take a big, deep breath and say: Wait a minute—whether it is a Republican or Democratic President and whether it is a Republican or Democratic Senate—this is taking us down a very wrong and dangerous path.

I believe that in the great tradition of partisan Members of this body, who nevertheless understood that politics was no way to make decisions on judges, good sense will ultimately prevail and the Senate will return to a standard that is appropriate—whether the candidate is well qualified based upon traditional temperament and ethics, and on their ability to apply the law fairly, and understanding and knowledge of the law.

If we don't return to that kind of a standard, then we are on an inevitable decline in the way that our country applies the rule of law; and, since the rule of law underpins everything in the United States—from our guaranteed constitutional rights to our economic free market system, our property rights, and all the rest—it would be the beginning of the end of this country.

I do not exaggerate when I say that nothing less is at stake and that this body needs to address this question very seriously before decisions such as today's become the rule rather than the aberrant exception.

I believe this is a dark day in the history of the Senate, that history will judge the actions of the committee today very harshly. I just hope my colleagues will consider whether in the future we need to return to the tradition that has served Presidents and the Senate and the Nation so well. I hope so.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I heard the last part of the remarks of the Senator from Arizona about what happened today in the Judiciary Committee to Supreme Court Justice Priscilla Owen, a member of the Texas Supreme Court, who was voted down on a straight party line vote. I have never seen a case in which a person who is totally qualified, a person who has shown integrity on the bench, and who has the academic credentials to be a great Federal judge would be turned down for, really, I think a litmus test on issues.

In the past administration—the Clinton administration—I voted for a number of judges with whom I disagreed philosophically, judges who I knew would rule differently from what I thought would be the ''right vote'' on the court. But I tried to see what their qualifications were. I certainly tried to see if they would be strict constructionists to the Constitution, if they would adhere to the law rather than be traditional judicial activists. I voted for people with whom I disagreed many times. Today, I don't think that could be said for members of the Judiciary Committee.

I am told there has never been a nominee who had the unanimous qualified recommendation from the American Bar Association and the support of both home State Senators who has been turned down for a traditional nomination.

I am sad today because I know Priscilla Owen. I know what a fine person she is. Not only did she graduate right at the top of her class in law school, but she had the No. 1 grade on the Texas bar exam when she took it. She has sterling credentials academically. She is very well regarded by the former Democratic attorney general. The chief justice of the Supreme Court of Texas was very supportive of her and came out publicly for her. The other Democratic member of the Supreme Court of Texas with whom she served came out strongly for her.

It is just stunning that someone who never had one smirch on her record of integrity, who was totally well qualified and unanimously certified by the American Bar Association, and who was reelected to the Texas Supreme Court by over 80 percent of the vote would be turned down by the Judiciary Committee. I think this is a sad day.

But I will say this: I talked to Justice Owen today. I said: You lost the battle today, but you could win the war because I am absolutely certain that President Bush will renominate her if there is Republican control of the Senate. If that happens, she will be confirmed, because she deserves to be confirmed.

It is very hard on a personal level to see someone as committed as Priscilla Owen—she is basically a nonpolitical individual. She did not even know when she was asked to submit her name for the Supreme Court of Texas if she had voted in the primary before. This judge is not political.

But George Bush—Governor of Texas at the time—appointed her. She then ran for election after her appointment and was endorsed by every newspaper in Texas and was just thought of by both Republicans and Democrats as the most qualified person who had been put forward for this particular seat on the bench on the Fifth Circuit.

It is a sad day, but I think this is not over.

I do believe that President Bush will reappoint her in the next Congress if the Republicans control the Senate and he believes that she will get a fair hearing. I believe she will win the vote of the Senate, and she will show what a great judge she can be because she will be sitting on the Fifth Circuit bench.

But this is a tough day for her. I think she did not deserve this treatment. I will say that in the parts of the hearing that she had that I saw, she was outstanding and did as good a job as anyone I have ever seen who was a nominee for the Federal bench. She did so well that she won the endorsement of the Washington Post, the Chicago Tribune, and the Wall Street Journal. She had accolades from newspapers across America.

She does not deserve to have the treatment that she got today. But we will have another day, and I believe Priscilla Owen will go down in the records as a great Federal judge, because I believe she will be one eventually.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. 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. REID. 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. REID. Mr. President, has the bill been reported this afternoon?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. REED). Morning business is closed.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

Wellstone Amendment No. 4486 (to amendment No. 4471), to prohibit the Secretary of Homeland Security from contracting with any corporate expatriate.

Reid amendment No. 4490 (to amendment No. 4486), in the nature of a substitute.

Smith (N.H.) amendment No. 4491 (to amendment No. 4471), to amend title 49, United States Code, to improve flight and cabin security on passenger aircraft.

Reid (for Boxer/Smith (N.H.)) amendment No. 4492 (to amendment No. 4491), to amend title 49, United States Code, to improve flight and cabin security on passenger aircraft.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, it is my understanding that Senator WELLSTONE has a modification that will allow us to proceed and finish his amendment. Recognizing that as the case, people still wish to speak in relation to that amendment. I think that can be done after we take that action. So if Senator WELLSTONE is ready, I will ask that he be allowed to modify his amendment, and that will be accepted by voice vote.

Following that, the Senator from Texas will be recognized for 20 minutes to speak in relation to the legislation before the Senate; and the manager of the bill, Senator THOMPSON, wishes to speak, and I ask that he be recognized following the statement of the Senator from Texas.

Senator LIEBERMAN wishes to speak after Senator THOMPSON. At that time, we should be in a position to move forward on the Smith-Boxer amendment.

I ask unanimous consent that the Senate resume consideration of the Wellstone amendment; that Senator WELLSTONE then modify his amendment with changes that have been agreed upon; that Senator WELLSTONE have 20 minutes to speak with respect to his amendment; that upon the use or yielding back of time, the Reid second-degree amendment No. 4490, as modified, be agreed to, the motion to reconsider be laid upon the table; and that the Wellstone amendment 4486, as amended, be agreed to, the motion to reconsider be laid upon the table, without intervening action or debate, with the proviso that Senators be recognized as I indicated: Senators GRAMM, THOMPSON, LIEBERMAN. And at that time, we would be in an almost certain position to move forward on the Smith-Boxer amendment. There have been conversations taking place among people with regard to this.

Mrs. BOXER. Reserving the right to object, I apologize. I was called to the Cloakroom. It was my understanding that after Senator GRAMM speaks in morning business that we were going to go to the Smith-Boxer amendment.

Mr. REID. That was the case, but we have the two managers of the bill who wish to speak on the amendment.

Mrs. BOXER. On which amendment?

Mr. REID. On the Wellstone amendment.

Mrs. BOXER. May I ask, where are we in terms of time?

Mr. REID. Senator THOMPSON wants 10 minutes. We are talking about 40 minutes. We hope at that time we will have something that will dispose of this amendment on which Senator BOXER and Senator SMITH have worked. At that time, we will be in a position to determine what is going to happen thereafter. We have had conversations. Senator THOMPSON has an amendment he wishes to offer today or on Monday.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object one more second.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I want to make the point that Senator SMITH and I are anxious to move forward on our amendment. We are working with Senator FEINSTEIN on an amendment that she would like to offer by UC which, if it is in the spirit of what we discussed, would be fine with us. We do hope we can move forward.

Talk about homeland security, 9/11, planes being hijacked and pilots and flight attendants being essentially helpless—we want to change that. We are going to stay here and push hard to try to get a vote on that before the end of the day.

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

Mr. THOMPSON. Reserving the right to object, as I understand it, Senator GRAMM will speak first. Then I will have the opportunity to speak and then Senator LIEBERMAN. Does the Senator from Minnesota want additional time?

Mr. REID. Under the agreement I just stated, he has 20 minutes if he wishes to use it.

Mr. THOMPSON. First? First meaning immediately, right now, before Senator GRAMM?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Just so everyone understands—and I am sure they do—the Senator from Minnesota will send his modification to the desk. At that time, we will vote in relation to the Wellstone amendment. Following that, Senator WELLSTONE will speak. Then the lineup will be what was enunciated before, all in relation to the Wellstone amendment.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Minnesota.

AMENDMENT NO. 4490, AS MODIFIED

Mr. WELLSTONE. Mr. President, I send a technical modification to the desk.

The PRESIDING OFFICER. Under the previous order, the modification is accepted.

The amendment (No. 4490), as modified, is as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b), or any subsidiary of such entity.

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity has completed the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(2) after the acquisition at least 50 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

(ii) to treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504(a) of such Code shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term ''foreign incorporated entity'' means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms ''person'', ''domestic'', and ''foreign'' have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to Congress that the waiver is required in the interest of national security.

This section shall take effect one day after the date of this bill's enactment.

The PRESIDING OFFICER. Under the previous order, the second-degree amendment No. 4490, as modified, is agreed to.

The amendment (No. 4490), as modified, was agreed to.

The PRESIDING OFFICER. Under the previous order, the first-degree

amendment No. 4486, as amended, is agreed to.

The amendment (No. 4486) as amended, was agreed to.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I say to my colleagues, Democrats and Republicans, that I am very pleased this amendment has been accepted. A good part of this is in a similar amendment passed in the House. This will be part of the law of this homeland defense bill.

Maybe I will take up all my time; maybe I should reserve some time to respond. I am interested in what my colleagues, Senators THOMPSON and GRAMM, say about the amendment. Let me explain briefly to other Senators why I have done this.

We did this on the Department of Defense appropriations bill. That was only for 1 year. We offered an amendment yesterday that would bar the Secretary of Homeland Security from entering into contracts with U.S. companies that give up their U.S. citizenship to avoid U.S. taxes.

I will give an example. It is a small story that I think tells a larger story. This is the story of Tyco. We heard all about Tyco International. They saved $400 million in taxes last year by chartering its base in Bermuda.

There was an article in the Wall Street Journal about a month ago that suggested actually these savings might have helped the company buy CEO Dennis Kozlowski's $19 million home in Boca Raton and a $6,000 shower curtain for his place in Manhattan. They have received $220 million in Government contracts. I guess the question is whether or not any of that was used to pay for the shower curtain.

This amendment, and the reason I have been focused on no Federal contracts for expatriates, is all about corporate reform. It is an egregious practice when these companies set up sham headquarters in countries such as Bermuda.

They have no staff. They have no operation. Not only do they not end up paying taxes on foreign profits but they can also take the profit in our own country and then cook the books and move it overseas to Bermuda or wherever else. It is not all that patriotic. It means a lot of other businesses, large and small, in my State of Minnesota and the Presiding Officer's State of Rhode Island get the short end of the stick.

Most of the large and small businesses in Minnesota, Rhode Island, and around the country would never do this. They would not do it, even if they had the lawyers and the accountants to tell them how, because they would not believe it was the right thing to do if they could do it. A lot of smaller businesses would never have the lawyers and the accountants to tell them how to do it.

If these companies are going to renounce their citizenship and engage in this kind of egregious behavior and not pay their fair share of taxes, it seems to me that is fine. Renounce their citizenship and they do not get any more Government contracts. It is that simple.

By the way, I do not think the companies that are good corporate citizens, that do not engage in any of this sham activity, should be penalized. Why should they end up being penalized in bidding for the contracts because they are paying their fair share of taxes or even more because other companies are engaged in this tax avoidance? Why should they be penalized for doing the right thing, which is to stay in our country? That is what is going on right now.

We have a situation where former U.S. companies that have renounced their citizenship currently hold about $2 billion worth of contracts with the Federal Government. This amendment has now passed the Senate, and it is now in the House bill, so it is going to become a part of law. So they are not going to be able to do that anymore.

These Bermuda companies have no staff, have no offices, have no business activity. The only thing they are trying to do is shield income and not pay their fair share of taxes. These are Enron-like schemes involving sham loans and other income transfers that allow these companies to reduce their U.S. taxes on U.S. source income, including income from Government contracts. It is called earnings stripping.

I am pleased with this amendment, and I want people to know about this because it has now passed the Senate. If a company reincorporates in a foreign country and 50 percent or more of the shareholders of the new foreign corporation are the same as the shareholders of the old U.S. company, then they do not get to contract with the Homeland Security Agency, and if the company does not have any substantial business activity in its foreign home. That is the two-part test. This is actually the two-part test in the Grassley-Baucus tax bill, and I thank them for their superb work.

There are many sacrifices people are making today. The only sacrifice this amendment asks of Federal contractors is that they pay their fair share of taxes like everybody else.

I say to my colleagues, I know we had a debate last time when I did this on the DOD appropriations bill. About 99 percent of the people in Minnesota in coffee shops would say: Absolutely. If these companies want to do this kind of tax avoidance, then they should not be getting the Government contracts. I think people are tired of this kind of egregious corporate behavior.

My second point: I am very proud of the fact that the vast majority of businesses in Minnesota and in our country do not engage in this kind of behavior. I do not want to see them put at any kind of competitive disadvantage because they do the right thing.

My third point: I think this is good public policy. I know last time in the debate some of my colleagues said it is a great thing to do, it is a good, populace thing to do, and people are going to be for it—in fact, I think that is why we had a voice vote, because a lot of people do not want to vote against it—but it is not good public policy. There are two Senators in the Chamber who are probably going to say that. They are going to say that in good faith, and they are going to marshal evidence for their point of view.

I have watched them both. Both of them are going to be retiring, and, frankly, though I do not always agree with one of them and I never agree with the other one, both of them have made the Senate a much better place. So I am not arguing that there is not a place for honest, intellectual disagreement.

From my point of view, it is good public policy. There is no reason in the world that these companies should be able to engage in this kind of egregious behavior. It is a big scam. There is no reason in the world that other businesses and other people should end up having to pay more taxes, and there is certainly no reason in the world that the vast majority of U.S. companies, that play by the rules of the game, stay in our country and do not engage in this kind of tax avoidance, should be at any kind of disadvantage.

I am glad the Senate has passed this amendment. I cannot overstate its importance. This is part of maybe the new look in the Senate. The Sarbanes bill was a powerful step forward. It took some jarring events to get that bill out of committee, but all of a sudden people started realizing we have to deal with some of these scandals, we have to deal with some of these abuses.

We are going to have a pension bill on the floor soon. That is going to be part of this. I am really glad the Senate has now passed this amendment because I think this is all about dealing with these kinds of corporate abuses. This is all about corporate accountability, and this is all about reform.

I am very proud of the fact the Senate has accepted the amendment, and I thank my colleagues for doing so.

I ask unanimous consent to add Senator JOHNSON and Senator HARKIN as original cosponsors.

I yield the floor.

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

The Senator from Texas.

Mr. GRAMM. Mr. President, this amendment is a perfect example, if one goes around doing surveys to decide on public policy, of how far afield from logic and reality and good sense one can get.

Let me try to make a couple of points. If someone wants to get a good,

rousing round of applause in front of any group, stand up and say companies that are domiciled in the United States that change their domicile to any other country should not be able to do business with the Federal Government. They will get applause every time.

I wonder if one is going to get the applause when they explain to people that for the entire history of America, companies born in other countries have moved their domicile to America because we have had a better business climate.

Secondly, let me make it clear that these are private businesses. This is private property.

Another point: we sell about 80 to 90 percent of all defense and security goods sold in the world. They are produced by American companies, by American workers. The vast majority of those companies are domiciled in the United States, although not all of them. Why in the world we should be saying to the various parliaments and congresses around the world—some of whom may be having similar debates about why should they buy goods for their government that are produced by Americans when they can produce inferior goods at higher cost at home—why we should be picking this fight, I do not understand.

Finally, the world must think we have gone mad. We are the country that has drawn capital and business and literally created a brain drain in the world as people have voluntarily chosen to come to America and bring their wealth and bring their genius. They have helped make us the greatest country in the history of the world, but now the greatest deliberative body on Earth is trying to punish people who want to move the domicile, the headquarters, of their company, to another country? If I have ever seen logic in history turned on its head for political reasons, this is it.

This bill is not prospective. It does not make any sense. What about a company that was born in America and in 1812 decided that most of its business was in Britain? Now, we have to understand, Britain is the largest investor in the United States of America and they are investing tens of billions of dollars in our country every day. But we will say, because a company in 1812 decided it could operate its business better by having the headquarters in London, but the ownership of the company did not change, that we are not going to let them do business with the Federal Government?

Finally, this is simply a sign of a logic that is very dangerous; that is, this logic that somehow this is America against the world, and people are trying to get their businesses out of America, get their wealth out of America, and we have to stop them. For the long history of America, the preponderance of movement has been into our country, not out of it. Do we want other countries to be passing laws to prevent businesses from moving to America? I don't think so.

In the Finance Committee today, there was an effort to mark up a bill—and people will think this is a joke, but it is the truth—that said if you own property and you want to leave America and you want to go become a citizen in Ireland or Germany or Argentina, we will act as if you have sold your property, and you have to pay a tax to the American Government before you leave. Now, forgive me, but that is right out of Nazi Germany. I don't understand, when people are trying to bring wealth to America every day, when we have been a net gainer from people moving capital for over 200 years, why all of a sudden we are passing laws that sound as if they are right out of Nazi Germany.

The idea that somebody cannot leave America and take their property with them, that they have to pay a tax in order to get their property out of America—forgive me, but that rings of another era and another system, a system that I hated when I read about it as a schoolboy, and I still hate it.

Look, it is good politics to bash on companies that are increasingly international. Many of these companies end up with more American employees by relocating their headquarters than they would have otherwise. It is very good politics to say: We are going to show them. Move your headquarters out of America, or if you did it in 1812, you can't do business with the government. It is good politics, but it is terrible public policy.

We have probably, over the 200 years with active commerce in America, gained 100 companies domiciling in America for every one that has gone in the other direction. Do we really want to create an economic war where companies say, if you ever open a headquarters in our country, you can never move it anywhere else? Do we want that to happen to companies that want to come and locate in Texas? I don't think so. So, boy, you can get a great, rousing applause—probably even the Rotary Club would applause this—until they understood what you were talking about.

We took this amendment because people do not want to vote on it. I am happy to vote on it. This is a bad policy. It is a wrongheaded policy that is basically counter to everything we believe in as a nation. If you do not want to live in America, I just as soon you leave. If you want to take your property, great, go to it.

Now, the fact that for the whole history of America, property and people have been coming our direction, that does not change the fact you either believe in freedom or you do not. But to start saying, in order to sell us a good—even if your product is better, even if your product would save lives, even if your product would save money, if anyone cares about saving money—that you cannot sell it to us if, in 1812 you were domiciled in Boston and you moved to London and you did not change your ownership by moving. People make business decisions for business reasons. Part of what economic freedom is about is the ability of people to move their money and to move their labor by moving themselves.

It is great to get rousing applause. It is wonderful. I don't doubt that 90 percent of the people in Minnesota would be for it. I am not criticizing Minnesota. I don't believe 90 percent of the people in Texas would be for it, but there may be. There may be. But whether it is 90 percent or 100 percent, you either believe in freedom or you do not.

And I must stand up and speak out when, for over 200 years, people have been bringing their businesses to America, bringing wealth to America. We had almost $100 billion of wealth coming to America annually in the 1990s. Why we are suddenly passing laws saying you cannot go in the other direction? The problem with that is, if you cannot take it out, you will not bring it in.

One of the reasons I am being so hard on the Senator from Minnesota is this amendment we had in the Finance Committee today. I am sure somebody can defend it and say: People ought to pay taxes. We want their taxes. We want their money. We do not want them to take their money out of America.

Look, it is their money. It is a free country. Being a free country does not mean that you can do business with the Government if you do what the Government wants you to do. Freedom means you can do whatever you want to do. If people want to move their businesses, they ought to have a right to do it. If people want to take their money, their wealth, and move to France—I don't know why in the world anyone would want to do that—but if they do, my basic position is, God bless them and let them go. For every person that does that, there will be three people from France who want to move their wealth here.

Good applause. Great political issue. You could run a dynamite political spot on this: Old Joe Jones voted to let people move their businesses out of America and that cost us tax revenue. Yet he let them sell to the Homeland Security Department.

To me, that is what freedom is about.

This is bad policy coming on the same day as this Finance Committee bill that would force you to act as if you sold your property when you want to leave America, to pay a tax. God forbid this should be the policy of the United States of America. And it is not going to be. This amendment is not going to become law. I intend to work very hard to see it doesn't. I don't believe it will.

Again, nobody wants to vote against it. Everybody is going to applaud it, but in the end, some logic is going to prevail. When for 200 years people have been bringing wealth here, moving

businesses here, why we want to prevent people from going in the other direction is beyond my comprehension, other than we are going to get a big applause in doing it. Applause is a poor reason to have public policy.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I will take just 2 minutes, and I know the Senator from Tennessee will speak. I assume I have a little bit of time.

The fact is, this will become law. It will be in this bill. It will stay in this bill. The House passed a similar provision.

I will say a couple things to my colleague from Texas. I appreciate what he said, although I think a lot of it did not describe this amendment. This is not about buy America, or about business moving. It is basically about going after tax cheats. It is about people paying their fair share of taxes. Frankly, as long as we are going to talk about freedom—

Mr. GRAMM. Will the Senator yield on that?

Mr. WELLSTONE. I will be glad to yield.

Mr. GRAMM. Nothing in this amendment talks about taxes. This amendment says if you redomicile without changing half your ownership, that you can't sell the products in America.

You are assuming that if I move my business to France that I did it for tax reasons. I may do it for some other reason. I may just do it because I like French food.

So you are acting as if the only reason people do this is for taxes. And, even if that were the case, that wouldn't change my opinion.

Mr. WELLSTONE. No, I would say to my colleague—I appreciate it and I will finish up—I know I will not change his opinion. I am well aware of that. I will just tell you the Senate Finance Committee did a pretty thorough investigation of this, and we know very well that these companies have engaged in what I think is blatant tax avoidance. We know they set up these sham companies that don't have personnel there or they do not do any business there. We know they avoid paying taxes, including actually transferring some of the money they made in this country to avoid taxes. It is Enron-like schemes.

You talked about freedom. I am free, as a United States Senator, to introduce a piece of legislation that says we go after these tax cheats and they should pay their fair share of taxes. I am free, as a Senator from the State of Minnesota, to represent the people of my State and do so, and that is what I have done and this amendment passed and that is a fact.

Frankly, when my colleague says: Well, the only reason it passed is because it is just a popular thing to do, so Senators really would not have voted against it, that is quite an indictment of the Senate. I would have thought if the majority of Senators believed this was bad public policy, they would have been out here to oppose it—or at least some of them would have. I have to believe the majority believed it was good public policy. Otherwise I don't think it would have passed. I don't assume Senators are afraid to come and debate and are afraid to express their viewpoint and are afraid to oppose a policy if they don't think it is a good public policy. If that is the case, it is a sad commentary.

As my colleague knows, I would have been pleased to debate anybody because I think this is absolutely the right thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, we have other business to attend to, so I am not going to belabor this. Let me make my point. Nothing in this amendment has anything to do with or says anything about tax cheating. This amendment would apply to a company that moved from the United States to Great Britain in 1812.

The Finance Committee did not do any great deliberation in coming up with this amendment. It was a pay-for, something to create money they wanted to spend, and it seemed like a popular thing to do. Let's not deceive ourselves into thinking any great thought was behind it. And anybody who does not understand that amendments pass every day in the Senate that everybody hopes and believes will end up dying somewhere in some dark corner somewhere—where much of God's work is done, by the way—then I don't think they understand the reality of politics.

So I just stand by the following points: First, this amendment has nothing to do with taxes. This amendment is punitive to companies that may have started in America, may still employ 90 percent of their people in America but are now domiciled abroad; that is, they call another country their economic home. The incredible paradox of the amendment is that for every American company that has moved abroad, 100 have moved to America over the last 200 years.

Look, it is going to be on this bill. It is in the House bill. But I do not believe it is going to become law.

Second, I want to make the point that we are going to end up hurting America in the capital markets of the world if we keep this business up. If we had our major trading partners pass and enforce a similar law, we would lose 100 or maybe 1,000 companies that are coming here for every one we are preventing going there. This is not smart.

Third, I just have to raise this provision considered by the Finance Committee, which is based on the same logic: How dare anybody move out of America and take anything with them? My God, for over 200 years, people have moved from Asia and Europe and South America and everywhere, and they brought wealth with them to America. The idea of taxing people to get out of your country, the most dramatic example of that I remember is Nazi Germany.

So I just ask people to please take a long, hard look at some of these things we are doing. Some people think they won't actually become law. I hope not. But I do believe we are going to reach a point where we are going to begin to do some harm. The people in the financial markets around the world must think we are crazy when they see these kinds of amendments.

I yield the floor.

Mr. DODD. Mr. President, I would like to thank Senator WELLSTONE for introducing this important amendment to the homeland security bill.

Our international tax code currently has a loophole that allows U.S. corporations to open shell companies in tax haven countries while enjoying all of the benefits of conducting business in the United States without paying taxes. The Finance Committee has reported out a bill that temporarily addresses this very issue. I hope that in the coming weeks we will debate and pass the Finance Committee bill.

The amendment currently before us prohibits the new homeland security agency from contracting with any corporate expatriate. I commend my colleague for introducing this fair and very simple amendment. What this amendment says is that if you are incorporated outside of the United States and do not have substantial business activities in the foreign country you are incorporated in, and if at least 50 percent of the stock of the entity is held by former shareholders of the domestic corporation or by former partners of the domestic partnership, you will not be allowed to contract with the new homeland security agency.

Also, unlike previous discussions on this issue, Senator WELLSTONE'S amendment includes all inverted companies, so that there is no difference between companies who have just inverted or have been inverted for 6 months or 6 years. This is plain and simple, and more importantly, this is fair.

The U.S. government should not be in the business of contracting with U.S. based corporations that are avoiding their tax responsibilities by incorporating in offshore tax havens. Corporations have a right to determine where they should incorporate and what is best for their business, just like we have a right to determine how hard earned U.S. tax dollars should be spent. I strongly believe that U.S. tax dollars should not be spent in government contracts to companies that have expatriated in order to avoid paying taxes.

Companies who are or will be affected by this amendment must understand that there are benefits and costs to the decisions they make. This amendment, if adopted, will force corporations to include in their calculus

the fact that they may no longer be able to enjoy the earnings that are brought to them through Government contracts if they incorporate off shore to avoid U.S. taxes. That may or may not alter management's decision to move—management may decide that it does not matter that the company will not be able to contract with the government. If this is the decision, so be it. But we should not perpetuate a system that puts companies that do pay U.S. taxes at a competitive disadvantage because their counterparts have less of a tax burden.

I represent the State where Stanley Works is located. Stanley Works has a wonderful history and tradition in Connecticut, and so it was a great disappointment to many of us when they took steps towards inverting their company to Bermuda. Obviously Stanley Works executives weighed the benefits and costs to inverting the company and found that the costs outweighed the benefits, and so I can speak on behalf of Connecticut when I say, that we are pleased that Stanley Works dropped its plan to reincorporate to Bermuda.

In FY 2001, Stanley Works had a total of $5.2 million of defense and homeland security related Government contracts. Now that they are going to stay incorporated in the U.S., they would be put at an unfair disadvantage if they have to compete with companies who also weighed the cost and benefit, but decided that they are better off leaving the U.S. or remaining incorporated outside of the U.S.

The amendment currently before us takes away this unfair advantage. And so if companies like Ingersoll-Rand, Cooper Industries, and others are interested in continuing to contract with the Federal Government, then all they have to do is come back.

To continue to contract with companies that have inverted, to continue to allow companies to engage in tax saving techniques not available to most individual taxpayers and yet still be eligible for important and profitable government contracts, would in the words of the Treasury Department, ''reduce confidence in the fairness of the tax system.''

U.S. companies that have decided to move offshore currently hold at least $2 billion worth of contracts with the Federal Government. We have a responsibility to ensure that these offshore shell companies are not rewarded for turning their backs on America. And that is exactly what this Amendment does.

At a time when confidence in U.S. business practices is at an all time low, when the country is engaged in foreign policy challenges, and when CBO is projecting lasting deficits until 2006 we cannot continue to condone this practice, and we surely cannot allow the Government to continue to allow this unfair loophole to continue. Offshore tax havens are a massive $200 billion loss of U.S. tax revenue that should stay in the U.S. The 2002 U.S. deficit is expected to be at $157 billion—a deficit that would be closed were these offshore companies to pay their fair share of taxes.

I think that we can agree that we must address the problems in our flawed international tax code which is obviously in need of reform. There are problems with the fact that the tax code is currently putting American companies at a competitive disadvantage by taxing income from their overseas operations while other nations do not tax income earned abroad. But what we need to do is work together to change the law and not just abandon ship and reincorporate. And so while we work on making changes to the tax code, it is important that we do not disadvantage those companies who remain in the U.S. by also awarding contracts to those who have left. That is why I am pleased that this amendment passed the Senate today.

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

Mr. THOMPSON. Mr. President, the Senator from Texas is right. This is a significant change in procurement policy. The Senate Committee on Governmental Affairs, which has jurisdiction over Federal procurement policy, has not had a single hearing to consider this issue and the impact it will have on the procurement process.

I think at the outset it ought to be observed that it is very unfair to publicly accuse a company of being a tax cheat when they have not violated one single law, rule, or regulation of the United States. I have been informed since this discussion has been going on that one of the many unintended consequences, probably, and potentially unintended results, is one involving a company called Intelsat.

If we are going to prohibit companies from dealing with the new Department of Homeland Security, why limit it to the Department of Homeland Security? Let's prohibit them from doing business with—I guess, the closest comparable department would be the Department of Defense. But the Department of Defense uses satellites of Intelsat.

I do not know the extent of the traffic, but I think it is significant, and I know it is important to the national security of this country. Intelsat is a Bermuda company, and it is an inversion. That is the sort of thing we are dealing with, if thoughtful people think this thing through before we finish up this process.

Another result of this amendment would be to allow foreign companies that have always been foreign companies to be able to bid on Department of Homeland Security contracts. But it would preclude foreign companies that have at one time in the past been headquartered in the United States from bidding on those contracts, even if the work would be performed in the United States by American workers.

So if you have always been foreign, you can deal with the Federal Government. But if at one time, at any time in your past history you were an American company, you can't. That doesn't make any sense to me.

I am also concerned that this amendment might violate our trade obligations because it is discriminatory against certain foreign-based companies. If we were to enact the amendment, what would be the unintended results? I am concerned we would be giving governments an excuse to ban U.S. companies from bidding on foreign contracts, when we have been fighting to get foreign governments to open their procurement process to U.S. companies.

Denying a company the ability to be awarded Federal contracts based solely on the location of its headquarters represents a significant change in Federal procurement policy and counteracts years of work to streamline the Federal acquisition process. If we begin to use Federal contracts as leverage against potential contractors, the system will inevitably become highly politicized and the goal of obtaining the best value on Government contracts will no longer be a priority; It will be a political football, where the procurement process will turn into an attempt to punish our enemies and reward our friends instead of trying to get the best deal for the Government—which, of course, is the best deal for the taxpayer, who the proponents of this amendment claim they are looking out for.

Government contracts are not gifts. Federal contractors face a burdensome process full of redtape, paperwork, and unique Government regulatory requirements. That is why it can be difficult to get multiple companies to even bid on a contract.

We have attempted to streamline this process in recent years in order to increase competition, to save taxpayers money, but restrictions such as this discourage companies from bidding in the first place. We do not want to end up in a situation where DHS has to rely on sole-source vendors because we prohibit the Department from contracting with an inverted corporation. The least we could do is provide the Secretary with the authority to waive the ban in order to ensure competition in the bidding process. That procurement bar is a serious sanction, reserved only for egregious conduct such as fraud or criminal offenses in connection with obtaining the contract or performing a public contract.

What is important to Government procurement officials when evaluating a contract bid is not where the bidding company is headquartered. They look at where the work is to be done, whether the company will do a good job, and whether the bid is cost effective.

Whether or not you believe corporate inversions should be prohibited, the fact of the matter is that inversion transactions are legal under the current tax laws. Because the amendment

is retroactive, it would bar companies that have engaged in legal behavior—an inversion—from bidding on DHS contracts. The inversion could have occurred a year ago or 10 years ago. Either way, these companies had no way of knowing that they could be banned from bidding on federal contracts if they inverted.

This amendment's definition of an inversion is problematic, because it would snag any company that inverted at any time if 50 percent of the shareholders are the same before and after the inversion. This amendment would not just go after the sham transactions that are targeted by the Finance Committee bill. It would also catch companies that engaged in inversion transactions for legitimate business reasons. The Finance Committee-reported bill has an 80 percent shareholder test, which is intended to target the most egregious transactions.

It is important to note that these companies do and will pay U.S. tax on the income earned from their government contracts regardless of whether they are headquartered in the U.S.

The amendment does not address the root cause of corporate inversions, which is our highly complex foreign tax regime that taxes companies on a worldwide basis. U.S. tax laws put domestic companies at a distinct disadvantage relative to their foreign competitors who are taxed on a territorial basis.

That is the heart of the problem. That is the root cause, and that is what we ought to be addressing.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut is recognized for up to 10 minutes.

Mr. WELLSTONE. Mr. President, I wonder if I could have 2 minutes.

Mr. LIEBERMAN. Mr. President, I yield 2 minutes of my time to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, that is very gracious of the Senator from Connecticut.

I just wanted to say again that I appreciate the remarks of both of my colleagues. I did want to address one point that was made by my colleague from Texas, which is to say this won't become law when almost the identical provision was passed in the House and the Senate has agreed to it. I believe the chairman of the Senate Governmental Affairs Committee is committed to it. I believe there are many people in the House who are as well.

I will tell you one other thing. The public is committed to this as well. There are going to be a lot of people looking at the conference committee. The only time I get feisty is when there is an implication: Oh, well, you know we don't want to go on record because we are afraid to oppose it, which I think is unfair implication. I think it is bad public policy. They come out here and say: We will just knock it out in the conference committee; never mind that the vast majority of people think, of course, this is about tax avoidance; of course, we know what we are doing. Don't worry about that because it will be business as usual. We will just go to the conference committee and knock it out.

I want to say to my colleagues that I believe there are many Senators and representatives in that conference committee who will make sure that doesn't happen. I sure will be monitoring this. It will become law. It is not going away. We will not be back to the business of helping these corporations with all their egregious behavior and thinking they can get away with it. It doesn't work that way any longer. It is a new world. People do not stand for that kind of egregious behavior.

That is the standard of ordinary citizens and good public policy.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I want to speak in favor of the amendment that the Senator from Minnesota has introduced, which has been adopted, as amended. I want to say to him that not only do I support it personally, but as the manager of this bill and as chairman of the Governmental Affairs Committee, from which the underlying bill has emerged, when we go into conference on this bill with the House, I will naturally have in mind not only my personal support of the Senator's amendment but the fact that the Senate has adopted the amendment by voice vote unanimously. I will be pledged to do everything I can to keep it in the ultimate conference report, particularly since the House has adopted a similar amendment.

Mr. President, I want to speak briefly on this. I think the Senator has done something that is important and that is just. He attached this to a bill on homeland security. But it responds to a broader problem. It does, in a sense, touch the same spirit of patriotism that we generally responded to after the events of September 11 which engendered the basic bill before us. It is this notion that a significant number of American businesses that have been born and grown up here, benefitted from all the opportunities that America provides, decided to wriggle their way out of the taxes and locate offshore to avoid paying taxes to the United States of America. This is just wrong. It is like so much else that is going on around it.

Unfortunately, more than a few of our biggest companies have chosen to incorporate overseas and thereby avoid paying U.S. taxes.

Evidently, these companies have asked themselves if it is legal instead of asking if it is right or wrong. They have had some lawyers or accountants tell them it is legal to do this. Legality isn't the only standard for what is right and wrong.

It seems to me that a company that has grown up in America and that has benefitted from American workers and all that America does to create a climate for enterprise, economic growth, and markets for goods and services that are provided ought to, as an act of citizenship, even though it might not be illegal to go offshore, as an act of citizenship pay its fair share of taxes.

My dad was a small businessman. He did well as he went along. I always remember, it makes me think that I was raised in an age longer ago than it was. In fact, my dad used to say: I never complain about paying taxes because the taxes I pay are the price I pay as a businessman for doing business in this country, for the extraordinary not only blessings of liberty that America gives, but as part of that, the blessings of economic opportunity that are allowed me—dad never went to college—to start this business and be able to make enough money to send my kids to college and graduate school.

That ethic, which is still shared by the great majority of businesses in our country, including particularly, may I say, small businesses that don't have the wherewithal to kind of wriggle their way through the legal system, is not reflected as often in the actions that we have seen documented so well.

I share the view of many of my colleagues that we should close the tax loophole to prevent companies from further irresponsible behavior. That is the most direct way to address the problem. But I also support this amendment, which sends a simple and profound message: if you don't want to participate as U.S. citizens and pay your fair share of taxes, then don't expect to make billions of dollars of profits from U.S. government contracts that are paid with the tax dollars of Americans who pay their fair share in taxes.

My State of Connecticut has some recent history on this issue—history with a happy ending—that I would like to relate to the Senate. Back in May, StanleyWorks, a proud company based in New Britain, wanted to pack its corporate bags and reconstitute in Bermuda. And not because its executives wanted to try driving on the left side of the road. It was because some of its leadership decided it would be nice to avoid paying taxes to the United States of America.

It is sad and ironic, when you think about it. This company was founded in ''New Britain''—a name that calls to mind our roots as 13 colonies that broke away from the mother country because she tried to tax us from afar without giving us the rights, representation, and respect that we deserved. And here was a New Britain-based company thinking of setting up a shell in Bermuda to avoid paying taxes even though it is in every other way a full-fledged citizen of our United States.

StanleyWorks started in 1843 when an enterprising businessman named Frederick Trent Stanley set up a small

shop to make door bolts and other hardware from wrought iron. It was one of dozens of small foundries and other backyard industries in town struggling to make a go of it by turning out metal products—but Stanley had a special innovative spirit and an uncommon passion for doing things right. So, as often happens in America, what began as a modest enterprise prospered and grew.

To see this company so willing to scrap its proud history and proud presence in my State, and to see similar things happening around the country, really got me angry. It got a lot of us angry. And with good reason. Thousands and thousands of hardworking small businesses like the business my father owned and operated, and thousands of corporations, contribute to America every single day—not only the way that all businesses do, by producing jobs for Americans—but also by paying their fair share of taxes. Meanwhile, other companies have the gall to look for a clever way to fatten their bottom line and get an edge over their competitors who play by the rules.

That is why in May I cosponsored the bill by Senators BAUCUS and GRASSLEY to close the tax loophole that Stanley attempted to exploit, and supported adding to that bill a provision preventing overseas tax dodgers from competing for or receiving federal contracts.

I am proud that at least in my State, at least with StanleyWorks, a little bit of shame seemed to have an effect. StanleyWorks decided not to go overseas after all. They made the right decision, and I appreciate it.

But other corporations are still busy relinquishing their American citizenship and, in the process, relinquishing their good corporate citizenship in the very same act. Mr. President, when you wriggle out of taxes you wriggle out of responsibility. When you evade the basic requirements that everybody else meets, you erode our common bonds as a community. It may seem to make sense for individual companies at first when they're viewing through the narrow and amoral blinders of the bottom line, but it's downright destructive for American society as a whole.

And I must say, in the end it may not help a company's bottom line either, and this amendment helps make that clear. The fact is, when a company thumbs its nose at the country that gives it the opportunity to prosper, it loses credibility. It loses trust. It loses respect. It loses customers. And, yes, though it may seem that way based on the initial calculations of the CFO, it loses money.

Good ethics make good business. This amendment leaves no doubt about that fact. The border, in this case, is the line between right and wrong. We in Congress have to draw that line—to say that if you cross it, you will not be eligible for Federal contracts. Plain and simple.

In the context of Homeland Security, these actions seem even more unsavory. If a U.S. company wants to bid for work to defend the homeland—work that is being paid for in the tax dollars of its customers, among others—how can that company not even pledge allegiance, in the most basic fiscal sense, to the United States of America?

This measure that the Senator from Minnesota has attached is right on target. It says if an American-based company is not willing to pay taxes to America, they ought not to receive contracts through the new Department of Homeland Security that we are establishing in this bill, which after all are contracts that will be paid for by taxes paid by American companies. To me, that seems to be elementary fairness.

So I close with a quote from Paul Krugman of the New York Times, which I think says it well, when he wrote:

> [T]he trouble is that hinting, even by silence, that it's O.K. not to pay taxes is a dangerous game. . . . Accountants and tax planners have taken the hint; they now believe that it's safe to push the envelope. . . . Furthermore, what does it say to the nation when companies that are proud to stay American are punished, while companies that are willing to fly a flag of convenience are rewarded?

That is what this amendment is all about and why I was pleased to support it on the voice vote and why I intend to work with all the strength and skill I have in the conference committee to make sure it is part of the final conference report that comes back to the Senate with this bill.

I thank the Chair and yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I think under the unanimous consent request I have 20 minutes to speak on the bill. We have been talking about the amendment of the Senator from Minnesota, and I had yet to get the 20 minutes. I think maybe the Senator from California was under the impression that I had spoken before that debate but——

Mr. LIEBERMAN. Mr. President, if the Senator will yield?

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. It was my understanding, in the unanimous consent agreement Senator REID propounded, that Senator GRAMM would have a total of 20 minutes, which he could use either to speak on the Wellstone amendment or more generally on the bill.

I see Senator REID in the Chamber. Perhaps he can clarify.

Mr. REID. Will the Senator from Texas yield?

Mr. GRAMM. I will be happy to yield.

Mr. REID. I thought you were going to speak 20 minutes on the Wellstone amendment, and then Senator WELLSTONE would speak for 20 minutes, and then 20 minutes for the two managers. But if you want to speak on the bill, that certainly is your right.

The thing is, we have been waiting to finish this Smith-Boxer amendment. We would like to get that done. But if you have the understanding that you were to speak for 40 minutes——

Mr. GRAMM. Mr. President, probably we could move everything along by my just starting and trying to be expeditious. I speak slowly, so I will try not to repeat myself.

Mr. REID. The Senator has the floor, and he has the right. I would just indicate to everyone, we are going to have a vote sometime this afternoon on the Smith-Boxer amendment. Everyone has agreed that would take place. So everyone should understand that after the Senator from Texas completes his statement, Senator BOXER will modify her amendment to meet a couple of the objections that were raised, and then she will speak, Senator SMITH will speak, and maybe even Senator HOLLINGS will come and speak.

So I would estimate that probably at around 4:30 or thereabouts we could have a vote on the Smith amendment. I think that would be all of the legislation on this bill today.

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

Mr. GRAMM. Mr. President, we have started the debate on homeland security, and one of the things that has struck me is that while we have talked about the President's request for flexibility—about his ability, in a national emergency, to override collective bargaining agreements—the debate, to this point, has basically been in the abstract. So while it does not make for a pretty speech, I would like to try to get specific this afternoon for 20 minutes and try to give some concrete examples as to what this debate is about.

The President has said that in order to protect the American homeland, he needs the ability to put the right person in the right place at the right time, and that he also needs the ability to move or remove people who are not capable of doing the job that needs to be done in order to protect our country, its people, its property.

I would like to just note the following things on this issue. No. 1, this is not a new concern. In 1984, the Grace Commission stated:

> The lack of integration of the INS, the Border Patrol, and the Customs Service would lead to security breakdowns.

That was the Grace Commission in 1983.

Does anybody doubt when INS approved a visa for two of the people who flew airplanes into the World Trade Center, after their pictures and names have been on every television station and every front page of every newspaper in the world, that the concern expressed by the Grace Commission in 1983 has been borne out?

In 1989, the Volcker Commission, on the National Commission on Public Service, concluded:

> The current system——

They are talking about our system of hiring, firing, and promoting.

The current system is slow, it is legally trampled, and intellectually confusing. It is impossible to explain to potential candidates. It is almost certainly not fit for filling the spirit of our mandate to hire the most meritorious candidates.

Does anybody doubt that the young lady who was an FBI agent who tried to warn headquarters that we had suspected terrorists taking lessons on flying planes but not on landing them should have been promoted and given a raise? I think the concerns of the Volcker Commission in 1989 have been borne out.

And then the U.S. Commission on National Security, chaired by our dear friend and former colleague, Warren Rudman, stated:

An agile, flexible personnel system is required for us to have a successful defense of the American homeland.

We can debate whether the current system is flexible enough, but let me just let the facts speak for themselves. And they are pretty simple facts.

Mr. President, 1,800,000 people worked for the Federal Government in the year 2000—1,800,000. How many do you think were fired because they were incapable of doing their job? With 1,800,000 people working for the Federal Government, how many of them do you think lost their job because they were not getting it done? The answer: 6.

In 2001, how many Government employees do you think lost their job out of 1.8 million because they were not getting the job done? The answer: 3.

Does anybody believe that all but three Federal employees in all of America, in every agency combined, would have met the standards of the private sector to keep their job? I do not think so.

Only 500 people out of the 1.8 million people who worked for the Federal Government were demoted in the year 2000 for lack of performance. Only 600 were denied pay raises.

Think about that. The vast majority of people who got bad ratings—over 99 percent of the people who work for the Federal Government who were given failing grades on their evaluations—got automatic pay increases with the Federal Government. No wonder two-thirds of Federal workers, in independent polls that have been conducted, believe that poor performers are not adequately disciplined. Further, nearly half of all Federal workers believe that job performance has little or nothing to do with a chance for promotion.

It seems to me when you look at these facts, the President is simply asking, in the area where life and death are at stake, to have greater flexibility in being sure we hire the right person; it does not take 6 months to do it; and if somebody is clearly not doing the job, that we at least move them out of these highly sensitive areas.

In listening to people who are defending workers instead of defending the homeland, you get the idea that the President is proposing a wholesale rewriting of personnel laws.

I just want people to look at the facts and see that under the President's bill, only 6 of the 70 chapters in the Federal Registry governing the civil service system are modified, and none of them is repealed.

Another area where people are wondering what are all these politicians talking about is this whole area of collective bargaining. Why, in this area of national security, in order to get a decision made and to get up our shield and to protect our people, does the President want to be able to waive collective bargaining agreements on a selective basis?

I simply picked out 8 that are very different to give you examples of the kind of problem you have in trying to make the Government work. Please forgive my clumsiness in reading them, but they are pretty revealing.

No. 1: Collective bargaining agreements can prohibit improvements to border protection in inspection areas. Let me give an example. In 1987, the Customs Service office at Logan Airport was renovated with a minor change in the area where the baggage of international flight passengers was inspected. The National Treasury Employees Union objected, saying the renovation had to be part of a collective bargaining agreement. The Federal Labor Relations Authority ruled that the Customs Service could not renovate its baggage inspection areas without a collective bargaining agreement.

Are we kidding? Are we going to put American lives at stake over changing collective bargaining agreements so that we can upgrade inspection areas? I don't think so. I don't think that is protecting workers or protecting jobs. I think that is protecting the status quo and exposing Americans to being hurt.

Let me give another example: Collective bargaining agreements can prohibit agencies from working together to protect the border. President Clinton's drug czar, Barry McCaffrey, as many will remember, noted the separate union rules that controlled how its inspectors would search vehicles. According to the San Francisco Examiner—this is General McCaffrey speaking—

Officials at one agency were actually forbidden to open the trunks of cars, a policy well known to drug dealers.

We are not asking people to share toothbrushes. We are just asking that the President have the ability to jointly train people at the Border Patrol and at INS and at Customs so that they can work together. This is a perfect example of where that has not happened.

Another example: Collective bargaining agreements could prohibit agencies from increasing the number of immigration inspectors. In 1990, the Immigration and Naturalization Service added an extra shift at the Honolulu International Airport to handle a surge of international flights in the afternoon. The American Federation of Government Employees objected, saying the new shift affected overtime and differential pay of existing workers and had to be negotiated with the union. The Federal Labor Relations Authority agreed that new shifts of border inspectors could not be added without a collective bargaining agreement.

Do we really think the President ought to have the ability to add personnel if our lives are at stake? I think the answer is yes.

Another example: Collective bargaining agreements could prohibit special task forces of the Border Patrol from being deployed in any region. Let me read you the union agreement and what it requires for deploying Border Patrol. I am not criticizing them. I have been maybe the biggest supporter of the Border Patrol. Under normal circumstances, when you are posting people, you want them to be posted in areas where they can preserve the basic quality of life. But let me read to you what the union agreement says.

They have to be posted where there are ''suitable eating places, drug stores, barber shops, places of worship, cleaning establishments, and similar places necessary'' to sustain the comfort or health of the employees.

In peacetime, when we are getting the job done, that is perfectly reasonable. But are we going to stand by and let a union work agreement say that we can't, in an emergency, deploy the Border Patrol where there are no dry cleaners? I don't think so.

Another example: Collective bargaining agreements could prohibit the forward deployment of the best Customs Service inspectors to foreign ports to inspect container ships destined for the United States. Unions are currently negotiating with the Customs Service to determine which inspectors will be shifted abroad based not on merit, but on seniority.

When we have a critical area where people's lives are at stake, we can't be fooling around with seniority. We have to give the President the right to say: Look, that agreement is perfectly good under ordinary circumstances, and at the post office we are going to agree with it. But when people's lives are at stake, we are not going to be fooling around where we can't put the best person in the best place. That is what this debate is about.

Another example: Collective bargaining agreements could prohibit agencies from implementing a new body search policy on detainees. Listen to this one. In 1995, the INS sought to change its policies regarding body searches and detentions in order to protect employees from harm and the Service from lawsuits. The American Federation of Government Employees insisted that no change in body search policy occur until a broader collective bargaining agreement was reached. When the INS implemented the new policy, the union challenged it before the Federal Labor Relations Authority, and they ruled that the new body

search policy could not be implemented without a new collective bargaining agreement.

The President is asking for flexibility in the name of national security. This is exactly the kind of circumstance he is talking about. When we have people at these press conferences saying, protect our workers, they are not talking about protecting workers, they are talking about protecting agreements that don't make any sense, given that we have had over 3,000 of our fellow citizens killed.

Let me give you a couple more examples. Collective bargaining agreements could prohibit agencies from canceling annual leave during a border crisis. In 2000, the Customs Service was pushing a drug interdiction effort along the Florida coast. When annual leave was canceled, the union filed a grievance on behalf of those Customs officers who wanted to attend the World Police and Firearms Games. The FLRA ruled that despite the interdiction effort, annual leave could not be canceled.

When people are saying the President doesn't need this authority and these agreements are sacred, is anybody willing to say that in order to protect people's right to go to some conference, we are going to deny the President the ability to say no, today we are going to protect people's lives in your hometown? I don't think so.

Let me give you one more example. Collective bargaining agreements could prohibit agencies from disbanding a single office. In 1991, INS attempted to shut down a unit facility due to a steady decrease in activity and staffing. No more than two union workers were at the facility in its last year, and one manager was capable of handling the workload. Yet, the union challenged the move and the Federal Labor Relations Authority ruled that the elimination of any unit could not occur until the collective bargaining agreement was changed.

So when we are talking about giving the President, for national security reasons, the right to waive these work rules, this is exactly the kind of thing that we are talking about. When people's lives are at stake, should we be able to deploy the Border Patrol on a sustained basis where they don't have dry cleaners? When people's lives are at stake, should we be able to change facilities without renegotiating union contracts? When lives are at stake, should we be able to require that people that were attending some conference stay on their job to protect our fellow citizens? That is what this debate is about.

The President has asked for the right to use a policy that has been available to every President for the last 20 years. Yet, in this bill, when we are supposed to be promoting homeland security, that right is taken away from the President. So what has happened here is we are providing a lot more money, and that will help. But we are imposing restrictions on the President that guarantee the money will not be well spent.

I understand the power of special interest groups. I understand that people have other concerns in national security. But I think, under the circumstances, given the crisis that we face, that those who say the President is trying to trample on labor rights, trying to take away from unions their power, I don't think they have a leg to stand on. I think if my colleagues would look at these examples, they show very clearly exactly the kind of thing we have to do.

Finally, I believe that the vast majority of people who are going to be in these emergency agencies would like to have these restrictions removed. They would like to have promotions based on merit. They would like incompetents who endanger their lives, as much or more than they endanger our lives, to be removed. That is what this debate is about. We have been sort of shouting back and forth at each other, and I thought it was important to come over and put some meat on the bones and give concrete examples.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

AMENDMENT NO. 4492, AS MODIFIED

Mrs. BOXER. Mr. President, I send a modified amendment to the desk, which has been cleared by Senator SMITH and myself, regarding training for pilots and flight attendants.

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

The amendment (No. 4492), as modified, is as follows:

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

In lieu of the matter proposed to be inserted, insert the following new title:

TITLE ____—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT

SECTION ____1. SHORT TITLE.

This title may be cited as the ''Arming Pilots Against Terrorism and Cabin Defense Act of 2002''.

SEC. ____2. FINDINGS.

Congress makes the following findings:

(1) Terrorist hijackers represent a profound threat to the American people.

(2) According to the Federal Aviation Administration, between 33,000 and 35,000 commercial flights occur every day in the United States.

(3) The Aviation and Transportation Security Act (Public Law 107–71) mandated that air marshals be on all high risk flights such as those targeted on September 11, 2001.

(4) Without air marshals, pilots and flight attendants are a passenger's first line of defense against terrorists.

(5) A comprehensive and strong terrorism prevention program is needed to defend the Nation's skies against acts of criminal violence and air piracy. Such a program should include—

(A) armed Federal air marshals;

(B) other Federal agents;

(C) reinforced cockpit doors;

(D) properly-trained armed pilots;

(E) flight attendants trained in self-defense and terrorism prevention; and

(F) electronic communications devices, such as real-time video monitoring and hands-free wireless communications devices to permit pilots to monitor activities in the cabin.

SEC. ____3. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish a program to deputize qualified pilots of commercial cargo or passenger aircraft who volunteer for the program as Federal law enforcement officers to defend the flight decks of commercial aircraft of air carriers engaged in air transportation or intrastate air transportation against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'. The program shall be administered in connection with the Federal air marshal program.

''(b) QUALIFIED PILOT.—Under the program described in subsection (a), a qualified pilot is a pilot of an aircraft engaged in air transportation or intrastate air transportation who—

''(1) is employed by an air carrier;

''(2) has demonstrated fitness to be a Federal flight deck officer in accordance with regulations promulgated pursuant to this title; and

''(3) has been the subject of an employment investigation (including a criminal history record check) under section 44936(a)(1).

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—The Under Secretary of Transportation for Security shall provide or make arrangements for training, supervision, and equipment necessary for a qualified pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot. Such training, qualifications, curriculum, and equipment shall be consistent with and equivalent to those required of federal law enforcement officers and shall include periodic re-qualification as determined by the Under Secretary. The Under Secretary may approve private training programs which meet the Under Secretary's specifications and guidelines. Air carriers shall make accommodations to facilitate the training of their pilots as Federal flight deck officers and shall facilitate Federal flight deck officers in the conduct of their duties under this program.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall train and deputize, as a Federal flight deck officer under this section, any qualified pilot who submits to the Under Secretary a request to be such an officer.

''(2) INITIAL DEPUTIZATION.—Not later than 120 days after the date of enactment of this section, the Under Secretary shall deputize not fewer than 500 qualified pilots who are former military or law enforcement personnel as Federal flight deck officers under this section.

''(3) FULL IMPLEMENTATION.—Not later than 24 months after the date of enactment of this section, the Under Secretary shall deputize any qualified pilot as a Federal flight deck officer under this section.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer.

''(f) AUTHORITY TO CARRY FIREARMS.—The Under Secretary of Transportation for Security shall authorize a Federal flight deck officer under this section to carry a firearm to

defend the flight deck of a commercial passenger or cargo aircraft while engaged in providing air transportation or intrastate air transportation. No air carrier may prohibit a Federal flight deck officer from carrying a firearm in accordance with the provisions of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), a Federal flight deck officer may use force (including lethal force) against an individual in the defense of a commercial aircraft in air transportation or intrastate air transportation if the officer reasonably believes that the security of the aircraft is at risk.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the air carrier employing a pilot of an aircraft who is a Federal flight deck officer under this section or out of the acts or omissions of the pilot in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) EMPLOYEE STATUS OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall be considered an 'employee of the Government while acting within the scope of his office or employment' with respect to any act or omission of the officer in defending an aircraft against acts of criminal violence or air piracy, for purposes of sections 1346(b), 2401(b), and 2671 through 2680 of title 28 United States Code.

''(i) REGULATIONS.—Not later than 90 days after the date of enactment of this section, the Under Secretary of Transportation for Security, in consultation with the Firearms Training Unit of the Federal Bureau of Investigation, shall issue regulations to carry out this section.

''(j) PILOT DEFINED.—In this section, the term 'pilot' means an individual who is responsible for the operation of an aircraft, and includes a co-pilot or other member of the flight deck crew.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter 449 is amended by inserting after the item relating to section 44920 the following new item:

''44921. Federal flight deck officer program.''.

(2) EMPLOYMENT INVESTIGATIONS.—Section 44936(a)(1)(B) is amended—

(A) by aligning clause (iii) with clause (ii);

(B) by striking ''and'' at the end of clause (iii);

(C) by striking the period at the end of clause (iv) and inserting ''; and''; and

(D) by adding at the end the following:

''(v) qualified pilots who are deputized as Federal flight deck officers under section 44921.''.

(3) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (49 U.S.C. 44903 note) is repealed.

SEC. ___4. CABIN SECURITY.

(a) TECHNICAL AMENDMENTS.—Section 44903, of title 49, United States Code, is amended—

(1) by redesignating subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons, as added by section 126(b) of Public Law 107–71) as subsection (j); and

(2) by redesignating subsection (h) (relating to limitation on liability for acts to thwart criminal violence or aircraft piracy, as added by section 144 of public law 107–71) as subsection (k).

(b) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Section 44918 of title 49, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) IN GENERAL.—

''(1) REQUIREMENT FOR AIR CARRIERS.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, shall prescribe detailed requirements for an air carrier cabin crew training program, and for the instructors of that program as described in subsection (b) to prepare crew members for potential threat conditions. In developing the requirements, the Under Secretary shall consult with appropriate law enforcement personnel who have expertise in self-defense training, security experts, and terrorism experts, and representatives of air carriers and labor organizations representing individuals employed in commercial aviation.

''(2) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish an Aviation Crew Self-Defense Division within the Transportation Security Administration. The Division shall develop and administer the implementation of the requirements described in this section. The Under Secretary shall appoint a Director of the Aviation Crew Self-Defense Division who shall be the head of the Division. The Director shall report to the Under Secretary. In the selection of the Director, the Under Secretary shall solicit recommendations from law enforcement, air carriers, and labor organizations representing individuals employed in commercial aviation. The Director shall have a background in self-defense training, including military or law enforcement training with an emphasis in teaching self-defense and the appropriate use force. Regional training supervisors shall be under the control of the Director and shall have appropriate training and experience in teaching self-defense and the appropriate use of force.'';

(2) by striking subsection (b), and inserting the following new subsection:

''(b) PROGRAM ELEMENTS.—

''(1) IN GENERAL.—The requirements prescribed under subsection (a) shall include, at a minimum, 28 hours of self-defense training that incorporates classroom and situational training that contains the following elements:

''(A) Determination of the seriousness of any occurrence.

''(B) Crew communication and coordination.

''(C) Appropriate responses to defend oneself, including a minimum of 16 hours of hands-on training, with reasonable and effective requirements on time allotment over a 4 week period, in the following levels of self-defense:

''(i) awareness, deterrence, and avoidance;

''(ii) verbalization;

''(iii) empty hand control;

''(iv) intermediate weapons and self-defense techniques; and

''(v) deadly force.

''(D) Use of protective devices assigned to crewmembers (to the extent such devices are approved by the Administrator or Under Secretary).

''(E) Psychology of terrorists to cope with hijacker behavior and passenger responses.

''(F) Live situational simulation joint training exercises regarding various threat conditions, including all of the elements required by this section.

''(G) Flight deck procedures or aircraft maneuvers to defend the aircraft.

''(2) PROGRAM ELEMENTS FOR INSTRUCTORS.—The requirements prescribed under subsection (a) shall contain program elements for instructors that include, at a minimum, the following:

''(A) A certification program for the instructors who will provide the training described in paragraph (1).

''(B) A requirement that no training session shall have fewer than 1 instructor for every 12 students.

''(C) A requirement that air carriers provide certain instructor information, including names and qualifications, to the Aviation Crew Member Self-Defense Division within 30 days after receiving the requirements described in subsection (a).

''(D) Training course curriculum lesson plans and performance objectives to be used by instructors.

''(E) Written training bulletins to reinforce course lessons and provide necessary progressive updates to instructors.

''(3) RECURRENT TRAINING.—Each air carrier shall provide the training under the program every 6 months after the completion of the initial training.

''(4) INITIAL TRAINING.—Air carriers shall provide the initial training under the program within 24 months of the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(5) COMMUNICATION DEVICES.—The requirements described in subsection (a) shall include a provision mandating that air carriers provide flight and cabin crew with a discreet, hands-free, wireless method of communicating with the flight deck.

''(6) REAL-TIME VIDEO MONITORING.—The requirements described in subsection (a) shall include a program to provide flight deck crews with real-time video surveillance of the cabins of commercial airline flights. In developing this program, the Under Secretary shall consider—

''(A) maximizing the security of the flight deck;

''(B) enhancing the safety of the flight deck crew;

''(C) protecting the safety of the passengers and crew;

''(D) preventing acts of criminal violence or air piracy;

''(E) the cost of the program;

''(F) privacy concerns; and

''(G) the feasibility of installing such a device in the flight deck.''; and

(3) by adding at the end the following new subsections:

''(f) RULEMAKING AUTHORITY.—Notwithstanding subsection (j) (relating to authority to arm flight deck crew with less than-lethal weapons) of section 44903, of this title, within 180 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, in consultation with persons described in subsection (a)(1), shall prescribe regulations requiring air carriers to—

''(1) provide adequate training in the proper conduct of a cabin search and allow adequate duty time to perform such a search; and

''(2) conduct a preflight security briefing with flight deck and cabin crew and, when available, Federal air marshals or other authorized law enforcement officials.

''(g) LIMITATION ON LIABILITY.—

''(1) AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the

acts or omissions of the air carrier's training instructors or cabin crew using reasonable and necessary force in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) TRAINING INSTRUCTORS AND CABIN CREW.—An air carrier's training instructors or cabin crew shall not be liable for damages in any action brought in a Federal or State court arising out of an act or omission of a training instructor or a member of the cabin crew regarding the defense of an aircraft against acts of criminal violence or air piracy unless the crew member is guilty of gross negligence or willful misconduct.''.

(c) NONLETHAL WEAPONS FOR FLIGHT ATTENDANTS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to determine whether possession of a nonlethal weapon by a member of an air carrier's cabin crew would aid the flight deck crew in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security shall prepare and submit to Congress a report on the study conducted under paragraph (1).

The provisions of this amendment shall take effect one day after date of enactment.

Mrs. BOXER. Mr. President, for the benefit of Members, I know Senator REID has been working hard to move things along. We have reached agreement on modifying our amendment, making sure that the pilot training is strengthened. I think we have done that with the help of Senator FEINSTEIN. I am very pleased that she was over here earlier to assist us with this amendment. I think she would be pleased with what we have done.

Basically, it is the amendment that Senator SMITH wrote in the form of a bill, and I was very glad to come on board after we wrote a few more bits and pieces about putting video cameras in the cockpits, and some other small items.

I thank my colleague from New Hampshire for his vision and tenacity in making sure that what happened on September 11 will not happen again.

Now we say, is there any one thing we can do can to ensure this will never happen? Of course not. Life is too complicated for that. As someone who has been a leader in the effort for sensible gun control laws, what we are doing in this amendment is very carefully thought out. It is backed by the Air Line Pilots Association International, and it is backed by the flight attendants.

I ask unanimous consent that a letter I just received from the Air Line Pilots Association be printed in the RECORD.

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

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Washington, DC, September 5, 2002.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: On behalf of the 67,000 members of the Air Line Pilots Association, International, I want to offer our thanks and support for your amendment to the pending homeland security legislation. The Boxer-Smith amendment creates a program allowing volunteer pilots who meet strict federal qualification standards to receive training to become federal flight deck officers, authorized to defend the cockpit against acts of criminal violence and air piracy.

Our nation has suffered greatly as a result of the events of September 11. More than 3,000 people were murdered, billions of dollars of property damage was incurred, the nation's economy was rocked, thousands of people were laid off and life in America will never be the same again—all because terrorists were able to kill eight pilots and take over the cockpits of their airliners on that day.

This must never happen again. Providing more armed federal air marshals and enhanced cockpit doors will help. However, not all flights will have the protection of air marshals and new, more secure cockpit doors will not be installed overnight. As an absolute last line of defense our government has authorized U.S. jet fighters to shoot down an airliner if hijackers gain control of it. To authorize such an action, without empowering pilots to defend the cockpit against hijackers, is both illogical and unacceptable.

We are confident that the program, created by your legislation, would not only add a genuine security enhancement in the very near term, but also give passengers and crews the added confidence that their government had provided all possible resources needed to defend against a terrorist hijacking.

The scrutiny and training our members undergo during their preparation for a career as professional airline pilots, we believe, provides a ready-made pool of individuals who would be well-equipped to participate in such a voluntary program: highly educated, physically and mentally fit men and women who are conditioned to react calmly and deliberately in a crisis.

In this period of attempting to find money for security initiatives that will have the most immediate and direct impact on preventing another terrorist attack, we believe that this legislation provides the most practical program for cockpit defense.

Thank you again for all your efforts on this important issue of safety and security.

Sincerely,

DUANE E. WOERTH,
President.

Mrs. BOXER. Mr. President, I think this letter from the pilots comes from the heart. When we think back to that terrible day, we know exactly what happened. The flight attendants were trained never to interfere if someone wanted to hijack a plane. The pilots were trained to go along. Do you know, according to the flight attendants that Senator SMITH and Senator BURNS and I met with today, they haven't had one bit of new training since 9/11, almost a year ago?

They are desperate for this legislation, which includes very important training for the flight attendants, to be repeated every 6 months at no new costs. As one flight attendant said, ''I don't need more training in how to make a napkin look better on a tray; I want to know how to defend myself in the cabin.''

In this bill, no one is authorized to carry a gun. It doesn't do that. All it says is that if a pilot feels that he or she wants to get this very extensive training—and we have strengthened it with the Feinstein language—and be qualified to defend the plane, as a last resort, if someone does break through the doors, under this amendment, they will have video cameras in the cockpit, which is what I wanted so much. That is kind of a rear-view mirror. And Senator SMITH put in wireless communication so that the flight attendants can talk to the pilots in an unobtrusive fashion.

This is a package that will make our skies safer. I am not going to talk long because I know Senator SMITH, who started the ball rolling on this, is anxious to speak, Senator HOLLINGS has some remarks, and people want to vote. So in the next 4, 5 minutes, I will lay out the rest of my argument.

Why do we need this bill, which will have this voluntary program of arming pilots who would have to go through a rigorous course and get qualified repeatedly and have the psychological profiles and everything else that we would expect to have happen?

Why do we need that? Why do we need to have the flight attendants' training? Mr. President, if I could stand before you and assure you that I believe the skies are safe, I would not be here supporting this bill, but I cannot tell you that, sadly. I join with my chairman. He has been a leader in safety, and we well know what has happened.

Just yesterday we learned that reporters from a New York newspaper went through screening processes in 11 airports with box cutters, razor blades, knives, and pepper spray. What happened? Each and every one got past security at those 11 airports, even airports from which planes involved in the disaster of 9/11 originated.

On July 1, we found out that the TSA, the Transportation Security Administration, itself conducted a random test, and they found that in many airports there was a 40-percent failure rate of finding the contraband, finding the weapons. Sadly for me, two of those airports that did the worst were in my State, Sacramento and Los Angeles.

Add to this we do not have enough air marshals. I cannot say how many we have. That is a classified item. But the American people need to know that we wrote the bill, and with the help of my chairman and his ranking member, we wrote the part of the bill that deals with putting air marshals on all the high-risk flights, the long-haul flights. I am here to say today unequivocally that we are way behind.

On some of the airlines—very few—they have not strengthened the doors. Guess what, Mr. President. As my chairman has repeatedly said, they are open during the flight. I am on flights constantly, all across the country and in between, and I see the pilot come out of that door. Guess what they do. Sometimes they have a cart in front of the door to protect against the cockpit

being taken over—a cart as a defense. Sometimes they will just have one or two flight attendants. Sometimes they will not even do anything; they just ask the passengers to stay away from the door.

To sum up, failure is what happens at those screening points. The same weapons that caused the tragedy of 9/11 are getting through. We do not have enough air marshals. The flight attendants have not had one bit of new training on what to do. The pilots want to have something at their disposal to save the aircraft. And on top of that, the U.S. military has issued orders to shoot down a commercial aircraft that is under the control of hijackers. Imagine that. Imagine if that happened and we knew we had not taken action at least to give our pilots a chance.

When I cosponsored this bill, people were really surprised because they said: BARBARA BOXER is a leading advocate of gun control laws and making sure guns stay out of the hands of criminals; she is strong; she is on the floor. This is not about guns in the hands of criminals. This is about a trained pilot who volunteers, most of whom have training in the military, and they will have rigorous training under this bill.

I do not know how we can, in the name of the victims of 9/11, not pass this bill today. I trust that we will do it.

Today, one of the flight attendants I met is the mother of Mark Bingham, who was one of the passengers on flight 93 who fought so hard against the hijackers.

God knows what they saw before they went into that cockpit. God knows what was done to the flight attendants who were told in their training to do nothing. God knows what they did to the pilots. God knows. Believe me, this wonderful woman talked today, and she could only speculate what it was like for her son and the others. When the son called, he would not go into any detail because, she said, he wanted to spare her that.

Today we have a chance. This is the homeland security bill. What better way than to make a statement today that we are going to do everything in our power to ensure that at least the flight attendants are trained in self-defense, that the pilots have the tools they need, including a video camera, the training they need, wireless communications with the aircraft. If we do this, we will be doing a very good thing for the people of this country, for the traveling public of this country.

I would like, at this time, to give an opportunity to Senator SMITH to speak. I see he is away from the floor. I am going to yield the floor and say about Senator SMITH's effort that he has really been the hero of this bill. He has worked hard with me to modify it in such a way so that I am proud to be on it. He has kept the coalition together. He has worked across the aisle and within his own party, and I think he and I are going to have a victory today. I certainly hope we will.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, Senator SMITH had to leave the floor for a moment, so if I may speak.

The PRESIDING OFFICER. The Senator is recognized.

Mr. THOMAS. Mr. President, I believe this is an important amendment, one I find great support for in the country. I believe it makes sense to arm qualified airline pilots, to add another layer of protection to our existing aviation security system. That is what we are seeking to do.

We have had increased security, of course—increased screening requirements, fortified cockpit doors, increased numbers of sky marshals—since September 11. We must continue to do more and do all that we can.

I recently wrote an op-ed in the Denver Post, as well as in a Wyoming paper, that indicated some 80 percent of American people, according to the polling, support this idea. This amendment mirrors the legislation introduced in both Houses of Congress and now passed by an overwhelming majority in the House to allow, but not require, carefully screened, properly trained and equipped airline pilots to be commissioned as Federal law enforcement officers and to carry firearms on the flight deck for defense.

The U.S. Department of Transportation, which has had a change of position, proposed a limited arms pilot program, but the Smith amendment would be even stronger. The Smith amendment would prevent airlines from opting out of the program to avoid a situation where misguided liability concerns block pilots from volunteering.

The Smith amendment would prevent airlines from discriminating against pilots who choose to participate.

The Smith amendment would provide liability protection both for the airlines and for lawful actions of armed pilots preventing a terrorism tragedy turning into a feeding frenzy for the trial bar.

Unfortunately, opponents of arming the pilots have fostered misplaced fears of the issue. Here are some of the facts.

Pilots would use firearms only in the defense of aircraft after hijackers breached the cockpit door. No man-made door is impenetrable to determined attackers, of course.

According to the May 2 House subcommittee testimony from Boeing's director of aviation safety, commercial planes are extremely unlikely to suffer catastrophic failure due to firearms on board. Aircraft are designed with sufficient strength, redundancy, and damage resistance that even single or multiple handgun bullets would not create holes that would result in the loss of the aircraft.

Even the worst possible mishap that could be brought about by an armed pilot is certainly not comparable to the alternatives. A plane destroyed by a missile fired from a U.S. fighter plane or that crashes into a ground target is simply not an acceptable outcome when there is a chance of preventing it by allowing federally commissioned, trained, screened, and volunteer pilots the means of mounting a last-ditch effort against terrorists and hijackers.

I certainly hope we can support this important amendment and make our skies even safer for Americans to travel. I urge my friends to vote yes on the Smith amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. While we are awaiting the arrival of Senator SMITH, I thought I would give some more details about the bill.

I see Senator SMITH is in the Chamber, so at this point I am very happy he has come back. I know he had to attend a quick meeting. I say to Senator SMITH, if we can get a vote this afternoon, it will be good for us.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. While the Senator from California is still in the Chamber, let me thank her in a big way for the wonderful cooperation she has given us as we have worked together to bring this amendment to the floor, but also, more importantly, to bring the flight attendants and the pilots together in this effort and to have legislation that is going to help them as we get through this terrible ordeal.

This has been a long, arduous effort since 9/11. I know the Senator has worked with various groups, as I have. Right after 9/11 we started to meet with pilots and flight attendants to hear from them as to what it was they believed they needed.

It became very clear, as the Senator from California has said, that the flight attendants were not properly trained and believed they needed that training. They were the first to die, we believe, in those aircraft. Not only that, the pilots themselves had absolutely no defense against these terrorist attacks.

In listening to the families, the flight attendants, and the pilots, we were able to piece together, work through, and develop legislation which I hope the Senate will pass this afternoon.

This amendment will train and arm commercial pilots with a firearm to defend the cockpit of our Nation's commercial aircraft from acts of terrorism. It also provides for increased training for flight attendants and communications devices for pilots and flight attendants to have the latest communications and video monitoring devices.

It is a terrible comment on our times that this kind of effort has to be put forth, but that is the world we live in, where people who are determined to kill us have no qualms about killing themselves. What happens, as we all

know, is that these aircraft become weapons of mass destruction. They become bombs, in essence.

As the Senator from California said, the option of not having guns in the cockpits or trained crews is having guns in the cockpits or, as a last line of defense, F–16s which will shoot down commercial aircraft with Americans on board, a terrible scenario to have happen, basically making the decision to take fewer lives to avoid killing more people because of what might happen on the ground. It is a terrible scenario we do not want to see happen.

I am not sure we can guarantee 100 percent it will never happen, but we can cut the odds with this legislation. That is why I am so excited about its passage. Hopefully, when it goes to conference with the House—the House bill is very similar but not quite where we need it to be—we can conference this and the President will sign it.

I was astonished to hear the flight attendants this morning in the press conference. They were very emotional and very articulate, I might add, in talking about the training they did not have, and they have not had any additional training since the 9/11 incident. I believe we have to give our Nation's pilots and flight attendants a fighting chance against these terrorists before our Government has to resort to shooting down an airplane and by all odds keeping the terrorists from getting into that cockpit. The cabin would be the first place the terrorists would be. At least with trained flight attendants, they can perhaps incapacitate the person or at least slow the person down. If that person gets to the cockpit with a lethal weapon, a properly trained pilot will stop that person before that person gets into the cockpit and causes the plane to lose control.

We have met some wonderful people. I was taken aback this morning in the meeting with Alice Hogan. She is the mother of Mark Bingaman who lost his life on flight 93, one of the many heroes on that aircraft. It is very emotional to see these people coming to Washington and talking with us and asking us to help. They should not have to ask, but they are here, they are articulate, and they are emotional. They want help. They deserve help. We do not want any more flight 93s or flight 175s.

A few weeks ago, I met Ellen Saracini whose husband Vic was the pilot of the aircraft that went into Tower 2. Ironically, she told us, she had had a conversation with her husband not too long before September 11 in which he indicated to her he wished they had better security on the aircraft, better training for flight attendants, maybe guns in the cockpit, some lethal way to stop a potential terrorist; that they did not feel comfortable with this philosophy of being a pacifist when it happens, do not make any waves and everything will be fine; the terrorist will land the aircraft somewhere.

That world is gone. We are not there anymore. I remember a reporter asking Ellen, ''Do you think your husband would have survived this incident if he had had a gun in the cockpit or a trained crew?'' And she said, ''I do not know how it could have been any worse than what happened.'' I certainly concur with that.

There are a lot of things we can say. I want to speak from the heart about this. We hear a lot about cost: How much is it going to cost to train the flight attendants? How much is it going to cost to train the pilots? How do you even estimate the cost of human life that happened in New York or at the Pentagon? We cannot put a cost on that.

This is an emotional time for all of us. We are on the eve of the anniversary of 9/11, and what a great tribute it would be to pass this legislation now so we can try to see it does not happen again. The cost is not that bad, frankly. If an air marshal had to be put on every single flight in America—I do not know what it is, 30,000 flights a day or whatever it is—the costs would be prohibitive. So this way, the pilots are armed and the flight attendants are trained. The odds are dramatically reduced.

Down the road perhaps, with better reinforced cockpits, maybe things will improve. Right now, we need this legislation, and we need it badly. I hope the Senate will pass it this afternoon and that it will go to the President's desk very shortly.

One other thing I want to mention, because it has been talked about: I have not heard anything official, but there has been some rumor there may be an effort to go with a test program, or a pilot program—no pun intended—where guns would be put in the cockpit on 2 or 3 percent of the planes, maybe train the flight attendants, maybe not. We need those flight attendants trained. This is not where we need to be. This is not going to get the job done.

If someone is a passenger on an airplane, they might want to know whether this is one of the 2 or 3 percent where the pilots are armed. I know I would want to ask. Ninety-seven percent of the planes are not going to have these so-called test provisions.

I am thinking, what are we testing for? It is not a good idea. The House started out with this, and they left it a long time ago and moved our way on the legislation. What is so ludicrous about this is, let's say we implement a test program for 5 years. Three percent of the aircraft have trained pilots and are carrying arms, and nothing happens for 5 years—and we would hope it would not—what does that mean? We are going to wait until something happens with the other 97 percent? And when something happens, we will increase it to 15 or 20 percent? It is illogical. We need this bill to pass now. Armed pilots. The pilots want it. The flight attendants want it. The American people want it. I hope the majority of the Senate wants it, as the majority of the House.

Mrs. BOXER. Will the Senator yield?

Mr. SMITH of New Hampshire. I yield.

Mrs. BOXER. Senator SMITH has been eloquent and his leadership has been stalwart.

I very much worry that some kind of test program is going to be put forward by the administration, as opposed to what we are doing. I ask my friend if he does not agree. We already know there are huge failure rates at the screening points. TSA said in some airports it was 40 percent; in some it was 30 percent; and in some it was 20 percent.

That means when the New York Daily News sent out reporters, and they came back after Labor Day and said they snuck on box cutters, pepper spray, knives, razor blades, all without detection, we already know, God forbid, we could theoretically and practically have another incident.

Since we already know about that failure rate, and since we already know the military will shoot down commercial aircraft they decide is under control of hijackers, and since we know that the doors are not yet secure, and that in many cases they are open and the pilots come out or the flight attendants go in and they are guarded by a cart, don't we have enough information to move forward with this bill right now with this amendment?

Mr. SMITH of New Hampshire. I absolutely agree with the Senator. We do; we have more than enough information. I certainly do not think it is worth having a test program to wait and hope that something else does not happen again. We need to cut the odds dramatically. I don't know if it can be 100 percent, but we certainly can cut the odds dramatically. We need to restore the confidence of the American people to fly again.

The stories just related are incredible—.357 magnums getting on aircraft. Another thing which has not been focused on, terrorists do not necessarily have to have something we can determine as a weapon; they have bare hands. They have been trained to murder. They have gone through the Bin Laden terrorist camps. They are experts in martial arts. They can kill with their hands. Some small weapon could be helpful to a terrorist, but they could kill with their bare hands.

They have to be stopped. The best way, of course, is to keep them off the planes. In the event they get on the plane, this is the last line of deterrence and defense. I am hopeful the Senate will realize this. I know it has been a long process. The House has had hearings. They marked a bill, 310 to 113, on July 10. Today we are considering essentially similar legislation—not exactly the same.

The Allied Pilots Association, the Airline Pilots' Security Alliance, Airline Pilots Association, Coalition of Airline Pilots Association, Southwest Airlines Pilots Association, Association of Flight Attendants: all of these

groups have not only supported this amendment but have worked very hard and talked to Members of Congress in a very informative, instructive, positive way, pleading with Congress to help them defend the people on those aircraft and the people on the ground.

I have several items to print, including one from the pilots to President Bush, an editorial by Richard Cohen, and an editorial by George Will, and I ask unanimous consent these documents be printed in the RECORD.

APRIL 3, 2002.

Hon. GEORGE W. BUSH,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As representatives of the largest airline pilot organizations in this country, we would like your assistance in the immediate development and implementation of a program to defend the American traveling public with voluntarily armed pilots.

Public opinion polls and those within our own pilot groups indicate overwhelming support for arming flight deck crewmembers with lethal weapons. Nothing short of lethal force can stop lethal intent to hijack and destroy our aircraft and murder all on board. Yet the volunteer pilot arming provisions of the Aviation and Transportation Security Act of 2001 that you signed into law on November 19, 2001, are being ignored.

To remedy this situation, we ask for your assistance in implementing a flight deck protection program that has the following characteristics: All volunteer pilots must be carefully screened, successfully trained and subsequently designated by a federal law enforcement agency such as the FBI or TSA; pilots so selected, screened and trained should be deputized or have the same indemnification and protections afforded other law enforcement officers in the employ of the U.S. government; pilots must be certificated in weapons handling, use of lethal force, carriage policy and procedure, rules of engagement in all environments, recurrent training, tort law, and other subjects deemed necessary by the governing authority; choice of weapons and ammunition will be mandated by the responsible federal agency; and certified pilots will draw their weapons only for use in direct defense of the flight deck in accordance with program ''use of force'' rules.

If the unthinkable happens again, there must be a means provided for our flight crews to defeat any hijacker who breaches the flight deck with a weapon and attempts to destroy the aircraft. Otherwise, a U.S. fighter may be ordered to shoot down a commercial airliner full of innocent passengers. America's pilots must have lethal weapons as a last line of defense against well-coordinated, highly trained teams of terrorists.

Each of our pilot groups has independently assessed and recommended the best way to implement a plan to arm our flight crews. Each has drawn similar conclusions closely paralleling a proposed training program developed by the FBI at the request of the Department of Justice. We have forwarded our specific recommendations through the comment process requested by the Federal Aviation Administration, and stand ready to immediately assist your administration in the establishment of such a program.

Sincerely,

CAPTAIN DUANE WOERTH,
President, Air Line Pilots Association.
CAPTAIN TRACY PRICE,
President, Airline Pilot Security Alliance.
CAPTAIN JON WEAKS,
President, Southwest Airlines Pilots' Association.
CAPTIN JOHN E. DARRAH,
President, Allied Pilots Association.
CAPTAIN BOB MILLER,
President, Coalition of Airline Pilots Associations.

[From the Washington Post, June 4, 2002]

GUNS . . .

(By Richard Cohen)

Careful readers of this column will remember when, some years back, I was burglarized. It was the middle of the night, sometime around 3 a.m., when I heard a noise—the back door being forced open. I awoke with a start, tried to quiet my thumping heart, rushed to the head of the stairs and heard someone running around the floor below. At that moment, what I wanted more than anything in the world was a gun.

What I wanted at that moment—and only that moment, I hasten to add—was denied last month to airline pilots who just might have to deal with a terrorist somehow getting into the cockpit. That this decision was made by the pro-gun Bush administration only deepens the mystery. If I were a pilot, I would want a gun in the cockpit. And in every survey, most pilots say they do.

The gun I would want would not be carried on my person. It would not be on me when I went to the bathroom or left the cockpit for any reason. It would be in a secure location, accessible only to someone who knew a code, and while it might be loaded with bullets that could stop a man but not penetrate the fuselage, even conventional ammo does not present an unacceptable risk. Planes don't deflate like balloons from one or two bullet holes. And, anyway, air marshals and other law enforcement officers already fly not only armed but with conventional ammo.

This gun would be used only as a last resort to stop a terrorist from gaining control of the plane. It's probably not too much to say that if pilots had had weapons on Sept. 11, the attacks might have been averted. A man with a box cutter is no match for a man with a gun.

The union that represents the pilots, the 62,000-member Air Line Pilots Association, favors having a weapon in the cockpit. Not all pilots agree, of course. Some of them feel that arming pilots would distract from the real job at hand—making the cockpit as secure as possible as quickly as possible. This includes, among other things, bulletproof cockpit doors that can't be broken down. It also includes beefing up the air marshal program. After all, El Al Israel's national airline, does not arm its pilots and has not had a hijacking since 1968. It uses sky marshals.

But El Al has only 34 airplanes. The United States has more 20,000 flights a day. It will be a long time, if ever, before there's a sky marshal on every flight. That cannot, of course, be said for pilots. Every flight has at least one.

Back in 1995, when he was governor of Texas, George W. Bush signed a bill giving Texans the right to carry a concealed weapon. The bill insisted only that the gun-toters be at least 21, pass a criminal background check and have no history of mental illness. I can only hope that pilots already meet those criteria.

If that's the case, then why is it somehow logical to allow every Tom, Dick and Harry to pack some heat but to forbid that same right to airline pilots, who, I may point out, often are ex-military people? Regardless, they would all be trained in the use of the gun, and their first duty, always, would be to fly the plane—no matter what. Only if a terrorist somehow managed to gain access to the cockpit would the pilot use the weapon. Could even a stray shot be worse than a commandeered plane on a terrorist mission?

I am, like all reasonable people, in favor of the tightest restrictions on guns. I fear the things, since they are easily concealed and lethal. The more there are, the more chances they will fall into the wrong hands. That is precisely what I feared the night I was burglarized—not that the burglar had a knife (I had scissors), but a gun.

But even in my most anti-NRA moods, I want the cops to be armed, since, among other things, just be being so, they deter crime. Armed pilots would also be a deterrent. A terrorist would not be dealing with the chance that an air marshal is aboard but the certainty that, in the cockpit, it is gun and a person—cool enough to be an airline pilot—who is cool enough to use it. Just one night in my life, I wanted a gun. On just one flight, a pilot might feel the same way.

[From the Washington Post, June 6, 2002]

ARMED (AND TRUSTED)

(By George F. Will)

The next perpetrators of terrorism in America probably are already here, perhaps planning more hijackings. Post Sept. 11 airport security measures may have made hijackings slightly more difficult, but the fact that these are America's most visible anti-terrorist measures vastly increases the terrorists' payoff in proving the measures incapable of keeping terrorists off airplanes.

Recently this column presented, without endorsement, the views of three commercial airline pilots who oppose guns in cockpits. Today's column presents, and endorses, the views of three other commercial airline pilots—two trained as fighter pilots, one civilian-trained—who refute the other pilots' principal contentions, which were:

Proper policy regarding suicidal, hijackers is to land as quickly as possible, which can be as quick as 10 minutes. So priority should be given to making cockpits impenetrable. Armed pilots might be tempted to imprudent bravery—particularly ''renegade'' pilots with fighter-pilot mentalities, who would leave the cockpit to battle terrorists in the main cabin. And arming pilots serves the pilots' union objective of requiring a third pilot in each cockpit.

The three pilots who favor allowing pilots to choose whether to carry guns respond:

Passengers already entrust their lives to pilot's judgments. Landing a hijacked plan is indeed the first priority, but pilots need to be alive to do that. A cockpit impenetrably sealed from terrorists is an impossibility, in part because planes cannot be landed as quickly as the other three pilots say. An ignoble fear—of lawyers, of liability—explains why the airlines oppose arming pilots. But legislation could immunize airlines from liability resulting from harms suffered by passengers as a result of pilots' resisting terrorists.

Landing a plane from 30,000 feet requires at least 20 minutes, never just 10. A training flight, simulating a fire emergency on a flight just 4,000 feet up and 15 miles from Philadelphia's airport, takes about 12 minutes to land when done perfectly. Transatlantic flights can be three hours from a suitable airport. Such airports are not abundant west of Iowa. Which means on most flights, terrorists would have time to penetrate the cockpit.

Bulletproof doors are not the answer: the Sept. 11 terrorists had no bullets. Well trained terrorists can blow even a much-reinforced cockpit door off its hinges using a thin thread of malleable explosive that can pass undetected through passenger screening

procedures when carried on a person rather than in luggage. Here is what else can be undetected by security screeners busy confiscating, grandmothers' knitting needles:

The knife with the six-inch serrated blade that a passenger found, in a post-Sept. 11 flight, secreted under her seat. Two semi-automatic pistols that recently passed unnoticed through metal detectors and were discovered only when the owner's bags were selected for a random search at the gate. A mostly plastic 22-caliber gun that looks like a cell phone. An entirely plastic and razor-sharp knife. A ''bloodsucker''—it looks like a fountain pen but has a cylindrical blade that can inflict a neck wound that will not stop bleeding.

The idea that arming pilots is a means of justifying a third pilot is derisory: Re-engineering cockpits for that would be impossibly complex. Equally implausible is the idea that a Taser (electric stun gun) is a satisfactory aid when locked in a plane, seven miles up, with a team of trained terrorists.

A pilot's gun would never leave the cockpit because the pilot never would. And shooting a terrorist standing in the cockpit door frame would not require a sniper's skill. The powerful pressurization controls, as well as the location and redundancy of aircraft electronic, hydraulic and other systems, vastly reduce the probability that even multiple wayward gun shots—even of bullets that are not frangible—would cripple an aircraft.

About fear of ''fighter pilot mentality'': The military assiduously schools and screens pilot candidates to eliminate unstable or undisciplined candidates. Airlines, too, administer severe selection procedures for pilots, who are constantly scrutinized. Captains have two physical examinations a year (first officers, one) with psychological components. Everything said in the cockpit is recorded.

Besides, many passengers fly armed—county sheriffs, FBI and Secret Service agents, postal inspectors, foreign body-guards of foreign dignitaries. Why, then, must the people on whom all passengers' lives depend—pilots—be unarmed? Especially considering that the prudent law enforcement doctrine is that lethal force is warranted when menaced by more than one trained and armed opponent.

To thicken the layers of deterrence and security, in the air as well as on the ground, Congress should promptly enact legislation to empower pilots to choose to carry guns. Time flies. So do hijackers. And the next ones probably are already among us.

Mr. SMITH of New Hampshire. Mr. President, I reiterate:

This amendment trains and arms commercial pilots with a firearm to defend the cockpit of our Nation's commercial aircraft from acts of terrorism. The amendment also provides for increased training for flight attendants and communications devices for pilots and flight attendants to have the latest communications and video monitoring devices.

Today, there are no defensive capabilities our Nation's pilots. No firearms.

Only Federal air marshals, on a very small percentage of commercial flights, are armed to defend against terrorism.

When all else has failed to defend a commercial aircraft, the only option for the defense of the public from the use of a commercial aircraft as an instrument of mass terror is for the United States military to shoot down that commercial aircraft.

I firmly believe that we should give our Nation's pilots & flight attendants a fighting chance against terrorists before our Government resorts to shooting commercial aircraft out of the sky.

I am proud to have joined a bipartisan coalition including Senator ZELL MILLER, Senator CONRAD BURNS, Senator FRANK MURKOWSKI, and Senator BARBARA BOXER in introducing our bill, S. 2554, the ''Arming Pilots Against Terrorism and Cabin Defense Act of 2002.''

On July 21, 2001, the FAA limited the carriage of weapons of aircraft to certain law enforcement officers.

September 11, 2001—the worst terrorist attack in U.S. History. That attack could have been prevented if pilots were armed.

I was convinced of this fact by a wonderful and brave woman—Ellen Saracini of Pennsylvania.

Over one month ago, I spoke at a press conference with Ellen Saracini.

Ellen is the wife of the late Captain Vic Saracini.

Captain Victor Saracini was the pilot of United Flight 175 on its way from Boston to Los Angeles when it was commandeered on September 11 and crashed into the World Trade Center Tower 2.

Vic supported armed pilots before September 11th and Ellen has continued that support.

Our nation has suffered a great loss with the loss of the pilots, flight attendants and thousands of victims of September 11th.

I never ever want to see an event like September 11th happen again and I firmly believe that armed pilots will be an effective tool to prevent any future contemplated acts of terrorism.

What we learned from September 11th is that a military jet shooting down a commercial aircraft is not only possible, it is now commonly considered as a part of airline security.

We also recently learned that the military contemplated ramming commercial jets with military aircraft if they were hijacked weapons of mass destruction. On September 11th, I understand that the shooting down of commercial aircraft may have been necessary at the time. Today, there is no excuse not to arm pilots before we allow our military to shoot down commercial aircraft.

At the time it was the right decision, because the despicable acts of September 11th were unthinkable—not anymore.

Since September 11th, there have been some advancements in commercial airline security, yet, the most common sense legislation to train and arm commercial airline pilots, has yet to be implemented.

The Aviation and Transportation Security Act was approved and signed into law. This act authorizes air carrier pilots to carry a firearm in the cockpit if: (1) the Undersecretary for TSA approves; (2) the air carrier approves; (3) the firearm is approved; and, (4) the pilot has received proper training.

This law was passed as a result of my amendment in the Senate and a provision passed by the House. I was unhappy with the language, but I had the hope that the Department of Transportation would give adequate consideration to the issue of armed pilots.

The FAA published a request for comments on whether pilots should be allowed to be armed on December 31, 2001. By March 15, 2002, the FAA had received over 7,500 comments and according to the FAA's analysis, more than 96% of the comments favored armed pilots. As a result of the open comment period, the TSA decided to agree with the 4% of respondents who disapproved of armed pilots and ignored the comments of 96% of respondents.

This is a critical point in the debate today. Today, the Transportation Security Administration is authorized to start training pilots in the proper use of a firearm to defend the cockpit. One pilot said that the current inaction on the part of TSA and the Department of Transportation is a criminal act of negligence. Maybe this inaction is a political act of negligence that needs to be addressed by the Senate today.

On May 21, 2002, the former Under Secretary for Transportation Security, John Magaw, testified that he would not approve the arming of commercial pilots.

The House passed a strong armed pilots bill by an overwhelming margin—today the Senate finally considers an amendment to train and arm pilots.

The bottom line is that armed pilots are the first line of deterrence and last line of defense to terrorism.

First line of deterrence, because terrorists will never target American commercial aircraft again, if terrorists know that an armed pilot will end an attempted hijacking with deadly force.

Last line of defense, because an armed pilot is the last line of defense before an F–16 or other military aircraft shoots down a hijacked aircraft full of innocent civilians. It really is that simple.

Nonlethal weapons are a great supplement to a firearm—but it is not an alternative.

Our nation's air marshals are armed with a firearm. Maybe they should also be given a stun gun or a tazer, but nobody in this chamber would argue that our nation's air marshals should only have a stun gun. Tazers and stun guns are good to disable one or two terrorists, but a firearm is the best alternative to defend against a September 11th style attack.

The pilots and the flight attendants want safer travel. My understanding is that the Department of Transportation initially opposed arming pilots because of liability issues. Our amendment grants the airlines a limited liability shield to protect from aggressive trial lawyers. Our amendment will ensure

that the pilots and airlines are not held liable for actions taken to protect the lives of the crew and passengers from terrorist attack.

A commercial aircraft is not going to crash as a result of the discharge of a firearm on a commercial aircraft. On May 2, 2002, Ron Hinderberger of the Boeing Company testified before the House Committee on Transportation. Hinderberger said: ''The risk of loss of an aircraft due to a stray round from a hand gun is very slight.''

The cost of this program is not going to be too much to bear. The cost that I never want this nation to pay again—is another September 11 style attack on the United States of America. I am willing to work with the good members of the Senate to keep the cost of this program to a minimum. My office has consulted some private training facilities including Gunsight in Arizona and Blackwater Lodge in North Carolina. Both have assured my office that the cost would be minimal. Gunsight quotes the cost at about $2000 per pilot for initial training and about $700 per pilot for recurrent training.

The amendment contains findings that we inserted at the request of Senator BARBARA BOXER that a Federal air marshall should be on all high risk flights.

The amendment creates a Federal Flight Deck Officer Program to train and arm pilots.

Ninety days after the bill is passed the Undersecretary for Transportation shall establish a program to deputize qualified pilots who volunteer for the armed pilots program.

The bill grants pilots the authority to use force and provides a liability protection for pilots acting in scope of their duties as Federal Flight Deck Officers.

The amendment establishes the Aviation Crewmember Self-Defense Division within the TSA to train flight attendants to prepare them for terrorist and criminal threats.

Another provisions states that the air carriers shall provide flight and cabin crew with a discreet, hands free wireless method of communicating. The purpose of this device is to provide a method for the pilot to communicate with the flight attendant to understand if there is a threat to a commercial aircraft.

Also, another provision was added at the request of Senator BOXER to provide a real time and cost effective video monitoring device for the pilot to monitor the activities in the passenger's cabin. This gives a pilot a view of any possible threat to the pilot's cockpit without having to open the cockpit door.

Today it is an honor to be fighting on behalf of the pilots, flight attendants, commercial airline passengers, and the American people who support the idea of armed pilots and trained flight attendants on the floor of the United States Senate.

If my state of New Hampshire is any barometer of the popularity of Armed Pilots—the Congress would pass this amendment by Unanimous Consent right now.

The House of Representatives conducted hearings, marked up and passed an armed pilots bill by a margin of 310–113 on July 10th.

Today, the Senate is considering a similar armed pilots amendment and it is my hope and prayer that this amendment is passed by the anniversary of September 11th. One year is long enough for the American people to wait for this common sense and reasonable amendment to arm pilots and train flight attendants.

Also, I want to thank the Allied Pilots Association, the Airline Pilots' Security Alliance, the Air Lines Pilots Association, the Coalition of Airline Pilots Associations, the Southwest Airlines Pilots' Association and the Association of Flight Attendants for the leadership and hard work these groups have completed to help the Congress draft and pass an armed pilots and trained flight attendant's bill.

Yesterday, we learned that many different reporters investigating airport security were able to smuggle small knives and pepper spray through the checkpoints of 11 airports over Labor Day weekend.

These airports included Newark International, Logan Airport in Boston, Dulles Airport, O'Hare, LaGuardia and Kennedy, among others.

These are our largest and busiest airports, where security should be the tightest.

Anbd this report is certainly not the only instance where weapons have passed through security without detection.

But we have to assume that occasionally mistakes happen, even at our biggest and busiest airports.

Some sort of weapon could be smuggled aboard an airplane.

All it took on September 11th was a few box-cutter knives.

This recent example of screening insecurity is just another reason why airline pilots need to be armed.

Because they will provide the first line of deterrence and the last line of defense.

In other words, if terrorists know that the pilots have firearms, then they will be less likely to attempt a takeover.

But if the unthinkable happens and a terrorist gets through security with some sort of weapon and then tries to take over a plane, the plan is to start descending to land the plane immediately, and to use the firearm if the terrorists try to get into the cockpit.

The terrorists will not be able to get into the cockpit with armed pilots.

And the lives of passengers and the crew, as well as perhaps thousands of Americans on the ground, will be saved.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished Senator from New Hampshire is right. Pilots do work hard. I have commented to that effect on other occasions, and on other measures. Our problem is, looking at the Senate floor, we have two Senators, maybe three at the most. What really occurs is that we are addressing a ''fixed'' jury.

In other words, 35 years ago when I came to the Senate, we did not have the luxury of television. So if you wanted to know what was going on, you had to come over on the floor. Invariably, there were always 20 to 30 Republican Senators in their cloakroom, and 20 to 30 Democrats in their cloakroom. If an issue was raised, you could make a point and come right out on the floor. Or if you agreed with a particular Senator, you could thank him for his observation. In a sense, we would learn from each other.

We now have the TV everywhere. Incidentally, if you are watching it in your office and you find you want to raise a point, you come to the floor quickly; then you find out someone else has been waiting an hour, another Senator has been waiting a half hour, so your opportunity is totally missed. But the real point is, we do not listen to each other.

The pilots have worked—he is dead right, they have worked this bill. And to my surprise, it has come up this afternoon.

I have tried my very best to improve airline security since the terrorist attacks. As the chairman of the Commerce Committee, I got the best possible witnesses together, and we immediately passed out of the committee a bipartisan, unanimous airline security measure. We passed it out of the Senate 100 to 0.

While we had the view in the Senate that airline security should be within the Justice Department in order to compromise and get things done, we went along with the House and kept it in the Transportation Department which proved to be, of course, a mistake in that we wasted now 6 or 7 months in confirming the man who took over, but was replaced in the particular role as head of transportation security. Without a much debate and without a report we just put his nomination up on the floor and we voted to have him confirmed so he could get off to a running start.

In any event, we made a mistake. I realize we were behind the curve, and we had a some unnecessary requirements with respect to airline security and they were going in the wrong direction in some instances.

Let me say categorically, I am pleased Admiral Loy, the Commandant of the Coast Guard—we had the Coast Guard authorization in our particular committee, so we worked closely with Admiral Loy on Coast Guard and seaport security. We had field hearings together, as well as within the Senate. He is very realistic, very attune, an expert, very professional, very much experienced on security. He had not

taken over for very long before the August break. I did not demand that he respond to questions for his nomination, but I gave him our questions in a 2-page letter and said: Work over August and we will have a hearing on this security measure, the guns.

I am constantly asked by the press about this issue, and we would be delighted to vote on guns in the cockpit, we would be delighted to vote in the committee.

We had this hearing scheduled. I talked to Admiral Loy only yesterday. He has answered our letter, and he is ready to go next Tuesday.

He has been doing just the right kind of work, getting around and conferring with the airport managers and getting everybody working together. Not unlike the former occupant of this desk who greatly impressed me, Senator Robert Kennedy. He had never been in the courtroom, but when he was selected as the Attorney General of the United States, he was the first Attorney General to go around and shake hands with the 32,000 in the Justice Department at that time.

You have to get your team working together. Admiral Loy has done that. But I say it is a fixed jury because the pilots, as the Senator from New Hampshire has pointed out, have been working this issue. We all have many responsibilities. I just have not had the opportunity to bring up the facts and test what we already have. The Senator from California said: ''And since we know this, and since we know that,'' why have any further tests? I could not agree with the distinguished Senator from California any more. We do know. How do we know? We know from the best of the best.

There is one airline that is under the gun. That is the Israeli airline, El Al. In fact, they have been so successful in preventing hijacking that they do not even have attempted hijackings, as far as we know. They just go after the ticket counter itself, as they did in Los Angeles, and shoot it up and kill those people there.

But knowing El Al is the most under-the-gun airline, we had the privilege of talking to a gentleman, the chief pilot of El Al, in September of last year. It was just about a year ago, slightly less than a year.

He said: ''Senator, what you want to do is get a secure door to the cockpit. That is the last line of defense. Not a gun—the last line of defense is that secure door. And that door is never, ever to be opened in flight.'' Once the door is secure and if there is any disturbance whatsoever in the cabin, they go immediately to the ground and law enforcement meets them there.

The chief pilot of El Al emphasized—I will never forget it—he said: ''Senator, they can be assaulting my wife in the cabin. I do not open that door.''

And for 30 years they have not had a hijacking.

We have a test, and that is why I am on the floor of the Senate trying to make sense out of this bad mistake that is about to be made because there is one thing you do not want to do, and that is put weaponry on the plane itself. In fact, the marshals pointing their guns recently on that Delta flight going into Philadelphia—wrong. You don't point your gun, and law enforcement and gun safety dictate that, unless you intend to use it. Anybody should know that.

So even our marshals need better training already. But be that as it may, for 30 years now they have not had a hijacking on El Al Airlines. We have had a test and we know it.

The trouble is, this has been worked politically. I know how the system works. I look around and I look for the measures and speakers who will talk in support of it. I find out that Senators who first were inclined to vote with me and listen and understand the problem, they have gone. I know the White House position is they should not have them. It has been announced and reaffirmed that they do not want pilots to carry guns in the cockpit. But you don't see anybody out here defending President Bush and the policy of this administration.

More to the point, I could talk all day long, or talk into next week and just hold the floor. I hope we can work out a compromise with respect to keeping the door closed. But let me read a letter, which is new to me. It was less than an hour ago when I had an appointment with Mr. Leo Mullin, the chief executive officer of Delta Airlines down in Atlanta, down in my backyard. Mr. Mullin was there and mentions the discussion we had about the economic travails of air transport in America. He said:

By the way, I want to thank you for your leadership on this.

I haven't led anybody. I can't find anybody behind me. I am not a leader unless they let my staff vote. I think they would go along with me. But I haven't been able to find a Senator to go with me, and we have called the White House.

You can rest for a while. Don't worry about it because I am going to take a little time and give you all some rest. I know I am doing the Lord's work.

This letter is dated today.

Dear Senator Hollings: With the safety of our passengers and crewmembers as our number one priority, we are writing to convey our serious concerns regarding S. 2554 that would permit the use of firearms by pilots aboard commercial aircraft. As discussions continue on the merits of this subject, we stand ready to work with Congress and the Administration in an effort to reach a prudent consensus position. It must be noted, however, that while we are spending literally billions of dollars to keep dangerous weapons off of aircraft, the idea of intentionally introducing thousands of deadly weapons into the system appears to be dangerously counter-productive.

Divert right here. I ask unanimous consent the letter in its entirety be printed in the RECORD.

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

AIR TRANSPORT ASSOCIATION OF AMERICA, INC.,
Washington, DC, September 5, 2002.

Hon. ERNEST F. HOLLINGS,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR HOLLINGS: With the safety of our passengers and crewmembers as our number one priority, we are writing to convey our serious concerns regarding S. 2554 that would permit the use of firearms by pilots abroad commercial aircraft. As discussions continue on the merits of this subject, we stand ready to work with Congress and the Administration in an effort to reach a prudent consensus position. It must be noted, however, that while we are spending literally billions of dollars to keep dangerous weapons off of aircraft, the idea of intentionally introducing thousands of deadly weapons into the system appears to be dangerously counter-productive.

In the aftermath of the tragic events of September 11, we understand the rational for providing crewmembers with means to defend themselves and their aircraft. However, we believe that allowing guns aboard every aircraft is ill-advised.

A variety of serious safety, technical and training issues have been raised that require answers prior to moving forward with any proposal to even consider the use of firearms by cockpit crews. To ensure the safety and security of our customers and employees, we have a duty and obligation to ask these tough questions and to have a clear understanding of the answers. Otherwise, innocent passengers and crewmembers will be killed or injured through accidental firings of weapons, or worse, there being used against crews and passengers.

We believe that the public must know what studies or testing have been conducted to determine the effects of an accidental weapon discharge in a pressurized aircraft at altitude, or discharge into a sophisticated instrument panel? How will the firearm be stowed, maintained and protected from misuse between flights, particularly when the aircraft is parked overnight or deployed in international operations? What is the process to measure the ability of armed pilots to handle a firearm in the close confines of the cockpit? Will the training program disrupt the airline's ability to operate their schedules? How often are firearms utilized by trained law enforcement officers lost, misplaced, stolen, fired accidentally or used against the officer carrying the weapons.

The Transportation Security Administration has testified that the cost to the government for the program is approximately $860 million. In light of programs already completed and underway to secure cockpit doors, we seriously question the cost effectiveness of a program mandated in S. 2554 that would impose a further burden on scarce TSA resources. Indeed, with secure cockpit doors now being further upgraded with even higher protective capabilities, the advisability of introducing dangerous and unnecessary weapons in the cockpit environment must be carefully considered.

Until such time as validated answers to these and other questions are available, we believe that a decision to deploy firearms aboard commercial aircraft raises a serious and unnecessary risk for both passengers and crewmembers. Just as we would not introduce an aircraft into service without thorough testing, training of crewmembers and evaluating all safety measures, no one should place deadly weapons in the hands of flight crews without a thorough evaluation.

In view of these concerns, we urge you to reject calls for the introduction of thousands of deadly weapons into the cockpits of our aircraft.

Sincerely,

ATA Board of Directors: Carl D. Donaway, Chairman & CEO, Airborne, Express; John F. Kelly, Chairman, Alaska Airlines; Glenn R. Zander, President & CEO, Aloha Airlines; W. Douglas Parker, Chairman, President & CEO, America West Airlines; Donald J. Carty, Chairman & CEO, American Airlines; J. George Mikelsons, Chairman, President & CEO, American Trans Air; Richard H. Shuyler, Chief Executive Officer, Atlas Air; Gordon Bethune, Chairman & CEO, Continental Airlines; Leo F. Mullin, Chairman & CEO, Delta Air Lines; Vicki Bretthauer, Acting Chief Executive Officer, DHL Airways; Jerry Trimarco, Chief Executive Officer, Emery Worldwide; Anthony E. Bauckham, President, Evergreen International Airlines; Frederick W. Smith, Chairman & CEO, FedEx Corporation; John W. Adams, Chairman, President & CEO, Hawaiian Airlines; David Neeleman, Chief Executive Officer, JetBlue Airways; Timothy E. Hoeksema, Chairman, President & CEO, Midwest Express Airlines; Richard H. Anderson, Chief Executive Officer, Northwest Airlines; Herbert D. Kelleher, Chairman, Southwest Airlines; Glenn Tilton, Chairman, President & CEO, United Airlines; David N. Siegel, President & CEO, US Airways; Thomas H. Weidemeyer, President, United Parcel Service Airlines

Mr. HOLLINGS. I think there are 101,249 commercial airline pilots with active pilot certificates. So we could have 100,000 running around here with pistols. And, incidentally, possibly getting pistols on board for the hijackers because you have to understand that hijacking has changed now.

You don't just have an individual coming on board because he wants to fly to Cuba. You don't have somebody escaping criminal justice because he wants to get out of the country. We know and we have been put on notice, they have five-man teams, professional suicidal terrorists. Try that on, Senator SMITH. Try that on as a pilot. You are a big man. I think Senator SMITH could take care of two of them. I think he could take care of two of them and, with a pistol, maybe take care of three. But while he has already killed three, unloading, quick, the pistol, they still have two more that are going to knock him down and take over the other pilot.

You crack that door and you are a goner. You are not going to stop professional teams of suicidal attackers. I don't care how good a pilot or how much training you have had, it is not going to happen. That plane is going to be taken over.

Think about the situation where there is some disruption and I have a pistol and some fellow is coming after me and I can defend myself. That is not the problem. The problem here is to prevent, if you please, Senator, an airline in the United States, a commercial airline, from ever being used as a weapon of mass destruction. You don't want to save people from getting hurt or whatever else, but you save it, with all that fuel aboard, from ever being run into the Chrysler Building, the Empire State Building, the Sears Building, the Coca-Cola Building down there in Atlanta—wherever they want to run it. They can make a mark if they wiped out the Coca-Cola Building in Atlanta, I can tell you that. And that is the whole idea. It is not necessarily how many, but to get it on national news.

So it is that they commercially trade. They stay in country for at least 2 years. They are disciplined. You never know they are here. They train at the gym every day, they are physically fit, and they go on-board planes not with pistols but with box cutters, or whatever else they have on them. But they know how to break in any ordinary cracked door and take over that plane. So you can't crack the door. They should never be opened in flight—and we would have a 30-year record of no hijacks and never have this occur again.

There is one way I know of that I can guarantee the American public the best security I can—if anybody can give that guarantee—is to take the El Al procedure and protocol and follow it to the letter T. They have a 30-year track record of success.

I will go ahead and read because they have something about testing. I am not worried about cost. I am not worried about testing. I am not worried about the professionalism in the trade. I am worried about this never, ever happening again—no 9/11.

I am able, if I can get a majority of this body to go along with me and go along with the administration, to give the public that kind of assurance—that they can get on a plane; immediately the plane will take off. You won't have the plane flying around above you, ''Hey, they are ready to shoot you down,'' because you have secured the cockpit door and there is not going to be any need to shoot down a plane. The plane itself is not going down because it was forced. You don't have to worry about it because it is going by a big building or a nuclear power plant. You don't have to worry about, 30 minutes after takeoff and 30 minutes before landing, keeping your seat, because you are not going to have to worry about that kind of activity, and that is a silly rule, if I have ever heard one. It is one that we ought to be able to get rid of. You don't have to worry about taking off from Reagan National and running into the White House. You don't have to worry about that because as they take off, the door is secure. If they start storming the door, they will land at Dulles with law enforcement to meet them. That hijacking team knows they are going off to the jail. I have given them the guarantee.

But if, in turn, you want to support these pistols in the cockpit and if you are going to guarantee that weaponry is there, we hope they can use it. Getting it on the plane and keeping it in the cockpit—a secure little safe, or whatever it is—it is just a bad idea to arm a plane.

Let me read further, since the entire letter is one of particular interest.

I quote from the letter from the Air Transport Association:

In the aftermath of the tragic events of September 11, we understand the rationale for providing crewmembers with means to defend themselves and their aircraft. However, we believe that allowing guns aboard every aircraft in the absence of comprehensive research and testing and without a full evaluation of the potential consequences, is ill-advised.

A variety of serious safety, technical and training issues have been raised that require answers prior to moving forward with any proposal to allow the use of firearms by cockpit crews. To ensure the safety and security of our customers and employees, we have a duty and obligation to ask these tough questions and to have a clear understanding of the answers. Otherwise, innocent passengers and crewmembers could be killed or injured—through accidental firings of weapons or, worse, their being used against crews and passengers.

For example, what studies or testing have been conducted to determine the effects of an accidental weapon discharge in a pressurized aircraft at altitude, or discharge into a sophisticated instrument panel? How will the firearm be stowed, maintained and protected from misuse between flights, particularly when the aircraft is parked overnight or deployed in international operations?

Let me divert. There is a law in a lot of these countries that you can't have a weapon. There is not going to be a weapon in a cockpit if you land in downtown Heathrow. We know that. You have all kinds of considerations that come into this.

Let me further read from the letter:

What is the process to measure the ability of armed pilots to handle a firearm in the close confines of the cockpit? Will the training program disrupt the airline's ability to operate their schedules?

How often are firearms utilized by trained law enforcement officers? Will they be lost, or misplaced? Will they be fired accidentally, or used against the officer carrying the weapon?

I have the figures on that. In some years, over 10 percent of law enforcement officers are killed when their own weapons are used against them. I have all kinds of criminal statistics from the FBI.

I read further:

The Transportation Security Administration has testified that the cost to the government for the program is approximately $850 million.

I agree with the distinguished Senator from New Hampshire. I am not worried about the cost. Some should be worried about costs. As of yesterday at 11 o'clock, the deficit was $394 billion, and by the end of the month it will exceed $400 billion. But you can see what they are doing now. They are trying to offload expenditures into the next fiscal year because they are worried about the campaign a couple of months from this time in November. And they have come from a $5.6 trillion surplus. They already have created a $400 billion deficit. Nobody wants to talk about it. We asked corporate America for a certificate under oath that we have gotten corporate America away from corruption—certified by the CEO.

Get the CEO of the U.S. Government to certify his figure. No way, Jose.

I will go back. I read that sentence again in this letter.

The Transportation Security Administration has testified that the cost to the government for the program is approximately $850 million. In light of programs already completed and underway to secure cockpit doors, we seriously question the cost effectiveness of a program mandated in S. 2554 that would impose a further burden on scarce TSA resources.

Therein I divert to join the Senator from New Hampshire and the Senator from California. I am not worried about the cost. I think they are right. When we are trying to prevent a 9/11, let us not start talking money around here. When somebody is against something, they all want to start talking money. But when I get up and try to get it paid for, I can't find anybody who wants to pay.

Talking about Social Security, we have been using that as a piggy bank, and not a lockbox. Come on. We know it.

Indeed, with secure cockpit doors now being further upgraded with even higher protective capabilities, the advisability of introducing dangerous and unnecessary weapons in the cockpit environment must be carefully considered.

Until such time as validated answers to these and other questions are available, we believe that a decision to deploy firearms aboard commercial aircraft raises a serious and unnecessary risk for both passengers and crewmembers. Just as we would not introduce an aircraft into service without thorough testing, training of crewmembers and evaluating all safety measures, no one should place deadly weapons in the hands of flight crews without a thorough evaluation.

In view of these concerns, we urge you to reject calls for the introduction of thousands of deadly weapons into the cockpits of our aircraft.

I say to the Senator from California, you had a nice letter and thousands of pilots. Here are the people who are running the airlines, the ATA board of directors: Carl D. Donaway, chairman and CEO of Airborne Express; John F. Kelly, chairman of Alaska Airlines; Glenn R. Zander, president and CEO of Aloha Airlines; W. Douglas Parker, chairman, president, and CEO of American West Airlines; Donald J. Carty, chairman and CEO of American Airlines; J. George Mikelsons, chairman, president, and CEO of American Trans Air; Richard H. Shuyler, chief executive officer of Atlas Air; Gordon Bethune, chairman and CEO of Continental Airlines; Leo F. Mullin, chairman and CEO of Senator MILLER's airline, Delta Air Lines; Vicki Bretthauer, acting chief executive officer of DHL Airways; Jerry Trimarco, chief executive officer, Emery Worldwide; Anthony E. Bauckham, president of Evergreen International Airlines; Frederick W. Smith, chairman and CEO of FedEx Corporation; John W. Adams, chairman, president, and CEO of Hawaiian Airlines; David Neeleman, chief executive officer of JetBlue Airways; Timothy E. Hoeksema, chairman, president, and CEO of Midwest Express Airlines; Richard H. Anderson, chief executive officer of Northwest Airlines; Herbert D. Kelleher, chairman of Southwest Airlines; Glenn Tilton, chairman, president, and CEO of United Airlines; David N. Siegel, president and CEO of US Airways; Thomas H. Weidemeyer, president of United Parcel Service Airlines. I think——

Mrs. BOXER. Will the Senator yield for a question?

Mr. HOLLINGS. For a question, yes, ma'am, I am glad to yield.

Mrs. BOXER. I thank the Senator. The Senator always makes a great argument for his position, but I have to say, these are the very same airlines who have not given the flight attendants one new bit of training.

Mr. HOLLINGS. I will agree with the Senator 100 percent. We have to get the flight attendants.

Mrs. BOXER. Good.

Mr. HOLLINGS. They are on the front lines. We call them in a war, the MLR, the main line of resistance. With my door secure, it is the flight attendants who are going to have to defends themselves while getting the plane down to the ground.

Mrs. BOXER. I know the Senator is with us on that. I want to make the point, though, as you name the names of folks who are good folks and good business-people—some better business-people than others—they have not embraced a lot of things that you and I embrace. In this case you agree with them, But they are not in the planes. They fly around in their own corporate jets.

I say to my friend, it is the flight attendants, the pilots, and the passengers in the planes. I honestly think if you want to look to who the leaders are on safety, I would rather look to the pilots and the flight attendants.

But I know my friend feels very strongly about the cockpit doors, and I so agree with him. I just want to pose this question to him. He will have the floor as long as he wants, although I hope we can reach some agreement on the doors so we can end this lengthy debate.

The Kevlar doors, which have been put into some of the JetBlue planes, to me, are a tremendous answer because you cannot penetrate that Kevlar door if it is kept shut.

So I want to know if my friend had seen a demonstration of that Kevlar. And as we work together on the committee, I want to work with you on those doors. But I hope we can accommodate you in this bill and that we can bring this to a vote.

Mr. HOLLINGS. Right. Well, I don't know about agreeing to the vote. I want to hear some more. I might be persuaded by the Senator from Georgia or the Senator from New Hampshire. I am sure they are going to have more to say.

But, yes, one, on the flight attendants, absolutely we have to. And we have that hearing next week. And we finally have someone in charge of airline security. You know it. I think you like Admiral Loy. I like Admiral Loy. He is the bipartisan choice of the committee.

Mrs. BOXER. Right.

Mr. HOLLINGS. So, working with him, we are going to find out his steps, and when, and get realistic drop-dead dates, and so forth, especially airports—that they can't be rebuilt—and get this equipment in and everything else.

I remember the distinguished Senator said: Look, they make them out in my backyard, and they are only making seven a month. They can make 50 a month if they have the orders.

This was last year.

Mrs. BOXER. Right.

Mr. HOLLINGS. They were not ordering all the things. They were wondering about the curtains in the office and the logo. Do you not remember?

Mrs. BOXER. Right.

Mr. HOLLINGS. So we are together on that. I will agree with you on the flight attendants and anything else we can possibly get done to increase safety, and more than anything else, get the airline business back up and going.

I am very much disturbed that we could adopt the Smith-Boxer amendment, and you could have a plane being used as a weapon of mass destruction. There isn't any question about it. It is not going to be one fellow, and one fellow defending himself in the cockpit. I can see it now, with the flight attendant outside saying, ''He's killing me''—whatever it is—''Open the door.'' Once that door is slightly cracked, they have their team, and they will have practiced how to take over that plane.

They will take the shots, the first two or something like that, but the other three will get in and have that plane. And they will have control and they will have pistols. They will take that pistol away. I can tell you that here and now.

So you have really weaponized the aircraft, which El Al says do not ever do that. I can tell you that right now. Don't weaponize. They do not have weapons in the cockpit.

With that having been said, that is why I feel as strongly as I do. We have had the tests. I agree with the distinguished colleagues. We are not worried about cost in this instance. We have already spent $15 billion to keep people economically going. To save one life, I would spend another $15 billion. So it is not the cost; it is not the training; this is a tested and true program of never having had a hijacking in 30 years.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MILLER. Madam President, I believe that my timing could have been a little better.

Mr. REID. Madam President, will the Senator from Georgia yield for a question?

Mr. MILLER. Yes.

Mr. REID. I have heard a lot of the debate—not all of the debate—and I

have had a number of Senators from both sides who are interested in knowing when they could leave. I was trying to figure out a better way to say that. I wonder if there is any idea now from the Senators involved—Senators Boxer, SMITH, and HOLLINGS—as to how much longer is needed to debate this before we have a vote.

Mr. HOLLINGS. Not quite yet.

Mrs. BOXER. If I might just answer the question this way: I would say, in all honesty, the ball is in the court of my chairman, Chairman HOLLINGS. We have a couple of people who want to talk, but they are not asking for a lot of time. They have brief comments. But as soon as the Senator from South Carolina believes he is ready, we are ready. We do not have anything else we have to add. So we are working with him. We are trying to work with him on the issue of cockpit doors. We are hoping that it will occur to him to perhaps support us or at least allow us to have a vote. We just have to wait and see.

Mr. REID. Madam President, I appreciate very much the Senator from Georgia yielding. I just say this: I can remember when the Senator offered his amendment, which was adopted overwhelmingly, on the energy bill that pickups would not be subject to SUV guidelines. And I had a conversation with the Senator from Georgia at that time that I thought it should be a requirement that all pickups sold in the United States should come out with gun racks. Do you remember that, Senator?

Mr. MILLER. I would be happy not to make any remarks and we vote right now. I am not anxious to follow Senator HOLLINGS in this debate. But if we are not going to have a vote right now, then I think I will make some remarks.

Mr. REID. I think you should proceed.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MILLER. Madam President, as I started to say, my timing could be somewhat better than following my good friend from South Carolina.

No one in this body or outside of this body has more respect, more admiration, and more downright affection for someone than I do for the Senator from South Carolina. His record as Lieutenant Governor, as Governor, and as Senator for 35 years is stuff of which legends are made. On this issue, unfortunately, I disagree with him, because I rise today in support of this amendment.

Our airline pilots are among the most highly trained professionals in all of the American workforce. Every day millions of Americans put their lives in the hands of airline pilots, and we have great reason to give them our trust.

Thanks to literally thousands and thousands of hours of training, commercial airline pilots have made aviation our Nation's safest form of public transportation. But since September 11, our Nation's pilots are faced with a grave new danger: Homicidal fanatics who think nothing of using our airplanes to kill themselves and as many Americans as they can.

With these new threats, the American public has uniformly called for giving the pilots every measure of protection possible in order to make our skies safer.

But there are some folks who are leery of putting their trust in our Nation's pilots. I cannot understand the logic that says we can trust someone with a Boeing 747 in bad weather, but we cannot trust that same person with a Glock 9 millimeter.

The folks who oppose arming pilots say we should put our trust elsewhere. We have heard about making the doors stronger. We have heard about security screeners. The Senator from California talked about the recent examples in the airports in New York where so many went through with things that they should not have had in their luggage. We all know how that is. We travel. We see it. Deep down we know it is a screening process that our Nation's Transportation Security Administration's own studies show fails one out of every four times. So let's face it, if our pilots were failing one out of every four landings, America would not be putting our trust in them to keep us safe.

Our Nation's air safety plan has multiple levels, from little steps such as banning nail clippers, all the way up to authorizing military fighter aircraft to shoot down a commercial jetliner filled with innocent passengers.

Why is there not—somewhere between banning nail clippers and shooting down the plane, somewhere between those two extremes—some room for allowing a trained pilot to use a handgun to defend the cockpit?

Some critics have worried what might happen if terrorists got hold of the gun, to which I would answer: Nothing worse than if terrorists got control of the aircraft. Others wonder what happens if a bullet goes astray in the fight with a terrorist. Could it damage the aircraft? I would answer: Yes, but not nearly as much as a missile that would be fired at the aircraft if terrorists took control.

If you have any doubts about how the American public feels about this subject, ask them this question: If you had to choose between flying on an airline with pilots who were armed to protect the cockpit and an airline whose pilots were unarmed, which would you choose? I am convinced they would overwhelmingly choose to fly with armed pilots, and I am just as convinced that terrorists would prefer to fly with defenseless pilots.

That is why I am a cosponsor of this bipartisan amendment to train and arm our Nation's airline pilots. I, for one, trust our Nation's pilots to keep me safe when I fly. But I want to give them more than just my trust. I want to give them the training and the tools they need to keep all Americans safe in the air.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I have recently—in fact, today—received a copy of a letter that was addressed to me as well as primarily to Senator HOLLINGS, chairman of the Commerce Committee. I think it is an important letter.

The views of the administration should be considered, as is always the case or should always be the case when we are dealing with issues. This one, of course, is very emotional and, frankly, an issue which has been polarizing in some respects.

I would like to read this letter that was delivered today. I hope my colleagues will pay attention to some of the concerns raised here and perhaps understand that there are some difficult issues that need to be addressed. Among them are training, cockpit modifications, coordination with other nations and international airlines—for example, landing in a country that has stricter gun control laws—and complying with State and local gun control laws. As we know, there are different laws in different States, the issue of legal liability, support organization, and the cost. So I would like to read this letter that was sent by Admiral Loy to Senator HOLLINGS with a copy to me:

> Dear Mr. Chairman, This responds to your letter to me of August 1, 2002. I wanted to answer your question on my views about whether and how to arm flight deck crews operating commercial aircraft. The balance of the questions in your letter will be addressed by separate correspondence, which I will send you later this week.

This letter is from Admiral Loy, the new acting Under Secretary for the Transportation Security Administration.

He goes on to say:

> After I began work as the Acting Under Secretary at the Transportation Security Administration (TSA), and following the vote in July by the House of Representatives supporting a program to arm pilots with lethal weapons, Secretary Mineta asked me to review the range of issues associated with a voluntary deployment of guns in the cockpit. His concern and mine is, above all, to ensure the safety of airline passengers and crew. I have finished my review and wanted to share my conclusions and concerns with you while the discussion continues in the Congress.
>
> Our review included significant outreach in which we sought counsel from airlines, pilots, airports, the FAA and numerous federal law enforcement agencies, including the FBI, Secret Service and ATF. The study team evaluated a range of deployment and training options and numerous associated policy and budget issues. The review was intended to reach general conclusions and also to outline the elements of the general protocols to be followed if a decision was made to arm pilots. A core assumption of pending legislation, and also of our review, was that any program would be carried out by volunteer pilots who would receive training consistent with the designation as armed Federal Flight Deck Officers.
>
> We concluded that if legislation is passed authorizing a program to arm pilots with lethal weapons, it would be preferable if pilots

were individually issued lockboxes that would be used to transport their weapons to and from the aircraft. They would be trained on weapon use and their responsibilities under the program, and subject to periodic evaluation. The pilots would be responsible for maintenance and proper care of the weapon. We determined that the alternative program design—having general use weapons stored aboard an aircraft and maintained by a cadre of airline employees—poses greater security risks, operational complexity and cost.

Many of the federal law enforcement experts we consulted continue to have significant concerns about arming pilots with either lethal or non-lethal weapons. The airline industry shares these concerns. The Board of Directors of the Air Transport Association has sent Secretary Mineta a letter signed by twenty-one airline chief executive officers urging a cautious approach to arming pilots and outling their concerns (attached).

I ask unanimous consent that the letter from the board of directors of the Air Transport Association, sent to Secretary Mineta, be printed in the RECORD.

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

AIR TRANSPORT ASSOCIATION,
Washington, DC, September 2, 2002.

Hon. NORMAN Y. MINETA,
Secretary, Department of Transportation, Washington, DC.

DEAR MR. SECRETARY: With the safety of our passengers and crewmembers as our number one priority, we are writing to convey our thoughts regarding S. 2554 that would permit the use of firearms by pilots aboard commercial aircraft. As discussions continue on the merits of this subject, we stand ready to work with Congress and the Administration in an effort to reach a prudent consensus position.

In the aftermath of the tragic events of September 11, we understand the rationale for providing crewmembers with means to defend themselves and their aircraft. However, we believe that allowing guns aboard every aircraft in the absence of comprehensive research and testing and without a full evaluation of the potential consequences, is ill-advised.

A variety of serious safety, technical and training issues have been raised that require answers prior to moving forward with any proposal to allow the use of firearms by cockpit crews. To ensure the safety and security of our customers and employees, we have a duty and obligation to ask these tough questions and to have a clear understanding of the answers. Otherwise, innocent passengers and crewmembers could be killed or injured.

For example, what studies or testing have been conducted to determine the effects of an accidental weapon discharge in a pressurized aircraft at altitude, or discharge into a sophisticated instrument panel? How will the firearm be stowed, maintained and protected from misuse between flights, particularly when the aircraft is parked overnight or deployed in international operations? What is the process to measure the ability of armed pilots to handle a firearm in the close confines of the cockpit? Will the training program disrupt the airline's ability to operate their schedules?

The Transportation Security Administration has testified that the cost to the government for the program is approximately $850 million. In light of programs already completed and underway to secure cockpit doors, we seriously question the cost effectiveness of a program mandated in S. 2554 that would impose a further burden on scarce TSA resources. Indeed, with secure cockpit doors now being further upgraded with even higher protective capabilities, the advisability of introducing dangerous and unnecessary weapons in the cockpit environment must be carefully considered.

Until such time as validated answers to these and other questions are available, we believe that a decision to deploy firearms aboard commercial aircraft raises a serious and unnecessary risk for both passengers and crewmembers. Just as we would not introduce an aircraft into service without thorough testing, training of crewmembers and evaluating all safety measures, no one should place deadly weapons in the hands of flight crews without a thorough evaluation.

In view of these concerns, we urge you to consider a more pragmatic, thoughtful approach that does not interject excessive risks and consequences for the traveling public and our employees. Moving forward, you can rest assured we will continue to take all necessary steps to ensure that air travel remains the world's safest form of transportation.

Sincerely,

ATA Board of Directors: Carl D. Donaway, Chairman & CEO, Airborne Express; John F. Kelly, Chairman, Alaska Airlines; Glenn R. Zander, President & CEO, Aloha Airlines; W. Douglas Parker, Chairman, President & CEO, America West Airlines; Donald J. Carty, Chairman & CEO, American Airlines; J. George Mikelsons, Chairman, President & CEO, American Trans Air; Richard H. Shuyler, Chief Executive Officer, Atlas Air; Gordon Bethune, Chairman & CEO, Continental Airlines; Leo F. Mullin, Chairman & CEO, Delta Air Lines; Vicky Bretthauer, Acting Chief Executive Officer, DHL Airways.

Jerry Trimarco, Chief Executive Officer, Emery Worldwide; Anthony E. Bauckham, President, Evergreen International Airlines; Frederick W. Smith, Chairman & CEO, FedEx Corporation; John W. Adams, Chairman, President & CEO, Hawaiian Airlines; David Neeleman, Chief Executive Officer, JetBlue Airways; Timothy E. Hoeksema, Chairman, President & CEO, Midwest Express Airlines; Richard H. Anderson, Chief Executive Officer, Northwest Airlines; Herbert D. Kelleher, Chairman, Southwest Airlines; John W. Creighton, Jr., Chairman & CEO, United Airlines; Thomas H. Weidemeyer, President, United Parcel Service Airlines; David N. Siegel, President & CEO, US Airways.

Mr. MCCAIN. Continuing from Admiral Loy's letter to Chairman HOLLINGS:

We agree that there are literally dozens of issues that would need to be resolved as part of a program involving lethal weapons. Let me mention a few such issues or questions.

The next topic that he brings up is entitled ''Training curricula and program design.''

We estimate that some 85,000 pilots may be eligible for the program authorized by the House. In order to avoid significant safety and security risk, a detailed, effective training program must be designed from scratch and tested. This must include firearms training and safety instruction. It would include classroom training on numerous issues, such as airport security procedures that would be established for airline employees to carry weapons through airports, and the legal liability and responsibilities of employees and airlines when a weapon is carried on duty and off duty. It must include specific training about the circumstances under which the weapon may be used onboard the aircraft and outside the aircraft at airports and within the community at large. It must establish protocols and communications tools to coordinate a pilot's responsibilities with those of Federal Air Marshals and other law enforcement officers authorized to travel armed. It is possible that special training facilities would be needed for high-volume training, so that the program could incorporate at least some practice in a simulated aircraft environment, such as is provided to our Federal Air Marshals.

Cockpit modifications. In order to allow ready access to the weapon in the cockpit while securing it appropriately, it would be necessary to install special sleeves for the weapons in each cockpit. Obviously each different aircraft will raise different design and installation considerations. It would be necessary for TSA, the airlines and aircraft manufacturers to assess these issues in more detail.

Coordination with other nations and international airlines. There are numerous thorny issues that must be resolved with foreign nations and foreign airlines. For example, pilots flying international routes for a U.S. carrier must comply with gun control laws abroad. In order to avoid conflict, TSA, with the support of other federal agencies, would need to undertake extensive coordination with countries around the globe to clarify rights and responsibilities of airline employees traveling armed. Would we authorize the employees of foreign air carriers to participate in this program? Would we provide reciprocal access to the U.S. if other nations design similar programs to arm pilots? What type of background investigation would be possible and necessary? Who would pay?

Complying with state and local gun control laws. We have only begun to assess the issues associated with complying with state and local gun control laws. Our review suggests that some meaningful legal work and coordination would be an early task for the program.

Legal liability. There are numerous and complex issues of legal liability that need careful, thorough review. These relate to the pilots, flight crews, other airline employees, the airlines, airports, vendors supporting the program and individuals who provide training to the pilots participating in the program.

A large support organization. A worldwide program of this size would require sizable staff and support. Existing TSA headquarters functions would be considerably stretched in order to manage the program, track the inventory of federal weapons and investigate accidental weapon discharges, program operation and public complaints.

Cost. Our preliminary estimate is that a program involving all commercial pilots could cost up to $900 million for the start-up and some $250 million annually thereafter. Of course these estimates must be refined to reflect details of an actual program, including the possibility that fewer than all commercial pilots will participate. These estimates do not include any projections for necessary cockpit modifications to accommodate ready access to the firearms. The total program costs may vary widely according to program design decisions, but any program open to all pilots would be very expensive. TSA's current budget does not allow for further work in this area, which raises the question of who will bear the cost of this potentially expensive program.

I am convinced that if there is to be responsible legislation establishing a program

to allow guns in the cockpit, it must address the numerous safety, security, cost and operational issues raised by TSA's review, and should enable us to implement the program in a methodical, careful, and pragmatic manner.

I remain committed to working with the Senate and the House of Representatives on this important issue. I have provided an identical copy of this letter to Senator McCain. Thank you for your interest and leadership in this matter and I look forward to our hearing next Tuesday.

Very Respectfully,

JAMES M. LOY,
Acting Under Secretary.

The reason I read this letter is that I think it is important for us to understand there are a lot of complexities involved with implementing a program of this nature. I know there are certain foreign countries where no one is allowed to carry or possess a weapon under any circumstances—certainly not a hand weapon, if it is not for hunting purposes. I know there are different laws in different States as far as weapons control is concerned.

I wonder who is going to pay the $900 million for startup and some $250 million annually thereafter. I think that issue should be addressed here. I visited with the CEO of a major airline this morning who made a compelling case that the major airlines in the United States are in deep and serious trouble. One major airline just declared bankruptcy. Others are convinced that another major airline will be declaring bankruptcy soon.

Who is going to pay for this program? Are we going to lay it on the airlines, or are we going to lay it on the taxpayers of America?

Legal liability is always a question whenever we embark on a program that involves the use of weapons. The support organization at TSA, I think, is a legitimate question. Right now, we are facing a deadline of the end of the year for installation of devices that would check all luggage. We all know that isn't going to happen. We are undergoing the transition from private companies to Federal employees at our airports.

So what I am asking is that the sponsors of the legislation, who obviously feel very strongly on this issue, make sure that, as we enact this legislation—and I am convinced there will be a significant vote in support of this amendment—these issues are adequately addressed. I think these issues warrant our concern and our attention. There are very small airplanes—for example, commuter aircraft—that carry a sizable number of passengers. How are we going to put those weapons in those very small cockpits? I am sure there is a way, but I want to impress upon my colleagues that there is a lot of complexity associated with this issue as outlined by Admiral Loy, and there are other concerns that I think we deserve to know at least some of the solutions for as we address this amendment and this issue, which has already been passed by the other body and, I am confident, would be passed by a large vote here.

I yield the floor.

Mr. LIEBERMAN. Madam President, I rise to support this amendment, which would enable those we already entrust with our lives on airplanes—namely, pilots and flight attendants—to have the tools and the training they need to disable terrorists in the air.

Since September 11th, we have taken many steps to make it safer to fly. For all the agency's troubles, the creation of the Transportation Safety Administration has been a step forward. Airlines themselves have beefed up their security. Airports like Bradley International Airport in Windsor Locks, Connecticut—which I toured last month—have made very visible progress. And so much of this progress has resulted from better collaboration and cooperation, which bodes well for the creation of a Department of Homeland Security.

But we still have a long way to go and a short time to get there. I was disturbed by an investigative report in yesterday's New York Daily News. Let me read you the opening:

Carry-on bags concealing potentially deadly weapons. Six major airlines. Eleven airports. Fourteen flights. And not once did anyone catch on.

To test the supposedly more stringent security imposed at the nation's airports after the Sept. 11 attacks, Daily News reporters boarded flights over the Labor Day weekend carrying contraband—including box cutters, razor knives and pepper spray.

Not a single airport security checkpoint spotted or confiscated any of the dangerous items, all of which have been banned from airports and planes by federal authorities.

Obviously we must fix these lapses without further delay. But at the same time, we have to realize no matter what security procedures we put in place on the ground, they won't be failsafe. We need a security network that's flexible enough to protect passengers from danger even if one link in the chain breaks down.

The reality is, if a dangerous person has managed to get on a plane with a weapon or an explosive device, there is one last line of defense: the people on the plane. We need to make sure that last line of defense is a strong line of defense.

Having our flight crew carry weapons has been carefully considered in both houses of Congress. We've thought through stun guns as an alternative, but it turns out they are unreliable, and the cockpit is too small to use them effectively. While potential concerns and complications about equipping pilots with firearms have been raised, in the end, this idea just makes sense.

It is also important to note that this amendment provides much-needed training and communications capability for the cabin crew. These provisions will prepare flight attendants, who are often the first to encounter potential hijackers on a flight, to handle such threats. Flight attendants will also have improved communications with the cockpit in the event of an emergency.

Besides the fact that firearms can actually give our flight crews a practical advantage over terrorists in the air—if it comes down to that—sending the message that the good guys will be armed gives us an important psychological advantage as well. The mere fact that a pilot or co-pilot could have a lethal weapon should be a powerful deterrent to would-be terrorists.

We will never forget the heroism of the men and women on Flight 93 who resisted the highjackers and brought down that plane, which may well have been headed in our direction. It is in their spirit that this amendment should be considered. The flight crew isn't a passive target. It is an active force that can fight back against anyone who seeks to hijack a plane or use it as a weapon ever again.

Of course we need to secure the cockpit door. Of course we need to make sure that the passengers are screened effectively for weapons. Of course we need to have high-quality, well-trained air marshals on our flights. But we should also take this sane, sensible step of training and equipping our flight crews, who we already entrust with our lives, with the tools they need to protect us.

I strongly support this amendment.

Mr. SPECTER. Madam President, I am unable to support the amendment by my colleagues Senator SMITH and Senator BOXER to arm pilots on commercial flights because I am concerned that such a proposal would invite gun fights in the cockpit.

I believe that federal air marshals are the individuals best suited to handle any terrorist situation which might arise on a flight, and am fully supportive of providing the financial resources necessary to hire additional air marshals. Although this amendment would provide significant training for pilots to handle firearms, I remain concerned that in an emergency situation their concentration should be focused on flying the plane, not dealing with attackers in the passenger cabin.

I do strongly support the provision in the amendment which would provide self-defense training for flight attendants, however I simply do not believe it is worth the risk to have the availability of guns in the cockpit which could fall into terrorist hands.

Mr. HATCH. Madam President, I rise today in support of the amendment offered by my friend and colleague, Senator BOB SMITH, the Arming Pilots Against Terrorism and Cabin Defense Act of 2002. This amendment sends a strong message to would-be terrorists and acts as a significant deterrent against the hijacking of America's planes.

As a last line of defense in potential terrorist attacks, I believe that pilots who want to should have the ability to carry firearms in order to defend the cockpit. This is a policy that makes sense. An overwhelming majority of the American public supports arming

pilots. Counterterrorism experts believe that firearms are the best deterrent when it comes to cockpit security.

I have heard from large numbers of pilots and constituents from my home state of Utah who advocate for the ability of pilots to carry guns to protect the cockpit. It is my hope that this amendment will help ensure that all who travel on airlines feel safe, including pilots, flight attendants, and most importantly, the public. While I support the right of pilots to carry weapons on-board aircraft, at the same time, it is important for them to receive the proper training to be able to discharge a firearm in the cockpit safely and effectively.

I also support the language in this amendment that exempts the airlines and pilots from liability as they attempt to defend our airplanes. This is an industry that has been struggling, even before the tragic events of September 11th. We must not further burden these companies with what could eventually be frivolous lawsuits that would endanger the domestic airline industries very existence. I am encouraged to see that this important issue is addressed in Senator SMITH's amendment.

I must add that, while there are many worthy aspects to this amendment, portions of it give me pause. The foremost issue is who bears the burden of its cost. At a time when Congress has critically-important decisions to make as we face our responsibility to improve our national aviation and homeland security procedures, we must balance those responsibilities with our commitment that many of us made to our constituents to spend within our means and avoid increased deficit spending.

This amendment could have serious unintended consequences. As part of our nation's aviation and homeland security policy, the Federal Government is already paying for Federal air marshals, the federalization of the baggage screening process, and reinforced cockpit doors. These are important safety measures that I strongly support. The Transportation Security Administration estimates this amendment will initially cost approximately $884 million, of which the majority, $865 million, will go to pay for training, requalification, equipment, background checks, program management, and direct course costs for 85,000 pilots over a period of two years. And at least $264 million of the $885 million will be recurring costs. Furthermore, an additional $16.5 million will need to be allocated for the purchase and installation of gun storage boxes on airplanes. That being said, I don't think that the airline industry can afford to pay these training costs either.

Serious questions must be raised about having the Federal Government shouldering the costs of training. The amendment not only allows for pilots to be trained, but flight attendants as well. I strongly support the ability of these individuals to carry weapons on-board planes after they have received proper training, I am concerned about the Federal Government picking up the tab.

While I have reservations over a few of the provisions of this bill, on the other hand, it can readily be argued that no legislation allowing pilots to be armed if they wish might compromise the safety of our skies. This is not a perfect piece of legislation, but on balance, I think it is a needed one. I will vote for this amendment in order to take an additional step to help ensure the safety of our airlines and urge my colleagues to do the same.

Mr. THURMOND. Madam President, I rise today in support of the amendment to establish a program to permit pilots to defend their aircraft against acts of criminal violence or air piracy. This legislation will provide a critical last line of defense to secure commercial aircraft, allowing qualified pilots to carry firearms.

The legislation requires the Under Secretary of Transportation for Security to establish a program not later than 90 days after the date of enactment to deputize qualified volunteer pilots as Federal law enforcement officers to defend the cockpits of commercial aircraft in flight against acts of criminal violence or air piracy. Pilots who are deputized will be known as ''Federal Flight Deck Officers'' and will be authorized to carry a firearm and use force—including deadly force—against an individual in defense of an aircraft.

I was disappointed that the Department of Transportation initially opposed this effort. Recently the Department has indicated its support for a limited pilot program. While important steps to improve the security of our airports and protect the flying public have been taken, the tragic events of last September 11th demonstrated our enemies will stop at nothing to inflict harm on Americans and destroy our way of life. Our response must be equally as determined and resolute. We must not take half measures or engage in wishful thinking. We must not refrain from utilizing every tool we possess. We must enable those who pilot commercial passenger aircraft to defend against any threat and protect the safety of their aircraft and passengers. And finally, we must do so without further delay. This amendment properly addresses those concerns and I strongly support its passage.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. We are very close to having a vote on this amendment. Senators BOXER and SMITH worked out the problem with the Commerce Committee. I am grateful for that. The only speaker I know of is Senator MURKOWSKI, who wishes to speak for about 5 minutes on this issue.

I ask unanimous consent that as soon as he completes his statement, the Senator from California be recognized to modify her amendment.

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

Mr. REID. I also ask unanimous consent that the Senate then vote with respect to the Reid for Boxer-Smith amendment No. 4492; that upon disposition of that amendment, the Smith amendment No. 4491, as amended, if amended, be agreed to, and the motion to reconsider be laid upon the table, without further intervening action or debate.

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

Mr. REID. So Members should be advised that at approximately 4:55 there will be a vote.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Madam President, I didn't hear the time of the vote.

Mr. REID. As soon as the Senator has finished.

Mr. MURKOWSKI. Madam President, I am proud to join Senator SMITH, Senator BOXER, and others. I was one of the original Members joining Senator SMITH in this effort, which allows commercial pilots the right to carry firearms in defense of their aircraft.

We have heard the explanation given time and again, if indeed an aircraft is hijacked and you happen to be on that plane, that there is the authority to take that airplane down with a military jet, an F–16, or whatever. I think any Member, if asked would they support having the pilot in command of the aircraft having a weapon of some kind, a handgun, as a last line of defense, that virtually every Member of this body would say absolutely, anything other than the alternative, which would be to take the aircraft down.

I have listened to the debate here off and on today, and I would like to comment a little bit. The Senator from South Carolina is interested in the secure doors.

Some of the airlines are putting secure doors on their aircraft. They are doing it currently at their own expense. I just took a flight across the country, and the cockpit door was opened six times by either the pilot or copilot on a 5½ hour flight. At least two times it was opened to provide food access into the cockpit. So that cockpit door was opened eight times during that flight.

That is the harsh reality. We do not have the capability to feed nor to provide restroom facilities for the crew. We are certainly not going to retrofit all the aircraft in the skies immediately with those capabilities in the cockpit. So we are going to have the potential risk.

While those who perhaps commute short distances feel secure because of a closed cockpit, we do not have that on a cross-country flight. That is the harsh reality.

It is also apparent, as the Senator from Arizona pointed out, that there is some difficulty in implementing the program. The idea of secure doors and the question of who pays for it, obviously, are concerns of the airline industry. How the guns are managed, if you

will, is a concern of the airlines. Their business, obviously, is reducing the amount of administrative authority they can, but our job is protecting the public.

If, indeed, history proves itself, as it appears to have done in a couple of instances, one occurred on a FedEx cargo plane. During takeoff, the crew was overpowered by an individual who was a crew member who happened to be deadheading on the flight, and he attacked them with a hammer. There was a tremendous fight in the cockpit. This aircraft was fully loaded with fuel and freight, but the crew managed to subdue this individual with the weapon they were able to take away from the individual who initiated the attack and land that aircraft safely. It was a hammer. It was very bloody. Nevertheless, it proved that the crew was willing to do whatever they could to stop that aircraft from crashing. I gather it was to crash into some of the FedEx facilities.

If we look at the concerns expressed in the general discussion about secure doors, we cannot secure the door; it is going to be opened from time to time. There is talk about changing the air pressure of the aircraft by puncturing the hull. An air marshal is obviously trained. If there is an altercation of some nature, there is as much chance of penetrating the hull by him. Evidence has shown there is not an explosion, there is a decompression, and a decompression is manageable by the cockpit crew.

As we look at the alternatives, it is clear that the airlines oppose this because they are not in the business of managing guns. Their bottom line is transporting passengers. It does create problems. But if we look at how we are implementing the security program in this country, it was not very well thought out. I am not suggesting that as an example. Nevertheless, we are looking at a first rather I should say last line of defense which is probably more correct.

We have debated this back and forth. We as legislators, and certainly as passengers, have to recognize we trust the flight crew with our very safety and security, and we should give them all the tools to complete that task. That is the reason I am standing with my friend, Senator SMITH, on this legislation. It is first and foremost an attempt to increase the level of safety aboard our commercial airliners.

My State of Alaska has many small planes. There are firearms available for various reasons: If the plane goes down or if a passenger attempts to overcome the crew. As we look at the question of guns in the cockpit, there is a great inconsistency. One is the inconsistency associated with sky marshals, and the other is associated with the realization that we would simply be arming pilots who are highly trained.

I do not think there is any question about the substance of this amendment. It provides a greater level of safety. I think most of the pilots would agree they, too, want to have this capability and are prepared to use it in an appropriate manner.

I do not take this legislation lightly. This amendment does not cavalierly attempt to hand out guns to flight crews, and wish them the best.

Because of September 11, 2001, and the tactics used by the hijackers that day, we must change the way aircraft and passengers are protected. The amendment is an important part of that effort.

As many in this body are aware, there is a large percentage of pilots who have served in the military and law enforcement. In fact, many also serve as reservists in the different branches of the military. These pilots have been trained in the use of weaponry. Why not utilize the trained personnel already on hand?

The Airline Pilots Association supports this concept and has written to the F.B.I. requesting a program to train cockpit personnel. I have heard from many pilots in Alaska and around the country that support it. So why not further enhance the chances of passenger and aircraft survival?

I applaud the administration and this Congress for moving quickly to secure cockpit cabins, adding needed Sky Marshals, improving airport perimeter security, training screening personnel, and increasing flight deck security.

But we must also afford passengers the utmost in security after the plane has cleared the runway. Arming pilots is not the only solution, but it is an important component.

The pilots know they need it. The passengers will support it. And this Congress should pass it. I encourage my colleagues to support this amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). Who yields time?

The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent to add Senators TIM HUTCHINSON, CRAIG THOMAS, and STROM THURMOND as original cosponsors, and I thank my colleague from South Carolina for his cooperation. I appreciate it very much. I again thank my colleague, Senator BOXER, for her leadership, and I thank Senator REID for his cooperation as well.

Mr. HOLLINGS. I thank the Senator from New Hampshire.

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

The Senator from California.

AMENDMENT NO. 4492, AS FURTHER MODIFIED

Mrs. BOXER. Mr. President, we are about to vote in 2 minutes. I am going to wrap up in 2 minutes. I send a modification of my amendment to the desk. I want to explain to my colleagues that this is a modification that has been written by Senator HOLLINGS. It will result in the cockpit door remaining closed during the flight except for mechanical emergencies or physiological emergencies.

This is an issue on which Senator HOLLINGS has been a very strong and sometimes lone voice. We are very proud to accommodate him, and we hope, therefore, he will be with us on this vote.

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

The amendment (No. 4492), as further modified, is as follows:

At the end of the amendment add the following:

SECTION 1. PROHIBITION ON OPENING COCKPIT DOORS IN FLIGHT.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

Sec. 44917. Prohibition on opening cockpit doors in flight

''(a) IN GENERAL.—The door to the flight deck of any aircraft engaged in passenger air transportation or interstate air transportation that is required to have a door between the passenger and pilot compartment under title 14, Code of Federal Regulations, shall remain closed and locked at all times during flight except for mechanical or physiological emergencies.

''(b) MANTRAP DOOR EXCEPTION.—It shall not be a violation of subsection (a) for an authorized person to enter or leave the flight deck during flight of any aircraft described in subsection (a) that is equipped with double doors between the flight deck and the passenger compartment that are designed so that—

''(1) any person entering or leaving the flight deck is required to lock the first door through which that person passes before the second door can be opened; and

''(2) the flight crew is able to monitor by remote camera the area between the 2 doors and prevent the door to the flight deck from being unlocked from that area.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by inserting after the item relating to section 44916 the following:

''44917. Prohibition on opening cockpit doors in flight.''

Mrs. BOXER. Mr. President, in closing this debate, I thank everyone, particularly Senator SMITH for his amazing work.

I ask unanimous consent that Senator BAUCUS be added as a cosponsor.

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

Mrs. BOXER. Mr. President, I say to the flight attendants and the pilots who worked so hard to help us get this to a vote today: Your work will be rewarded. You are, in many cases, the last line of defense with the fact that our security checkpoints are failing, unfortunately. They are doing better, but they are not where they should be, and contraband is getting on to the planes, coupled with the fact that our military has orders to shoot down a plane that has been taken over by hijackers. Let's give this program a chance. Let's give people a chance to save their lives and the lives of the crew, the passengers and, frankly, the people on the ground.

This is important for homeland security, to make sure we are doing everything to avoid another 9/11. I ask for an aye vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, before we vote—and the vote will occur momentarily—I have spoken to the majority leader, and this will be the last vote tonight. I will also indicate the majority leader has indicated we will come in on Monday at 12 o'clock. We will have an hour of morning business, and at 1 o'clock we will vote on a judicial nomination, or if we do not work something out on the cloture motion that was filed today, we will vote on that on Monday. We will have a pro forma session in the morning, and that would ripen on Monday.

We are going to have to vote on Monday at 1 o'clock either on a judicial nomination or cloture on drought assistance.

I appreciate everyone's cooperation today. We have been able to move forward two very important amendments on this very important legislation. I have spoken with Senator THOMPSON. We have not cleared this with Senator BYRD and others. We want to make sure Senator THOMPSON has the first amendment when we come back on Monday, and following that, Senator BYRD will have the next amendment.

Mrs. BOXER. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 4492, as further modified. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Delaware (Mr. BIDEN), the Senator from Iowa (Mr. HARKIN), and the Senator from New Jersey (Mr. TORRICELLI), are necessarily absent.

Mr. NICKLES. I announce that the Senator from Kentucky (Mr. BUNNING), the Senator from Nevada (Mr. ENSIGN), and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

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

The result was announced—yeas 87, nays 6, as follows:

[Rollcall Vote No. 210 Leg.]

YEAS—87

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

NAYS—6

Chafee	Jeffords	Reed
Corzine	Kennedy	Specter

NOT VOTING—7

Akaka	Ensign	Torricelli
Biden	Harkin	
Bunning	Helms	

The amendment (No. 4492), as further modified, was agreed to.

Mr. SMITH of New Hampshire. I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4491, AS AMENDED

The PRESIDING OFFICER. Under the previous order, amendment No. 4491, as amended, is agreed to, and the motion to reconsider is laid on the table.

The amendment (No. 4491), as amended, was agreed to.

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

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

Mr. SHELBY. Mr. President, I am pleased to join with Senator BAYH in offering an amendment to the homeland security bill.

It is a straighforward amendment designed to improve and strengthen the protection of our Department of Defense installations which contain the storage and destruction facilities for our Nation's chemical agent and munitions stockpile.

Prior to September 11, no temporary flight restrictions existed for any of our Nation's chemical weapons stockpile sites. Secretary Rumsfeld took quick action after September 11 to establish temporary flight restrictions at each of these sites, but numerous violations of these flight restrictions have occurred.

In the case of the Anniston Chemical Destruction Facility and storage site, 22 violations have occurred since flight restrictions were implemented by the Department of Defense. The latest was just today when a Lear-type jet flew over the incineration facility at less than 1000 feet. Another violation that caused great concern was a night time over-flight which included 3 passes by an unidentified aircraft.

These incursions are serious matters. Current law provides for stiff penalties to be levied against those who violate restricted air space. In the case of our chemical weapons storage sites and weapons destruction facilities, we must be ever vigilant. That is what this amendment seeks to do by:

First, requiring the Secretary of Defense to review the current temporary flight restrictions to determine if they are sufficient to provide maximum protection to these facilities from potential airborne threats and to report his findings to Congress.

Second, the amendment would require the FAA to issue a report on each violation of the temporary flight restrictions which apply to these sites. Mr. President, as I have stated, very serious penalties already exist for those who violate these restrictions. Given the tremendous danger to the workers and local citizens associated with any unintentional crash or intentional act at any one of these storage sites, I believe this amendment is both reasonable and prudent in requiring the FAA to report on actions taken in response to a confirmed and properly investigated restricted airspace violation.

Lastly, in the amendment we ask the Secretary of Defense to assess the use of periodic air patrols and military flight training exercises in terms of their effectiveness as a deterrent to airspace violations or other potential airborne threats to these facilities.

While little, if anything, could be done to stop someone intent on attacking one of these storage sites from the air, we should take every step to make sure that these flight restrictions are respected and violators are punished. This amendment is about safety, enforcement of the law, and, ultimately, protection of our citizens who live in close proximity to these chemical weapons facilities.

MORNING BUSINESS

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 10 minutes each.

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

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

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

Mr. SESSIONS. Mr. President, I ask unanimous consent I be allowed to proceed as in morning business.

The PRESIDING OFFICER. The Senate is in morning business.

The Senator from Alabama.

THE NOMINATION OF PRISCILLA OWEN

Mr. SESSIONS. Mr. President, we had a very sad day today. The Senate