job is to provide world leadership to try to find a way to reduce the stockpile of nuclear weapons in this world, to safeguard the stockpile of weapons that already exist, make sure terrorists never get their hands on one, stop the spread of nuclear weapons to other countries and to terrorist organizations and begin the march toward the reduction of the stockpile of nuclear weapons.

If we begin this process to talk about modernization and testing and building new nuclear weapons and building designer nuclear weapons, and finding nuclear weapons that will bust into caves, it will not leave this world a safer place. It will make this world a more dangerous place. It is, in my judgment, a reckless course.

I hope with all my might that the amendment being offered today to stop this march toward the building of new nuclear weapons and the discussion about the plausibility of simply using nuclear weapons as another device in conflict, I hope with all my might we stop it dead in the Senate right now.

We have a responsibility. That responsibility is world leadership.

I mentioned the article in Time magazine. The potential of one 10-kiloton nuclear weapon missing from the Russian arsenal acquired by terrorists to be detonated in an American city was devastating news to an intelligence community that became apoplectic about it, and should have been. That was just one, and there are nearly 30,000 nuclear weapons.

Our responsibility is to make sure not that we build more, to make sure we reduce the stockpile of nuclear weapons and reduce the danger of nuclear weapons.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

As I mentioned before, we have a very proud tradition of moving the United States away from nuclear confrontation. I mentioned the start of that effort by President Kennedy beginning the process of nonproliferation. President Johnson picked up where he left off, although he did not have sufficient time. But President Nixon ratified it. Presidents Ford, Carter, and Reagan negotiated SALT and START. President Bush signed START and START II and President Clinton START III.

What do they know that this President does not know? Why do we have Republicans and Democrats moving away from the brink of nuclear escalation? What are we talking about? Five kilotons would cause 280,000 casualities, 230,000 fatalities. That is what we are talking about with small nuclear weapons.

This is not just modernization. The Senator from Colorado knows we have a very active program now being reviewed by scientists to make sure we have an adequate deterrent. What is the effect if you dropped a 5-kiloton nuclear weapon on Damascus: 280,000 casualties, 230,000 fatalities.

Just before the first gulf war, the Chairman of the Joint Chiefs of Staff, Colin Powell, commissioned a study of the possibility of the use of small nuclear weapons on the battlefield. He rejected all of them because, he said, ''they have no battlefield utility.''

If the Senator from Colorado can show us where we had any hearings, where any of the Joint Chiefs of Staff have testified they want this kind of weapon, I am interested. He cannot because we have not had any hearings.

This is a statement from the Administrator of the National Nuclear Security Administration in response to a question on April 8, 2003: I have a bias in favor of the lowest usable yield. I have a bias in favor of things that might be usable.

There it is, a statement from the No. 1 person in the administration.

We have in the RECORD the 5-year program in terms of the development of these weapons, $485 million. We have in the RECORD the costs of the small nukes, $82 million. Why are we being asked to go ahead and walk down this path where we have Republican and Democrats and the Chair of the Joint Chiefs of Staff saying this is a mistake?

What in the world does the Senator from Colorado know that these Presidents did not know? Where is the testimony before our Armed Services Committee showing these will be usable?

I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. Mr. President, to suggest that somehow or the other this particular President does not want to be a leader in reducing nuclear threats is absurd.

I call to the attention of the Members of the Senate the Moscow Treaty which was put together at the first of this administration. He brought down some 8,000 warheads to 1,700 to 2,200 active warheads.

The result from our potential adversaries is to produce more nuclear warheads. Our adversaries are not necessarily responding to what we do in the United States. Take India and Afghanistan. They are more interested in

how each other's country is responding to that issue. They are not that concerned about what is happening here. Despite that, they continue to be proliferating. And there is always the potential they could be proliferating warheads that could have an impact on us.

We know our adversaries are building hard bunkers, deeply buried. This particular piece of legislation is not putting in place the engineering or development of nuclear warheads. I have just shared that language with my colleagues. But what we are looking at is a study. I think it is foolhardy and irresponsible to not even look at the facts, to not call for a study to see where we are in relation to the rest of the world. We know other countries, other than just Afghanistan, such as North Korea—I don't see a real stepdown as far as Russia and other countries around the world. We know Iran, admittedly, is looking at a nuclear weapons program.

So this is an important step in making sure that America remains secure. I think it is a responsible step because we are saying that in order to maintain peace in this world we need to have a strong America. If we want to have some response to terrorism and that flexible threat we have out there, we have to have a more flexible defense posture. We need to look at alternatives. And, yes, I believe terrorists throughout the world have the potential of being a real threat to this country, although the main threat that is recognized today is from many of those countries that I cited.

But that is why it is important to have a study. I think those people in the know—whether they are in the Bush administration or were in the Clinton administration—agree we need to stay on top of this issue. I think the irresponsibility would be for us to bury our heads in the sand and ignore the fact that the world is changing. The fact is, the world is changing, the threat is changing, and for us to deal with those potential threats, we need to look at modernizing our ability to deal with those changing threats. That is what the provision in this particular bill is all about.

Mr. President, I yield the floor.

Mr. AKAKA. Mr. President, I rise today in support of the amendment offered by Senators KENNEDY and FEINSTEIN to prohibit the use of funds for the support of new nuclear weapons development.

Passage of this amendment would ensure that the United States will not develop new nuclear weapons while at the same time asking other nations to give up their own weapons development programs.

Unfortunately, today we live in a world where governments and terrorists are seeking to create and acquire weapons of mass destruction. I am deeply concerned that we are not doing enough to stop the potential flow of weapons and weapon materials to terrorist organizations. Rather than devoting scarce resources to researching new nuclear weapons we should be securing nuclear material already in existence.

The administration's plans to develop new weapons and modify old types of weapons will compromise U.S. security by undermining efforts to make worldwide cooperation on nonproliferation of nuclear and other weapons of mass destruction, WMD, more effective.

The first Bush administration prohibited work on nuclear weapons then under development and halted nuclear testing except for safety and reliability, effectively bringing work on new weapons types to a close.

In contrast, I believe this administration's nuclear initiatives are creating a new kind of arms race by expanding our weapon development programs.

The United States pledged in the Nuclear Nonproliferation Treaty ''to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament.'' This is still a worthy objective.

However, instead of strengthening nonproliferation efforts, the administration has requested $27.6 million for the Robust Nuclear Earth Penetrator, RNEP, for fiscal year 2005. The request would continue a study to modify an existing weapon to penetrate completely into the ground before detonating, increasing its ability to destroy buried targets.

The RNEP is a bad idea for a number of reasons. First, it is a common misconception that a weapon detonated a few meters underground creates less fallout. In fact, a weapon detonated at a shallow depth would actually create more fallout than if it were detonated on the surface.

Nuclear testing done in the 1960s demonstrated that weapons detonated deep underground can produce large amounts of fallout. In order to prevent this during underground testing done at the Nevada Test Site, detonations were required to be at least 600 feet underground, with no vertical shaft open to the atmosphere. This scenario cannot happen in a battlefield situation.

We do not have the ability to drive a weapon down to the depths that would be required to prevent huge quantities of fallout from occurring, and even if we did, the hole created by the weapon would allow the fallout to escape to the atmosphere. Even a low-yield RNEP would kill large numbers of people from both the blast and from the inevitable fallout that would follow.

The RNEP study was initially projected to cost $45 million—$15 million a year for fiscal year 2003–2005. It is now projected to cost $71 million, which is too much money to research a weapon that in many ways duplicates what conventional weapons can do already.

Additionally, the budget request includes figures through fiscal year 2009 that total $484.7 million and includes placeholders for both the development-engineering and production-engineering phases. This may indicate that the RNEP study is more than just a study and is in fact being undertaken with the foregone conclusion that the weapon will go into development. This amendment would effectively stop funding for this weapon.

The administration argues that these weapons programs are needed to increase deterrence from a new kind of threat. I do not believe these weapons will deter other nations or terrorists. If other nations see the U.S. developing new nuclear weapons, they are likely to think that they need new weapons for their security as well.

We already know that terrorists are trying to acquire nuclear weapons. Director of Central Intelligence, George Tenet, warned the Armed Services Committee once again in March of al-Qaida interest in chemical, biological, radiological and nuclear, CBRN, weapons.

Director Tenet said, ''Acquiring these remains a 'religious obligation' in Bin Ladin's eyes, and al-Qaida and more than two dozen other terrorist groups are pursuing CBRN materials. Over the last year, we've also seen an increase in the threat of more sophisticated CBRN. For this reason, we take very seriously the threat of a CBRN attack.'' We cannot afford this risk.

I urge my colleagues to support the Kennedy-Feinstein amendment to stop funding new nuclear weapons development programs.

Mr. BIDEN. Mr. President, I support the amendment offered by Senator KENNEDY and Senator FEINSTEIN to prohibit the use of funds for the Robust Nuclear Earth Penetrator and for the development of new nuclear weapons concepts.

Both the administration's policy of pre-emptive war and the suggestion, reportedly included in the Nuclear Posture Review, that it might use nuclear weapons against non-nuclear countries undercut U.S. non-proliferation pronouncements. And these policies form the context in which we must evaluate administration proposals for new nuclear weapons research.

Moves to make nuclear weapons just another part of the U.S. arsenal of usable weapons send a strong and unmistakable message to other countries: the only way to deter the United States is to have nuclear weapons of your own.

The President's agenda for a new generation of nuclear weapons is included in the bill before us today, which funds the Robust Nuclear Earth Penetrator, the Advanced Concepts Initiative—which could include low-yield nuclear weapons—and the Modern Pit Facility. Funds for the Robust Nuclear Earth Penetrator, known as RNEP, or the bunker buster, are supposed to cover a ''study'' of turning existing nuclear bombs into earth penetrators. But what a robust study this is. The 5-year budget required by Congress and submitted by the Department of Energy funds the ''study'' at $27.6 million

in fiscal year 2005, but the 5-year total balloons to $484.7 million.

Last year, Congress passed amendments that required congressional authorization before later phases and developmental engineering of RNEP could take place. The price tag suggests that the administration sees RNEP as far more than a study; it is clearly looking ahead to the development and fielding of a new nuclear weapon. If so, the Congressional Research Service warns that the 5-year cost is far from the total price tag for this program.

It is impossible to provide an estimate of total program cost because of the difficulty of the task at hand.

The current nuclear earth penetrator, the B61–11, can penetrate only to 20 feet in dry earth. According to physicist Rob Nelson from Princeton University, even an extremely small bunker buster with a yield of one-tenth of a kiloton must penetrate 140 feet underground to be contained. It is hard to imagine the technical feat required to penetrate into hardened targets to the depth necessary to prevent massive fallout from a nuclear weapon with the RNEP's yield, which is said to be far in excess of 5 kilotons. In fact, preventing the spread of fallout from an RNEP is impossible—and tens of thousands or hundreds of thousands of casualties could result from the nuclear fallout from such a weapon.

U.S. nuclear tests from the 1960s and 1970s illustrate the point. The 1962 ''Sedan'' test exploded a 100-kiloton weapon 635 feet underground. It produced a gigantic cloud of fallout and left a crater a quarter mile in diameter. To destroy a deeply buried target, an even larger weapon would be needed—and an RNEP would be lucky to penetrate more than 50 feet underground. The fallout would be immense.

The bill before us also includes $9 million for the Advanced Concept Initiative that could lead to the development of new nuclear weapons, including low-yield nuclear weapons.

This program raises further concerns: Will the new weapons require a resumption of nuclear testing, leading others to test as well? Will the new weapons erode the current gap between nuclear and conventional weapons, which helps to make nuclear war ''unthinkable'' and to deter other countries from developing such weapons?

The Robust Nuclear Earth Penetrator and low-yield nuclear weapons are not like regular nuclear weapons. Regular nuclear weapons are designed to deter an adversary; the massive destruction and civilian casualties they cause make nuclear weapons unlike even other weapons of mass destruction, with the possible exception of smallpox. But these nuclear weapons are different. They bridge the gap between conventional weapons and the city-busting weapons of the cold war. They offer the lure of a better way to destroy point targets.

Supporters of new nuclear weapons argue that they, too, could deter an adversary, and that is true. All nuclear weapons have a deterrent function. But the deterrence benefits that low-yield weapons provide are far outweighed by both the risk that they will actually be used and the dangerous signal that they send to other countries—whether intentionally or not—that we intend to fight nuclear wars.

These nuclear weapons blur the distinction between nuclear and conventional war. They begin to make nuclear war more ''thinkable,'' as Herman Kahn might have said. But Herman Kahn's book was ''Thinking About the Unthinkable.'' He understood that nuclear war was unthinkable, even as he demanded that we think about how to fight one if we had to. Looking at the foreign and defense policies of the current administration, I fear that they have failed to understand that vital point. They want to make nuclear war ''thinkable.''

And that failure of understanding could lead to bigger failures: a failure to understand how to keep other countries from developing nuclear weapons; a failure to view nonproliferation as a vital and workable policy objective; and perhaps even a failure to avoid a nuclear war, which would do horrible damage to our country.

Building bunker busters and low-yield nuclear weapons is not a path to non-proliferation. Neither is a program to do R&D on such weapons, while Defense Department officials press our scientists to come up with reasons to build them.

Neither is a program to test those weapons—which would surely be necessary to develop new low-yield weapons; and which would just as surely be the death knell not only of the Comprehensive Test-Ban Treaty, but also of the Nuclear Non-Proliferation Treaty.

Consider what the administration has said regarding nuclear weapons: The Nuclear Posture Review of December 2001 spoke of reducing U.S. reliance upon nuclear weapons. But it also reportedly listed not only Russia and China, but also North Korea, Iraq, Iran, Syria, and Libya as potential enemies in a nuclear war.

It spoke of possibly needing to develop and test new types of nuclear weapons, gave that as a reason for increasing our nuclear test readiness, and said that nuclear weapons might be used to neutralize chemical or biological agents. And in the run-up to the Iraq war, the administration proclaimed a doctrine of preemption against any potential foe that acquired weapons of mass destruction.

Now, if you were a North Korean leader, or an Iranian or Syrian one, which part of those reports would you act on? The part that reduces reliance on nuclear weapons? Or the part that names you as a possible target for nuclear preemption?

So far, we have one positive answer—from Libya, which is giving up its WMD program.

But from North Korea and Iran, the response is much more disturbing. The Washington Post reported last month that a new National Intelligence Estimate would likely conclude that North Korea has approximately eight nuclear bombs, instead of two; and that its secret uranium enrichment program would be operational by 2007 and produce enough weapons-grade uranium for another six bombs per year. Iran was accelerating its nuclear weapons program, when disclosures and IAEA inspections exposed it and disrupted Iran's efforts. It pursued two means of uranium enrichment—centrifuges and lasers—and experimented with separating plutonium.

Even countries that are our friends and allies worry about—and react to—these U.S. policies. Just last week, Brazil's new Ambassador reiterated his country's intent to limit the access of the International Atomic Energy Agency to Brazil's uranium enrichment plant. One rationale he used was Brazil's unhappiness that the Bush administration would consider using nuclear weapons against non-nuclear countries.

How shall we stem the spread of nuclear weapons? For a while, it seemed as though the administration's approach would be to declare war on every adversary that dared to go nuclear. But do we really intend to go to war with North Korea, if the price is the slaughter of hundreds of thousands of South Korean civilians? In fact, we appear now to be withdrawing half our ground combat forces from South Korea to send them to Iraq; and there are rumors that those forces will not return to Korea.

Do we intend to go to war with Iran, when we cannot guarantee security in Iraq? The list of countries that we accuse of having weapons of mass destruction is long. Will we take them all on? And what do we do when Indian officials cite our Iraq war arguments as justification for a possible attack on Pakistan that could risk a nuclear war? Is this the world we want?

Nobody ever said that nonproliferation was easy.

I don't have a silver bullet; and I don't expect the President to have one, either. But you have to keep your eye on the ball. When conservatives opposed the Comprehensive Test-Ban Treaty, they said that countries would build nuclear weapons for their own strategic reasons. That is right.

It means that if we want to prevent proliferation, or roll it back, we have to affect those strategic calculations. Nonproliferation policy gives us a framework for those efforts.

The Nuclear NonProliferation Treaty gives us international support, and affects the calculations of countries whose neighbors sign and obey the treaty. The Nuclear Suppliers Group buys more time, by restricting exports of nuclear or dual-use materials and equipment. But in the end, it still comes down to other countries' strategic calculations.

For lasting nonproliferation, we must treat the regional quarrels that

drive countries to seek nuclear weapons. We were able to do that with Argentina and Brazil. As South Africa moved away from apartheid, we were able to do that there, as well. We are making a real effort to help India and Pakistan step back from the brink, and we must continue that effort. But we also have to address security concerns in East Asia, including North Korea's concerns, if we are to keep that whole region from developing nuclear weapons. And we have to pursue peace in the Middle East.

Nor is there really an alternative to working with the international community.

We don't have the ability to inspect sites in Iran; the International Atomic Energy Agency does have that ability. Its inspections have revealed much about the extent of Iran's nuclear program and have made it harder for Iran to pursue that program.

We cannot close down proliferation traffic all by ourselves. The case of North Korea shows how much we need the help of other countries. The cooperation of other countries, especially including Russia and China, is essential. That is why the Proliferation Security Initiative is so important, as is our adherence to international law in implementing that initiative.

Those are the paths to nonproliferation. They are long and difficult paths, and we do not know whether we will succeed. But we can see where we want to go, and we can see how working those issues will help get us there.

Building a new generation of nuclear weapons will only take us on the opposite path. So I urge my colleagues to support the Kennedy-Feinstein amendment to prohibit funding for those counterproductive weapons.

Mr. LAUTENBERG. Mr. President, I rise today to discuss a critical national security amendment that I have cosponsored. I commend the leadership of Senator KENNEDY and FEINSTEIN and I join them today in offering an amendment that will eliminate funds in this year's budget for research and development on nuclear bunker buster. This amendment also deletes funding for the advanced concepts programs—money authorized for research on small nuclear weapons.

Mr. President, I am disappointed that this administration has requested these programs for this year's Department of Energy Budget. First and foremost, the development of these new weapons are not needed; the U.S. already has 6,000 deployed nuclear weapons. But most importantly, a U.S. decision to proceed with a new generation of nuclear weapons will undercut international non-proliferation efforts and undermine the United States' credibility on global security.

We are currently facing a new type of national security challenge; our greatest goal is to prevent the nexus of terrorists and weapons of mass destruction. As such, it is imperative that this country's defense and foreign policy reflect a firm commitment to every aspect of non-proliferation and arms control. Destroying and preventing the spread of current nuclear warheads remains a critical component of this commitment. So too is preventing the development of new types of nuclear weapons and materials, however small they might be and however limited their use.

We invaded Iraq to change a regime that we were told posed an imminent threat to global security. The administration assured us that not only had Saddam amassed an arsenal of biological and chemical weapons, but he was also actively pursuing nuclear weapons as well. We have so far lost 840 American men and women in this effort but have yet to uncover traces of WMD programs in Iraq. I find it truly bizarre and hypocritical that the administration would plan to build new types of nuclear weapons at the same time it pursues military operations abroad with the purported objective of destroying similar materials.

In our global war on terror, the last thing we need is more nuclear weapons. What we need are more troops on the ground protecting Iraqis and providing stability. What we need is better intelligence and law enforcement and enhanced efforts to collaborate with our allies on both priorities.

Instead, the administration has decided that researching and developing new types of nuclear weapons is a priority. How we can credibly ask North Korea and Iran to stop their own nuclear programs while at the same time we develop mini nukes and bunker busters?

Let me respond to three points the administration makes in support of its dangerous nuclear requests:

First, the administration says the Pentagon must study bunker busters for the war on terrorism; only the Robust Nuclear Earth Penetrator (RNEP), it claims, could be used against suspected underground bunkers containing weapons of mass destruction. They say our amendment will tie the Pentagon's hands in the war on terrorism. This is not true. The administration's scenario in which the new nuclear explosives are used against suspected underground bunkers containing biological, chemical or nuclear weapons is highly improbable. Our intelligence about the location of WMD materials is not precise enough to destroy it this way. Just imagine launching nuclear bunker busters based on weapons intelligence as unreliable as that circulating before the Iraq war. Even if underground sites were accurately identified, the resulting nuclear explosions could spread the blast, radiation, and toxins over populated areas.

Moreover, current conventional weapons in our arsenal can destroy these materials. And if we really care about the threat of WMD, then the proposed research money ought to be going to fund better weapons intelligence and improved conventional methods for putting these WMD sites out of commission, like blocking air intakes and external energy sources.

Second, administration officials claim that the bunker buster funding and the mini nuke funding is just for feasibility studies and research and development, not for use. They claim that we are opposing the important scientific advances involved in researching these weapons.

With nuclear weapons, any materials researched and developed must be tested. You cannot understand the physics of nuclear weapons without tests. Currently, the U.S. is a signatory of the Comprehensive Test Ban Treaty, which prohibits testing nuclear weapons. If we test our new weapons, even at an early non-useable stage of development, we are immediately breaking this treaty and inviting other countries that are signatories to break this treaty as well.

Finally, the proponents of the nuclear funding say that the administration's request only deals with a small amount of money—$9 million for the mini nukes and around $30 million for the bunker busters. Relative to a Defense Budget for 2005 projected to surpass $440 billion dollars, they say that the sum in question—the sum our amendment will delete—is insignificant.

This is also patently wrong. First, the Fiscal Year 2005 budget contains $9 million for mini nukes, which is a 50 percent increase from last year's request. What's more important is not the sum, but the intent. The administration has made it clear that it wants this money to create—-and I quote the Pentagon ''a more useable'' nuclear weapon. This funding, however small, sends a dangerous message to other members of the nine country nuclear club that the U.S. is intending to use our nuclear arsenal.

Second, with the bunker buster, in May 2003, Secretary Rumsfeld said that the Robust Nuclear Earth Penetarato program ''is a study. It is nothing more and nothing less.'' This study was planned to cost $15 million for fiscal years 2003–2005. Yet this year, the Administration requested $27.6 million for the study, and suddenly revealed that it planned to spend $485 million over the next five years. That is not insignificant at all.

I just returned from attending a celebration of the 60th anniversary of D-Day in Normandy, France. The most important military and political lesson learned from the D-Day battles was the necessity of international cooperation. I believe that this great example of multi-lateral cooperation should be remembered and applied to current events, in Iraq and elsewhere. The world watched in awe as young, dedicated soldiers from several countries fought side by side on those beaches and cliffs that launched the events that would rid the world of fascism.

Today, the administration's unilateral foreign policy and marginalization

of the United Nations has fractured this alliance of democracies. Our relations with Europe are tense and our public standing in the world an all-time low. I believe that funding nuclear weapons in this year's budget will only provoke further antagonism between the United States and our allies.

I urge my colleagues to support the Kennedy-Feinstein amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. LEVIN. Mr. President, I believe I have 10 minutes allocated to me.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. Mr. President, I very much support the pending amendment because I believe if this country is going to have any credibility in our argument that countries such as Iran should not be allowed to obtain nuclear weapons, we ourselves must reduce our own reliance on nuclear weapons and not move in the direction of new nuclear weapons.

We undermine our position when we put money into a budget which says we are going to start doing and continue research on new types of weapons and on advanced concepts for nuclear weapons, when we have been a party to a treaty called the Nuclear Non-Proliferation Treaty, which says:

Each of the Parties to the Treaty—

That includes us—

undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty of general and complete disarmament under strict and effective international control.

We have told the Indians, we have told the Pakistanis: Do not move down that nuclear road.

We have told the Iranians: We are not going to let you go down that nuclear road. We are going to take actions to prevent you from acquiring nuclear weapons. This is at the same time this administration is moving this country toward additional reliance on nuclear weapons, new types of nuclear weapons, and new uses for nuclear weapons.

It is totally inconsistent for us to be moving in the direction we talk about when it comes to other countries but in the direction that we literally live out when we come to our own activity. Too often this country has been portrayed as saying that the rules that apply to everybody else do not apply to us. We have seen too much evidence of that approach recently. It has dramatically weakened our position in this world and strengthened the terrorists' position when we say we are not governed by the same rules by which everybody else is governed. There is a nonproliferation treaty out there, Iran. You are a member of that treaty, and you have to live up to it.

Now, of course, Iran can pull out of that treaty. They can withdraw from that treaty, too, just as we withdrew from the ABM Treaty. But they are a member of that nonproliferation regime now. So we tell them: You have to live up to that regime. We are not going to sit by and allow you to get nuclear weapons.

That is what we say over here. But over here we put millions of dollars into doing research on new types of nuclear weapons and new uses for nuclear weapons which already are in the inventory.

This is a grave danger to us. We undermine our own security when we talk out of the right side of our mouth when it comes to what other people can do, and out of the left side of our mouth when it comes to our own activity.

The effort to move toward more usable nuclear weapons is what this argument is all about. This is what Administrator Brooks talked about in answer to a question by Senator REED, when he says:

And I accept Senator Reed's point that . . . I have a bias in favor of things that might be usable.

Here is the Administrator of the National Nuclear Security Administration talking about that we have to move toward more usable nuclear weapons. And why do we need these weapons? We are told because there are underground bunkers that might be the targets, and that those bunkers might not be reachable except through nuclear weapons.

Can we just imagine having dropped nuclear weapons going after Saddam Hussein? We had this intelligence that said he was in an underground bunker. And that underground bunker, we were told, was something we could hit with a conventional weapon at the time. It was one of, apparently, 50 airstrikes that we used against the high-value targets in Iraq, including Saddam Hussein and his sons.

Well, according to the press, there were about 50 of those airstrikes. Not one of them was successful. It turns out there apparently was not even a bunker at the one we were sure Saddam Hussein was in. But if there was a bunker, he was not in it. According to this report in the New York Times of June 13, a Central Intelligence Agency officer reported that Hussein was in that underground bunker at that site. So we went after him. We directed the airstrikes against that bunker.

But then, after the main part of this war was over, we went and inspected where we had struck based on intelligence that there was an underground bunker containing Saddam Hussein. And lo and behold, not only wasn't there Saddam Hussein—we knew that already—but there wasn't even a bunker at the location.

And the suggestion that we are going to design nuclear weapons to go after bunkers, despite the huge result in terms of human loss when nuclear weapons are used, assumes we have intelligence which is so reliable that we can, with great certainty, reach a leader who otherwise would not be reachable with conventional weapons. If anything has been demonstrated recently during this Iraq war, it is that our intelligence is not only not particularly accurate but it is wildly inaccurate at times.

The idea that we project to the world that we are going to design nuclear weapons to go after bunkers—nuclear weapons which have yields which will kill tens of thousands of people if they succeed with their low yield—it seems to me is not only a message which undercuts our position against proliferation and our position in support of the nonproliferation treaty but a message which totally weakens us, which opens us up to the attacks of the terrorists who would kill us, that the United States lives by one set of rules when it comes to its own activities at the same time it wants to apply another set of rules to the rest of the world.

The administration's Defense Science Board, last year, called for a strategic redirection of the stockpile stewardship priorities in favor of nuclear weapons that previously had not been provided for and supported.

The legislative justification for the administration's position on this matter says we should be exploring weapons concepts that could offer greater capabilities for precision and earth penetration and weapons which are more ''relevant.'' More relevant nuclear weapons is what this is all about, relevant and usable nuclear weapons. A more relevant stockpile, according to their definition, will have reduced efficient yield.

But when you look at what the real yield is of these so-called reduced weapons, reduced yields, a 1-kiloton nuclear weapon detonated at a depth of 25 to 50 feet would eject more than 1 million cubic feet of radioactive debris into the air and leave a crater about the size of the World Trade Center. A 100-kiloton weapon that was detonated 635 feet below ground in Nevada formed a crater 320 feet deep and 1,200 feet in diameter. If a target were so deeply buried that a conventional weapon could not effectively harm a target, neither could a low-yield nuclear weapon. To successfully reach one of those targets would require a large yield and a large yield cannot be contained.

According to Sidney Drell, a noted physicist at Stanford University and a member of the NNSA advisory panel, a target buried at 1,000 feet would take a nuclear weapon with a yield greater than 100 kilotons to do any damage.

This body is again faced with a decision: Do we want to continue to walk down a road which we are urging and demanding that others not walk? The greatest fight we must wage is against proliferation of weapons of mass destruction that could reach the hands of terrorists.

The determination to develop new nukes and new uses for nuclear weapons undermines that fight. It weakens us in that fight and it makes us less secure in the war against terrorism.

I strongly urge that the pending amendment be adopted.

Mr. KENNEDY. Will the Senator yield?

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. There is 18 minutes on the Democratic side and 33 minutes on your side.

Mr. INHOFE. When are we scheduled to have our vote?

The PRESIDING OFFICER. At the conclusion of the use or yielding back of the time.

Mr. INHOFE. I see there are those wanting to be heard on the other side. Let me make a couple comments.

We are talking as if this is some program that we are putting together. This is a feasibility study. This is something to determine what the costs would be, what risks are out there, what the potential threat is that we could be guarding against. We are talking about a defensive system. I have heard all of the arguments.

Since we do have some time, I will let them use some of their time, and then I would like to respond so we can stay on schedule.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 15 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I am very happy to join with Senator KENNEDY in support of this amendment. I come at this from a passionate, moral point of view so my arguments are going to reflect that. We have been hearing for 2 years now that this is just a study. Yet the Congressional Research Service has shown in its reports that, in fact, it is much more than a study. This is the reopening of the nuclear door and the development of a new generation of nuclear weapons.

We, the strongest and most technologically proficient military on Earth now see fit to reopen that door and begin to study and develop a new generation of nuclear weapons: One, the robust nuclear earth penetrator, a 100-kiloton bunker buster, which at present cannot be developed to drive deeply enough into the ground to prevent the spewing of massive amounts of radioactive debris; two, something called advanced concepts initiative, which is the development of low-yield nuclear weapons, under 5 kilotons, to be used as strategic battlefield nuclear weapons; and three, the development of a plutonium pit facility with enough capacity to create up to 450 plutonium pits per year, which are the trigger devices in a nuclear weapon.

I strongly believe that to proceed on this path is folly because by doing so we are encouraging the very nuclear proliferation we are seeking to prevent. In other words, we are telling other countries, don't do what we do, do what we say. We are practicing the ultimate hypocrisy. And there is now emerging evidence that others are going to follow this course.

When I stood on the floor last week, I mentioned the report that India is beginning the development of battlefield nuclear weapons. You can be sure Pakistan will follow. We also know Brazil is looking at that opportunity as well. In April of this year, Brazil refused to allow IAEA, the International Atomic Energy Agency, inspectors to examine a uranium enrichment facility under construction. They insisted that the facility will only produce low-enriched uranium, which is legal under the Nuclear Nonproliferation Treaty, so long as it is safeguarded. They also refused to fully cooperate with the IAEA's investigation into the nuclear black market operated by Pakistani scientist A.Q. Kahn.

These are all the signs. We saw them in North Korea as well. Brazil appears to be rebelling against what it perceives to be a double standard in the global nuclear proliferation regime. It views President Bush's proposals, which significantly curtail the sharing of potentially peaceful nuclear technology, as a radical departure from the standards agreed to under the NPT. I am quoting from a statement issued by the former Foreign Minister of Great Britain, Robin Cook, and former Secretary of State Madeleine Albright in a document entitled ''A Nuclear Nonproliferation Strategy for the 21st Century.'' We know that other countries follow the example of the United States. Why are we doing this?

There is good news. Last week the House Appropriations Subcommittee on Energy and Water eliminated all funding for these programs, everything—for the pit facility, for the advanced weapons concepts, and for the nuclear bunker buster. That was a wise decision. I believe the action of the House is a reflection of the growing bipartisan concerns that I know many of my colleagues share about this administration's nuclear weapons programs. That is why the Senator from Massachusetts and I and the Senator from Michigan and others have offered our amendment to eliminate funds for programs to develop new nuclear weapons capabilities, including the robust nuclear earth penetrator.

This administration continues to argue that no new weapons production is currently planned. But again, the facts belie this statement.

Ambassador Linton Brooks, head of the National Nuclear Security Administration, stated in a recent interview that it is important, in his view, to maintain a manufacturing and scientific base so that the United States can meet the goal of ''being able to design, develop, and begin production of a new warhead within 3 to 4 years of a decision to enter engineering development.''

That is the ball game—the development of a new warhead. It is not just a study; it is development.

I mentioned the Congressional Research Service report. I was staggered when I saw that it concluded that the administration's long-term budget plans, including $485 million for the robust nuclear earth penetrator between 2005 and 2009, casts doubt on the contention that the studies of a new nuclear weapon are, in fact, just studies. Why would the administration be including $485 million in future funds in its long-term budget for a robust nuclear earth penetrator if it was just a study? The fact is, they would not. The study doesn't cost $485 million. The answer is that they are planning to go into the engineering and the development phases.

What I find most troubling with the administration's approach is the suggestion that we can make nuclear weapons more usable.

I strongly believe it must be a central tenet of the U.S. national security policy to do everything at our disposal to make nuclear weapons less desirable, less available, and less likely to be used.

According to press reports, the 2001 Nuclear Posture Review cited the need to develop a new generation of nuclear weapons and suggested a ''new triad'' which blurred the lines between conventional and nuclear forces. I keep mentioning that because this paper is often postulated as a throwaway—don't pay attention to it—but it is a very important statement of administration policy.

As early as 2001, this administration was creating a new triad of strategic forces, and one part of that would be the nuclear triad—in other words, the creation of new weapons that could be used along with conventional weapons.

This document also names seven countries—not all of them possessing nuclear weapons—against which we would consider launching a nuclear first strike.

So this new triad, with its emphasis on the offensive capability of these weapons—even in first-strike scenarios—represents a radical and dangerous departure from the idea that our strategic nuclear forces are primarily intended for deterrence. This is significant. We have always looked at our nuclear arsenal as a deterrent arsenal. This is now changing to an offensive arsenal. If you think about how the robust nuclear earth penetrator would be used, how low-yield nuclear weapons would be used, they would not be used in a defensive posture; they would be used as part of an offensive thrust.

A recent report of the Pentagon's Defense Sciences Board argues that ''nuclear weapons are needed that produce much lower collateral damage,'' precisely so these weapons can be more ''usable'' and integrated into war-fighting plans.

Now, the problem in all of this is that there is no such thing as a ''clean''

or usable nuclear bomb. A lot of studies have been done.

A leader in this effort is Dr. Sidney Drell, a physics professor at Stanford University. He points out how the effects of a small bomb would be dramatic. A 1-kiloton nuclear weapon detonated 20 to 50 feet underground would dig a crater the size of Ground Zero in New York and eject 1 million cubic feet of radioactive debris into the air.

The depth of penetration of the robust nuclear earth penetrator is limited by the strength of the missile casing. The deepest our current earth penetrator can burrow is 20 to 35 feet of dry earth.

Casing made of even the strongest material cannot withstand the physical force of burrowing through 100 feet of granite to reach a hard or deeply buried target—much less the 800 feet needed to contain the nuclear blast.

So if a nuclear bunker buster were able to burrow into the earth to reach its maximum feasible penetration depth of 35 feet, it would not be able to be deep enough to contain even a bomb with an explosive yield of only 0.2 kilotons, let alone a 100-kiloton bomb like the robust nuclear earth penetrator.

So given the insurmountable physics problems associated with burrowing a warhead deep into the earth, destroying a target hidden beneath 1,000 feet into rock will require a nuclear weapon of at least 100 kilotons. So anything short of 800 feet will not contain a fallout. A fireball will break through the surface, scattering enormous amounts of radioactive debris—1.5 million tons for a 100-kiloton bomb—into the atmosphere. Is that what we want to be doing as a Nation?

The 1962 Sedan nuclear test at the Nevada Test Site illustrates the enormous destructive effects of a 100-kiloton nuclear blast detonated 635 feet below the surface of the Earth—far deeper than any robust nuclear earth penetrator can be engineered to go. The radioactive cloud it produced continued to rise as debris settled back to Earth, and the base surge of the explosion rolled over the desert. Even at 635 feet below the ground, the blast could not be contained.

On the floor of the Senate last week, my friend, the distinguished Senator from Arizona, Mr. KYL, argued that because conventional earth-penetrating munitions failed to knock out Saddam Hussein in his underground bunker on the eve of the Iraq war, ''only nuclear weapons can address the deeply buried targets that are protected by man-made, or even hard geology.''

I usually, on security matters, agree with my friend. But consider the implications of this statement. If we had used a nuclear earth penetrator, we might have killed Saddam Hussein—that is, assuming we had the right location in the first place, and clearly our intelligence was not right—but at the same time the United States would have used a nuclear weapon against a nonnuclear weapon state, detonating it in the middle of a city of 5 million people. Would leveling Baghdad have been the right way to liberate an oppressed people from a brutal dictator? Of course not.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I have one sentence before yielding to the Senator from New Mexico. This is a feasibility study. That is all it is. You can keep saying over and over that it is more, but it is not. In the 5-year plan, which says in the event the feasibility study recommends it, and in the event the President recommends it, in the event we authorize it in both the House and Senate, then you can go forward with it. Right now, it is a feasibility study.

With that, I yield the floor.

Mr. WARNER. Mr. President, at the conclusion of the remarks of our distinguished colleague from New Mexico, I ask unanimous consent that the Senator from Virginia be recognized for about 6 or 7 minutes for the purpose of a colloquy with the Senator from Utah.

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

Mr. INHOFE. I yield to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I thank Senator INHOFE for the opportunity to speak.

The Feinstein-Kennedy amendment would prevent the NNSA from studying alternative technologies for our nuclear stockpile. It would also prevent the NNSA and DOD from studying earth-penetrating capability, which many military experts believe is an area where our existing arsenal does not provide sufficient deterrence.

The robust nuclear earth penetrator is a study to determine how or if the existing B–61 and existing B–83—those are the names of nuclear weapons—might be modified to provide an added capability of underground penetration. At present, our military is unable to provide credible deterrence against deeply buried targets.

Included in the President's fiscal year 2005 budget is $27.6 million in funding to undertake a feasibility study for the RNEP. With this research—and I stress research—we may be able to solve the complex engineering challenges and identify capabilities for both nuclear and conventional weapons to address the evolving tactical challenges. This is research not intended to replace any conventional weapon. It would only serve to transition from relying on large megaton city busters with more precise weapons, also providing funding for the NNSA to evaluate modification to existing weapons. It does not imply a commitment to build these weapons. Section 3117 of the Defense Authorization Act of 2004 requires that specific congressional authorization be obtained to move beyond a feasibility study. That has not been repealed and has not been changed.

Last year, the Energy and Water appropriations bill contained language that prevents the NNSA and the Department of Defense from moving beyond a feasibility study without congressional approval. I am the chairman of that committee, and I intend to include similar language again this year.

The Advanced Concepts Initiative will examine emerging or alternative technologies that could provide this country with an improved nuclear deterrence.

In 2001, the Nuclear Posture Review suggested that we should keep our nuclear scientists engaged and thinking about what the nuclear stockpile of the future should look like. By denying our scientists the opportunity to investigate this technology and the options for our stockpile, we will also neglect critical research into improving the safety, reliability, and security of the existing aging stockpile. It makes absolutely no sense to ignore technology and innovation when it comes to nuclear security and deterrence. I guarantee other countries are not limiting themselves to what they know today but are focusing on new possibilities for tomorrow.

This is not an attempt to build brand-new weapons and add to the stockpile. I am very supportive of reducing the number of weapons we have deployed, and I support the President's recently announced efforts to take a dramatic step in that direction. I support a much smaller, more flexible stockpile that can respond to a variety of threats in the post-cold-war era.

Last year, the Appropriations Energy and Water Development Subcommittee included a requirement that the President send to Congress a nuclear stockpile report that underlines the size of the stockpile of the future. This classified report is complete and defines the size and mission of our future stockpile. It goes beyond reductions contemplated by the Clinton administration. The plan proposed by the President would reduce the number of deployed weapons to levels consistent with the Moscow Treaty and its lowest level in several decades.

But even with these reductions, we must constantly adapt to provide a credible deterrence to the post-cold-war era. It is not realistic to think we can put the nuclear genie back into the bottle. We cannot hope that if we ignore the evolving nuclear threat that it will go away. History tells us a different story.

Despite the U.S. adopting a testing moratorium, several countries, including France, India, and Pakistan have tested weapons. Countries such as Libya, Iran, and North Korea have ignored international pressure to stop the development of a nuclear capability.

The fact is, countries will pursue what is in their sovereign best interests, and the U.S. should not believe

that we are in any different position. It is in our Nation's best interest to ensure that our weapons serve as a credible deterrent to a wide range of threats.

I remain hopeful that we will only use our stockpile as a deterrent to other nuclear states. However, to be an effective deterrent, it must evolve to address the changing threats. We also must maintain a group of experts at our national labs that understand the complex science to support the engineering and physics to ensure our stockpile is a viable deterrent and is safely stored at home.

To ensure we have an effective deterrent, we are doing the following:

We are maintaining our nuclear deterrent. That sends a clear and convincing signal to our allies and our enemies that our nuclear capability is sufficient to deter most threats.

We are maintaining our test readiness that allows us to hedge against the possibility that we may someday need to conduct a test to confirm a problem or verify that we resolved a problem within the stockpile.

We are using the RNEP study to examine whether or not existing weapons could be adapted to improve our ability to hold at risk deeply buried facilities that our enemies occupy.

We are challenging our scientists to think of a wide variety of options and face challenges to ensure that our nuclear deterrent is flexible and responsive to evolving threats. Failure to challenge our physicists and engineers will limit our capabilities in the future.

It is disingenuous of our opponents to argue that these policies put us on an irreversible course of new weapons development. Nothing could be further from the truth. Congress has the ultimate responsibility in determining whether or not to proceed with full-scale development.

I urge my colleagues to oppose this shortsighted amendment that would prevent our weapons scientists from investigating the best available options. This research is critical to ensuring this country has an effective and safe stockpile that will serve as a credible deterrent to all existing and potential threats.

I hope that in the process of discussing this issue, we will arrive at a conclusion that makes it eminently clear that the statement I have made regarding the 1-year feasibility study will be what we are talking about and what we will adopt.

I thank the Senator. I yield the floor.

Mr. INHOFE. Mr. President, may I inquire as to the time remaining?

The PRESIDING OFFICER. The Senator has 26 minutes.

Mr. INHOFE. And the other side?

The PRESIDING OFFICER. There is 3 minutes.

Mr. INHOFE. Under our unanimous consent agreement, we will recognize the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, our distinguished colleague from Utah wishes to have a colloquy with me. The colloquy represents a number of days of careful deliberations on a point and issue in last year's bill which is of great importance to him. I will follow my colleague after he makes his remarks.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I intend to oppose the Kennedy-Feinstein amendment even though I am sympathetic with many of the arguments they make. I am in agreement with the idea that this is a feasibility study only and that the study should go forward, but my primary concern is that there be no nuclear testing of this particular device or any aspect of this particular device while the study is going on.

It is my understanding that is part of the law accepted previously, but I want to make it absolutely sure. For that purpose, I intend, following this vote, some time during the debate, to call up my amendment which makes it clear that there can be no nuclear testing under the cover of a study of the RNEP as it is so called. That amendment is offered not only for myself and my colleague from Utah, Senator HATCH, but we are joined by Senator COLLINS of Maine and Senator DOMENICI of New Mexico.

I wish to make it clear that my goal is to see to it that there be no nuclear testing in the name of the study unless there is a specific congressional vote with respect to that testing. I do not believe it will be necessary, but if some future administration 5, 10, 15 years from now were to decide they needed to do some nuclear testing, that there was a compelling case to do that, I want that future administration to have to come to the Congress and make the compelling case to the Congress. My amendment goes in that direction with that as its goal.

Mr. WARNER. Mr. President, it is my understanding there are others who have associated with the Senator on this matter; am I not correct in that?

Mr. BENNETT. That is correct. As I said, Senator HATCH, Senator COLLINS, and Senator DOMENICI have cosponsored the amendment, and there are some others who indicated they will as well.

Mr. WARNER. Mr. President, I thank my colleague. I think the observations of the Senator from Utah, Mr. BENNETT, are important ones. I will work with my colleagues on the other side of the aisle to see if we cannot accept this amendment eventually because it, in all likelihood, clarifies the language that I put in the bill last year.

I think the amendment helps to clarify the intent of the language last year, which in its verbiage requires a specific authorization by Congress to proceed with the engineering development phase or subsequent phase of the robust nuclear earth penetrator and, in my view, that includes a full-scale underground nuclear test on the robust nuclear earth penetrator if such test, in the judgment of the technical community, is deemed necessary.

So I think the amendment can be helpful, and I will work with my distinguished colleagues on the other side, most specifically the ranking member, Senator LEVIN, to see whether we can adopt it.

I thank my colleague.

Mr. BENNETT. Mr. President, I thank the chairman for his courtesy and look forward to working with him and Senator LEVIN to see if we can indeed get this amendment adopted.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. At this point, I yield to the junior Senator from Texas for such time as he may consume.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I thank the Senator from Oklahoma for his courtesy in allowing me to speak briefly against this amendment which, as we have heard, prohibits any funding both for a feasibility study on the robust nuclear earth penetrator and for the advanced concepts initiative. My concern is the premise upon which this amendment is offered. If the events of the last decade have taught us anything, it is that weakness invites aggression by those who see that as an opportunity to terrorize or otherwise wreak havoc on innocent civilians in this country and elsewhere.

The concept that we should somehow prohibit important research—and this amendment would eliminate research because, of course, production is prohibited by current law—the suggestion and the logic, if there is any, that by somehow blinding ourselves to the threat and the means to overcome the threats that surround us in an ever dangerous world is beyond me. If we have learned anything in the last decade from the time of the bombing of the World Trade Center in 1993 to the bombing of our American embassies in Africa to the Khobar Towers incident to the bombing of the USS *Cole*, it is that weakness in the eyes of terrorists and rogue nations invites aggression.

I wonder from where the sense of moral equivalency comes that we often hear in this debate. There are those who have said time and again that if we are to try to reduce the proliferation of nuclear weapons around the world, how can America then conduct research on the robust nuclear earth penetrator and on those areas covered by the advanced concepts initiative? But I wonder if those who are making these statements truly believe America's research on such weapons systems to protect ourselves and to defend ourselves is somehow the equivalent of the actions of rogue states and terrorists. Moral equivalency is simply wrong.

There are those who suggest that somehow by conducting essential research into hardened weapons like the

robust earth nuclear penetrator, that may perhaps be able to protect our country and assist us in exposing hardened bunkers, which can contain command and control or perhaps even biological or other weapons of mass destruction research facilities, that we will start a new arms race. I detect a hint of perhaps the old cold war mentality that somehow they believe we will enter into some sort of arms race which will endanger the world.

The truth is, America, as a fraction of its GDP, spends more on defense than the next 20 nations in the world. We are the only superpower that exists in the world and there is no risk of an arms race such as we saw occur with the former Soviet Union. So this is merely a matter of allowing us to do the basic research into weapons that would allow us to protect ourselves against hardened and deeply buried targets where laboratories could store or produce weapons of mass destruction. We can conduct research on these weapons as a way to protect ourselves and indeed make America safer.

Finally, this amendment would eliminate the advanced concepts initiative. It is important to reiterate what that initiative will do. The initiative focuses on increasing the reliability, safety, and security of our existing nuclear weapons stockpile. It focuses on assessing the capabilities of our adversaries to ensure we avoid a technological surprise. It focuses on thinking up innovative methods for countering our adversaries' weapons of mass destruction and developing weapons systems requirements, and it focuses on evaluating concepts to meet future military requirements.

I fail to see the wisdom of our willingness to blind ourselves to emerging threats in a very dangerous world. As I say, our weakness, our willingness to disarm ourselves and blind ourselves to the danger that surrounds us is an invitation to those who see that as a means for them to use terrorism to accomplish their political goals in this world in which we live.

I urge my colleagues to oppose the amendment today. I thank the manager of the bill for this time and I yield back any remaining time to him.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I understand the other side has 3 minutes remaining, and I think the Senator from Massachusetts wants to wind up. It would be our intention to yield back our time unless somebody comes to the floor who has not been heard. So at this point I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Finally, Mr. President, my friend from Texas does not state our amendment correctly. We are only dealing with the mini nuke and the bunker buster, not the safety of the stockpile or the study of information that happens in other countries. The fact of the matter is, this administration does have a plan for the development of the bunker buster and the small nuclear weapon. There is no doubt about it. It says so in its Nuclear Posture Review.

It puts in motion a major change in our approach to the role of nuclear offensive forces in our deterrent strategy and presents a blueprint for transforming our strategic posture. That is the beginning of a new arms race.

It is not what I say; it is in their budget request that goes on for 5 or 7 years and asks for $485 million for the bunker buster and $84 million for the small nukes. That is what the administration basically wants. This is what their principal responsible officials in the administration have said.

Linton Brooks:

> I have a bias in favor of things that might be usable. I think that's just an inherent part of deterrence.

Fred Celec, former deputy assistant to the Secretary of Defense: If a hydrogen bomb can be successfully designed to survive a crash through hard rock or concrete and still explode, ''It will ultimately get fielded.''

There it is. That is what we are dealing with. We believe, if we go this route, it is going to make it more difficult to achieve arms control in the area of nuclear arms. It is going to make our goals harder to realize and make the possibility of nuclear war more likely.

Interestingly, the House of Representatives, in their conclusions on this same issue, provides no funds for advanced concepts research and the robust nuclear earth penetrator. Our bill does provide a significant increase in weapons dismantlement, and for security upgrades in the weapons complex for nuclear nonproliferation, the committee provides the request for $1.3 billion. We spend the resources on other high-priority nonproliferation needs.

That is the conclusion of the Republican House of Representatives. They seem to get it.

Rather than start into a new arms race with nuclear weapons, let us accept our amendment and rely on what we have relied on, which the Secretary of State, former Chairman of the Joint Chiefs of Staff, Colin Powell, recognized—that these were not small nukes and were not battlefield weapons. They did not have a place in our military. That is what the former Chairman of the Joint Chiefs of Staff said. No one is suggesting that he hasn't had a life and career in terms of security of this country.

We have the best in terms of conventional forces. Why go ahead and see nuclear proliferation in terms of weapons that will create increased dangers for the American people?

I yield the remaining time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, it is our intention to yield our time. However, I repeat: This is a feasibility study. It is nothing more than that. You can quote all these other people whose opinion is we should have this. It doesn't make any difference. If the feasibility study says we should go into R&D and production, we can do that. If the 5-year plan says they come up with that recommendation, we can do that. But, first, the feasibility study would have to be done. Then the President would have to make a request, and both Houses of Congress would have to authorize it. This is just a feasibility study. We voted on this last year. I have sent for the vote. We will have it down here to remind people how they voted. Nothing has changed.

I yield the remainder of our time 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. WARNER. Mr. President, I ask unanimous cosent that the order for the quroum call be dispensed with.

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

Mr. WARNER. Mr. President, I think we have had a very good debate. I thank colleagues on both sides of the aisle for participating in the debate this morning—the Senator from Oklahoma, Mr. INHOFE; Senator ALLARD; the Senator from Texas; and many of us.

While the vote had been scheduled for a little later to accommodate the needs of several Senators, I ask the desk to recognize that all time has been yielded.

The PRESIDING OFFICER. All time has expired.

Mr. WARNER. Therefore, if it is agreeable with my colleague from Michigan, we will have a vote.

Mr. LEVIN. Mr. President, we have no objection. However, there may be some Senators who relied on this vote starting later, and we ought to accommodate them and keep the vote open a little longer.

Mr. WARNER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Vermont (Mr. JEFFORDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY) would vote ''yea.''

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

The result was announced—yeas 42, nays 55, as follows:

[Rollcall Vote No. 113 Leg.]

YEAS—42

Akaka	Dayton	Lautenberg
Baucus	Dodd	Levin
Biden	Dorgan	Lieberman
Bingaman	Durbin	Lincoln
Boxer	Edwards	Mikulski
Breaux	Feingold	Murray
Byrd	Feinstein	Pryor
Cantwell	Graham (FL)	Reed
Carper	Harkin	Reid
Chafee	Inouye	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden

NAYS—55

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

NOT VOTING—3

Jeffords	Kerry	Leahy

The amendment (No. 3263) was rejected.

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

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

The motion to lay on the table was agreed to.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. WARNER. Mr. President, I thank the Senator from Colorado and all others who participated in what I felt was one of the better debates we have had in some time on a very serious issue. I commend the Senator from Massachusetts and others for the manner in which we conducted the debate.

Mr. President, I will now propound a unanimous consent request.

I ask unanimous consent that the time from 2:15 to 3:40 be equally divided between the opponents and proponents of the Smith amendment No. 3183; provided further, that at 3:40, the Senate proceed to executive session for the consideration en bloc of the following nominations: Virginia Hopkins, Ricardo Martinez, and Gene Pratter.

I further ask unanimous consent that there be 20 minutes of debate equally divided between the chairman and ranking member of the Judiciary Committee, or their designees, and that at 4 o'clock today the Senate proceed to a vote in relation to the Smith amendment No. 3183, with no amendments in order to the amendment prior to the vote.

I further ask that following that vote, the Senate then proceed to consecutive votes on the confirmation of Executive Calendar Nos. 563, 564, and 566, with 2 minutes of debate equally divided prior to each vote. I finally ask that following these votes, the President be immediately notified of the Senate's action and the Senate resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, following this series of votes, we will return to the Defense bill. At that time, there has been an agreement—at least it is my understanding that a Crapo amendment will be laid down.

Mr. WARNER. Mr. President, that is correct.

Mr. REID. That amendment would be set aside and Senator CANTWELL would lay down an amendment, and we will do our best to work out a time to vote on those amendments.

Mr. WARNER. The Senator is correct.

Mr. REID. Following the offering of the Cantwell amendment, the next one in order is the amendment by Senator DURBIN on our side, so people understand that.

Mr. DODD. Mr. President, if I may inquire, we have a pending amendment. What is the plan for dealing with amendments that have been offered and set aside? Do we try to resolve these matters in negotiation, or is there a schedule by which we will vote on these?

Mr. WARNER. The issue I am familiar with is the one the Senator from Connecticut and I debated which has sections (a) and (b).

Mr. DODD. Correct, the contractors.

Mr. WARNER. Mr. President, did the Senator reach any conclusions as to whether he wants to amend his amendment?

Mr. DODD. We may very well. I have not had a chance to speak with staff. I will be happy to speak with them in the next hour.

Mr. WARNER. I am hoping we can act on that amendment.

Mr. LEVIN. If whoever has the floor will yield, I understand we have now received the documents. We received the documents which we sought from the Army. I have not read them yet, and I do not know if the Senator has had a chance to review them.

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. REID. No objection.

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

Mr. WARNER. I thank the Presiding Officer. I think we will go to the standing order to place the Senate in recess.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m. today.

Thereupon, the Senate, at 1 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. Under the previous order, the time until 3:40 p.m. will be equally divided between the proponents and opponents on the Smith amendment.

Who yields time?

The Senator from Virginia.

AMENDMENT NO. 3183

Mr. WARNER. Mr. President, it is my understanding that the time is equally divided between the distinguished Senator from Oregon on this side and the Senator from Massachusetts on the other. Am I correct on that?

Mr. LEVIN. As I understand it, Mr. President, both are proponents of the amendment. I do not know who would be controlling the opponents' time. Is there opposition? If so, I wonder if the chairman knows who the opponents are who would be controlling the time.

Mr. WARNER. Mr. President, the distinguished Senator from Michigan does raise a valid point. I will provide the Senate with the individual that controls the opponents' time momentarily.

Mr. LEVIN. In terms of the proponents' time, I understand that will be divided between the Senator from Oregon and the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Oregon will control the time.

The Senator from Oregon.

Mr. SMITH. Mr. President, first may I express my appreciation to those who have agreed to this time agreement about an issue that is long overdue for our Senate to take up once again and to vote on its merits. This is the issue of hate crimes. This is an issue that is much in the news of late because it is an issue that too often is visited on the American people, or classes of Americans within the American community.

We are in the midst of a war on terror, and as we fight that war on terror abroad, it is important we not forget the war on terror at home. What Senator KENNEDY and I are trying to do in this bill is to simply remind the American people that there are classes of Americans who are uniquely vulnerable, who are singled out for violence, and for whom we need to do something.

It is a fact that hate crimes statutes are on the books of well over 30 States in America. They are even on the books of the U.S. Government. The Federal Government now has authority to pursue, prosecute, and punish those who commit hate crimes on the basis of race, religion, or national origin. What we are proposing to do in this bill is to add a few categories.

There is one category, one class of Americans that is the problem in this amendment, as some view it a problem, and that is the gay and lesbian community.

Now, many may wonder why we are bringing up this issue on a Defense authorization bill. And the answer is simply because some of the worst hate

crimes in recent memory have been committed in the U.S. military. It clearly is not unique to the American military because it happens all over the place, even in my State of Oregon, and notably, for example, in Texas with the death, murder, and dragging of James Byrd, and the savage beating of Matthew Shepard in Wyoming. But why the military bill? My answer is, why not? This is a bill that needs to move. It is important that we pass the defense authorization. It is important that we deal with this issue of domestic terrorism.

A hate crime is when someone with an ill-motive singles out an American citizen—or any person, but an America citizen—who, because of his sexual orientation, is hated and even killed. This happens way too often. In fact, if it happens at all, it is too often.

As I recounted yesterday in the case of several of our servicemen, a Navy man and an Army private were literally beaten to death. It is appropriate that we take up this issue on the Defense authorization bill.

Many of my colleagues will ask, Why are you trying to punish thought? I think it is important to recount that we are not punishing thought. We are not punishing speech. We are, in fact, punishing thought and speech that amounts to conduct, and that conduct then becomes criminal.

Many people say this is not appropriate to put in statute. We put it in statute a long time ago in the Federal Government. We did it in response to civil rights laws that were not being enforced in the Southern States—or a few of them. And the Federal Government needed to have some mechanism—some legal reach—to punish and pursue those who committed hateful things against the communities of African-American citizens. What this did was generate litigation when the Federal Government pursued it. It took the litigation all the way to the United States Supreme Court.

I think it is important that we recount that we are not going after anybody's hateful thinking or their hateful speaking but for the combination of those things—with hateful conduct which amounts to crime.

When this case came to the United States Supreme Court, you might have expected that conservatives would have struck it down. But it was an overwhelming vote by the United States Supreme Court, and the majority opinion affirming hate crimes as a category was written by none other than William Rehnquist, our current Chief Justice. It is hard to imagine a more conservative Justice. He made it very clear.

Citing the great Jurist William Blackstone, Rehnquist opined that ''it is reasonable that among crimes of different natures those should be most severely punished which are the most destructive of the public safety and happiness.''

Further, Rehnquist added:

> Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct the more serious is the offense and, therefore, the more severely it ought to be punished.

Obviously, in the case of James Byrd, when his murderers were ultimately subject to the death penalty, you can't punish that any more severely. But what was different in that case, because it involved race, was the Federal Government had the statutory right to be there to back up and help to reinforce the State of Texas should they have needed it.

In the case of Matthew Shepard—in the case of Wyoming where there is no authorization for the Federal Government to help because our hate crimes do not include sexual orientation—the sheriff's office in Laramie—I met the sheriff, a good Republican—pled for this law. He said: We needed the help. It was a case of national importance, and we needed the backup of the Federal Government to manage all that happened around the pursuit and the prosecution and the punishment of Matthew Shepard's murderers.

But what is really important to emphasize—and some of my friends will come to the Senate floor and say we are punishing thought; we are infringing upon the first amendment because we are going after people because of what they speak. The answer, as Rehnquist and others have said, is, no, we are not. We only do it if they act upon it. When criminal conduct is more serious because it is so heinous with the evidence around it, you can even more severely punish that crime.

I think it is very important to hit on one other thing before I turn to my colleague, Senator KENNEDY.

Many people wonder why we would do this, why we would add this category.

My mother used to teach me to treat people the way they would like to be treated—not just the way I would like to be treated. I cannot think of a more Christian or decent thing to do than come to the aid of someone who is in physical peril, or to prosecute their case when they have been wronged, regardless of what you think of their life or lifestyle.

I believe the moral imperative that underpins hate crimes legislation is simply this, and it comes from sacred writ: When people are being stoned in the public square, we ought to come to their rescue. That includes the Federal Government, but that does not include the Federal Government according to our statutes today. What Senator KENNEDY and I propose to do would change that—- and change it for the good.

This is not about endorsing anyone's lifestyle. This is about protecting Americans in any class or category in which they may find themselves.

We need to do this. We need to pass this amendment. It is long overdue.

I understand the reluctance on the part of some of my colleagues because of their dislike of the entire category of hate crimes, but I disagree with them. I understand them, but I disagree with them because of this: The position, if you do not like hate crimes as a category and don't want to expand it to a new class of people, says you really have to then strike from our books the hate crimes protections for race, religion, and national origin. I don't think any of my colleagues would come down here and try to do that, particularly after those categories have been found constitutional across the street by the judicial branch of Government.

But I think, because you can demonstrate clearly the gay and lesbian community is demonstrably more vulnerable to crime because of their sexual orientation, we owe it to them as Americans—our American brothers and sisters—to add this extra measure of law and protection.

I urge my colleagues, I plead with them, to vote for this hate crimes legislation, known officially as the Local Law Enforcement Enhancement Act. It is symbolic, yes, but it can be substantive because the law can teach. The law is a good teacher, and the laws will then teach Americans that bigotry will not be tolerated. By changing the law, we can change hearts and minds, and I urge my colleagues to do so—to change hearts and minds, even change maybe their own minds and join with me and Senator KENNEDY in voting in favor of this most important and timely amendment.

Congress must take up and carry the torch of freedom and liberty so cherished by our forefathers. It is only through our ever vigilance against hate and those acts that threaten life, liberty and happiness of all Americans that we can achieve a just society.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 6 minutes on the legislation.

I want the history of this legislation to understand what a very important and significant role my friend and colleague, the principal sponsor of this legislation, the Senator from Oregon, GORDON SMITH, has played in giving us the opportunity on the floor of the Senate to vote on an issue of enormous importance and consequence in terms of justice in our country, and to be able to express what this Nation is really about; that is, that when we are going to be facing hate crimes, we are going to use every possible tool we have to deal with these crimes. We are not going to battle them with one hand tied behind our back.

I have enjoyed the chance to work with Senator SMITH on this legislation over a number of years. We have had some successes in trying to get it through the Senate, but we have failed. However, I admire my friend and colleague's perseverance. As Shakespeare says, perseverance, Lord, make honor bright, and the Senator from Oregon has enhanced the honor in the Senate

by giving us an opportunity to address this issue.

For those listening to these remarks, they may not understand how complicated it is to get a real vote on some matters which are basic and of fundamental importance. On many occasions when they have opposed the legislation, Members try to undermine the central thrust of the legislation, divert it with parliamentary tactics.

The Senator, because of the respect Members have for him, has been able to ensure that the Senate will address this issue frontally, and it should, because it is a defining issue in terms of our country and our society about what this country represents. On the issues dealing with hate crimes, we find them to be completely unacceptable in this country.

We have learned from past experience, in other hate crimes legislation, where the gaps in the legislation have been. This legislation is very targeted, limited, but an important legislative effort to try to address those serious loopholes in a way which is both constitutional, is limited, but also effective and can make an important difference in terms of reducing the incidence of hate crimes.

I am sure my friend remembers a number of years ago we had the proliferation of church burnings in this country, primarily focused in the southern part of this Nation. After a good deal of deliberation, we were able to get the FBI involved in church burnings. The difference we saw was virtually almost overnight. Once America understood in different places of the country that we were serious about making sure we would use the full resources of our National Government to halt church burnings, it is amazing how they were effectively halted. There are still a scattering of them in some communities but effectively the epidemic we were seeing at that time has halted.

The Senator from Oregon and I believe we can make the similar type of progress on the issues of hate crimes. That is why this is such an opportunity.

I will take a few moments later to describe the appropriateness of this amendment on this legislation and the particular challenges we have been faced with in the military. As an Armed Services Committee member who has reviewed and watched that closely, I will come back to this issue. However, let me point out this is entirely relevant to this legislation. We have seen that hate crimes have taken place in the military. A number of occasions I will describe or place in the RECORD.

On one particular occasion it was based upon race. We saw a commanding general perform in an extraordinarily exemplary way, and on another occasion, when dealing with a young gay man, the performance was abysmal. The fact is, we ought to make sure that certainly the Armed Forces are going to understand we are not going to tolerate the issues of hate crimes in the military or in any other place in our society.

It has been argued that our bill is discriminatory because it singles out hate crimes from other crimes when, in fact, all crimes are hate crimes. That is not true. It is not supported by the history or the law. Every crime is tragic and harmful and has its consequences because not all crime is based on hate. Hate crimes are based on bigotry or prejudice. A hate crime occurs when the perpetrator intentionally selects the victim because of who the victim is.

Mr. WARNER. If the Senator will yield, the Chair inquired as to the management of the time in opposition, and I ask unanimous consent that any Senator desiring to speak in opposition could speak for up to 10 minutes. If he or she desires additional time, we can seek an additional UC for another 10 minutes, and if a quorum is put in it will be charged equally to both sides.

The PRESIDING OFFICER. Is there objection?

Mr. SMITH. I further ask that the request be modified to reserve to Senator KENNEDY and myself any time unused after his remarks.

Mr. WARNER. Absolutely.

Mr. KENNEDY. I don't expect we will have numerous speakers, but it could happen that all the time will be taken up by people using 10 minutes.

So as I understand what the Senator is saying, those who want to speak may speak up to 10 minutes, but within the general timeframe the total time is divided.

Mr. WARNER. Yes.

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

Mr. KENNEDY. I ask that interlude not be charged against my time.

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

Mr. KENNEDY. As with acts of terrorism, hate crimes have an impact far greater than the impact on the individual victims and their families. They are crimes against entire communities, against the whole Nation, and against the fundamental ideals of liberty and justice for all on which America was founded.

As Attorney General Ashcroft has said, criminal acts of hate run counter to what is best in America, our belief in equality and freedom.

According to the surveys conducted by the Department of Justice, 85 percent of law enforcement officials believe hate-motivated violent crimes are more serious than similar crimes not motivated by bias. One need look no further than the current conflict in the Middle East or recall the ethnic cleansing campaigns in Bosnia, Rwanda, what is happening in the Sudan today, study the Holocaust itself, to understand that violence motivated by hate is different and is more destructive. Or consider the hate crimes committed in America. Most of them are committed by multiple offenders against a single victim.

Because the victims are attacked simply because of who they are, there is little that can be done to avoid being a victim of a hate crime. Hate crimes are twice as likely as other crimes to involve injury to the victim and four times as likely to require hospitalization.

In the 1993 decision in Wisconsin v. Mitchell, a unanimous Supreme Court recognized that bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest.

A hate crime against one member of a group sends a strong message to the other members that you are next, that certain parts of the country aren't safe for you to work or travel or live in, that you better watch your step. This is domestic terrorism, plain and simple, and it is unacceptable.

Centuries ago, Blackstone commented it was unreasonable that among crimes of a different nature, those should be most severely punished, which are the most destructive of the public safety and happiness.

The simple fact is that hate crimes are different. They are more destructive than other crimes. The Federal Government has a responsibility to send a clear and unambiguous message that hate-motivated violence in any form from any source will not be tolerated.

Congress recognized the special harm caused by hate-motivated bias when it passed the current hate crimes law following the assassination of Dr. King in 1968, when it passed the Hate Crimes Statistics Act of 1990, and when it passed the Hate Crimes Sentencing Enhancement Act of 1994. Now it is time for Congress to take the next step toward protecting all Americans from the problems of hate-motivated violence, by passing the Local Law Enforcement Enhancement Act to address the obvious deficiencies in the current Federal hate crimes law.

As we mentioned, we are going to have our time. We hope those who might be in opposition would come over to the Chamber to debate us.

I think before I yielded myself 7 minutes. Do I still have a little time left on that?

The PRESIDING OFFICER. The Senator has consumed the time.

Mr. KENNEDY. Mr. President, I yield myself 2 additional minutes.

First of all, I know the Senator from Oregon, Mr. SMITH, has described this amendment, but what this amendment does is it authorizes the Justice Department to assist State and local authorities in hate crimes cases. It authorizes Federal prosecutions only when a State does not have jurisdiction or when a State asks the Federal Government to take jurisdiction or when a State fails to act against hate-motivated violence.

In other words, the amendment establishes an appropriate backup for

State and local law enforcement to deal with hate crimes in cases where States request assistance or cases that would not otherwise be effectively investigated and prosecuted. So this is very limited and targeted.

I want to remind the Senate that the original hate crimes preventive legislation was introduced in 1997 in the 105th Congress. The Senate Judiciary Committee held hearings in the 105th Congress and the 106th Congress. We had testimony from State and local law enforcement, the Justice Department, victims and families, and respected constitutional lawyers alike.

Our hate crimes bill has passed the Senate twice. In July of 1999, we passed it as an amendment to the Commerce-Justice-State appropriations bill. The amendment was stripped out in conference. In June of 2000, the bill was passed as an amendment to the Department of Defense authorization bill by a vote of 57 to 42. So there is precedent for this action. We had good bipartisan support.

Several months later, the House of Representatives voted 232 to 192 to instruct the conferees to accept the hate crimes bill. Again, however, the bill was stripped in conference.

In the 107th Congress, the Local Law Enforcement Act was introduced with 51 original cosponsors and favorably reported out of the Judiciary Committee by a vote of 12 to 7. In June of 2000, the Senate failed to invoke cloture on it with a vote of 54 to 43, with a clear majority supporting it.

So this issue has been studied. We have had extensive hearings. We have listened to the constitutional authorities. We have listened to local, State, and Federal officials with regard to this issue. We have also read the newspapers of this country and have studied what has been happening in the growth of hate crimes.

The PRESIDING OFFICER. The Senator has consumed the time.

Mr. KENNEDY. Mr. President, I will come back to that in a moment.

Mr. SMITH. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. Yes, I yield.

Mr. SMITH. I say to the Senator, I wonder, as you recounted some of these horrendous acts that have occurred, if you are familiar with the Wisconsin case that is called Wisconsin v. Todd Mitchell. It is the 1993 case in which Chief Justice William Rehnquist authored the decision upholding hate crimes legislation. As it says in this preamble:

> The question presented in this case is whether this penalty enhancement is prohibited by the First and Fourteenth Amendments. We hold that it is not.

Sir, this was a unanimous decision. And Justice Rehnquist—again, you would probably agree with me, I say to the Senator—is one of the more conservative justices. He wrote:

> Thus, although the statute punishes criminal conduct, it enhances the maximum penalty for conduct motivated for a discriminatory point of view more severely than the same conduct engaged in for some other reason or for no reason at all. Because the only reason for the enhancement is the defendant's discriminatory motive for selecting his victim. . . .

And that was the man's race.

Justice Rehnquist held it is entirely appropriate to look at the man's motive in ultimately ascribing the severity of the penalty that was handed down for this assault that was made by a White man on a Black man. It was prosecuted under the Federal Hate Crimes Act.

I am sure the Senator is familiar with that. Maybe he can help me to explain to my conservative colleagues how it is that we are trying to legislate thought or punish thought and punish speaking. Would the Senator agree with me that Justice Rehnquist and I are both right in saying we are only punishing conduct and the evidence that comes from thought and speech that can be used legitimately, constitutionally to enhance penalties?

Mr. KENNEDY. Mr. President, I thank the Senator for raising this issue because this is enormously important. The Senator from Oregon, in terms of protection of the first amendment, has reviewed the holding in the Wisconsin case.

As the Senator remembers, this principle was reaffirmed this last year by the Supreme Court in the cross burning decision in Virginia v. Black. As we know, as it has been interpreted, this act punishes violence, not speech. It covers only violent acts that result in death or bodily injury. It does not prohibit or punish speech, expression, or association in any way, even hate speech—even hate speech.

Those great lines of Oliver Wendell Holmes:

> If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.

We ensure that even the hate speech is not affected in this. It is the violence, the physical violence that we are addressing, and it is enormously important that our colleagues understand that.

Mr. President, I withhold the remainder of the time.

I suggest that we have the quorum call, and I suggest that we have it on the opponents' time until it reaches where we are, and then we will charge it to both of us if that is acceptable.

Mr. SMITH. Mr. President, if I can modify the request, I think in fairness to my colleagues who disagree with me, we better charge it equally.

I ask unanimous consent that Senator ARLEN SPECTER of Pennsylvania be added as a cosponsor to this amendment.

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

Mr. SMITH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, I think we had 42 minutes, and we divided that up formally. May I ask, of the 21 minutes, how much time have I used?

The PRESIDING OFFICER. The proponents have 12 minutes.

Mr. KENNEDY. Twelve minutes. That is all that remains between both of us, Senator SMITH and I?

The PRESIDING OFFICER. No, for the proponents.

Mr. KENNEDY. We are both proponents.

The PRESIDING OFFICER. The opponents have 37 minutes.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

I will put more information in the RECORD, but I want to point out to our colleagues the growth of hate crimes in this country, what the Southern Law Poverty Center has said has taken place. That is the authoritative group, more so than even the Justice Department. The number of hate groups in America has expanded exponentially ever since 9/11. The figures we have here are basically dated figures, because they don't go in until after 9/11, but what we do see is the total number of hate crimes statistics during the period of the 1990s have been going higher and higher. Hate crimes based on sexual orientation have gone up significantly over the last several years. The venom and the hate against gays and lesbians has increased dramatically.

The backlash since 9/11 has been dramatic with regard to hate crimes against Muslims. This chart shows the dramatic increase and it is continuing to go up at an extraordinary level. Hate crimes against Arab Americans and hate crimes against Arabs have gone up dramatically in the last 2 years. Beyond that, hate crimes against Jews in the country and society have gone up exponentially as well. For all of these groups, I will include accurate information. But this is a real problem.

There is the possibility of not having a universal solution, and we don't suggest that with the passage of this amendment all of these problems are going to go away. But what we are going to say is, we ought to be battling this with the full force of the U.S. Government. When we guarantee the kinds of rights and liberties in this country that are in the Constitution and the Bill of Rights, we ought to make sure they are going to be enforced with the full power and authority of the United States. That is what our legislation does in dealing with the issue of hate crimes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, inasmuch as our colleagues are not here to debate Senator KENNEDY and me, I hope that is a good sign. I thought I would recount very briefly again the appropriateness of why this is on the military authorization bill, recounting the stories of two service people. They are somewhat horrendous, but it is appropriate that everyone understand why this has a very logical nexus for Senator KENNEDY and me with this piece of legislation and this amendment.

One of these crimes resulted in the death of an Army private and the other the death of a Navy seaman. In 1992, Navy Seaman Allen R. Schindler was brutally murdered by his shipmate Terry Helvey in Okinawa, Japan. Helvey beat and stomped Schindler to death simply because he was gay. He didn't want his wallet; he didn't want his watch; he wanted him dead because of his sexual orientation.

Helvey's attack was so vicious that he destroyed every organ in Schindler's body. He was so badly beaten that Schindler's own mother could identify him only by the remains of the tattoo on his arm. The medical examiner compared Schindler's injuries to those sustained by the victims of fatal airplane crashes.

In another tragic case, PFC Barry Winchell was forced outside his barracks at Fort Campbell Army Base where he was stationed. In the early morning hours of July 5, 1999—this is very recent history—Winchell was repeatedly beaten with a baseball bat by another Army private. He was beaten with such force and his injuries were so severe that he died shortly thereafter. Barry was only 21. He was murdered, again not for his watch, not for his wallet, but simply because he was gay.

These are appalling examples. Again, I want to say for the RECORD, I understand the reluctance of some of my colleagues to deal with issues that involve a person's sexuality, but I also want to say I don't agree with them. I think we need to treat people civilly and in the highest Christian traditions, no matter what we think of their lifestyles. I think the finest example we can find on this issue—really on point—is the great New Testament example when, in my view, the greatest person who ever lived was confronted with a woman being stoned to death because of her lifestyle. He did not endorse her lifestyle, but He risked His life to save her life. It does seem to me that if this can be done in ancient Israel, we ought to be able to do the same in modern America and have laws that reflect the very best part of the American people, that we stand and help those in need. You need read no more into it, no more moral approval in it.

I believe there are real family values, and I believe there are counterfeit family values. Arguments made to suggest that opposing hate crimes is a family value are truly misguided. When it comes to human necessities of making a living and having shelter and enjoying public safety, having the dignity and respect of law on your side, that is for all of us, I don't care how we conduct our lifestyles. That is for the American people. It includes gays and lesbians.

We are not censoring speech. We are not punishing thought. We are punishing crime. The statutes that are constitutional in this government, upheld by William Rehnquist as to their constitutionality, are long overdue to be added to to include this category of the American people who are gay and lesbian. The need is easy to demonstrate through statistics, through crimes committed on this community. Those of us who stand with the President in fighting the war on terrorism, I say great, but don't forget the war on terrorism at home. It includes defending gays and lesbians and other Americans and classes that make them vulnerable and more likely victims of crime. We owe them that, and we owe them at least that. We owe them more, in fact.

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

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

Mr. SESSIONS. Mr. President, the Defense bill we are working on today is critically important for our Nation. We need to complete that bill. It is important for us not to be distracted from it by bringing up amendments about which people feel strongly and which may be important, but are unrelated to defense and not germane to the issue before us.

I am glad we are able to at least proceed fairly promptly to a vote on this issue so that we can get back to the purpose with which we are dealing. We have soldiers in the field who are at risk this very moment. They need to know we are moving forward on business that relates to them, that deals with the issues that threaten their lives, and we need to make sure that we have every possible activity and report in this authorization bill to help them do their jobs better. I wanted to say that at the beginning. Sometimes these things happen, and we can offer amendments, but we do not need to do too much of this, in my view.

I raise two points about this so-called hate crimes amendment, and the reason that I will be voting against it. Different people can have different ideas and different values about how we should deal with this issue.

First, there is no legitimacy for any attack on any person because of their sexual orientation in America today. That is unacceptable behavior. It has always been unacceptable. We need to crack down on it aggressively. In fact, I believe States are doing so, as they do with all other crimes that occur throughout our country.

I was a Federal prosecutor for 15 years and dealt with the distinctions between Federal and State law on a regular basis. Most people may not realize that if someone robs a gas station, or someone shoots your daughter on her way home from school, or someone commits a rape, those are not Federal crimes. They are not prosecuted in Federal court. They cannot be prosecuted in Federal court under normal circumstances. They have always been given over to the States for prosecution. That is very important.

We have developed and expanded over the years the reach of Federal law, and in some instances that is quite good, I believe—but in some instances it is very much in dispute. In fact, liberals and conservatives say Federal law is reaching over and prosecuting and taking over cases. There are always some State offenses that are prosecuted in Federal court. Regardless of the debate, what we have decided to do in the past is each case should be evaluated on its own. I will make a couple of points.

With regard to this hate crimes legislation, Senator HATCH, the chairman of the Judiciary Committee, proposed what I thought was a good piece of legislation some time ago. That legislation said we would conduct a study, in effect, to see what the need of this legislation is. I have to tell you, Mr. President, if you want to prosecute somebody for assaulting, shooting, or harming another person, it is easier to prosecute that case if you do not have to prove what was in the mind of the person who did it. That is an additional element of a crime, one not easily proven. I know the Presiding Officer is a lawyer and skilled in these matters. It is an additional element to the crime that must be proven.

If we were to create such a hate crime, we would basically be taking on an offense that would be a fundamental State crime—an assault, a murder, or assault with intent to kill. You would be transforming that kind of crime into a Federal offense, and not only would you have to prove all the underlying elements that would be true in a State trial, but you would also have to prove that the person did it for a reason of hate, but not just any hate. If you dislike U.S. Senators and you beat up one—there may be a Federal law that protects a Senator, I don't know.

If there is a State legislator and someone goes and beats them up because they hate them, because of the way they voted, all right, that can be taken care of in State court. But what would make it a Federal offense? Well, if a person hated him, but they hated him for a particular reason—they hated him because of sexual orientation—that is why this becomes now a Federal offense rather than a State offense.

One can make arguments that this is all right to do. We did that with the

issue of race in America, and there was a very real reason for it. As a southerner myself, I am sorry to say that in fact and in reality there were areas in this country where crimes against African Americans were prosecuted either not at all or not adequately; there was not proper punishment being imposed in those cases and people were denied civil rights. At certain periods of time in our Nation's history, feelings were so strong that cases could not be effectively prosecuted. That was clear. That was established. That was a fact, unfortunately.

So the Federal Government said those kinds of crimes involving race could be prosecuted in Federal court under the civil rights statute even though there may be an underlying State offense. That is how those came into effect.

Now we are being asked to go one step further. I think maybe we ought not do that. Senator HATCH's study would have analyzed the question of whether offenses involving assaults on gays are being adequately prosecuted in America. If they are being adequately prosecuted—and most States would have tougher laws. Most States have death penalty laws. This bill does not provide the death penalty for the murder of somebody under a hate crime. So are those being adequately prosecuted?

We know in a case in Colorado that a person committed murder because of the victim's sexual orientation, apparently, and was given the death penalty in State court. One offense occurred in my home State of Alabama, and he was tried and given life without parole. So I am not aware of those offenses being inadequately prosecuted. That is what I am saying.

In addition, there is this troubling concept of what is in one's mind. If the Social Security office turned a person down for their disability and they did not get a disability paycheck and they spent weeks churning it in their heart and soul and their hatred built and built and they finally went down to the Social Security office and shot everybody, well, that would not meet the definition of hate crime under this statute. It might be a Federal offense because it is the Federal Social Security agency, but if it had been a local State official it would not be a Federal crime. There would be no Federal jurisdiction.

So we are being asked to take that extra step into creating a new offense in Federal law based on the question of what is in somebody's mind when they commit the crime.

Classical American jurisprudence has been simple and direct. I know as a student in law school I learned about these things and as a former prosecutor I have been thinking a lot about it lately. I think sometimes even we who have been former prosecutors get overly aggressive about passing statutes to deal with every wrong that comes up.

Let's take the burglary statute that is in effect in almost every State in America today. It makes it a State crime to break and enter into a dwelling with the intent to commit a felony. Some of them are first degree, such as when the crime involves an occupied dwelling at night and those are the elements of their crime. That is what we have done for 200-plus years in America and England. It did not say why a person broke into somebody's house or even what kind of felony someone may be intending to commit. It could be rape; it could be robbery; it could be theft. So that is the clarity with which our law has traditionally operated.

Now we are saying if someone assaults and kills this person because they were mad at him over a girlfriend and hated him for it, that is not a Federal offense, but if a person is angry because of someone else's sexual orientation, that could be a Federal offense. Maybe that is justified and some would find it justified, but I think before we continue down this road of moving into the psychological motivations for a specific act of committing a crime, we ought to ask ourselves: is it the kind of problem we know is not being effectively prosecuted and handled in America today, is not being prosecuted and sentenced effectively based on the act that was committed, so that now we need to figure out the motive behind the act and make it a Federal crime? That is what we need to be thinking about.

I do believe Senator HATCH's legislation that he offered some time ago I think it even passed this body once, although it did not become law—said let us do a study of that and analyze where we are so we can deal with it.

Well, terrorists hate us for various reasons. People hate our Government. Some of them hate police officers. Would it be a Federal crime to commit murder against a police officer? Not to my knowledge. It would not be a crime to do that if someone hates the police officer or hates the jailer who locks up a person in compliance with the law of the land. The jailer could be murdered and that would not be a Federal offense.

This should not be seen as any kind of referendum on how we think about the treatment of people with various sexual orientations. This is a great, free country. It is a country that allows behavior people may agree with or not agree with. In my view, it is just as much a crime to injure or harm anyone whether it is as a result of their sexual orientation or any other behavior they may be participating in. Maybe someone does not like them because they are out there complaining about George Bush or complaining about JOHN KERRY and they hate them for that. That would not be a Federal crime if action is taken against them.

I do not know that we need to take this step today. In fact, I think we should not. It is something that deserves careful consideration and is not to be thrown onto the Defense bill as we are moving forward at this date. Let's think it through. Let's do a study, as Chairman HATCH has suggested. Let's see if there is a real problem out there. If there is a problem of failure to enforce the law, then I would say this could be justified. We have done it before with regard to civil rights actions. Maybe it would be appropriate to do it now. Frankly, I do not see that today. I think it is a reach in terms of need and creates the danger of criminalizing thought processes rather than actions.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I rise to comment on the remarks of the Senator from Alabama. I join and agree with his remarks. I have said to the Senator from Oregon on more than one occasion, if I believed hate crimes were a proper crime for the Federal Government to be passing on, I would vote for this as well as the others, but I do not believe, as the Senator from Alabama stated, we should be criminalizing thought, and that is what this does. I have always said the greatest of the freedoms we have in this country is the freedom to believe what we want to believe and the freedom to think what we want to think. I know there are lots of motivations for people to do things and there are lots of bad thoughts out there in people's minds, but we do not criminalize those. We only criminalize them if there are actions taken. We criminalize the action, not the thought.

I think protecting the freedom of belief and the freedom to think the way one wants to think is an important concept in our country, somewhat unique in the American Constitution, and I believe this hate crimes amendment violates that very premise. So I will vote against this amendment.

I wanted to be clear, as the Senator from Alabama was clear, it is not because of the group that happens to be identified in this amendment to be subject to hate crimes. It could be any group.

I will vote no because I believe the premise underlying this criminal statute is faulty. I regret to have to oppose our two colleagues who are trying to take a step forward and bring civility and protection to certain people who have been the subject of violence. But I do not believe this is the right way to do it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, have we used all time on our side?

The PRESIDING OFFICER. Yes. Twelve seconds remain to the opponents.

Mr. SMITH. I ask unanimous consent to speak for 2 minutes, and I probably won't use that.

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

Mr. SMITH. Mr. President, there are few people I like more than my colleagues who are speaking against this

amendment. They know that. They know I respect their right to disagree with me. But I want to state for the record that if I believed what Senator KENNEDY and I were doing was criminalizing thought, I would vote against this amendment. What we are doing is criminalizing actions. It is always the case in criminal law that you look at all of the evidence, and if it can establish that words and thoughts have led to actions that rise to hate crimes—William Rehnquist, the most conservative Justice we probably have on the Supreme Court, and maybe some would argue that a couple others are more conservative—held in a unanimous Supreme Court decision that existing hate crimes statutes are constitutional because they do not punish thought. They do not impinge upon the first amendment. They do not impinge upon the 14th amendment because it takes action to commit a crime, and the words and the thoughts are simply evidentiary materials that go into motive to establish a crime. You have to establish motive.

This is simply an enhanced version of looking at the totality of a crime. If it can rise to a hate crime, it ought to be prosecuted. This is the constitutional law of America. We are simply saying there is a category of Americans out there who ought to be added to settled constitutional law of the Federal Government. We owe them at least this; they deserve no less than a vote on this amendment.

I yield the floor.

Ms. MIKULSKI. Mr. President, I rise in strong support of the Smith amendment on hate crimes. This amendment mirrors the Local Law Enforcement Enhancement Act, which I have been proud to co-sponsor. This bill puts America's values of equality and freedom into action.

Hate crimes are one of the most shocking types of violence against individuals. They are motivated by hatred and bigotry. But hate crimes target more than just one person—they are crimes against a community because of who they are—because of their race, gender, sexual orientation, religion or disability.

We are a nation that cherishes our freedom. All Americans must be free to go to church, walk through their communities, attend school without the fear that they will be the target of hate violence. We are a Nation that is built on a foundation of tolerance and equality. Yet no Americans can be free from discrimination and have true equality unless they are free from hate crimes. That's why hate crimes are so destructive. They tear at our Nation's greatest strength—our diversity.

This amendment does two things—it helps communities fight these crimes and it makes sure that those who are most often the target of hate motivated violence have the full protection of our Federal laws.

The amendment strengthens current law to help local law enforcement investigate and prosecute hate crimes. It does this by closing a loophole that prevented the Federal Government from assisting local and State police at any stage of the investigative process. Simply put—this bill authorizes Federal law enforcement officers to get involved if State or local governments want their help. That means local communities, which often have very limited resources for pursuing these types of crimes, will have the resources of the FBI and other Federal law enforcement agencies at their disposal to help them more effectively prosecute incidents of hate violence.

This amendment also improves current law so it protects more Americans. It broadens the definition of hate crimes to include gender, sexual orientation and disability. Today, gay and lesbian Americans, women and those with disabilities are often targets of hate motivated violence, but existing Federal laws offer these communities no safeguards. That is the weakness in our current law. And that is what this legislation will fix. By passing this legislation today, the United State Senate says to all Americans that you deserve the full protection of the law and you deserve to be free from hate violence.

Hate crimes are crimes against more than one person—these crimes affect whole communities and create fear and terror in these communities and among all Americans. We need look no further than the horrific killings of James Byrd and Matthew Shepard to know the anger and grief that families and communities experience because of hatred and bigotry. Hate crimes attack the fundamental values of our Nation—freedom and equality. This bill is another step in the fight to make sure that in a Nation that treasures these values these crimes do not occur.

So today I rise to support and urge my colleagues to pass this much needed and timely legislation. It is time that we put these American values into action and passed this hate crimes bill. The Local Law Enforcement Enhancement Act says that all Americans are valued and protected—regardless of race, religion, gender, sexual orientation or disability.

Mr. ENZI. Mr. President, I rise in opposition to the Local Law Enforcement Enhancement Act, Amendment 3183, proposed by my colleague from Oregon.

I have always believed that we should leave as many decisions as possible to the States to decide. Only on rare occasions, and with great and good cause should the Federal Government try to step in and legislate what the States should do. When we try to legislate ''one size fits all'' solutions to the problems facing the States more often than not we create more problems than we solve.

Before we act on this amendment, we should ask ourselves if this new law that we would create would reduce crime. After all, that should be our primary reason for passing new criminal laws. In this case, although I know it is a well meaning effort to address a serious problem, it won't prevent crime, it will only make a statement about it. That's one of the problems with a Federal hate crime bill. If it passes, we may think we have taken care of the problem. Unfortunately, although it may make us feel good, a law like this will do little to slow down or stop the cycle of violence in our cities and towns.

Another problem with the hate crime bill is its definition of hate crimes. All of the predicate offenses that would qualify as hate crimes are already illegal and they are already being prosecuted under traditional categories of crimes. In other words, the States are already aware of the problem and using existing law to address it. In those cases where additional legislation is needed, the States are taking the lead and deciding the matter for themselves. They don't need or want us to step in and tell them what they should do.

In addition, if we pass this amendment Federal agents and prosecutors will be put in a position in which they will be second guessing the efforts of local officials and substituting their own judgment or political motivations for the judgment of local law enforcement personnel who are dealing with the problem of hate crimes at the scene where they are committed.

The Smith amendment could essentially federalize most crimes. Such an explosion in Federal jurisdiction would require a tremendous expansion in the size and scope of Federal law enforcement and Federal prosecutors at a time when the States have the capability of prosecuting these crimes themselves—and they are doing it. Federal prosecutors already have the tools at their disposal to address issues like hate crimes—they just have to make better use of them.

All crimes are in some way hate crimes. By enacting hate crime legislation we ironically serve the principle of inequality that this type of legislation seeks to fight against. Violent crimes are horrific and should be punished equally, regardless of the particular ''bias'' of the perpetrator. A vicious murder should be prosecuted to the fullest extent of the law—no matter who the victim is. The value of an individual's life should not depend on their heritage, ethnicity or lifestyle. If life truly is a sacred gift we should treat every life with the same dignity and respect we all deserve.

To try to read someone's mind, or guess what their real motivation was for committing a crime will never be possible. Crimes aren't thoughts, they're actions, and actions which are crimes need to be addressed as soon as they are committed. To try to gauge the seriousness of a crime based on someone's thoughts is to put an additional burden on law enforcement personnel and prosecutors, not to mention the judge and jury who will have to work on and ultimately decide the

case. Clearly, putting a greater value on some lives inherently devalues others, and it goes against a basic principle of our legal foundation which is that all are equal in the eyes of the law. Justice is swifter when the accused are tried on the basis of what they did without adding some speculation on the thoughts they might have had while committing the crime.

We have State and Federal laws to punish murder, assault, battery, and a long list of other crimes. If these laws are not strong enough then we should make them stronger. We should also be making our feelings known to our neighbors, to our children, in our papers and through our broadcast media that hatred in any form is wrong. We should not, however, try to make statements with laws that weaken State authority or the rights granted to individuals in the Constitution.

Our society must continue to participate in a dialogue on the issues of racism, bigotry, and hate. We must pray for direction and guidance and work together to ensure that we avoid the kind of hate that may give rise to such crimes in the first place. Hatred in any form is destructive to the very foundation upon which our society is built.

If we are to truly address the problem of hate crimes, we must come together as one, our families, our spiritual and church leaders, our local and community leaders, and the citizens of our communities to foster and reinforce in our children and all our citizens the importance of treating each other as we would wish to be treated. It is such a simple lesson—it is never permissible to hurt another. Somehow, some of our children never learned it. Recent and past events make it clear that it is a lesson about which every child must be taught, and every adult constantly reminded.

Mr. HATCH. Mr. President, I rise today in opposition to the Local Law Enforcement Enhancement Act of 2003, offered as an amendment by my dear friend from Oregon, Senator SMITH.

Those who have been instrumental in drafting hate crimes legislation in the past several Congresses—Senators KENNEDY, SMITH and others—know I care deeply about this issue. They know I believe that hate crimes are insidiously harmful, that they should be forcefully prosecuted, and that the Federal Government has a role to play in reducing the incidence of these crimes in our Nation. The concerns I have voiced have always been about what Congress should do at the national level, not about whether we should act.

In past Congresses, and again here today, I have felt compelled to voice my opposition to Senator SMITH's hate crimes legislation which has essentially remained unchanged over the past several years, and is now being offered as an amendment. My primary concern has been, and remains to this day, that this legislation invades an area historically and constitutionally reserved to State and local law enforcement authorities, without a demonstrated need for Federal intervention. In an effort to do what we believe is right, we simply cannot ignore core principles of our Constitution.

While there is little evidence that the States are failing to prosecute hate crimes, I firmly believe that local law enforcement authorities need our help. They need our resources, and they need our expertise. And we, the Federal Government, should stand ready and able to provide such assistance. We must proceed, however, in a manner that does not offend the authorities conferred upon the States by our Constitution.

As all of my colleagues are aware, this body has considered this issue in almost every session of Congress since 1999. I recognize that Senator SMITH has the necessary support in this body to pass his amendment. Indeed, his amendment has prevailed twice before. Recognizing that a majority of the Members of this body have supported Senator SMITH's proposal in the past, and in view of the substantial concerns I have about the amendment, over the past few months I have worked diligently to improve the legislation so that it may receive much broader bipartisan support. I have suggested that the proposal include Federal assistance and a study and an analysis of available statistics. I have also suggested that the amendment be broadened to include the possibility of the death penalty for those who commit the most heinous of crimes. I also think that the definition and intent elements of what is considered to be a hate crime should be significantly narrowed so that we do not capture every crime that happens to be committed against a member of a particular class. With these changes, the legislation would stand a better chance of becoming law and surviving constitutional challenges, which we know are certain to occur. Despite those concessions, it appears clear that we were unable to come to an agreement and I must, therefore, once again stand in opposition to two of my dear friends.

If we genuinely want to make a difference, if we want to pass legislation that both Houses of Congress will support, let us find a baseline of common ground and resist the temptation to make this a divisive political issue. I urge my colleagues to oppose the amendment.

I yield the floor.

NOMINATION OF VIRGINIA HOPKINS

Mr. HATCH. Mr. President, I rise in support of the confirmation of Virginia Hopkins for the United States District Court for the Northern District of Alabama. I have reviewed her record and I find her to be an excellent choice for the federal bench. Virginia Hopkins possesses 25 years of legal experience that will serve her well on the federal bench.

Upon graduating from the University of Virginia School of Law in 1977, Ms. Hopkins joined the Birmingham, Alabama law firm of Lange, Simpson, Robinson & Sommerville, LLP. There she had a broad civil practice that included appellate matters, tax and estate planning, business dispute resolution and planning, and labor disputes. She also worked for another widely respected law firm, Taft, Stettinius & Hollister LLP. in Washington D.C.

In 1991, Ms. Hopkins returned to Alabama to join the firm of Campbell & Hopkins LLP., where she is currently a partner. Over the past 12 years, she has developed a broad civil practice, including litigation, tax and estate planning, business dispute resolution and planning, trademark and copyright registrations and disputes, trade secret disputes, confidentiality agreement disputes, and trade name disputes.

I am confident that she will make a fine addition to the Northern District of Alabama.

Thank you, Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, today we vote on the nomination of Virginia Hopkins to the Northern District of Alabama. Ms. Hopkins has been an attorney at the firm Campbell & Hopkins in Alabama, and has the support of both of her home State Senators. In particular, Senator SHELBY deserves praise for diligently pressing forward, and this confirmation rewards his constant attention to this nomination. Senator SHELBY has always been a pleasure with whom to work, whether I was serving as chairman or ranking member. Senator SHELBY has always been someone who plays it straight and shows good judgment. He is fair and forthright.

I must note that since May 18, the date of the agreement on judicial confirmations this year involving Senator DASCHLE, Senator FRIST and the White House, the Senate has confirmed seven judges, including two circuit court nominees. We confirmed Marcia Cooke to the district court in Florida, Judge Van Antwerpen to the Third Circuit in Pennsylvania, and Ray Gruender to the Eighth Circuit the first week of that agreement. The following week, the Senate confirmed the nominations of Dennis Saylor, Sandra Townes, Ken Karas, and Judith Herrera to the Federal district courts.

Last week, the Republican leadership did not schedule any judicial nominations for a vote and considered other business during that shortened work week. In the month since the agreement to have a floor vote on 25 judicial nominees, the Republicans have asked for votes on only seven judicial nominees and have scheduled debate on a variety of matters other than judicial nominees. That is their choice. The Republican leadership knows that some of the remaining nominees in the agreement for votes this year require significant time for debate.

I do not want to see the Democrats blamed for any delay in confirmation votes when Republicans have been advised for weeks now that it is going to

take time for the Senate to process all of the nominees in the agreement. Members of the Senate deserve time to consider the merits of the nominees for lifetime positions. Democrats have been working cooperatively on judges but the Republican leadership has not worked with us to schedule the debate and votes on the many remaining judicial nominees that we had hoped could be considered before June 25. After today's three votes, 15 judicial nominees remain to be scheduled for debates and votes. I hope that we can make progress on more nominees this week and next. At the pace the Republican leadership has chosen to proceed, there is now a strong likelihood that debate and votes on some of these judicial nominees will extend past June 25.

On the occasion of the confirmation of this Alabama nominee, I would note that some in the Senate have falsely alleged that Democratic Senators have treated southern nominees unfairly. Some extreme partisans tried to divide the American people for partisan political gain with their false accusations against Democratic Senators. The truth is that Democrats have treated judicial nominees from the South very fairly: Southern States comprise about 25 percent of the States in the Nation, yet out of the 181 judicial nominees of President Bush that we have confirmed as of this vote, 59 nominees, or one-third of the confirmed nominees, have been to judicial seats in the South. In particular, I would note that six of President Bush's judicial nominees have already been confirmed to United States district courts in Alabama since he took office: Judge Karon Bowdre, Northern District; Judge Callie Granade, Southern District; Judge Mark Everett Fuller, Middle District; Judge L. Scott Coogler, Northern District; Judge R. David Proctor, Northern District; and Judge William Steele, Southern District. Judge Steele, as you may recall, was initially nominated by President Bush to the Eleventh Circuit, but President Bush pulled down the elevation of this then-U.S. magistrate judge in order to put forward the even more controversial William Pryor, who was recess appointed earlier this year despite the serious objections of numerous Senators. Recent news articles about Judge Pryor's actions on the bench have only underscored the concerns of many that he lacks the political independence and fairness to serve as a judge.

Ms. Hopkins received a partial ''Not Qualified'' rating from the American Bar Association. Following the White House's exclusion of the ABA from reviewing judicial candidates before they have the President's stamp of approval, a dismaying number of this President's nominees have received ''Not Qualified'' ratings. Indeed, four of his nominees were rated ''Not Qualified'' by a majority of the ABA rating committee, and 24—more than 10 percent—were rated ''Not Qualified'' by some members of the ABA's standing committee.

The weight that should be accorded an ABA rating was called into question after the debacle in which Republican partisan Fred Fielding prepared Miguel Estrada's ABA rating recommendation. Mr. Fielding not only served on the White House transition team advising the President about Cabinet appointments, he subsequently cofounded the Committee for Justice, which attacks anyone opposed to the President's judicial nominees. Similarly, the ABA's rating to Judge Pickering after his judicial ethics were called into question by national ethics experts undermined the confidence that some in the Senate had in the evaluations of the ABA's rating committee. Also, the ABA's ratings do not take into account the President's effort to put so many ideologues and extremists into these lifetime positions on the bench.

In Ms. Hopkins' case, the ABA rating may reflect her modest trial experience: She has been the sole or chief counsel in only two of the cases she has tried to verdict. Ms. Hopkins has been active in Republican fundraising like many of the President's nominees, but I am hopeful, given the confidence Senator SHELBY has reposed in her, that she will leave her partisan roots behind upon confirmation. Out of deference to Senator SHELBY, I will vote in favor of her confirmation.

I congratulate Ms. Hopkins on her confirmation.

NOMINATION OF RICARDO MARTINEZ

Mr. HATCH. Mr. President, I am pleased today to speak in support of Judge Ricardo Martinez, who has been nominated to the United States District Court for the Western District of Washington. Since 1998, Judge Martinez has served as a federal magistrate judge—an experience which undoubtedly has prepared him well for the district court bench.

Judge Martinez has a compelling story. The son of former migrant workers, he lived in a migrant camp for several years during his childhood, where he worked with his parents on the farms. Neither he nor his parents understood English, but with the help of his teachers, he mastered the language and became the family's interpreter. He also became the first in his family to attend high school. Incidentally, he was one of two boys to graduate from high school with honors.

Judge Martinez then attended the University of Washington, where he earned a Bachelor of Science degree in psychology. He subsequently graduated from the university's law school, where he had been a member of the Order of the Coif.

Following graduation from law school, Judge Martinez spent 10 years as an assistant prosecutor with the King County Prosecuting Attorney's Office where he became chief of the drug unit. After his appointment as a judge on the King County Superior Court in 1990, he started the State's first drug court, which allows those who are arrested on minor drug-related charges to have the charges dropped in exchange for staying drug-free, completing their education and seeking employment.

I applaud President Bush for his nomination of Judge Martinez and am confident that he will serve on the bench with compassion, integrity and fairness.

Thank you, Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of Ricardo Martinez, to be a United States District Judge for the Western District of Washington. For the past 6 years, he has been a widely respected United States Magistrate Judge for the Western District of Washington. Previously, Judge Martinez served as a Superior Court Judge and as an assistant prosecutor in King County, WA. He is a graduate of the University of Washington and of the University of Washington Law School, and has substantial trial experience. In light of his significant judicial experience it is not surprising that he received a unanimous rating of ''Well-Qualified'' from the American Bar Association.

Judge Martinez's nomination is the product of a bipartisan judicial nominating commission that Senators MURRAY and CANTWELL insisted upon in spite of Bush administration opposition. The State of Washington is well-served by its bipartisan judicial nominating commission which recommends qualified, consensus nominees on whom members of both parties can agree. It is difficult to understand why President Bush has opposed similar bipartisan selections commissions since they help Democrats and Republicans work together and help maintain an independent judiciary. I thank Senators MURRAY and CANTWELL for their steadfast efforts in maintaining the commission.

While some people have accused Democrats of being anti-Hispanic, our record of confirming Hispanic nominees is excellent. Democrats have supported the swift confirmation of President Bush's Latino nominees already, with four more waiting only for a vote on the Senate floor. While President Clinton nominated 11 Latino nominees to circuit court positions, five of those 11 were blocked by the Republican Senate, and four of those five were not even granted hearings. President Bush has only nominated four Latino jurists to circuit court positions, three of whom have already been confirmed with unanimous Democratic support. President Bush's 21 Latino nominees constitute less than 10 percent of his 225 judicial nominees.

Regrettably the President has been more concerned with nominating those affiliated with the Federalist Society. He has nominated 45 such nominees. Twice as many nominees have been affiliated with the Federalist Society as have been Hispanic. In fact, all of his Hispanic, Asian and African American judicial nominees combined do not

equal the number of those affiliated with the Federalist Society.

This confirmation marks the 182nd lifetime judicial appointment approved by the Senate during this Presidential term. That is more than is all of President Reagan's term from 1981 through 1984 and more than in all of President Clinton's more recent term from 1997 through 2000. We have also approved more judicial nominees this Congress than in either of the last two Congresses preceding the Presidential elections in 1996 or 2000.

I strongly support his nomination and I congratulate Judge Martinez and his family on his confirmation.

Ms. CANTWELL. Mr. President, it is my privilege today to discuss the incredibly talented nominee for vacancy on the District Court for the Western District of Washington, Judge Ricardo Martinez. The people of western Washington will be well-served by this talented and fair jurist.

Given Judge Martinez's reputation for even-handedness and thoroughness, it is fitting that he was recommended by a bipartisan selection committee that I believe is a sound model for other States. Members of Washington State's legal community, the White House, and my colleague Senator PATTY MURRAY and I worked together to review a group of applicants. Together, we all agreed that Judge Martinez is the right person for the job.

Judge Martinez has ably served the people of Washington State as a public servant for more than two decades: as prosecutor in the State's largest county for 10 years; as a Superior Court judge for 8 years; and as a United States Magistrate judge in the Western District of Washington for the past 5 years.

While serving on the King County Superior Court, Judge Martinez took the lead in helping to create an innovative ''drug court'' to address the unique challenge of recidivism among drug offenders. He helped build a consensus to try a new approach, and preside over the new court for three years.

And it worked. The''drug court,'' one of the first in the Nation, has helped reduce recidivism rates among those people who successfully complete the program and it has been emulated by many jurisdictions across the country.

Judge Martinez's commitment to his community extends beyond the courtroom. He has volunteered countless hours to help those in need and the homeless; to mentor young people as a coach in several sports; and to raise money for college scholarships for young men from disadvantaged backgrounds.

Those who have worked with Judge Martinez attest to his fundamental sense of fairness and justice. The ABA rated him as ''well-qualified''—its highest rating—on a unanimous vote. He also enjoys support from the Federal bench, and was encouraged to apply for the vacancy by all of the incumbent judges of the Western District.

I am pleased to offer Judge Ricardo Martinez my full support, and I urge my fellow Senators to approve his nomination.

NOMINATION OF GENE PRATTER

Mr. HATCH. Mr. President, I rise today in support of the nomination of Gene Pratter to be United States District Judge for the Eastern District of Pennsylvania.

Gene Pratter, has contributed much to the legal community over her 29 year legal career, specifically in the areas of ethics and professional conduct. Upon graduation from University of Pennsylvania Law School, Ms. Pratter joined the law firm of Duane Morris & Heckscher—now Duane Morris LLP. She has remained with this firm since her first days as an associate and is currently a partner in and general counsel of the firm.

She has represented numerous clients in commercial litigation and professional liability. She has also represented licensed law, financial and other professionals before State and national licensing boards and in litigation throughout the country in both federal and State courts. She has practiced in a variety of legal issues including litigation and alternative dispute resolution, with emphasis on commercial, securities, employment contract, real estate, insurance coverage, RICO, professional and business ethics, and professional liability litigation. She has also represented the Philadelphia Zoo.

Additionally, Ms. Pratter has served as an expert witness and has overseen legal issues for her law firm, Duane Morris, for a number of years while also holding the position of vice-chair of the firm's Trial Department. She has also been named as a Judge Pro Tem in the Philadelphia Court of Common Pleas and a mediator for the U.S. District Court for the Eastern District of Pennsylvania.

Ms. Pratter has been a guest faculty member at the University of Pennsylvania Law School, where she lectured on the legal profession and professional responsibility. She also served on the School's Board of Overseers from 1993 to 1999. She is active in numerous professional and community associations.

I have every confidence that she will make an excellent federal judge. I commend President Bush for nominating her, and I urge my colleagues to join me in supporting this nomination.

Thank you, Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, today we vote to confirm another district court nominee, Gene Pratter to the U.S. District Court for the Eastern District of Pennsylvania. Ms. Pratter is currently a partner at the firm Duane Morris LLP, where she has worked her entire career.

A look at the Federal judiciary in Pennsylvania demonstrates yet again that President Bush's nominees have been treated far better than President Clinton's and shows dramatically how Democrats have worked in a bipartisan way to fill vacancies despite the fact that Republicans blocked more than 60 of President Clinton's judicial nominees. With this confirmation, 17 of President Bush's nominees to the Federal courts in Pennsylvania will have been confirmed—a rate not matched in any other State but California.

With this confirmation, President Bush's nominees will make up 17 of the 42 active Federal circuit and district court judges for Pennsylvania—that is more than one-third of the Pennsylvania Federal bench. On the Pennsylvania district courts alone, President Bush's influence is even stronger as his nominees will hold 14 of the 33 active seats—or more than 42 percent of the current active seats. With the additional Pennsylvania district court nominees pending on the floor and likely to be confirmed soon, nearly half of the district court seats in Pennsylvania will be held by President Bush's appointees. Republican appointees will outnumber Democratic appointees by nearly two to one.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House. Republicans denied votes to nine district and one circuit court nominees of President Clinton in Pennsylvania alone. Despite the efforts and diligence of the senior Senator from Pennsylvania, Senator SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were 10 nominees by President Clinton to Pennsylvania vacancies who never got a vote. Despite records showing them to be well-qualified nominees, many of their nominations sat idle before the Senate for more than a year without being considered. Such obstruction provided President Bush with a significant opportunity to shape the bench according to his partisan and ideological goals.

Recent news articles in Pennsylvania have highlighted the way that President Bush has been able to reshape the Federal bench in Pennsylvania. For example, The Philadelphia Inquirer, on November 27, 2003, said that the significant number of vacancies on the Pennsylvania courts ''present Republicans with an opportunity to shape the judicial makeup of the court for years to come.''

Democratic support for the confirmation of Gene Pratter is yet another example of our extraordinary cooperation despite an uncompromising White House and a record that shows Republicans' refusal to cooperate on President Clinton's Pennsylvania nominees when they controlled the Senate and a Democrat resided at 1600 Pennsylvania Avenue.

Like so many of President Bush's nominees, Ms. Pratter is a member of the Federalist Society and has been involved in numerous Republican Party campaigns. She has no judicial experience although she comes from a well-

respected law firm. Her record of defending businesses raises concerns about her ability to balance business and individual interests. In her answers to my written questions, however, she assured me that she would be fair to all parties that come before her. I hope that she will be a person of her word. I hope that she will follow the law. I hope that she will treat all who appear before her with respect. I hope she will not abuse the power and trust of her position. Sometimes we have to take a risk to allow a nominee to be confirmed.

I congratulate Ms. Pratter on her confirmation today.

Mr. SANTORUM. Mr. President, I yield the remainder of time in opposition.

Mr. SMITH. Mr. President, I believe we have used all our time. Therefore, I believe we are ready to vote.

The PRESIDING OFFICER. All time has expired.

Mr. KENNEDY. 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. SANTORUM. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

EXECUTIVE SESSION

THE NOMINATION OF VIRGINIA E. HOPKINS TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA

THE NOMINATION OF RICARDO S. MARTINEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

THE NOMINATION OF GENE E.K. PRATTER TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to executive session to consider nominations 563, 564, and 566. There will be 20 minutes of debate equally divided between the chairman and ranking members of the Judiciary Committee, or their designees. At the conclusion of 20 minutes, we will vote on the nominations, following which there will be a vote on the pending amendment.

Mr. SANTORUM. Mr. President, I rise to speak in favor of Gene Pratter, who is the nominee, as you noted, on the Executive Calendar for the Eastern District of Pennsylvania.

Gene has an outstanding record of community service, of service to the legal community, working in very complex and difficult litigation with a large law firm in the city of Philadelphia. She is someone who has been active, as I mentioned, in the community and in political life, and is the kind of well-rounded individual who I think would make an excellent jurist on the court.

She is someone I have gotten to know over the past 10 or 12 years, and I have respected her demeanor. She has a very professional but yet gentle way of discussing sometimes rather contentious issues in which we have been involved.

Again, I respect the way she approaches issues that confront her. She has proven that she has outstanding legal abilities. She has proven that she understands the importance of community and the importance of being a good citizen and participating as a citizen beyond just the professional life, which to me, as a judge, is something that is very important.

We have been fortunate under the leadership of Senator SPECTER in finding now 20 judges under this administration who have been nominated, and I believe the number is 17 or 18 who have been confirmed by the Senate. We have done a good job in finding people who are well rounded and people who have judicial experience and judicial temperament about which I spoke, as well as a record of community involvement and active citizenship which rounds out the person. So when they come to the bench, they are not just a narrow scholar or someone who is a ''hail fellow well met'' but a nice combination of the two that brings the kind of commonsense judicial temperament that is important in our court system.

I commend Gene for her steadfastness in this process. As anybody who has gone through this process in the last couple of years will tell you, this is a difficult and somewhat tortuous process where you are on again, off again; You don't know whether your career is going to move forward or is going to stay in limbo. Is it going to fall off the docket and not be heard from again? That is a very difficult thing for all of these nominees to have to go through.

But thanks to the agreement of Senator FRIST and Senator DASCHLE, we have been able to move some of these nominations—the ''noncontroversial nominations''—and we will now have a vote on Judge Pratter.

I say for the RECORD again that because of the work Senator SPECTER has done with our bipartisan nominating commission we have in the State of Pennsylvania, we have been able to get Republicans and Democrats—I underscore Republicans and Democrats—nominated by this President.

When there are two Republican Senators, we have a rule in Pennsylvania that the party in power—that means the President—will nominate three to his party to every one in the minority party, irrespective of, as I said before, the fact that we may have two Republican Senators and a Republican President. Out of every four nominees, we still nominate one Democrat to fill the bench to make sure there is a proper balance on the court, and even to some degree some little ideological balance on the court.

We have been successful in getting soon to be 20 nominees approved by the Senate, which I think is a fairly admirable record if you consider the contentious attitude the judicial nominees have had to work through in the committee as well as in the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. 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. SESSIONS. Mr. President, I speak on behalf of a judicial nominee for the Northern District of Alabama, Virginia E. Hawkins. I join with Senator Richard Shelby of my State in moving her nomination forward with great enthusiasm. She is a woman of impeccable academic credentials, high in integrity, great legal experience and skill. She will do a great job on the Federal bench.

She has a strong academic background. She graduated from the University of Alabama in 1974 as an undergraduate. She attended Agnes Scott College before that. Then she attended the University of Virginia Law School in 1977. She began her career as an associate attorney at the law firm of Lange, Simpson, Robinson & Sommerville in Birmingham, AL. That is one of the great law firms in the State. The fact she was hired there in itself is a good commendation of what they thought were good legal skills and good judgment. She certainly would not have been selected at that firm had they not thought so at the time.

She had at that firm a broad civil practice, including appellate matters, tax and estate planning, business dispute resolution, and planning in labor disputes. These things come up in Federal court, also.

She left the firm after 2 years to join the law firm of Taft, Stettinius & Hollister in Washington, DC, where she established the firm's intellectual property practice and handled complicated trademark matters. It is a fine law firm in Washington for her to be part of.

In 1991, however, she and her husband decided to return to her home of Anniston, AL, and to form the firm of Campbell & Hopkins where she is currently a partner.

Over the past 12 years she developed a broad civil practice, including litigation, tax and estate planning and administration, business dispute resolution, and planning intellectual property cases.

Simply stated, Virginia Hopkins has a number of career, academic, and professional achievements. Her experience will be an asset to the bench of the Northern District of Alabama.

I know her children now are at the age of graduating from high school. She felt the need to come back to her roots to raise those children in the right way. Now she is so excited about the opportunity to serve her country and her Nation and the rule of law as a Federal judge. It is exciting to talk to her. It makes me pleased every time I do, to see how excited she is about this opportunity. I believe she is going to do a terrific job.

I know Senator SHELBY agrees with that. In fact, he propounded her nomination from the beginning. I know he believes in every way she will be a superb Federal judge. I am glad to see the senior Senator from Alabama in the Senate today, a distinguished lawyer in his own right.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I am pleased that we will soon be voting on the nomination of Virginia Hopkins for the United States District Court for the Northern District of Alabama. This nomination has been on the calendar for a number of months now and I am pleased that we are finally going to have an up or down vote.

Virginia Hopkins is a highly qualified candidate. She will be an important addition to the Federal bench. Like others who know Virginia, I have a high regard for her intellect and her integrity. She is a woman of the law who understands and respects the constitutional role of the judiciary and, specifically, the role of the federal courts in our legal system.

Having been a practicing attorney for more than a quarter century, Virginia has concentrated her legal practice in wills and estate planning, as well as intellectual property law and civil litigation. Virginia has a strong record of trying cases in both the federal and state courts for a broad range of individual and corporate clients. Without question, I believe it is fair to say that Virginia Hopkins is an experienced and skilled attorney.

In addition to being a devoted wife and mother of two children and a skilled attorney, Virginia is also active in her community. She has served on the board of the United Way of East Central Alabama, while also remaining active in her church. She is a graduate of the University of Alabama and also Virginia Law School.

Again, I am pleased to support the nomination of Ms. Virginia Hopkins to the United States District Court for the Northern District of Alabama. I am confident that she will serve honorably and that she will apply the law with impartiality and fairness. I encourage my colleagues to join with me in supporting her nomination as I believe that she will serve our nation with the honor and dignity required of the federal judiciary.

I yield the floor.

Mr. REID. How much time remains for the majority and minority?

The PRESIDING OFFICER. The majority has 1 minute 44 seconds and the minority has 11 minutes.

Mr. REID. Does the distinguished Senator from Pennsylvania wish us to yield part of our time?

Mr. SPECTER. Mr. President, I would need 5 minutes to speak on behalf of the judicial nominee.

Mr. REID. I yield 5 minutes to the Senator from Pennsylvania of the time of the minority.

Mr. SPECTER. I thank my distinguished colleague from Nevada for yielding the time. I have sought recognition to urge my colleagues to confirm Gene E.K. Pratter to the U.S. District Court for the Eastern District of Pennsylvania. Ms. Pratter comes to this position with a very distinguished academic career, having earned honors at Stanford University and her law degree from the University of Pennsylvania in 1975.

She is a partner in the prestigious law firm in Philadelphia of Duane Morris where she serves not only as a partner but as general counsel to the firm for their own matters.

She has authored many very distinguished legal writings. She has served in many professional capacities as a judge pro tempore for the State courts, Court of Common Pleas of Philadelphia County. She has been a mediator for the U.S. District Court for the Eastern District of Pennsylvania, so she has had extensive ancillary experience before becoming a Federal judge.

I have had the opportunity to know Ms. Pratter personally for about a decade and can personally attest to her intelligence and demeanor. She will be an outstanding judge.

She had been recommended to the President by Senator SANTORUM and myself after she received approval from a nonpartisan judicial selection commission which advises Senator SANTORUM and I as to judicial recommendations to the President. This is a group which has functioned for all of my tenure in the Senate, going back 24 years when Senator Heinz and I had this panel in existence. It has been carried forward. As I say, it is in existence now by appointment from Senator SANTORUM and myself.

I am especially pleased to find this confirmation occurring today. We had to postpone the induction ceremony for Ms. Pratter some time ago when there had been some disagreements as to how we would proceed. We had hoped for this confirmation last week, and, of course, it has been delayed because of the ceremonies involving the funeral and other matters related to former President Reagan. But I am especially pleased to have it concluded today because a swearing-in has been scheduled in Philadelphia for Friday at 2 o'clock. So Ms. Pratter, who I am sure is watching, and others will know that the commitment can go forward. That is in anticipation of a favorable vote, which I think is virtually certain to be forthcoming.

Mr. President, it would take a great deal of time to give the details of Ms. Pratter's extensive biographical résumé and accomplishments, so I ask unanimous consent that it be printed in the RECORD.

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

GENE E.K. PRATTER, PARTNER AND GENERAL COUNSEL

Gene E.K. Pratter is a partner in and General Counsel of Duane Morris LLP. She frequently represents clients in commercial litigation and professional liability and licensing matters. Ms. Pratter has represented licensed law, financial and other professionals before state and national licensing boards and in litigation throughout the country in federal and state courts.

A 1975 graduate of the University of Pennsylvania Law School and an honors graduate of Stanford University, Ms. Pratter is a member of the American Bar Association's Litigation Section and the Philadelphia Bar Association's Committees on Professional Responsibility and Professional Guidance, of which she was chair from 2000 through 2001. In addition, she is a member of the Pennsylvania Bar Association's Women in the Profession Committee. Ms. Pratter served as the co-chair of the ABA Litigation Section's Committee on Ethics and Professionalism and recently concluded her tenure as the co-chair of the Section's Task Force on the Independent Lawyer.

A member of the University of Pennsylvania's American Inns of Court, she is the author of a number of articles concerning ethics and professional conduct and has presented many programs for practitioners on those and other subjects. Ms. Pratter frequently serves as an expert witness and advises lawyers and law firms concerning professional responsibility and professional liability matters, and she has overseen legal issues for Duane Morris itself for a number of years while also holding the position of vice-chair of the firm's Trial Department. She has also been named as a Judge Pro Tem in the Philadelphia Court of Common Pleas and a mediator for the U.S. District Court for the Eastern District of Pennsylvania. Ms. Pratter was an Overseer of the University of Pennsylvania Law School from 1993 to 1999. She is active in numerous professional and community associations.

AREAS OF PRACTICE

Alternative Dispute Resolution;
Commercial and Real Estate Litigation;
Employment Contract Litigation;
Insurance Coverage Litigation;
Professional and Business Ethics Counseling and Litigation;
Professional Liability Litigation—Accountants, Actuaries, Architects, Attorneys, Brokers, Engineers, Fiduciaries, Insurance Professionals, Management Consultants, Title Insurers;
RICO Litigation;
Securities Litigation;
Reinsurance Litigation.

PROFESSIONAL ACTIVITIES

American Bar Association—Section of Litigation, Co-Chair, Ethics and Professional Responsibility Committee, 1994–1998, Co-Chair, Task Force on the Independent Lawyer, 1995–present, Commission on Women in the Profession, Tort and Insurance Practice

Section, Business Law Section, Center for Professional Responsibility;

Pennsylvania Bar Association—Civil Litigation Section, Education Law Section, Mentor, State Civil Committee, Women in the Profession Committee;

Philadelphia Bar Association—Professional Responsibility Committee, Chair, Professional Guidance Committee, Committee on Women in the Profession;

Association of Professional Responsibility Lawyers;

Defense Research Institute;

Pennsylvania Defense Institute;

University of Pennsylvania Law School Inn of the American Inns of Court;

Federalist Society;

St. Thomas More Society.

ADMISSIONS

Pennsylvania;

United States Court of Appeals for the Third Circuit;

United States District Court for the Eastern District of Pennsylvania.

EDUCATION

University of Pennsylvania Law School, J.D., 1975.

Mr. SPECTER. Mr. President, I again thank my colleague from Nevada and yield the floor.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

AMENDMENT NO. 3183

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the Smith amendment No. 3183 to S. 2400.

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

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Vermont (Mr. JEFFORDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 65, nays 33, as follows:

[Rollcall Vote No. 114 Leg.]

YEAS—65

Akaka	Breaux	Conrad
Alexander	Byrd	Corzine
Allen	Campbell	Daschle
Baucus	Cantwell	Dayton
Bayh	Carper	DeWine
Bennett	Chafee	Dodd
Biden	Clinton	Dorgan
Bingaman	Coleman	Durbin
Boxer	Collins	Edwards
Ensign	Leahy	Reid (NV)
Feingold	Levin	Rockefeller
Feinstein	Lieberman	Sarbanes
Graham (FL)	Lincoln	Schumer
Gregg	Lugar	Smith
Harkin	Mikulski	Snowe
Hollings	Miller	Specter
Inouye	Murkowski	Stabenow
Johnson	Murray	Stevens
Kennedy	Nelson (FL)	Voinovich
Kohl	Nelson (NE)	Warner
Landrieu	Pryor	Wyden
Lautenberg	Reed (RI)	

NAYS—33

Allard	Domenici	Lott
Bond	Enzi	McCain
Brownback	Fitzgerald	McConnell
Bunning	Frist	Nickles
Burns	Graham (SC)	Roberts
Chambliss	Grassley	Santorum
Cochran	Hagel	Sessions
Cornyn	Hatch	Shelby
Craig	Hutchison	Sununu
Crapo	Inhofe	Talent
Dole	Kyl	Thomas

NOT VOTING—2

Jeffords	Kerry

The amendment (No. 3183) was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DASCHLE. Mr. President, hatred and violence are not traditional values and they are not American values. Vicious crimes tear at the very fabric of our society and should be prosecuted to the fullest extent of the law.

Sixty-five Senators—including 18 Republican Senators—voted today to expand hate crimes protection to all Americans. The overwhelming support for the hate crimes amendment is a victory for basic fairness and for victims' rights.

This bipartisan amendment provides more help for local law enforcement—and tougher penalties for people who commit hate crimes. It also expands hate crimes protections to include gender, sexual orientation and disability. These are all reasonable changes that are supported by the overwhelming majority of Americans and by law enforcement agencies across the country.

Those who say these protections are unnecessary because they protect only a small number of people miss the point. Even one beating, one murder, or one assault is unacceptable. Hate crimes diminish all Americans.

This is not the first time the Senate has voted to strengthen existing federal protections against hate crimes. I brought these same protections to the Senate floor when I was majority leader in 2002. They were first introduced in 1997 and passed by the Senate in 1999. In 2000, majorities in both the House and Senate supported hate crimes legislation—only to have the provisions stripped out behind the closed doors of a conference committee at the insistence of the far right.

We urge the far right to end their efforts to prevent these modest but important protections from being signed into law. We will continue to press this case until all Americans enjoy equal protection from hate crimes.

Mr. BYRD. Mr. President, today, I voted in support of an amendment to the Department of Defense Authorization Act to establish that hate crimes based on race, color, religion, and national origin are prohibited at all times—not only when a person is involved in certain federally protected activities as is the case under existing law. The legislation I voted to enact today for the first time also prohibits hate crimes based on three additional categories, meaning a person's actual or perceived disability, gender, or sexual orientation, so long as the incident has a demonstrable tie to interstate trade.

The legislation voted on today is different than the hate crimes legislation I opposed in June 2000 in several significant ways. Primarily, it includes stronger safeguards to ensure that the States continue to take the lead in prosecuting hate crimes. The language of the amendment makes it clear, though, that the Federal Government can prosecute a hate crime at the Federal level in circumstances where, for example, the State does not have jurisdiction or refuses to take jurisdiction over the crime.

In June 2002, I voted in support of an amendment nearly identical to the hate crimes legislation approved today. Then, and today, I approached the Senate leadership about adding to the legislation language that would include age as a protected category, so that crimes directed against the elderly and children could also be considered hate crimes under this law. Defining age as an additional protected category in the law would also give State and local law enforcement officials new tools to provide technical, forensic, prosecutorial, and other assistance beneficial to prosecuting hate crimes against the elderly and children.

Unfortunately, the managers of the hate crimes legislation declined to accept my suggestion of defining age as being an additional protected category under the bill, but I pledge to continue to do all that I can to make certain that the elderly and children are provided all protections possible to ensure their safety, and to make certain that those who perpetrate hate crimes against them receive suitable punishment.

EXECUTIVE SESSION

NOMINATION OF VIRGINIA E. HOPKINS TO BE UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER. The Senate will now proceed with executive session to consider Executive Calendar No. 563, which the clerk will report.

The legislative clerk read the nomination of Virginia E. Hopkins, of Alabama, to be United States District Judge for the Northern District of Alabama.

The PRESIDING OFFICER. There will be 2 minutes of debate equally divided on the nomination.

Mr. WARNER. Mr. President, I ask unanimous consent that each of the next three votes be 10 minutes so we can return to the Defense bill.

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

The Senator from Utah.

Mr. HATCH. Mr. President, I am prepared to yield back all of my time on the three judges. I ask unanimous consent that all time be yielded back.

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

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Virginia E. Hopkins, of Alabama, to be United States District Judge for the Northern District of Alabama? The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Vermont (Mr. JEFFORDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 115 Ex.]

YEAS—98

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (FL)	Reed
Bunning	Graham (SC)	Reid
Burns	Grassley	Roberts
Byrd	Gregg	Rockefeller
Campbell	Hagel	Santorum
Cantwell	Harkin	Sarbanes
Carper	Hatch	Schumer
Chafee	Hollings	Sessions
Chambliss	Hutchison	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lieberman	Wyden
DeWine	Lincoln	

NOT VOTING—2

Jeffords	Kerry

The nomination was confirmed.

NOMINATION OF RICARDO S. MARTINEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Ricardo S. Martinez, of Washington, to be United States District Judge for the Western District of Washington.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. BURNS). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Mr. President, I wonder if I could address the Senate with regard to the schedule.

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

Mr. WARNER. We are making good progress on this bill. We have indications of at least four amendments that will be worked on, part this evening and part in the early morning, that could result in three to four votes. We would like to lead off following the established time for morning business, which I understand may be some 30 minutes, at approximately 10 o'clock with debate with the Senator from Connecticut, Mr. DODD, 15 minutes on each side, followed by a rollcall vote. That would be followed thereafter by Senator LEAHY. We are not certain exactly what time. That will require approximately 2 hours equally divided. We have the Bunning amendment which will be brought up tomorrow. And tonight we will lay down an amendment by Senator REED on end strength. We will start that amendment tonight. There are colleagues on both sides who will want to address that tomorrow.

We will order this evening the final order of these amendments in sequence. If there is any other Senator desiring to move forward with an amendment tomorrow, I urge that Senator to address my colleague or myself.

Mr. REID. Will the Senator yield?

Mr. WARNER. Yes.

Mr. REID. It is my understanding that tonight, when we get to the bill, the junior Senator from Idaho is going to lay down an amendment; is that right?

Mr. WARNER. My understanding is he wishes to do that tomorrow where we can get a unanimous consent.

Mr. REID. That is the best way to proceed.

Mr. WARNER. We recognize when the votes are concluded, Senator REED would lay down his amendment for discussion, we would then do cleared amendments, and that will conclude the actions on this bill for today. When the leadership decides on the opening of the Senate tomorrow, we have 30 minutes for morning business.

Mr. REID. We need half an hour on our side. I indicated to Senator LEVIN we would be happy to waive morning business on Thursday, but we would like a half hour on our side tomorrow.

Mr. FRIST. Mr. President, if the Senator would yield.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. If you need 30 minutes in morning business, we would like it equally divided. Because we have such a full day tomorrow, I want to have this first vote at 10 o'clock. We would be happy to come at 9 o'clock in the morning, you take 30 minutes, or we will divide the hour 30–30.

Mr. REID. That is totally appropriate.

I say through the Chair, on our side, Senator DURBIN will offer the next amendment, not Senator REED. Our amendment will be Senator DURBIN.

Mr. LEVIN. I understand that Senator DURBIN, if he could, prefers to lay it down tomorrow, and Senator REED can lay his amendment down.

Mr. WARNER. We have Senator REED tonight. We will accommodate Senator DURBIN tomorrow with 30 minutes equally divided.

Mr. LEAHY. Mr. President, if I might ask the distinguished senior Senator from Virginia, as I understand it, my amendment is actually pending. There are a number pending, but my understanding is the distinguished Senator from Virginia will protect me for a block of time.

Mr. WARNER. That is correct.

Mr. LEAHY. So we can debate and vote.

Mr. WARNER. Two hours equally divided at a time mutually agreeable, followed by a vote.

Mr. LEAHY. Good enough for me.

Mr. WARNER. We will incorporate this at the conclusion tonight in a UC. I thank the Presiding Officer, and I thank Members.

Senator TALENT, also, will be recognized tonight to lay down his amendment. We will debate that and then look for a vote, if necessary, tomorrow.

Any other Senators desiring to be heard on amendments? Now is a good time.

If not, I yield the floor.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Ricardo S. Martinez, of Washington, to be United States District Judge for the Western District of Washington? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Vermont (Mr. JEFFORDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 116 Ex.]

YEAS—98

Akaka	Brownback	Collins
Alexander	Bunning	Conrad
Allard	Burns	Cornyn
Allen	Byrd	Corzine
Baucus	Campbell	Craig
Bayh	Cantwell	Crapo
Bennett	Carper	Daschle
Biden	Chafee	Dayton
Bingaman	Chambliss	DeWine
Bond	Clinton	Dodd
Boxer	Cochran	Dole
Breaux	Coleman	Domenici

Dorgan	Kennedy	Reed
Durbin	Kohl	Reid
Edwards	Kyl	Roberts
Ensign	Landrieu	Rockefeller
Enzi	Lautenberg	Santorum
Feingold	Leahy	Sarbanes
Feinstein	Levin	Schumer
Fitzgerald	Lieberman	Sessions
Frist	Lincoln	Shelby
Graham (FL)	Lott	Smith
Graham (SC)	Lugar	Snowe
Grassley	McCain	Specter
Gregg	McConnell	Stabenow
Hagel	Mikulski	Stevens
Harkin	Miller	Sununu
Hatch	Murkowski	Talent
Hollings	Murray	Thomas
Hutchison	Nelson (FL)	Voinovich
Inhofe	Nelson (NE)	Warner
Inouye	Nickles	Wyden
Johnson	Pryor	

NOT VOTING—2

Jeffords	Kerry

The nomination was confirmed.

NOMINATION OF GENE E. K. PRATTER TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Gene E. K. Pratter, of Pennsylvania, to be U.S. District Judge for the Eastern District of Pennsylvania.

Mr. HATCH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Gene E. K. Pratter, of Pennsylvania, to be U.S. District Judge for the Eastern District of Pennsylvania. The clerk will call the roll.

Mr. REID. I announce that the Senator from Vermont (Mr. JEFFORDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 117 Ex.]

YEAS—98

Akaka	Corzine	Inhofe
Alexander	Craig	Inouye
Allard	Crapo	Johnson
Allen	Daschle	Kennedy
Baucus	Dayton	Kohl
Bayh	DeWine	Kyl
Bennett	Dodd	Landrieu
Biden	Dole	Lautenberg
Bingaman	Domenici	Leahy
Bond	Dorgan	Levin
Boxer	Durbin	Lieberman
Breaux	Edwards	Lincoln
Brownback	Ensign	Lott
Bunning	Enzi	Lugar
Burns	Feingold	McCain
Byrd	Feinstein	McConnell
Campbell	Fitzgerald	Mikulski
Cantwell	Frist	Miller
Carper	Graham (FL)	Murkowski
Chafee	Graham (SC)	Murray
Chambliss	Grassley	Nelson (FL)
Clinton	Gregg	Nelson (NE)
Cochran	Hagel	Nickles
Coleman	Harkin	Pryor
Collins	Hatch	Reed
Conrad	Hollings	Reid
Cornyn	Hutchison	Roberts
Rockefeller	Smith	Talent
Santorum	Snowe	Thomas
Sarbanes	Specter	Voinovich
Schumer	Stabenow	Warner
Sessions	Stevens	Wyden
Shelby	Sununu	

NOT VOTING—2

Kerry	Jeffords

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

Mr. WARNER. Mr. President, the Senator from Connecticut wants to modify an amendment at the desk. I suggest he lead off. The Senator from Missouri wishes to speak for about 5 or 6 minutes, the Senator from Rhode Island for whatever time he may wish, 5 or 10 minutes, and then Senator DURBIN also would like to speak. So, Mr. President, is that an order which is agreeable to my colleagues?

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

Mr. WARNER. Of course, there will be no more votes tonight. We do anticipate a very active day tomorrow, and the leadership is in the process of working out the sequencing of events tomorrow.

Mr. DODD. Mr. President, what is the pending business?

The PRESIDING OFFICER. Amendment No. 3313, the amendment by the Senator from Connecticut.

AMENDMENT NO. 3313, AS FURTHER MODIFIED

Mr. DODD. Mr. President, I send a modification to the desk.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. WARNER. There is no objection, Mr. President.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 3313), as further modified, is as follows:

On page 195, between lines 10 and 11, insert the following:

SEC. 868. PROHIBITIONS ON USE OF CONTRACTORS FOR CERTAIN DEPARTMENT OF DEFENSE ACTIVITIES.

(a) PROHIBITION ON USE OF CONTRACTORS IN INTERROGATION OF PRISONERS.—(1) Notwithstanding any other provision of law and except as provided in paragraph (2), the use of contractors by the Department of Defense for the interrogation of prisoners, detainees, or combatants at any United States military installation or other installation under the authority of United States military or civilian personnel is prohibited.

(2)(A) During fiscal year 2005, the President may waive the prohibition in paragraph (1) with respect to the use of contractors to provide translator services under that paragraph if the President determines that no United States military personnel with appropriate language skills are available to provide translator services for the interrogation to which the waiver applies.

(B) The President may also waive the prohibition in paragraph (1) with respect to any other use of contractors otherwise prohibited by that paragraph during the 90-day period beginning on the date of the enactment of this Act, but any such waiver shall cease to be effective on the last day of such period.

(3) The President shall, on a quarterly basis, submit to the appropriate committees of Congress a report on the use, if any, of contractors for the provision of translator services pursuant to the waiver authority in paragraph (2)(A).

(b) PROHIBITION ON USE OF FUNDS.—No funds authorized to be appropriated by this Act or any other Act may be obligated or expended for the utilization of contractor personnel in contravention of the prohibition in subsection (a), whether such funds are provided directly to a contractor by a department, agency, or other entity of the United States Government or indirectly through a permanent, interim, or transitional foreign government or other third party.

(c) PROHIBITION ON TRANSFER OF CUSTODY OF PRISONERS TO CONTRACTORS.—No prisoner, detainee, or combatant under the custody or control of the Department of Defense may be transferred to the custody or control of a contractor or contractor personnel.

(d) RECORDS OF TRANSFERS OF CUSTODY OF PRISONERS TO OTHER COUNTRIES.—(1) No prisoner, detainee, or combatant under the custody or control of the Department of Defense may be transferred to the custody or control of another department or agency of the United States Government, a foreign, multinational, or other non-United States entity, or another country unless the Secretary makes an appropriate record of such transfer that includes, for the prisoner, detainee, or combatant concerned—

(A) the name and nationality; and

(B) the reason or reasons for such transfer.

(2) The Secretary shall ensure that—

(A) the records made of transfers by a transferring authority as described in paragraph (1) are maintained by that transferring authority in a central location; and

(B) the location and format of the records are such that the records are readily accessible to, and readily viewable by, the appropriate committees of Congress.

(3) A record under paragraph (1) shall be maintained in unclassified form, but may include a classified annex.

(e) REVIEW OF UNITED STATES POLICY ON USE OF CONTRACTORS IN COMBAT OPERATIONS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the Secretary's review of United States policy on the use of contractors in combat operations.

(2) The report under paragraph (1) shall identify and review all current statutes, regulations, policy guidance, and associated legal analyses relating to the use of contractors by the Department of Defense, and by other elements of the uniformed services, in routine engagements in direct combat on the ground, including any prohibitions and limitations on the use of contractors in such engagements.

(f) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committees on Armed Services, Foreign Relations, and the Judiciary of the Senate and the Select Committee on Intelligence of the Senate; and

(2) the Committees on Armed Services, International Relations, and the Judiciary of

the House of Representatives and the Permanent Select Committee on Intelligence of the House of Representatives.

Mr. DODD. Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be added as a cosponsor to Senator DODD's modified amendment.

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

Mr. LEVIN. Mr. President, I ask unanimous consent that Senator CONRAD be added as a cosponsor to amendment No. 3192 which was adopted.

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

FAIRNESS IN PUBLIC-PRIVATE COMPETITIONS

Mr. KENNEDY. Mr. President, I commend Chairman WARNER and Senator LEVIN for working with Senator CHAMBLISS and me to reach a worthwhile bipartisan agreement on this amendment to produce greater fairness in public-private competitions. We face great challenges on national security and national defense in these times. We are doing all we can to meet the needs of our armed forces, and we are proud of their service to our country. The Federal civilian employees of the Department of Defense deserve our strong support, too.

The rules put in place last May by the Office of Management and Budget to implement public-private competition reforms in the Federal Government, including the Department of Defense, are the most sweeping changes in half a century. These rules have been controversial, and Congress has passed important protections over the last year to ensure that competitions to privatize Federal work are fair.

Last year, in the Department of Defense Appropriations Act, a bipartisan Congress guaranteed Federal employees the opportunity to demonstrate that they can do the work better and for a lower cost than private contractors. The fair competition amendment will make these provisions permanent, guaranteeing the use of the most efficient organizations in both streamlined competitions and other A–76 competitions at the Department of Defense. The amendment also reduces the incentive for private contractors to deny health benefits or provide inadequate benefits. Forty-four million Americans are uninsured today, and the cost of health insurance premiums have soared by 43 percent over the last 3 years. Under this amendment, if contractors offer inferior health benefits, comparative savings in health costs will not be counted in assessing their bids.

The amendment corrects a major defect in the OMB rules, which prevent Federal employees form competing effectively for a new work or work conducted by private contractors. The administration opposed a similar amendment in the House that established a pilot program. This amendment addresses the administration's specific concerns about the pilot project, while establishing a process for allowing and encouraging Federal employees to compete for new work and work currently performed by contractors.

The amendment also requires the inspector general to determine whether the Department of Defense has the infrastructure necessary to conduct public-private competitions and administer service contracts.

This amendment deals primarily with competitions in the Department of Defense. We know there is also more work to be done with respect to other Federal agencies.

Given the importance of this issue to my colleagues and me, we will be closely monitoring public-private competitions at the Department of Defense to ensure compliance with the current rules, to improve the law, and to pursue further legislative solutions to ensure fair competition. As we expand the Nation's military budget, we must see that taxpayers and our men and women in uniform are obtaining all of the benefits possible, and I hope very much that Chairman WARNER and Senator LEVIN will retain this important amendment in the conference report.

Mr. CHAMBLISS. I appreciate the hard work of our chairman and ranking member in working with Senator KENNEDY and to approve the fair competition amendment.

The amendment addresses a number of issues about which I am very concerned. One of the key issues is the ability of civilian employees to have the opportunity to compete for new work or work currently performed by contractors. This amendment would encourage the Department of Defense to level the playing field in these areas, improve efficiency, and protect government employees' ability to perform critical skills in key areas. And it does so in a way that addresses the concerns expressed by the administration in its Statement of Administration Policy.

Federal employees should compete in defense of their work, unless national security dictates otherwise. Direct conversion, giving work performed by Federal employees to contractors without competition, disservices Federal employees and taxpayers. The OMB Circular A–76 allows for direct conversions with OMB's approval. But there is evidence that agencies may be undertaking direct conversions without OMB's approval. This amendment ensures that for DoD, the largest agency and the one that does the most contracting out, there will be no direct conversions of any functions performed by more than ten employees, absent the invocation by the Secretary of Defense of a national security waiver. We have also included strong language in the amendment to close loopholes by which DoD could break up functions so that they involve ten or fewer employees or arbitrarily designate the work as new in order to get around this requirement.

Federal employees required to undergo public-private competitions should be able to submit their most competitive bids through the most efficient organization process. This amendment establishes such a requirement for all functions performed by more than ten employees.

Due to the significant costs associated with conducting competitions, contractors should be required to demonstrate that they will be marginally more efficient than Federal employees before taking away work performed by Federal employees. This amendment requires a minimum cost differential for all functions performed by more than ten employees of 10 percent of $10 million, whichever is smaller.

Privatization reviews should be predicated on agencies' capacity to perform those reviews and then satisfactorily administer any resulting service contracts. Our amendment ensures through its Inspector General reporting requirement that the Congress will know whether DoD has the capacity to conduct the privatization reviews required of it by OMB over the next several years.

I am pleased that this amendment has been accepted by the Senate and look forward to working with my colleagues during conference to include it in law.

Mr. LEVIN. I appreciate the willingness of my colleagues to work with the Chairman and me on this amendment. The amendment addresses a number of important issues that face the Department of Defense's contracting out policies.

For the first time, this amendment would make permanent provisions that require a most efficient organization and a minimum cost differential in almost all competitions. It ensures that contractors do not have incentives to offer inferior health insurance packages as a way to cut costs and make their bids more appealing. And it sets up a process for Federal employees to gain opportunities to conduct new work and work performed by contractors.

The amendment would, on a government-wide basis, put Federal employees and contractors on the same basis with respect to competing to perform new work. Contractors are not required to compete against Federal employees for new work, either under the FAR or A–76. The amendment would eliminate the requirement in A–76 that forces Federal employees to compete for new work or to retain their own work when the scope of that work expands.

Mr. KENNEDY. Given that the one concern identified by OMB in its SAP has been addressed in the amendment, would the Senator anticipate that the amendment will be included in the conference report?

Mr. LEVIN. That is my hope and expectation. I note that the House bill contains a similar provision, so the differences between the two provisions will have to be worked out by the conferees. I commit to working with my colleagues in the conference to ensure that the final language in the conference report achieves the purposes of the amendment.

COMMISSION ON THE FUTURE OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE

Mr. BINGAMAN. Mr. President, I would like to discuss section 841 of S. 2400, entitled the Commission on the Future of the National Technology and Industrial Base.

Mr. WARNER. Yes. This Commission will examine our national technology and industrial base as it pertains to the national security of the United States. The Commission will make important recommendations to ensure we maintain our technological leadership in a global economy.

Mr. BINGAMAN. I commend the chairman for his advocacy of this important issue. I would like to make the chairman aware of an effort that has been underway at the National Academy of Sciences.

Mr. WARNER. Will the Senator please describe this effort to me?

Mr. BINGAMAN. Yes. For the past 12 years, the Board on Science Technology and Economic Policy at the National Academies, has been evaluating the effects of globalization on key U.S. Industries such as biotechnology, software, telecommunications, semiconductors, flat panel displays, lighting and heavy manufacturing industries such as steel. The board produced a report in 2000 evaluating the effects of globalization on a subset of these industries. They are now in the process of evaluating the effects of outsourcing and globalization trends over the past 4 years on many of these same industries. Many, if not all, of these industries are important to our defense industrial base. I would like to ask the chairman if he believes it is important for the Commission to review the work of Board on Science Technology and Economic Policy as it undertakes its research.

Mr. WARNER. Yes, I believe it is prudent that the Commission fully utilize the expertise that the Board on Science Technology and Economic Policy has developed in evaluating the trends of globalization and outsourcing on the industries you have just discussed.

Mr. BINGAMAN. I thank the chairman for his time in this matter.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 3251

Mr. TALENT. Mr. President, I have an amendment I wish to offer on behalf of Mr. BOND and myself. It is at the desk. I ask it be called up. It is amendment No. 3251.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. TALENT], for himself and Mr. BOND, proposes an amendment numbered 3251.

Mr. TALENT. 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 as follows:

(Purpose: To express the sense of Congress on America's National World War I Museum)

At the end of subtitle G of title X, add the following:

SEC. 1068. SENSE OF CONGRESS ON AMERICA'S NATIONAL WORLD WAR I MUSEUM.

(a) FINDINGS.—Congress makes the following findings:

(1) The Liberty Memorial Museum in Kansas City, Missouri, was built in 1926 in honor of those individuals who served in World War I in defense of liberty and the Nation.

(2) The Liberty Memorial Association, a nonprofit organization which originally built the Liberty Memorial Museum, is responsible for the finances, operations, and collections management of the Liberty Memorial Museum.

(3) The Liberty Memorial Museum is the only public museum in the Nation that exists for the exclusive purpose of interpreting the experiences of the United States and its allies in the World War I years (1914–1918), both on the battlefield and on the home front.

(4) The Liberty Memorial Museum project began after the 1918 Armistice through the efforts of a large-scale, grass-roots civic and fundraising effort by the citizens and veterans of the Kansas City metropolitan area. After the conclusion of a national architectural design competition, ground was broken in 1921, construction began in 1923, and the Liberty Memorial Museum was opened to the public in 1926.

(5) In 1994, the Liberty Memorial Museum closed for a massive restoration and expansion project. The restored museum reopened to the public on Memorial Day, 2002, during a gala rededication ceremony.

(6) Exhibits prepared for the original museum buildings presaged the dramatic, underground expansion of core exhibition gallery space, with over 30,000 square feet of new interpretive and educational exhibits currently in development. The new exhibits, along with an expanded research library and archives, will more fully utilize the many thousands of historical objects, books, maps, posters, photographs, diaries, letters, and reminiscences of World War I participants that are preserved for posterity in the Liberty Memorial Museum's collections. The new core exhibition is scheduled to open on Veterans Day, 2006.

(7) The City of Kansas City, the State of Missouri, and thousands of private donors and philanthropic foundations have contributed millions of dollars to build and later to restore this national treasure. The Liberty Memorial Museum continues to receive the strong support of residents from the States of Missouri and Kansas and across the Nation.

(8) Since the restoration and rededication of 2002, the Liberty Memorial Museum has attracted thousands of visitors from across the United States and many foreign countries.

(9) There remains a need to preserve in a museum setting evidence of the honor, courage, patriotism, and sacrifice of those Americans who offered their services and who gave their lives in defense of liberty during World War I, evidence of the roles of women and African Americans during World War I, and evidence of other relevant subjects.

(10) The Liberty Memorial Museum seeks to educate a diverse group of audiences through its comprehensive collection of historical materials, emphasizing eyewitness accounts of the participants on the battlefield and the home front and the impact of World War I on individuals, then and now. The Liberty Memorial Museum continues to actively acquire and preserve such materials.

(11) A great opportunity exists to use the invaluable resources of the Liberty Memorial Museum to teach the ''Lessons of Liberty'' to the Nation's schoolchildren through on-site visits, classroom curriculum development, distance learning, and other educational initiatives.

(12) The Liberty Memorial Museum should always be the Nation's museum of the national experience in the World War I years (1914–1918), where people go to learn about this critical period and where the Nation's history of this monumental struggle will be preserved so that generations of the 21st century may understand the role played by the United States in the preservation and advancement of democracy, freedom, and liberty in the early 20th century.

(13) This initiative to recognize and preserve the history of the Nation's sacrifices in World War I will take on added significance as the Nation approaches the centennial observance of this event.

(14) It is fitting and proper to refer to the Liberty Memorial Museum as ''America's National World War I Museum''.

(b) SENSE OF CONGRESS.—Congress—

(1) recognizes the Liberty Memorial Museum in Kansas City, Missouri, including the museum's future and expanded exhibits, collections, library, archives, and educational programs, as ''America's National World War I Museum'';

(2) recognizes that the continuing collection, preservation, and interpretation of the historical objects and other historical materials held by the Liberty Memorial Museum enhance the knowledge and understanding of the Nation's people of the American and allied experience during the World War I years (1914–1918), both on the battlefield and on the home front;

(3) commends the ongoing development and visibility of ''Lessons of Liberty'' educational outreach programs for teachers and students throughout the Nation; and

(4) encourages the need for present generations to understand the magnitude of World War I, how it shaped the Nation, other countries, and later world events, and how the sacrifices made then helped preserve liberty, democracy, and other founding principles for generations to come.

Mr. TALENT. Mr. President, I rise today in support of an amendment to designate the Liberty Memorial Museum in Kansas City, MO, as America's World War I Museum. All of us in Missouri are privileged to have such an outstanding museum and memorial to honor those who served during this critical period in our Nation's history.

World War I is, of course, an important part of America's history, and its history ought to be preserved so the generations of the 21st century can understand the role played by the United States in the preservation and advancement of freedom during that crucial time.

The Liberty Memorial Museum is the only public museum in the Nation that exists for the exclusive purpose of interpreting the experiences of the United States and its Allies in the

World War I years, both on the battlefield and on the homefront. It deserves this designation as America's National World War I Museum.

The museum has a truly amazing history. After the guns were silenced in 1918 and the huge celebrations died down, concerned citizens in the United States reflected on the war and the losses sustained. The Liberty Memorial Museum project began after the 1918 armistice through the efforts of a large-scale, grassroots civic and fundraising effort by the citizens and veterans in the Kansas City metropolitan area. In less than 2 weeks, $2.5 million was raised through donations from local citizens. That was in 1918. That gives the Senate some idea of the enormity of the efforts on behalf of this memorial.

After the conclusion of a national architectural design competition, ground was broken in 1921, construction began in 1923, and the Liberty Memorial Museum was open to the public in 1926.

At the dedication on November 1, 1921, the main Allied military leaders spoke to a crowd of close to 200,000 people.

It was the only time in history the leaders of the United States, Belgium, Italy, France, and Great Britain were together at one place. These were the military leaders during World War I and they convened in Kansas City in 1921 to open this museum.

Today, the Liberty Memorial Museum seeks to educate a diverse group of audiences through its comprehensive collection of historical materials, emphasizing eyewitness accounts of the participants on the battlefield and the homefront and the impact of World War I on individuals, then and now. The Liberty Memorial Museum continues to actively acquire and preserve such materials.

The designation of the museum as ''America's National World War I Museum'' is a great opportunity to use the invaluable resources of the Liberty Memorial Museum to teach the lessons of liberty to the Nation's schoolchildren through onsite visits, classroom curriculum development, distance learning, and other educational initiatives.

I am pleased to offer the amendment on behalf of Mr. BOND and myself. I want to thank the chairman and the ranking member for agreeing to include the measure in the underlying bill. It has been cleared on both sides and I look forward to the Senate adding it to this Defense measure.

I yield the floor, and I ask for adoption of the amendment.

Mr. WARNER. Mr. President, the amendment is cleared on both sides.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to amendment No. 3251.

The amendment (No. 3251) was agreed to.

AMENDMENT NO. 3352

Mr. REED. Mr. President, I have an amendment numbered 3352.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside and the clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself, Mr. HAGEL, Mr. MCCAIN, Mr. CORZINE, Mr. AKAKA and Mr. BIDEN proposes an amendment numbered 3352.

Mr. REED. 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 as follows:

(Purpose: To increase the end strength for active duty personnel of the Army for fiscal year 2005 by 20,000 to 502,400)

On page 59, line 7, strike ''482,400'' and insert ''502,400''.

Mr. REED. Mr. President, it is my intention this evening to spend a few minutes to lay the amendment down and then I presume at the end of the evening, with unanimous consent, I will be given at least an hour of debate tomorrow which I will share with Senators MCCAIN, HAGEL, and others. That is my understanding. I ask the Senator from Virginia if that understanding is correct.

Mr. WARNER. Mr. President, we will work that out along those lines.

Mr. REED. Mr. President, I understand from the chairman that he will offer a second-degree amendment at the appropriate time. At this juncture, I would like to briefly explain the amendment and then have the opportunity to discuss it in more detail tomorrow with my colleague.

Mr. WARNER. Mr. President, I understand it is in order to forward a second-degree amendment to the pending amendment.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

AMENDMENT NO. 3450 TO AMENDMENT NO. 3352

Mr. WARNER. I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3450 to amendment No. 3352.

Mr. WARNER. 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 as follows:

(Purpose: To provide for funding the increased number of Army active-duty personnel out of fiscal year 2005 supplemental funding)

Strike line 2 and insert the following:

''502,400, subject to the condition that the costs of active duty personnel of the Army in excess of 482,400 shall be paid out of funds authorized to be appropriated for fiscal year 2005 for a contingent emergency reserve fund or as an emergency supplemental appropriation''.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. My amendment will increase the end strength of the Army to meet the incredible mission that has been thrust upon them in the wake of the war on terror and the operations in Afghanistan and the operations in Iraq. I believe it is incumbent that we formally increase the end strength of the Army and we incorporate within the Army budget the requirements for these additional soldiers.

At this juncture, the Army is being increased on an emergency basis through supplemental appropriations. I think that is not the appropriate way to do it. I think we have to recognize that the struggles we are engaged in are long term; they are not temporary. We have to have an end strength within the authorization bill that reflects that long-term effort we are engaged in.

I also believe we have to have within the Army budget the baseline established so that if a supplemental is delayed or is not sufficient to cover these additional troops, the Army does not have to go among its own programs and root about and find moneys to pay for these troops.

These troops are necessary. It is expedient that we should in fact engage and correct this discrepancy between the missions and the men and women who are serving our Army so well.

This is a quick glimpse of our soldiers who are committed throughout the world: 310,000 soldiers in 120 countries. The most significant, of course, are operations in Afghanistan and in Iraq. There are 13,000 in Afghanistan and 126,000 in Iraq. There are soldiers all across the globe and I think we all understand the stresses of these operations are wearing our Army down rapidly.

Some of the indications that we have too few troops can be cited very quickly. First, literally a few days ago the Army announced a stop-loss policy that would prevent soldiers from leaving the Army 90 days before their unit deploys into Iraq. We are essentially telling volunteers that they cannot leave at the end of their enlistment. That is an obvious indication we have too few troops.

Second, we are withdrawing troops from Korea. There might be strategic reasons to pull troops out of Korea. There might be logistical reasons. Technology might be aiding them. But, frankly, this is an indication of, again, the shortage of troops within the Army, because we have huge risks in North Korea. This is a regime that has announced they have nuclear weapons. This is a regime that has been involved in on-and-off negotiations with us for a matter of many months to see if we can resolve the situation peacefully.

The signal we are sending to the North Koreans, albeit unwittingly, is this is not a major priority; we are actually taking troops away.

When troops are taken away, we may still have the ability to deter the North Koreans from attacking South Korea but, frankly, our mission over there is no longer just deterrence, it is disarmament, and that requires diplomacy backed up by force. We hope diplomacy works, but we are weakening our hand.

One of the most interesting and insightful indications of the shortage of

troops is we are actually beginning to take apart the training infrastructure of the U.S. Army. Recently it was announced that troops from our training centers, the 11th Army Cavalry Regiment, which serves as the op force, the enemy force, in training our units, is being notified for deployment overseas. In addition to that, the 1st Battalion of the 509th Infantry, which acts as the opposition force to train our troops at Fort Polk, LA, is also on notice.

What can be more demonstrative of the shortage of troops than the fact we are, in a sense, dismantling our training structure? That in the long term is going to do great harm to the service. We need more troops.

I am sure those who are opposed to the amendment will say we have authorized in this bill again access to emergency authorization and supplemental funding, but that is not doing it the right way, doing it up front, doing it in a straightforward manner, increasing end strength statutorily, and putting this into the regular budget process.

I hope tomorrow we can debate this bill. I am unaware of the second-degree amendment. I will get with the chairman to see what his language is. I feel very strongly that this is the way to do it, and I am joined in that by my colleagues Senators MCCAIN, HAGEL, CORZINE, AKAKA, BIDEN, and many others who feel very strongly this is the way to do it and it should be done. I hope it will be done tomorrow.

With the expectation and the understanding that we will have at least an hour tomorrow on my side to engage in debate on this issue, at this point I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I say to my good friend from Rhode Island that this has been an issue he has expressed concern about for better than a year or more in the course of our hearings in the Armed Services Committee, where my colleague is a very valuable member. He also draws on his own experience as a distinguished West Point graduate and Army officer himself. He speaks against a background of experience and knowledge.

Yes, the bill at the moment has a provision in it which gives the flexibility to the Secretary of Defense, the Secretary of the Army, and others to increase on a temporary basis—actually we go up to 30,000 if they need it, whereas the Senator from Rhode Island does 20,000. We will work this out tomorrow. But I express two concerns tonight, as we lay down the preliminary record. I pose this question to the Senator from Rhode Island. You do not provide in your amendment any means by which to pay for it; am I not correct?

Mr. REED. The Senator is correct.

Mr. WARNER. Then my next question would be, you know from your experience on the committee that the Department of the Army primarily—it could be it comes from other areas of the defense budget, but the Department of the Army might have to get over $2 billion out of its current budget to meet these added costs. Would that not be correct?

Mr. REED. If I may respond to the chairman, he is quite right about the offset. I have some ideas from where the money could come. It is my feeling it should come from funds outside the Army. I think what we have done is we have increased it, but we haven't offset it by Army programs. So there is the possibility—I hope the likelihood—the offset would come from other programs.

Mr. WARNER. As I think the Senator will see—I think I have sent a copy of my amendment over to him. It is very brief. It just specifies that the funding will come from areas other than the Department of the Army budget or elsewhere in the defense budget. Has the Senator had an opportunity to look at the amendment?

Mr. REED. I have had an opportunity to read the amendment. It seems, in keeping with the Senator's commitment to be constructive and helpful, to be very constructive and very helpful, on first examination.

Mr. WARNER. We will work on this tomorrow. But I think for the purposes of tomorrow's debate, we framed the parameters in which the debate is likely to occur. I am optimistic that we can work this out together. I commend the Senator. He has been a lead, with Senator MCCAIN and others, from the very beginning.

At this point in time, the leadership, tonight, in consultation with Senator LEVIN and myself, will work out the sequence of events tomorrow. The Senator believes he needs a full hour on his side?

Mr. REED. Yes. Myself, Senator HAGEL, and Senator MCCAIN wish to speak.

Mr. WARNER. Fine. I will indicate to the leadership I will not need a full hour to speak to the second-degree amendment and to my concern about the permanency of it. But the reality is I think this will move tomorrow. I thank the Senator.

Mr. President, I see the distinguished Senator from Illinois seeking recognition. It is my hope and expectation we can work this matter out. How much does he wish to address it tonight?

Mr. DURBIN. Mr. President, I say to the chairman, who I respect so much, I agree tomorrow we will take 30 minutes equally divided before the vote on this amendment. My hope this evening is, in the span of perhaps 20 minutes, to give a longer statement so it will not be necessary to repeat it tomorrow and save us some time so we can move more quickly. I know the Senator has been extremely patient.

Mr. WARNER. We have all been patient. I thank the Senator. I think that is very helpful. If the Senator will proceed along those lines, I will be working on the finalization of the unanimous consent request to put in tomorrow. At the conclusion of the Senator's remarks, this amendment will just be among the pending amendments?

Mr. DURBIN. That is correct.

Mr. WARNER. We may be able to work it out tomorrow such that we do not require a recorded vote.

Mr. DURBIN. I might say to the chairman, because of the serious nature of this amendment, I think we will want a recorded vote.

Mr. WARNER. That is the Senator's prerogative.

Mr. DURBIN. I hope we can work on this tomorrow, and I will confer with the chairman on that aspect.

I come to the floor today to offer amendment to the Defense Department authorization bill.

The amendment would reaffirm a very important, long-standing position of our nation: that the United States shall not engage in torture or cruel, inhuman or degrading treatment. This is a standard that is embodied in the U.S. Constitution and in numerous international agreements which the United States has ratified.

The amendment would require the Defense Secretary to issue guidelines to ensure compliance with this standard and to provide these guidelines to Congress. The Defense Secretary would also be required to report to Congress on any suspected violations of the prohibition on torture or cruel, inhuman or degrading treatment. The amendment specifically provides that this information should be provided to Congress in a manner and form that would protect national security.

Let me also explain what this amendment would not do. It would not impose any new legal obligations on the United States. It would not limit our ability to use the full range of interrogation techniques that are outlined in the Army interrogation manual. It would not affect the status of any person under the Geneva Conventions or whether any person is entitled to the protections of the Geneva Conventions.

It would only reaffirm and ensure compliance with our long-standing obligation not to subject detainees to torture or cruel, inhuman and degrading treatment.

The amendment is supported by a broad coalition of organizations and individuals, including human rights organizations like Human Rights Watch and Amnesty International, religious institutions such as the Episcopal Church, and military officers, such as retired Rear Admiral John Hutson.

Admiral Hutson was a Navy Judge Advocate for 28 years and from 1997–2000, he was the Judge Advocate General, the top lawyer in the Navy. In a letter in support of this amendment, he wrote:

It is absolutely necessary that the United States maintain the high ground in this area and that Congress take a firm stand on the issue. . . . It is critical that we remain steadfast in our absolute opposition to torture and [cruel, inhuman or degrading treatment]. Senator DURBIN's proposed amendment is a critical first step in that regard.

In the aftermath of 9/11, some have called for the United States to abandon this commitment. But President Bush has made it clear that he does not support this position. On June 26, 2003, the International Day in Support of Victims of Torture, the President said:

The United States is committed to the world-wide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment.

I commend the President for standing behind our treaty obligations. Now the Congress must do no less. The world is watching us. They are asking whether the United States will stand behind its treaty obligations in the age of terrorism. With American troops in harm's way, we need to tell the world and the American people that the United States is committed to treating all detainees humanely.

As we mourn the passing of President Ronald Reagan, we should recall his vision of America as a shining city upon a hill—a model of democracy, freedom and the rule of law that people around the world look to for inspiration. As President Reagan said in his Farewell Address to the Nation:

After 200 years, two centuries, [America] still stands strong and true on the granite ridge, and her glow has held steady no matter what storm. And she's still a beacon, still a magnet for all who must have freedom.

President Reagan was right. Our city upon a hill must hold steady in defense of our principles no matter what storm. Despite the threat of terrorism, we must stand by our opposition to torture and other cruel treatment.

In fact, it was President Reagan who first transmitted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Senate with his recommendation that the Senate ratify the treaty.

We are in the process of defining our values as a country in the age of terrorism. We need to make it clear that we will not compromise principles that have guided us and other civilized nations for hundreds of years.

The prohibition on torture and other cruel treatment is deeply rooted in our history. In 15th and 16th Century England, the infamous Star Chamber issued warrants authorizing the use of torture against political opponents of the Crown. Supporters of the Star Chamber claimed that torture was necessary to protect the security of the state. Blackstone, the English jurist who greatly influenced the Founding Fathers, said: ''It seems astonishing that this usage of torture should be said to arise from a tenderness to the lives of men.'' Those words still ring true today.

In 1641, the Star Chamber was abolished and the use of torture warrants ended. A prohibition on torture and cruel treatment developed in English common law. The English Bill of Rights of 1689, which served as a model for our Bill of Rights, contained a ban on ''cruel and unusual punishments.''

This history carried great weight with the Framers of our Constitution. During the Constitutional Conventions, Patrick Henry, in a statement that typified the Founders' views, said: ''What has distinguished our ancestors? That they would not admit of tortures, or cruel and barbarous punishment.''

During the Constitutional Convention, George Mason, who is known as ''the Father of the Bill of Rights,'' explained that the 5th Amendment ban on self-incrimination and the 8th Amendment ban of cruel and unusual punishment both prohibit torture and cruel treatment.

Our history makes clear that these principles also guided us during times of war. During the Civil War, President Abraham Lincoln asked Francis Lieber, a military law expert, to create a set of rules to govern the conduct of U.S. soldiers in the field. The Lieber Code prohibited torture or other cruel treatment of captured enemy forces. It became the foundation for the modern law of war, which is embodied in the Geneva Conventions.

In the early twentieth century, the emergence of large police departments in the United States was accompanied by a dramatic increase in the abuse of suspects in police custody. President Hoover appointed the National Commission on Law Observance and Enforcement, also known as the Wickersham Commission, to review law enforcement practices. In 1931, the Commission's findings shocked the nation and permanently transformed the nature of American law enforcement.

The Commission concluded:

The third degree is the employment of methods which inflict suffering, physical or mental, upon a person, in order to obtain from that person information about a crime. . . . The third degree is widespread. The third degree is a secret and illegal practice. When all allowances are made it remains beyond a doubt that the practice is shocking in its character and extent, violative of American traditions and institutions, and not to be tolerated.

The commission catalogued and condemned ''third degree'' methods, including, physical brutality, threats, sleep deprivation, exposure to extreme cold or heat—also known as ''the sweat box''—and blinding with powerful lights and other forms of sensory overload or deprivation.

The commission also discussed practical reasons to reject the ''third degree'':

The third degree involves the danger of false confessions. . . so many instances have been brought to our attention during this investigation that we feel convinced not only of its existence but of its seriousness.

The third degree impairs police efficiency. . . . It tends to make [police] less zealous in the search of objective evidence.

The third degree brutalizes the police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public. Probably the third degree has been a chief factor in bringing about the present attitude of hostility on the part of a considerable portion of the population toward the police and the very general failure of a large element of the people to aid or cooperate with the police in maintaining law and order.

Over the next two decades, numerous Supreme Court opinions cited the Wickersham Commission report and condemned the use of various third degree methods as unconstitutional.

As the landscape of American policing was being reshaped, the horrific abuses of Nazi Germany began to come to light. This reinforced American opposition to torture and other forms of cruel treatment.

One of the counts in the Nuremberg indictment of Gestapo officials detailed official orders approving the application of ''third degree'' techniques, including ''[a] very simple diet (bread and water)[,] hard bunk[,] dark cell[,] deprivation of sleep[,] exhaustive drilling[,] . . . [and] flogging (for more than 29 strokes a doctor must be consulted)'' as a means of obtaining evidence, or ''information of important facts'' regarding subversion. One of the defenses raised by Gestapo officers was that such actions were necessary to protect against Resistance terrorism.

After World War II, in the aftermath of Nuremberg and the disclosure of Nazi Gestapo tactics, the United States and our allies created a new international legal order based on respect for human rights.

One of its fundamental tenets was a universal prohibition on torture and cruel, inhuman, or degrading treatment. The United States took the lead in establishing a succession of international agreements that ban the use of torture and other cruel treatment against all persons at all times. There are no exceptions to this prohibition.

Eleanor Roosevelt was the Chair of the U.N. Commission that produced the Universal Declaration on Human Rights in 1948. The Universal Declaration states unequivocally, ''No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.''

The United States, along with a majority of countries in the world, is a party to the Geneva Conventions, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, all of which prohibit torture and cruel, inhuman, or degrading treatment.

Army regulations that implement these treaty obligations state:

Inhumane treatment is a serious and punishable violation under international law and the Uniform Code of Military Justice (UCMJ). All prisoners will receive humane treatment without regard to race, nationality, religion, political opinion, sex, or other criteria. The following acts are prohibited: murder, torture, corporal punishment, mutilation, the taking of hostages, sensory deprivation, collective punishments, execution without trial by proper authority, and all cruel and degrading treatment. All persons will be respected as human beings. They will be protected against all acts of violence to include rape, forced prostitution, assault and theft, insults, public curiosity, bodily injury, and reprisals of any kind This list is not exclusive.

Some people may be asking, ''What is, 'cruel, inhuman or degrading treatment.' '' How can the United States be bound by such an uncertain standard?

The United States Senate debated this question before ratifying the International Covenant on Civil and Political Rights and the Torture Convention. In response to this concern, we filed reservations to both of these agreements. A reservation is a statement filed by the Senate that clarifies our obligations under international agreements.

These reservations state that the United States is bound to prevent ''cruel, inhuman or degrading treatment'' only to the extent that that phrase means the cruel, unusual and inhumane treatment or punishment prohibited by the U.S. Constitution. In other words, ''cruel, inhuman or degrading treatment'' is defined by the U.S. Constitution, and the United States is only prohibited from engaging in conduct that is already unconstitutional.

This provides certainty and clarity. In 1990, the Senate Foreign Relations Committee held a hearing on the Torture Convention and an official from the first Bush administration explained the reservation:

> We have proposed this reservation because the terms ''cruel, inhuman or degrading treatment or punishment'' used in this Convention are vague and are not evolved concepts under international law. . . . On the other hand, the concept of cruel and unusual punishment under the United States Constitution is well developed, having evolved through court decisions over a period of 200 years.

The current administration has confirmed that it stands by this reservation. Last year, Defense Department General Counsel William Haynes said:

> ''[C]ruel, inhuman or degrading treatment or punishment'' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States. United States policy is to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with this commitment.

Aside from our legal obligations, there are also important practical reasons for standing by our commitment not to engage in torture or other cruel treatment.

Torture is an ineffective interrogation tactic because it produces unreliable information. People who are being tortured will often lie to their torturer in order to stop the pain.

Resorting to torture and ill treatment of detainees would make us less secure, not more. It would create anti-American sentiment at a time when we need the support and assistance of other countries in the war on terrorism.

Finally, and most importantly, if we were to engage in torture or ill treatment of detainees, we would increase the risk of subjecting members of the Armed Forces to torture if they are captured by our enemies.

The U.S. Army fully recognizes these practical downsides. The Army Field Manual on Intelligence Interrogation states:

> Use of torture and other illegal methods is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear. Revelation of use of torture by U.S. personnel will bring discredit upon the U.S. and its armed forces while undermining domestic and international support for the war effort. It may also place U.S. and allied personnel in enemy hands at a greater risk of abuse by their captors.

As the great American patriot Thomas Paine said: ''He that would make his own liberty secure must guard even his enemy from oppression.''

Sadly, the ''third degree,'' which was condemned by the Wickersham Commission in 1931 and in subsequent Supreme Court decisions, has reemerged in modern times with a new name: ''stress and duress.'' ''Stress and duress'' tactics, which are also known as ''torture lite,'' include extended food, sleep, sensory, or water deprivation, exposure to extreme heat or cold, and ''position abuse,'' which involves forcing detainees to assume positions designed to cause pain or humiliation. ''Stress and duress'' tactics clearly constitute torture or cruel, inhuman, or degrading treatment.

As the Supreme Court explained in Blackburn v. Alabama, a 1960 case:

> [C]oercion can be mental as well as physical . . . the blood of the accused is not the only hallmark of an unconstitutional inquisition. A number of cases have demonstrated, if demonstration were needed, that the efficiency of the rack and the thumbscrew can be matched, given the proper subject, by more sophisticated modes of ''persuasion.''

Let's take one example: sleep deprivation. In Ashcraft v. Tennessee, a 1944 case, the Supreme Court held that a confession obtained by depriving a suspect of sleep and continuously questioning him for 36 hours was involuntarily coerced. For the majority, Justice Hugo Black wrote:

> It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired [quoting the Wickersham Commission]. . . . We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear.

As explained in a recent New York Times article by Adam Hochschild, sleep deprivation was widely used in the Middle Ages on suspected witches—it was called tormentum insomniae. Stalin's secret police subjected prisoners to the ''conveyer belt,'' continuous questioning by numerous interrogators until the prisoner signed a confession. Former Israeli Prime Minister Menachem Begin wrote about his experience with sleep deprivation in a Soviet prison in the 1940's:

> In the head of the interrogated prisoner a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire: to sleep, to sleep just a little. . . . Anyone who has experienced this desire knows that not even hunger or thirst are comparable with it. . . . I came across prisoners who signed what they were told to sign, only to get what the interrogator promised them . . . uninterrupted sleep!

Another example is ''position abuse.'' In 2002, in a case called Hope v. Pelzer, the Supreme Court addressed this issue. Hope, a prisoner, was handcuffed to a ''hitching post'' for seven hours in the sun and not allowed to use the bathroom. The Court held that this violated the 8th Amendment prohibition on cruel and unusual punishment. The Court said:

> The obvious cruelty inherent in this practice should have provided [the prison guards] with some notice that their alleged conduct violated Hope's constitutional protection against cruel and unusual punishment. Hope was treated in a way antithetical to human dignity—he was hitched to a post for an extended period of time in a position that was painful, and under circumstances that were both degrading and dangerous.

In the 1930s, Stalin's secret police forced dissidents to stand for prolonged periods to coerce confessions for show trials. In 1956, experts commissioned by the CIA documented the effects of forced standing. They found that ankles and feet swell to twice their normal size within 24 hours, the heart rate increases, some people faint, and the kidneys eventually shut down.

For many years, the United States has characterized the use of ''stress and duress'' by other countries as ''Torture and Other Cruel, Inhuman and Degrading Treatment.'' The State Department's ''Country Reports on Human Rights Practices,'' which are submitted to Congress every year, have condemned ''beatings,'' ''threats to detainees or their family members,'' ''sleep deprivation,'' ''depriv[ation] of food and water,'' ''suspension for long periods in contorted positions,'' ''prolonged isolation,'' ''forced prolonged standing,'' ''tying of the hands and feet for extended periods of time,'' ''public humiliation,'' ''sexual humiliation,'' and ''female detainees . . . being forced to strip in front of male security officers.''

The Army Field Manual on Intelligence Interrogation characterizes ''stress and duress'' as illegal physical and mental torture. The Manual states that ''acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or an aid to interrogation'' are ''illegal.'' It defines ''infliction of pain through . . . bondage (other than legitimate use of restraints to prevent escape),'' ''forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time,'' ''food deprivation,'' and ''any form of beating,'' as ''physical torture'' and defines ''abnormal sleep deprivation'' as ''mental torture'' and prohibits the use of these tactics under any circumstances.

The Army Field Manual provides very specific guidance about interrogation techniques that may approach the

line between lawful and unlawful actions. Before using a questionable interrogation technique, an interrogator is directed to ask whether ''If your contemplated actions were perpetrated by the enemy against U.S. [prisoners of war], you would believe such actions violate international or U.S. law. . . . If you answer yes . . . do not engage in the contemplated action.''

This is the Army's version of ''the golden rule''—do unto others as you would have them do to you. It is an important reminder that the prohibition on torture and other cruel treatment protects American soldiers as much as it does the enemy. If enemy forces used stress and duress tactics on American soldiers, we would condemn them. We must hold ourselves to the same standard.

The United States is not alone in condemning ''torture lite.'' In Israel, a country that has grappled with terrorism for decades, the Supreme Court held that ''stress and duress'' techniques violate international law and are absolutely prohibited. As the Court explained:

These prohibitions are ''absolute.'' There are no exceptions to them and there is no room for balancing. Indeed violence directed at a suspect's body or spirit does not constitute a reasonable investigation practice.

For all of these reasons, it is vitally important that the Congress affirm the United States' commitment not to engage in torture or cruel, inhuman or degrading treatment.

Our commitment to principle, even during difficult times, has made America a special country. In the age of terrorism, we may be tempted by the notion that torture is justified. But to sacrifice this principle would grant the terrorists a valuable victory at our expense.

The Israeli Supreme Court has explained:

Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the Rule of Law and recognition of an individual's liberty constitutes an important component in its understanding of security. At the end of the day, they strengthen its spirit and allow it to overcome its difficulties.

The brutal slaying of Nicholas Berg reminded us that our enemies do not respect any rules in their relentless quest to kill Americans. But that is what distinguishes us from the terrorists we fight. There are some lines that we will not cross. Torture and cruel, inhuman or degrading treatment are inconsistent with the principles of liberty and the rule of law that underpin our democracy.

As President Reagan reminded us, our city upon a hill must stand firm. The eyes of the world are upon us.

I urge my colleagues to support the amendment.

It has been suggested to me by staff that perhaps I would offer the amendment this evening and then ask unanimous consent it be set aside while we work things out with Chairman WARNER and other Senators who are interested in this issue.

If there is no objection, with the understanding that I will not call up the amendment this evening and will wait until a decision from the chairman and the ranking member as to my place in line, I offer the amendment and merely at this point ask it be reported by the clerk.

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

AMENDMENT NO. 3386

Mr. DURBIN. I send to the desk amendment No. 3386.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Illinois, [Mr. DURBIN], proposes an amendment numbered 3386.

Mr. DURBIN. 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 as follows:

(Purpose: To affirm that the United States may not engage in torture or cruel, inhuman, or degrading treatment or punishment)

At the end of subtitle F of title X, insert the following:

SEC. 1055. HUMANE TREATMENT OF DETAINEES.

(a) FINDINGS.—Congress makes the following findings:

(1) After World War II, the United States and its allies created a new international legal order based on respect for human rights. One of its fundamental tenets was a universal prohibition on torture and ill treatment.

(2) On June 26, 2003, the International Day in Support of Victims of Torture, President George W. Bush stated, ''The United States is committed to the world-wide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment.''.

(3) The United States is a party to the Geneva Conventions, which prohibit torture, cruel treatment, or outrages upon personal dignity, in particular, humiliating and degrading treatment, during armed conflict.

(4) The United States is a party to 2 treaties that prohibit torture and cruel, inhuman, or degrading treatment or punishment, as follows:

(A) The International Covenant on Civil and Political Rights, done at New York December 16, 1966.

(B) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

(5) The United States filed reservations to the treaties described in subparagraphs (A) and (B) of paragraph (4) stating that the United States considers itself bound to prevent ''cruel, inhuman or degrading treatment or punishment'' to the extent that phrase means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th amendment, 8th amendment, or 14th amendment to the Constitution.

(6) Army Regulation 190-8 entitled ''Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees'' provides that ''Inhumane treatment is a serious and punishable violation under international law and the Uniform Code of Military Justice (UCMJ).... All prisoners will receive humane treatment without regard to race, nationality, religion, political opinion, sex, or other criteria. The following acts are prohibited: murder, torture, corporal punishment, mutilation, the taking of hostages, sensory deprivation, collective punishments, execution without trial by proper authority, and all cruel and degrading treatment.... All persons will be respected as human beings. They will be protected against all acts of violence to include rape, forced prostitution, assault and theft, insults, public curiosity, bodily injury, and reprisals of any kind.... This list is not exclusive.''.

(7) The Field Manual on Intelligence Interrogation of the Department of the Army states that ''acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or an aid to interrogation'' are ''illegal''. Such Manual defines ''infliction of pain through... bondage (other than legitimate use of restraints to prevent escape)'', ''forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time'', ''food deprivation'', and ''any form of beating'' as ''physical torture'', defines ''abnormal sleep deprivation'' as ''mental torture'', and prohibits the use of such tactics under any circumstances.

(8) The Field Manual on Intelligence Interrogation of the Department of the Army states that ''Use of torture and other illegal methods is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear. Revelation of use of torture by U.S. personnel will bring discredit upon the U.S. and its armed forces while undermining domestic and international support for the war effort. It may also place U.S. and allied personnel in enemy hands at a greater risk of abuse by their captors.''.

(b) PROHIBITION ON TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—(1) No person in the custody or under the physical control of the United States shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States.

(2) Nothing in this section shall affect the status of any person under the Geneva Conventions or whether any person is entitled to the protections of the Geneva Conventions.

(c) RULES, REGULATIONS, AND GUIDELINES.—(1) Not later than 180 days after the date of enactment of this Act, the Secretary shall prescribe the rules, regulations, or guidelines necessary to ensure compliance with the prohibition in subsection (b)(1) by the members of the United States Armed Forces and by any person providing services to the Department of Defense on a contract basis.

(2) The Secretary shall submit to the congressional defense committees the rules, regulations, or guidelines prescribed under paragraph (1), and any modifications to such rules, regulations, or guidelines—

(A) not later than 30 days after the effective date of such rules, regulations, guidelines, or modifications; and

(B) in a manner and form that will protect the national security interests of the United States.

(d) REPORT TO CONGRESS.—(1) The Secretary shall submit, on a timely basis and not less than twice each year, a report to Congress on the circumstances surrounding any investigation of a possible violation of the prohibition in subsection (b)(1) by a member of the Armed Forces or by a person providing services to the Department of Defense on a contract basis.

(2) A report required under paragraph (1) shall be submitted in a manner and form that—

(A) will protect the national security interests of the United States; and

(B) will not prejudice any prosecution of an individual involved in, or responsible for, a violation of the prohibition in subsection (b)(1).

(e) DEFINITIONS.—In this section:

(1) The term ''cruel, inhuman, or degrading treatment or punishment'' means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th amendment, 8th amendment, or 14th amendment to the Constitution.

(2) The term ''Geneva Conventions'' means—

(A) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(B) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(C) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(D) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(3) The term ''Secretary'' means the Secretary of Defense.

(4) The term ''torture'' has the meaning given that term in section 2340 of title 18, United States Code.

Mr. WARNER. Would the Senator from Illinois clarify this?

Mr. DURBIN. I offered the amendment and asked unanimous consent that it be set aside pending a decision by the chairman and Senator LEVIN and other Senators.

Mr. WARNER. I wonder if the Senator might withhold until Senator REID, with whom I am working tonight, will give me some advice. What we will be doing—Senator REID could draw his up—we are going to incorporate this into the agreement.

The PRESIDING OFFICER. The amendment has already been reported.

Mr. DURBIN. I ask unanimous consent the amendment be set aside until there is an agreement between Senator WARNER, Senator LEVIN, Senator REID, and others as to the time that it may be considered.

Mr. WARNER. I was under the understanding we would do it differently. I have not had a chance to discuss this with Senator LEVIN. I understood you were just going do speak to this and not propose it. What is done, is done.

Mr. DURBIN. I asked unanimous consent to set it aside, and it will not be considered until you, Senator WARNER, and Senator LEVIN say it is appropriate, whatever that time may be.

Mr. WARNER. What was the decision we made with respect to Senator REED?

We have to have some equality of how we are handling these things.

The PRESIDING OFFICER. The Reed amendment has been called up and is now set aside by the Durbin amendment.

Mr. WARNER. This amendment would then have the same status of being a pending amendment.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. I thought by asking unanimous consent that it be set aside, it would not in any way supersede any other Members' rights.

Mr. WARNER. We get so many gatekeeping amendments up here we could encounter difficulty tomorrow morning.

Mr. DURBIN. You have been so cooperative and helpful, I ask unanimous consent that my amendment be withdrawn and I will offer it tomorrow. I want to do whatever the chairman wishes.

Mr. REID. Mr. President, will the distinguished Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. REID. The Senator from Illinois is willing to have his amendment set aside. He is certainly not trying to take advantage of anyone. I think it does not solve our problem if he withdraws his amendment.

Mr. WARNER. I just want to treat—Senator REED was here momentarily, and we worked with him. Anyway, I want to be fair to all Senators.

Mr. REID. We have a queue that is tentatively going to be set up to handle all this tomorrow.

Mr. WARNER. We will work this out tonight, hopefully.

Mr. LEVIN. The Senator from Illinois has indicated—if I could just ask whoever has the floor to yield?

Mr. DURBIN. I yield.

Mr. LEVIN. His amendment will be back in order when the chairman and ranking member so designate it. He is not trying to use his amendment as a gatekeeper. Why don't we just leave it pending and then set it aside?

Mr. WARNER. If he will withdraw it, we can include it in the unanimous consent tonight.

Mr. REID. We do not need to have him withdraw it.

Mr. WARNER. I beg your pardon?

Mr. REID. We do not need to have him withdraw it.

Mr. WARNER. Well, I am going to rely on your assurances.

Mr. REID. Because the Senator from Illinois has said he is not trying to take advantage of anyone, not trying to be a gatekeeper, that it is up to the two managers of the bill when the amendment of the Senator from Illinois is acted upon.

Mr. LEVIN. Mr. President, may I suggest this. If I could have the chairman's attention, if we have a unanimous consent agreement that is entered into tonight, and if we include Senator DURBIN's amendment in that list, that would supersede whatever status that amendment has at this point. Would that be agreeable to everyone?

Mr. WARNER. That is agreeable.

Mr. DURBIN. That is agreeable to me, as well.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am curious, having offered the amendment, whether I need to make a unanimous consent request to make it clear what has been agreed upon?

The PRESIDING OFFICER. No.

Mr. DURBIN. It appears it has become part of the legend and lore of the Senate, and I cannot add anything to it.

Mr. President, I yield the floor.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3167, AS MODIFIED

Mr. WARNER. Mr. President, the Senator from Michigan and myself will now proceed to do some cleared amendments. Domenici amendment No. 3167 was inadvertently approved by the Senate yesterday without a modification that was agreed to by both the majority and minority. I send to the desk a modified amendment No. 3167, as agreed to, as a substitute for the original amendment and ask unanimous consent that it be substituted for the version agreed to yesterday.

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

The amendment (No. 3167), as modified, was agreed to, as follows:

(Purpose: To require a report on the availability of potential overland ballistic missile defense test ranges)

At the end of subtitle C of title X, add the following:

SEC. 1022. REPORT ON AVAILABILITY OF POTENTIAL OVERLAND BALLISTIC MISSILE DEFENSE TEST RANGES.

The Secretary of Defense shall submit to Congress a report assessing the availability to the Department of Defense of potential ballistic missile defense test ranges for overland intercept flight tests of defenses against ballistic missile systems with a range of 750 to 1,500 kilometers.

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

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

The motion to lay on the table was agreed to.

AMENDMENTS NOS. 3395; 3392, AS MODIFIED; 3402, AS MODIFIED; 3346, AS MODIFIED; 3326, AS MODIFIED; 3349, AS MODIFIED; AND 3385, AS MODIFIED, EN BLOC

Mr. WARNER. Mr. President, I send a package of amendments to the desk and ask that they be considered en bloc.

The PRESIDING OFFICER. Is there objection to considering the amendments en bloc?

Mr. LEVIN. No objection.

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

Is there further debate? If not, without objection, the amendments are agreed to.

The amendments were agreed to, as follows:

AMMENDMENT NO. 3395

(Purpose: to encourage the Secretary of Defense to achieve maximum cost effective energy savings)

On page 195, between lines 10 and 11, insert the following:

SEC. 868. ENERGY SAVINGS PERFORMANCE CONTRACTS.

The Secretary of Defense shall, to the extent practicable, exercise existing statutory authority, including the authority provided by section 2865 of title 10, United States Code, and section 8256 of title 42, United States Code, to introduce life-cycle cost-effective upgrades to Federal assets through shared energy savings contracting, demand management programs, and utility incentive programs.

AMENDMENT NO. 3392, AS MODIFIED

(Purpose: To clarify the duties and activities of the Vaccine Healthcare Centers Network)

On page 147, after line 21, add the following:

SEC. ___. VACCINE HEALTHCARE CENTERS NETWORK.

Section 1110 of title 10, United States Code, is amended by adding at the end the following:

''(c) VACCINE HEALTHCARE CENTERS NETWORK.—(1) The Secretary shall carry out this section through the Vaccine Healthcare Centers Network as established by the Secretary in collaboration with the Director of the Centers for Disease Control and Prevention.

''(2) In addition to conducting the activities described in subsection (b), it shall be the purpose of the Vaccine Healthcare Centers Network to improve—

''(A) the safety and quality of vaccine administration for the protection of members of the armed forces;

''(B) the submission of data to the Vaccine-related Adverse Events Reporting System to include comprehensive content and follow-up data;

''(C) the access to clinical management services to members of the armed forces who experience vaccine adverse events;

''(D) the knowledge and understanding by members of the armed forces and vaccine-providers of immunization benefits and risks.

''(E) networking between the Department of Defense, the Department of Health and Human Services, the Department of Veterans Affairs, and private advocacy and coalition groups with regard to immunization benefits and risks; and

''(F) clinical research on the safety and efficacy of vaccines.

''(3) To achieve the purposes described in paragraph (2), the Vaccine Healthcare Centers Network, in collaboration with the medical departments of the armed forces, shall carry out the following:

''(A)(i) Establish a network of centers of excellence in clinical immunization safety assessment that provides for outreach, education, and confidential consultative and direct patient care services for vaccine related adverse events prevention, diagnosis, treatment and follow-up with respect to members of the armed services.

''(ii) Such centers shall provide expert second opinions for such members regarding medical exemptions under this section and for additional care that is not available at the local medical facilities of such members.

''(B) Develop standardized educational outreach activities to support the initial and ongoing provision of training and education for providers and nursing personnel who are engaged in delivering immunization services to the members of the armed forces.

''(C) Develop a program for quality improvement in the submission and understanding of data that is provided to the Vaccine-related Adverse Events Reporting System, particularly among providers and members of the armed forces.

''(D) Develop and standardize a quality improvement program for the Department of Defense relating to immunization services.

''(E) Develop an effective network system, with appropriate internal and external collaborative efforts, to facilitate integration, educational outreach, research, and clinical management of adverse vaccine events.

''(F) Provide education and advocacy for vaccine recipients to include access to vaccine safety programs, medical exemptions, and quality treatment.

''(G) Support clinical studies with respect to the safety and efficacy of vaccines, including outcomes studies on the implementation of recommendations contained in the clinical guidelines for vaccine-related adverse events.

''(H) Develop implementation recommendations for vaccine exemptions or alternative vaccine strategies for members of the armed forces who have had prior, or who are susceptible to, serious adverse events, including those with genetic risk factors, and the discovery of treatments for adverse events that are most effective.

''(4) It is the sense of the Senate—

''(A) to recognize the important work being done by the Vaccine Healthcare Center Network for the members of the armed forces; and

''(B) that each of the military departments (as defined in section 102 of title 5, United States Code) is strongly encouraged to fund the Vaccine Healthcare Center Network.''.

AMENDMENT NO. 3402, AS MODIFIED

(Purpose: To express the sense of Congress that the elimination of the drug trade in Afghanistan should be a national security priority for the United States, and to require a report on related efforts)

On page 272, after the matter following line 18, insert the following:

SEC. 1055. DRUG ERADICATION EFFORTS IN AFGHANISTAN.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States engaged in military action against the Taliban-controlled Government of Afghanistan in 2001 in direct response to the Taliban's support and aid to Al Qaeda.

(2) The military action against the Taliban in Afghanistan was designed, in part, to disrupt the activities of, and financial support for, terrorists.

(3) A greater percentage of the world's opium supply is now produced in Afghanistan than before the Taliban banned the cultivation or trade of opium.

(4) In 2004, more than two years after the Taliban was forcefully removed from power, Afghanistan is supplying approximately 75 percent of the world's heroin.

(5) The estimated value of the opium harvested in Afghanistan in 2003 was $2,300,000,000.

(6) Some of the profits associated with opium harvested in Afghanistan continue to fund terrorists and terrorist organizations, including Al Qaeda, that seek to attack the United States and United States interests.

(7) The global war on terror is and should remain our Nation's highest national security priority.

(8) United States and Coalition counterdrug efforts in Afghanistan have not yet produced significant results.

(9) There are indications of strong, direct connections between terrorism and drug trafficking.

(10) The elimination of this funding source is critical to making significant progress in the global war on terror.

(11) The President of Afghanistan, Hamid Karzai, has stated that opium production poses a significant threat to the future of Afghanistan, and has established a plan of action to deal with this threat.

(12) The United Nations Office on Drugs and Crime has reported that Afghanistan is at risk of again becoming a failed state if strong actions are not taken against narcotics.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the President should make the substantial reduction of drug trafficking in Afghanistan a priority in the war on terror;

(2) the Secretary of Defense should, in coordination with the Secretary of State, work to a greater extent in cooperation with the Government of Afghanistan and international organizations involved in counterdrug activities to assist in providing a secure environment for counterdrug personnel in Afghanistan; and

(3) because the trafficking of narcotics is known to support terrorist activities and contributes to the instability of the Government of Afghanistan, additional efforts should be made by the Armed Forces of the United States, in conjunction with and in support of coalition forces, to significantly reduce narcotics trafficking in Afghanistan and neighboring countries, with particular focus on those trafficking organizations with the closest links to known terrorist organizations.

(c) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report that describes—

(1) progress made towards substantially reducing the poppy cultivation and heroin production capabilities in Afghanistan; and

(2) the extent to which profits from illegal drug activity in Afghanistan fund terrorist organizations and support groups that seek to undermine the Government of Afghanistan.

AMENDMENT NO. 3346, AS MODIFIED

(Purpose: To reduce barriers for Hispanic-serving institutions in defense contracts, defense research programs, and other minority-related defense programs)

At the end of subtitle G of title X, add the following:

SEC. 1068. REDUCTION OF BARRIERS FOR HISPANIC-SERVING INSTITUTIONS IN DEFENSE CONTRACTS, DEFENSE RESEARCH PROGRAMS, AND OTHER MINORITY-RELATED DEFENSE PROGRAMS.

Section 502(a)(5)(C) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5)(C)) is amended by inserting before the period the following: '', which assurances—

''(i) may employ statistical extrapolation using appropriate data from the Bureau of the Census or other appropriate Federal or State sources; and

''(ii) the Secretary shall consider as meeting the requirements of this subparagraph, unless the Secretary determines, based on a preponderance of the evidence, that the assurances do not meet the requirements''.

AMENDMENT NO. 3326, AS MODIFIED

(Purpose: to clarify the authorities of the Judge Advocates General)

On page 221, between the matter following line 17 and line 18, insert the following:

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATES GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 3037 of this title, the General Counsel''.

(2)(A) Section 3037 of such title is amended to read as follows:

''§ 3037. Judge Advocate General, Assistant Judge Advocate General: appointment; duties

''(a) POSITION OF JUDGE ADVOCATE GENERAL.—There is a Judge Advocate General in the Army, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Judge Advocate General's Corps. The term of office is four years, but may be sooner terminated or extended by the President. The Judge Advocate General, while so serving, has the grade of lieutenant general.

''(b) APPOINTMENT.—The Judge Advocate General of the Army shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

''(c) DUTIES.—The Judge Advocate General, in addition to other duties prescribed by law—

''(1) is the legal adviser of the Secretary of the Army, the Chief of Staff of the Army, and the Army Staff, and of all offices and agencies of the Department of the Army;

''(2) shall direct and supervise the members of the Judge Advocate General's Corps and civilian attorneys employed by the Department of the Army (other than those assigned or detailed to the Office of the General Counsel of the Army) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Army;

''(4) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

''(5) shall perform such other legal duties as may be directed by the Secretary of the Army.

''(d) POSITION OF ASSISTANT JUDGE ADVOCATE GENERAL.—There is an Assistant Judge Advocate General in the Army, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Army who have the qualifications prescribed in subsection (b) for the Judge Advocate General. The term of office of the Assistant Judge Advocate General is four years, but may be sooner terminated or extended by the President. An officer appointed as Assistant Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.

''(e) APPOINTMENTS RECOMMENDED BY SELECTION BOARDS.—Under regulations prescribed by the Secretary of Defense, the Secretary of the Army, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or under subsection (d) for appointment as the Assistant Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.''.

(B) The item relating to such section in the table of sections at the beginning of chapter 305 of such title is amended to read as follows:

''3037. Judge Advocate General, Assistant Judge Advocate General: appointment; duties.''.

(b) DEPARTMENT OF THE NAVY.—(1) Section 5019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 5148 of this title, the General Counsel''.

(2) Section 5148 of such title is amended—

(A) in subsection (b), by striking the fourth sentence and inserting the following: ''The Judge Advocate General, while so serving, has the grade of vice admiral or lieutenant general, as appropriate.''; and

(B) by striking subsection (d) and inserting the following:

''(d) The Judge Advocate General, in addition to other duties prescribed by law—

''(1) is the legal adviser of the Secretary of the Navy, the Chief of Naval Operations, and all offices, bureaus, and agencies of the Department of the Navy;

''(2) shall direct and supervise the judge advocates of the Navy and the Marine Corps and civilian attorneys employed by the Department of the Navy (other than those assigned or detailed to the Office of the General Counsel of the Navy) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Navy or Marine Corps;

''(4) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

''(5) shall perform such other legal duties as may be directed by the Secretary of the Navy.''.

(c) DEPARTMENT OF THE AIR FORCE.—(1) Section 8019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 8037 of this title, the General Counsel''.

(2) Section 8037 of such title is amended—

(A) in subsection (a), by striking the third sentence and inserting the following: ''The Judge Advocate General, while so serving, has the grade of lieutenant general.''; and

(B) in subsection (c)—

(i) by striking ''General shall,'' in the matter preceding paragraph (1) and inserting ''General,'';

(ii) by redesignating paragraphs (1) and (2) as paragraphs (4) and (5), respectively, and, in each such paragraph, by inserting ''shall'' before the first word; and

(iii) by inserting after paragraph (1) the following new paragraphs:

''(1) is the legal adviser of the Secretary of the Air Force, the Chief of Staff of the Air Force, and the Air Staff, and of all offices and agencies of the Department of the Air Force;

''(2) shall direct and supervise the members of the Air Force designated as judge advocates and civilian attorneys employed by the Department of the Air Force (other than those assigned or detailed to the Office of the General Counsel of the Air Force) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Air Force;''.

(d) EXCLUSION FROM LIMITATION ON GENERAL AND FLAG OFFICER DISTRIBUTION.—Section 525(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(9) An officer while serving as the Judge Advocate General of the Army, the Judge Advocate General of the Navy, or the Judge Advocate General of the Air Force is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general or rear admiral under paragraph (1) or (2), as the case may be.''.

AMENDMENT NO. 3349, AS MODIFIED

(Purpose: To modify the authority to convey land at Equipment and Storage Yard, Charleston, South Carolina)

On page 365, between lines 18 and 19, insert the following:

SEC. 2830. MODIFICATION OF AUTHORITY FOR LAND CONVEYANCE, EQUIPMENT AND STORAGE YARD, CHARLESTON, SOUTH CAROLINA.

Section 563(h) of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 360) is amended to read as follows:

''(h) CHARLESTON, SOUTH CAROLINA.—

''(1) IN GENERAL.—The Secretary may convey to the City of Charleston, South Carolina (in this section referred to as the 'City'), all right, title, and interest of the United States in and to a parcel of real property of the Corps of Engineers, together with any improvements thereon, that is known as the Equipment and Storage Yard and consists of approximately 1.06 acres located on Meeting Street in Charleston, South Carolina, in as-is condition.

''(2) CONSIDERATION.—As consideration for the conveyance of property under paragraph (1), the City shall provide the United States, whether by cash payment, in-kind contribution, or a combination thereof, an amount that is not less than the fair market value of the property conveyed, as determined by the Secretary.

''(3) USE OF PROCEEDS.—Amounts received as consideration under this subsection may be used by the Corps of Engineers, Charleston District, as follows:

''(A) Any amounts received as consideration may be used to carry out activities under this Act, notwithstanding any requirements associated with the Plant Replacement and Improvement Program (PRIP), including—

''(i) leasing, purchasing, or constructing an office facility within the boundaries of Charleston, Berkeley, and Dorchester Counties, South Carolina; and

''(ii) satisfying any PRIP balances.

''(B) Any amounts received as consideration that are in excess of the fair market value of the property conveyed under paragraph (1) may be used for any authorized activities of the Corps of Engineers, Charleston District.

''(4) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under paragraph (1) and any property transferred to the United States as consideration under paragraph (2) shall be determined by surveys satisfactory to the Secretary.

''(5) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under paragraph (1) as the Secretary considers appropriate to protect the interests of the United States.''.

AMENDMENT NO. 3385, AS MODIFIED

(Purpose: To exempt procurements of certain services from the limitation regarding service charges imposed for defense procurements made through contracts of other agencies)

On page 163, between lines 19 and 20, insert the following:

''(c) INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.—This section does not apply to procurements of the following services:

''(1) Printing, binding, or blank-book work to which section 502 of title 44 applies.

''(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 114 Stat. 2187; 2 U.S.C. 182c).

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

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

The motion to lay on the table was agreed to.

Mr. GRASSLEY. Mr. President, I am pleased to be joined by my colleague Senator FEINSTEIN in support of amendment No. 3402 to S. 2400, the Department of Defense Reauthorization bill. We hope this resolution expressing Congress's expectations will encourage the Department to do more to address narcotics trafficking in Afghanistan.

This resolution calls upon the President to make the elimination of drug trafficking in Afghanistan a priority in the global war on terror; encourages the Secretary of Defense to increase cooperation and coordination with the Government of Afghanistan and our allies to assist in providing a secure environment for counterdrug personnel operating in Afghanistan; and calls upon the Armed Forces to work with our allies against the regional illicit narcotics trade.

These are not original observations. In testimony before both committees in both Chambers, several officials from the Department of Defense have affirmed that there is a strong, direct connection between terrorism and drug trafficking. We know from this testimony and other evidence that some of the profits generated by narcotics trafficking support terrorists.

This resolution is needed, because there is some inconsistency between the direction that we are providing to our troops in Afghanistan and the narco-terrorist connection. I do not believe that we will see long-term success in the global war on terror until the financial underpinnings of terrorists are eliminated, and I do not believe that Afghanistan can avoid becoming a narco-state if the drug trafficking there is not addressed. To avoid these potential pitfalls, we must step up our counter-narcotics activities in Afghanistan. I hope the administration, and particularly the Department of Defense, will heed this resolution.

Narcotic trafficking is not only a source of funding for terrorist organizations, but its production poses a threat to the future stability of Afghanistan. President Karzai has stated repeatedly that he believes opium production poses a significant threat to the future of Afghanistan. His concerns are echoed by the United Nations Office on Drugs and Crime, which recently warned that Afghanistan is at risk of again becoming a failed state if strong actions are not taken against narcotics. If we are going to assist the people of Afghanistan in their efforts to create a stable country, we cannot ignore their pleas for greater action against the narco-terrorists operating in the region.

Mr. President, I believe that our current policy in Afghanistan does not square with these observations about the threat that narcotics pose to the future of Afghanistan. Attempts are being made to separate anti-terror operations from anti-drug operations, despite the acknowledged link between the two. We know that drug trafficking is a war industry of terrorism. If we are going to be successful, we must eliminate the financial underpinnings of terrorism just as effectively as the organizations themselves.

Those who sell and trade opium in Afghanistan are narco-terrorists. They support terrorists and insurgents who oppose the legitimate government. By supporting terrorists and insurgents, they become legitimate targets for the Combined Forces Command-Afghanistan. Just as ball bearing factories in Nazi Germany were important military targets during World War II, drug labs, and those who facilitate the drug trade, should also be considered viable military targets as we prosecute the War on Terror.

I believe that the United States should treat narcotics traffickers no different than others suspected of cooperating with terrorists. The connection is real, and cannot be ignored. I urge my colleagues to join us in supporting this resolution.

Mrs. FEINSTEIN. Mr. President, I rise in support of the Grassley-Feinstein amendment, which calls upon the President to make the decimation of the Afghanistan heroin trade one of his highest national security priorities, asked the Defense Department to devote more time, energy and resources to anti-drug efforts in Afghanistan, and asks for a study into whether profits from the illegal drug trade continue to fund terrorists and others who upset the stability of that nation.

Afghanistan has long been the world's major supplier of heroin, providing the global market as much as 80% of all the heroin consumed each year.

This is a grave problem—not just because heroin is a bad thing in and of itself, but because profits from the heroin trade in Afghanistan have historically been funneled, in large part, to terrorists bent on doing America harm or those that aid and protect those terrorists.

Indeed, it has been estimated that millions of dollars—even hundreds of millions of dollars—in drug profits have been funneled to al-Qaida and other terrorist organizations throughout the world. Those organizations, in turn, can use the money to run terrorist training camps; to buy guns, bombs and other supplies; to recruit; and to fund terrorist operations throughout the world.

Needless to say, this is a major problem. If we continue to allow terrorist organizations to rake in hundreds of millions of untraceable dollars, the war on terror is going to go quite poorly for us indeed.

This is not the first time I have raised these concerns. Last May, for instance, I expressed concern that this administration had made a decision to allow warlords and others in Afghanistan to continue to grow poppy and to produce opium, in the hopes of maintaining relationships and alliances with those who were trafficking in drugs. In other words, the administration was essentially turning a blind eye to drug production, in order to work more closely with those who were profiting from it.

This was not acceptable then, and it remains unacceptable now. The very reason we went to Afghanistan—to remove al-Qaida's means of support—will be lost if we continue to allow these drug lords to fund al-Qaida and those that hide them, protect them, fund them and help them in other ways.

More than two years after we went into Afghanistan, we don't have bin Laden. We have not stopped the terrorist attacks. We do not control the countryside in Afghanistan. And now we are standing by while the drug trade flourishes beyond levels experienced even before 9/11.

I know this is not an easy problem to solve. Farmers in Afghanistan, like in many other nation's involved in illegal drug production, often find that growing poppy is far more profitable than the country's other staples—cereals, wheat, barley, rice, and so on.

So combined with Afghanistan's foreboding terrain and chaotic political and security situation, it is not a simple matter to eliminate drug production.

Many farmers survive either solely on poppy production or by growing a mix of legal, and illegal crops.

There is hope—poppy production represents only about 8% of Afghanistan's crop production (in volume). So many farmers do grow alternate crops, and they make a living doing it.

But we need to make better efforts to provide farmers good alternatives; to deter production; and, most importantly, to eradicate the crops on the ground.

Eradicating poppy is not easy—particularly in a nation where the central government has so little control over its distant—and even not-so-distant—provinces.

Only with military assistance can anti-drug operatives go into an area and take out the poppy fields. Some of these warlords have virtual armies at their disposal—helicopters, rocket launchers, you name it. This is not your local marijuana field in someone's backyard. This, truly, is akin to war.

The war in Iraq has certainly hindered the Defense Department's ability to assist in these operations—there is only so much manpower and equipment to go around. This is one reason why so many questioned the advisability of going into Iraq before the job in Afghanistan was finished.

But tough as it may be to solve, this issue is simply too important to ignore, and we cannot wait any longer.

Recent estimates put Afghanistan's poppy production this year at more than 5,000 metric tons—more than 50 percent higher than last year.

Even if the most aggressive current efforts at eradication succeed in every respect, only 25 percent of the crop this year will be destroyed.

This means that no matter what, more heroin will be produced this year

than last. The value of that heroin could easily exceed three billion dollars. Farmers only get about a penny on the dollar. Where is the rest of the money going? Best estimates are that much of it goes to terrorists or their protectors.

This simply cannot continue if we hope to win the war on terror. This amendment calls upon the Defense Department to better assist in protecting drug eradication efforts and to work to disrupt and destroy those who aid terrorist activity through the drug trade.

I urge my colleagues to support this amendment. I yield the floor.

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate resume the Defense authorization bill on Wednesday, there be 30 minutes equally divided for debate in relation to the Dodd amendment, No. 3313, as further modified. I further ask that following that time, the Senate proceed to a vote in relation to the amendment, with no amendments in order to the amendment prior to the vote. I further ask that following the disposition of the Dodd amendment, the Senator from Virginia, Mr. WARNER, or his designee, be recognized to offer the next first-degree amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

COMMISSION ON THE FUTURE OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE

Mr. BYRD. Mr. President, as we are considering the National Defense Authorization Act, I thank my colleagues, Senators WARNER and LEVIN, the Chairman and ranking Member of the Armed Services Committee, for so graciously agreeing to accept an amendment that I and several of my colleagues have proposed to modify Section 841 of that bill to enhance the work of the new ''Commission on the Future of the National Technology and Industrial Base,'' which is being established by this legislation. This amendment is the result of collaboration between myself and Senators SNOWE and KERRY, Chairman and ranking Member of the Committee on Small Business and Entrepreneurship, as well as Senators ALLEN and COLEMAN.

First of all, our amendment will require this new Commission to consider carefully the problem of current or potential shortages of critical technologies in the United States. It will also require the Commission to examine the issue of existing or future shortages of the raw materials that are essential to the production of these technologies.

America's national security continues to be threatened by dwindling supplies of U.S.-made components and raw materials. Our Nation's industrial base can be expected to experience a decline in the production of certain technologies and the raw materials necessary to create them, as more and more small and medium-sized U.S. firms shift their production overseas. To the extent that these firms specialize in the manufacture of unique components, or are ''sole source'' producers of materials needed to supply the U.S. defense industry, their departure from the U.S. market leaves manufacturers of America's critical technologies with a dearth of reliable suppliers.

The amendment that my colleagues and I offer today requires the Commission to examine whether, and in which areas, the United States now suffers, or might suffer in the future, shortages of critical technologies and their raw material inputs. The amendment also accelerates the deadline by which the report must be issued, requiring that it be issued on March 1, 2007, rather than a year later. Further, it requires the Commission to make recommendations addressing these shortages, so that our Nation can attempt to alleviate, ahead of time, any adverse impact that such shortages might have on the national security of the United States.

We cannot wait to discover whether our Nation will be confronted with these shortages. Once they are upon us, it will be too late. If we wait until confronted with the fact that our Nation can no longer access the materials it needs to feed its technological advancement or maintain its industrial base, the consequences could be disastrous. An ounce of prevention is worth a pound of cure, and we hope that by requiring this Commission to examine today possible shortages that could affect our Nation's technology and industrial base tomorrow, we can enhance and protect the national security of the United States.

I would note, in closing, that our amendment will also make certain that representatives of small business can join labor representatives and others associated with the defense industry as members of this new Commission. I ask my colleague from Maine, the distinguished Chair of the Small Business Committee, how exactly will this provision make certain that the Commission has the benefit of obtaining a broad range of diverse opinions drawn from a wide cross-section of America?

Ms. SNOWE. I thank the distinguished Senator from West Virginia for his question. Just like its previous version which I introduced on June 3, this amendment is intended to ensure that small business interests are represented in the Commission's composition and in the subjects of the Commission's activities.

As I stated before, the Commission's activities will be incomplete without taking into account small business contributions to our Nation's defense. The most recent data from the Department of Defense suggests that more work needs to be done to secure small business access to national defense contracts. Representatives of small business contracting concerns would make important contributions to the work of the Commission. In addition, the Commission would benefit from participation by the Chief Counsel for Advocacy of the Small Business Administration or his representative. Congress and President Bush endowed the Chief Counsel's Office of Advocacy with the unique mandate to represent America's small businesses before the agencies of our government. The Chief Counsel's trained staff of economists, analysts, and lawyers would provide much needed perspectives for the Commission deliberations.

I thank Senator BYRD, Chairman WARNER and Senator LEVIN for their work for America's small business. I also wish to thank the esteemed Senators ALLEN, COLEMAN, and KERRY for their support.

Mr. BYRD. I commend the distinguished Chair SNOWE for her tireless efforts on behalf of America's industrial base.

Ms. MIKULSKI. Mr. President, last night the Senate accepted two very important amendments to level the playing field for Federal employees whose jobs are being contracted out. I am so pleased that we agreed to the Kennedy-Chambliss amendment to fix the worst problems with DoD's contracting out process, and the Collins amendment to—at long last—give Federal employees the right to protest contracting out decisions to an independent entity.

DoD is pursuing a political agenda masquerading as management reform. DoD's zeal for privatization costs money, it costs morale, it costs the integrity of the civil service, and now it's costing our reputation in Iraq. I was shocked to hear about about the role of contractors in the appalling abuse of prisoners at Abu Ghraib. DoD is taking contracting out too far. How can you contract out the interrogation of prisoners?

America needs an independent civil service. Our Federal employees are on the front lines every day working hard for America. At a time when we are fighting terrorism and struggling with chaos in Iraq, how does the administration thank DoD employees? By forcing them into unfair competitions. Forcing them to spend time and money competing for their jobs instead of doing their jobs.

Make no mistake. I am not opposed to privatization. In some instances privatization works well. Look at Goddard, in my State of Maryland 3,000 government jobs and 9,000 private contractors. I am proud of them both. What I am opposed to is the Bush administration stacking the deck against Federal employees to pursue an ideologically-driven agenda.

The Kennedy-Chambliss amendment fixes the worst problems with DoD's procedures for contracting out to make competitions more fair for DoD employees. The Kennedy-Chambliss amendment does six things to level the playing field. It guarantees employees the right to submit their own ''best bid'' during a competition. It requires contractors to show that they are actually saving money. It makes sure privatization doesn't come at the expense

of health benefits for employees. It closes loopholes that allow DoD to contract out jobs without a competition. It establishes a process for allowing and encouraging Federal employees to conduct new work and work currently performed by contractors. And it makes sure that DoD has the infrastructure in place to effectively conduct competitions and oversee the contracts.

This amendment is so important. Civilian employees at the Defense Department work hard to support our troops and to protect our country. If we are going to contract out Defense Department work, we need to be very cautious. It's a matter of national security. Can we trust a private company to do the job? What if the company goes out of business? What if it is bought by a foreign company? How do we know a private company will have the same mission—and the same motive as U.S. military personnel?

The Bush administration's rules do just the opposite. They're reckless. They give private contractors the edge—whether they deserve it or not. 75 percent of Federal jobs that were contracted out in 2002 and 2003 were DoD jobs. And DoD is targeting 240,000 more jobs for privatization. More than 20 percent of DoD employees who lost their jobs to contractors never had the chance to compete for their own jobs.

I want to know why the Bush administration is trying to undermine our Federal workforce—pushing a process so clearly stacked in favor of private contractors. Civilian Defense Department employees are not the enemy. Who are these employees? They are the shipbuilders at Naval Academy in Annapolis, they are intelligence analysts, and they are the electricians at the Pentagon—who know every nook and cranny of top secret buildings.

These Federal employees are on the front lines. They lost their lives in the Pentagon on September 11. They are committed to making sure our soldiers are ready to protect us. These men and women are dedicated and duty driven. They are not political strategists. They cannot be bought. Why are some trying to make Federal employees the enemy? They aren't part of the problem, they are part of the solution. I know what Federal employees do, how hard they work. I know they think of themselves first as citizens of the United States of America, second as workers at mission driven agencies.

The way the Defense Department pursues contracting out is irresponsible and dangerous. DoD is pushing contracting out even when it just doesn't make sense, even when it puts our Nation's security at risk, or the integrity of our Armed Forces on the line. They are pushing contracting out even when it costs more to conduct competitions than it saves in the long run.

I know DoD isn't used to holding fair competitions. Look at their track record—no-bid contracts for cronies like Halliburton. But we can't let the Defense Department's zeal for privatization get in the way of the ability of our Armed Forces to carry out their duties. And we can't let them replace our civil service with cronyism and political patronage. That means putting some checks and balances on privatization.

I also want to say a few words about an amendment that Senator COLLINS offered to give Federal employees the right to appeal unfair contracting out decisions to GAO. This legislation is long overdue. Contractors have always been allowed to appeal to GAO or to the Court of Federal Claims when they lose a competition. Yet Federal employees can only appeal within their agency—the same agency that's trying to contract them out. That is unfair.

Giving Federal employees the right to appeal is vital to level the playing field during competitions, to hold agencies accountable for conducting fair competitions, and to make sure taxpayers are getting the best deal.

The Collins amendment is a compromise. It doesn't give employees the exact same rights as contractors. For instance, they can't appeal to the Court of Federal Claims. And it creates hurdles for allowing unions to represent their members in an appeal. I am sick of union busting. I think we can do more for employees. I hope we fix these problems as the process moves forward. But we can't let the perfect be the enemy of the good. I support the Collins amendment because it is a good compromise, and it would—finally—allow employees to appeal when an agency makes a mistake.

MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

125TH ANNIVERSARY OF COLUMBIA, SOUTH DAKOTA

Mr. DASCHLE. Mr. President, this week marks the 125th anniversary of the settlement of one of my state's oldest towns. Columbia, SD, located in Brown County in the northeastern part of my State, has a long and rich history that represents the spirit of hard work and community that defines what it means to be from South Dakota.

In mid-June, 1879, a group of wagons loaded with supplies arrived at the spot that would one day become Columbia, South Dakota. Under the leadership of Byron M. Smith of Minneapolis, the settlers took advantage of the Elm River's abundant water supply, and began work on the new town. Once the first post office was built and officially recognized, the town of Columbia was born.

Today, residents of Columbia proudly reflect on a 125-year history, and the seemingly endless string of goals they have accomplished—and hardships they have had to endure—along the way. From the establishment of the post office in 1879 to the dam that was built 3 years later—creating Lake Columbia—to the construction of the town's first school, courthouse, and roller-skating rink, Columbia's first decade saw its inhabitants lay the groundwork for the future of the community. More than a century has passed since then, during which Columbia has survived fire, drought, dust storms, blizzards, and even a tornado on the town's 99th birthday. After 125 years of both good times and bad, the people of Columbia have emerged as strong and united as ever.

Truly, it is the people who have enabled Columbia to reach this remarkable milestone. The legacy of those original settlers has been carried proudly to this day, and its reach is not limited to the corner of South Dakota where the town resides. In fact, Ralph Herseth, a graduate of Columbia High School and a former Governor of South Dakota, is the grandfather of our State's newest representative, STEPHANIE HERSETH. I am proud to join Representative HERSETH and Senator JOHNSON in congratulating Columbia on its 125th birthday.

ON THE RETIREMENT OF ROYCE FEOUR

Mr. REID. Mr. President, I rise today to honor Royce Feour who recently retired after reporting on boxing and sports for the Las Vegas Review-Journal for nearly 37 years.

Royce is a legend in Nevada sports reporting. He started his career in journalism half a century ago at age 14 when he covered prep sports for the Review Journal and the High School Sports Association.

He continued writing about sports at the University of Nevada-Reno with the support of two journalism scholarships. He became the editor of the school paper, and a correspondent for the Reno Evening Gazette and the Nevada State Journal.

After he graduated, Royce worked for 5 years at Las Vegas Sun, where he became sports editor. He reported on the first football and baseball games at what was back then the Nevada Southern University—now UNLV. At that first football game, it was so dark by the end of the game that no one in the press box could tell if the winning kick was good.

Royce covered the recruitment of UNLV basketball coach Jerry Tarkanian, who lost his first game and offered to quit that same night. The offer was declined, and Tarkanian went on to win 509 games in 19 seasons, and an NCAA championship in 1990.

Royce was a sportswriter, but he was also a newspaper man. So when an earthquake struck San Francisco and rocked the upper deck of Candlestick Park while he was covering game 3 of

the 1988 World Series, he got on the phone and dictated a story about the quake.

Royce is best known for covering boxing in Las Vegas. He has reported on nearly every major championship fight in the city, going back to the Sonny Liston-Floyd Patterson heavyweight title bout at the Las Vegas Convention Center in 1963. He has chronicled the careers of boxing legends such as Muhammed Ali, Lennox Lewis, Roy Jones, Evander Holyfield, Riddick Bowe, Julio Cesar Chavez, Roberto Duran, Larry Holmes, Mike Tyson, Sugar Ray Leonard, Marvin Hagler, Roy Jones Jr., Thomas Hearns and Oscar de La Hoya.

For his incredible work, Royce has earned several Nevada Press Association awards and was named Writer of the Year by the North American Boxing Federation. He was the Las Vegas Boxing Hall of Fame's Local Media Man of the Year. And in 1996, he was awarded the Nat Fleischer Award for ''Excellence in Boxing Journalism'' by the Boxing Writers Association of America.

That is the highest honor that can be given to a boxing reporter. But I honor Royce for his brand of friendship. Royce, thanks for being my friend.

Royce Feour's exceptional skills and lasting devotion to his trade are remarkable. He is truly one of the heavyweights of the Nevada press. Please join me in honoring his years of extraordinary work, and wishing him well in his retirement.

CONGRATULATIONS TO SPARKS, NEVADA

Mr. REID. Mr. President, I rise to offer my congratulations to the City of Sparks, NV, which was recently selected as a finalist in the 2004 All-America City competition.

Sparks is a city of about 80,000 residents in Washoe County, which is in northern Nevada. Under the leadership of Mayor Tony Armstrong, it is a wonderful place to live, even better than it has been in the past.

The All-America City Award is sponsored by the National Civic League, which was founded 110 years ago by Theodore Roosevelt to promote citizenship and democracy.

Since the award was initiated in 1949, more than 4,000 communities have competed for the coveted designation as an All-America City. This year, hundreds of cities began the process, which requires extensive documentation of how the community is responding to challenges. Sparks was selected as one of the 30 finalists.

Nevada is the fastest growing State in the country. Sparks is doing a great job of absorbing growth, while preserving the hometown family atmosphere that makes it so attractive to longtime residents and newcomers alike.

Sparks has also done a great job of revitalizing its infrastructure, especially in the wake of a massive flood a few years ago. Sparks Marina Park and the Victorian Square redevelopment project are two examples of this renewal.

Sparks has always been a great place to live and raise a family. Now it can boast of being an All-America City finalist. Once again, I congratulate the Mayor, City Council and the citizens of Sparks, NV.

CBO REPORT

Mr. DOMENICI. Mr. President, at the time S. Rep. No. 108–269 was filed, the Congressional Budget Office report was not available. At the following link, ftp://ftp.cho.gov/54xx/doc5479/s1582.pdf, the CBO report for S. 1582 is now available on their Web site, and I ask unanimous consent that the CBO cost estimate be printed in the RECORD for the information of the Senate.

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

S. 1582—Valles Caldera Preservation Act of 2004

Summary: Public Law 106–248 established the Valles Caldera Preserve in New Mexico. That law also established the Valles Caldera Trust, a government-owned corporation, to manage the preserve. S. 1582 would make several changes to Public Law 106–248. One of those changes would authorize the Secretary of Agriculture to acquire, by taking, certain subsurface rights to the Baca Ranch, which lies within the preserve. Under the bill, the owners of those subsurface rights would be entitled to just compensation as determined by a court.

CBO estimates that S. 1582 would increase direct spending by about $3 million in 2007. Enacting the bill would not affect revenues. S. 1582 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of state, local, or tribal governments.

In the event that the Secretary of Agriculture uses a declaration of taking to acquire certain mineral interests of the Baca Ranch, such an acquisition would constitute a private-sector mandate as defined by UMRA. The cost of the mandate would be the fair market value of the mineral interests and expenses incurred by the private-sector owners in transferring those interests to the federal government. Based on information from government sources, CBO estimates that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates ($120 million in 2002, adjusted annually for inflation).

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 1582 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment) and 800 (general government).

	By fiscal year, in millions of dollars—									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN DIRECT SPENDING										
Estimated budget authority	0	0	1	0	0	0	0	0	0	0
Estimated outlays	0	0	3	0	0	0	0	0	0	0

Basis of Estimate: For this estimate, CBO assumes that S. 1582 will be enacted near the start of fiscal year 2005 and that the federal government will assume ownership of the subsurface rights soon thereafter. Based on information from the Department of the Interior about the length of time typically required to resolve similar cases, we assume that a court would award a total of $3 million in compensation to the owners of those subsurface rights during fiscal year 2007.

According to the Forest Service, the appraised value of the subsurface rights to be taken is about $2 million. In addition, based on information about historical differences between federal appraisals and amounts awarded by courts to compensate takings of private property in New Mexico, CBO estimates that an additional $1 million would be awarded to the owners of those subsurface rights. Hence, we estimate that payments to those parties would total about $3 million in 2007.

S. 1582 specifies two sources of funds to make that payment. First, the bill would require the Forest Service to use existing funds to compensate the owners of the subsurface rights for the appraised value of those rights. Second, S. 1582 would provide authority to use the Claims and Judgments Fund to pay additional amounts awarded by the court. For this estimate, CBO assumes that the agency would use $2 million of funds appropriated for land acquisition in fiscal year 2004—funds that CBO estimates are available but not likely to be spent under current law—to pay a portion of the compensation amount. Hence, we estimate that the bill would provide new budget authority of $1 million in 2007.

Estimated Impact on State, Local, and Tribal Governments: S. 1582 contains no intergovernment mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments.

Estimated Impact on the Private Sector: In the event that the Secretary of Agriculture uses a declaration of taking to acquire certain mineral interests of the Baca Ranch, such an acquisition would constitute a private-sector mandate as defined by UMRA. The cost of the mandate would be the fair market value of the mineral interests and expenses incurred by the private-sector owners in transferring those interests to the federal government. Based on

information from government sources, CBO estimates that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates ($120 million in 2002, adjusted annually for inflation).

The bill would direct the Secretary of Agriculture to acquire the mineral interests without the seller's consent should negotiations for a sale fail after 60 days. Should those negotiations fail, the Secretary of Agriculture would be required to file a declaration of taking with the court. The declaration of taking would force the owners of the geothermal and mineral interests to give up ownership in exchange for a sum equal to the fair market value as determined by the court. As noted above, an appraisal done by the Forest Service in 2001 concluded that the privately held mineral and geothermal interests on the Baca Ranch have a fair market value of almost $2 million. In December 2001, the Forest Service's offer for purchase of the interests based on this appraisal was rejected.

Estimate Prepared by: Federal Costs: Megan Carroll. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Selena Caldera.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ANNUAL REPORT OF THE U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Mr. BYRD. Mr. President, today the U.S.-China Economic and Security Review Commission issued its second major annual report to the Congress, as mandated by the Congress in its enabling statute, P.L. 106–398, October 30, 2000, as amended by Division P of P.L. 108–7 February 20, 2003. I commend it to my colleagues as a comprehensive, insightful and useful examination of the key trends, policies and realities inherent in the U.S./China relationship, and featuring a number of recommendations for the Congress to consider.

It is noteworthy that the Commission adopted this report by a unanimous, bipartisan vote of 11–0. The commission is composed of an equal number of Democratic and Republican appointees, three each by the four leaders of the Senate and the House of Representatives. It is refreshing, indeed, in an era characterized by far too much partisanship and divisiveness, that in its treatment of the often contentious and important issues regarding this growing bilateral relationship, the Commission could reach a unanimous vote. Debates over foreign policy, it has often been said, to be effective, should end at the water's edge, and we should speak as a Nation with one voice to the world. Mr. President, in this report, bipartisan unanimity has been achieved, and by a very diverse group of thoughtful and independent minded Commissioners. I would also point out that this is a purely congressional body, in that all of the commissioners are appointed by the congressional leadership, and the report which is issued is intended to be exclusively advisory to the Congress.

The mandate of the U.S.-China Commission is to ''monitor, investigate, and report to Congress on the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China.'' The commission, therefore, takes an expansive view of U.S. national security, which is that our economic health and well-being are fundamental national security matters, including the maintenance of a strong manufacturing base, and the ability to maintain U.S. global competitiveness and a healthy employment level and growth rate. These central economic factors are just as essential to the national security and defense of our Nation as are strong and ready standing armies, navies and air forces equipped with the best weaponry, leadership and operational doctrines.

In addition, the commission has treated, very thoroughly, a series of specific topics mandated in amendments to its charter last year, including China's proliferation practices, China's economic reforms and U.S. economic transfers to China, China's energy needs, Chinese firms' access to the U.S. capital markets, U.S. investments into China, China's economic and security impacts in Asia, U.S.-China bilateral programs and agreements, China's record of compliance with its World Trade Organization, WTO, commitments, and the Chinese government's media control efforts.

Mr. President, I will not recite all the many important conclusions and recommendations for action contained in this timely report. But I point out that the United States needs to be much more proactive and clear-thinking in managing our overall relationship with China, and far more focused on what our goals are in the relationship if we are to advance our national economic and security interests.

The report concludes, overall, that the U.S.-China economic relationship lacks active management. U.S. goals for specific elements of the relationship are too vague or even nonexistent. This is particularly highlighted in the enormous goods trade deficit, some $123 billion in 2003, and growing rapidly. The United States has the capability to nudge the Chinese into more positive policies and actions, thereby leveling a playing field which China has tilted in the direction of mercantilist behavior, including, in some arenas, intimidating tactics. Issues which have been festering in the WTO, for instance, such as China's artificial manipulation of the value of her currency, continued tolerance of high levels of Intellectual Property Crimes, massive illegal subsidization of Chinese enterprises, resistance to good faith compliance with important WTO procedures, and with many pledges made for progress in proliferation of WMD, all require heightened levels of attention and management by the United States

The United States certainly has such influence at this period, and for the next few years, because of the enormous dependence of China on our good will, our consumer markets, our manufacturing capability, our technology and our cooperation in many fields. Such dependence will not last forever, however, and it is time that we begin to manage this relationship in ways that will produce more positive and favorable outcomes.

Lastly, Mr. President, this report is studded with recommendations for Congressional action and for joint policy-making efforts between the Congress and the Executive Branch. It recognizes that good policy proceeds from building a strong consensus between our two branches, as well as between our two countries. I encourage my colleagues, many of whom have testified on these matters before the Commission, to examine the recommendations offered for our consideration.

Mr. President, the Commission has today issued this fulsome report, and I ask unanimous consent to have printed in the RECORD the Commission's list of recommendations.

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

RECOMMENDATIONS TO CONGRESS

CHAPTER 1—CHINA'S INDUSTRIAL, INVESTMENT, AND EXCHANGE RATE POLICIES

Recommendations for dealing with China's currency manipulation

The 1988 Omnibus Trade and Competitiveness Act requires the Treasury Department to examine whether countries are manipulating their exchange rates for purposes of gaining international competitive advantage. The Treasury is to arrive at its finding in consultation with the IMF, which defines manipulation as ''protracted large-scale intervention in one direction in the exchange market.'' The Treasury has repeatedly evaded reporting on this test. The Commission recommends that Congress require the Treasury to explicitly address this test in its required report to Congress. Furthermore, a condition for taking action against a country that manipulates its currency is that an offending country be running a material global current account surplus in addition to a bilateral surplus. The Commission recommends that Congress amend this provision so that a material global current account surplus is not a required condition.

The administration should use all appropriate and available tools at its disposal to address and correct the problem of currency manipulation by China and other East Asian countries. With regard to China, this means bringing about a substantial upward revaluation of the yuan against the dollar. Thereafter, the yuan should be pegged to a trade-weighted basket of currencies, and provisions should be established to guide future adjustments if needed. As part of this process, the Treasury Department should engage in meaningful bilateral negotiation with the Chinese government, and it should also engage in meaningful bilateral negotiations with Japan, Taiwan, and South Korea regarding ending their long-standing exchange

rate manipulation. The administration should concurrently encourage our trading partners with similar interests to join in this effort. The Commission recommends that Congress pursue legislative measures that direct the administration to take action—through the WTO or otherwise—to combat China's exchange rate practices in the event that no concrete progress is forthcoming.

Recommendations for addressing China's mercantilist industrial and FDI policies

The Commission recommends that Congress direct the United States Trade Representative (USTR) and the Department of Commerce to undertake immediately a comprehensive investigation of China's system of government subsidies for manufacturing, including tax incentives, preferential access to credit and capital from state-owned financial institutions, subsidized utilities, and investment conditions requiring technology transfers. The investigation should also examine discriminatory consumption credits that shift demand toward Chinese goods, Chinese state-owned banks' practice of noncommercial-based policy lending to state-owned and other enterprises, and China's dual pricing system for coal and other energy sources. USTR and Commerce should provide the results of this investigation in a report to Congress that assesses whether any of these practices may be actionable subsidies under the WTO and lays out specific steps the U.S. government can take to address these practices.

The Commission recommends that Congress direct the administration to undertake a comprehensive review and reformation of the government's trade enforcement infrastructure in light of the limited efforts that have been directed at enforcing our trade laws. Such a review should include consideration of a proposal by Senator Ernest Hollings (D–SC) to establish an assistant attorney general for international trade enforcement in the Department of Justice to enhance our capacity to enforce our trade laws. Moreover, the U.S. government needs to place an emphasis on enforcement of international labor standards and appropriate environmental standards.

The Commission recommends that Congress direct the administration to work with other interested WTO members to convene an emergency session of the WTO governing body to extend the MFA at least through 2008 to provide additional time for impacted industries to adjust to surges in imports from China.

CHAPTER 2—CHINA IN THE WORLD TRADE ORGANIZATION: COMPLIANCE, MONITORING, AND ENFORCEMENT

The Commission recommends that Congress press the administration to make more use of the WTO dispute settlement mechanism and/or U.S. trade laws to redress unfair Chinese trade practices. In particular, the administration should act promptly to address China's exchange rate manipulation, denial of trading and distribution rights, lack of IPR protection, objectionable labor standards, and subsidies to export industries. In pursuing these cases, Congress should encourage USTR to consult with trading partners who have mutual interests at the outset of each new trade dispute with China.

The Commission recommends that Congress press the administration to make better use of the China-specific section 421 and textile safeguards negotiated as part of China's WTO accession agreement to give relief to U.S. industries especially hard hit by surges in imports from China.

Notwithstanding China's commitments at the April 2004 JCCT meeting, the Commission recommends that Congress press the administration to file a WTO dispute on the matter of China's failure to protect intellectual property rights. China's WTO obligation to protect intellectual property rights demands not only that China promulgate appropriate legislation and regulations, including enacting credible criminal penalties, but also that these rules be enforced. China has repeatedly promised, over many years, to take significant action. Follow-through and action have been limited and, therefore, the Commission believes that immediate U.S. action is warranted.

The Commission recommends that Congress urge the Department of Commerce to make countervailing duty laws applicable to nonmarket economies. If Commerce does not do so, Congress should pass legislation to achieve the same effect. U.S. policy currently prevents application of countervailing duty laws to nonmarket economy countries such as China. This limits the ability of the United States to combat China's extensive use of subsidies that give Chinese companies an unfair competitive advantage.

The Commission recommends that Congress encourage the administration to make a priority of obtaining and ensuring China's compliance with its WTO commitments to refrain from forced technology transfers that are used as a condition of doing business. The transfer of technology by U.S. investors in China as a direct or indirect government-imposed condition of doing business with Chinese partners remains an enduring U.S. security concern as well as a violation of China's WTO agreement. A WTO complaint should be filed when instances occur.

The Commission recommends that Congress encourage USTR and other appropriate U.S. government officials to take action to ensure that the WTO's Transitional Review Mechanism process is a meaningful multilateral review that measures China's compliance with its WTO commitments. If China continues to frustrate the TRM process, the U.S. government should initiate a parallel process that includes a specific and comprehensive measurement system. The United States should work with the European Union, Japan, and other major trading partners to produce a separate, unified annual report that measures and reports on China's progress toward compliance and coordinates a plan of action to address shortcomings. This report should be provided to Congress. In addition, independent assessments of China's WTO compliance conducted by the U.S. government, such as USTR's annual report, should be used as inputs in the multilateral forum evaluating China's compliance, whether that forum is a reinvigorated and effective TRM or a new process.

The Commission recommends that Congress consider options to assist small- and medium-sized business in pursuing trade remedies under U.S. law, such as through section 421 cases.

CHAPTER 3—CHINA'S PRESENCE IN THE GLOBAL CAPITAL MARKETS

The Commission recommends that Congress reinstate the reporting provision of the 2003 Intelligence Authorization Act [P.L. 107–306, Sec 827] directing the director of Central Intelligence (DCI) to prepare an annual report identifying Chinese or other foreign companies determined to be engaged or involved in the proliferation of weapons of mass destruction or their delivery systems that have raised, or attempted to raise, funds in the U.S. capital markets. The Commission further recommends that Congress expand this provision to require the DCI to undertake a broader review of the security-related concerns of Chinese firms accessing, or seeking to access, the U.S. capital markets. This should include the establishment of a new interagency process of consultations and coordination among the National Security Council, the Treasury Department, the State Department, the SEC, the Federal Bureau of Investigation (FBI), and the intelligence community regarding Chinese companies listing or seeking to list in the U.S. capital markets. The aim of such an interagency process should be to improve collection management and assign a higher priority to assessing any linkages between proliferation and other security-related concerns and Chinese companies, including their parents and subsidiaries, with a presence in the U.S. capital markets.

The Commission recommends that Congress require mutual funds to more fully disclose the specific risks of investments in China. This should include disclosure to investors of the identities of any local firms subcontracted by funds to perform due diligence on Chinese firms held in their portfolios. Subcontractors' principal researchers, location, experience, and potential conflicts of interest should all be disclosed.

The Commission recommends that Congress direct the Commerce Department and USTR to evaluate whether Chinese state-owned banks' practice of noncommercial-based policy lending to state-owned and other enterprises constitutes an actionable WTO-inconsistent government subsidy and include this evaluation in the report on subsidies recommended in Chapter 1.

In its 2002 Report, the Commission recommended that Congress prohibit debt or equity offerings in U.S. capital markets by any Chinese or foreign entity upon which the State Department has imposed sanctions for engaging in the proliferation of weapons of mass destruction (WMD) or ballistic missile delivery systems. The Commission further believes that Congress should bar U.S. institutional or private investors from making debt or equity investments, directly or indirectly, in firms identified and sanctioned by the U.S. government for weapons proliferation-related activities, whether they are listed and traded in the United States or in the Chinese or other international capital markets. For example, NORINCO, a company sanctioned by the U.S. government, is currently available for purchase on the Chinese A share market. U.S.-based qualified foreign institutional investors that have rights to trade on this exchange should not be permitted to invest in NORINCO or any other firm officially determined to have engaged in the proliferation of WMD or ballistic missiles.

CHAPTER 4—CHINA'S REGIONAL ECONOMIC AND SECURITY IMPACTS AND THE CHALLENGES OF HONG KONG AND TAIWAN

Regional engagement

The Commission recommends that Congress revitalize U.S. engagement with China's Asian neighbors by encouraging U.S. diplomatic efforts to identify and pursue initiatives to demonstrate the United States' firm commitment to facilitating the economic and security needs of the region. These initiatives should have a regional focus and complement bilateral efforts. The Asia-Pacific Economic Cooperation forum (APEC) offers a ready mechanism for pursuit of such initiatives. The United States should consider further avenues of cooperation by associating with regional forums of which it is not a member.

Hong Kong

The Commission recommends that Congress consult with the administration to assess jointly whether the PRC's recent interventions impacting Hong Kong's autonomy constitute grounds for invoking the terms of the U.S.-Hong Kong Policy Act with regard to Hong Kong's separate treatment. This includes U.S. bilateral relations with Hong

Kong in areas such as air services, customs treatment, immigration quotas, visa issuance, and export controls. In this context, Congress should assess the implications of the National People's Congress Standing Committee's intrusive interventions with regard to matters of universal suffrage and direct elections. Congress and the administration should continue to keep Hong Kong issues on the U.S.-PRC bilateral agenda and work closely with the United Kingdom on Hong Kong issues.

Cross-strait issues

The Commission recommends that Congress enhance its oversight role in the implementation of the Taiwan Relations Act. Executive branch officials should be invited to consult on intentions and report on actions taken to implement the TRA through the regular committee hearing process of the Congress, thereby allowing for appropriate public debate on these important matters. This should include, at a minimum, an annual report on Taiwan's request for any military equipment and technology and a review of U.S.-Taiwan policy in light of the growing importance of this issue in U.S.-China relations.

The Commission recommends that the Congress and the administration conduct a fresh assessment of the one China policy, given the changing realities in China and Taiwan. This should include a review of:

The policy's successes, failures, and continued viability;

Whether changes may be needed in the way the U.S. government coordinates its defense assistance to Taiwan, including the need for an enhanced operating relationship between U.S. and Taiwan defense officials and the establishment of a U.S.-Taiwan hotline for dealing with crisis situations;

How U.S. policy can better support Taiwan's breaking out of the international economic isolation that the PRC seeks to impose on it and whether this issue should be higher on the agenda in U.S.-China relations. Economic and trade policy measures that could help ameliorate Taiwan's marginalization in the Asian regional economy should also be reviewed. These should include enhanced U.S.-Taiwan bilateral trade arrangements that would include protections for labor rights, the environment, and other important U.S. interests.

To support this policy review, the Commission recommends that the appropriate committees of Congress request that the executive branch make available to them a comprehensive catalogue and copies of all the principal formal understandings and other communications between the United States and both China and Taiwan as well as other key historical documents clarifying U.S. policy toward Taiwan.

The Commission recommends that Congress consult with the administration on developing appropriate ways for the United States to facilitate actively cross-Strait dialogue that could promote the long-term, peaceful resolution of differences between the two sides and could lead to direct trade and transport links and/or other cross-Strait confidence-building measures. The administration should be directed to report to Congress on the status of cross-Strait dialogue, the current obstacles to such dialogue, and, if appropriate, efforts that the United States could undertake to promote such a dialogue.

CHAPTER 5—CHINA'S PROLIFERATION PRACTICES AND THE CHALLENGE OF NORTH KOREA

Should the current stalemate in the Six Party Talks continue, the Commission recommends that Congress press the administration to work with its regional partners, intensify its diplomacy, and ascertain North Korean and Chinese intentions with a detailed and staged proposal beginning with a freeze of all North Korea's nuclear weapons programs, followed by a verifiable and irreversible dismantlement of those programs. Further work in this respect needs to be done to determine whether a true consensus on goals and process can be achieved with China. If this fails, the United States must confer with its regional partners to develop new options to resolve expeditiously the standoff with North Korea, particularly in light of public assessments that the likely North Korean uranium enrichment program might reach a stage of producing weapons by 2007.

The Commission recommends that Congress press the administration to renew efforts to secure China's agreement to curtail North Korea's commercial export of ballistic missiles and to encourage China to provide alternative economic incentives for the North Koreans to substitute for the foreign exchange that would be forgone as a result of that curtailment.

As recommended in the Commission's 2002 Report, and now similarly proposed by President Bush and the U.N. Secretary General, the Commission reiterates that Congress should support U.S. efforts to work with the U.N. Security Council to create a new U.N. framework for monitoring the proliferation of weapons of mass destruction and their delivery systems in conformance with member nations' obligations under the Nuclear Non-Proliferation Treaty, the Biological Weapons Convention, and the Chemical Weapons Convention. This new monitoring body would be delegated authority to apply sanctions to countries violating these treaties in a timely manner or, alternatively, would be required to report all violations in a timely manner to the Security Council for discussion and sanctions.

As recommended in the Commission's 2002 Report, the Commission reiterates that Congress should act to broaden and harmonize proliferation sanctions by amending all current statutes that pertain to proliferation to include a new section authorizing the president to invoke economic sanctions against foreign nations that proliferate WMD and technologies associated with WMD and their delivery systems. These economic sanctions would include import and export limitations, restrictions on access to U.S. capital markets, restrictions on foreign direct investment into an offending country, restrictions on transfers by the U.S. government of economic resources, and restrictions on science and technology cooperation or transfers. The new authority should require the President to report to Congress the rationale and proposed duration of the sanctions within seventy-two hours of imposing them. Although the president now has the authority to select from the full range of economic and security-related sanctions, these sanctions are case specific and relate to designated activities within a narrow set of options available on a case-by-case basis.

CHAPTER 6—CHINA'S ENERGY NEEDS AND STRATEGIES

The Commission recommends that Congress direct the secretaries of State and Energy to consult with the International Energy Agency with the objective of upgrading the current loose experience-sharing arrangement, whereby China engages in some limited exchanges with the organization, to a more structured arrangement whereby the PRC would be obligated to develop a meaningful strategic reserve, and coordinate release of stocks in supply disruption crises or speculator-driven price spikes.

The Commission recommends that Congress encourage work that increases bilateral cooperation in improving China's energy efficiency and environmental performance, such as further cooperation in Clean Coal Technology and waste-to-liquid-fuels programs, subject to any overriding concerns regarding technology transfers. Further, the commission recommends that Congress direct the State and Energy departments, and the intelligence community, to conduct an annual review of China's international energy relationships and its energy practices during times of global energy crises to determine whether such U.S. assistance continues to be justified.

The Commission recommends that the Commerce Department and USTR investigate whether China's dual pricing system for coal and any other energy sources constitutes a prohibited subsidy under the WTO and include this assessment in the Commerce/USTR report on subsidies recommended in Chapter 1.

CHAPTER 7—CHINA'S HIGH-TECHNOLOGY DEVELOPMENT AND U.S.-CHINA SCIENCE AND TECHNOLOGY COOPERATION

The U.S. government must develop a coordinated, comprehensive national policy and strategy designed to meet China's challenge to the maintenance of our scientific and technological leadership. America's economic competitiveness, standard of living, and national security are dependent on such leadership. The Commission therefore recommends that Congress charge the administration to develop and publish such a strategy in the same way it is presently required to develop and publish a national security strategy that deals with our military and political challenges around the world. In developing this strategy, the administration should utilize data presently compiled by the Department of Commerce to track our nation's technological competitiveness in comparison with other countries.

The Commission recommends that Congress revise the law governing the CFIUS process (Title VII of the Defense Production Act)—which gives the president authority to investigate mergers, acquisitions, or takeovers of U.S. firms by foreign persons if such activities pose a threat to national security—to expand the definition of national security to include the potential impact on national economic security as a criterion to be reviewed. In this regard, the term national economic security should be defined broadly without limitation to particular industries.

The Commission recommends that Congress direct the administration to transfer chairmanship of CFIUS from the Secretary of the Treasury to the Secretary of Commerce.

CHAPTER 8—CHINA'S MILITARY MODERNIZATION AND THE CROSS-STRAIT BALANCE

The annual report to Congress recommended in Chapter 4 on Taiwan's requests for military equipment and technology should include an assessment of the new military systems required by Taiwan to defend against advanced PRC offensive capabilities.

As recommended in Chapter 4, Congress and the administration should review the need for a direct communications hotline between the United States and Taiwan for dealing with crisis situations. This is important in light of the short time frame of potential military scenarios in the Strait, together with Chinese strategic doctrine emphasizing surprise and deception.

The Commission recommends that Congress urge the president and the secretaries of State and Defense to press strongly their European Union counterparts to maintain the EU arms embargo on China.

The Commission recommends that Congress direct the administration to restrict foreign defense contractors who sell sensitive military-use technology or weapons

systems to China from participating in U.S. defense-related cooperative research, development, and production programs. This restriction can be targeted to cover only those technology areas involved in the transfer to China.

The Commission recommends that Congress request the Department of Defense to provide a comprehensive annual report to the appropriate committees of Congress on the nature and scope of foreign military sales to China, particularly from Russia and Israel.

CHAPTER 9—MEDIA AND INFORMATION CONTROL IN CHINA

On June 30, 2003, the Commission recommended that Congress direct the Broadcasting Board of Governors to target funds for efforts aimed at circumventing China's Internet firewall through the development of anticensorship technologies and methods. Congress approved such funding as part of the 2004 Omnibus Appropriations Act. The Commission recommends that Congress continue this program with enhanced resources, pending successful results for the current fiscal year.

As recommended in the Commission's 2002 Report, the Commission reiterates that Congress should direct the Department of Commerce and other relevant agencies to conduct a review of export administration regulations to determine whether specific measures should be put in place to restrict the export of U.S. equipment, software, and technologies that permit the Chinese government to surveil its own people or censor free speech.

The Commission recommends that Congress approve legislation to establish an Office of Global Internet Freedom within the executive branch, tasked with implementing a comprehensive global strategy to combat state-sponsored blocking of the Internet and persecution of users. The strategy should include the development of anticensorship technologies.

The Commission recommends that Congress encourage the administration to press China to freely admit U.S. government-sponsored journalists, such as those representing the Voice of America and Radio Free Asia. China frequently denies visas for such journalists, despite the fact that China's state-sponsored journalists are freely admitted in the United States. Options should be considered for linking Chinese cooperation to concrete consequences, including the possible use of U.S. visas for Chinese government journalists as leverage to gain admission of more U.S. government-supported journalists to China.

TRIBUTE TO RONALD AND NANCY REAGAN

Mr. LEAHY. Mr. President, we have come to the close of several days of tribute to our late President, Ronald Reagan. So much has been said about President Reagan's buoyant spirit and about the contributions he made to our Nation, and these tributes have helped millions of Americans with the healing process that comes with the death of so popular and beloved a leader.

Though much has already been said about President Reagan, I do want to pay special tribute today to our former First Lady, Nancy Reagan.

For me—and, I suspect, for millions of other Americans—some of the most stirring images of this memorable week have been of Nancy Reagan and her family. We saw again, and so clearly, her strength, her compassion and her deep love for her husband.

Ever since President Reagan's deeply moving announcement to his fellow citizens and to the world that he was suffering from Alzheimer's disease, I have watched Mrs. Reagan conduct herself with compassion, loyalty, competence and caring that have been an inspiration to the thousands of family members who every day struggle to cope with loved ones suffering from this disease or from any of the long variety of other disorders that can come upon us in our older ages—and sometimes far earlier than that.

The Alzheimer's Association estimates that 4.5 million Americans today suffer from this debilitating disease. Often, family members and especially, spouses—end up as primary caregivers to their partners or other family members. Along with the emotional pain and heartbreak of watching the mind of a loved one slowly fade away, many caregivers are ill-equipped to handle the many facets of the illness that present themselves over the duration of this mental and physical struggle. Their own physical health suffers. Managing a job or any other activity outside the home becomes almost impossible.

I believe Nancy Reagan is an inspiration to so many Americans. The love that she and her husband so clearly showed to each other comforted and sustained their marriage in sickness, as it did in health.

Marcelle and I extend our best wishes to Mrs. Reagan and to the entire Reagan family.

AUSTRALIA FREE TRADE AGREEMENT

Mr. BAUCUS. Mr. President, in the book of Ecclesiastes, the Preacher spoke of how there is ''a time to plan, and a time to uproot.'' The American farmer has known this truth from the first days when Indians first walked to this continent.

Those of us who are privileged to represent rural States know well the times of American farmers and ranchers. No matter what the time, their concerns are never far from our thoughts.

Times have changed for American agriculture, and for American jobs. In 1900, 37 percent of American workers worked in agriculture. Now, only about 2 percent do.

Of course, it doesn't seem like 2 percent to rural States such as Montana, North Dakota, and South Dakota, where agriculture can still account for as much as 50 percent of the economy.

But that is the reality: American farmers are more productive than ever. And because productive American agriculture produces more than American households consume, exports are as important as ever. That is why American farmers have been among the strongest supporters of international trade.

And it is about that intersection between American agriculture and international trade that I rise to speak today.

Last month, the United States and Australia signed a free trade agreement, taking an important step to connect two of the world's most vibrant economies. This agreement creates opportunities for both countries. For Australia, it offers integration with the world's largest economic power. For the United States, it offers a link to an Australian market that has one of the highest standards of living in the world—and is a key platform to markets in Asia.

In the coming weeks, we will hear about the significant economic benefits of this agreement. But I think we should also look at this agreement in a broader context. First, we need to take a balanced look at the agreement and assess its costs and benefits. Second, we need to view the Australia agreement in the context of our larger trade agenda.

The benefits of the Australia agreement are compelling—particularly in the context of the current debate over jobs moving overseas.

When compared to some of the other agreements that the administration is negotiating, Australia offers real benefits. And it is not subject to some of the traditional criticisms.

Compare the debate over the Australia agreement to the debate over the Central America agreement. Critics of CAFTA contend that Central America's lower labor and environmental standards will undercut jobs here at home. I share some of these concerns and continue to work hard on strengthening these standards.

Yet, with the Australia agreement, this tension disappears. Australian workers enjoy high labor standards. Australia protects its environment.

More importantly, Australian consumers want U.S. manufactured goods. Australia is one of the few countries where the U.S. enjoys a trade surplus. This fact helps explain the strong support of U.S. manufacturers for this agreement—which they estimate will result in $2 billion more in exports every year.

This free trade agreement offers clear benefits to the U.S. economy and to U.S. workers.

Thus the Australia agreement does not raises the usual concerns over labor and the environment. But it does raise concerns over agriculture. And farmers are usually stalwart supporters of free trade.

Their anxieties are understandable. Australia is a major exporter of many of the same commodities that Americans produce—particularly beef, dairy, and sugar. Yet, Australia offers a relatively small consumer market in exchange. So, while Australian farmers would get increased access to our consumer market of around 250 million people, our farmers would get increased access to an Australian consumer market that is much smaller.

So when the administration announced late in 2002 that it intended to enter into negotiations with Australia, agriculture groups immediately voiced concern.

As I looked at the negotiations, I saw two options. I could sit back, say nothing, and hope for the best. This might have been politically expedient, given the anxieties within the agriculture community, but it would have risked getting a worse product, as a result.

Instead, I decided to engage the process, using my position as the ranking Democrat on the Finance Committee to help shape the best possible agreement for our country and our farmers. After consulting with the agriculture community in Montana, I decided that to do otherwise would be a disservice to the many farmers and ranchers back home who look to me to fight for them.

As I looked at this agreement, the potential concerns for beef, dairy, and sugar producers were clear. But I also saw potential gains for Montana—including wheat farmers and pork producers, as well as Montana's growing technology manufacturing industries. With this in mind, I set out to help Ambassador Zoellick find ways to mitigate the dangers and maximize the gains.

My staff and I worked closely with the U.S. Trade Representative throughout this process. And I met personally with the Australian Prime Minister and other officials. As negotiations entered a critical phase last December, I spelled out to Ambassador Zoellick the sensitive areas for Montana agriculture that needed his greatest attention. I also offered some ideas for how to manage them.

My staff and I worked tirelessly to ensure that negotiators—from both countries—understood and accommodated the needs of Montanans. In early February, the negotiators concluded an agreement that addressed sensitive Montana products with great care. The U.S. Trade Representative addressed my concerns on virtually every commodity.

While Australia agreed to the immediate elimination of all tariffs on many U.S. agricultural products, the U.S. received important protections.

Beef. On beef, my first concern was ensuring that the U.S. gets what is called ''access for access.'' In other words, the U.S. Trade Representative should undertake new agreements and find new export markets to offset potential increased imports from Australia. The proposed U.S.-Thailand agreement, for example, will help us reach that goal. Thailand's population is three times larger than Australia's, with a consumer market that is growing quickly. We need to build on the Thailand agreement by opening other significant markets—particularly in Asia.

But we are several years from finishing the Thailand agreement. And we are likely several years from completing the current round of negotiations in the WTO. So we need to make sure that increased access to our market is far enough down the road that it will be offset by other agreements. To address this, I worked with USTR to ensure a significant transition period. As a result, access for Australian beef will increase very slowly, with duties in place for 18 years. Importantly, the agreement only provides increased access for manufactured beef—other beef products will continue to face the same duties they face today.

I also worked to ensure the agreement contained special safeguards—so that there is not a surge of Australian imports into the U.S. market. As a result, the agreement contains two safeguards—one in effect during the 18-year transition, and another taking effect in year 19 to remain in place indefinitely.

Dairy. For dairy, this agreement recognizes the sensitivity of this industry by retaining existing tariffs indefinitely. Most importantly for Montana, tariffs for milk protein concentrates are unaffected by the agreement.

Sugar. Perhaps the most difficult issue in the agreement was how to address the concerns of the U.S. sugar industry. This industry faces extreme distortions on the global market, for example, high export subsidies in Europe. These distortions chronically depress the world price far below the world's average cost of production. For these reasons, sugar policy must be addressed multilaterally in the WTO negotiations.

In this agreement, Ambassador Zoellick took a difficult and controversial step in excluding sugar entirely from the agreement. Some have criticized him for this. But not this Senator and those I represent.

Sheep. Even for Montana sheep ranchers, who already face free trade in lamb, the agreement delays the elimination of the few remaining wool tariffs, rather than providing for their immediate elimination. This comes on the heels of initial efforts by the U.S. and Australian industries to establish a joint marketing effort aimed at increasing consumption of lamb.

Wheat. On wheat, which is a major Montana export, the agreement makes some progress toward our ultimate goal of reforming global markets. The U.S. industry and I had both hoped to secure an Australian commitment to restructure the Australian Wheat Board, a state trading enterprise, or STE, that acts as a monopoly trader controlling the Australian market. Because Australia is a significant exporter of wheat, their artificially low prices distort the world market and make it harder for U.S. wheat growers to compete.

While Australia did not agree to immediate changes to its Wheat Board, it did agree to reverse its position in the Doha Round negotiations and work with the U.S. to mandate global reform of STEs. This is an important step. It further isolates and undermines the Doha negotiating leverage of other countries that use STEs to distort agriculture markets.

This will particularly help us in our efforts to force reform in Canada. Montana wheat producers are affected daily by the distortions introduced into the U.S. market by the Canadian Wheat Board. This part of the Australia agreement is thus a very positive development, and a clear improvement compared to the status quo.

SPS Issues. Finally, I reminded Ambassador Zoellick of the crucial need for Australia to resolve its sanitary and phytosanitary, or SPS, barriers to U.S. products. In response to U.S. concerns, the Australians agreed to resolve SPS disputes as soon as possible. I am pleased to note that the Australians have made good on this promise in the high-profile dispute over pork. Last month, Australia lifted regulatory barriers to U.S. pork. That one action could mean an additional $50 million in U.S. pork exports.

U.S. negotiators understood my concerns in this agreement. I thank Ambassador Zoellick and his staff—particularly Al Johnson—for addressing them.

Of course, it would be a mistake to think that free trade agreements affect only farmers. For the great swath of American and Montana manufacturing workers hit hard by the more than 3 million jobs lost over the past 3 years, this agreement couldn't come at a better time.

Australia is one of the few large economies with whom the U.S. enjoys a trade surplus. With a standard of living higher than Germany, France, and even Japan, Australia has one of the most robust and fundamentally sound economies in the world. Guaranteed access to a market like this is crucial if we are serious about rebuilding the U.S. economy.

Industrial trade with Australia is already strong, but with this agreement, it will get even stronger. This agreement will eliminate tariffs on more than 99 percent of U.S. goods immediately. Mr. President, 93 percent of current U.S. exports to Australia are manufactured goods, so further economic integration is bound to help U.S. manufacturers and U.S. workers.

These benefits will extend to all parts of the country. Montana industries already export $3.4 million worth of industrial goods to Australia. This number will only grow higher, as a result of this agreement. Montana will benefit not only from increases in direct exports, but from increased demand for other goods that require Montana inputs.

Further benefits would accrue to U.S. exporters from using Australia as a platform for more efficient access to Asian markets. This agreement will thus provide net benefits across a vast spectrum of the U.S. economy—manufacturing, services, investments, and workers.

But let me return to how international trade will help U.S. farmers.

This is always a fundamental question, particularly for those of us who represent rural states.

As a Montanan, it is hard to talk about international trade without thinking about agriculture. Over the years, U.S. agriculture has undergone enormous changes, for reasons that are much broader than globalization. The U.S., as a whole, has changed dramatically. Where we live, where we work, the things we make, the technology we use to make things—all of these have changed since our parents' time.

We need a rural America that is not only stable and prosperous; we need a rural America that is compatible in the long-term with a 21st century characterized by mobility and rapid technological advancement. We need a farm economy that is highly adaptive and aggressively focused on competitiveness.

To accomplish this, we need sweeping changes in several areas. We will need more agricultural research—an area suffering from an appalling decline in federal support. We will need a farm policy that facilitates, rather than simply underwrites, the farm economy.

And we will need a vigilant search for new and growing markets.

Of course, many of these needs are beyond the ken of trade policy, but the search for new markets is not. That is why fundamentally we need a strategy that embraces the global trading system.

For the U.S. to remain a superpower in agriculture, we must see the world as it is, not as it used to be. That means we need to focus our attention on global negotiations that will create real fairness in agriculture trade. I share the concern of many about a trade policy agenda that focuses too much attention on bilateral agreements, at the expense of our broader efforts in the World Trade Organization.

Yet, in the trend toward globalization, the industrial world is moving ahead. We should not allow agriculture to be left behind. Leaving agriculture behind in the 20th century trading regime would be disastrous for U.S. farmers, if for no other reason than they are, on the whole, the most productive and technologically advanced in the world. A globalized economy and its institutions are the only forum in which American farmers' technological advantage is most powerful. American agriculture must move ahead to prosper.

We cannot shut agriculture out of the globalizing process. We cannot settle for the status quo, hoping that it will sustain us indefinitely. As the rest of the world's agricultural producers rapidly develop, we cannot hide behind high tariffs and high subsidies.

The U.S. represents only 5 percent of the world's consumers. Yet, in commodity after commodity, we produce far more than Americans can consume. That is true of beef and wheat, for example. And demand from our own 5 percent will likely grow much more slowly than demand from the other 95 percent. There are only so many steaks any one well-fed American can eat. But in the developing world, demand for food still has much room to grow. The more their wealth grows, the more that consumption patterns will shift from low-cost, starchy foods to high-value sources of protein such as beef and wheat.

We are faced, then, with a simple choice: Either we try to turn back the clock to a time of inferior technology and a more insular world or we seek greater access to the markets of the other 95 percent of the world. The choice is clear.

As a nation, we have embarked on a policy of opening markets. This is a wise policy and a sound one. The fruit of this effort should be more and higher-paying jobs for U.S. workers, more abundant choices for our consumers, and greater markets for our farmers and ranchers.

Yet, if we are going to sell our products overseas, then we have to engage global markets. And we can't do that in a vacuum. This means negotiating trade agreements and fighting the distortions—such as high tariffs and high subsidies—that other countries use to undermine our competitiveness. In that fight, we have no better ally than Australia.

At the heart of the matter, engaging global markets means opening doors. And we won't succeed in opening doors to other markets if we won't open our own. We can't insist that China, Thailand, Taiwan, and Japan open their markets to our products, if we aren't also willing to open our markets to theirs. And I can't insist that Ambassador Zoellick accommodate my concerns in a free trade agreement, if I am not willing to offer my support in return.

When Ambassador Zoellick announced the administration's intention to negotiate a free trade agreement, many of us harbored concerns that he would negotiate a far different agreement than the one we have before us today. But the protections that American negotiators built into this agreement are strong. And I congratulate the Trade Representative's office for its skill in negotiating such a tough agreement.

Mr. President, I will support the U.S.-Australia free trade agreement. I look forward to working with my colleagues to make sure that this agreement is implemented fairly. And I look forward to working with the U.S. Trade Representative to make sure that all trade agreements are the best possible deal for Montana.

This is the time for engaging our allies and for opening the door to new markets. This is the time for planting the seeds of a greater world trade system. As the American farmer has done down through the centuries, we should labor today for a future of growth.

RECOGNIZING THE PROFESSIONALISM OF MS. CAROL MADONNA

Mr. AKAKA. Mr. President, I recognize the efforts of Ms. Carol Madonna, a Brookings Institution LEGIS fellow, who has been a tremendous asset to me and my office during the past 18 months. Over the past year and a half, Carol has assisted me with fulfilling my responsibilities as a member of the Senate Committees on Armed Services and Veterans' Affairs. She has worked many long hours to address issues of concern to our men and women in the military, veterans, and Federal employees.

Mr. President, Carol Madonna is an excellent example of a dedicated Federal employee. She is always willing to pitch in and provide assistance. She is a very quick learner and an extremely hard worker. She adapts quickly to changing circumstances and is always responsive to situations. From early bird breakfasts with Pentagon officials to late vote evenings in the Senate, Carol was an invaluable member of my legislative staff and a quick study on the diverse and competing priorities that arise in the Senate on a regular basis. Her professionalism and dedication to getting the job done reflects well on the Defense Supply Center-Philadelphia, an agency within the Defense Logistics Agency, where Carol has been employed for the past 22 years.

Mr. President, Carol Madonna has many accomplishments that are worthy of mention. She is most proud, however, of her two sons, Dan Madonna, a teacher in Philadelphia, and Lee Madonna, who is about to receive his Associate's Degree from Delaware County Community College. As much as my staff and I will miss Carol, we wish her well as she joins her family in Philadelphia, and thank her for her wonderful service to the people of Hawaii and this great Nation.

EMPTY WORDS

Mr. KYL. Mr. President, I ask unanimous consent that the column ''Empty Words'' by Frank Gaffney, which appears in today's Washington Times, be printed in the RECORD. I believe that this piece appropriately emphasizes the crucial role continued research plays in maintaining the credible nuclear deterrrent of the United States. As more information becomes available regarding covert nuclear programs in North Korea and Iran, the sustainability and credibility of America's nuclear arsenal is of paramount concern.

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

[From the Washington Times, June 15, 2004]

EMPTY WORDS

(By Frank J. Gaffney Jr.)

The U.S. Senate gets back to work today after a week of bipartisan mourning of Ronald Reagan and tributes to his security policy legacy. It is fitting that the first orders

of business will be votes on amendments to repudiate two of the initiatives most central to the Gipper's foreign and defense policy success: the maintenance of a credible and safe nuclear deterrent, and protection of Americans against missile attack.

The first effort to reduce last week's Reagan endorsements to empty words will be led by some of the Senate's most liberal Democrats, notably Sens. Edward Kennedy of Massachusetts and Dianne Feinstein of California. They seek to preclude the United States from even researching new nuclear weapons, let alone testing or deploying them.

Ronald Reagan hated nuclear weapons as much as anybody. What is more, he seriously worked to rid the world of them. Yet, unlike these legislators, President Reagan understood—until that day—this country must have effective nuclear forces. He was convinced there was no better way to discourage the hostile use of nuclear weapons against us than by ensuring a ready and credible deterrent.

Toward that end, Mr. Reagan comprehensively modernized America's strategic forces, involving both new weapons and an array of delivery systems He built two types of intermediate-range nuclear missiles and deployed them to five Western European countries. And, not least, he recognized our deterrent posture depended critically upon a human and physical infrastructure that could design, test, build and maintain the nation's nuclear arsenal. Without such support, America would inexorably be disarmed.

In fact, it is no exaggeration to say that, but for Mr. Reagan's nuclear modernization efforts—most of them over the strenuous objections of senators like Mr. Kennedy and John Kerry—we may well not have a viable nuclear deterrent today. Even with his legacy, 15 years of policies more in keeping with the anti-nuclear ''freeze'' movement's nostrums than Mr. Reagan's philosophy of ''peace through strength'' have undermined the deterrent by creeping obsolescence, growing uncertainty about its reliability and safety and loss of infrastructure to ensure its future effectiveness.

This is especially worrisome since some of the research in question would explore whether a Robust Nuclear Earth Penetrator (RNEP) could be developed to penetrate deep underground before detonating. Such a capability would allow us to hold at risk some of the 10,000 concealed and hardened command-and-control bunkers, weapons of mass destruction (WMD) production and storage facilities and other buried high-value targets built by potential adversaries.

If anything, the absence of a credible American capability to attack such targets may have contributed to rogue states' massive investment in these facilities over the past 15 years. One thing is clear: Our restraint in taking even modest steps to modernize our nuclear deterrent—for example, by designing an RNEP or new, low-yield weapons—has certainly not prevented others from trying to ''get the Bomb.''

There is no more reason—Sens. Kennedy, Kerry and Feinstein's arguments to the contrary notwithstanding—to believe continuing our unilateral restraint will discourage our prospective enemies' proliferation in the future.

Last September, the Senate recognized this reality, rejecting an earlier Feinstein-Kennedy amendment by a vote of 53–41. Five Democrats—Sens. Evan Bayh of Indiana, Fritz Hollings of South Carolina, Zell Miller of Georgia, Ben Nelson of Nebraska and Bill Nelson of Florida—joined virtually every Republican in permitting nuclear weapons research, with the proviso further congressional approval would be required prior to development and production. The prudence of this is even more evident today in light of revelations of covert Iranian and North Korean nuclear activity since last fall.

The other assault on the Reagan legacy will be led by Democratic Sens. Carl Levin of Michigan and Jack Reed of Rhode Island. They hope to strip more than $500 million from defense authorization legislation that would buy anti-missile interceptors, the direct descendant of Ronald Reagan's Strategic Defense Initiative (SDI).

Just last week, former Gorbachev spokesman Gennadi Gerasimov, reminded the world how mistaken those like Sen. Carl Levin, Michigan Democrat, were when they ridiculed and tried to undermine the Reagan missile defense program: ''I see President Reagan as a gravedigger of the Soviet Union and the spade that he used to prepare this grave was SDI.''

Today, there are published reports the U.N. Security Council has been briefed by its inspectors that ballistic missiles and WMD components were slipped out of Iraq before Saddam Hussein was toppled. Such weapons, like some of the thousands of other short-range missiles in arsenals around the world, could find their way into terrorists hands and be launched at this country from ships off our shores.

Can there be any doubt but that Ronald Reagan—faced with today's threat of missile attack and the proliferation of nuclear and other weapons of mass destruction—would have been any less resolute in building missile defenses and maintaining our nuclear deterrent than he was in the 1980s? If last week's praise for his visionary leadership two decades ago was not dishonest rhetoric, it should inspire, and guide us all now.

BIPARTISAN CAMPAIGN REFORM ACT OF 2002

Mr. McCAIN. Mr. President, since the Bipartisan Campaign Reform Act of 2002, BCRA, became law, many of its detractors have mistakenly argued that it is ineffective and unworkable. Mr. President, I ask unanimous consent that two articles from the Washington Post, an article from the Wall Street Journal, and an article by Anthony Corrado, a visiting Fellow at The Brookings Institution, be printed in the RECORD immediately following my remarks. As these articles describe, BCRA is having exactly the effect intended. Furthermore, as Mr. Corrado points out, BCRA did not serve as the death knell for America's political parties; their fundraising remains strong.

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

[From the Washington Post, June 8, 2004]

REPUBLICAN 'SOFT MONEY' GROUPS FIND BUSINESS RELUCTANT TO GIVE

(By Thomas B. Edsall)

Republican operatives attempting to compete with Democratic groups for large sums of unregulated presidential campaign funds have run into a number of roadblocks, including reluctance on the part of many corporations to contribute to new independent groups.

The Federal Election Commission last month cleared the way for liberal groups to continue raising millions of dollars of unrestricted contributions, and now GOP groups that have held back are joining in. But in a sign of the problems GOP leaders are encountering, one of the key Republican groups, Progress for America, failed in its bid to recruit James Francis Jr. to become chairman.

Francis ran the Bush 2000 campaign's ''Pioneer'' program, which produced 246 men and women who each raised at least $100,000. PFA organizers sought out Francis because his close ties to the administration would have lent enormous clout and prestige.

''It gets down to, 'What does it look like?' And it might not look like I was independent,'' Francis said, adding that he could have complied with laws requiring total separation from the Bush campaign, but critics would still have raised questions.

Meanwhile, election law lawyers said corporations are showing significant reluctance to get back into making ''soft money'' donations after passage of the McCain-Feingold law that went into effect on Nov. 6, 2002.

Unlike political committees regulated by the FEC, ''527s''—named for the section of the tax code that governs their activities—have no restrictions on the sources or amount of contributions, and some have received gifts of $5 million or more. Republicans, encountering corporate unwillingness to give to GOP 527s and seeking to capitalize on the Bush campaign's unprecedented fundraising success, urged the FEC to clamp down on the these groups' activities.

''I would say that on the whole the corporate business community has been very reluctant to support 527s,'' said GOP lawyer Jan W. Baran.

Kenneth A. Gross, an election lawyer, said he has told his corporate clients ''to proceed with caution.'' Prospective donors of soft money should be sure to get affirmative statements that the organization asking for money will not coordinate activities with federal candidates in violation of the law, and that the organization will abide by the rules governing political communications, he said.

Overall, pro-Democratic 527 organizations have raised at least $106.6 million, according to PoliticalMoneyLine, three times the $33.6 million raised by pro-Republican groups in this election cycle.

The Democratic advantage disappears, however, when these figures are added to the amounts raised by the national party committees and the presidential campaigns. Then the GOP pulls far ahead, $557.6 million to $393.6 million.

Lobbyist and former House member Bill Paxon, who is vice president of the Leadership Forum, a Republican 527, acknowledged that the GOP 527 effort will not be able to match the Democrats'.

Paxon said donations in the $25,000 to $50,000 range have started to come in from at least a dozen corporations, including Pfizer Inc., Union Pacific Corp., Bell South Corp. and International Paper Inc. In 2002, those four companies gave far more to Republican Party committees, more than $2.6 million.

''We don't expect to be posting huge numbers at the end of this filing,'' covering the period through the end of June, Paxon said, ''but we have laid the groundwork.''

Democrats have set up at least seven new 527 organizations. These groups are on track to raise $175 million to $300 million for ''independent'' issue ads and get-out-the-vote activities.

Financier George Soros, Progressive Corp. Chairman Peter B. Lewis and Hollywood writer-producer Stephen L. Bing have each given more than $7 million to such groups as the Media Fund, America Coming Together and MoveOn.org, which are working to defeat President Bush.

Privately, organizers of the Republican 527s said they have been banking on an outpouring of corporate support to defray start-up costs and to get their programs up and

running. Corporate and union money cannot be spent on television ads mentioning federal candidates for 60 days before the general election, although it can be used for voter mobilization.

Signs of corporate wariness toward making soft money contributions could be found in a number of places.

After Francis rejected the chairmanship of PFA, a key leadership role has fallen to co-chairman James W. Cicconi, general counsel and executive vice president at AT&T, but the company has declined to say whether it will give any money to the 527s. ''We have not made a comment about that at all,'' said Claudia B. Jones, director of media relations for AT&T.

A Wall Street Journal survey of the 20 top businesses giving soft money before the new law went into effect showed that more than half of the 20 companies are resisting pressure to give, and only one, Bell South, would say affirmatively that it plans to make corporate contributions.

Baran said that in addition to corporate wariness toward making soft money contributions, the success of the Bush campaign and the Republican National Committee has worked as a disincentive to giving to the 527s:

''A lot of folks on the business side are looking at the $200 million the Bush campaign has raised, and the millions the RNC has raised, and they aren't sure the funding [of the 527s] is all that necessary.''

[From the Wall Street Journal, June 7, 2004]

COMPANIES PARE POLITICAL DONATIONS

REPUBLICANS FEEL THE BRUNT AS NEW 'SOFT MONEY' RULES UPEND TRADITIONAL GIVING

(By Jeanne Cummings)

WASHINGTON.—Republicans are getting a cold shoulder from some of their traditional corporate benefactors, putting them at a fund-raising disadvantage against new, well-financed political organizations touting the Democratic message.

A Wall Street Journal survey of the top 20 corporate donors to national political party committees during the 2002 election cycle found that more than half—including the likes of Citigroup Inc., Pfizer Inc. and Microsoft Corp.—are resisting giving big-dollar donations to the new, independent organizations that were created after a 2002 campaign-finance reform law restricted such contributions to the political parties.

The reticence illustrates an uneasiness on the part of some of the corporations to get sucked back into the world of unlimited political contributions that they thought campaign reform had left behind. They also seem reluctant to give to untested organizations that are dedicated to partisan political activity, rather than to policy or legislative issues.

Their attitude sends a signal that a major source of the ''soft money''—the large and unlimited donations to the national parties that long fed the political system—may have dried up, at least in the short term.

''It reflects what many advocates of reform said: that much of this money was not natural to the political process,'' said Anthony Corrado, a campaign-finance expert at the Brookings Institution.

The corporate coyness could be an unexpected fund-raising boon to Democratic presumptive nominee John Kerry, who is enjoying an extraordinary year of fund raising.

The big-dollar soft-money contributions were the financial hallmark of past elections, and the flood of such contributions included unregulated and unlimited checks from corporations, labor unions and wealthy individuals. Political parties are barred from accepting soft money under the 2002 law.

However, several new political groups, formed outside the parties in the wake of the law, now are seeking those same checks to conduct political projects, such as voter-mobilization efforts and advertising campaigns.

The Democrats' soft-money base, largely comprising labor unions and wealthy liberals, has responded readily, depositing $40.5 million in new organizations, which are playing a significant role in the presidential campaign.

For instance, the Media Fund, an advertising organization founded by former Clinton aide Harold Ickes, has spent $15 million attacking President Bush or defending Mr. Kerry. America Coming Together, a voter-mobilization group headed by labor turnout guru Steve Rosenthal, has spent nearly $20 million enrolling new voters that could neutralize or best the grass-roots work of the Bush-Cheney operation in swing states.

Republicans had hoped the Federal Election Commission would shut down these groups. But the commissioners didn't, and that has Republicans playing catch-up on tough terrain.

The corporations contacted by The Wall Street Journal that aren't giving in this cycle made about $21.2 million in contributions to the national parties during the 2002 cycle. More than half of that money went to Republican committees—a sum that would have given the new Republican groups a boost in catching the Democrats.

The reluctance of some big companies to give could give cover to other corporations, which collectively contributed $267 million to both parties in the last election cycle—or more than half the $496 million of soft money raised in 2002, according to the Center for Responsive Politics.

''To the extent the big companies use their muscle to reject entreaties by political organization to give money, the medium-size firms will feel that they have a more credible position when they reject them,'' says Nathaniel Persily, a campaign-finance expert at the University of Pennsylvania Law School.

OLD RELIABLES

Among the companies not giving to these new organizations, whether they have Democrat or Republican ties, are some of the biggest and most reliable corporate donors to the parties, including Fannie Mae, Verizon Communications Inc. and FedEx Corp. Pfizer's decision to bow out of the process means that another 2002 big giver, Pharmacia Co., is also out of the game, since it has since been sold to Pfizer.

Other companies, such as Altria Group Inc. and Freddie Mac, have refused solicitation so far this cycle, but haven't adopted a blanket no-giving policy.

Only BellSouth Corp. said it has decided to donate to the groups. AT&T Corp. and American International Group Inc. refused to say what they plan to do.

This corporate attitude doesn't mean Republican groups won't generate substantial sums to finance independent operations; the party has a healthy roster of deep-pocketed individual donors.

But executives say it's difficult to justify donations to shareholders because the core missions of these new political groups, at best, are only tangentially connected to the company's legislative and regulatory priorities.

TRACK RECORDS

In contrast, the Republican National Committee and Democratic National Committee had platform policy statements on labor, telecommunications, and tax policy.

''In the past we have given to pre-existing organizations that we could look at their track records'' and how their work advanced the company's priorities, said Misty Skipper, a spokeswoman for CSX Corp. The company's former chairman, John Snow, is President Bush's secretary of the Treasury but so far it has refused solicitations for this election cycle.

''The new organizations are still evolving and that makes it harder to make a detailed analysis, so we will take them on a case-by-case basis,'' said Ms. Skipper.

Since the law governing these groups is unsettled, executives say it also raises the risk a corporate donor could get dragged into a political scandal. ''Any time there is a new system put in place there is a lot of uncertainty, and nobody in corporate America likes uncertainty,'' said John Scruggs, vice president for government affairs for Altria, another company that is holding back for now. ''I think everybody would just like to see how all this will work before they make any firm decisions.''

Perhaps the biggest reason for the reluctance is many executives felt the soft-money system amounted to extortion of private businesses. ''It was bad for the country and bad for the political system. And what's bad for the political system is only bad for business,'' said Edward A. Kangas, retired chairman of Deloitte Touche Tohmatsu who led the corporate fight for passage of the 2002 reform law.

Businesses may open their wallets in future campaign cycles, and they are still contributing to party conventions and a few party entities exempt from the ban, including the Democratic and Republican governors associations.

The chilly reception the new outside organizations are receiving from corporate donors is prompting one of the leading Republican groups, Progress for America, to concentrate its efforts on soliciting wealthy individuals, says President Brian McCabe.

Former Congressman Bill Paxon, who leads the Leadership Forum, an organization associated with the Republican House caucus, said flatly: ''We will not have the total number of resources the Democrats have.''

Still, the Leadership Forum has assembled lobbyists and influential Republicans committed to raising $25,000 apiece. Next month, it will hold a fund-raising event featuring House Speaker Dennis Hastert.

But the House leadership's embrace of the forum caught the eye of watchdog organizations monitoring possible violations of the law's ban on coordination with elected officials. ''We will be filing new complaints,'' said Fred Wertheimer, a leading reformer.

CORPORATE RELUCTANCE

Former corporate soft-money donors are declining to give to new independent political groups seeking the big checks that parties cannot accept anymore.

Who's Giving: BellSouth.

Who's not giving: AFLAC; Altria Group; BlueCross and BlueShield; Citigroup; CSX; Eli Lilly; Fannie Mae; Freddie Mac; Lockheed Martin; Microsoft; Pfizer; and Verizon. Source: WSJ research.

[From the Washington Post, June 4, 2004]

A BETTER CAMPAIGN FINANCE SYSTEM

(By E.J. Dionne Jr.)

Pity the poor campaign finance reformers. All their dreams are supposedly going up in smoke.

After all, both President Bush and Sen. John Kerry passed up federal matching funds in the primaries so they could raise record sums of private money. Groups theoretically independent of the parties have run millions of dollars worth of ads, often using huge donations from the very rich. Kerry considered declining to accept the Democratic nomination at his party's convention in July so he

could have an extra month to raise and spend private money.

Critics of reform see these developments as signs of a loopy system. In fact, the 2004 campaign will be remembered as one in which the political money system became more democratic and more open. Small contributors have more influence this year. Big contributors have less. Those new big-money political committees are getting a lot of attention because they are now the exception rather than the rule.

Does this mean that the new system pushed through by John McCain and Russ Feingold in the Senate and Chris Shays and Marty Meehan in the House has brought forth perfection? Of course not. Their law was simply a first but important step.

Thanks to the new law, candidates for the presidency, the House and the Senate are not themselves out soliciting unlimited contributions from rich and well-connected people or from big corporations. A lot of business guys are relieved that politicians considering bills that affect their companies aren't on the phone suggesting that it would be awfully nice to see them and their corporate checkbooks at the next ''soft money'' fundraiser.

The hope of McCain-Feingold was to create a more broadly based political money system—more people contributing in smaller amounts. Partly because of the law and partly because of the inventiveness of political entrepreneurs such as Zephyr Teachout, Howard Dean's director of online organizing, that is what is happening.

Dean began the democratizing process during the primary campaign by creating a base of tens of thousands of small donors. Kerry got the Dean message. He started peppering his speeches with references to ''JohnKerry.com'' and asking for donations. (Bush, in fairness, can be reached at GeorgeWBush.com.)

Kerry then proceeded to break all Democratic Party records, raising more than $117 million at last count.

The Kerry Web site recently featured Cathy Weigel of North Kansas City, Mo., as its 1 millionth online contributor. For a mere $50 contribution, Weigel got a call from Kerry and a promise of ''a great seat at the Inauguration and a prime visit to the White House.'' Such calls and promises used to go to big soft-money fundraisers who bagged a million or so in contributions.

Yes, problems persist. They always will in this imperfect world. By failing to regulate the ''527'' political committees (named after the section of the tax code they are organized under), the Federal Election Commission needlessly opened a loophole that could push the system back toward big money. This loophole won't destroy the entire law. Under McCain-Feingold, outside groups will have to operate on smaller contributions starting two months before the election. But the loophole should still be closed.

The system regulating presidential primaries is entirely antiquated, one reason Bush and Kerry both dropped out of it. It worked well for a long time, but now it needs fixing.

It's absurd that simply by delaying his party's convention into September, Bush gave himself not only an extra month more than Kerry to raise private money but also a leg up afterward. In the general election campaign, Kerry will have to stretch the $75 million he gets in public money over three months; Bush will have the same amount to spend in just two months.

The system needs stronger incentives to encourage candidates to base their campaigns on small contributions. Tax credits could cover the cost of providing candidates free airtime. And federal candidates should get the ''clean money'' option that allows politicians in Arizona and Maine to virtually eschew private fundraising. Those clean-money plans have given new people a chance to enter politics without mortgaging their houses or their souls.

Those who would abandon all efforts to limit money's influence on politics are urging that we live with plutocracy. By indiscriminately pronouncing even successful reform efforts as failures, reform's foes are trying to undermine any attempt to make politics a little more honest, a little less subject to the whims of the wealthy, a little more democratic. The nation's campaign money system is still flawed. But it's better than it used to be.

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[May 2004]

NATIONAL PARTY FUNDRAISING REMAINS STRONG, DESPITE BAN ON SOFT MONEY

(By Anthony Corrado)

The national party committees continue to outpace the fundraising totals set in the 2000 election cycle, despite the ban on soft money. The latest totals suggest that the national committees are adapting successfully to the new fundraising restrictions imposed by the Bipartisan Campaign Reform Act (BCRA), more commonly known as McCain-Feingold, and that they will have the resources needed to mount meaningful campaigns on behalf of their candidates in the fall election. Moreover, the parties have demonstrated financial strength despite the unprecedented fundraising efforts of their presumptive presidential nominees and unrestricted fundraising by so-called 527 committees and other nonparty organizations in the quest for campaign dollars in the hotly contested race for the White House.

After 15 months in the 2004 election cycle, the national parties have raised a total of $433 million in hard money alone, compared to $373 million in hard and soft money combined at this point in the 2000 campaign. Every one of the six national committees has substantially increased its hard dollar fundraising in response to the ban on soft money. The Republican committees have replaced all of the $86 million in soft money they had solicited by March of 2000 with hard dollar contributions subject to federal limits. The Democratic committees, which were much more dependent on soft money than their Republican counterparts, raising more than half of their funds from soft contributions at this point in 2000, have already replaced most of their soft money receipts with new hard dollar contributions.

This surge in national party fundraising is the result of a substantial increase in the number of individual contributors that have been added to party rolls. While the higher contribution limits for national party committees adopted under BCRA (up to $57,500 per person every two years) have produced millions of additional dollars for these committees, the vast majority of the increase in party hard money receipts is a result of the extraordinary growth in the number of small donors on both sides of the aisle.(1) No longer able to solicit unlimited soft money donations, the parties are investing more resources in direct mail, telemarketing, and Internet fundraising, with notable success in soliciting small contributions of less than $200. The RNC, which for decades has had the largest donor base of any of the party committees, has added more than a million new donors to its rolls since 2001.(2) The NRCC, in 2003 alone, recruited more than 400,000 new contributors.(3) The DNC has increased its number of direct mail donors from 400,000 in 2001 to more than 1.2 million so far in 2004, and increased its number of email addresses from 70,000 to more than 3 million. In the first four months of this year, the DNC posted 35 million pieces of fundraising mail, which, according to DNC Chairman Terry McAuliffe, exceeded the amount of fundraising mail posted by the committee ''in the entire decade of the 1990s.''(4)

As anticipated by most observers, the Republicans have proved to be more successful in raising hard dollars than the Democrats, outraising the Democrats by a margin of two-to-one and increasing the fundraising gap between the parties. Overall, the Republican committees collected $288 million during the course of the first 15 months of this cycle, as compared to $216 million in hard and soft money combined four years ago. The Democratic committees took in $145 million, as compared to $157 million in hard and soft money combined four years ago. The Republicans have more than doubled last cycle's hard money total, while the Democrats have almost doubled their hard money receipts, increasing their take by 89 percent. The most recent quarter, however, suggests that the Democrats' investments in small donor fundraising are paying off and that the party may be beginning to narrow the gap. In the first quarter of this election year, the Democrats received $50 million as opposed to $82 million by the Republicans, and recent reports suggest that fundraising on the Democratic side continues to strengthen.(5)

Even so, the Republicans have increased their financial advantage as compared to four years ago, when the Democrats controlled the White House. The gap has grown from about $59 million to $143 million. The Republicans are therefore likely to have an even greater financial advantage over the Democrats than they did four years ago. In 2000, the Republican national party committees received approximately $346 million in hard money, as opposed to $204 million for their Democratic opponents.

The gap between Republicans and Democrats is much narrower in terms of cash available to spend in the months ahead. As of the end of March, the Republican committees had almost $86 million of net cash available to spend, led by the RNC, which has a cash balance of $54 million. The Democrats had $43 million available to spend, led by the DNC, which had $27 million in cash. The expenditure-to-cash ratios for each party are now roughly equivalent, with the Republicans raising twice as much as the Democrats and generating twice as much net cash.

When BCRA was adopted, many observers expressed concern that the law would weaken the parties by depriving them of the resources needed to mount viable campaigns on behalf of their candidates. Yet, to date, the parties have proven that they can effectively adjust to a hard money world. They have altered their strategies and ended their reliance on soft money, replacing large soft money donations with thousands of small individual gifts.

The rise of a number of federal-election-related 527 organizations, which are not wholly subject to federal contribution limits and may raise funds from unlimited sources in unlimited amounts, has not dimmed the resources available to the parties. So far, the monies raised and spent by these committees represents only a portion of the monies the party committees have received, and a relatively small share of the total resources spent so far in this year's federal elections. In the first 15 months of this cycle, the national parties raised $433 million. State and local party committees collected more than $94 million for federal election activity, including $59 million by Republican committees and $35 million by Democratic committees. The presidential contenders, George Bush and John Kerry, took in more than $270 million. Congressional candidates garnered

$583 million, or 35 percent more than they raised at this point two years ago.(6) The major new 527 organizations active in federal elections in the aftermath of BCRA (Joint Victory Committee 2004, Media Fund, Americans Coming Together, MoveOn.org, and America Votes) raised slightly more than $47 million, while Club for Growth, a conservative group, generated more than $5 million.(7)

To what extent this will change in the aftermath of the FEC's May 13 decision to defer immediate action on proposed regulations for 527 groups remains to be seen. But it now appears that the parties are benefiting from the deep partisan divide within the country and the high level of competition in the presidential race, which is spurring tens of thousands of individuals to contribute to their preferred party for the first time. This suggests that the funds spent by nonparty groups will supplement, rather than overshadow, the role of the parties in 2004.

ADDITIONAL STATEMENTS

TRIBUTE TO BETTY STRONG

• Mr. HARKIN. Mr. President, earlier this month, Sioux City, IA, lost one of its most passionate and beloved community leaders, Betty Strong.

Betty was an adopted daughter of Iowa—she was born and raised in Missouri—but she became a true Iowan, through and through. She moved to Sioux City in 1953, and for the next half century she worked tirelessly for her community and as an activist in the Democratic Party. She was one of those people who always strove to make a positive difference in the lives of those around her, and Betty succeeded magnificently.

Betty's understanding and passion for politics made her an invaluable participant in countless State, local, and national campaigns. She was a delegate for Vice President Walter Mondale at the 1984 Democratic National Convention, and participated in Senator JOSEPH BIDEN's 1988 Presidential campaign in Iowa. In 2000, she coordinated Iowans for Gore.

I met Betty more than 20 years ago and she quickly became a very dear friend and trusted political counselor. She was my chief supporter and organizer in Sioux City during my first campaign for the Senate.

In 1976, Betty became the first woman to be elected chairperson of the Woodbury County Democratic Party, and she also served on a variety of other local Democratic and women's organizations.

Betty's tireless organizing and campaigning in the late 1980s helped to win the vote to build four new high schools and a juvenile detention center in Sioux City. From 1989 until her death, Betty served as the president of the Missouri River Historical Development Inc., a nonprofit group that built the $4 million Sioux City Lewis and Clark Interpretive Center. Betty was very proud of that center, which, she said, ''brings history alive for people of all ages.''

The list of Betty's accomplishments runs long, and is a testament to all she has done to better the lives of the people around her. She was involved in politics for all the right reasons. She wasn't seeking fame. She simply wanted a government that worked for all people. Betty Strong embodied the qualities and spirit that people in my State cherish.

Our thoughts and prayers go out to Betty's husband Darrell, their children Sharon, Jackie, and Marvin, and their spouses. Iowans are deeply indebted to Betty for her devotion to public service. We will miss her greatly.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

NOTIFICATION OF THE PRESIDENT'S INTENT TO ENTER INTO A FREE TRADE AGREEMENT WITH THE GOVERNMENT OF BAHRAIN—PM 86

The PRESIDING OFFICER laid before the Senate 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:

Consistent with section 2105(a)(1)(A) of the Trade Act of 2002, (Public Law 107–210; the ''Trade Act''), I am pleased to notify the Congress of my intent to enter into a Free Trade Agreement (FTA) with the Government of Bahrain.

This agreement will create new opportunities for America's workers, farmers, businesses, and consumers by eliminating barriers in trade with Bahrain. Entering into an FTA with Bahrain will not only strengthen our bilateral ties with this important ally, it will also advance my goal of a U.S.-Middle East Free Trade Area (MEFTA) by 2013.

Consistent with the Trade Act, I am sending this notification at least 90 days in advance of signing the United States-Bahrain FTA. My Administration looks forward to working with the Congress in developing appropriate legislation to approve and implement this free trade agreement.

GEORGE W. BUSH.

THE WHITE HOUSE, *June 15, 2004.*

MESSAGE FROM THE HOUSE

At 12:58 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 bills and joint resolution, in which its requests the concurrence of the Senate:

H.R. 2010. An act to protect the voting rights of members of the Armed Services in elections for the Delegate representing American Samoa in the United States House of Representatives, and for other purposes.

H.R. 2055. An act to amend Public Law 89–366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National Seashore.

H.R. 3378. An act to assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries.

H.R. 3504. An act to amend the Indian Self-Determination and Education Assistance Act to redesignate the American Indian Education Foundation as the National Fund for Excellence in American Indian Education.

H.R. 3658. An act to amend the Public Health Service Act to strengthen education, prevention, and treatment programs relating to stroke, and for other purposes.

H.R. 4061. An act to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries.

H.R. 4103. An act to extend and modify the trade benefits under the African Growth and Opportunity Act.

H.R. 4278. An act to amend the Assistive Technology Act of 1998 to support programs of grants to States to address the assistive technology needs of individuals with disabilities, and for other purposes.

H.R. 4322. An act to provide for the transfer of the Nebraska Avenue Naval Complex in the District of Columbia to facilitate the establishment of the headquarters for the Department of Homeland Security, to provide for the acquisition by the Department of the Navy of suitable replacement facilities, and for other purposes.

H.R. 4323. An act to amend title 10, United States Code, to provide rapid acquisition authority to the Secretary of Defense to respond to combat emergencies.

H.R. 4417. An act to modify certain deadlines pertaining to machine-readable, tamper-resistant entry and exit documents.

H.J. Res. 97. Joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

The message also announced that the House had agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 62. Concurrent resolution expressing the sense of Congress that Katherine Dunham should be recognized for her groundbreaking achievements in dance, theater, music, and education, as well as for her work as an activist striving for racial equality throughout the world.

H. Con. Res. 63. Concurrent resolution expressing the sense of Congress that Lionel Hampton should be honored for his contributions to American music.

H. Con. Res. 260. Concurrent resolution recognizing and honoring the service of those who volunteer their time to participate in funeral honor guards at the interment or memorialization of deceased veterans of the uniformed services of the United States at national cemeteries across the country.

H. Con. Res. 439. Concurrent resolution honoring the members of the Army Motor Transport Brigade who during World War II

served in the trucking operation known as the Red Ball Express for their service and contribution to the Allied advance following the D-Day invasion of Normandy, France.

The message further announced that the House has passed the following bill, with an amendment:

S. 1663. An act to replace certain Coastal Barrier Resources System maps.

ENROLLED BILLS SIGNED

At 1:25 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker, during the recess of the Senate, had signed the following enrolled bills:

H.R. 1822. An act to designate the facility of the United States Postal Service located at 3751 West 6th Street in Los Angeles, California, as the ''Dosan Ahn Chang Ho Post Office''.

H.R. 2130. An act to redesignate the facility of the United States Postal Service located at 121 Kinderkamack Road in River Edge, New Jersey, as the ''New Bridge Landing Post Office''.

H.R. 2438. An act to designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the ''Major Henry A. Commiskey, Sr. Post Office Building''.

H.R. 3029. An act to designate the facility of the United States Postal Service located at 255 North Main Street in Jonesboro, Georgia, as the ''S. Truett Cathy Post Office Building''.

H.R. 3059. An act to designate the facility of the United States Postal Service located at 304 West Michigan Street in Stuttgart, Arkansas, as the ''Lloyd L. Burke Post Office''.

H.R. 3068. An act to designate the facility of the United States Postal Service located at 2055 Siesta Drive in Sarasota, Florida, as the ''Brigadier General (AUS-Ret.) John H. McLain Post Office''.

H.R. 3234. An act to designate the facility of the United States Postal Service located at 14 Chestnut Street in Liberty, New York, as the ''Ben R. Gerow Post Office Building''.

H.R. 3300. An act to designate the facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, as the ''Walter F. Ehrnfelt, Jr. Post Office Building''.

H.R. 3353. An act to designate the facility of the United States Postal Service located at 525 Main Street in Tarboro, North Carolina, as the ''George Henry White Post Office Building''.

H.R. 3536. An act to designate the facility of the United States Postal Service located at 210 Main Street in Malden, Illinois, as the ''Army Staff Sgt. Lincoln Hollinsaid Malden Post Office''.

H.R. 3537. An act to designate the facility of the United States Postal Service located at 185 State Street in Manhattan, Illinois, as the ''Army Pvt. Shawn Pahnke Manhattan Post Office''.

H.R. 3538. An act to designate the facility of the United States Postal Service located at 201 South Chicago Avenue in Saint Anne, Illinois, as the ''Marine Capt. Ryan Beaupre Saint Anne Post Office''.

H.R. 3690. An act to designate the facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, as the ''Barber Conable Post Office Building''.

H.R. 3733. An act to designate the facility of the United States Postal Service located at 410 Huston Street In Altamont, Kansas, as the ''Myron V. George Post Office''.

H.R. 3740. An act to designate the facility of the United States Postal Service located at 223 South Main Street In Roxboro, North Carolina, as the ''Oscar Scott Woody Post Office Building''.

H.R. 3769. An act to designate the facility of the United States Postal Service located at 137 East Young High Pike in Knoxville, Tennessee, as the ''Ben Atchley Post Office Building''.

H.R. 3855. An act to designate the facility of the United States Postal Service located at 607 Pershing Drive in Laclede, Missouri, as the ''General John J. Pershing Post Office''.

H.R. 3917. An act to designate the facility of the United States Postal Service located at 695 Marconi Boulevard in Copiague, New York, as the ''Maxine S. Postal United States Post Office''.

H.R. 3939. An act to redesignate the facility of the United States Postal Service located at 14–24 Abbott Road in Fair Lawn, New Jersey, as the ''Mary Ann Collura Post Office Building''.

H.R. 3942. An act to redesignate the facility of the United States Postal Service located at 7 Commercial Boulevard in Middletown, Rhode Island, as the ''Rhode Island Veterans Post Office Building''.

H.R. 4037. An act to designate the facility of the United States Postal Service located at 475 Kell Farm Drive in Cape Girardeau, Missouri, as the ''Richard G. Wilson Processing and Distribution Facility''.

H.R. 4176. An act to designate the facility of the United States Postal Service located at 122 West Elwood Avenue in Raeford, North Carolina, as the ''Bobby Marshall Gentry Post Office Building''.

H.R. 4299. An act to designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the ''Dr. Miguel A. Nevarez Post Office Building''.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2010. An act to protect the voting rights of members of the Armed Services in elections for the Delegate representing American Samoa in the United States House of Representatives, and for other purposes.

H.R. 2055. An act to amend Public Law 89–366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National Seashore; to the Committee on Energy and Natural Resources.

H.R. 3658. An act to amend the Public Health Service Act to strengthen education, prevention, and treatment programs relating to stroke, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

H.R. 4061. An act to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries; to the Committee on Foreign Relations.

H.R. 4323. An act to amend title 10, United States Code, to provide rapid acquisition authority to the Secretary of Defense to respond to combat emergencies; to the Committee on Armed Services.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 62. Concurrent resolution expressing the sense of Congress that Katherine Dunham should be recognized for her groundbreaking achievements in dance, theater, music, and education, as well as for her work as an activist striving for racial equality throughout the world; to the Committee on the Judiciary.

H. Con. Res. 63. Concurrent resolutions expressing the sense of Congress that Lionel Hampton should be honored for his contributions to American music; to the Committee on the Judiciary.

H. Con. Res. 260. Concurrent resolution recognizing and honoring the service of those who volunteer their time to participate in funeral honor guards at the interment or memorialization of deceased veterans of the uniformed services of the United States at national cemeteries across the country; to the Committee on Veterans' Affairs.

H. Con. Res. 439. Concurrent resolution honoring the members of the Army Motor Transport Brigade who during World War II served in the trucking operation known as the Red Ball Express for their service and contribution to the Allied advance following the D-Day invasion of Normandy, France; to the Committee on Armed Services.

MEASURES PLACED ON THE CALENDAR

The following joint resolution was read the first and second times by unanimous consent, and placed on the calendar; pursuant to Public Law 108–61, section 9(c)(2)(B):

H.J. Res. 97. Joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

EXECUTIVE AND OTHER COMMUNICATIONS

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

EC–7920. A communication from the Assistant Secretary for Policy, Management, and Budget, Department of the Interior, transmitting, pursuant to law, the Department's report on Fiscal Year 2003 competitive sourcing efforts under the Consolidated Appropriations Act, Fiscal Year 2004; to the Committee on Energy and Natural Resources.

EC–7921. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, the Administration's International Energy Outlook 2004 (IEO2004); to the Committee on Energy and Natural Resources.

EC–7922. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, a draft of proposed legislation, entitled the ''Harry S. Truman National Historic Site Boundary Adjustment Act'' ; to the Committee on Energy and Natural Resources.

EC–7923. A communication from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Inspection of Allot 82/182/600 Materials Used in the Fabrication of Pressurizer Penetrations and Stream Space Piping Connections at Pressurized-Water Reactors'' (NRC Bulletin 2004–01) received on June 7, 2004; to the Committee on Environment and Public Works.

EC–7924. A communication from the Assistant Secretary, Division of Investment Management, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Disclosure of Breakpoint Discounts by Mutual Funds'' (RIN3235–

AI95) received on June 9, 2004; to the Committee on Finance.

EC–7925. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Timber Fertilization Expenses'' (Rev. Rul. 2004–62) received on June 9, 2004; to the Committee on Finance.

EC–7926. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Preproduction Costs of Creative Property'' (Rev. Rul. 2004–58) received on June 9, 2004; to the Committee on Finance.

EC–7927. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Preproduction Costs of Creative Properties Safe Harbor Amortization'' (Rev. Proc . 2004–36) received on June 9, 2004; to the Committee on Finance.

EC–7928. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC–7929. A communication from the Assistant Administrator, Bureau for Legislative and Public Affairs, U.S. Agency for International Development, transmitting, pursuant to law, the Egypt Economic Report to the Congress; to the Committee on Foreign Relations.

EC–7930. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles that are firearms sold commercially under a contract in the amount of $1,000,000 or more to Colombia; to the Committee on Foreign Relations.

EC–7931. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to the Republic of Korea and Germany; to the Committee on Foreign Relations.

EC–7932. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license agreement for the manufacture of significany military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more to Canada; to the Committee on Foreign Relations.

EC–7933. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad to Japan and the United Kingdom; to the Committee on Foreign Relations.

EC–7934. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Belgium and The Netherlands; to the Committee on Foreign Relations.

EC–7935. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC–7936. A communication from the Inspector General, Railroad Retirement Board, transmitting, pursuant to law, the Board's Semiannual Report to Congress for the period from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

EC–7937. A communication from the Staff Director, Commission on Civil Rights, transmitting, pursuant to law, a report relative to the Commission's internal control systems and their compliance with the provisions of the Federal Managers Financial Integrity Act; to the Committee on Governmental Affairs.

EC–7938. A communication from the Chairman, National Science Board, transmitting, pursuant to law, the report of the Office of Inspector General for the period from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

EC–7939. A communication from the General Counsel, Federal Retirement Thrift Investment Board, transmitting, pursuant to law, the report of a rule entitled ''Methods of Withdrawing Funds from the Thrift Savings Plan; Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts; Loan Program; Thrift Savings Plan'' received on June 9, 2004; to the Committee on Governmental Affairs.

EC–7940. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled ''Audit of Advisory Neighborhood Commission 8D for Fiscal Years 2000 Through 2003, as of March 31, 2003''; to the Committee on Governmental Affairs.

EC–7941. A communication from the Federal Co-chair, Appalachian Regional Commission, transmitting, pursuant to law, the report of the Office of Inspector General for the period from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

EC–7942. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the report of the Office of Inspector General for the period from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

EC–7943. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of the Office of Inspector General for the Department of Commerce from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

EC–7944. A communication from the Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Prevailing Rate Systems; Change in Federal Wage System Survey Job'' (RIN3206–AJ79) received on June 9, 2004; to the Committee on Governmental Affairs.

EC–7945. A communication from the Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Computation of Overtime Pay'' received on June 9, 2004; to the Committee on Governmental Affairs.

EC–7946. A communication from the Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Physicians' Comparability Allowances'' (RIN3206–AJ96) received on June 9, 2004; to the Committee on Governmental Affairs.

EC–7947. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Office's Annual report to Congress on its competitive sourcing accomplishments; to the Committee on Governmental Affairs.

EC–7948. A communication from the Chairman, National Credit Union Administration, transmitting, pursuant to law, the report of the Office of Inspector General for the period from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

EC–7949. A communication from the Administrator, U.S. Agency for International Development, transmitting, pursuant to law, the report of the office of Inspector General for the period from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

EC–7950. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the Office of Inspector General for the Department of Education from October 1, 2003 through March 31, 2004; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S.J. Res. 39. A joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

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. NELSON of Nebraska:

S. 2518. A bill to amend the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act to make the consent of Congress to certain compacts contingent on party states sharing the long-term liability for damages caused by radioactive releases from regional facilities; to the Committee on the Judiciary.

By Ms. MIKULSKI (for herself, Mrs. HUTCHISON, Ms. CANTWELL, Ms. SNOWE, Mrs. FEINSTEIN, Ms. COLLINS, Mrs. MURRAY, Mrs. DOLE, Ms. LANDRIEU, Ms. MURKOWSKI, Mrs. LINCOLN, Mrs. CLINTON, Ms. STABENOW, and Mrs. BOXER):

S. 2519. A bill to authorize assistance for education and health care for women and children in Iraq during the reconstruction of Iraq and thereafter, to authorize assistance for the enhancement of political participation, economic empowerment, civil society, and personal security for women in Iraq, to state the sense of Congress on the preservation and protection of the human rights of women and children in Iraq, and for other purposes; to the Committee on Foreign Relations.

By Mr. KENNEDY (for himself, Mr. CORZINE, Ms. MIKULSKI, Mrs. MURRAY, Mr. DURBIN, Mr. AKAKA, and Mr. FEINGOLD):

S. 2520. A bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families; to the Committee on Health, Education, Labor, and Pensions.

By Ms. COLLINS:

S. 2521. A bill to suspend temporarily the duty on certain rayon staple fibers; to the Committee on Finance.

By Mr. CORZINE:

S. 2522. A bill to amend title 38, United States Code, to increase the maximum amount of home loan guaranty available under the home loan guaranty program of the Department of Veterans Affairs, and for

other purposes; to the Committee on Veterans' Affairs.

ADDITIONAL COSPONSORS

S. 540

At the request of Mr. INHOFE, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 540, a bill to authorize the presentation of gold medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th Century in recognition of the service of those Native Americans to the United States.

S. 1139

At the request of Mr. DEWINE, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1139, a bill to direct the National Highway Traffic Safety Administration to establish and carry out traffic safety law enforcement and compliance campaigns, and for other purposes.

S. 1411

At the request of Ms. LANDRIEU, her name was added as a cosponsor of S. 1411, a bill to establish a National Housing Trust Fund in the Treasury of the United States to provide for the development of decent, safe, and affordable housing for low-income families, and for other purposes.

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1411, supra.

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 1411, supra.

S. 1557

At the request of Mr. MCCONNELL, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1557, a bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Armenia.

S. 1737

At the request of Mr. WYDEN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1737, a bill to amend the Clayton Act to enhance the authority of the Federal Trade Commission or the Attorney General to prevent anticompetitive practices in tightly concentrated gasoline markets.

S. 1888

At the request of Mr. SPECTER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1888, a bill to halt Saudi support for institutions that fund, train, incite, encourage, or in any other way aid and abet terrorism, and to secure full Saudi cooperation in the investigation of terrorist incidents.

S. 1897

At the request of Ms. SNOWE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1897, a bill to amend title XVIII of the Social Security Act to provide a clarification of congressional intent regarding the counting of residents in a non-provider setting for purposes making payment for medical education under the medicare program.

S. 2015

At the request of Ms. CANTWELL, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2015, a bill to prohibit energy market manipulation.

S. 2159

At the request of Mr. SESSIONS, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 2159, a bill to amend section 1951 of title 18, United States Code (commonly known as the Hobbs Act), and for other purposes.

S. 2302

At the request of Mr. CONRAD, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2302, a bill to improve access to physicians in medically underserved areas.

S. 2328

At the request of Mr. DORGAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2328, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes.

S. 2338

At the request of Mr. BOND, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2338, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 2449

At the request of Mr. BAUCUS, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2449, a bill to require congressional renewal of trade and travel restrictions with respect to Cuba.

S. 2461

At the request of Mr. DEWINE, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 2461, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S.J. RES. 37

At the request of Mr. BROWNBACK, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S.J. Res. 37, a bill to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian Tribes and offer an apology to all Native Peoples on behalf of the United States.

S. CON. RES. 74

At the request of Mrs. CLINTON, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Con. Res. 74, a concurrent resolution expressing the sense of the Congress that a postage stamp should be issued as a testimonial to the Nation's tireless commitment to reuniting America's missing children with their families, and to honor the memories of those children who were victims of abduction and murder.

S. CON. RES. 90

At the request of Mr. LEVIN, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. RES. 361

At the request of Mr. CHAMBLISS, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. Res. 361, a resolution supporting the goals of National Marina Day and urging marinas to continue providing environmentally friendly gateways to boating.

AMENDMENT NO. 3183

At the request of Mrs. MURRAY, her name was added as a cosponsor of amendment no. 3183 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction , and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

At the request of Mr. SMITH, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of amendment no. 3183 proposed to S. 2400, supra.

AMENDMENT NO. 3192

At the request of Mr. LEVIN, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of amendment no. 3192 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3251

At the request of Mr. BOND, his name was added as a cosponsor of amendment no. 3251 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3263

At the request of Mr. KENNEDY, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of amendment no. 3263 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and

for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3296

At the request of Mr. SARBANES, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of amendment no. 3296 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3301

At the request of Mr. NELSON of Nebraska, the names of the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. PRYOR), the Senator from South Dakota (Mr. JOHNSON) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of amendment no. 3301 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3313

At the request of Mr. LEVIN, his name was added as a cosponsor of amendment no. 3313 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3367

At the request of Mrs. BOXER, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of amendment no. 3367 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3377

At the request of Mr. KENNEDY, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of amendment no. 3377 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3412

At the request of Mr. KENNEDY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of amendment no. 3412 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3437

At the request of Mr. BUNNING, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of amendment no. 3437 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

STATEMENTS OF INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. MIKULSKI (for herself, Mrs. HUTCHISON, Ms. CANTWELL, Ms. SNOWE, Mrs. FEINSTEIN, Ms. COLLINS, Mrs. MURRAY, Mrs. DOLE, Ms. LANDRIEU, Ms. MURKOWSKI, Mrs. LINCOLN, Mrs. CLINTON, Ms. STABENOW, and Mrs. BOXER):

S. 2519. A bill to authorize assistance for education and health care for women and children in Iraq during the reconstruction of Iraq and thereafter, to authorize assistance for the enhancement of political participation, economic empowerment, civil society, and personal security for women in Iraq, to state the sense of Congress on the preservation and protection of the human rights of women and children in Iraq, and for other purposes; to the Committee on Foreign Relations.

Ms. MIKULSKI. Mr. President, I am proud to join with my colleague Senator KAY BAILEY HUTCHISON—and the 12 other women of the United States Senate—to introduce the Iraqi Women's and Children's Liberation Act. This legislation authorizes the President to give education, health care benefits and other help to the women and children of Iraq, including ensuring the political participation of women in a new democratic Iraq.

Before Saddam Hussein came to power, Iraq was the progressive center of the Middle East. In the 1940s, Iraqi women were lawyers, physicians, teachers, professors, engineers, scientists, prominent writers, artists and poets. By the late 1950's, women in Iraq enjoyed political freedoms with equal protections under the law and the right to vote.

Under Saddam Hussein, all that changed. Women lost opportunities for education. They were forced out of the work force. Women and children did not have access to health care. The personal rights of women were severely restricted or ignored as Saddam's government sanctioned ''honor killings'' and rape as a tool of oppression.

The facts speak for themselves. Today, women make up only 17 percent of the Iraqi workforce. Only 29 percent of Iraqi girls attend high school. Illiteracy among Iraqi women is an astronomical 77 percent, compared to 45 percent for men. Death during childbirth or from pregnancy related complications is the leading cause of death of Iraqi women. Health organizations estimate that 90 percent of these deaths are preventable. Right now, 25 percent of the children under the age of 5 in Iraq are malnourished and 1 in 8 dies even before they reach that age.

As America works to help the Iraqi people build a free and democratic nation, it is vitally important that education and health care for women and children are assured. If we are helping create a new government, let us insist that there not be the old rules, the old repression.

Of equal importance is ensuring that women have a seat at the table in a new Iraqi government. Full political participation by women is the best insurance that women's rights will be respected now and in the future.

These are the two important components of our legislation: first, it authorizes the President to provide education and health care assistance for the women and children living in Iraq and to women and children of Iraq who are refugees in other countries. When our own government and the NGOs come in, they should focus significant efforts on making sure women and children have access to education and health care. They should also do their best to partner with and build the capacity of local NGOs to strengthen Iraq's civil society.

Second, it authorizes the President to provide assistance enhancing the political participation, economic empowerment and personal security of Iraqi women. For Iraq to truly be liberated, its women must have a voice in the new political and governmental institutions.

This legislation is really about opportunity-making sure the women and children in Iraq have the opportunity to live productive lives and fulfill their potential, and making sure Iraq has the opportunity to succeed as a democratic nation by tapping the talents of all its citizens. The road to opportunity starts with access to health care so children can thrive and women can raise healthy families. It continues with education to gain the skills and knowledge necessary to support that family and contribute to society as a whole. One of the most important ways to contribute to society is through political participation—whether that means voting, running for office, working in a government agency, or organizing for a cause or a community.

While building the physical infrastructure in Iraq—things like roads, bridges, and power plants—is important, we also need to focus on the social infrastructure that protects women and children and builds hope and opportunity. That is the goal of this legislation.

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. 2519

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 ''Iraqi Women and Children's Liberation Act of 2004''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) For more than 600 years under the Ottoman Empire, women in Iraq were kept inside their homes, repressed, and forbidden to be seen in public without a related male escort.

(2) The Sevres Treaty of 1919, following World War I, installed a new monarchy in Iraq under which education for boys and girls flourished.

(3) Within a span of 20 years, 6 centuries of repression of women in Iraq was reversed. Thousands of women in Iraq became lawyers, physicians, educators, teachers, professors, engineers, prominent writers, artists, and poets, demonstrating the impact of progressive policies on the ability of women in Iraq to achieve.

(4) In 1941, women in Iraq earned equal wages for equal jobs, an achievement still not duplicated in most parts of the world.

(5) On July 14, 1958, the monarchy in Iraq was overthrown by General Abdul-Karim Kasim, who enfranchised women in Iraq with political rights.

(6) In 1959, Iraq became the first country in the Middle East to have a female minister, four female judges, prominent scientists, politicians, and freedom fighters.

(7) The 1959 Code of Personal Status secularized the multi-ethnic state of Iraq. Women enjoyed political and economic rights, successfully participating in the workforce as well as advancing in the political sphere. Women had the right to receive an education and work outside the home. Women were career military officers, oil-project designers, and construction supervisors, and had government jobs in education, medicine, accounting, and general administration.

(8) The Code of Personal Status also granted women extensive legal protections. It gave women the right to vote and granted equal status to men and women under the law. It prohibited marriage by persons under the age of 18 years, arbitrary divorce, and male favoritism in child custody and property inheritance disputes.

(9) The regime of Saddam Hussein regularly used rape and sexual violation of women to control information and suppress opposition in Iraq and tortured and killed female dissidents and female relatives of male dissidents.

(10) The Department of State has reported that more than 200 women in Iraq were beheaded by units of ''Fedayeen Saddaam'', a paramilitary organization headed by Uday Hussein.

(11) After the 1990 invasion of Kuwait, the regime of Saddam Hussein imposed policies that resulted in severe economic hardship, discrimination, impoverishment, and oppression of women in Iraq. Many women were prevented from working. Presently, women comprise as much as 65 percent of the population of Iraq, but only 19 percent of the workforce.

(12) Men who killed female relatives in ''honor killings'' were protected from prosecution for murder under Article 111 of the Iraqi Penal Code enacted in 1990. The United Nations Special Rapporteur on Violence Against Women has reported that since the enactment of that article, more than 4,000 women were killed for tarnishing the honor of their families, with the killings occurring by a range of methods that included stoning.

(13) Maternal mortality is the leading cause of death among women of reproductive age in Iraq, and it continues to rise due to lack of basic health care. The maternal mortality rate in Iraq of 292 deaths per 100,000 live births compared with a maternal mortality rate in the United States of 8 deaths per 100,000 live births. 90 percent of the maternal deaths in Iraq are identified as preventable.

(14) More than 48 percent of the population of Iraq is under the age of 18 years. One in four children of the age of 5 years or younger is chronically malnourished. One in eight children dies before the age of 5 years, the highest rate of mortality among children under that age in the region. Some estimate the total rate of child mortality in Iraq to be as high as 13 percent.

(15) Girls and women in Iraq have meager educational opportunities relative to the opportunities available to men and boys in Iraq, and twice as many boys as girls in Iraq attend school. 29 percent of females attend secondary school as compared with 47 percent of males. The illiteracy rate in Iraq is the highest in the Arab world at 61 percent for the general population, 77 percent for women, and 45 percent for men.

(16) Press accounts indicate that many women in Iraq are being pressured to adhere to strict Islamic codes that restrict their mobility and impinge on their human rights.

(17) Security for women in Iraq is an issue of grave concern. Women are afraid to leave their homes or to send their daughters to school.

(18) Women in leadership positions in Iraq are vulnerable to attack. One of the three women on the Iraqi Governing Council was assassinated, and another has a $2,000,000 bounty on her head.

(19) Women from the autonomous Kurdish region travel freely, hold important jobs and political positions, and perform a key role in the revival of the areas of Iraq that have been under Kurdish control. The integration of women in the economic and political spheres of the region provides a contrast to the rest of Iraq and serves as an example of what is possible in Iraq.

(20) According to the 2003 Arab Human Development Report of the United Nations, pervasive exclusion of women from the political, economic, and social spheres hampers development and growth in Arab countries.

(21) Ambassador L. Paul Bremer, the Presidential Envoy to Iraq, has voiced his support of women in Iraq in stating that ''[w]e in the coalition are committed to continuing to promote women's rights in Iraq.''

(22) Women have participated in planning for Iraq's political future in the following way:

(A) 3 out of 25 people on the Iraqi Governing Council are women.

(B) One of the government ministries is led by a woman. 16 of the 25 deputy minister positions are held by women.

(C) 15 of the 1,000 nationally-appointed judges are women.

(23) Resolution 137 was adopted in a closed session (sponsored by conservative Shiite members) on December 29, 2003, with the intent of reversing family law. The adoption of that resolution threatened negative impacts on the rights of women to education, employment, mobility, property inheritance, divorce, and child custody.

(24) Ambassador Bremer, who has veto power, stated that he would not sign Resolution 137 into law.

(25) The Iraqi Governing Council revoked Resolution 137 on February 27, 2004, in part due to pressure from women's groups. However some members of the Governing Council walked out to protest this action.

(26) The Transitional Administrative Law (TAL) that establishes the framework for the interim government of Iraq was officially signed on March 8, 2004. It aims to achieve a goal of having women constitute not less than 25 percent of the members of Iraq's interim legislature. It does not express a goal for a representation rate for women in the executive or judicial branch of the interim government. It also provides that Sharia, the Islamic law, can be a source, but not the only source, of Iraqi law.

(27) United States officials propose to turn over political power to Iraqis on June 30, 2004. Some factions have already voiced strong objection to the TAL and could press ahead with their goal of making Sharia the supreme law of Iraq.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the United States should ensure that women and children in Iraq benefit from the liberation of Iraq from the regime of Saddam Hussein;

(2) women of all ethnic groups in Iraq should be included in the economic and political reconstruction of Iraq;

(3) women should be involved in the drafting and review of the key legal instruments, especially the constitution, of the emerging nation in Iraq in order to ensure that the transition to that nation does not involve or facilitate the erosion of the rights of women in Iraq;

(4) women should have membership in any legislature or other committee, body, or structure convened to advance the reconstruction of Iraq that builds on the goal provided for in the Transitional Administrative Law;

(5) women should have a similar level of representation in leadership posts in all levels of government in Iraq, including ministers and judges, whether local or national, and women should be integrated in all levels of political process in Iraq, especially the building of political parties;

(6) the presence of women on the Iraqi Governing Council should better represent the percentage of women in the general population of Iraq;

(7) the participation and contribution of women to the economy of Iraq should be fostered by awarding contracts and sub-contracts to women and women-led businesses and by ensuring the availability of credit for women;

(8) continued emphasis and support should be granted to grass-roots organization and civil society building in Iraq, with special emphasis on organizing, mobilizing, educating, training, and building the capacities of women and ensuring the incorporation of their voices in decision-making in Iraq;

(9) the security needs of women in Iraq should be addressed and special emphasis placed on recruiting and training women for the police force in Iraq; and

(10) the Government of Iraq should adhere to internationally accepted standards on human rights and rights of women and children.

SEC. 4. AUTHORIZATION OF ASSISTANCE.

(a) EDUCATION AND HEALTH CARE ASSISTANCE FOR WOMEN AND CHILDREN.—The President is authorized to provide education and health care assistance for the women and children living in Iraq and to women and children of Iraq who are refugees in other countries.

(b) ENHANCEMENT OF POLITICAL PARTICIPATION, ECONOMIC EMPOWERMENT, CIVIL SOCIETY, AND PERSONAL SECURITY OF WOMEN.—The President is authorized to provide assistance for the enhancement of political participation, economic empowerment, civil society, and personal security of women in Iraq.

(c) SENSE OF CONGRESS ON PROVISION OF AUTHORIZED ASSISTANCE.—It is the sense of Congress that the President should ensure that assistance is provided under subsections (a) and (b) in a manner that protects and promotes the human rights of all people in Iraq, utilizing indigenous institutions and nongovernmental organizations, especially women's organizations, to the extent possible.

(d) SENSE OF CONGRESS ON PROMOTION OF HUMAN RIGHTS IN PROVISION OF ASSISTANCE TO GOVERNMENT OF IRAQ.—In providing assistance to the government of Iraq, the President should ensure that such assistance is conditioned on the government of Iraq making continued progress toward internationally accepted standards of human rights and the rights of women.

(e) REPORTS.—Not later than six months after the date of the enactment of this Act, and every six months thereafter during the three-year period beginning on such date, the Secretary of State shall submit to the appropriate congressional committees a report that sets forth the following:

(1) A comprehensive description and assessment of the conditions and status of women and children in Iraq as of the date of the report, including a description of any changes in such conditions and status during the six-month period ending on such date.

(2) A statement of the number of women and children of Iraq who are in refugee camps throughout the Middle East as of the date of such report, a description of their conditions as of such date, and a description of any changes in such conditions during the six-month period ending on such the date.

(3) A statement the expenditures of the United States Government during the six-month period ending on the date of such report to promote the education, health, security, human rights, opportunities for employment, judicial and civil society involvement and political participation of women in Iraq.

(f) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''appropriate congressional committees'' means—

(1) the Committees on Appropriations and Foreign Relations of the Senate; and

(2) the Committees Appropriations and International Relations of the House of Representatives.

By Mr. CORZINE:

S. 2522. A bill to amend title 38, United States Code, to increase the maximum amount of home loan guaranty available under the home loan guaranty program of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

Mr. CORZINE. Mr. President, I rise to introduce legislation to increase the VA home loan guaranty so that veterans participating in the program may secure a mortgage comparable to what they could obtain in the conventional mortgage market.

The VA home loan guaranty program, which Congress created in 1944, has assisted millions of veterans—many of whom missed the opportunity to accumulate savings or build credit during their time of service—purchase a home. Under the program, an eligible veteran may purchase a home through a private lender and the VA guarantees to pay the lender a portion of the losses if the veteran defaults on the loan.

Unfortunately, the VA currently only guarantees a maximum of $60,000 on a loan. This means, effectively, that a lender will only loan four times the amount of the guaranty, or $240,000, to a veteran seeking a home loan.

While a loan of this size is sufficient to assist many veterans in purchasing a home, it is insufficient for many other veterans, particularly those living in high cost areas, like my state of New Jersey. In most places in my State, the cost of purchasing a home exceeds $240,000. For example, the median home sale price is Newark, New Jersey in 2003, was $331,200. In Middlesex, Hunterdon, and Somerset, the median sales price in 2003, was $314,000.

Thus, unfortunately for many veterans living in these high cost areas, the VA home loan program is inaccessible because the guaranty is so low.

My legislation would increase the VA guaranty to 25 percent of the Freddie Mac conforming loan limit, or $83,425. With such an increase, a participating veteran could borrow up to $333,700—which is the conventional loan limit—towards the purchase of a home. And, because Freddie Mac updates its conforming loan limit annually to account for changes in average housing prices, pegging the VA home loan guaranty to this index would ensure that the guaranty and available mortgage limits rise with housing inflation.

My legislation, which the House Veterans Affairs Committee recently approved, would ensure that more veterans have a chance at the American Dream of owning a home. What is more, my legislation would not cost the U.S. Treasury a cent. In fact, according to the Congressional Budget Office (CBO), it would raise approximately $42 million a year, through increased user fees associated with the VA home loan program.

This legislation is simple, it's cost effective, and it would assist our veterans, who have traded years of traditional employment to serve our country, purchase a home. I hope that my colleagues will join me in supporting this important piece of legislation.

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. 2522

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN MAXIMUM AMOUNT OF HOME LOAN GUARANTY FOR CONSTRUCTION AND PURCHASE OF HOMES AND ANNUAL INDEXING OF AMOUNT.

(a) MAXIMUM LOAN GUARANTY BASED ON 100 PERCENT OF FREDDIE MAC CONFORMING LOAN RATE.—Section 3703(a)(1) of title 38, United States Code, is amended by striking ''$60,000'' each place it appears in subparagraphs (A)(i)(IV) and (B) and inserting ''the maximum guaranty amount (as defined in subparagraph (C))''.

(b) DEFINITION.—Such section is further amended by adding at the end the following new subparagraph:

''(C) In this paragraph, the term 'maximum guaranty amount' means the dollar amount that is equal to 25 percent of the Freddie Mac conforming loan limit limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a single-family residence, as adjusted for the year involved.''.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3450. Mr. WARNER submitted an amendment intended to be proposed to amendment SA 3352 proposed by Mr. REED (for himself, Mr. HAGEL, Mr. MCCAIN, Mr. CORZINE, Mr. AKAKA, and Mr. BIDEN) to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

SA 3451. Mr. WARNER (for Mr. SHELBY) proposed an amendment to the bill S. 2238, to amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

TEXT OF AMENDMENTS

SA 3450. Mr. WARNER submitted an amendment intended to be proposed to amendment SA 3352 proposed by Mr. REED (for himself, Mr. HAGEL, Mr. MCCAIN, Mr. CORZINE, Mr. AKAKA, and Mr. BIDEN) to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

Strike line 2 and insert the following: ''502,400, subject to the condition that the costs of active duty personnel of the Army in excess of 482,400 shall be paid out of funds authorized to be appropriated for fiscal year 2005 for a contingent emergency reserve fund or as an emergency supplemental appropriation''.

SA 3451. Mr. WARNER (for Mr. SHELBY) proposed an amendment to the bill S. 2238, to amend the National Flood Insurance Act of 1968 to reduce losses to the properties for which repetitive flood insurance claim payments have been made; as follows:

On page 2, line 3, strike ''Flood Insurance Reform Act of 2004'' and insert ''Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004''.

On page 7, line 6, insert ''that decide to participate in the pilot program established under this section'' after ''communities''.

On page 7, line 20, strike ''3'' and insert ''4''.

On page 7, line 24, strike ''$3,000'' and insert ''$5,000''.

On page 7, line 26, strike ''$15,000'' and insert ''$20,000''.

On page 8, line 19, strike ''1 foot above''.

On page 8, line 22, strike ''(f)'' and insert ''(g)''.

On page 8, line 25, strike ''1-year period'' and insert ''fiscal year''.

On page 10, between lines 13 and 14, insert the following:

''(e) NOTICE OF MITIGATION PROGRAM.—

''(1) IN GENERAL.—Upon selecting a State or community to receive assistance under subsection (a) to carry out eligible activities, the Director shall notify the owners of a severe repetitive loss property, in plain language, within that State or community—

''(A) that their property meets the definition of a severe repetitive loss property under this section;

''(B) that they may receive an offer of assistance under this section;

''(C) of the types of assistance potentially available under this section;

''(D) of the implications of declining such offer of assistance under this section; and

''(E) that there is a right to appeal under this section.

''(2) IDENTIFICATION OF SEVERE REPETITIVE LOSS PROPERTIES.—The Director shall take such steps as are necessary to identify severe repetitive loss properties, and submit that information to the relevant States and communities.

On page 10, line 14, strike ''(e)'' and insert ''(f)''.

On page 10, line 23, insert '', in a manner consistent with the allocation formula under paragraph (5)'' after ''time''.

On page 11, between lines 3 and 4, insert the following:

''(3) CONSULTATION.—In determining for which eligible activities under subsection (c) to provide assistance with respect to a severe repetitive loss property, the relevant States and communities shall consult, to the extent practicable, with the owner of the property.

''(4) DEFERENCE TO LOCAL MITIGATION DECISIONS.—The Director shall not, by rule, regulation, or order, establish a priority for funding eligible activities under this section that gives preference to one type or category of eligible activity over any other type or category of eligible activity.

''(5) ALLOCATION.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), of the total amount made available for assistance under this section in any fiscal year, the Director shall allocate assistance to a State, and the communities located within that State, based upon the percentage of the total number of severe repetitive loss properties located within that State.

''(B) REDISTRIBUTION.—Any funds allocated to a State, and the communities within the State, under subparagraph (A) that have not been obligated by the end of each fiscal year shall be redistributed by the Director to other States and communities to carry out eligible activities in accordance with this section.

''(C) EXCEPTION.—Of the total amount made available for assistance under this section in any fiscal year, 10 percent shall be made available to communities that—

''(i) contain one or more severe repetitive loss properties; and

''(ii) are located in States that receive little or no assistance, as determined by the Director, under the allocation formula under subparagraph (A).

On page 11, line 4, strike ''(3)'' and insert ''(6)''.

On page 11, line 9, strike ''(f)'' and insert ''(g)''.

On page 13, line 3, strike ''(g)'' and insert ''(h)''.

On page 16, line 11, strike ''historic places'' and insert ''Historic Places''.

On page 16, after line 25, insert the following:

''(vi) The owner of the property, based on independent information, such as contractor estimates or other appraisals, demonstrates that an alternative eligible activity under subsection (c) is at least as cost effective as the initial offer of assistance.

On page 17, line 22, strike ''that the grounds'' and insert ''in favor of the property owner''.

On page 17, line 24, strike ''make a determination of how much to'' and insert ''require the Director to''.

On page 18, lines 4 through 6, strike ''and the Director shall promptly reduce the chargeable risk premium rate for such property by such amount'' and insert ''to the amount paid prior to the offer to take action under paragraph (1) or (2) of subsection (c)''.

On page 19, line 6, strike ''Flood'' and insert ''Bunning–Bereuter–Blumenauer Flood''.

On page 19, line 16, strike ''(h)'' and insert ''(i)''.

On page 20, between lines 2 and 3, insert the following:

''(j) RULES.—

''(1) IN GENERAL.—The Director shall, by rule—

''(A) subject to subsection (f)(4), develop procedures for the distribution of funds to States and communities to carry out eligible activities under this section; and

''(B) ensure that the procedures developed under paragraph (1)—

''(i) require the Director to notify States and communities of the availability of funding under this section, and that participation in the pilot program under this section is optional;

''(ii) provide that the Director may assist States and communities in identifying severe repetitive loss properties within States or communities;

''(iii) allow each State and community to select properties to be the subject of eligible activities, and the appropriate eligible activity to be performed with respect to each severe repetitive loss property; and

''(iv) require each State or community to submit a list of severe repetitive loss properties to the Director that the State or community would like to be the subject of eligible activities under this section.

''(2) CONSULTATION.—Not later than 90 days after the date of enactment of this Act, the Director shall consult with State and local officials in carrying out paragraph (1)(A), and provide an opportunity for an oral presentation, on the record, of data and arguments from such officials.

On page 20, line 3, strike ''(i)'' and insert ''(k)''.

On page 20, line 7, strike ''2004,''.

On page 20, line 8, strike ''and 2008'' and insert ''2008, and 2009''.

On page 20, line 19, strike ''section 1361A'' and insert ''this section''.

On page 20, line 20, strike ''(j)'' and insert ''(l)''.

On page 20, line 22, strike ''2008'' and insert ''2009''.

On page 22, line 12, strike ''(m)'' and insert ''(l)''.

On page 22, strike line 21 and all that follows through page 23, line 3, and insert the following:

(d) FUNDING.—Section 1367 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d) is amended—

(1) in subsection (b), by striking paragraph (1) and inserting the following:

''(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding $40,000,000, to remain available until expended;'';

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

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

''(c) ADMINISTRATIVE EXPENSES.—The Director may use not more than 5 percent of amounts made available under subsection (b) to cover salaries, expenses, and other administrative costs incurred by the Director to make grants and provide assistance under sections 1366 and 1323.''.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON PRODUCTION AND PRICE COMPETITIVENESS

Mr. COCHRAN. Mr. President, I announce that the Subcommittee on Production and Price Competitiveness of the Committee on Agriculture, Nutrition, and Forestry will conduct a hearing on June 23, 2004 in SD–628 at 10 a.m. The purpose of this hearing will be to examine proposed legislation permitting the Administrator of the Environmental Protection Agency to register Canadian pesticides. Agenda: S. 1406.

SUBCOMMITTEE ON ENERGY

Mr. ALEXANDER. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Energy of the Committee on Energy and Natural Resources.

The hearing will be held on Tuesday, June 22, at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of this hearing is to receive testimony regarding High Performance Computing: Regaining U.S. Leadership.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, June 15, 2004, at 11 a.m. to conduct a hearing on the nomination of the Hon. Alan Greenspan, of New York, to be chairman of the board of governors of the Federal Reserve System.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION.

Mr. INHOFE. Mr. President: I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet

on Tuesday, June 15, 2004, at 9:30 a.m. on Oversight of Pipeline Safety.

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

COMMITTEE ON FINANCE

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, June 15, 2004, at 10:30 a.m., in 215 Dirksen Senate Office Building, to hear testimony on U.S.—Australia and U.S.—Morocco Free Trade Agreements; and to consider S.J. Res. 39, Approving the Renewal of Import Restrictions Contained in the Burmese Freedom and Democracy Act of 2003.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 15, 2004 at 9:30 a.m. to hold a hearing on Sea Island and Beyond: Status Report on the Global Partnership Against Weapons of Mass Destruction.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 15, 2004 at 2:30 p.m. to hold a hearing on Sudan: Peace But At What Price?

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

COMMITTEE ON FOREIGN RELATIONS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 15, 2004 at 4:30 p.m. to hold a hearing on Nominations.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, June 15, 2004, at 10:30 a.m. for a hearing titled ''A Review of Current Efforts to Combat Terrorism Financing.''

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, June 15 at 10:45 a.m.

The purpose of this hearing is to receive testimony regarding crude oil supply, gasoline demand and the effects on prices.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, June 15, 2004, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 1530, the Tribal Parity Act.

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

COMMITTEE ON THE JUDICIARY

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, June 15, 2004 at 10 a.m., on ''Biometric Passports'' in the Dirksen Senate Office Building, room 226. The witness list will be provided later today.

Panel I: The Honorable Maria Cantwell, United States Senator [D–WA].

Panel II: The Honorable Asa Hutchinson, Under Secretary for Border and Transportation Security, Department of Homeland Defense, Washington, DC; The Honorable Maura Harty, Assistant Secretary for Consular Affairs, Department of State, Washington, DC.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. INHOFE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on June 15, 2004 at 2:30 p.m., to hold a closed business meeting.

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

SPECIAL COMMITTEE ON AGING

Mr. INHOFE. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet on Tuesday, June 15, 2004 from 10:15 a.m.–12:30 p.m., in Dirksen 628 for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Substance Abuse and Mental Health Services be authorized to meet for a hearing on Providing Substance Abuse Prevention and Treatment Services to Adolescents during the session of the Senate on Tuesday, June 15, 2004, at 10 a.m.

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

PRIVILEGE OF THE FLOOR

Mr. TALENT. Mr. President, I ask unanimous consent that Lore Aquayo of my office be allowed the privilege of the floor.

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

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

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

FLOOD INSURANCE REFORM ACT OF 2004

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 513, S. 2238.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2238) to amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

There being no objection, the Senate proceeded to consider the bill which was reported by the Committee on Banking, Housing, and Urban Affairs, with amendments, as follows:

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

S. 2238

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Flood Insurance Reform Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Congressional findings.
TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968
Sec. 101. Extension of program and consolidation of authorizations.
Sec. 102. Establishment of pilot program for mitigation of severe repetitive loss properties.
Sec. 103. Amendments to existing flood mitigation assistance program.
Sec. 104. FEMA authority to fund mitigation activities for individual repetitive claims properties.
Sec. 105. Amendments to additional coverage for compliance with land use and control measures.
Sec. 106. Actuarial rate properties.
Sec. 107. Geospatial digital flood hazard data.
Sec. 108. Replacement of mobile homes on original sites.
Sec. 109. Reiteration of FEMA responsibility to map mudslides.
TITLE II—MISCELLANEOUS PROVISIONS
Sec. 201. Definitions.
Sec. 202. Supplemental forms.
Sec. 203. Acknowledgement form.
Sec. 204. Flood insurance claims handbook.
Sec. 205. Appeal of decisions relating to flood insurance coverage.
Sec. 206. Study and report on use of cost compliance coverage.
Sec. 207. Minimum training and education requirements.
Sec. 208. GAO study and report.
Sec. 209. Prospective payment of flood insurance premiums.
Sec. 210. Report on changes to fee schedule or fee payment arrangements.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the national flood insurance program—

(A) identifies the flood risk;

(B) provides flood risk information to the public;

(C) encourages State and local governments to make appropriate land use adjustments to constrict the development of land

which is exposed to flood damage and minimize damage caused by flood losses; and

(D) makes flood insurance available on a nationwide basis that would otherwise not be available, to accelerate recovery from floods, mitigate future losses, save lives, and reduce the personal and national costs of flood disasters;

(2) the national flood insurance program insures approximately 4,400,000 policyholders;

(3) approximately 48,000 properties currently insured under the program have experienced, within a 10-year period, 2 or more flood losses where each such loss exceeds the amount $1,000;

(4) approximately 10,000 of these repetitive-loss properties have experienced either 2 or 3 losses that cumulatively exceed building value or 4 or more losses, each exceeding $1,000;

(5) repetitive-loss properties constitute a significant drain on the resources of the national flood insurance program, costing about $200,000,000 annually;

(6) repetitive-loss properties comprise approximately 1 percent of currently insured properties but are expected to account for 25 to 30 percent of claims losses;

(7) the vast majority of repetitive-loss properties were built before local community implementation of floodplain management standards under the program and thus are eligible for subsidized flood insurance;

(8) while some property owners take advantage of the program allowing subsidized flood insurance without requiring mitigation action, others are trapped in a vicious cycle of suffering flooding, then repairing flood damage, then suffering flooding, without the means to mitigate losses or move out of harm's way;

(9) mitigation of repetitive-loss properties through buyouts, elevations, relocations, or flood-proofing will produce savings for policyholders under the program and for Federal taxpayers through reduced flood insurance losses and reduced Federal disaster assistance;

(10) a strategy of making mitigation offers aimed at high-priority repetitive-loss properties and shifting more of the burden of recovery costs to property owners who choose to remain vulnerable to repetitive flood damage can encourage property owners to take appropriate actions that reduce loss of life and property damage and benefit the financial soundness of the program;

(11) the method for addressing repetitive-loss properties should be flexible enough to take into consideration legitimate circumstances that may prevent an owner from taking a mitigation action; and

(12) focusing the mitigation and buy-out of repetitive loss properties upon communities and property owners that choose to voluntarily participate in a mitigation and buy-out program will maximize the benefits of such a program, while minimizing any adverse impact on communities and property owners.

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

SEC. 101. EXTENSION OF PROGRAM AND CONSOLIDATION OF AUTHORIZATIONS.

(a) BORROWING AUTHORITY.—The first sentence of section 1309(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)), is amended by striking ''through December'' and all that follows through '', and'' and inserting ''through the date specified in section 1319, and''.

(b) AUTHORITY FOR CONTRACTS.—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026), is amended by striking ''after'' and all that follows and inserting ''after September 30, 2008.''.

(c) EMERGENCY IMPLEMENTATION.—Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)), is amended by striking ''during the period'' and all that follows through ''in accordance'' and inserting ''during the period ending on the date specified in section 1319, in accordance''.

(d) AUTHORIZATION OF APPROPRIATIONS FOR STUDIES.—Section 1376(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4127(c)), is amended by striking ''through'' and all that follows and inserting ''through the date specified in section 1319, for studies under this title.''.

SEC. 102. ESTABLISHMENT OF PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

(a) IN GENERAL.—The National Flood Insurance Act of 1968 is amended by inserting after section 1361 (42 U.S.C. 4102) the following:

''SEC. 1361A. PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

''(a) AUTHORITY.—To the extent amounts are made available for use under this section, the Director may, subject to the limitations of this section, provide financial assistance to States and communities for taking actions with respect to severe repetitive loss properties (as such term is defined in subsection (b)) to mitigate flood damage to such properties and losses to the National Flood Insurance Fund from such properties.

''(b) SEVERE REPETITIVE LOSS PROPERTY.—For purposes of this section, the term 'severe repetitive loss property' has the following meaning:

''(1) SINGLE-FAMILY PROPERTIES.—In the case of a property consisting of 1 to 4 residences, such term means a property that—

''(A) is covered under a contract for flood insurance made available under this title; and

''(B) has incurred flood-related damage—

''(i) for which 3 or more separate claims payments have been made under flood insurance coverage under this title, with the amount of each such claim exceeding $3,000, and with the cumulative amount of such claims payments exceeding $15,000; *or*

''(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

''(2) MULTIFAMILY PROPERTIES.—In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director shall by regulation provide.

''(c) ELIGIBLE ACTIVITIES.—Amounts provided under this section to a State or community may be used only for the following activities:

''(1) MITIGATION ACTIVITIES.—To carry out mitigation activities that reduce flood damages to severe repetitive loss properties, including elevation, relocation, demolition, and floodproofing of structures, and minor physical localized flood control projects, and the demolition and rebuilding of properties to at least 1 foot above Base Flood Elevation or greater, if required by any local ordinance.

''(2) PURCHASE.—To purchase severe repetitive loss properties, subject to subsection (f).

''(d) MATCHING REQUIREMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), in any 1-year period the Director may not provide assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds for carrying out the eligible activities to be funded with such assistance amounts.

''(2) REDUCED COMMUNITY MATCH.—With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

''(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

''(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.

''(3) NON-FEDERAL FUNDS.—For purposes of this subsection, the term 'non-Federal funds' includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the eligible activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

''(e) STANDARDS FOR MITIGATION OFFERS.—The program under this section for providing assistance for eligible activities for severe repetitive loss properties shall be subject to the following limitations:

''(1) PRIORITY.—In determining the properties for which to provide assistance for eligible activities under subsection (c), the Director shall provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time.

''(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties to take eligible activities under subsection (c) as soon as practicable.

''(3) NOTICE.—Upon making an offer to provide assistance with respect to a property for any eligible activity under subsection (c), the State or community shall notify each holder of a recorded interest on the property of such offer and activity.

''(f) PURCHASE OFFERS.—A State or community may take action under subsection (c)(2) to purchase a severe repetitive loss property only if the following requirements are met:

''(1) USE OF PROPERTY.—The State or community enters into an agreement with the Director that provides assurances that the property purchased will be used in a manner that is consistent with the requirements of section 404(b)(2)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(b)(2)(B)) for properties acquired, accepted, or from which a structure will be removed pursuant to a project provided property acquisition and relocation assistance under such section 404(b).

''(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties and of associated land to engage in eligible activities as soon as possible.

''(3) PURCHASE PRICE.—The amount of purchase offer is not less than the greatest of—

''(A) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;

''(B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property; and

''(C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property, *or an amount equal to the current fair market value of the property*.

''*(4) COMPARABLE HOUSING PAYMENT.—If a purchase offer made under paragraph (2) is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the flood hazard area in the same community, the Director shall make available an additional relocation payment to the homeowner-occupant to apply to the difference.*

''(g) INCREASED PREMIUMS IN CASES OF REFUSAL TO MITIGATE.—

''(1) IN GENERAL.—In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property, the Director shall—

''(A) notify each holder of a recorded interest on the property of such refusal; and

''(B) notwithstanding subsections (a) through (c) of section 1308, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to paragraph (2) and subject to the limitation under paragraph (3).

''(2) INCREASED PREMIUMS UPON SUBSEQUENT FLOOD DAMAGE.—Notwithstanding subsections (a) through (c) of section 1308, if the owner of a severe repetitive loss property does not accept an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property and a claim payment exceeding $1,500 is made under flood insurance coverage under this title for damage to the property caused by a flood event occurring after such offer is made, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time of such flood event, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to this paragraph and subject to the limitation under paragraph (3).

''(3) LIMITATION ON INCREASED PREMIUMS.—In no case may the chargeable premium rate for a severe repetitive loss property be increased pursuant to this subsection to an amount exceeding the applicable estimated risk premium rate for the area (or subdivision thereof) under section 1307(a)(1).

''(4) TREATMENT OF DEDUCTIBLES.—Any increase in chargeable premium rates required under this subsection for a severe repetitive loss property may be carried out, to the extent appropriate, as determined by the Director, by adjusting any deductible charged in connection with flood insurance coverage under this title for the property.

''(5) NOTICE OF CONTINUED OFFER.—Upon each renewal or modification of any flood insurance coverage under this title for a severe repetitive loss property, the Director shall notify the owner that the offer made pursuant to subsection (c) is still open.

''(6) APPEALS.—

''(A) IN GENERAL.—Any owner of a severe repetitive loss property may appeal a determination of the Director to take action under paragraph (1)(B) or (2) with respect to such property, based only upon the following grounds:

''(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

''(ii) Based on independent information, such as contractor estimates or appraisals, the property owner believes that the price offered for purchasing the property is not an accurate estimation of the value of the property, or the amount *of Federal funds* offered for mitigation activities, *when combined with funds from non-Federal sources*, will not cover the actual cost of mitigation.

''(iii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of historic places will be interfered with, impaired, or disrupted.

''(iv) The flooding that resulted in the flood insurance claims described in subsection (b)(2) for the property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

''(v) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

''(B) PROCEDURE.—An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1)(B) or (2), as applicable.

''(C) EFFECT OF FINAL DETERMINATION.—In an appeal under this paragraph—

''(i) if a final determination is made that the grounds under subparagraph (A) exist, the third party hearing such appeal shall make a determination of how much to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1)(B) or (2) and the Director shall promptly reduce the chargeable risk premium rate for such property by such amount; and

''(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1)(B) or (2), as applicable, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

''(D) COSTS.—If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

''(i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and

''(ii) by the National Flood Insurance Fund, if such final determination is that the grounds under subparagraph (A) do exist.

''(E) REPORT.—Not later than 6 months after the date of the enactment of the Flood Insurance Reform Act of 2004, the Director shall submit a report describing the rules, procedures, and administration for appeals under this paragraph to—

''(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(ii) the Committee on Financial Services of the House of Representatives.

''(h) DISCRETIONARY ACTIONS IN CASES OF FRAUDULENT CLAIMS.—If the Director determines that a fraudulent claim was made under flood insurance coverage under this title for a severe repetitive loss property, the Director may—

''(1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this title for the property; or

''(2) refuse to renew the policy with such policyholder upon expiration and deny the provision of any new flood insurance coverage under this title to such policyholder for the property.

''(i) FUNDING.—

''(1) IN GENERAL.—Pursuant to section 1310(a)(8), the Director may use amounts from the National Flood Insurance Fund to provide assistance under this section in each of fiscal years 2004, 2005, 2006, 2007, and 2008, except that the amount so used in each such fiscal year may not exceed $40,000,000 and shall remain available until expended. Notwithstanding any other provision of this title, amounts made available pursuant to this subsection shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

''(2) ADMINISTRATIVE EXPENSES.—Of the amounts made available under this subsection, the Director may use up to 5 percent for expenses associated with the administration of section 1361A.

''(j) TERMINATION.—The Director may not provide assistance under this section to any State or community after September 30, 2008.''.

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (7), by striking ''and'' at the end; and

(2) by striking paragraph (8) and inserting the following:

''(8) for financial assistance under section 1361A to States and communities for taking actions under such section with respect to severe repetitive loss properties, but only to the extent provided in section 1361A(i); and''.

SEC. 103. AMENDMENTS TO EXISTING FLOOD MITIGATION ASSISTANCE PROGRAM.

(a) STANDARD FOR APPROVAL OF MITIGATION PLANS.—Section 1366(e)(3) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following new sentence: ''The Director may approve only mitigation plans that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.''.

(b) PRIORITY FOR MITIGATION ASSISTANCE.—Section 1366(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by striking paragraph (4) and inserting the following:

''(4) PRIORITY FOR MITIGATION ASSISTANCE.—In providing grants under this subsection for mitigation activities, the Director shall give first priority for funding to such properties, or to such subsets of such properties as the Director may establish, that the Director determines are in the best interests of the National Flood Insurance Fund and for which matching amounts under subsection (f) are available.''.

(c) COORDINATION WITH STATES AND COMMUNITIES.—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following:

''(m) COORDINATION WITH STATES AND COMMUNITIES.—The Director shall, in consultation and coordination with States and communities take such actions as are appropriate to encourage and improve participation in the national flood insurance program of owners of properties, including owners of properties that are not located in areas having special flood hazards [but are located within the 100-year floodplain] *(the 100-year floodplain), but are located within flood prone areas*.''.

(d) FUNDING.—Section 1367(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d(b)) is amended by striking paragraph (1) and inserting the following:

''(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding $40,000,000, to remain available until expended;''.

(e) REDUCED COMMUNITY MATCH.—Section 1366(g) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(g)), is amended—

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

''(2) REDUCED COMMUNITY MATCH.—With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

''(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

''(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.''.

(f) NATIONAL FLOOD MITIGATION FUND.—Section 1366(b)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(b)(2)), is amended by striking ''$1,500,000'' and inserting ''7.5 percent of the available funds under this section''.

SEC. 104. FEMA AUTHORITY TO FUND MITIGATION ACTIVITIES FOR INDIVIDUAL REPETITIVE CLAIMS PROPERTIES.

(a) IN GENERAL.—Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by adding at the end the following:

''SEC. 1323. GRANTS FOR REPETITIVE INSURANCE CLAIMS PROPERTIES.

''(a) IN GENERAL.—The Director may provide funding for mitigation actions that reduce flood damages to individual properties for which 1 or more claim payments for losses have been made under flood insurance coverage under this title, but only if the Director determines that—

''(1) such activities are in the best interest of the National Flood Insurance Fund; and

''(2) such activities cannot be funded under the program under section 1366 because—

''(A) the requirements of section 1366(g) are not being met by the State or community in which the property is located; or

''(B) the State or community does not have the capacity to manage such activities.

''(b) PRIORITY FOR WORST-CASE PROPERTIES.—In determining the properties for which funding is to be provided under this section, the Director shall consult with the States in which such properties are located and provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time.''.

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended by adding at the end the following:

''(9) for funding, not to exceed $10,000,000 in any fiscal year, for mitigation actions under section 1323, except that, notwithstanding any other provision of this title, amounts made available pursuant to this paragraph shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.''.

SEC. 105. AMENDMENTS TO ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES.

(a) COMPLIANCE WITH LAND USE AND CONTROL MEASURES.—Section 1304(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking ''compliance'' and inserting ''implementing measures that are consistent''; and

(B) by inserting ''by the community'' after ''established'';

(2) in paragraph (2), by striking ''have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event; and'' and inserting ''are substantially damaged structures;''

(3) in paragraph (3), by striking ''compliance with land use and control measures.'' and inserting ''the implementation of such measures; and''; and

(4) by inserting after paragraph (3) and before the last undesignated paragraph the following:

''(4) properties for which an offer of mitigation assistance is made under—

''(A) section 1366 (Flood Mitigation Assistance Program);

''(B) section 1368 (Repetitive Loss Priority Program and Individual Priority Property Program);

''(C) the Hazard Mitigation Grant Program authorized under section 404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5170c);

''(D) the Predisaster Hazard Mitigation Program under section 203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5133); and

''(E) any programs authorized or for which funds are appropriated to address any unmet needs or for which supplemental funds are made available.''.

(b) DEFINITIONS.—Section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is amended—

(1) by striking paragraph (7) and inserting the following:

''(7) the term 'repetitive loss structure' means a structure covered by a contract for flood insurance that—

''(A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event; and

''(B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.'';

(2) in paragraph (13), by striking ''and'' at the end;

(3) in paragraph (14), by striking the period and inserting ''; and''; and

(4) by adding at the end the following:

''(15) the term 'substantially damaged structure' means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in any regulation promulgated by the Director, or by a community ordinance, whichever is lower.''.

SEC. 106. ACTUARIAL RATE PROPERTIES.

(a) IN GENERAL.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by striking subsection (c) and inserting the following:

''(c) ACTUARIAL RATE PROPERTIES.—Subject only to the limitations provided under paragraphs (1) and (2), the chargeable rate shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 1307(a)(1) with respect to the following properties:

''(1) POST-FIRM PROPERTIES.—Any property the construction or substantial improvement of which the Director determines has been started after December 31, 1974, or started after the effective date of the initial rate map published by the Director under paragraph (2) of section 1360 for the area in which such property is located, whichever is later, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e).

''(2) CERTAIN LEASED COASTAL AND RIVER PROPERTIES.—Any property leased from the Federal Government (including residential and nonresidential properties) that the Director determines is located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.''.

(b) INAPPLICABILITY OF ANNUAL LIMITATIONS ON PREMIUM INCREASES.—Section 1308(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is amended by striking ''Notwithstanding'' and inserting ''Except with respect to properties described under paragraph (2) or (3) of subsection (c), and notwithstanding''.

SEC. 107. GEOSPATIAL DIGITAL FLOOD HAZARD DATA.

For the purposes of flood insurance and floodplain management activities conducted pursuant to the National Flood Insurance Program under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), geospatial digital flood hazard data distributed by the Federal Emergency Management Agency, or its designee, or the printed products derived from that data, are interchangeable and legally equivalent for the determination of the location of 1 in 100 year and 1 in 500 year flood planes, provided that all other geospatial data shown on the printed product meets or exceeds any accuracy standard promulgated by the Federal Emergency Management Agency.

SEC. 108. REPLACEMENT OF MOBILE HOMES ON ORIGINAL SITES.

Section 1315 of the National Flood Insurance Act of 1968 (42 U.S.C. 4022) is amended by adding at the end the following:

''(c) REPLACEMENT OF MOBILE HOMES ON ORIGINAL SITES.—

''(1) COMMUNITY PARTICIPATION.—The placement of any mobile home on any site shall not affect the eligibility of any community to participate in the flood insurance program under this title and the Flood Disaster Protection Act of 1973 (notwithstanding that such placement may fail to comply with any elevation or flood damage mitigation requirements), if—

''(A) such mobile home was previously located on such site;

''(B) such mobile home was relocated from such site because of flooding that threatened or affected such site; and

''(C) such replacement is conducted not later than the expiration of the 180-day period that begins upon the subsidence (in the area of such site) of the body of water that flooded to a level considered lower than flood levels.

''(2) DEFINITION.—For purposes of this subsection, the term 'mobile home' has the

meaning given such term in the law of the State in which the mobile home is located.''.

SEC. 109. REITERATION OF FEMA RESPONSIBILITY TO MAP MUDSLIDES.

As directed in section 1360(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(b)), the Director of the Federal Emergency Management Agency is again directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of such section 1360, in order to make known the degree of hazard within each such zone at the earliest possible date.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. DEFINITIONS.

In this title, the following definitions shall apply:

(1) DIRECTOR.—The term ''Director'' means the Director of the Federal Emergency Management Agency.

(2) FLOOD INSURANCE POLICY.—The term ''flood insurance policy'' means a flood insurance policy issued under the National Flood Insurance Act of 1968 (42 U.S.C. et seq.).

(3) PROGRAM.—The term ''Program'' means the National Flood Insurance Program established under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

SEC. 202. SUPPLEMENTAL FORMS.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop supplemental forms to be issued in conjunction with the issuance of a flood insurance policy that set forth, in simple terms—

(1) the exact coverages being purchased by a policyholder;

(2) any exclusions from coverage that apply to the coverages purchased;

(3) an explanation, including illustrations, of how lost items and damages will be valued under the policy at the time of loss;

(4) the number and dollar value of claims filed under a flood insurance policy over the life of the property, and the effect, under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), of the filing of any further claims under a flood insurance policy with respect to that property; and

(5) any other information that the Director determines will be helpful to policyholders in understanding flood insurance coverage.

(b) DISTRIBUTION.—The forms developed under subsection (a) shall be given to—

(1) all holders of a flood insurance policy at the time of purchase and renewal; and

(2) insurance companies and agents that are authorized to sell flood insurance policies.

SEC. 203. ACKNOWLEDGEMENT FORM.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop an acknowledgement form to be signed by the purchaser of a flood insurance policy that contains—

(1) an acknowledgement that the purchaser has received a copy of the standard flood insurance policy, and any forms developed under section 202; and

(2) an acknowledgement that the purchaser has been told that the contents of a property or dwelling are not covered under the terms of the standard flood insurance policy, and that the policyholder has the option to purchase additional coverage for such contents.

(b) DISTRIBUTION.—Copies of an acknowledgement form executed under subsection (a) shall be made available to the purchaser and the Director.

SEC. 204. FLOOD INSURANCE CLAIMS HANDBOOK.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop a flood insurance claims handbook that contains—

(1) a description of the procedures to be followed to file a claim under the Program, including how to pursue a claim to completion;

(2) how to file supplementary claims, proof of loss, and any other information relating to the filing of claims under the Program; and

(3) detailed information regarding the appeals process established under section 205.

(b) DISTRIBUTION.—The handbook developed under subsection (a) shall be made available to—

(1) each insurance company and agent authorized to sell flood insurance policies; and

(2) each purchaser, at the time of purchase and renewal, of a flood insurance policy, and at the time of any flood loss sustained by such purchaser.

SEC. 205. APPEAL OF DECISIONS RELATING TO FLOOD INSURANCE COVERAGE.

Not later than 6 months after the date of enactment of this Act, the Director shall, by regulation, establish an appeals process through which holders of a flood insurance policy may appeal the decisions, with respect to claims, proofs of loss, and loss estimates relating to such flood insurance policy, of—

(1) any insurance agent or adjuster, or insurance company; or

(2) any employee or contractor of the Federal Emergency Management Agency.

SEC. 206. STUDY AND REPORT ON USE OF COST COMPLIANCE COVERAGE.

Not later than 1 year after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall submit to Congress a report that sets forth—

(1) the use of cost of compliance coverage under section 1304(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)) in connection with flood insurance policies;

(2) any barriers to policyholders using the funds provided by cost of compliance coverage under that section 1304(b) under a flood insurance policy, and recommendations to address those barriers; and

(3) the steps that the Federal Emergency Management Agency has taken to ensure that funds paid for cost of compliance coverage under that section 1304(b) are being used to lessen the burdens on all homeowners and the Program.

SEC. 207. MINIMUM TRAINING AND EDUCATION REQUIREMENTS.

The Director of the Federal Emergency Management Agency shall, in cooperation with the insurance industry, *State insurance regulators*, and other interested parties—

(1) establish minimum training and education requirements for all insurance agents who sell flood insurance policies; and

(2) not later than 6 months after the date of enactment of this Act, publish these requirements in the Federal Register, and inform insurance companies and agents of the requirements.

SEC. 208. GAO STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of—

(1) the adequacy of the scope of coverage provided under flood insurance policies in meeting the intended goal of Congress that flood victims be restored to their pre-flood conditions, and any recommendations to ensure that goal is being met;

(2) the adequacy of payments to flood victims under flood insurance policies; and

(3) the practices of the Federal Emergency Management Agency and insurance adjusters in estimating losses incurred during a flood, and how such practices affect the adequacy of payments to flood victims.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report regarding the results of the study under subsection (a).

SEC. 209. PROSPECTIVE PAYMENT OF FLOOD INSURANCE PREMIUMS.

Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by adding at the end the following:

''(f) ADJUSTMENT OF PREMIUM.—Notwithstanding any other provision of law, if the Director determines that the holder of a flood insurance policy issued under this Act is paying a lower premium than is required under this section due to an error in the flood plain determination, the Director may only prospectively charge the higher premium rate.''.

SEC. 210. REPORT ON CHANGES TO FEE SCHEDULE OR FEE PAYMENT ARRANGEMENTS.

Not later than 3 months after the date of enactment of this Act, the Director shall submit a report on any changes or modifications made to the fee schedule or fee payment arrangements between the Federal Emergency Management Agency and insurance adjusters who provide services with respect to flood insurance policies to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

Mr. SHELBY. Mr. President, I would first like to acknowledge the leadership of Senator BUNNING in crafting this legislation. In addition, several members of the Banking Committee, from both sides of the aisle, are cosponsors on S. 2238. The Banking Committee unanimously voted to favorably report S. 2238 on March 30, 2004. This has truly been a bipartisan effort.

This is important legislation that will go a long way in bringing the flood insurance fund toward financial soundness, while protecting existing property owners. The pilot program established in Section 102 will help to address the mitigation of severe repetitive loss properties. These properties, while only a small percentage of insured properties, constitute a large share of claims paid. FEMA estimates that while repetitive loss properties only account for approximately 1 percent of all insured properties, these properties account for over 30 percent of amounts paid in claims. In addition, most of these properties were constructed before the development of flood insurance rate maps, and are paying subsidized rates for flood insurance.

S. 2238 provides an additional $40 million annually for mitigation activities. This additional funding will allow families that have lived through several floods and suffered substantial harm, both financial and emotional, to either flood-proof their home or have their home bought-out.

I also want to commend Senator SARBANES for his efforts. Title II of S. 2238 is largely his creation. I believe Title II will ensure that families displaced by floods receive adequate and timely assistance.

The managers' amendment to S. 2238 represents several technical and conforming changes. First the definition of repetitive loss property is narrowed. This change was made to assure concerned parties that the pilot program would be targeted at those properties that have indeed suffered the greatest

losses. The managers' amendment also clarifies the funding allocation of the additional mitigation dollars that will be provided under the pilot program. A more explicit allocation is needed to insure that those States hit hardest by flooding receive an adequate flow of funding. The managers' amendment also extends the pilot program and the National Flood Insurance Program until September 30, 2009.

Mr. SARBANES. Mr. President, I support the passage of S. 2238, as amended, and want to urge my colleagues to support this critical legislation which ensures the continuation of the National Flood Insurance Program, which covers over 4.4 million properties around the country. Unless we quickly act to reauthorize this program, it will expire at the end of this month. In addition to extending the National Flood Insurance Program for 5 years, this bill establishes a loss mitigation pilot program to help mitigate flood risks for properties that have been flooded numerous times.

This bill has been drafted in a bipartisan manner, and I particularly want to thank Senators BUNNING and SHELBY for working collaboratively with me to craft this legislation and also for accepting my amendment which makes a number of administrative changes to the National Flood Insurance Program designed to strengthen the program and ensure that flood victims can fairly and adequately recover for flood losses. While Federal flood insurance was created almost 40 years ago to ''provide the necessary funds promptly to assure rehabilitation or restoration of damaged property to pre-flood status or to permit comparable investment elsewhere,'' unfortunately, the program is not working as Congress envisioned. Recent flooding in Maryland as a result of Hurricane Isabel in September 2003, showed that under the strain of a major flooding event, the National Flood Insurance Program was unable to withstand the pressure. Unfortunately, many of the 6,000 Marylanders who filed claims after Hurricane Isabel found the process of recovering under their flood insurance policies to be difficult, time-consuming and frustrating. Too many victims were given incomplete or inaccurate information or were coerced into settling claims that came nowhere near close to providing adequate funding for repairs.

My amendment, as contained in this bill, ensures that policyholders are provided with accurate and timely information about their policies as well as what to do in the event of a flood. As a result of this legislation, FEMA will be required to establish a formal appeals process for complaints; disseminate a claims handbook so that families know exactly what to do if they are flooded; provide simple forms and disclosures so that all policyholders know what coverages are available and what coverages they are purchasing; and, establish minimum agent training requirements so that insurance agents, the main points of contact for flood victims, have a better understanding of this program. In addition, this bill asks the General Accounting Office of conduct a thorough review of the flood insurance program, with particular emphasis on limitations in the flood insurance policy and FEMA's interpretations of this policy. We need to have a detailed understanding of what these limitations are and what the consequences are of broadening coverage. As a result of these changes, I am hopeful that flood victims around the country will not face the same obstacles to receiving fair payments as Marylanders faced last year.

In addition to the administrative changes we are making in this bill, I have been working with my colleague, Senator MIKULSKI, and FEMA to ensure that FEMA does all it can to improve its processes and policies so that flood victims can better navigate the flood insurance program and more fairly settle their claims. I believe that FEMA is working to fix those problems that were brought to its attention, and I want to thank Mr. Anthony Lowe, former Federal insurance administrator, and Mr. Trey Reid, acting insurance administrator, who now oversees the program, for working with me and my colleagues to go back and make sure that Hurricane Isabel flood victims are treated fairly. After Hurricane Isabel, I received numerous complaints that flood victims were pressured into accepting settlements far below what they consider fair, in addition to our findings that FEMA distributed inaccurate price guidelines for the costs of repairs. When confronted with these issues, Mr. Lowe, Mr. Reid, and FEMA staff quickly responded. Letters have now been sent to all flood victims who believe they were treated unfairly can have their claims reviewed. While I appreciate these efforts, I understand that there is some concern that these reviews are not being conducted in an independent way, and I have urged FEMA to take all actions to ensure that this process is fair. The process of reviewing these claims is a fair and necessary step in maintaining the integrity of the National Flood Insurance Program, and I will continue working with FEMA to ensure that all victims are able to have their claims reviewed in an unbiased manner.

This is an important piece of legislation. In addition to the changes contained in my amendment, this bill will help to strengthen and stabilize the flood insurance program by providing $40 million a year to states and communities to mitigate flood risks. While the National Flood Insurance Program has primarily been able to cover losses through the premiums it collects, there have been times when it has had to borrow funds from the Treasury, and this is in large part due to a relatively small number of properties. According to FEMA, these repetitive loss properties account for only 1 percent of policies, but over 35 percent of all losses in the flood insurance program. This bill makes funding available so that communities can assist families who are stuck in a cycle of repeated flooding to get out of harm's way, and so that these properties are less of a drain on the National Flood Insurance Program.

Once again, I thank Senators SHELBY and BUNNING for working with me in such a collaborative manner on this bill.

Mr. NELSON of Florida. Mr. President, I commend Senators SHELBY, SARBANES, and BUNNING for their efforts in drafting the S. 2238, the Bunning/Bereuter/Blumenauer Flood Insurance Reform Act. They have worked with Senator GRAHAM and me to make some important changes that will greatly benefit Federal flood insurance policy holders. Since 1968, the National Flood Insurance Program has provided reasonably priced insurance to Americans across the country. In Florida alone, there are approximately 2 million flood insurance policies.

I support this legislation and, as the former elected insurance commissioner of the State of Florida, appreciate its goals and purpose. However, I have a unique situation in Florida dealing with flood insurance and would like to take a few minutes to bring it to my colleagues' attention.

There is a community in Gulf Country in North Florida known as Cape San Blas. The area has some of the most impressive, pristine beaches in the State. You can see the unique physical characteristics of the Cape quite clearly from space—it is a swath of land that juts out into the Gulf of Mexico.

Most of the residents of Cape San Blas have lived there for some time and have seen first hand the incredible damage and awesome forces of nature brought to bear by hurricanes. And ere we are today, 2 weeks into hurricane season and a good number of the residents of the Cape either do not have flood insurance or have to purchase it at a very high price.

Since 1983, most of Cape San Blas has been included in the Coastal Barrier Resources System, which prevents the Cape from receiving many forms of Federal assistance, most notably flood insurance. But the residents made due by other means, relying on the private market or, in some cases, simply not purchasing flood insurance because it was not a requirement at the time.

Back in 1995, after Hurricane Opal tore through parts of the Florida panhandle, the Federal Emergency Management Agency, FEMA, determined its flood maps required revisions. The agency decided it would need to remap the area and began the process. The new maps took effect in November 202 and placed a large portion of the Cape and the surrounding area in a special flood hazard area—an area of land that has a 1 percent chance of being flooded in any given year. A home located

within this area has a 26 percent chance of suffering flood damage during the term of a 30-year mortgage.

The special flood hazard area designation has had a devastating effect on the local economy for several reasons. First, under the Flood Disaster Protection Act of 1973 mandates flood insurance for property in a special flood hazard area that receives a federally backed loan. If a local bank writes a home loan, without Federal backing, while the bank may not require flood insurance, it does face a safety and soundness issue and possible enforcement action with federal banking regulators for offering high-risk loans.

As a result of the new classification, some residents who never had to carry flood insurance before suddenly found it was a requirement. Many long-time homeowners have been forced to scramble to buy private flood insurance, often at very high rates. Some are also prevented from borrowing against their hard-earned equity, because second mortgages also require hard-to-obtain flood insurance. Local banks have had to turn away homeowners because of this.

The new maps and classification have had a devastating effect on homeowners and the local economy already weakened by the closure of a paper mill and saddled with high rates of unemployment. With the stroke of a pen, FEMA radically changed the lives of thousands of residents and property owners in Cape San Blas. On the Cape, prior to FEMA's new maps, about 70 percent of the lands were not in special flood zone areas and financing was easily obtainable. The new maps placed approximately 75 percent of the Cape in a special flood hazard area and financing is near impossible. Even worse, the new flood maps have slowed the new economic engine of the Cape—tourism, construction and development.

This is a clear case of a Government action adversely affecting the lives of citizens. It is simply unfair. There must be a way to make the residents whole again, and I think we have a responsibility to explore every possible avenue to do so. I had considered legislative remedies for the residents of Cape San Blas on the flood insurance bill. Yet I am very aware the flood insurance program is set to expire in 15 days and do not want to block the passage of this legislation, which is so critical to Florida and the Nation. But in the coming weeks, I intend to work with my colleagues and the Banking and Environment and Public Works Committees, with Congressman ALLEN BOYD, who represents Cape San Blas, and the appropriate Federal agencies to find an equitable solution to the problem facing the residents of Cape San Blas.

Ms. LANDRIEU. Mr. President, I am pleased to see that the Senate will reauthorize the National Flood Insurance program today. This is such an important program for the people of Louisiana.

If there is a theme that runs through the social and economic history of my State, it is water. The Mississippi River, with its great southern port of New Orleans, has been a center of commerce and an economic gateway to the east. Smaller rivers, streams, and bayous run throughout our parishes. More than 8,277 square miles of Louisiana are covered by water, nearly 16 percent. The entire southern third of my State could be called a giant wetland, much of it below sea level, including the city of New Orleans.

Floods are a part of life in Louisiana, particularly in the southern part of the State. Louisiana has more than 377,000 insured properties under the program as of 2003. That same year the program paid nearly 6,000 flood loss claims in Louisiana. The National Flood Insurance Program allows Louisianians to stay in their homes and protects them from the devastation nature can wreak.

The flood program gives the housing, insurance, banking, and mortgage lending markets in my State greater stability. It also brings peace of mind to those families who need the program to protect their most important assets: their homes and businesses.

However, when this reauthorization bill was reported out of the Banking Committee, I had deep concerns about a pilot program contained in the bill designed to address severe repetitive loss properties. These are properties that experience a lot of flooding. The Federal Emergency Management Agency estimates that these repetitive loss properties, while only making up about one percent of all the insured properties, cost the program $200 million annually. Some property owners have collected flood claims that are four or five times higher than the actual value of the property. They refuse to take any action to minimize the cost to the program and benefit from subsidized insurance rates.

Under the pilot program, $40 million in funding would be available on an optional basis for States and communities to take steps to mitigate the flood damage potential on these properties. If a property owner receives a mitigation offer and turns it down, their flood insurance premiums would increase 50 percent, and would keep on increasing by 50 percent until it reached the actuarial rate for the property. This provision would help prevent some of the abuse in the program.

Louisiana has the most repetitive loss properties in the county, about one-third of the total number nationwide. I had concerns about how this pilot program would impact low income property owners in my State and so I put a hold on the bill. I felt that even though State and local communities could opt into the program, they would not have as much control over how the program would get funding to property owners that want mitigation. FEMA held all the cards.

Let me give an example of what I mean. Under the original bill, FEMA would award mitigation funds based upon what it felt was in the best interest of the flood insurance program. I believed that this gave FEMA the power to overrule local determinations of what kind of flood mitigation to offer and what properties to mitigate. For example, a local community that wanted to elevate a structure above the base flood elevation could be denied relief because FEMA decided that buyouts were in the best interest of the flood insurance program in order to permanently remove properties out of the flood insurance program altogether.

The impact this could have on property owners could be devastating. I did not want to see low-income people facing a terrible choice: sell your property or see your rates go up. Many of these families have lived on this land for generations. It may flood regularly, but it is also home. I wanted to make sure the pilot program struck a proper balance between the needs of the flood insurance program and the rights of property owners.

The chairman and ranking member of the Banking Committee, Senators SHELBY and SARBANES, and myself worked together to make changes to the bill that I believe have achieved this balance. The changes keep the pilot program in place but add safeguards requiring FEMA to pay greater deference to local decisions about what properties to mitigate and what kinds of mitigation offers are most appropriate. We added demolition and rebuild as an additional eligible mitigation activity under the bill, an option that Louisiana's flood plain managers wanted. We also included a funding formula that insures that Louisiana gets its fair share of funding under the pilot program. Under FEMA's current mitigation program, Louisiana only received about $1 million even though the State had more than $60 million in need.

I thank Chairman SHELBY and the ranking member of the Banking Committee, Senator SARBANES, as well as their staffs for their willingness to work with me on these changes. We have made this important bill a better deal for local communities in my State and across the country.

Mr. WARNER. My understanding is it is cleared on both sides. I ask unanimous consent that the amendment at the desk be agreed to, the committee amendments be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 3451) was agreed to, as follows:

(Purpose: To make technical and conforming amendments)

On page 2, line 3, strike ''Flood Insurance Reform Act of 2004'' and insert ''Bunning–Bereuter–Blumenaur Flood Insurance Reform Act of 2004''.

On page 7, line 6, insert ''that decide to participate in the pilot program established under this section'' after ''communities''.

On page 7, line 20, strike ''3'' and insert ''4''.

On page 7, line 24, strike ''$3,000'' and insert ''$5,000''.

On page 7, line 26, strike ''$15,000'' and insert ''$20,000''.

On page 8, line 19, strike ''1 foot above''.

On page 8, line 22, strike ''(f)'' and insert ''(g)''.

On page 8, line 25, strike ''1-year period'' and insert ''fiscal year''.

On page 10, between lines 13 and 14, insert the following:

''(e) NOTICE OF MITIGATION PROGRAM.—

''(1) IN GENERAL.—Upon selecting a State or community to receive assistance under subsection (a) to carry out eligible activities, the Director shall notify the owners of a severe repetitive loss property, in plain language, within that State or community—

''(A) that their property meets the definition of a severe repetitive loss property under this section;

''(B) that they may receive an offer of assistance under this section;

''(C) of the types of assistance potentially available under this section;

''(D) of the implications of declining such offer of assistance under this section; and

''(E) that there is a right to appeal under this section.

''(2) IDENTIFICATION OF SEVERE REPETITIVE LOSS PROPERTIES.—The Director shall take such steps as are necessary to identify severe repetitive loss properties, and submit that information to the relevant States and communities.

On page 10, line 14, strike ''(e)'' and insert ''(f)''.

On page 10, line 23, insert '', in a manner consistent with the allocation formula under paragraph (5)'' after ''time''.

On page 11, between lines 3 and 4, insert the following:

''(3) CONSULTATION.—In determining for which eligible activities under subsection (c) to provide assistance with respect to a severe repetitive loss property, the relevant States and communities shall consult, to the extent practicable, with the owner of the property.

''(4) DEFERENCE TO LOCAL MITIGATION DECISIONS.—The Director shall not, by rule, regulation, or order, establish a priority for funding eligible activities under this section that gives preference to one type or category of eligible activity over any other type or category of eligible activity.

''(5) ALLOCATION.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), of the total amount made available for assistance under this section in any fiscal year, the Director shall allocate assistance to a State, and the communities located within that State, based upon the percentage of the total number of severe repetitive loss properties located within that State.

''(B) REDISTRIBUTION.—Any funds allocated to a State, and the communities within the State, under subparagraph (A) that have not been obligated by the end of each fiscal year shall be redistributed by the Director to other States and communities to carry out eligible activities in accordance with this section.

''(C) EXCEPTION.—Of the total amount made available for assistance under this section in any fiscal year, 10 percent shall be made available to communities that—

''(i) contain one or more severe repetitive loss properties; and

''(ii) are located in States that receive little or no assistance, as determined by the Director, under the allocation formula under subparagraph (A).

On page 11, line 4, strike ''(3)'' and insert ''(6)''.

On page 11, line 9, strike ''(f)'' and insert ''(g)''.

On page 13, line 3, strike ''(g)'' and insert ''(h)''.

On page 16, line 11, strike ''historic places'' and insert ''Historic Places''.

On page 16, after line 25, insert the following:

''(vi) The owner of the property, based on independent information, such as contractor estimates or other appraisals, demonstrates that an alternative eligible activity under subsection (c) is at least as cost effective as the initial offer of assistance.

On page 17, line 22, strike ''that the grounds'' and insert ''in favor of the property owner''.

On page 17, line 24, strike ''make a determination of how much to'' and insert ''require the Director to''.

On page 18, lines 4 through 6, strike ''and the Director shall promptly reduce the chargeable risk premium rate for such property by such amount'' and insert ''to the amount paid prior to the offer to take action under paragraph (1) or (2) of subsection (c)''.

On page 19, line 6, strike ''Flood'' and insert ''Bunning–Bereuter–Blumenaur Flood''.

On page 19, line 16, strike ''(h)'' and insert ''(i)''.

On page 20, between lines 2 and 3, insert the following:

''(j) RULES.—

''(1) IN GENERAL.—The Director shall, by rule—

''(A) subject to subsection (f)(4), develop procedures for the distribution of funds to States and communities to carry out eligible activities under this section; and

''(B) ensure that the procedures developed under paragraph (1)—

''(i) require the Director to notify States and communities of the availability of funding under this section, and that participation in the pilot program under this section is optional;

''(ii) provide that the Director may assist States and communities in identifying severe repetitive loss properties within States or communities;

''(iii) allow each State and community to select properties to be the subject of eligible activities, and the appropriate eligible activity to be performed with respect to each severe repetitive loss property; and

''(iv) require each State or community to submit a list of severe repetitive loss properties to the Director that the State or community would like to be the subject of eligible activities under this section.

''(2) CONSULTATION.—Not later than 90 days after the date of enactment of this Act, the Director shall consult with State and local officials in carrying out paragraph (1)(A), and provide an opportunity for an oral presentation, on the record, of data and arguments from such officials.

On page 20, line 3, strike ''(i)'' and insert ''(k)''.

On page 20, line 7, strike ''2004,''.

On page 20, line 8, strike ''and 2008'' and insert ''2008, and 2009''.

On page 20, line 19, strike ''section 1361A'' and insert ''this section''.

On page 20, line 20, strike ''(j)'' and insert ''(l)''.

On page 20, line 22, strike ''2008'' and insert ''2009''.

On page 22, line 12, strike ''(m)'' and insert ''(l)''.

On page 22, strike line 21 and all that follows through page 23, line 3, and insert the following:

(d) FUNDING.—Section 1367 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d) is amended—

(1) in subsection (b), by striking paragraph (1) and inserting the following:

''(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding $40,000,000, to remain available until expended;'';

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

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

''(c) ADMINISTRATIVE EXPENSES.—The Director may use not more than 5 percent of amounts made available under subsection (b) to cover salaries, expenses, and other administrative costs incurred by the Director to make grants and provide assistance under sections 1366 and 1323.''.

The committee amendments were agreed to.

The bill (S. 2238), as amended, was read the third time and passed, as follows:

S. 2238

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Congressional findings.

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

Sec. 101. Extension of program and consolidation of authorizations.
Sec. 102. Establishment of pilot program for mitigation of severe repetitive loss properties.
Sec. 103. Amendments to existing flood mitigation assistance program.
Sec. 104. FEMA authority to fund mitigation activities for individual repetitive claims properties.
Sec. 105. Amendments to additional coverage for compliance with land use and control measures.
Sec. 106. Actuarial rate properties.
Sec. 107. Geospatial digital flood hazard data.
Sec. 108. Replacement of mobile homes on original sites.
Sec. 109. Reiteration of FEMA responsibility to map mudslides.

TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Definitions.
Sec. 202. Supplemental forms.
Sec. 203. Acknowledgement form.
Sec. 204. Flood insurance claims handbook.
Sec. 205. Appeal of decisions relating to flood insurance coverage.
Sec. 206. Study and report on use of cost compliance coverage.
Sec. 207. Minimum training and education requirements.
Sec. 208. GAO study and report.
Sec. 209. Prospective payment of flood insurance premiums.
Sec. 210. Report on changes to fee schedule or fee payment arrangements.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the national flood insurance program—

(A) identifies the flood risk;

(B) provides flood risk information to the public;

(C) encourages State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses; and

(D) makes flood insurance available on a nationwide basis that would otherwise not be

available, to accelerate recovery from floods, mitigate future losses, save lives, and reduce the personal and national costs of flood disasters;

(2) the national flood insurance program insures approximately 4,400,000 policyholders;

(3) approximately 48,000 properties currently insured under the program have experienced, within a 10-year period, 2 or more flood losses where each such loss exceeds the amount $1,000;

(4) approximately 10,000 of these repetitive-loss properties have experienced either 2 or 3 losses that cumulatively exceed building value or 4 or more losses, each exceeding $1,000;

(5) repetitive-loss properties constitute a significant drain on the resources of the national flood insurance program, costing about $200,000,000 annually;

(6) repetitive-loss properties comprise approximately 1 percent of currently insured properties but are expected to account for 25 to 30 percent of claims losses;

(7) the vast majority of repetitive-loss properties were built before local community implementation of floodplain management standards under the program and thus are eligible for subsidized flood insurance;

(8) while some property owners take advantage of the program allowing subsidized flood insurance without requiring mitigation action, others are trapped in a vicious cycle of suffering flooding, then repairing flood damage, then suffering flooding, without the means to mitigate losses or move out of harm's way;

(9) mitigation of repetitive-loss properties through buyouts, elevations, relocations, or flood-proofing will produce savings for policyholders under the program and for Federal taxpayers through reduced flood insurance losses and reduced Federal disaster assistance;

(10) a strategy of making mitigation offers aimed at high-priority repetitive-loss properties and shifting more of the burden of recovery costs to property owners who choose to remain vulnerable to repetitive flood damage can encourage property owners to take appropriate actions that reduce loss of life and property damage and benefit the financial soundness of the program;

(11) the method for addressing repetitive-loss properties should be flexible enough to take into consideration legitimate circumstances that may prevent an owner from taking a mitigation action; and

(12) focusing the mitigation and buy-out of repetitive loss properties upon communities and property owners that choose to voluntarily participate in a mitigation and buy-out program will maximize the benefits of such a program, while minimizing any adverse impact on communities and property owners.

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

SEC. 101. EXTENSION OF PROGRAM AND CONSOLIDATION OF AUTHORIZATIONS.

(a) BORROWING AUTHORITY.—The first sentence of section 1309(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)), is amended by striking ''through December'' and all that follows through '', and'' and inserting ''through the date specified in section 1319, and''.

(b) AUTHORITY FOR CONTRACTS.—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026), is amended by striking ''after'' and all that follows and inserting ''after September 30, 2008.''.

(c) EMERGENCY IMPLEMENTATION.—Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)), is amended by striking ''during the period'' and all that follows through ''in accordance'' and inserting ''during the period ending on the date specified in section 1319, in accordance''.

(d) AUTHORIZATION OF APPROPRIATIONS FOR STUDIES.—Section 1376(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4127(c)), is amended by striking ''through'' and all that follows and inserting ''through the date specified in section 1319, for studies under this title.''.

SEC. 102. ESTABLISHMENT OF PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

(a) IN GENERAL.—The National Flood Insurance Act of 1968 is amended by inserting after section 1361 (42 U.S.C. 4102) the following:

''SEC. 1361A. PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

''(a) AUTHORITY.—To the extent amounts are made available for use under this section, the Director may, subject to the limitations of this section, provide financial assistance to States and communities that decide to participate in the pilot program established under this section for taking actions with respect to severe repetitive loss properties (as such term is defined in subsection (b)) to mitigate flood damage to such properties and losses to the National Flood Insurance Fund from such properties.

''(b) SEVERE REPETITIVE LOSS PROPERTY.—For purposes of this section, the term 'severe repetitive loss property' has the following meaning:

''(1) SINGLE-FAMILY PROPERTIES.—In the case of a property consisting of 1 to 4 residences, such term means a property that—

''(A) is covered under a contract for flood insurance made available under this title; and

''(B) has incurred flood-related damage—

''(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this title, with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or

''(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

''(2) MULTIFAMILY PROPERTIES.—In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director shall by regulation provide.

''(c) ELIGIBLE ACTIVITIES.—Amounts provided under this section to a State or community may be used only for the following activities:

''(1) MITIGATION ACTIVITIES.—To carry out mitigation activities that reduce flood damages to severe repetitive loss properties, including elevation, relocation, demolition, and floodproofing of structures, and minor physical localized flood control projects, and the demolition and rebuilding of properties to at least Base Flood Elevation or greater, if required by any local ordinance.

''(2) PURCHASE.—To purchase severe repetitive loss properties, subject to subsection (g).

''(d) MATCHING REQUIREMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), in any fiscal year the Director may not provide assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds for carrying out the eligible activities to be funded with such assistance amounts.

''(2) REDUCED COMMUNITY MATCH.—With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

''(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

''(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.

''(3) NON-FEDERAL FUNDS.—For purposes of this subsection, the term 'non-Federal funds' includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the eligible activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

''(e) NOTICE OF MITIGATION PROGRAM.—

''(1) IN GENERAL.—Upon selecting a State or community to receive assistance under subsection (a) to carry out eligible activities, the Director shall notify the owners of a severe repetitive loss property, in plain language, within that State or community—

''(A) that their property meets the definition of a severe repetitive loss property under this section;

''(B) that they may receive an offer of assistance under this section;

''(C) of the types of assistance potentially available under this section;

''(D) of the implications of declining such offer of assistance under this section; and

''(E) that there is a right to appeal under this section.

''(2) IDENTIFICATION OF SEVERE REPETITIVE LOSS PROPERTIES.—The Director shall take such steps as are necessary to identify severe repetitive loss properties, and submit that information to the relevant States and communities.

''(f) STANDARDS FOR MITIGATION OFFERS.—The program under this section for providing assistance for eligible activities for severe repetitive loss properties shall be subject to the following limitations:

''(1) PRIORITY.—In determining the properties for which to provide assistance for eligible activities under subsection (c), the Director shall provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time, in a manner consistent with the allocation formula under paragraph (5).

''(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties to take eligible activities under subsection (c) as soon as practicable.

''(3) CONSULTATION.—In determining for which eligible activities under subsection (c) to provide assistance with respect to a severe repetitive loss property, the relevant States and communities shall consult, to the extent practicable, with the owner of the property.

''(4) DEFERENCE TO LOCAL MITIGATION DECISIONS.—The Director shall not, by rule, regulation, or order, establish a priority for funding eligible activities under this section that gives preference to one type or category of eligible activity over any other type or category of eligible activity.

''(5) ALLOCATION.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), of the total amount made available for assistance under this section in any fiscal year, the Director shall allocate assistance to a State, and the communities located within that State, based upon the percentage of the total number of severe repetitive loss properties located within that State.

''(B) REDISTRIBUTION.—Any funds allocated to a State, and the communities within the State, under subparagraph (A) that have not been obligated by the end of each fiscal year shall be redistributed by the Director to other States and communities to carry out eligible activities in accordance with this section.

''(C) EXCEPTION.—Of the total amount made available for assistance under this section in any fiscal year, 10 percent shall be made available to communities that—

''(i) contain one or more severe repetitive loss properties; and

''(ii) are located in States that receive little or no assistance, as determined by the Director, under the allocation formula under subparagraph (A).

''(6) NOTICE.—Upon making an offer to provide assistance with respect to a property for any eligible activity under subsection (c), the State or community shall notify each holder of a recorded interest on the property of such offer and activity.

''(g) PURCHASE OFFERS.—A State or community may take action under subsection (c)(2) to purchase a severe repetitive loss property only if the following requirements are met:

''(1) USE OF PROPERTY.—The State or community enters into an agreement with the Director that provides assurances that the property purchased will be used in a manner that is consistent with the requirements of section 404(b)(2)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(b)(2)(B)) for properties acquired, accepted, or from which a structure will be removed pursuant to a project provided property acquisition and relocation assistance under such section 404(b).

''(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties and of associated land to engage in eligible activities as soon as possible.

''(3) PURCHASE PRICE.—The amount of purchase offer is not less than the greatest of—

''(A) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;

''(B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property; and

''(C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property, or an amount equal to the current fair market value of the property.

''(4) COMPARABLE HOUSING PAYMENT.—If a purchase offer made under paragraph (2) is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the flood hazard area in the same community, the Director shall make available an additional relocation payment to the homeowner-occupant to apply to the difference.

''(h) INCREASED PREMIUMS IN CASES OF REFUSAL TO MITIGATE.—

''(1) IN GENERAL.—In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property, the Director shall—

''(A) notify each holder of a recorded interest on the property of such refusal; and

''(B) notwithstanding subsections (a) through (c) of section 1308, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to paragraph (2) and subject to the limitation under paragraph (3).

''(2) INCREASED PREMIUMS UPON SUBSEQUENT FLOOD DAMAGE.—Notwithstanding subsections (a) through (c) of section 1308, if the owner of a severe repetitive loss property does not accept an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property and a claim payment exceeding $1,500 is made under flood insurance coverage under this title for damage to the property caused by a flood event occurring after such offer is made, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time of such flood event, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to this paragraph and subject to the limitation under paragraph (3).

''(3) LIMITATION ON INCREASED PREMIUMS.—In no case may the chargeable premium rate for a severe repetitive loss property be increased pursuant to this subsection to an amount exceeding the applicable estimated risk premium rate for the area (or subdivision thereof) under section 1307(a)(1).

''(4) TREATMENT OF DEDUCTIBLES.—Any increase in chargeable premium rates required under this subsection for a severe repetitive loss property may be carried out, to the extent appropriate, as determined by the Director, by adjusting any deductible charged in connection with flood insurance coverage under this title for the property.

''(5) NOTICE OF CONTINUED OFFER.—Upon each renewal or modification of any flood insurance coverage under this title for a severe repetitive loss property, the Director shall notify the owner that the offer made pursuant to subsection (c) is still open.

''(6) APPEALS.—

''(A) IN GENERAL.—Any owner of a severe repetitive loss property may appeal a determination of the Director to take action under paragraph (1)(B) or (2) with respect to such property, based only upon the following grounds:

''(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

''(ii) Based on independent information, such as contractor estimates or appraisals, the property owner believes that the price offered for purchasing the property is not an accurate estimation of the value of the property, or the amount of Federal funds offered for mitigation activities, when combined with funds from non-Federal sources, will not cover the actual cost of mitigation.

''(iii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places will be interfered with, impaired, or disrupted.

''(iv) The flooding that resulted in the flood insurance claims described in subsection (b)(2) for the property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

''(v) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

''(vi) The owner of the property, based on independent information, such as contractor estimates or other appraisals, demonstrates that an alternative eligible activity under subsection (c) is at least as cost effective as the initial offer of assistance.

''(B) PROCEDURE.—An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1)(B) or (2), as applicable.

''(C) EFFECT OF FINAL DETERMINATION.—In an appeal under this paragraph—

''(i) if a final determination is made in favor of the property owner under subparagraph (A) exist, the third party hearing such appeal shall require the Director to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1)(B) or (2) to the amount paid prior to the offer to take action under paragraph (1) or (2) of subsection (c); and

''(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1)(B) or (2), as applicable, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

''(D) COSTS.—If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

''(i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and

''(ii) by the National Flood Insurance Fund, if such final determination is that the grounds under subparagraph (A) do exist.

''(E) REPORT.—Not later than 6 months after the date of the enactment of the Bunning-Bereuter-Blumenaur Flood Insurance Reform Act of 2004, the Director shall submit a report describing the rules, procedures, and administration for appeals under this paragraph to—

''(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(ii) the Committee on Financial Services of the House of Representatives.

''(i) DISCRETIONARY ACTIONS IN CASES OF FRAUDULENT CLAIMS.—If the Director determines that a fraudulent claim was made under flood insurance coverage under this title for a severe repetitive loss property, the Director may—

''(1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this title for the property; or

''(2) refuse to renew the policy with such policyholder upon expiration and deny the

provision of any new flood insurance coverage under this title to such policyholder for the property.

''(j) RULES.—

''(1) IN GENERAL.—The Director shall, by rule—

''(A) subject to subsection (f)(4), develop procedures for the distribution of funds to States and communities to carry out eligible activities under this section; and

''(B) ensure that the procedures developed under paragraph (1)—

''(i) require the Director to notify States and communities of the availability of funding under this section, and that participation in the pilot program under this section is optional;

''(ii) provide that the Director may assist States and communities in identifying severe repetitive loss properties within States or communities;

''(iii) allow each State and community to select properties to be the subject of eligible activities, and the appropriate eligible activity to be performed with respect to each severe repetitive loss property; and

''(iv) require each State or community to submit a list of severe repetitive loss properties to the Director that the State or community would like to be the subject of eligible activities under this section.

''(2) CONSULTATION.—Not later than 90 days after the date of enactment of this Act, the Director shall consult with State and local officials in carrying out paragraph (1)(A), and provide an opportunity for an oral presentation, on the record, of data and arguments from such officials.

''(k) FUNDING.—

''(1) IN GENERAL.—Pursuant to section 1310(a)(8), the Director may use amounts from the National Flood Insurance Fund to provide assistance under this section in each of fiscal years 2005, 2006, 2007, 2008, and 2009, except that the amount so used in each such fiscal year may not exceed $40,000,000 and shall remain available until expended. Notwithstanding any other provision of this title, amounts made available pursuant to this subsection shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

''(2) ADMINISTRATIVE EXPENSES.—Of the amounts made available under this subsection, the Director may use up to 5 percent for expenses associated with the administration of this section.

''(l) TERMINATION.—The Director may not provide assistance under this section to any State or community after September 30, 2009.''.

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (7), by striking ''and'' at the end; and

(2) by striking paragraph (8) and inserting the following:

''(8) for financial assistance under section 1361A to States and communities for taking actions under such section with respect to severe repetitive loss properties, but only to the extent provided in section 1361A(i); and''.

SEC. 103. AMENDMENTS TO EXISTING FLOOD MITIGATION ASSISTANCE PROGRAM.

(a) STANDARD FOR APPROVAL OF MITIGATION PLANS.—Section 1366(e)(3) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following new sentence: ''The Director may approve only mitigation plans that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.''.

(b) PRIORITY FOR MITIGATION ASSISTANCE.—Section 1366(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by striking paragraph (4) and inserting the following:

''(4) PRIORITY FOR MITIGATION ASSISTANCE.—In providing grants under this subsection for mitigation activities, the Director shall give first priority for funding to such properties, or to such subsets of such properties as the Director may establish, that the Director determines are in the best interests of the National Flood Insurance Fund and for which matching amounts under subsection (f) are available.''.

(c) COORDINATION WITH STATES AND COMMUNITIES.—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following:

''(m) COORDINATION WITH STATES AND COMMUNITIES.—The Director shall, in consultation and coordination with States and communities take such actions as are appropriate to encourage and improve participation in the national flood insurance program of owners of properties, including owners of properties that are not located in areas having special flood hazards (the 100-year floodplain), but are located within flood prone areas.''.

(d) FUNDING.—Section 1367 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d) is amended—

(1) in subsection (b), by striking paragraph (1) and inserting the following:

''(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding $40,000,000, to remain available until expended;'';

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

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

''(c) ADMINISTRATIVE EXPENSES.—The Director may use not more than 5 percent of amounts made available under subsection (b) to cover salaries, expenses, and other administrative costs incurred by the Director to make grants and provide assistance under sections 1366 and 1323.''.

(e) REDUCED COMMUNITY MATCH.—Section 1366(g) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(g)), is amended—

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

''(2) REDUCED COMMUNITY MATCH.—With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

''(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

''(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.''.

(f) NATIONAL FLOOD MITIGATION FUND.—Section 1366(b)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(b)(2)), is amended by striking ''$1,500,000'' and inserting ''7.5 percent of the available funds under this section''.

SEC. 104. FEMA AUTHORITY TO FUND MITIGATION ACTIVITIES FOR INDIVIDUAL REPETITIVE CLAIMS PROPERTIES.

(a) IN GENERAL.—Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by adding at the end the following:

''SEC. 1323. GRANTS FOR REPETITIVE INSURANCE CLAIMS PROPERTIES.

''(a) IN GENERAL.—The Director may provide funding for mitigation actions that reduce flood damages to individual properties for which 1 or more claim payments for losses have been made under flood insurance coverage under this title, but only if the Director determines that—

''(1) such activities are in the best interest of the National Flood Insurance Fund; and

''(2) such activities cannot be funded under the program under section 1366 because—

''(A) the requirements of section 1366(g) are not being met by the State or community in which the property is located; or

''(B) the State or community does not have the capacity to manage such activities.

''(b) PRIORITY FOR WORST-CASE PROPERTIES.—In determining the properties for which funding is to be provided under this section, the Director shall consult with the States in which such properties are located and provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time.''.

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended by adding at the end the following:

''(9) for funding, not to exceed $10,000,000 in any fiscal year, for mitigation actions under section 1323, except that, notwithstanding any other provision of this title, amounts made available pursuant to this paragraph shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.''.

SEC. 105. AMENDMENTS TO ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES.

(a) COMPLIANCE WITH LAND USE AND CONTROL MEASURES.—Section 1304(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking ''compliance'' and inserting ''implementing measures that are consistent''; and

(B) by inserting ''by the community'' after ''established'';

(2) in paragraph (2), by striking ''have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event; and'' and inserting ''are substantially damaged structures;''

(3) in paragraph (3), by striking ''compliance with land use and control measures.'' and inserting ''the implementation of such measures; and''; and

(4) by inserting after paragraph (3) and before the last undesignated paragraph the following:

''(4) properties for which an offer of mitigation assistance is made under—

''(A) section 1366 (Flood Mitigation Assistance Program);

''(B) section 1368 (Repetitive Loss Priority Program and Individual Priority Property Program);

''(C) the Hazard Mitigation Grant Program authorized under section 404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5170c);

''(D) the Predisaster Hazard Mitigation Program under section 203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5133); and

''(E) any programs authorized or for which funds are appropriated to address any unmet needs or for which supplemental funds are made available.''.

(b) DEFINITIONS.—Section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is amended—

(1) by striking paragraph (7) and inserting the following:

''(7) the term 'repetitive loss structure' means a structure covered by a contract for flood insurance that—

''(A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event; and

''(B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.'';

(2) in paragraph (13), by striking ''and'' at the end;

(3) in paragraph (14), by striking the period and inserting ''; and''; and

(4) by adding at the end the following:

''(15) the term 'substantially damaged structure' means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in any regulation promulgated by the Director, or by a community ordinance, whichever is lower.''.

SEC. 106. ACTUARIAL RATE PROPERTIES.

(a) IN GENERAL.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by striking subsection (c) and inserting the following:

''(c) ACTUARIAL RATE PROPERTIES.—Subject only to the limitations provided under paragraphs (1) and (2), the chargeable rate shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 1307(a)(1) with respect to the following properties:

''(1) POST-FIRM PROPERTIES.—Any property the construction or substantial improvement of which the Director determines has been started after December 31, 1974, or started after the effective date of the initial rate map published by the Director under paragraph (2) of section 1360 for the area in which such property is located, whichever is later, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e).

''(2) CERTAIN LEASED COASTAL AND RIVER PROPERTIES.—Any property leased from the Federal Government (including residential and nonresidential properties) that the Director determines is located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.''.

(b) INAPPLICABILITY OF ANNUAL LIMITATIONS ON PREMIUM INCREASES.—Section 1308(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is amended by striking ''Notwithstanding'' and inserting ''Except with respect to properties described under paragraph (2) or (3) of subsection (c), and notwithstanding''.

SEC. 107. GEOSPATIAL DIGITAL FLOOD HAZARD DATA.

For the purposes of flood insurance and floodplain management activities conducted pursuant to the National Flood Insurance Program under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), geospatial digital flood hazard data distributed by the Federal Emergency Management Agency, or its designee, or the printed products derived from that data, are interchangeable and legally equivalent for the determination of the location of 1 in 100 year and 1 in 500 year flood planes, provided that all other geospatial data shown on the printed product meets or exceeds any accuracy standard promulgated by the Federal Emergency Management Agency.

SEC. 108. REPLACEMENT OF MOBILE HOMES ON ORIGINAL SITES.

Section 1315 of the National Flood Insurance Act of 1968 (42 U.S.C. 4022) is amended by adding at the end the following:

''(c) REPLACEMENT OF MOBILE HOMES ON ORIGINAL SITES.—

''(1) COMMUNITY PARTICIPATION.—The placement of any mobile home on any site shall not affect the eligibility of any community to participate in the flood insurance program under this title and the Flood Disaster Protection Act of 1973 (notwithstanding that such placement may fail to comply with any elevation or flood damage mitigation requirements), if—

''(A) such mobile home was previously located on such site;

''(B) such mobile home was relocated from such site because of flooding that threatened or affected such site; and

''(C) such replacement is conducted not later than the expiration of the 180-day period that begins upon the subsidence (in the area of such site) of the body of water that flooded to a level considered lower than flood levels.

''(2) DEFINITION.—For purposes of this subsection, the term 'mobile home' has the meaning given such term in the law of the State in which the mobile home is located.''.

SEC. 109. REITERATION OF FEMA RESPONSIBILITY TO MAP MUDSLIDES.

As directed in section 1360(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(b)), the Director of the Federal Emergency Management Agency is again directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of such section 1360, in order to make known the degree of hazard within each such zone at the earliest possible date.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. DEFINITIONS.

In this title, the following definitions shall apply:

(1) DIRECTOR.—The term ''Director'' means the Director of the Federal Emergency Management Agency.

(2) FLOOD INSURANCE POLICY.—The term ''flood insurance policy'' means a flood insurance policy issued under the National Flood Insurance Act of 1968 (42 U.S.C. et seq.).

(3) PROGRAM.—The term ''Program'' means the National Flood Insurance Program established under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

SEC. 202. SUPPLEMENTAL FORMS.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop supplemental forms to be issued in conjunction with the issuance of a flood insurance policy that set forth, in simple terms—

(1) the exact coverages being purchased by a policyholder;

(2) any exclusions from coverage that apply to the coverages purchased;

(3) an explanation, including illustrations, of how lost items and damages will be valued under the policy at the time of loss;

(4) the number and dollar value of claims filed under a flood insurance policy over the life of the property, and the effect, under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), of the filing of any further claims under a flood insurance policy with respect to that property; and

(5) any other information that the Director determines will be helpful to policyholders in understanding flood insurance coverage.

(b) DISTRIBUTION.—The forms developed under subsection (a) shall be given to—

(1) all holders of a flood insurance policy at the time of purchase and renewal; and

(2) insurance companies and agents that are authorized to sell flood insurance policies.

SEC. 203. ACKNOWLEDGEMENT FORM.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop an acknowledgement form to be signed by the purchaser of a flood insurance policy that contains—

(1) an acknowledgement that the purchaser has received a copy of the standard flood insurance policy, and any forms developed under section 202; and

(2) an acknowledgement that the purchaser has been told that the contents of a property or dwelling are not covered under the terms of the standard flood insurance policy, and that the policyholder has the option to purchase additional coverage for such contents.

(b) DISTRIBUTION.—Copies of an acknowledgement form executed under subsection (a) shall be made available to the purchaser and the Director.

SEC. 204. FLOOD INSURANCE CLAIMS HANDBOOK.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop a flood insurance claims handbook that contains—

(1) a description of the procedures to be followed to file a claim under the Program, including how to pursue a claim to completion;

(2) how to file supplementary claims, proof of loss, and any other information relating to the filing of claims under the Program; and

(3) detailed information regarding the appeals process established under section 205.

(b) DISTRIBUTION.—The handbook developed under subsection (a) shall be made available to—

(1) each insurance company and agent authorized to sell flood insurance policies; and

(2) each purchaser, at the time of purchase and renewal, of a flood insurance policy, and at the time of any flood loss sustained by such purchaser.

SEC. 205. APPEAL OF DECISIONS RELATING TO FLOOD INSURANCE COVERAGE.

Not later than 6 months after the date of enactment of this Act, the Director shall, by regulation, establish an appeals process through which holders of a flood insurance policy may appeal the decisions, with respect to claims, proofs of loss, and loss estimates relating to such flood insurance policy, of—

(1) any insurance agent or adjuster, or insurance company; or

(2) any employee or contractor of the Federal Emergency Management Agency.

SEC. 206. STUDY AND REPORT ON USE OF COST COMPLIANCE COVERAGE.

Not later than 1 year after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall submit to Congress a report that sets forth—

(1) the use of cost of compliance coverage under section 1304(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)) in connection with flood insurance policies;

(2) any barriers to policyholders using the funds provided by cost of compliance coverage under that section 1304(b) under a flood insurance policy, and recommendations to address those barriers; and

(3) the steps that the Federal Emergency Management Agency has taken to ensure that funds paid for cost of compliance coverage under that section 1304(b) are being used to lessen the burdens on all homeowners and the Program.

SEC. 207. MINIMUM TRAINING AND EDUCATION REQUIREMENTS.

The Director of the Federal Emergency Management Agency shall, in cooperation with the insurance industry, State insurance regulators, and other interested parties—

(1) establish minimum training and education requirements for all insurance agents who sell flood insurance policies; and

(2) not later than 6 months after the date of enactment of this Act, publish these requirements in the Federal Register, and inform insurance companies and agents of the requirements.

SEC. 208. GAO STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of—

(1) the adequacy of the scope of coverage provided under flood insurance policies in meeting the intended goal of Congress that flood victims be restored to their pre-flood conditions, and any recommendations to ensure that goal is being met;

(2) the adequacy of payments to flood victims under flood insurance policies; and

(3) the practices of the Federal Emergency Management Agency and insurance adjusters in estimating losses incurred during a flood, and how such practices affect the adequacy of payments to flood victims.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report regarding the results of the study under subsection (a).

SEC. 209. PROSPECTIVE PAYMENT OF FLOOD INSURANCE PREMIUMS.

Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by adding at the end the following:

''(f) ADJUSTMENT OF PREMIUM.—Notwithstanding any other provision of law, if the Director determines that the holder of a flood insurance policy issued under this Act is paying a lower premium than is required under this section due to an error in the flood plain determination, the Director may only prospectively charge the higher premium rate.''.

SEC. 210. REPORT ON CHANGES TO FEE SCHEDULE OR FEE PAYMENT ARRANGEMENTS.

Not later than 3 months after the date of enactment of this Act, the Director shall submit a report on any changes or modifications made to the fee schedule or fee payment arrangements between the Federal Emergency Management Agency and insurance adjusters who provide services with respect to flood insurance policies to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

ORDERS FOR WEDNESDAY, JUNE 16, 2004

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9 a.m. on Wednesday, June 16. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period for morning business for 60 minutes, with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the majority leader or his designee; provided that following morning business, the Senate resume consideration of Calendar No. 503, S. 2400, the Department of Defense authorization bill, as provided under the previous order.

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

PROGRAM

Mr. WARNER. Mr. President, tomorrow, following morning business, the Senate will resume consideration of the Defense authorization bill under the previous order. The Senate will return to the Dodd contracting amendment tomorrow morning for a final 30 minutes of debate. Following that debate at approximately 10:30 a.m., the Senate will vote in relation to the Dodd amendment. Following the disposition of the Dodd amendment, we will continue to push forward with the amending process. There are several pending amendments that will require rollcall votes, and it is my hope that we will be able to lock in time agreements on them tomorrow morning.

Senators should expect rollcall votes throughout the day tomorrow in relation to the bill as the Senate continues to make progress on the Defense authorization bill. In addition, it is my expectation that rollcall votes could occur in relation to judicial nominations as well.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. WARNER. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:05 p.m., adjourned until Wednesday, June 16, 2004, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate June 15, 2004:

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. NORTON A. SCHWARTZ, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. COLBY M. BROADWATER III, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. JOSEPH R. INGE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. RUSSEL L. HONORE, 0000

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. WILLIAM E. INGRAM JR., 0000

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. DOUGLAS A. PRITT, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. THOMAS T. GALKOWSKI, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. JAMES E. CARTWRIGHT, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. JAMES T. CONWAY, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. JOHN F. SATTLER, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be admiral

VICE ADM. TIMOTHY J. KEATING, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS VICE CHIEF OF NAVAL OPERATIONS, UNITED STATES NAVY, AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5035:

To be admiral

VICE ADM. JOHN B. NATHMAN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. JOHN G. MORGAN JR., 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. CHARLES L. MUNNS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. RONALD A. ROUTE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral

REAR ADM. (LH) THOMAS L. ANDREWS III, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral

REAR ADM. (LH) LEWIS S. LIBBY III, 0000
REAR ADM. (LH) ELIZABETH M. MORRIS, 0000

CONFIRMATIONS

Executive Nominations Confirmed by the Senate June 15, 2004:

THE JUDICIARY

VIRGINIA E. HOPKINS, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

RICARDO S. MARTINEZ, OF WASHINGTON, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON.

GENE E. K. PRATTER, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA.