



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 152

WASHINGTON, THURSDAY, MARCH 2, 2006

No. 25

## Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable CRAIG THOMAS, a Senator from the State of Wyoming.

### PRAYER

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain, Dr. Stephen L. Swisher, Lovers Lane United Methodist Church in Dallas, TX.

The guest Chaplain offered the following prayer.

Let us pray.

We pray, Dear God, that You would fill this sacred minute with meaning and make it an oasis for the refreshment of our souls, a window cleaning for our vision, and a recharging of the batteries of our spirit. As this day unfolds, give us the courage to step into life with new drive and motivation.

As we gather here in this historic place, facing the stress of committee hearings, paperwork deadlines, and seemingly endless functions, may we not lose sight of our true purpose—to get the right things done and in some cases the wrong things undone.

I pray Your blessings upon each Member of this our United States Senate, their families and staff members. Surround each one with Your protection, strength, and guidance. May they feel You as close as their next breath.

Lord, we remember those who have stood here before us and we are proud—and in our minds we can visualize the sea of faces whom we represent, those multiplied millions of people looking to us to make a real, positive, significant difference—and we are emboldened. May our words offer hope and our actions inspiration. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable CRAIG THOMAS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Repub-

lic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, March 2, 2006.

To the Senate:

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

TED STEVENS,  
President pro tempore.

Mr. THOMAS thereupon assumed the chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

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

### RECOGNITION OF THE MAJORITY LEADER

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

### SCHEDULE

Mr. FRIST. Mr. President, this morning we have 30 minutes set aside for a period of morning business. Following that 30 minutes, we will resume postcloture debate on the PATRIOT Act conference report. We had five procedural votes on or in relation to the PATRIOT Act yesterday, concluding with an 84-to-15 vote. Given that overwhelming vote, it is now time for the Senate to take a final vote on this con-

ference report. That vote is scheduled for 3 p.m. today. We will divide the time equally until that time.

After the vote on the adoption of the PATRIOT Act, we will proceed to a cloture vote on the issue of LIHEAP. I hope we can proceed to the LIHEAP bill and come to a resolution on that measure before the close of the week. In any event, I am confident we will proceed to that measure and work toward a vote on the LIHEAP issue. We will update Senators this afternoon after the two votes later today.

### COMBAT METH ACT

Mr. FRIST. Mr. President, I wish to make a brief comment on an important provision on methamphetamine that is in the PATRIOT Act but not a lot of attention has been focused on it over the last several days, a very important provision.

At 3 o'clock today the Senate will vote on passage of the PATRIOT Act conference report, and after a lot of months of debate we will finally deliver a PATRIOT Act that is stronger and tougher and more effective against terrorists on American soil, while at the same time protecting our civil liberties.

It has not been easy. It has taken a long time. But now we are on the verge of a tremendous success with the passage of a very important bill that will benefit the American people.

The Combat Meth Act is legislation Senator TALENT introduced last year, and I and many of our colleagues are a cosponsor of that legislation. Senator TALENT's leadership has been instrumental in pushing this bill forward, and it is something of which we can all be very proud.

I have worked with the House leadership to encourage Members to get this done because meth is a crisis that has been building in all of our States. It is highly addictive, cheap, and easily available.

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



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In the last 10 years meth has become America's worst drug problem. I say that, even putting it before marijuana, cocaine, and heroin, in that the use of it has increased so significantly and it is so terribly addictive.

Last year Tennessee ranked No. 2, tied with Iowa and just behind Missouri, in the number of meth lab seizures. Through tougher laws and tougher enforcement over the last year and a half Tennessee is starting to see a turnaround, and that is one of the reasons I am so convinced this legislation will have a dramatic impact in a short period of time.

It was in March of last year that Tennessee signed its Meth Free Tennessee Act, a much needed law that required retailers to take cold medicines and sinus medicines containing pseudoephedrine off the shelves and put them behind the counter where they can be closely monitored. As a result of this powerful new approach, lab seizures have declined dramatically, down 40 percent in May and another 60 percent in June.

In addition, district attorneys across the State have told me of the tremendous impact it has made and they joined Governor Bresden in launching the Meth Destroys campaign. Through videos and brochures and bulletin boards and other means of public relations, the Meth Destroys campaign is reaching out to schools, to church groups, to parents, to civic organizations, to educate the public on the grave dangers of this highly addictive drug, methamphetamine.

Now with the imminent passage of the Combat Meth Act here in the Senate today at 3 o'clock, everyone's job is going to get a whole lot easier.

We learned that when one State restricted access to the precursors, meth cooks simply crossed over to the adjoining State, bought their ingredients and brought them back. Law enforcement told us again and again that they needed uniform law to be able to cut off this access to and purchase of these ingredients.

Senator TALENT and Senator FEINSTEIN introduced the Combat Meth Act to restrict access to cold medicines containing pseudoephedrine and ephedrine across all 50 States. Under the Combat Meth Act, meth users will no longer be able to jump from State to State, cruise from State to State in order to buy these ingredients.

Once again I thank Senator TALENT and Senator FEINSTEIN for pushing hard to get this done. It will have a direct impact in a short period of time. Lives will be saved, communities will be better protected because of their commitment. I urge all of our colleagues to vote for the PATRIOT Act, which includes the Combat Meth Act, this afternoon. It applies directly to the well-being and safety of our neighbors and fellow citizens.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

#### ORDER OF PROCEDURE

Mr. REID. Mr. President, before the distinguished majority leader leaves, will the Senator be so kind as to allow 5 more minutes in morning business on each side, with 20 minutes on each side. We have a number of people seeking recognition.

Mr. FRIST. That will be fine.

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

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for up to 40 minutes, with the first half of the time under the control of the Democratic leader and the second half of the time under the control of the majority leader.

Mr. REID. Mr. President, I yield 10 minutes to Senator BAUCUS of Montana and 10 minutes to Senator KENT CONRAD of North Dakota, in that order.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. I thank the Chair. I thank the leader very much for the allocation of time.

#### INCREASING THE FEDERAL DEBT LIMIT

Mr. BAUCUS. Mr. President, on December 29 of last year I received a letter from the Secretary of the Treasury, John Snow, asking that Congress increase the Federal deficit. This is extremely important, obviously; that is, whether we should and the degree to which we should increase the Federal debt limit. But we don't have any scheduled debate on this and I don't think, frankly, the leadership wants to schedule debate on whether we should and the degree to which we should increase the Federal debt. I think the reason is pretty clear. It is because it is embarrassing. It is an embarrassment that our Federal debt is growing so much and at a rapid rate.

I say that in part because the Secretary says the United States will hit the limit in the middle of this month. That is not too many days away. I hope very much this body exercises its responsibility to do what it should do and let's have a discussion on our fiscal situation: How great is the debt? What should be done about it? How big is the deficit and what should be done about that? Where are we? Where are we headed? What are the implications?

These are very real questions that affect the financial security of the United States and which affect very

greatly individual Americans. I very much hope we have that debate of the points I think we should consider. It is our responsibility to address the implications of our huge Federal debt and deficits. We have a responsibility to do that. That is our job. It is much more our job to address that than it is some other things I think we do here in the Senate, and I am going to do what I can to urge my colleagues and urge, frankly, anybody listening and watching to begin to think about what is going on here because this is critical.

Let's review some of the facts about the debt limit. Currently, our Treasury, the U.S. Treasury, is authorized to issue debt totaling over \$8 trillion. That is the current statute. Last year's budget resolution proposed an increase in that authorization of \$781 billion. That is an increase. That would be the fourth largest debt limit increase in the Nation's history.

If I might briefly indicate in a graphic way literally what that means. This basically is a chart showing the amount of Federal debt limit increases the Congress has enacted over various years going back not too long ago—1986 up to the present.

The red bars here indicate the amount of the debt increase Congress has enacted because our Federal debt was going up so quickly. You can see there was a big increase back in 1990. That was the time when, frankly, our country was under a little bit of pressure and the debt was going up. Between 2000, 2001, we did not have any debt increases. But what has happened lately?

You can see all these huge increases in the last 4 years. In 2002, the Congress increased the national debt by \$450 billion.

Here is a whopper. In 2003, Congress increased the Federal debt by close to \$1 trillion. The next year it increased the Federal debt by \$800 billion, four-fifths of a trillion dollars in 1 year. Last year it did not have to increase the debt because the \$800 billion carried us over through 2005, but here again we have to increase the Federal debt by \$781 billion.

The debate point is that in the last years there have been big increases in the Federal debt. Why? Because we have been borrowing so much in this country, Congress has authorized and the President has proposed very large expenses.

More striking, though, is that total increase has occurred since the year 2002.

During this administration, America's debt, the total deficit, has increased by \$3 trillion. You can imagine. Since 2002, if you add up all the increases in the Federal debt, our Federal debt has increased by \$3 trillion. That is not the level now; it is close to \$9 trillion if it is increased further. But this is the increase—and those increases have occurred only in the last 4 years. That is a 40-percent increase in the entire Federal debt accrued by our

country in its entire history. Forty percent of the increase in the Federal debt has occurred in the last 4 years.

Who is lending the Federal Government these funds? Ask yourself that question. That is a lot of debt out there. Some of it is internal. The U.S. Government borrows from Social Security, and we all know that pretty soon those chickens are going to come home to roost. We can't do that much longer. We will have to start paying back all that is due to Social Security—and that is an awful lot. Much of the borrowing is from American citizens and businesses.

But what is more alarming is the trend where much more of the debt is held by foreigners and central banks in foreign countries; that is, the amount of debt held by foreign governments is much worse. Five years ago foreigners held about \$1 trillion of our Federal debt.

What is that number today? It is double. In over 5 years the amount has doubled. The number held by foreigners has now doubled to \$2.2 trillion.

Today, Japan holds two-thirds of a trillion dollars of our foreign debt. China holds a quarter of a trillion dollars. China's reserve is scheduled to be about \$1 trillion by the end of this year.

The rate of increase in Federal debt held by foreigners—simply by foreign banks, central banks—is alarming. I tend not to be an alarmist. In fact, sometimes people say: Max, you are kind of easy going, you don't get too upset, and so on. But I am quite concerned about these trends. They are worse.

I might also add that the debt held by foreigners after World War II was extremely high, too. It was. But the composition of that debt—investments held by foreigners—was just that: investment in infrastructure in the United States and capital assets; that is, investments foreigners made in the United States after World War II. The composition was not much debt. It is securities to finance the borrowing by Uncle Sam, and we have to pay back the interest on that borrowing.

The question is, How long can we continue to borrow all of that money? That is the basic question.

What are the implications to our foreign policy as foreigners increase their holdings of U.S. debt? What does that mean? What might happen?

Try to be wholly analytical about this. What does that mean? What percentage of the American taxes are being used to pay interest on that debt? How much are American taxpayers paying to foreigners directly through interest on the national debt?

I think that should be debated. That is something I think is quite concerning, particularly with the large numbers.

These are just some of the issues I think we should debate. We also should remember—this is not rocket science—that ordinarily there are limits on

debt. Ordinarily, credit card companies or businesses or banks just do not automatically increase debt, which is happening in this country in the last 4 years as I showed in that chart. It has been automatic. We have increased the debt.

Think a little bit about the limits an institution holds on a family and what the family wants to borrow. What about a credit card and a maximum balance. Most Americans have credit cards. Most Americans know there is a maximum balance on that credit card. You can only borrow so much. After a certain limit, you can't borrow any more. That is it.

Wouldn't it be great if each individual could say: We are going to ask the credit card company to increase the debt, and do it as the Congress is doing right now. We will just increase the debt limit. A person can't ask a bank willy-nilly to increase the maximum allowance on a credit card. There is a good reason for that. There have to be limits. We have to live within our means.

Take an ordinary business, a bank loan to a business. The bank pays a lot of attention to how that business is being run, whether it is being run well. It pays a lot of attention.

One could ask: Is the Treasury or foreigners or someone who holds the debt asking how well we are running our business?

I urge the majority leader to schedule time to hold a thorough debate on this issue.

This is real. This is really real. We all know this cannot continue. We really do not know at what point, if we continue to increase the debt, there might be some cataclysmic event. We just don't know that. But we do know that with every debt limit increase we are accelerating the time when something nasty or bad might happen economically.

Already, some countries are starting to move out of dollars into other currencies. China is on the margin of looking at holding currencies other than the dollar. Many countries worldwide are becoming more self-sufficient. They don't need the United States as much now as they once did. They are becoming more independent. They are going more in their own direction. They are doing what they think makes sense for them economically.

Clearly, the bottom line is we have to live within our means. Every time we increase the debt limit we are not within our means.

I urge us to have a debate so we can know what we really should be doing.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. CONRAD. I thank the Chair and I thank my colleagues.

#### DEBT AND TAXES

Mr. CONRAD. Mr. President, the New York Times, in its Monday edition editorial, said:

There's nothing Congressional Republicans would like more than to escape the inescapable need to raise the Nation's debt limit. The upcoming increase, from \$8.18 trillion to nearly \$9 trillion, will be the fourth major hike in the last 5 years.

The editorial went on to say:

It will come as no surprise if Senate leaders squelch debate on the debt limit until Congress is ready to begin its next week-long recess on March 17. Then, up against the Treasury's default deadline, the increase would be put to a voice vote so that no individual would have to go on record as approving the measure—

Increase in the debt.

If anybody thinks that the New York Times is just imagining that there will be an attempt to avoid a debate on this massive increase in the Nation's debt, this is what the chairman of the Finance Committee said:

Senator GRASSLEY told Reuters that the goal would be to get the debt limit legislation passed with the least debate.

He went on to say:

I would like to see a bill on any Thursday night just prior to a recess.

Why do our colleagues on the other side of the aisle want to avoid a discussion of the Nation's debt? Perhaps it is revealed in this chart which shows what is happening to the Nation's debt under their leadership.

Our friends on the other side of the aisle have controlled Washington policymaking since 2001. They have controlled the Senate. They have controlled the House. They have controlled the White House.

Here is their record on debt. At the end of the President's first year, the debt was \$5.8 trillion. I think it is fair to leave out the first year. He is not responsible for the first year.

Look at what happened since. The debt has gone up each and every year—and up dramatically. At the end of this year, it is predicted, if the President's budget is adopted, that the debt will have reached \$8.6 trillion.

Every Member of this body will recall when the President embarked on this fiscal strategy. He told us not only that he would not increase the debt but that he would have maximum paydown of the debt. He said his plan would virtually eliminate the Nation's publicly-held debt.

There is no elimination going on here. Instead, the debt has exploded. We anticipate that it will be \$8.6 trillion at the end of this year, if the President's further 5-year program is adopted. The debt will skyrocket to \$12 trillion in 2011, at the worst possible time before the baby boomers retire.

One of the results of their disastrous fiscal strategy is the debt held by foreigners has exploded at an even more alarming rate. It took 42 Presidents—all the Presidents pictured here—224 years to run up \$1 trillion of external debt. This President has more than doubled that amount in 5 years.

This is the legacy of debt that will haunt this country for generations to come. This is the hard reality. This is a fiscal plan and a fiscal strategy that

has failed—failed miserably, and failed by any measure.

The Senator from Montana raised a question of who is holding our debt. Here it is: Japan—we now owe them \$685 billion. We owe China over \$250 billion. We owe the United Kingdom over \$230 billion. And in fourth place—who would have ever believed this—we now owe the so-called Caribbean banking centers over \$100 billion.

Now it comes to this year and a further continuation of the Republican plan to load the Nation with debt. I do not know how else you can term it because here is what has happened.

By the way, from 1998 to 2001, there was no need to increase the Nation's debt limit. In fact, we were paying down the Nation's publicly-held debt under the administration of President Clinton. But in 2002, we had to raise the debt \$450 billion; in 2003, we had to raise the debt \$984 billion; in 1 year, 2004, another \$800 billion increase in debt; and now, in 2006, they are seeking to raise the debt another almost \$800 billion.

You add this up and the debt will have already increased under this President by \$3 trillion. When he came into office it was more than \$5 trillion. And we now know, if his next 5-year plan is adopted, he will add another \$3 trillion to the debt.

This is not a sustainable strategy or plan, and it is time for Congress to face up to it. It is time to begin the debate on what we do to confront these rapidly growing debts.

I hope very much that we will have a chance for a full debate on the debt limit and to consider stringent pay-go legislation, the device which we have had in the past to provide budget discipline.

It simply says: If you want more spending, you have to pay for it. If you want more tax cuts, you have to pay for them. That is a basic notion that we used with great effect in the 1980s and 1990s to reduce what were then record deficits and debt levels—levels that have been greatly exceeded by the massive runup of debt under this administration. I hope we have that opportunity. The Nation deserves as much.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

#### THE ISLAMIC REPUBLIC OF IRAN

Mr. SANTORUM. Mr. President, I rise today to talk about some of the recent developments in the Islamic Republic of Iran.

We have a lot of activity today. There is a hearing in the Foreign Relations Committee, as well as some dissidents who are in town to talk about the state of affairs in Iran.

As many of my colleagues know, the Iranian Government's track record with respect to supporting acts of terror inflicted upon innocent persons and

inflicting damage on peaceful relations among Middle Eastern countries is abysmal. Iran's bad activities in the Middle East and, candidly, bad actions in the world—at the head of the list, from my perspective, is promoting terrorism activities and Islamic fascism ideology that undergirds that terrorist activity in the Middle East—have secured a designation by the U.S. Department of State as a state sponsor of terrorism. Iran supports terrorist organizations such as Hezbollah, the entity behind the 1983 suicide terrorist attack against U.S. military and civilian personnel in Lebanon. Hamas is another organization that they are now supporting, the Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command. All of these are reprehensible organizations that the Iranian Government is directly sponsoring as a state sponsor of terrorism.

Additionally, Iran has been implicated in the 1996 attack on U.S. military personnel at Khobar Towers in Saudi Arabia.

Iran's reach into Iraq, which many of us have been complaining about for a couple of years and which is now being recognized by our Government, by our Department of State, and which is now being recognized by the world—Iran is one of the fomenters of terrorism within the country of Iraq. Iran's connection to the Supreme Council for the Islamic Revolution in Iraq and the organization's Badr Brigades means that Iran has a hand in shaping the allegiances of both Iraq's police and military forces.

Iran's human rights violations, in addition to their terrorist activities, are no less chilling. The State Department reported that the Government of Iran engages in widespread use of torture and other degrading treatment and the Iranian Government continues to discriminate against religious and ethnic minorities. They do not discriminate as to who they discriminate against. Other Muslim sects—whether Sunni or Sufi or Jews or Christians, they discriminate against them all.

Iran's record of degradation of women is appalling and should not be tolerated by the international community. Iranian women are severely oppressed and their voices are constantly suffocated by the government. There are numerous examples of Iranian women who have been arrested and severely beaten for the simple fact they are females. One example is Dr. Roya Toloui, a women's rights activist and the editor of a publication that is now banned in Iran. She was arrested last summer in the wake of a 2005 July demonstration in the town of Mahabad. Dr. Toloui was held in prison for 66 days. While she was there, she was raped and she was tortured. Though she has since been released from prison, Dr. Toloui is in constant fear of rearrest and of death.

The State Department also noted Iran's continued restrictions on work-

ers' rights. In short, the Government of Iran oppress its people and terrorizes the world and is a threat to the security of this country and to the security of democracies throughout the West.

The one additional aspect that has now taken a lot of press is Iran's pursuit of nuclear capability. This is very unsettling when you have a regime with this kind of track record to be in pursuit of nuclear capability. Iran, of course, is permitted to pursue peaceful nuclear research under the terms of the Nuclear Nonproliferation Treaty. Its record on transparency and the true purpose of its program, obviously, is very much in doubt. In November of 2003 the International Atomic Energy Agency reported that Iran has been developing an undeclared nuclear enrichment program for 18 years and had covertly imported nuclear material and equipment. Furthermore, the IAEA reported that Iran had conducted over 110 unreported experiments to produce uranium, metal, and separated plutonium, and had possession of designs clearly related to the fabrication of nuclear weapons.

In 2005, in August, following the election of President Ahmadinejad, Iran announced that the ongoing negotiations under the terms of the 2004 Paris agreement, the agreement that suspended activities brokered by the EU-3, were "satisfactory" according to Iran. Then they announced they were resuming the conversion of raw uranium into gas for enrichment. In January of 2006, Iran removed the IAEA seals on the research enrichment plant in Natanz.

Recently, the IAEA board voted 27 to 3 to report Iran to the U.N. Security Council, and in so doing noted Iran's many failures and breaches of its obligations to comply with the Nuclear Nonproliferation Treaty. Iran's aggressive behavior and concealment of ongoing nuclear activities can only lead to one conclusion, and that is that Iran is seeking to enrich uranium to use for nuclear weapons.

In response to this nuclear gambit, I believe we need smart sanctions for the U.N. to impose. For example, the U.N. should consider imposing a travel ban on Iran's leaders, banning international flights from Iranian air, banning the transportation of cargo carried by Iranian Government-owned ships, and possibly to pursue legal action against Iranian leaders responsible for human rights and terrorism abuses, as well as executions.

I recently introduced legislation with my colleague, Senator NORM COLEMAN, that seeks to empower the forces of democracy in Iran and support efforts to foster peaceful change within Iran. It is S. 333, the Iran Freedom and Support Act. It seeks to make it harder for the Government of Iran to have access to revenue and foreign investment. Resources that those investments accrue are used by the Iranian Government to support terrorist organizations and to pursue nuclear activity as well as to repress its people.

The bill also codifies sanctions, controls, and regulations currently in place against Iran by Executive order. It codifies those in statute. The bill declares it should be a policy of the United States to support the Iranian people in their prodemocracy movements. We believe, and the bill says, that the people of Iran are entitled to self-determination, to free and fair elections, and we want to provide the resources in helping those groups attain those free and fair elections. We authorized \$10 million in this bill, but thanks to the effort on the supplemental the administration has sent up to the Congress, they have requested \$75 million for prodemocracy efforts in Iran. I hope the introduction of our legislation last year perhaps gave some encouragement to ask for such funding. They have asked for \$75 million. I will amend our bill to ask for \$100 million for those efforts.

The Iran Freedom and Support Act is a nonviolent way to try to effect change in Iraq. I agree with the President and all who have talked about keeping our military options on the table, but it is vitally important to try to use our diplomatic options first and foremost. At a time when the threat from Iran is real, it is not only real to this country, not only real to the Middle East and Iraq, but it is, obviously, real to their own people in the way they treat them.

This is an important piece of legislation. It is something I hope we can do. It is important in spite of what the President has done. I support his policies that we show the Congress is 100 percent behind his effort to do something about the nuclear gambit Iran is engaged in right now. I am hopeful we can pass this legislation in a timely fashion.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I rise to join my colleague from Pennsylvania on underscoring the urgency that surrounds the threat to our Nation and the entire world community with Iran.

I listened to my esteemed colleague talk about the Iranian repression of women. I thought to myself, how sad; Iran was a country that at times led that part of the world in its respect for women and women's rights at a time few talked about it. And how low they have sunk.

It was 100 years ago Iran's constitutional revolution was the first genuine democracy in the Middle East, over half of the population of that part of the world. When we look where we are today, I have a touch of sadness in my heart as I reflect upon the plight of the Iranian people.

Make no mistake, as my colleague from Pennsylvania noted, Iran is a nation with painful rhetoric, rhetoric of its president, who says: Our goal is to destroy Israel. We should take people at their word that is the goal.

This is not, by the way, the rantings of a madman. This is the clear policy of

the regime backed by the ruling mullahs. It is the clear policy, not the rantings of some wild man. Take him at his word, that is his goal, his objectives, and Iran's goal and objective.

Painful rhetoric is backed by their concrete actions. They are the largest state sponsor of state-supported terrorism in the world. It is not just cheap rhetoric; it is a disconcerting and frightening reality we have to deal with.

Now we have a regime that is clearly in pursuit of nuclear weapons. We are dealing with a lot of security issues out there today. There is lots on the agenda dealing with concerns about port security. Let's not let this issue slip away.

Some say Washington is a town of a thousand issues and few priorities. This is a priority and continues to be a priority. As I said before, they have been clear about their regime and their desire to destroy Israel and the western civilization.

At the conference where Ahmadinejad talked about destroying Israel, I remember the picture behind him vividly, a picture of an hourglass. In this hourglass, the ball is dropping through. This is posted not by accident but by design. In the hourglass, the fragile glass ball is falling through the glass, about to be shattered. That is Israel. But already lying on the floor of the shattered glass is a shattered USA.

That is the vision, that is the plan. We have to understand that. Clearly, the vitriolic rhetoric is backed by a clear vision and plan and it merits immediate action by the international community.

All in all, the Tehran regime's previous and ongoing activities indicate that a nuclear-armed Iran would pose an unprecedented threat to American national security as well as to the existence of the State of Israel. Have no doubt about it; if Iran were to use a nuclear weapon in the Middle East, we are not protected, even being thousands of miles away. We will all be impacted by that. We are all in this. The outcome of Iran's vision and the destruction of Israel is unacceptable. Common sense and responsibility demand that action be taken now. Time is not on our side.

The scenario we face with Iran today has many parallels to the 1930s when the League of Nations failed to confront the aggression of the dictatorships in Japan, Italy, and Germany. Hitler said what he would do and the international community chose to ignore that very clear red flag. In "Mein Kampf," Hitler meant what he said. When he had the opportunity, he acted on that.

The President of Iran has not written a book such as "Mein Kampf," but he has been very clear about what his intentions are, public about his intentions to destroy Israel and the rest. And at the same time he is pursuing a strategy to campaign to obtain nuclear capacity. Will the international com-

munity continue to wring its hands and allow this murderous regime to align its intentions with its capabilities or will it take action? The answer must be yes. The answer must be now. And the United States must be part of leading that charge.

The IAEA has taken some action. There is a meeting of the board of governors March 6. They must continue to put pressure on Iran. But that is not enough. The reality is, negotiations are not enough. There is a Russian proposal on the table. The European three have been negotiating with Iran. The problem with this, it may seem as if there is something there, but when you pursue this negotiation you are presuming that the other side wants a solution. They are negotiating with someone who is not looking for a solution to divert a crisis but playing a cat-and-mouse game to buy time. You have to realize enough time for talk and we have to take action. Talk is what the other side wants as it buys time. It is clear they are not looking for a solution to avert a crisis. They have a vision. They have a path.

They have demonstrated time and again they are not serious about negotiating. They deserve no further opportunities to prevent them from being held to account for their intransigence. I think it is high time the international community called the Iranian bluff. They have had more than enough opportunities to negotiate and have brazenly violated every agreement. The Security Council must take strong action. This needs to be the focus of our policy now and in the immediate future.

While all of us recognize that actions must be taken to deal with the imminent threat of Iran's nuclear intentions, a true long-term solution to the problem with Iran lies in efforts to promote a free and democratic society. As Secretary Rice has noted:

Attempting to draw neat, clean lines between our security interests and our democratic ideals does not reflect the reality of today's world. Supporting the growth of democratic institutions in all nations is not some moralistic flight of fancy; it is the only realistic response to our present challenges.

In his State of the Union Address, President Bush made a direct appeal to the Iranian people and voiced our country's support for their right to freedom. Here in Congress, we need to act to convert moral support into concrete actions to help foster democratic change in Iran.

I commend my colleague, Senator SANTORUM, for his introduction of the Iran Freedom and Support Act of 2005. I am a cosponsor of that legislation. He has talked about that and clearly seeks to support the roots of democratic change in Iran. We need to support democracy in Iran. And supporting them is not being an American voice preaching moralistically about democracy; it is an opportunity to connect with the Iranians around the world, not just there. There are folks who have been

fighting for freedom in Iran. Some are still in Iran. We need to figure out a way to connect with Iranian voices, with dissidents in Iran and around the world, to let them know we are there to support freedom, we are there to support democracy.

I urge passage of Senator SANTORUM's bill. It is a step in the right direction.

Finally, I would note that March 20 and 21 is the Iranian new year. I say that because the regime is repressing the celebration of the Iranian new year. I want to conclude my comments by wishing the Iranian people a happy new year, one in which, hopefully, they will be closer to freedom, closer to freedom in the year to come. And we will take those steps necessary to help make that happen.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I commend the Senator from Minnesota. I think he is right on target. He is putting the burden where it should be, and that is directly on the United Nations to do what is right with regard to Iran.

Our President has tried to put the Europeans out front to negotiate with the Iranians. I believe they have been less than forthcoming about what they were doing the last 2 years with nuclear capabilities. Now it is time for us to all step in as world leaders and say to Iran: You must stop making nuclear weapons. And further, if you do not, there will be repercussions.

But it will take the entire world community, led by the United Nations, to make an impact on Iran. The United States cannot do this alone. We do not trade with Iran. We need the people who are trading with Iran to say there will be consequences if a nuclear weapon is produced in that country.

So I thank the Senator from Minnesota. I hope very much the United States will step forward with the other leaders of the world to say we are of one mind.

Mr. President, I wish to take a moment because today is Texas Independence Day.

The PRESIDING OFFICER. Time for morning business has expired.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that I be allowed to speak for 5 minutes in morning business.

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

#### 170TH ANNIVERSARY OF TEXAS INDEPENDENCE DAY

Mrs. HUTCHISON. Mr. President, I wish to take a moment to read the letter of William Barret Travis from the Alamo. This is a tradition I continue that was started by Senator John Tower to commemorate Texas Independence Day, and that is today, March 2.

Today is the 170th anniversary of the signing of the Texas Declaration of Independence, a document that was

signed by, among others, my great-great-grandfather, Charles S. Taylor, and also his friend, Thomas J. Rusk, who first held the Senate seat I now hold. They both hailed from Nacogdoches, which is the oldest town in Texas—the town in which my mother grew up and the town in which I now own the home my grandfather built.

It is a very historic time for Texas. We celebrate Texas Independence Day every single year because we know that fighting for freedom has made a difference in what Texas is. We love our history. We fought for freedom. We were a republic for 10 years, and then we came into the United States as a State.

The defense of the Alamo by 189 courageous men, who were outnumbered 10 to 1, was a key battle of the Texas Revolution. The sacrifice of COL William Barret Travis and his men made possible GEN Sam Houston's ultimate victory at San Jacinto, which secured independence for Texas.

From the Alamo, Colonel Travis wrote to his countrymen the following:

Fellow citizens and compatriots: I am besieged by a thousand or more of the Mexicans under Santa Anna—I have sustained a continual bombardment and cannonade for 24 hours and have not lost a man—the enemy has demanded a surrender at discretion, otherwise, the garrison is to be put to the sword, if the fort is taken—I have answered the demands with a cannon shot, and our flag still waves proudly from the wall—I shall never surrender or retreat.

Then, I call on you in the name of liberty, of patriotism and of everything dear to the American character, to come to our aid, with all dispatch. The enemy is receiving reinforcements daily and will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due to his own honor and that of his country—Victory or Death.

William Barret Travis, Lt. Col, Commander.

Colonel Travis's are the words of a true patriot. And his letter did inspire Texans to ultimate victory. In fact, his holding of the Alamo for so long did allow Sam Houston to muster his troops for the last stand at San Jacinto.

To show you one other example of how Texans love their history, the minister who opened our Senate today with prayer from Lovers Lane Methodist Church in Dallas, TX, showed me, at breakfast this morning, the ring he wears which is a replica of the ring of William Barret Travis that he wore at the Alamo. He put the ring around the neck of the daughter of one of those who was able to survive and leave the day before the onslaught that killed all of those men at the Alamo. So Susanna Dickinson's daughter had that ring around her neck—she was about 8 years old at the time—and that is why we know what the ring signified.

Another example of how history continues to inspire us: I, just 2 weeks ago, commissioned the newest amphibious ship of the U.S. Navy. It is an amphib-

ious assault ship, the first of its class, the USS *San Antonio*. The USS *San Antonio* has in its motto the words from William Barret Travis's letter "Never surrender, never retreat."

That is a great ship which is going to carry marines into battle. It will carry our marines with the very best of technology, the very best safety measures we can possibly give them. And the quote "Never surrender, never retreat" will carry them into battle to help protect the freedom of Americans for years to come.

I am proud to be the sponsor of the ship the USS *San Antonio*. It represents the spirit of our armed services today, just as 170 years ago when we fought for our independence from Mexico and later became a great State of the United States of America.

Mr. President, I yield the floor.

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

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### USA PATRIOT TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 3199, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 3199, an act to extend and modify authorities needed to combat terrorism, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the time until 2:30 p.m. shall be equally divided, with 1 hour of the time controlled by the minority to be under the control of the Senator from Wisconsin, Mr. FEINGOLD.

Mr. VITTER. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business for up to 15 minutes and that the time be charged to the Republican side. I further ask that Senator STEVENS be recognized at 12:15 for up to 5 minutes and Senator BYRD then be recognized for up to 35 minutes.

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

#### LOBBYING REFORM

Mr. VITTER. Mr. President, I rise to speak on the very important subject of lobbying reform. When you think of our role in our constitutional system and how important it is that that role

be held in high regard and confidence by the American public, this issue certainly takes center stage as a very important one that we need to address. Again, it goes to the heart of who we are and what we are about and the heart of the crucial task of having the confidence of the American people in our system.

Obviously, in the last year, in particular, that has been shaken—shaken by some very real and serious scandals that have touched the Congress. Because of that, we need to address these issues of lobby reform, campaign finance reform, and other related issues very boldly and very directly.

Again, why do we need to do this? For a very simple reason. This goes to the heart of our credibility, the heart of the central issue: Do the American people have confidence in our integrity, in our ability to put their interests ahead of the interests of narrow or special interests?

I come to this set of issues with quite a bit of experience from Louisiana. These sorts of issues have been at the center of our political debate for quite some time because, quite frankly, we have fought our own challenges in terms of integrity and credibility. We have had a political culture and a political history riddled with corruption and cronyism. Many of us are working very hard to get beyond that. Before I came to the House of Representatives in 1999, I served in the Louisiana legislature. While I was there for about 7 years, these sorts of issues—reform issues, lobby reform, campaign finance reform—were at the very top of my agenda because, again, what could be more important than building the confidence of citizens in the integrity of their Government? Certainly, when I stepped into the Louisiana legislature in January 1992, that credibility and that integrity absolutely needed bolstering.

When I first went to the legislature in 1992, we had a Governor named Edwin Edwards. We had an explosion of legalized gambling issues and legalized gambling concerns. That only fueled the need to address these central, ethical lobby and related issues. Issues such as the influence of gambling and gambling contributions came to the floor, and the influence of gambling entities on elected officials. Because of all this, I filed several formal ethics complaints against our then-Governor, Edwin Edwards. Many of those were successful to help draw attention to the very real problems that were persistent. And then several years later, that was actually followed by Federal prosecution of then-former Governor Edwards on gambling-related charges, and he now still serves a significant sentence in Federal prison.

Other issues came before us, such as gambling contributions. We had an infamous incident of the president of the State Senate handing out gambling contribution checks on the floor of the Senate. This caught everybody's atten-

tion, and the good part of the incident—the only good part—is that it ushered in more reform, more cleaning house, if you will.

So I was very involved in those issues for exactly the same reason. They went to the heart of what we are about. They went to the heart of voters' and citizens' confidence. They went to the heart of the question of our integrity.

In part, because of that background and that experience, I was very interested in being involved in these ethics reform and lobby reform efforts on Capitol Hill. Very early on, I joined the working group in the Senate that was focused on these important issues. The group consisted of Senators SANTORUM, MCCAIN, LOTT, KYL, LIEBERMAN, OBAMA, ISAKSON, DODD, FEINGOLD, and COLLINS. It was a very strong, very sincere bipartisan working group to look hard at these crucial questions and to come up with a strong package that could gain bipartisan consensus support, and that we could pass through the Senate.

In working with this group, we discussed a lot of issues and tried to hone in on the key abuses and, therefore, the key reforms we thought we needed to address. That led to our releasing a statement in favor of meaningful lobby reform, particularly with regard to the following areas: The revolving door between private lobbying and public service; privately funded travel, which has clearly been abused in the past; gifts from lobbyists; improved lobbying disclosure; earmarks and the abuse of earmarks and the need for transparency and some limit in terms of those earmarks; strengthened ethics guidelines, training, and enforcement.

Again, I compliment all of my fellow Senators who worked on that important group—Senators SANTORUM, MCCAIN, LOTT, KYL, LIEBERMAN, OBAMA, ISAKSON, DODD, FEINGOLD, and COLLINS. We all worked together in a very aggressive and sincere way. I think we have made a lot of headway. That headway is being exhibited this week and even more next week.

This past Tuesday, the Senate Rules Committee, chaired by Senator LOTT, voted out a consensus package of important reforms. Now, today, the other committee of jurisdiction, the Committee on Homeland Security and Governmental Affairs, chaired by Senator COLLINS, will take a look at their side of these matters—those matters in this general category that fall under their jurisdiction. I think they are going to come out today with a strong and significant package in terms of matters that come from their jurisdiction. Of course, as I said, Senators LOTT and COLLINS were very active, very forceful, and contributing members to the working group.

I look forward to supporting these two packages that will come together next week on the Senate floor. But as I do, I also look forward to strengthening the package, perhaps here on the Senate floor, perhaps through separate

legislation, on other crucial questions, which I truly believe we also need to address in a bold and direct and forceful way to gain the confidence of the American people.

I want to highlight three of those additional issues today. The first has to do with a very important matter of Indian tribe campaign contributions. Now, this, as everyone knows, is not some theoretical concern. This issue has been at the heart of the recent scandals that have plagued the Congress and the country with regard to lobby reform and campaign contributions. So this is not a theoretical or abstract concern.

What is the problem? The fundamental problem, as I see it, is that the rules are very different and very tilted for Indian tribes, as opposed to other entities such as corporations. How is that true? Let me give you a few examples. The first is that Indian tribes are treated as "persons" under Federal campaign finance law, and because of that they are allowed to contribute up to \$2,100 per election to a candidate. But they are not considered what are called "individuals" under the law. For that reason, there is no aggregate limit in terms of how much money they can give to Federal political campaigns overall in an election cycle.

For other entities, such as corporations, there is absolutely an overall limit of \$101,400. That is a lot of money but understand that tribes have no such limit, so they can go beyond that and give absolutely as much as they want, without limit, to Federal campaigns.

The second area of difference I think is even more significant, and that is because most Indian tribes are unincorporated, they are not subject to any rules or ban on using corporate treasury funds to fund all of this or to any rules with regard to mandatory disclosure of the source of the funds they use and where they go. That is a huge difference.

Corporate PACs, of course, have to collect money in very certain ways. They cannot write a check out of the corporate treasury. An Indian tribe can and, in doing so, doesn't have to disclose in any meaningful way where the money came from or where it is going.

The second issue I want to highlight is the ability of some incumbents, some Members of Congress, in the House and Senate, to pay their spouses or dependent children for work on their own political campaign. Why is that a problem? It is a fundamental problem, in my opinion, because it gives Members of Congress the ability to increase their salary if they want to abuse that right to write checks to their own personal bank account from their campaign account by "hiring" a spouse or even a dependent child or both.

Again, this is not a theoretical concern; this has been a practice in the past and is, to at least a limited extent, a practice now. There may be some spouses or some kids who do a lot

of work for that paycheck, who do a full day's work for a full day's paycheck. But, clearly, this is an area that is wide open to abuse and, in fact, in my opinion, has been abused in the past.

So how do we fix it? I think it is pretty simple. I think to gain the confidence of the American people and to do ourselves a favor, we fix it in a very simple and direct way, which is by completely banning spouses or dependent children from being on the payroll of a Member's campaign or on the payroll of a Member's leadership PAC.

The final issue that I quickly want to highlight is the issue of Members' spouses being able to lobby Congress. Again, I think in the real world, in the heartland of America, this causes average citizens and average voters a lot of concern. The concern, again, is obvious. A Member's spouse has a unique ability to lobby, No. 1. No. 2, that relationship, if a Member's spouse is on the payroll of a lobbying firm, means that the lobbying firm is writing a check, which basically goes directly into the family banking account of that Member.

How do we address this? We need to be very careful to address it responsibly and carefully and also to take into account the fact that some spouses may have been a true lobbyist with true expertise, earning an honest day's work, before they were ever spouses of a Member of Congress. So I believe the way to address it is to ban that activity if the spouse was not a registered lobbyist a year or more before the Member was elected to Congress or the marriage between the spouse and the Member occurred.

I think that is a responsible, fair way to address a very real concern, a very real issue in the hearts and minds of the American people.

I close by again saying I appreciate all of the work of my fellow members of the working group on which I serve. I look forward to that legislation coming to the floor next week, and I also look forward to us addressing other crucial issues that may not be in that underlying package, such as campaign contributions of Indian tribes, such as spouses and dependent children being on the payrolls of campaigns, and such as lobbying by Member spouses.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). Who yields time? The Senator from Alaska.

PERMANENT POSTPONEMENT OF S. 1977

Mr. STEVENS. Mr. President, I have come to the floor today to ask a request of the joint leadership. Last year, I introduced S. 1977 to repeal a provision of the 1977 reauthorization of the Marine Mammal Protection Act of 1972. My bill was designed to address the concerns on the west coast about the impact of high energy prices on their economies, their businesses, and their consumers.

Upon its introduction, S. 1977 was immediately met with press releases con-

demning it. I believe the purpose of my legislation was deliberately misinterpreted. By repealing this provision, this bill would ensure that the Cherry Point refinery in the State of Washington could maintain its current capacity.

The Cherry Point refinery processes 225,000 barrels of crude oil per day. About 60 percent of the crude oil processed at the refinery comes from my State of Alaska, and 70 percent of its refined product is consumed by businesses, vehicles, and industries located in Washington State.

S. 1977 deals solely with the construction or expansion of marine terminals and docks in Puget Sound specifically at Cherry Point. It has nothing to do with the number or size of tankers in Puget Sound. The Coast Guard controls that through regulation. The existing provision of law under consideration limits the expansion of docks which is vital to the area's economy. If this provision is enforced, it will eventually reduce crude oil delivery at the Cherry Point refinery by about 10 percent, reducing fuel capacity for the entire region by about 704,000 gallons per day of refined product.

My intention on introducing this legislation was to ensure stable supplies of fuel for the Pacific Northwest at the existing capacity. It would not have increased capacity at all.

Some have litigated this issue in the press, politicized this issue, and leveraged it for personal political publicity. Some Washingtonians have appealed to me because they don't like to see a conflict between our State and their State. They contacted me privately and sought to work this out.

In particular, one letter convinced me that despite my good intentions, the bill may not be the best policy for the people of Washington right now. But they contacted me.

Because of my private consultation with the author of the letter, which I do appreciate very much, I have come to the floor to ask that the joint leadership institute procedures to bring about the permanent postponement of this legislation and indicate we will never take it up.

It is my understanding that this is the only procedure available as it is not possible for me to ask to withdraw it. I have never, in my 38 years in the Senate, asked to pull legislation or have any bill I introduced be permanently postponed. But that is my intention now.

For years, I have fought for Alaska's right to determine our State's future and to develop our own energy resources, particularly in the Alaska Coastal Plain. I defer to this policy now, and I believe the people of Washington will have to make this decision. It is a decision that will have to be made. But based on the private conversations and the letter I mentioned, I yield to the concerns of Washingtonians on this legislation. I still believe S. 1977 is the right policy, but I

respect the rights of those living in Washington State to make the decision as to when that policy should be pursued. Consistent with my personal philosophy, again I ask that the leadership find a way to permanently postpone consideration of S. 1977.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

APPOINTING CONFEREES

Mr. President, still another day has gone by. It is now Thursday, and we have been unable to appoint conferees for the pension reform bill. This is a shame. Up to 40 million Americans are concerned about what we do in the Senate. They may not wake up every morning thinking about it, but there are millions of Americans who are worried about their pensions, and they should be.

It is so important that we get this matter to conference and come back with a bill that will help those 40 million Americans. We passed a bill out of this body on a bipartisan basis; 97 of the Senators voted for it. Not only was it a bipartisan vote, it was a bipartisan effort to get it to the floor. We need to do things on a bipartisan basis. This pension reform bill is an indication of how we can work together, but it shouldn't break down now.

There is a dispute over whether the conference should have seven Republicans or eight Republicans. That is what it amounts to, whether it has seven Republicans going to conference or eight Republicans. There is a two-vote difference. Because of the majority, 55 to 45, we have agreed to a two-vote difference, but it is not right that we are not going to conference because the majority doesn't want an extra Senator.

I need an extra Senator. I need 8 to 6. I have Senators who are heavily engaged in this matter and who have worked hard: Senator KENNEDY, Senator HARKIN, Senator MIKULSKI, and, of course, Senator BAUCUS who does the finance aspect of this and has worked very hard. Senator ROCKEFELLER has worked hard on this. There isn't anything unreasonable about saying: Mr. Leader, instead of going for seven Republicans, go with eight, go with nine. They have already agreed to go with nine, they just wanted the difference to be 9 to 6. They wanted a difference of three. I can't do that. I will go with nine. If they want nine Senators from the current seven, fine, I will go along with that.

In yesterday's Congress Daily the majority said they didn't want an 8-to-6 ratio because, "How do you break a tie?" I took my math training at Searchlight Elementary School. We

had one teacher who taught all eight grades and it wasn't that great, I am sure. But I even know that really doesn't make sense. Remember, how do you break the tie if the vote is 8 to 6?

We know that can't be the real reason for the delay because we know the majority's first proposal was 7-5. You would have to have the same concerns about 7-5, so that can't be the reason.

I understand another reason for the delay could be the majority's insistence that they get a three-vote margin conference. We can't start something like that around here. There are five Republicans, and I understand and appreciate that. We have agreed to a two-vote margin. That is fair. We have never had a conference committee that I am aware of with a three-vote margin, certainly not in this session of Congress. I am hard pressed to remember that it ever happened, so that can't be the reason.

So there must be something else going on. There must be pressure coming from people downtown, as we refer to the special interest groups that are interested in legislation. There must be pressure coming from these special interest groups to appoint particular Members to this conference, to ensure that they get the result they seek at the end of the conference. It is like fixing a jury. Sometimes you work too hard and you wind up with a bad result.

I had a case once where I represented the North Las Vegas Police Department. They had been accused of false arrest. So we go to pick the jury, and the plaintiff's attorney—I was representing the defendant—used up all their voir dire during the voir dire examination of the jury, and then we have a period of time after that wherein you can peremptorily challenge a juror. You don't have to have a reason, you just get rid of them. He used all of his peremptory challenges, and somebody stood and talked who had been a police officer. He didn't want that guy on the jury, but he had used up all of his challenges. He couldn't get rid of a juror who was a police officer, who would tend to side with me. He worked a little too hard in coming up with a jury that he thought would be OK and wound up trying too hard. So sometimes you try to play with the jury too long and you wind up being hurt.

In that case, I got a defense verdict. I won the case. I don't know if that was the reason, but I am sure it didn't hurt me to have a former police officer during that jury deliberation.

So I really don't know how to explain this deadlock. The downtown interests, the special interests say they obviously can't have that Republican or that Democrat on this conference because they don't agree with whomever it is on this issue.

This bill passed the Senate by a vote of 97 affirmations. Ninety-seven Senators said it is a good bill. This is not a Republican conference; it is a Senate conference. Is it going to make that much difference if it is 8-6 or 9-7, compared to 7-5? I don't think so.

In the past, we would appoint conferees based strictly on seniority. If the majority leader doesn't want to do that, then have him pick based on some other principle. We will probably stick with the seniority rule over here, but not necessarily. There is little consideration of how anyone would vote. I haven't asked those I would like to be on the conference committee—Senator KENNEDY, Senator BAUCUS, Senator ROCKEFELLER, Senator HARKIN, Senator MIKULSKI—how they are going to vote. I do know that Senator HARKIN and Senator MIKULSKI both believe there should be pension reform, but they are experts in different areas of this very complex piece of legislation that is so important that we complete. We will appoint people to this conference and let them do what they think is right. We need to move on.

It should not have taken 9 months to consider the bill in the first place, and it shouldn't take us 2 months to go to conference. Democrats have cooperated on this every step of the way—Senators BAUCUS and GRASSLEY, KENNEDY and ENZI—the chairman and ranking members of the committees. We are ready to go to conference 5 minutes from now. If the majority leader walked through these doors and said: I move that we go to conference, the ratio will be 8-6, 9-7, it is done. They could start meeting today. We are not delaying this legislation.

I don't understand all the reasons that we are not going forward with the conference, but I have to tell you, it looks somewhat suspicious to me when they are saying, instead of having seven Republican Senators, we want eight, for some reason. That is wrong. We need to stop playing around with this. Up to 40 million Americans, I repeat, are counting on us to do this the right way and to do it quickly.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FEINGOLD. 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. FEINGOLD. Mr. President, I ask unanimous consent that I be recognized at 2:15 p.m. for up to 15 minutes to make some final remarks on this bill.

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

Mr. FEINGOLD. Mr. President, yesterday the Senate took further steps to reauthorize the PATRIOT Act without the fundamental checks and balances that so many of us believe are needed. To bring us back to first principles, I read aloud the Constitution and the Bill of Rights. And to remind us of the broad, bipartisan support for amending the PATRIOT Act all over this country, I read the eight statewide resolutions that have passed in the last few

years expressing concerns about the PATRIOT Act. I also read some of the nearly 400 local resolutions that have passed—the four resolutions from my own State of Wisconsin. Today I want to continue by reading some additional items to take my colleagues back to how hard we fought in November and December to stop the flawed conference report, and how many Americans wanted us to do better than we have done this week.

Let me start with a few editorials. The resolutions passed by State and city governments that I read here on the floor yesterday are not the only way by which Americans have expressed their concerns about the PATRIOT Act. The Fourth Estate has weighed in too, with many newspapers running editorials or columns criticizing the PATRIOT Act's effect on Americans' freedom. And not just a few newspapers, but dozens and dozens, from all across the United States. From major national newspapers to small, local newspapers. Papers in big cities and small towns. All concerned about the erosion of civil liberties under the PATRIOT Act. I am going to read just a few representative editorials.

From the Orlando Sentinel, August 17, 2005; headline: Fighting the terrorists.

Our position: Patriot Act changes need to be tough but protect against abuse of power.

The U.S. House and Senate have taken different approaches to renewing the USA Patriot Act, the sweeping anti-terrorism law that otherwise would expire at year's end. The Senate's more thoughtful, bipartisan approach deserves to prevail when members begin meeting next month to reconcile their competing proposals.

The House proposal leaves the Patriot Act's expanded surveillance and law-enforcement powers largely intact. It does not accommodate legitimate concerns raised by both liberals and conservatives about inadequate checks on those powers.

The Senate proposal, passed unanimously, includes what Judiciary Chairman Arlen Specter called "responsible changes to safeguard civil liberties." It would continue to let the government obtain secret court orders to seize medical, financial, library and other records, but only records tied to suspected terrorists or spies, or people in contact with them. It would require the government to notify targets of secret search warrants after seven days, though a judge could extend that deadline.

Also under the Senate proposal, two of the most controversial Patriot Act provisions—to seize records secretly and conduct roving wiretaps—would expire in 2009 unless renewed. That would encourage Congress to reevaluate those provisions in four years.

The Senate proposal would not stop the government from using the powers in the Patriot Act to go after terrorists. But its changes would better protect ordinary Americans from possible abuse of those powers.

Next, The Los Angeles Times; editorial, "Checks on the Patriot Act," from November 21, 2005.

The Patriot Act, a 4-year-old federal law that gave investigators unprecedented power to search for and chase terrorists, is a case study in bad lawmaking. Angry and anxious to respond to the atrocities of 9/11, Congress

hastily approved a measure that exposed an indeterminable number of Americans to unreasonable searches and intrusive snooping for the sake of the war on terror. The law provided few of the legal system's usual checks to protect against investigators abusing the new capabilities.

The measure eventually generated outrage on both sides of the political spectrum, as well as from corporations, libraries and retailers forced to report secretly on the activities of employees and customers. Nevertheless, in their haste to wrap up business before the Thanksgiving recess, lawmakers were poised last week to reauthorize the Patriot Act, which is due to expire at the end of the year, with only minor changes.

That was the outcome sought by the White House and its allies in the House. A bipartisan group of six senators stopped the bill, however, by threatening a filibuster. They demanded that House and Senate negotiators produce a reauthorization bill with more of the safeguards that the Senate had approved earlier this year.

The senators' demands are modest, recognizing that law enforcement agencies do need enhanced powers to battle elusive and technologically sophisticated groups of terrorists. But the public also needs to be able to review how those powers have been used. And people need more assurance that the information vacuumed up by their government is actually connected to a suspected terrorist or spy.

In particular, the bill should do away with the automatic, permanent gag orders that allow investigators to hide forever their demands for records from banks, libraries, doctors and other sources. And the most controversial provisions of the Patriot Act should be extended for a much shorter period than the seven years suggested by House and Senate conferees.

When Congress approved the Patriot Act, it put its trust in prosecutors and investigators to use their expanded powers responsibly. It now appears that trust was misplaced. Authorities have gone on a snooping frenzy since 2001, issuing more than 30,000 secret demands for records per year, according to the Washington Post. And unless the law is changed, no one will ever know whether those records should have been gathered, or what has been done with them.

Americans want to trust their government. It is their government's foundation, its system of checks and balances, that enables that trust.

Now, from The Pittsburgh Post-Gazette, entitled, "True patriots: Some in Congress won't let terror limit freedom," from November 30, 2005.

Long before the 9/11 terrorist attacks and the so-called Patriot Act that was passed in reaction and fear, a man with stellar patriotic credentials who championed the cause of liberty had words of wisdom for his fellow Americans: "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

What Benjamin Franklin said in his own day remains a telling commentary for our time. Indeed, these words could have been written specifically about the Patriot Act, which went too far in trying to accomplish a legitimate goal: to remove some of the bureaucratic and legal barriers that stood in the way of hunting down terrorists.

But increasing government power while decreasing judicial oversight was a troubling exercise in a free country, and Congress realized as much when it passed the Patriot Act, including sunset provisions that could be considered in calmer days. That time has come and plenty of true patriots have stood up and offered suggestions that would make

the Patriot Act more respectful of civil liberties and the American ideal of freedom.

This is one issue that provides common ground for liberals and conservatives. When a government has the power to search a suspect's premises without his knowledge and can retrieve personal business and library records of people without showing any connection to terrorism, then the alarms that go up are for Americans regardless of party. That is why, for example, former Republican Rep. Bob Barr, the scourge of President Clinton, finds himself on the same side of the fight as the American Civil Liberties Union.

Despite the bipartisan qualms about reauthorizing the Patriot Act without proper amendment, the Bush administration has not been sympathetic. Trust us, it says implicitly. But because paranoia animates policy for this White House, the use of the Patriot Act is bound to go too far and impinge on basic civil liberties. This is an administration, after all, that feels threatened when Sen. John McCain and others want to outlaw torture.

Sadly, ordinary Americans can't naively trust their freedom to such hands. The Patriot Act needs to have reasonable checks and balances written into it. Of the two bills to reauthorize the act, the Senate version accomplishes this better than the House measure. A tentative agreement has been reached on reconciling the bills, but principled opposition remains.

Six senators—three Republicans (Larry Craig of Idaho, John Sununu of New Hampshire and Lisa Murkowski of Alaska) and three Democrats (Richard Durbin of Illinois, Russell Feingold of Wisconsin and Ken Salazar of Colorado)—have emerged to resist accepting a version of the Patriot Act that doesn't meet their legitimate concerns.

This isn't about being pro-terror but pro-American. It is possible to keep essential liberty and obtain safety. For Americans to deserve both, the true patriots on Capitol Hill need support.

From the New York Times, just recently, on February 11, 2006, entitled, "Another Cave-In on the Patriot Act."

The Patriot Act has been one of the few issues on which Congress has shown backbone lately. Last year, it refused to renew expiring parts of the act until greater civil liberties protections were added. But key members of the Senate have now caved, agreeing to renew these provisions in exchange for only minimal improvements. At a time when the public is growing increasingly concerned about the lawlessness of the Bush administration's domestic spying, the Senate should insist that any reauthorization agreement do more to protect Americans against improper secret searches. When the Patriot Act was passed after Sept. 11, 2001, Congress made some of its most far-reaching provisions temporary so it would be able to reconsider them later on. Those provisions were set to expire last December, but Congress agreed to a very short extension so greater civil liberties protections could be added. This week, four key Republican senators—later backed by two Democrats—said that they had agreed to a deal with the White House. It is one that does little to protect Americans from government invasions of their privacy.

One of the most troubling aspects of the Patriot Act is the "gag order" imposed by Section 215, which prohibits anyone holding financial, medical and other private records of ordinary Americans from saying anything when the government issues a subpoena for those records. That means that a person whose records are being taken, and whose privacy is being invaded, has no way to know about the subpoena and no way to challenge

it. Rather than removing this gag order, the deal keeps it in place for a full year—too long for Americans to wait to learn that the government is spying on them. Even after a year, someone holding such records would have to meet an exceedingly high standard to get the gag order lifted. It is not clear that this change has much value at all.

The compromise also fails to address another problem with Section 215: it lets the government go on fishing expeditions, spying on Americans with no connection to terrorism or foreign powers. The act should require the government, in order to get a subpoena, to show that there is a connection between the information it is seeking and a terrorist or a spy.

But the deal would allow subpoenas in instances when there are reasonable grounds for simply believing that information is relevant to a terrorism investigation. That is an extremely low bar.

One of the most well-publicized objections to the Patriot Act is the fact that it allows the government to issue national security letters, an extremely broad investigative tool, to libraries, forcing them to turn over their patrons' Internet records. The wording of the compromise is unclear. If it actually says that national security letters cannot be used to get Internet records from libraries, that would be an improvement, but it is not clear that it does.

In late December, it looked as if there was bipartisan interest in the Senate for changing the worst Patriot Act provisions and standing up for Americans' privacy rights. Now the hope of making the needed improvements has faded considerably.

Clearly the PATRIOT Act touched a nerve, and has continued to do so for 4 years now. While I support a strong fight against terrorism, we cannot sacrifice our citizens' basic liberties in that fight. To do so would weaken this country.

Next I want to turn back to some PATRIOT Act resolutions. It was not just State and city governments that passed resolutions these past several years. Colleges and universities across the United States have become actively involved in the PATRIOT Act debate as well. Across the country, 53 resolutions have been passed on 44 campuses advocating for substantial changes to the PATRIOT to protect the civil liberties of the American people. From Mt. Holyoke, a small private all-women's liberal arts school in South Hadley, MA, to the University of Texas at Austin, one of the largest public universities in the United States, students and faculties alike are coming together to pass these resolutions. Resolutions have been passed on college campuses in states from California to Kentucky. I will now read a few of these campus resolutions.

A resolution concerning the protection of students' civil rights in the wake of the passage of the USA PATRIOT Act.

UNIVERSITY OF TEXAS AT AUSTIN STUDENT GOVERNMENT

WHEREAS: The United States Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act; Public Law 107-56) on October 25, 2001, championed by U.S. Attorney General John Ashcroft;

WHEREAS: The 4th amendment of the Bill of Rights establishes: The right of the people

to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. WHEREAS: According to Mayor Pro Tem Jackie Goodman's Austin City Council resolution regarding the PATRIOT Act, "fundamental rights granted by the United States Constitution are threatened by actions taken at the Federal level, notably by passage of certain sections of the 'U.S.A. P.A.T.R.I.O.T. Act,' other acts and executive orders which, among other things:

Grant potential unchecked powers to the Attorney General and the U.S. Secretary of State to designate legal domestic groups as "terrorist organizations" by overly broad definitions, and implying restrictions to Constitutionally protect First Amendment rights of speech and assembly by reference, such as political advocacy or the practice of a religion; while lifting administrative regulations on covert, surveillance counter-intelligence operations;

Violate the First and Fourth Amendments to the Constitution through the expansion of the government's ability to wiretap telephones, monitor e-mail communications, survey medical, financial and student records, and secretly enter homes and offices without customary administrative oversight or without showing probable cause;

Give law enforcement expanded authority to obtain library records, and prohibits librarians from informing patrons of monitoring or information requests;

Violate the Fifth, Sixth and Fourteenth Amendments to the Constitution in establishing secret military tribunals, and in subjecting citizens and non citizens to indefinite detention without being allowed an attorney, without being brought to trial, and without even being charged with a crime;

Authorize eavesdropping on confidential communications between lawyers and their clients in federal custody;"

WHEREAS: In the October 1997 edition of Global Issues, available as Vol. 2, No. 4 of the USIA Electronic Journal, then Senator John Ashcroft (R-MI) wrote in an article entitled, "Keep Big Brother's Hands Off the Internet,"

The FBI wants access to decode, digest and discuss financial transactions, personal e-mail, and proprietary information sent abroad—all in the name of national security. . . This proposed policy raises obvious concerns about American's privacy. . . The protections of the Fourth Amendment are clear. The right to protection from unlawful searches is an indivisible American value. Two hundred years of court decisions have stood in defense of this fundamental right. The state's interest in crime-fighting should never vitiate the citizens' Bill of Rights. . .

The administration's interest in all e-mail is a wholly unhealthy precedent, especially given this administration's track record on FBI files and IRS snooping. Every medium by which people communicate can be subject to exploitation by those with illegal intentions. Nevertheless, this is no reason to hand Big Brother the keys to unlock our e-mail diaries, open our ATM records, read our medical records, or translate our international communications. . .

WHEREAS: Eva Poole, President of the Texas Library Association, the oldest and largest organization representing Texas libraries, including university and academic libraries, stated in a personal e-mail by request:

The USA PATRIOT Act is just one of several troubling policies that compromise the public's privacy rights. Enhanced surveil-

lance powers permitted under the provisions of the Act license law enforcement officials to peer into Americans' most private reading, research, and communications. Several of the Act's provisions not only violate the privacy and confidentiality rights of those using public libraries, but take no consideration of constitutional checks and balances as it authorizes intelligence agencies to gather information in situations that may be completely unconnected to a potential criminal proceeding.

Librarians do not know how the USA PATRIOT Act and related measures have been applied in libraries because the gag order bars individuals from making that information public. Equally troubling is the fact that librarians are not allowed to comment on FBI visits to examine library users' Internet surfing and book-borrowing habits. I oppose any use of governmental power to suppress the free and open exchange of knowledge and information.

WHEREAS: The Student Governments of the University of California at Berkeley and Santa Barbara, University of Alaska Fairbanks, University of Washington, Washington State University, University of Wisconsin and Southern Oregon University have passed resolutions denouncing the USA PATRIOT Act;

THEREFORE BE IT RESOLVED that the Student Government of the University of Texas at Austin has been, and remains, absolutely committed to the protection of civil rights and civil liberties for all of its students and affirms its commitment to embody democracy and to embrace, defend, and uphold the inalienable rights and fundamental liberties granted to students under the United States and Texas Constitutions;

BE IT FURTHER RESOLVED that the Student Government of the University of Texas at Austin firmly calls upon the Austin Police Department, University of Texas Police Department, Federal Bureau of Investigation and Joint Terrorism Task Force to refrain from and, in certain cases, discontinue the surveillance of individuals, groups of individuals, and organizations based solely on their participation in activities protected by the First Amendment to the United States Constitution, such as political advocacy or the practice of a religion without reasonable and particularized suspicion of criminal conduct unrelated to the activity protected by the First Amendment of the United States Constitution;

BE IT FURTHER RESOLVED that Student Government respectfully requests that Dr. Fred Heath, Vice Provost of General Libraries, direct all UT libraries to post in a prominent place within the library a notice as follows:

"WARNING: Under Section 215 of the federal USA PATRIOT Act (Public Law 107-56), records of books and other materials you borrow from this library may be obtained by federal agents. This law also prohibits librarians from informing you if records about you have been obtained by federal agents. Questions about this policy should be directed to Attorney General John Ashcroft, Department of Justice, Washington, DC 20530."

BE IT FURTHER RESOLVED that the Student Government of the University of Texas at Austin commits to organizing a forum addressing student privacy concerns consisting of a panel of relevant administrators and community members;

BE IT FURTHER RESOLVED that the Student Government of the University of Texas at Austin firmly calls upon UTPD to preserve and uphold students' freedom of speech, assembly, association, and privacy, the right to counsel and due process in judicial proceedings, and protection from unreasonable searches and seizures, even if re-

quested to do otherwise in accordance with new federal law, which infringes upon such rights granted to federal or state law enforcement agencies under powers assumed by the USA PATRIOT Act by Executive Order; BE IT FURTHER RESOLVED that the Student Government of the University of Texas at Austin calls upon the Austin City Council to do everything in its power to protect and defend the rights and liberties of University of Texas at Austin students who reside within jurisdiction of the City of Austin.

Next:

ASSOCIATED STUDENTS OF MOUNT HOLYOKE COLLEGE

A RESOLUTION AFFIRMING CIVIL RIGHTS AND LIBERTIES IN LIGHT OF THE USA PATRIOT ACT

WHEREAS, Mount Holyoke College has a diverse student and faculty body, including many students from outside the United States, and many students with diverse cultural backgrounds whose contributions to this community are vital to the culture and civic character of Mount Holyoke College; and

WHEREAS, the preservation of civil rights and civil liberties is a pillar of American society and is essential to the well-being of any democracy, particularly during times of conflict when such rights and liberties, especially those of immigrants and ethnic minorities, may be threatened, intentionally or unintentionally; and

WHEREAS the preservation of civil rights and liberties is essential to the well-being of a democratic society; and

WHEREAS, The community of Mount Holyoke College denounces terrorism, and acknowledges that federal, state and local governments have a responsibility to protect the public from terrorist attacks in a rational, deliberative and lawful fashion to ensure that any new security measure enhances public safety without impairing constitutional rights or infringing upon civil liberties; and

WHEREAS, Mount Holyoke College as a private institution, is also responsible to protect its community, including all faculty, staff, and students, whether they be residents or non-residents; and

WHEREAS, the United States Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act; Public Law 107-56) on October 26, 2001; and

WHEREAS, some provisions of the USA PATRIOT Act and other related federal orders and measures may pose a threat to the civil rights and civil liberties of all students, staff and faculty at Mount Holyoke College, including natural citizens of the United States, and particularly, but not limited to, those who are of Middle Eastern, Muslim or South Asian descent; by:

a. Reducing judicial supervision of telephone and Internet surveillance.

b. Expanding the government's power to conduct secret searches without warrant.

c. Granting power to the Secretary of State to designate domestic groups, including political and religious groups, as "terrorist organizations".

d. Granting power to the Attorney General to subject non-citizens to indefinite detention or deportation even if they have not committed a crime.

e. Granting the Federal Bureau of Investigation (FBI) access to sensitive medical, mental health, financial and educational records about individuals without having to show evidence of a crime.

f. Granting the FBI the power to compel libraries and bookstores to produce circulation or book purchase records of their patrons, and forbidding disclosure that such

records have been requested and produced; and

WHEREAS, law enforcement and security measures that undermine fundamental constitutional rights do irreparable damage to the American institutions and values of equal justice and freedom that the students staff and faculty of Mount Holyoke College hold dear; and

WHEREAS, the Senate of the Associated Students of Mount Holyoke College believes that there is not and need not be conflict between security and the preservation of liberty, and that students of Mount Holyoke College can maintain their privacy and be both safe and free;

BE IT RESOLVED BY THE SENATE OF THE ASSOCIATED STUDENTS OF MOUNT HOLYOKE COLLEGE THAT the SGA Senate supports the fundamental, constitutionally-protected civil rights and civil liberties of all members of Mount Holyoke College; and THAT the SGA Senate opposes those measures that infringe upon such civil rights and liberties, or that single out individuals for legal scrutiny or enforcement activity based solely on their country of origin, religion, ethnicity or immigration status; and THAT the SGA Senate urges all students, staff, and faculty of Mount Holyoke College to respect the civil rights and civil liberties of all members of this community, regardless of citizenship or heritage; and THAT the SGA Senate urges the Mount Holyoke College Department of Public Safety and all other applicable departments, except when required by law, to refrain from:

a. utilizing race, religion, ethnicity or national origin as a factor in selecting which individuals to subject to investigative activities except when seeking to apprehend a specific suspect whose race, religion, ethnicity or national origin is part of the description of the suspect,

b. participating in a joint search of the property or residence, with any law enforcement agency absent the assurance that simultaneous notice of the execution of a search warrant to such member of Mount Holyoke College,

c. any practice of stopping drivers or pedestrians for the purpose of scrutinizing their identification documents without particularized suspicion of criminal activity, and

THAT the SGA Senate urges the Mount Holyoke College Department of Public Safety not to subject any individual to the custody of the South Hadley Police Department, who may be placed in federal custody, to military detention, secret detention, secret immigration proceedings, or detention without access to counsel; and

THAT the SGA Senate urges the Mount Holyoke College administration to provide notice to all individuals whose education records have been obtained by law enforcement agents pursuant to Section 507 of the USA PATRIOT Act (Disclosure of Educational Records).

Mr. President, I ask unanimous consent to have printed in the RECORD the resolution passed by the United Council of Students at the University of Wisconsin Madison.

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

UNIVERSITY OF WISCONSIN STUDENT  
RESOLUTION (2/19/2004)

MC1201-01: RESOLUTION IN RESPONSE TO USA  
PATRIOT ACT

Whereas the Fourth Amendment of the United States Constitution states;

The right of the people to be secure in their persons, houses, papers, and effects,

against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized, and;

Whereas the Fifth Amendment of the United States Constitution states;

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation, (emphasis added), and;

Whereas Section 1 of the Fourteenth Amendment of the United States Constitution states;

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws* (emphasis added), and;

Whereas the United Council of University of Wisconsin Students Policy Platform in regards to Student/Civil/Legal Rights states the following two points;

United Council opposes discrimination based on but not limited to race, ethnicity, creed, gender, gender identity, sexual orientation, religious belief or lack thereof, veteran status, marital/familial/parental status, age, physical appearance, disability, political affiliation, national origin, income level or source, residency status, or geographic disadvantage for any reason including but not limited to educational opportunity, employment, housing, physical or emotional well being, and social attitudes; and;

United Council supports the student campaign for the statistical accounting and documentation of Racial Profiling in the UW System, the state of Wisconsin, and the United States of America;

Whereas the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, USA PATRIOT, Act of 2001 (H.R. 3162, S. 1510) of the title officially introduced: "To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes" became Public Law No. 107-56 on October 26, 2001;

Whereas Senator Russ Feingold (D-WI) was the only member of the United States Senate to vote against this bill;

Whereas Laura Murphy, Director the American Civil Liberties Union Washington National Office stated that, "Included in this bill are provisions that would allow for the mistreatment of immigrants, the suppression of dissent and the investigation and surveillance of wholly innocent Americans;"

Whereas the USA PATRIOT Act overrides civil liberties such as those encompassed within the Fourth, Fifth and Fourteenth Amendments of the United States Constitution;

Be it resolved that United Council appreciates the support of Senator Russ Feingold for voting against the USA PATRIOT Act;

Be it further resolved that United Council upholds Civil Liberties such as those encom-

passed within the Fourth, Fifth and Fourteenth Amendments of the United States Constitution;

Be it finally resolved that United Council urges UW institutions to both officially state that they will protect students, citizens and non citizens alike, and their rights, and inform students that they are entitled to legal advice before cooperating with Federal law enforcement agencies.

Mr. FEINGOLD. Mr. President, every day children across this country learn about the role of their Government and how it is intended to function. I have also collected a handful of textbooks used by children from elementary school up through high school to see what they have to say about the role of Government. In looking at these books, I notice that each of them at different reading levels discuss the Government as a whole, the importance of the Constitution as the foundation of our Government, and the importance of checks and balances and separation of powers. Each of these books, at whatever learning level or reading level, teaches that the Government does not have endless, unchecked powers over the people it is intended to protect.

I started my presentation after closure was invoked by reading the Constitution of the United States. I wish to conclude for now by reading a very brief portion of one of these books. It is entitled "National Government, a Kids' Guide." "Separation of Powers."

The people who wrote the U.S. Constitution wanted to make sure that the leaders of the government did not have too much power. The writers spread the power among three separate branches of government that work together to govern the country. This is called separation of powers.

The executive branch is lead by the president of the United States. This part of the government is responsible for making sure the laws are carried out, or executed.

The legislative branch is made up of the people in the Senate and the House of Representatives. Together, the Senate and the House of Representatives are called the United States Congress. The legislative branch makes the laws.

The third branch is the judicial branch, which is led by the Supreme Court. The judges—called justices—of the Supreme Court explain the laws and decide if any laws are not fair.

Each branch of the government has its own job to do, but the three branches have to work together. The people who wrote the Constitution were very careful to make sure that each branch of the government could check up on the others. A system called checks and balances keeps different parts of the government from having too much power.

Mr. President, I ask unanimous consent that Senator BYRD be recognized at 12:30 p.m. today.

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

Mr. FEINGOLD. Mr. President, I reserve the remainder of my time.

I yield the floor.

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. KYL. 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. KYL. Mr. President, I ask unanimous consent that I be allowed to speak until 12:30, with the time to be charged to the Republican side.

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

Mr. KYL. Mr. President, the hour has almost arrived. I understand that in a little less than 3 hours, we will finally be voting for the final time on the reauthorization of the PATRIOT Act. This is critical for the defense of our country, the security of our Nation.

I am pleased we have the opportunity now to approve it, and I predict it will be approved overwhelmingly. The question is, What took us so long? We could have done this at least 2 weeks ago. Indeed, we could have done it 2 months ago. Such is the process in the Senate that sometimes the wheels grind slowly.

The problem is the war on terror. Our enemy does not treat the war necessarily the same way some people in this country do. They are very flexible. They are very agile. They do not tell us what they are going to do in advance. Sometimes they are very patient and wait a long time to strike, and when they do strike, it can be with great speed and lethality, which means that our ability to fight the terrorists has to be equally agile.

Good intelligence has a short shelf life. Yet that is basically our main weapon in the war on terror. This is not a war we fight with planes, tanks, and ships, but with good intelligence to find out where the terrorists are, who they are, what they are up to, and, if we can, find out whether we are able to stop their terrorist attacks before they occur. That takes good intelligence. It takes agility to be able to get that intelligence, cooperate among the various law enforcement and intelligence agencies.

Before September 11, several of us had provisions of law we believed were important to amend in our statutes to provide tools to fight terrorists. Little did we know how important those would soon become. Senator FEINSTEIN and I have been ranking member and chairman of the Subcommittee on Terrorism, Technology and Homeland Security for many years, since I came to the Senate. We held a lot of hearings on the subject. We had a lot of ideas about what we wanted to propose.

Shortly after September 11, a lot of these things made their way into the PATRIOT Act which we were able to approve. Some Members said the PATRIOT Act was approved hastily. Actually, a lot of the ideas of the PATRIOT Act had been around for some time, had a lot of debate and hearings, but there did not seem to be a reason to get them passed; that is, until September 11, and then, indeed, we did act quickly. But I submit there is a difference between acting hastily and acting quickly.

Nevertheless, some of the provisions were sunsetted. Regarding things we

did then and some subsequent amendments to statute, we wanted to take another look down the road to make sure we did not act too hastily. Our action today will make it clear that by reauthorizing these provisions, we intended them to be in effect. We know the terrorists have not stopped their war on terror, and therefore we dare not stop the tools to fight terrorism, many of which are embodied in the PATRIOT Act. So it is important to reauthorize these provisions and not have them expire or sunset.

There is a certain amount of pride of authorship I confess to since a lot of the provisions we are reauthorizing today are provisions which I wrote or helped to write in coauthorship with some of my colleagues. Let me mention some of these because these are important, one of which has been known as or has come to be known as the Moussaoui fix, which is named after Zacarias Moussaoui, sometimes referred to as the 20th hijacker. In the 108th Congress, Senator SCHUMER and I introduced the Moussaoui fix, which allows the FBI to obtain FISA warrants to monitor and search suspected lone wolf terrorists such as Zacarias Moussaoui.

Now, lone wolf terrorists exist because in today's world, you do not get a little card that says: I am a proud member of al-Qaida. It is a very loose-knit organization. Some have likened it to a franchise where all over the world there are little bands of people—cells—who would do harm to the West generally and the United States in particular and who share the same goals and ideals of al-Qaida, frequently have communication with members of al-Qaida, train in the same way, and conduct the same kinds of terrorist activities, sometimes in consultation or concert with al-Qaida. But it is not like a club, it is not like you are a member of the KGB of the Soviet Union, which is what the threat was when we wrote the FISA act.

Because the FISA act refers to foreign intelligence organizations or terrorist organizations, we found that with people such as Zacarias Moussaoui, who we could not prove was a card-carrying member of any particular terrorist group but we figured he was a terrorist and up to no good, we did not have an ability under FISA to seize and search his computers even though we had the ability to arrest him. This was 2 weeks before September 11. Had we been able to get into the computer, we might well have discovered the information we later found that could have pointed us in the direction of an attack on September 11.

Well, that is what the object of the Zacarias Moussaoui fix was: to enable us to add the lone wolf terrorist to the other situations in which a FISA warrant could be obtained. And it filled a gap in our laws that, as I said, might well have uncovered the September 11 conspiracy had it been in place at the time.

It was reported out of a unanimous Judiciary Committee and passed out of the Senate 90 to 4 in 2003. In 2004, it was added to the Intelligence Reform and Terrorism Prevention Act, with the general PATRIOT Act sunset applied to it. Like the other PATRIOT provisions, the Moussaoui fix was set to expire at the end of last year. Today, we will extend the sunset on that critical provision of law for another 4 years.

Another was the material support enhancements. In 2004, I introduced a bill that, among other things, clarified and expanded the statute prohibiting the giving of material support to a designated foreign terrorist organization. These changes helped address perceived ambiguities in the law that had led the Ninth Circuit Court of Appeals to strike down parts of it as unconstitutionally vague. The changes also expanded the law to bar giving any type of material aid whatsoever—including providing one's self—to a terrorist group.

This legislative proposal also was enacted into law later that year as part of the intelligence reform bill, and also was subjected to a sunset. Again, today, with the PATRIOT Act reauthorization conference report, we repeal that sunset. We make the 2004 material support enhancements permanent features of our law, as they should be.

Another part of the original PATRIOT Act I helped author was the so-called pen registers and trap-and-trace authority. Now, the authority for pen registers and trap and trace is critical for antiterror investigations. It has been around for years in connection with other kinds of investigations, and it obviously was an important tool to fight terrorism.

What these authorities do is allow investigators to discover what telephone numbers are being dialed into and out of a suspect's telephone. As I said, they already had this authority in connection with other kinds of crimes. It certainly made sense to have it track terrorists. An important feature here was to get one court order from a judge in one place and not have to hop all around the country wherever the telephone was used and get a separate court order in that State. That requirement made it totally useless.

So this one court warrant for trap and trace and pen registers was enacted. I am very glad to see the conference report repeals the sunset on this authority—in other words, the automatic ending of the authority—and makes permanent for antiterror investigations this pen register and trap-and-trace authority, another critical tool to fight terrorism.

For the past 2 years, I have also been a cosponsor of legislation that my colleague, Senator FEINSTEIN, helped to coauthor on seaport security and mass transportation security. This is especially interesting in view of the debate and concern right now about seaport security with which we are all familiar.

This particular legislation increases the penalties for and, by the way, also the scope of the criminal offenses for attacks on seaports and shipping. It also consolidates and updates the laws with regard to attacks on railroads and other mass transportation facilities.

Now, these proposals also had been amended into the intelligence reform bill in 2004 by the House of Representatives but have been dropped in conference. Today these important provisions, which I helped to coauthor, are enacted into law through the conference report of the PATRIOT Act.

There is another rather interesting, rather esoteric—one of the things lawyers debate about—but an interesting and important provision of the PATRIOT Act we are going to be dealing with today. When the final draft of the PATRIOT Act reauthorization was introduced in the Judiciary Committee the night before the committee acted on it, for the first time a proposed three-part test was inserted into the bill—a test for determining whether a section 215 order is relevant to a terrorism investigation. There has been a lot of debate about these section 215 orders, but these are critical to obtain records that might help in the investigation of a potential terrorist.

Several of us expressed reservations about this three-part test and whether it would impede the use of these section 215 warrants and impede important investigations and thought it required further study.

Well, during the next weeks and months, we became persuaded essentially that this three-part test would simply either make impossible or certainly delay needed investigations and, therefore, should not be enacted. It raised more questions than it answered, complicated this investigative tool that was being used, after all, at the very preliminary stages of an investigation—not the stage at which you ought to be proving probable cause to introduce evidence into the trial.

Well, the test remains in the conference report, but with changed language. I think it is much better in its current form. The form of the test remains in the conference report, but investigators are no longer required to use that test. Instead, they are simply permitted to use that test to obtain a presumption that a 215 order is relevant to a terror investigation, which is fine.

Usually, when we create a legal presumption that a standard has been met, it is easier to satisfy the presumption than it is to satisfy the underlying legal test. I do not believe that is the case here. Relevance is a simple and well established standard of law. Indeed, it is the standard for obtaining every other kind of subpoena, including administrative subpoenas, grand jury subpoenas, and civil discovery orders.

So I cannot imagine that investigators will ever bother using the complicated three-part test in order to get a presumption when they can simply

plead relevance and that will suffice for their investigation. I might be wrong, and they might find this test useful. It is there should they decide they can use it. But I am pleased to see the conference report is not impeding investigations by mandating the use of that test.

We are not betting important antiterror investigations on the issue, I guess, is another way to say it. I think it would have been clearer just to eliminate the test, but it does not—other than, in my view, cluttering up section 215 of the PATRIOT Act because it is not mandatory, I do not think it is going to cause any harm. Investigators are not going to be impeded in their investigations because of it. I think that is an important change we made.

The conference report also does something that is important for States, like my own State of Arizona, that have attempted to improve the ability to prosecute and defend against certain kinds of serious crimes. In the 1996 Antiterrorism and Effective Death Penalty Act, Congress made an offer to the States in effect saying: If you will provide qualified counsel, lawyers, in capital cases to the defendants in those cases during the stage of the case after conviction but during appeal—it is the so-called postconviction review stage of litigation—then the Federal Government would apply a streamlined and expedited procedure to review the habeas corpus petitions that are normally filed during that period of time from the conviction in the State court.

The Federal courts would be required to abide by timelines in ruling on these cases, and they would be barred from staying Federal petitions to allow further exhaustion or broadly exempting claims from procedural default requirements on the grounds of the perceived inadequacy or lack of independence of the State's procedural rules. The bottom line is that if the defendants are represented by good counsel, by good lawyers, then they should be able to comply with the provisions of the law and not plead, in effect, they have to delay the law as they are having their appeals reviewed.

Arizona did its part to comply with this statute. It enacted a system to provide qualified counsel to capital defendants on State postconviction review. It spent a lot of money doing it. But to date, it has not received the benefits of the system. It is because the decision about whether a State is entitled to the benefits of this chapter 154 relief—including the time deadlines—is made by the same Ninth Circuit Court of Appeals that would be bound by those deadlines. And it has repeatedly refused to extend to Arizona the benefits of the 1996 law's special habeas chapter. By the way, it has also been very slow in many of these cases, and that has been a real problem.

The good thing about today's conference report is that it includes a provision that would shift the decision of

whether a State is eligible for this expedited review of capital cases away from the regional courts of appeals to the U.S. Attorney General, with a review of his decision in the U.S. Circuit Court for the District of Columbia. That court hears no habeas cases; therefore, it has no conflict of interest as the other circuit courts would. This will allow the Federal Government to keep its end of the bargain that it made with the States back in 1996 and will allow States like Arizona to finally take advantage of the streamlined and expedited procedures to which it is entitled.

I will conclude in this fashion. I think that by what I have just said it is clear there are a variety of important provisions in this conference report, this PATRIOT law we are reauthorizing. In some cases we are saying this is now going to be permanent law. We do not need to come back and reauthorize it every 4 years. In other cases, we are saying there are important provisions of other laws that need to be put in the PATRIOT Act and made permanent law. And we have done that. In other cases, as I mentioned, we wrote particular provisions into the PATRIOT Act, and it is important that we reauthorize those provisions. And there were other provisions, in addition to pen registers and trap and trace that I mentioned before, as well as the material support, which were parts of the original act.

We established several crimes as part of the PATRIOT Act that would serve as predicate crimes for further investigation, and these were very important because in the early stages of an investigation into a terrorist you may not have all of the scope of the activity of this individual well in mind. You may know he has been guilty of what you think of one particular crime, but you need to be able to use that as a predicate to expand your investigation into other things he may have done.

So, for example, we establish that violations of the Federal terrorism statutes could serve as a predicate offense allowing the Department of Justice to apply to courts for authorization to intercept wire or oral communications pursuant to title III when investigating such offenses. We establish that the felony violations of the Federal computer crimes statutes, the so-called hacking statutes, might serve as a predicate offense, allowing the Department of Justice to apply to courts for authorization to intercept wire or oral communications pursuant to title III when investigating such offenses.

We provide for the detention, for up to 7 days, of aliens the Attorney General has reasonable grounds to believe were engaged in conduct that threatened the security of the United States or aliens who are inadmissible; that is to say, they are not supposed to be coming into the United States or are deportable from the United States on the grounds of terrorism, espionage, sabotage, or sedition.

There are a variety of other provisions that are included in the PATRIOT Act. The key thing to remember here is, as I said before, our law enforcement and intelligence officials need to have adequate tools to fight terrorism because we provide those tools when we send the military into harm's way. We have an obligation to do that. And they fight important fronts in the war on terror. But so much of this war on terror relates to intelligence gathering and law enforcement activity, investigating potential crimes of these individuals. We have to give them the tools they need to fight these terrorists.

The PATRIOT Act does that. It is one of our tools. The FISA law is another one of those tools, the Surveillance Act. The Foreign Intelligence Surveillance Act is what FISA stands for. We have activities such as the NSA surveillance that is another important tool that deals with al-Qaida terrorists who are calling into or out of a foreign country. There are other mechanisms we are using to fight the terrorists.

But one of the bedrock laws now that we use is the PATRIOT Act. That law passed not long after 9/11 because we understood this world had changed and that it was time to apply to terrorism many of the same kinds of techniques in law enforcement authorities that we already deemed very useful in investigating other kinds of crimes. Our idea was, if it is good enough to investigate money laundering or drug dealing, for example, we sure ought to use those same kinds of techniques to fight terrorists. We have done that.

Today, actually, is a very important day because many of the provisions of the PATRIOT Act go into permanent law. Others are reauthorized for 4 more years. They provide critical support to the people we want to protect us in this war on terror. I am delighted we will be adopting the PATRIOT Act conference report today. My only regret, as I said, is we could not have done it before now. But we can at least celebrate the fact that the Senate has done its duty for the American people to help make them secure in the future.

The PRESIDING OFFICER (Mr. ISAKSON). The majority leader is recognized.

#### APPOINTMENT OF PENSION CONFEREES

Mr. FRIST. Mr. President, this morning the minority leader came to the floor to once again call into question our good faith efforts on the pensions bill. He now claims our longstanding offer of a 7-5 ratio on the conference committee "looks suspicious." I can't help but feel that what is beginning to look suspicious is this continuing pattern of obstruction on ground that seems to be ever shifting.

We originally considered proposing a 5-3 ratio but, to accommodate his caucus, we ultimately offered a 7-5 ratio. After a 2-month delay, this was rejected. The Democratic leader was unable to make a decision among members of his caucus. I understand those

challenges, but that is what leadership is all about. Now he wishes to further delay with an arbitrary dispute over the ratio of conferees and this new, equally disingenuous charge of "fixing the jury," which is absurd.

As the minority leader well knows, I have been working for years to fix the pensions problem. The American people deserve it. People don't understand why these games are being played.

The clock is ticking. People's lives are at stake. The first quarter of the physical year ends on March 31, 31 days from now. Within 2 weeks of that happening, companies have to make contributions to their pension plans. The pensions of millions of hard-working Americans are at stake. That is why these games don't make sense.

We have two committees with an equal stake in this bill. They should have an equal number of conferees on the committee. The conference committee should fairly represent the two committees of jurisdiction. The minority leader knows his proposals won't allow for that. I am for a fair conference but, equally importantly, I am for getting to conference so that we can address these challenges. The American people are waiting.

I know the Democratic leader says he wants to move forward as well. But remember, we passed this bill in November of last year, and we are still trying to do something very simple; that is, to get to conference so that we can pass the legislation.

I am baffled by the minority leader's inability to decide which five Senators from his caucus could join with our seven Senators so that we can appoint a conference and do the Nation's business. I am equally confused about why, in refusing to make that decision, he instead feels that he should decide on his own, unilaterally, the ratio of conferees with no regard for treating the two committees of jurisdiction fairly. If anyone is trying to fix the jury, it appears to be the minority leader by having one committee with more representatives than the other. We go back and forth every day, and that clock is ticking.

The airline provisions of the bill are necessary to keep additional pension obligations from being terminated and left at the doorstep of the Pension Benefit Guaranty Corporation. As Chairman GRASSLEY has suggested, in remarks that I will include in the RECORD, if we cannot make some progress shortly, we may need to look at pulling these provisions out and moving them on some other vehicle. That should not be necessary, but continued obstruction would leave us with no other choice. We are simply running out of time.

I plead with the Democratic leader to put forth his five. We have been ready for the last 2 months to put forth our 7 so we can get to conference and provide answers and a resolution to what millions of Americans are waiting for.

I ask unanimous consent to print in the RECORD the above-referenced document.

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

[From Dow Jones Newswires]

U.S. SENATOR GRASSLEY: SENATOR REID UNDERMINING PENSION TALKS

(By Rob Wells and John Godfrey)

WASHINGTON (Dow Jones).—A top U.S. Senate Republican on Thursday accused Senate Minority Leader Harry Reid, D-Nev., of undermining talks for a final pension overhaul bill, thereby helping the bill's critics.

"It's playing right into the hands of Ford (F) and General Motors (GM), because they negotiated benefits, both health and savings, they can't keep their promise to," said Senate Finance Chairman Charles Grassley, R-Iowa, at the National Summit on Retirement Savings, an industry and government seminar.

He said these companies "don't want these reforms because they're going to have to pay up" through higher pension contributions.

The bill would change pension funding rules and increase premiums paid by companies to the Pension Benefit Guaranty Corporation. The measure has divided business and labor groups, many of whom argue that it would be too strict.

The Senate has been attempting to name negotiators since December to a House and Senate conference to write a final pension overhaul bill.

Grassley accused Reid of delaying final pension talks by not formally naming Democratic negotiators. Part of the delay, however, stemmed from internal Republican disagreements over who would lead negotiations.

Reid and Senate Majority Leader Bill Frist, R-Tenn., have been in a standoff over the number of Democrats who will be part of the talks.

Grassley, departing from his prepared remarks, sharply criticized Reid for the delay. "They're being held up because one person in U.S. Senate can't make up his mind which two or three Democrats ought to be on a conference committee," Grassley said.

If Congress fails to act on the pension bill, companies will have to begin using the relatively pessimistic benchmark of the 30-year Treasury bond in pension calculations. The 30-year bond rate would begin to apply after April 15, although higher payments wouldn't occur until January 2007. Currently companies are using a blend of corporate bond rates in such calculations.

The airline industry also has a major stake in the bill since the Senate version would give a special break from pension funding rules for underfunded airline pension plans.

Grassley and other bill advocates say it's vital Congress completes work on the bill by the April 15 deadline.

Without action by then, "it's putting into jeopardy airlines being able to fly" Grassley said, which would "ruin the economy if we don't get something done."

Further delays may force negotiators to move pieces of the bill, such as the airline provision, in separate tax legislation to meet the April 15 deadline, he said.

A telephone call to Reid's office wasn't immediately returned.

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. DEMINT. 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. DEMINT. I ask unanimous consent to speak for 5 minutes as in morning business and that this time be counted against the Republican time in the debate.

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

PORT SECURITY

Mr. DEMINT. Mr. President, I have had a chance to listen to the debate on the PATRIOT Act in my office. I had not planned to speak. But hearing continued attacks on the President on security issues, particularly port security, while some from the other side seem intent on stopping one of the most important security pieces of legislation we have, the PATRIOT Act, compelled me to come to the floor to straighten out the facts.

It is important that we have an honest and fair debate. I appreciate those on the other side who have participated in the debate in an honest way. But I have heard enough of my colleagues from the other side use information and perhaps take different positions than they did only a year or so ago. I am compelled to point some of these things out.

I will give one example. This week in a Commerce Committee hearing, we were talking about port security. Senator BOXER said:

Our ports are a soft target. Al Qaida told us that when we found that out through [their] documents. . . . So you take the Dubai situation plus our lack of action on security. . . . And I'm going to oppose this deal.

That is fair enough unless we put it in perspective. This week, Senator BOXER actually voted to filibuster the PATRIOT Act, which is dedicated in large part to security in our ports. An entire title of the PATRIOT Act is focused on port security. Originally introduced as the bipartisan Reducing Crime and Terrorism in America's Seaports Act of 2005, title III strengthens criminal sanctions and takes a number of steps to improve our Nation's ability to secure our ports and to thwart terrorism. Yet Senator BOXER voted to filibuster the enactment of this essential port security provision the day after lamenting the vulnerability of American ports.

The truth is, to anyone who has watched this over time, very often our Democratic colleagues, with all due respect, block the very thing they blame Republicans for—in this case, blaming the President. Not only did Senator BOXER vote to filibuster the PATRIOT Act, but after the 9/11 attacks, Senator BOXER was one of four Democratic cosponsors of a bill that would have specifically permitted noncitizens to serve as airport security screeners. Senator BOXER cosponsored legislation to allow noncitizens to do for air travel what essentially the Coast Guard does for port security. Now she wants to block foreign companies from using American workers to manage our port terminals.

It is difficult to reconcile the two positions.

Republicans want a fair and non-partisan 45-day security review and a good but honest debate. It is not fair or honest to take a position this week that was very different than one that had been taken before. To Republicans, port security is not a passing political issue but a cornerstone of our commitment to protect the American people. That is why Republicans are working to pass the PATRIOT Act. We demand a fair and impartial 45-day security review of the proposed acquisition of the P&O Navigation Company of Britain by the Dubai Ports World.

I don't mean to be unfair to Senator BOXER, but it is an example of folks maybe taking a different position, trying to blame the President for something, in fact, that they have blocked in the past.

This is from an editorial in the Los Angeles Times, February 26:

. . . Now there is a Republican in the White House, and of all the grandstanding surrounding the Dubai Ports World deal, none tops Boxer's performance. She said last week that she would support legislation preventing any foreign firm, state-owned or not, from buying port operations. Memo to Boxer: 13 of the 14 container terminals at the ports of [Los Angeles] and Long Beach, the biggest port complex in the United States, are run by foreign-owned companies. She later told The Times that she meant such deals should get greater scrutiny, not be banned. Still, this is the sort of proposal one would expect from a Senator from a landlocked state like Vermont, not one where international trade plays a vital role in the economy.

The article goes on to talk about the 180-degree switch of opinions. Again, I don't mean to pick on one Senator. My plea to the other side, and my side as well, as we look at this vital issue of security in our country, don't look for political opportunities to blame one side for something we actually created ourselves. On the security issue, there is no better example of colleagues who have blocked security in many ways and now are attempting to suggest the President is not strong on security. President George Bush is the world leader in the war on terror and has probably done more to secure the borders of our homeland than any President or any Member of Congress. It is time we give him that respect.

Mr. President, I thank you for the time, and I yield the floor.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. REID. Mr. President, yesterday, the Senate passed a bill negotiated by the junior Senator from New Hampshire, Mr. SUNUNU, to strengthen civil liberties protections in the PATRIOT Act. In light of the improvements contained in the Sununu bill, I will now vote in favor of the pending conference report.

As I have emphasized many times, Democrats support the basic authorities contained in the PATRIOT Act. We voted for the original act in 2001. We unanimously supported the reauthor-

ization bill that passed the Senate last summer. In recent months, we have been vigilant to ensure that no provision of the act would expire during ongoing negotiations over a long-term extension of the law. But our support for the PATRIOT Act doesn't mean a blank check for the President.

Last December, a bipartisan group of Senators joined together to insist that the reauthorization bill which had been returned from the House-Senate conference be improved. We defeated that conference report, we did it purposefully, and it was done on a bipartisan basis.

I note that some of my "admirers"—I use that caustically—have run ads in the State of Nevada trying to embarrass me, saying that I and the Democrats are not for the PATRIOT Act. That was raw politics at its worst. What we tried to do, on a bipartisan basis, was to have a better conference report. That is what is happening. Some would say it has not been improved enough. I could argue that, but it has been improved.

Republicans and Democrats declared back then that Congress can provide the Government with the powers it needs to protect Americans and, at the same time, ensure sufficient checks and oversight to prevent abuses of these powers. Security and liberty are neither contradictory nor mutually exclusive.

Our insistence that the PATRIOT Act be improved has borne fruit. We stood up to the White House to demand a more balanced approach to antiterror tactics, and we have succeeded. Some say we didn't improve it enough, but there is no question that we improved it. Thanks to the courageous stand of Senator SUNUNU and a handful of other Republicans, along with the long-standing efforts of Chairman SPECTER, Senator LEAHY, and other Democrats on the Judiciary Committee, the Senate will soon pass a stronger, better PATRIOT Act.

The current bill is far from perfect. It falls short of the unanimously supported Senate bill we passed last summer. I would have preferred additional improvements in the conference report, but the version of the PATRIOT Act we will soon reauthorize is a vast improvement over the law we passed hastily in 2001.

For example, under the original PATRIOT Act, people who received a Government request for business records under section 215 were barred from discussing the request with anyone—their wives, sons, daughters, business partners—no one. But now, for the first time, recipients of such a gag order will be able to challenge it before a judge.

In addition, the new bill will restrict Government access to library records. The bill makes it clear that libraries operating in the traditional role, including providing Internet access, are not subject to national security let-

Finally, under the Sununu bill we passed yesterday, individuals or businesses that receive a national security letter will not be required to tell the FBI the identity of a lawyer they may consult to obtain advice or assistance. It seems so obvious that it is the right thing to do, but we had to fight for that.

Even before the Sununu improvements, the conference report included a number of crucial provisions to ensure congressional and public oversight of the Government's expansive powers under the PATRIOT Act. We insisted that the House accept 4-year sunsets instead of 7-year sunsets on the most controversial provisions of the act. In the original bill, we set sunsets. It is so important, as we look back and recognize why we did that. It is so important that we did that. Because of that, we were forced to improve this legislation. I again say that maybe it is not to the satisfaction of some, but it is certainly improved.

The conference report also requires extensive congressional public reporting and mandates audits by an independent inspector general. That wasn't there before.

I will continue to work for additional improvements in the act.

I wish to say at this time that Senator RUSS FEINGOLD is a person for whom I have great admiration. We are so fortunate that he is a Senator. Academically, no one in the Senate has a record that is superior to his. He is a Rhodes scholar, someone who stands for principle. I disagree with him on this legislation. I can support this legislation not going with all of the improvements that he, as a matter of principle, has caused the Senate to review.

I believe it is unfortunate that this good man, the Senator from Wisconsin, was not able to offer even two amendments. We asked the majority leader: How about two amendments? Don't fill the tree. He will take 15 minutes on each amendment. We were turned down. That is why I voted against cloture yesterday. That is a bad way, in my opinion, to run this Senate.

So I want the record to be spread with my words that RUSS FEINGOLD is a fine lawyer. I congratulate and applaud him for his work on this issue and other issues.

I will continue to work with him to seek additional improvements to the act. For example, I know he worked hard on an issue that is so important. Let's go back to the Senate-passed version of section 215, under which a Government request for medical records and other sensitive personal information must have a more direct connection to a suspected terrorist or spy.

Second, I remain extremely concerned about the lack of meaningful checks on Government overuse or abuse of national security letters. The Washington Post reported last November that the FBI issues more than

30,000 such letters in a year, with no judicial supervision. So we need more oversight of the Government's power to issue these secret subpoenas—30,000 of them. How many is that a day? How many is that a week? How many is that a month? It is unfortunate that we were unable to get ahold of this and change this.

Third, I still don't believe it was appropriate to include in the conference report sections not included in either the House or Senate bills limiting the right of habeas corpus in cases having nothing to do with terrorism. I will oppose any further weakening of the great writ.

There is a hue and cry out there that we have to do something about earmarks. What they always talk about are appropriations earmarks, which include a fraction of a percentage of the spending of this Government.

I do not back away or apologize for the earmarks I have placed in appropriations bills. I have a responsibility. I know better than some bureaucrat in Washington, DC, how the Forest Service should spend its money on the forests in Nevada. I know better than some bureaucrat from the Bureau of Land Management how money should be spent in Nevada. And 80 percent of the Federal lands controlled by the Bureau of Land Management are in Nevada. I know better than some bureaucrat in Washington, DC, how the money should be spent on roads and highways and bridges and dams in my State.

I believe in the Constitution. I believe the Constitution sets forth three separate but equal branches of Government, and by our folding on this earmark procedure and not doing our jobs, we are caving in and not following the Constitution. There are ways we can improve the way earmarks are placed on bills, and I am happy to work on that. I have worked with the distinguished ranking member of the Appropriations Committee and his staff to make sure this earmarking legislation that will be on the floor is not going to hurt what this body does. But my point is that earmarking is more than the Appropriations Committee. Is this an earmark that they stick in a conference report, where it is not in the House or Senate bill, that changes one of the basic rights Americans have guaranteed by our Constitution—a writ of habeas corpus? Yes. It is wrong. So if you want something about earmarks, let's not just focus on the Appropriations Committee.

I have talked about the flaws, and I am satisfied, in spite of them, that the conference report, as improved by Senator SUNUNU, is a step in the right direction and certainly better than the original PATRIOT Act.

Let me say a word about the relationship between the current debate on the PATRIOT Act and the continuing controversy over unlawful eavesdropping by the National Security Agency. On the same day we voted on

the PATRIOT Act conference report last December, when the conference report wasn't allowed to go forward, the New York Times reported that the President had authorized a secret program to eavesdrop on American citizens without warrants required by the Foreign Intelligence Surveillance Act. That story had a clear impact on the vote that day, as it well should have. There was some question why we were even having this protracted debate over the PATRIOT Act, since the President seemed to believe he was free to ignore the laws we enact anyway. But, in fact, no one is above the law—not even the President of the United States. One lesson of the NSA spying scandal is that Congress must stand up to the President and must insist on additional checks on the powers exercised by the executive branch. That is what we are doing today with this PATRIOT Act.

In addition to what we have here with the PATRIOT Act and NSA spying, now we have this Dubai port security, I think, scandal, on which the final decision was made by the Secretary of the Treasury, not the Secretary of Homeland Security. Whenever this administration is faced with a decision that affects the business community or the national security, the homeland security of this country, they always go with business.

Why wasn't the Secretary of Homeland Security the one who signed off on that? These companies control the perimeters of these facilities; they decide who does the background checks. The debate over the PATRIOT Act and over NSA wiretapping and the Dubai port situation is all about checks and balances. That is what this is about. They go to the heart of our system of separation of powers.

Today, we give the Government the tools it needs to help protect our national security, while placing sensible checks on the arbitrary exercise of Executive power.

So today, when this bill passes, I hope everybody will understand that I am saying that I am voting for this conference report because I think it improves the original PATRIOT Act, not because it is perfect. It is far from perfect.

I hope this administration—even though the President is in faraway India—gets the word that what is going on in this country with what I believe are constitutional violations is inappropriate. We need to get back to doing what is right for this country, following the Constitution and reestablishing the legislative branch of Government as a separate and equal branch of Government.

Mr. BYRD. Mr. President, how long am I recognized for?

The PRESIDING OFFICER (Mr. VITTER). The Senator from West Virginia is recognized for up to 35 minutes.

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD pertaining to the introduction of S. 2362 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

PRESCRIBED PSE

Mr. TALENT. Mr. President, I rise today to engage the distinguished chairman of the Judiciary Committee, Senator SPECTER, in a colloquy regarding the intent of the Combat Methamphetamine Act of 2005.

Section 701 of the PATRIOT Act of 2005 establishes restrictions on the sales of precursor chemicals used to manufacture methamphetamine. As you know, the methamphetamine abuse and trafficking problem is growing in our country, and this legislation will help to combat the epidemic.

The methamphetamine control provisions of the act are intended to address those precursor chemicals sold without a prescription.

I know that Chairman SPECTER and I agree that exempting pseudoephedrine products provided via a legitimate prescription is critical. Physicians and other health care providers sometimes prescribe pseudoephedrine products in amounts that could violate the daily and monthly limits included in this legislation.

Patients who need more pseudoephedrine than the law would allow need the option of getting pseudoephedrine under a prescription, and Senator SPECTER and I agree that the methamphetamine provisions should not impede the care of legitimate patients. Our new requirements focus on products purchased outside the current prescription process. We are seeking to stop the bad actors from manufacturing and trafficking methamphetamine and have no desire to prevent proper patient care. Many States that have enacted laws to combat the methamphetamine epidemic have also included this type of exemption. It just makes sense.

Mr. SPECTER. Mr. President, I would say to my colleague from Missouri that physicians should not be forced to change what are common and appropriate prescribing patterns in an effort to stop the manufacturing and trafficking of methamphetamine.

The Senator from Missouri is correct. The Combat Methamphetamine Act provisions in the PATRIOT Act are intended to address over-the-counter sales, not pseudoephedrine products provided under a valid prescription. It is my expectation that these new restrictions apply only to pseudoephedrine products provided to consumers without a prescription.

Mr. TALENT. I thank the distinguished chairman for this clarification.

Mr. KERRY. Mr. President, over the course of this week, the Senate has had a series of votes on the PATRIOT Act conference report as well as on a bill amending the conference report introduced by Senators SUNUNU, CRAIG, MURKOWSKI, and HAGEL.

Last December, I voted against cloture on the PATRIOT Act reauthoriza-

tion conference report. I did not cast that vote because I oppose reauthorizing the PATRIOT Act—I supported the PATRIOT Act then just as I do now. I voted against cloture on the conference report because I believed that it did not adequately protect our civil rights and liberties. Supporters of the conference report believed that you had to choose between two extremes: taking a tough stand on terror and protecting our fundamental constitutional rights. I thought you could accomplish both at the same time.

On February 28, 2006, I voted against cloture on the Sununu compromise bill, S. 2271, vote No. 22, because of procedural measures taken by the majority to prevent Senator FEINGOLD—or any other Senator—from offering amendments. Senator FEINGOLD's four proposed amendments would have improved the Sununu compromise and addressed more of the concerns I had with the conference report. They would have, No. 1, ensured that section 215 orders to produce sensitive library, medical, and other business records would be limited to individuals who had some connection to terrorism; No. 2, ensured that judicial review of section 215 gag orders and National Security Letter, NSL, gag orders is meaningful; No. 3, sunsetted the NSL authorities after 4 years; and No. 4, required notification of sneak-and-peek search warrants within 7 days of the search rather than within 30 days. I believe that each of these amendments would have improved both the Sununu compromise bill and the conference report. Regardless of whether my colleagues agree with me on that, I believe the Senate should have been given the opportunity to vote on them.

On March 1, 2006, the Senate conducted a series of votes, both procedural and substantive on the Sununu compromise bill and the PATRIOT Act conference report. I voted to support the Sununu compromise. I also voted to proceed to the motion to reconsider the conference report, to proceed to the conference report, and to invoke cloture on the conference report because, in my view, the Sununu compromise and the conference report come as a package deal. I support the two taken together, and for that reason, I also voted for the conference report today.

I support the Sununu compromise bill because it makes some important improvements to the PATRIOT Act. First, it allows judicial review of a section 215 nondisclosure order 1 year after its receipt. Section 215 of the PATRIOT Act allows the Government to obtain business records, including library, medical, and gun records among other things. Under the conference report, recipients of these section 215 orders were subject to an automatic permanent nondisclosure order which would have prevented them from bringing any court challenge. Under the compromise, a section 215 nondisclosure order is now subject to judicial review.

Second, the conference report would have required recipients of National Security Letters, NSL, to identify their attorneys to the FBI. NSLs allow the Government to obtain, without a warrant, subscriber records and other data from telephone companies and Internet providers. The compromise removes that requirement so that recipients of NSL orders can seek legal advice without having to inform the FBI.

Third, the compromise clarifies that the Government cannot issue NSLs to libraries unless the libraries provide "electronic communications services" as defined by the statute. Thus, libraries functioning in their traditional roles, including providing Internet access, are not covered.

Even though this legislation does not address all of my concerns with the conference report, these compromise provisions are steps in the right direction and will be important components of the PATRIOT Act.

I am proud to support this legislative package and am pleased we have reauthorized and improved the PATRIOT Act. I believe there is still more work to be done and will work with my colleagues; such as Senator FEINGOLD and Senator SPECTER, on further improvements. For example, in a perfect world the PATRIOT Act would provide for more meaningful judicial review of section 215 gag orders as well as NSL gag orders. There is no reason to have a conclusive presumption against recipients—one that can only be overcome by a showing of Government bad faith. Nor is there any reason to prohibit judicial review of those gag orders until a full year has passed. They should be immediately reviewable, and, if there are any presumptions, they should be in favor of the privacy rights being invaded rather than the Government doing the invading.

In a perfect world, the Patriot Act would require the subjects of section 215 business record disclosures to have some link to suspected terrorists. As I mentioned earlier, section 215 is expansive, and it allows the Government to obtain very sensitive, personal records. Simply requiring those records to be relevant to an authorized intelligence investigation, as the conference report does, is simply not enough. This standard will not prevent Government fishing expeditions.

And, in a perfect world, the PATRIOT Act would have required the Government to notify victims of sneak-and-peek searches—unannounced and secret entries into the homes of Americans—within 7 days as the original Senate bill did. The 30- to 60-day timeframe is simply too long. People have a right to know when the Government has been in their house, searching through their things.

Thus, I understand why some of my colleagues are disappointed with the compromise. They say that it does not go as far as the original Senate bill which was passed by unanimous consent, and they are right. But the fact is

that the compromise does improve the original conference report. I believe the compromise was the product of good faith negotiations. It is not a perfect bill, but it is a step in the right direction. And I will continue to work with my colleagues so that we can create a more even balanced PATRIOT Act.

Mr. ROCKEFELLER. Mr. President, I rise to speak in favor of the conference report on the PATRIOT Act Improvement and Reauthorization Act of 2005 and the accompanying measure to amend the Reauthorization Act. I commend the work of Senator SUNUNU and others in addressing several flaws in the measure reported by the conference in December. And I congratulate the hard work of Senators SPECTER and LEAHY in leading the Senate's efforts to extend and improve the PATRIOT Act.

I remain disappointed, however, in the process followed by the House-Senate conference, which not only excluded Democratic Members from key meetings and deliberations but also excluded the public. Sadly, the deficient process of the PATRIOT Act conference is characteristic of the manner in which too many conferences have been conducted in recent years.

Nevertheless, overall, adoption of the conference report, along with the accompanying improvements contained in the Sununu bill, will not only extend the PATRIOT Act but make it a stronger, more balanced tool in our fight against terrorists. I was one of the Senate's 10 conferees: 6 Republicans and 4 Democrats. We were appointed from the leadership and ranks of the Senate Judiciary and Intelligence Committees, the two committees with a direct responsibility for reauthorizing the PATRIOT Act.

The Senate conferees were appointed on July 29, 2005, immediately upon the Senate's passage by unanimous consent of the bill that had been unanimously reported by the Senate Judiciary Committee. I had expected that the conference with the House, which in July had passed a different reauthorization bill, would begin promptly on the return of the Congress at the beginning of this past September from last session's August recess. In fact, the House did not name its conferees until November 9.

The conference met the following day, on November 10, for its one and only meeting. That meeting was devoted exclusively to 5-minute opening statements. In my opening statement to the conference, I stressed the importance of how we did our work. I urged that the conference proceed openly, including by considering amendments in public session. I warned that otherwise the Congress would risk losing an indispensable ally in the long-term effort to defend the Nation; namely, a public that has confidence in the necessity for and the balance of the PATRIOT Act.

Unfortunately, our opening statements turned out to be our closing

ones, because we never met again as a conference. The flawed process of the conference produced a flawed result. Because it fell short of what the conference could have achieved, I joined my fellow Senate Democratic conferees in not signing the conference report. We then joined a bipartisan coalition that opposed cutting off debate in December and insisted that there be a further effort to improve the bill. That additional time has been well spent.

From the outset of the PATRIOT Act reauthorization debate, there has been neither division nor doubt in the Congress that we would unite in extending the investigative and information sharing powers that were enacted in the wake of September 11. Over this past year, as we have debated the checks and balances that should be added or strengthened, Republicans and Democrats alike have been prepared throughout to achieve what we have now accomplished, the extension of essential national security authorities.

In most cases, those authorities have been made permanent. For a few, we have decided that a further review in 4 years is appropriate before deciding whether to make these authorities permanent as well. The PATRIOT Act reauthorization agreement now before us establishes or augments some notable checks and balances. We have responded to the concerns of librarians and booksellers by requiring high level F.B.I. approval of applications for orders requiring the production of records. And we also have required that any such applications to librarians and booksellers be reported to the Congress. The holders of other sensitive records B concerning firearm sales, tax returns, education, and medical matters B also have enhanced protection.

The Reauthorization Act also places in the law provisions for the judicial review of orders from the Foreign Intelligence Surveillance Court for the production of records. Similarly, it also places explicitly into law something that the courts have already begun to require; namely, procedures for judicial review of national security letters to businesses from the F.B.I. demanding that they produce records for investigators.

I join others in the Senate and House in wishing that some of these provisions had been written in a more balanced way. Specifically, I am concerned that some of the new judicial review procedures tilt in a one-sided manner toward the Government and may not give the individuals and businesses who may seek relief a fair opportunity to make their cases. If Congress promises citizens judicial review, it ought to deliver fully on that promise. Some of those imbalances may have to be addressed by the courts or in future legislation.

The additional time to reach a PATRIOT Act agreement also gave us the opportunity to change other objectionable provisions of the original conference report. The report had con-

tained a requirement that the recipients of orders for the production of documents from the Foreign Intelligence Surveillance Court or by a national security letter advise the F.B.I., on its request, of the name of any attorney they contacted.

This would have been the first time, to my knowledge, that Congress had empowered the F.B.I. to demand that a citizen, who has been presented with a demand by the Government, inform the F.B.I. that he or she has spoken to an attorney and be required to give the F.B.I. the lawyer's name. I found that this intrusive provision, which we were told that the Department of Justice had insisted upon, to be inconsistent with basic American values. I am especially gratified that Senators SUNUNU, CRAIG, MURKOWSKI, and HAGEL were able to persuade the White House to strike this misguided provision.

Congress has an abiding commitment to provide our law enforcement and intelligence personnel with the tools and authorities they require to protect America. The Foreign Intelligence Surveillance Act and the PATRIOT Act are prime examples of that commitment. And it is a commitment that is not just a one time thing. Congress has returned repeatedly to these statutes to add new authorities or enhance existing ones.

In that process, any of us, as individual legislators, may not achieve all of what we want, but collectively we fulfill our oversight responsibilities by inquiring, debating, voting, and conducting oversight concerning the powerful tools that a President, whomever it may be at the time, believes that our law enforcement and intelligence officials need to protect America.

This process has not been followed, unfortunately, with respect to the NSA warrantless surveillance program inside the United States recently disclosed and acknowledged by the President. The administration continues to withhold important facts about the NSA program and, in turn, has prevented Congress from understanding the program and evaluating whether it is both legally and operationally sound. If a President refuses to deal with the Congress as a co-equal branch of Government, then the Congress cannot fulfill its responsibility on behalf of the people to ensure that the executive branch is acting under the rule of law.

For the PATRIOT Act, this is not the end of the process. We have an obligation to be vigilant in our oversight. And we will be returning to the act no later than 4 years from now when the remaining sunsets expire, in order to consider reauthorization legislation for those authorities.

During this time, the Senate Select Committee on Intelligence, of which I am vice chairman, will continue monitoring how the authorities contained in the PATRIOT Act are used to ensure that we have struck the proper balance

between empowering our counterterrorism efforts while not infringing upon the civil liberties of Americans.

Mr. KENNEDY. Mr. President, for months, we have been ready to roll up our sleeves and get back to work on the PATRIOT Act, but the White House has continued to block bipartisan efforts to improve the original bill and accept oversight of its intrusive surveillance programs. Again, and again, the administration has refused to join in serious negotiations with Republicans and Democrats on matters of national security, including the National Security Agency's warrantless wiretaps and the FBI's use of national security letters. The latest proposal offers improvements and deserves to pass; however, it is unacceptable and undemocratic that further amendments could not even be considered.

We need to implement these improvements quickly given the administration's disregard of congressional oversight. The proposed reauthorization bill requires public reports on the use of two of the most controversial provisions: section 215 and national security letters. It also requires the inspector general to audit their use, and it mandates a report on any data-mining activities by the Justice Department.

Americans deserve national security laws that protect both our security and our constitutional rights, and more changes are clearly needed. One of the most glaring omissions in the proposal is the failure to include a 4-year sunset provision on national security letters, even though it would be consistent with the new reporting and auditing requirements that will take effect.

The latest changes provide some additional protection for libraries, but these safeguards should apply to all of the means used by the Government to obtain sensitive information, including financial documents and library records. We also need a report on the Government's use of computerized searches from all Federal agencies, and we will continue to seek such a requirement as part of efforts toward other reforms.

We have not yet achieved the 9/11 Commission's goal to maintain governmental powers that enhance our national security while ensuring adequate oversight over their use. With so much at stake, the administration's refusal to work with Congress can only weaken our national security and further undermine the public's trust in their Government. So this battle will go on, and I regret we could not accomplish more in this needed legislation.

Mr. BINGAMAN. Mr. President, I rise today to speak in opposition to the PATRIOT Act conference report.

As I have stated in the past, I strongly support giving law enforcement the tools they need to aggressively fight terrorism. But I also believe that we must ensure that we adequately protect constitutional rights and properly balance civil liberties with national security concerns.

I support reauthorizing many of the expiring provisions of the PATRIOT Act, but I believe we need to make some important changes to ensure that Americans' civil liberties are protected. When the Senate debated this issue last July, I supported the bipartisan compromise, which unanimously passed the Senate, to reauthorize the expiring provisions of the PATRIOT Act. Unfortunately, many of the improvements that were made were later removed at the insistence of the White House and the House of Representatives. I cannot in good conscience support a reauthorization bill that is fundamentally flawed and lacks basic safeguards with regard to the rights of Americans.

The final compromise that was worked out, including the conference report and the bill offered by Senator SUNUNU, falls short in several respects. First, it does not address the problems with section 215, which allows the Government to obtain sensitive personal records, such as library, medical, or business records, as long as the Government submits a statement indicating that the documents are relevant to a terrorism investigation. I, along with many other Senators, have pressed to modify this standard to require that the Government show that the documents sought are actually relevant to the activities of a terrorism suspect or the activities of a person in contact with the suspect.

It is reasonable to require that if the Government is going to look at the private records of Americans that the Government demonstrate that the request for records has some actual connection to a terrorist and isn't just part of a fishing expedition. The final compromise does not include any significant improvements with regard to the standard for issuing section 215 orders.

The conference report also falls short with respect to section 215 gag orders. Under the PATRIOT Act, when a section 215 order is issued, the receipt of an order, such as a library or doctor, is automatically prohibited from disclosing that the FBI is seeking the records. In addition, under current law there is no explicit right to petition a court to modify or quash a gag order. The conference report still provides for an automatic gag order and prohibits judicial review, but specifies that a recipient of a section 215 gag order may disclose its existence to an attorney to obtain legal advice.

Although the Sununu bill the Senate passed earlier this week as part of the final compromise technically allows for judicial review of a nondisclosure order and permits a recipient to challenge the gag order before a FISA judge, this is merely an illusionary right and does not provide any meaningful review. A recipient must wait 1 year to challenge the gag order and the judge may overturn the order only if there is no reason to believe the disclosure will endanger national security.

However, because the Attorney General may certify that the disclosure may endanger national security and a judge must treat this certification as conclusive unless the Government is found to be acting in bad faith, it would be almost impossible to ever successfully challenge a gag order.

I also have significant concerns with respect to national security letters, or NSLs. National security letters are essentially formal requests made by Federal intelligence investigators to communication providers, financial institutions, and credit bureaus to provide certain consumer information relating to a national security investigation. The issuance of an NSL does not require any judicial oversight. The laws explicitly permitting NSLs were meant to prevent financial institutions from being held liable for disclosing private financial information in contravention of Federal privacy laws. NSLs do not require any court approval, and since 9/11 the Government has increasingly relied on them to obtain information as part of terrorism investigations. Like recipients of section 215 orders, NSL recipients are subject to an automatic gag order. At least two Federal district courts have found that NSL gag order restrictions and the lack of judicial review amount to constitutional violations under the fourth and first amendments.

The conference report attempts to address constitutional problems regarding NSLs by authorizing judicial review of NSLs and providing the ability to challenge a nondisclosure order. However, while recipients are technically given the ability to go to court, the right is essentially meaningless. The conference report does allow an NSL recipient to challenge the validity of an NSL in a district court, but it also stipulates that all of the Government's submissions are secret and cannot be shared with the person challenging the order. In addition, although the gag order can be challenged in court after 1 year, like section 215 challenges, the only way to prevail is to demonstrate that the Government is acting in bad faith because the Government's certification that disclosure would harm national security is conclusive.

The final compromise included in the Sununu bill does not address the significant problems with the NSL process, but rather makes some minor improvements with regard to NSLs. Under the compromise, it would remove the requirement that a person inform the FBI of the identity of an attorney providing advice to a NSL recipient. The compromise also clarifies that libraries are not subject to NSLs. Libraries, however, would remain subject to section 215. I believe the compromise fails to provide meaningful judicial review of NSL orders.

Finally, I also believe we missed an important opportunity to address the so called sneak-and-peek provision, which allows the Government to search

homes without notifying individuals of the search for an extended period of time after the search.

Many of my colleagues have come to the Senate floor and stated that they share the same concerns that I do with regard to the shortcomings of this current compromise. Senator SUNUNU, who has been instrumental in negotiating this compromise with the White House, and Senator SPECTER, the chairman of the Senate Judiciary Committee, have indicated their intention to push legislation aimed at modifying the PATRIOT Act in a manner consistent with the bipartisan bill that the Senate unanimously passed in July.

Although I support these efforts, and I intend to support legislation that would make these modifications, I am under no illusion that the Senate will take up any of these bills in the near future. Having just finished debate on the PATRIOT Act, I do not believe that Congress would have much of an appetite to take up this issue again. We had our opportunity, and, unfortunately, we missed it.

The changes that I would like to see made have the support of the majority of Senators—indeed, they were included in the bill that unanimously passed the Senate. However, because the majority leader knew that these sensible changes would garner wide support, he used procedural maneuvers to prevent any Senator from offering an amendment to fix the bill. Had these amendments been adopted, which I think it is fairly clear they would have, I would have voted for the conference report without hesitation.

While I recognize that this bill will make some slight improvements with respect to the PATRIOT Act, we have missed a critical opportunity to address the primary issues that have concerned the American public. As I have discussed, the Government can still access the library records and medical records of Americans without having to show that the documents sought have some connection to a suspected terrorist or the activities of a terrorist. The conference report simply failed to address the core shortcomings of some of the provisions in the PATRIOT Act.

I supported the improvements in the Sununu bill, but the analogy I would use is this: If you need to fix the broken windows on your house and the repairman comes along and paints your house instead—has your house been improved? I would say yes, but your windows are still broken. It is time for Congress to address the primary problems with the PATRIOT Act, and it is my hope that we can eventually enact commonsense reforms that enable the Government to fight terrorism in a manner consistent with our Nation's historic commitment to upholding basic civil liberties. I truly believe that the American people expect more of Congress with regard to the approach we have taken in ensuring our national security while at the same time protecting the liberties of Americans.

Mr. SALAZAR. Mr. President, I discuss the pending reauthorization of the USA PATRIOT Act.

We are near the end of what has been a very long process. For the past year, Congress has grappled with the need to renew a handful of provisions of the PATRIOT Act. As my colleagues know well, this legislation has embodied the debate over how to balance the needs of law enforcement in the war on terrorism and the paramount importance of protecting Americans' civil liberties.

The greatest Americans have always understood our shared responsibility as citizens of this great country to ensure that we get this balance right. And many times over the course of the debate about the PATRIOT Act, I have thought of Benjamin Franklin's words, "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety." I have thought about how Daniel Webster reminded us that "God grants liberty only to those who love it, and are always ready to guard and defend it." I believe that it is worth taking pains to be sure that we produce the very best balance, and the very best legislation, we can.

Last week, several Senators with whom I have worked closely over the past year announced that they had reached an agreement with the White House on a proposal to renew these controversial provisions.

Let me say at the outset that I do not believe this agreement is by any means perfect. My colleagues who were involved in negotiating this compromise would be the first to agree with me on that point.

But it does contain a number of critical improvements over the original law. Our ultimate goal was to place reasonable checks on the law enforcement powers provided by the original PATRIOT Act. Although it is not as strong in some areas as I would prefer, the legislation today accomplishes that goal.

This proposal would produce a PATRIOT Act that includes a number of specific improvements over the law that was passed 4 years ago.

Section 215 of the original PATRIOT Act allowed the government to obtain business, library, and a whole host of other personal records simply by claiming the records were related to a terrorism investigation. The current proposal provides greater protection for the most sensitive records, by requiring senior level FBI-approval for orders related to library, book, education, gun, medical or tax records, and by limiting the retention and dissemination of information regarding Americans.

The original law did not provide for judicial review of Section 215 orders, National Security Letters, or for the accompanying gag orders. The current proposal does.

The original law did not allow the recipient of a Section 215 order or a National Security Letter to consult with an attorney. The current proposal does.

The original law allowed delayed notification of property searches—so-called "sneak-and-peek" searches—for undefined "reasonable" periods. The current proposal establishes hard limits on those delays, while continuing to allow extensions when they are warranted.

The original law allowed the government to target libraries with National Security Letters. The legislation exempts libraries from NSLs unless they meet the statutory definition of an Electronic Communications Service Provider.

The original law allowed the use of "John Doe" roving wiretaps, which don't specify the target or the phone or computer. The current proposal imposes limits on the use of such wiretaps.

Finally, the current proposal once again sunsets the Act's most controversial provisions—Section 215 and roving wiretaps—in 4 years, increases public reporting requirements about the use of the powers authorized by the Act, and requires the Inspector General in the Department of Justice to audit the use of Section 215 and National Security Letters.

These safeguards are not simply cosmetic; they make meaningful improvements to the original law, and will go a long way toward protecting Americans' rights and freedoms.

In spite of these safeguards, the proposal before us is not perfect. I would have preferred a stronger standard for obtaining a search order under Section 215. I would have preferred that the expanded authority to issue National Security Letters be sunset. But we will have the opportunity to review these provisions—both with the sunsets contained in this legislation and its increased reporting and auditing requirements. I am committed to taking advantage of those provisions to fight for strong and appropriate civil liberties safeguards, and I know my colleagues are, too.

I joined with colleagues on both sides of the aisle to push for the very best PATRIOT Act we could realistically get. We have come to the point where the very best achievable version of the PATRIOT act is the one before us.

I thank Senators CRAIG, DURBIN, SUNUNU, FEINGOLD, and MURKOWSKI—my fellow SAFE Act cosponsors—for all of their hard work over the past several years on this critical issue. Without their efforts, we would not have the civil liberties protections contained in this proposal. I express my sincere gratitude for allowing me to become involved in these efforts.

The vote on this agreement by no means marks the end of this process. Whether or not we differ on the legislation before us, I know we will continue to work together to provide law enforcement with the tools they need to fight terrorists, and to protect and preserve Americans' basic rights and freedoms.

That has been, and will continue to be, a fight that demands our most vigorous efforts.

Mr. AKAKA. Mr. President, I oppose the conference report for H.R. 3199, the USA PATRIOT Improvement and Reauthorization Act of 2005. This bill does not protect the cherished civil liberties and freedoms of the American people.

I voted for the PATRIOT Act in 2001. I believed then, as I do now, that we must give our Government the tools it needs to fight, detect, and deter terrorist acts. While I had reservations about the PATRIOT Act and the possibility that it would allow the Government to infringe upon our privacy rights and civil liberties, I supported the bill since the more controversial provisions were not made permanent. Granting the Government this time-limited authority allowed Congress an opportunity to review how these broad new grants of power were being used.

Unfortunately, the administration has been less than forthcoming in disclosing how the PATRIOT Act has been used. According to the reports we have received, the Government has used the PATRIOT Act to:

- investigate and prosecute crimes that are not terrorism offenses;

- investigate individuals without having any cause to believe the person is involved in terrorist activities; and

- coerce Internet Service Providers, ISP, to turn over information about email activity and web surfing while preventing the ISP from disclosing this abuse to the public. This information is disturbing and may be indicative of other abuses that the Justice Department has not told us about.

Given these abuses, meaningful checks and balances on the Government's authority to investigate Americans are essential. Last July the Senate agreed by unanimous consent to reauthorize the PATRIOT Act with substantially stronger protections in place. However, the Republican-controlled House of Representatives objected to the Senate bill and tried to pass a conference report lacking the protections that the Senate insisted upon. Last month, a compromise bill was introduced, S. 2271, the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006.

I voted for S. 2271 because it is an improvement over the PATRIOT Act. Any improvement is good. However, S. 2271 does not go far enough to correct the flaws in the PATRIOT Act and convince me that the changes made to the underlying bill will preserve our civil liberties. S. 2271 will make explicit the right to counsel and the right to challenge in court an order from the Federal Bureau of Investigation, FBI, to turn over records sought in an intelligence investigation, called section 215 orders, but it does not correct the underlying standard for issuing these orders. As such, the FBI, after going before the Foreign Intelligence Surveillance Act, FISA, Court, can demand a wide array of personal information—including medical, financial, library, and bookstore and gun purchase records—

about an individual without any cause to believe the person is involved in terrorist activities. S. 2271 does provide an express right to challenge the gag order that accompanies a Section 215 order, but only after waiting a year. However, if the Government certifies that the disclosure would harm national security, the gag order cannot be lifted.

S. 2271 would also remove the conference report's language requiring recipients of National Security Letters, NSLs, to inform the FBI of the name of any attorney they consult about the demand for financial or Internet records. NSLs can be issued without FISA Court review. Again the bill still does not require that there be any connection between the records sought by the FBI and a suspected foreign terrorist or person in contact with such a target. This is especially troubling since news reports show that 30,000 NSLs are issued by the Government per year, a hundred-fold annual increase since the PATRIOT Act relaxed requirements on the FBI's use of the power.

In 2003, the State legislature in my home State of Hawaii passed a resolution reaffirming its commitment to civil liberties and called the entire Hawaii congressional delegation to repeal any sections of the PATRIOT Act that limit or violate fundamental rights and liberties protected by the Constitution of the United States. In good conscience I cannot vote to support the PATRIOT Act because I believe that it allows the Government to infringe upon the rights and protections we hold most dear.

I do not believe that the PATRIOT Act makes our Nation safer. It makes our country weaker by eroding the very freedoms that define us. As Thomas Jefferson said, "The man who would choose security over freedom deserves neither." I am afraid that by passing this legislation today we will in fact have neither a more secure nation nor the freedoms for which we are fighting.

Mrs. BOXER. Mr. President, I voted for the conference report because on balance I believe it is necessary legislation to give our law enforcement officials the tools they need to protect the American people from terrorist attacks. Before the Patriot Act, various law enforcement agencies did not have the ability to share information and work together, and this was a vulnerability that needed to be fixed after 9/11.

But this was a difficult decision. The bill had flaws, and two in particular concern me the most the so-called "sneak and peek" and library search provisions. Given my concerns about these provisions, I voted for every opportunity to make further improvements to the bill.

But ultimately I believe that by voting for the conference report I will be in a stronger position to help improve the Patriot Act in the future, working with Judiciary Committee Chairman

SPECTER, Ranking Member LEAHY and Senators FEINGOLD and SUNUNU.

I also wanted to show my support for Senator DIANNE FEINSTEIN's anti-methamphetamine bill, which was included in the conference report. Meth has become a terrible scourge across our country and Senator FEINSTEIN's bill will go a long way to combat the spread of the drug by restricting access to the ingredients used to make meth.

Mr. DURBIN. Mr. President, I am pleased that this conference agreement includes important provisions which will provide critical new tools and resources to help combat methamphetamine—one of the deadliest, most powerfully addictive, and rapidly spreading drug threats facing our country. Fighting meth requires a comprehensive approach designed to assist States, local law enforcement and prosecutors to crack down on cooks and traffickers of meth while bolstering community education and awareness and expanding treatment options for those addicted to this dangerous drug. As a cosponsor of the underlying Combat Meth Act that was incorporated in this conference agreement, I believe our action today is long overdue.

In my home State of Illinois, the meth scourge, especially in rural areas, is egregious. Like many States, Illinois faces the daunting challenge of trying to stay one step ahead of those who will go to any length to procure the ingredients to make their drugs.

Just a year ago, a law took effect in Illinois which required placing adult-strength cold tablets containing ephedrine or as their only active ingredient behind store counters. The law also limited to two packages per transaction the purchase of adult-strength cold tablets containing ephedrine or pseudoephedrine as the sole active ingredient and tablets with ephedrine or pseudoephedrine in combination with other active ingredients. Additionally, the law required education and training for retail sales personnel. At that time, the Illinois law was among the toughest in the Nation and the strongest law among our border States.

However, after that date, several States passed laws more restrictive than the Illinois law, and reports from law enforcement authorities indicated that meth makers from Missouri, Iowa, Kentucky and nearby States were coming to Illinois to purchase products. Incidents such as these led to enactment in November 2005 of the Methamphetamine Precursor Control Act to impose stricter controls on the display and sale of cold and sinus products containing meth's key ingredient pseudoephedrine. The Attorney General of Illinois, Lisa Madigan, has instituted and operates an aggressive anti-meth program in partnership with law enforcement agencies and multi-country drug task forces.

The facts and figures about the devastating impact of meth in Illinois underscore why our actions today to advance tough new provisions and funding authorization are so vital.

The number of meth labs seized by law enforcement authorities in Illinois grew from 24 labs in 1997, to 403 labs in 2000, to 1,099 labs in 2003. Illinois State Police reported 962 lab seizures in 2004 and nearly 1000 meth labs in 2005, more than double the number uncovered in 2000. Since 1997, the quantity of methamphetamines seized annually by the ISP has increased over tenfold.

The number of methamphetamine submissions to the Illinois State Police crime laboratories increased from 628 in 1998 to 3,250 in 2003—more than a five-fold increase. The number of counties submitting meth also increased during that period, from 73 in 1998 to 96 in 2003. In 2004, Byrne grants helped Illinois cops make almost 1,267 meth-related arrests and seize approximately 348,923 grams of methamphetamines. Local police departments depend on Byrne grant funding to participate in meth task forces which tackle the meth problem by coordinating the enforcement and interdiction efforts of local agencies within regional areas. In fact, over 65 percent of Illinois's Byrne funding in 2004 went to local law enforcement agencies.

The Southern Illinois Enforcement Group pays almost half of its agents with funding from Byrne grants. In 2004, this regional task force was responsible for more than 27 percent of the State's meth lab seizures. In a recent success of Byrne grant funding, Glen Carbon Police coordinated with the Illinois State Police Meth Task Force to discover the largest lab in the village's history. In this incident, local authorities raided a meth lab that proved to be capable of producing up to 6,000 grams of finished methamphetamine. Given examples such as this, it is baffling that this administration seeks to eliminate these critical funds in its budget proposal.

Methamphetamine is the only drug for which rural areas in Illinois have higher rates of drug seizures and treatment admissions than urban areas. Meth use, and the number of people behind bars for possessing, making or selling it, has grown rapidly over the past decade in Illinois. Just 5 years ago, 79 inmates entered State prisons on meth offenses. Last year, that number was 541. In fiscal year 2003, rural counties accounted for the vast majority, 79 percent, of persons sentenced to prison for meth-related offenses. The number of treatment admissions relating to methamphetamine abuse in Illinois jumped from 97 in 1994 to 3,582 in 2003.

Another disturbing implication is the effect on families. In 2004, more than half of the children entering foster care in some areas of rural southeastern Illinois were forced into the program because their caretakers were meth abusers. Officials expect to encounter even more children in homes where meth labs exist in coming years.

When specific regions were examined, findings indicate that rural counties have experienced the greatest impact

of methamphetamine. Rural counties have been greatly impacted by the presence and growth of methamphetamine, and are responsible for driving the escalating levels of methamphetamine arrests, drug seizures and submissions, clandestine lab seizures, methamphetamine commitments to Illinois Department of Corrections and methamphetamine treatment admissions.

Illinois Criminal Justice Information Authority statistics show that in 2003, the per capita occurrence of clandestine meth labs in rural counties was over 1700 percent greater than it is in non-rural areas. The per capita presence of meth in rural areas is over 500 percent greater than it is in non-rural areas; more than 73 percent of meth labs found in the State of Illinois were found in rural counties. Of 366 felony arrests in Edgar County, IL, 145 were for methamphetamine.

But urban areas are not immune to the meth crisis. The perception that meth labs are a rural issue ended when a major meth lab was discovered in a Chicago apartment building last September. The challenge we face is overwhelming and our actions today signal a commitment to support a concerted effort to tackle this urgent criminal justice and public health and safety challenge.

I commend the tireless and tenacious leadership of Senators TALENT and FEINSTEIN who have labored long and hard to secure passage of a strong Combat Meth Act. I look forward to working with them to ensure that full funding is provided to implement these new tools and provide the needed resources to localities grappling with this drug crisis.

Mr. LEVIN. Mr President, when the PATRIOT Act reauthorization bill left the Senate last July, we had a bill with provisions that protected both our security and our liberty. What came back to the Senate from the House-Senate conference committee was a bill that raised significant concerns for Senators from both sides of the aisle. As a result, the Senate did not vote to end debate in December, as Senators wanted more time to address those concerns.

The PATRIOT Act conference report which is before us leaves major problems unaddressed. Among the conference report's flaws: Section 215 of the PATRIOT Act permits the Government to seek court orders, to compel the production of any tangible thing, including library, medical and business records, in foreign intelligence investigations, including records of people who are totally innocent even of any allegation of impropriety. The conference report omits language in the Senate-passed bill establishing a reasonable standard for the FBI to obtain these sensitive records with Section 215 orders. And to make matters worse, the conference report permits the FBI to include gag orders that preclude the recipient from telling anyone they

even received the order. The conference report does not even permit recipients to challenge those gag orders in court. Also, the conference report requires recipients section 215 orders to tell the FBI, if asked, from whom they have sought legal advice.

Since December, there have been a number of efforts to improve the conference report. Unfortunately, those have met with limited success. The Sununu bill, if it passes the House of Representatives, would make only minimal improvements to the conference report that the Senate considered last December.

The Sununu bill, if it passes the House, would eliminate the requirement that recipients of 215 court orders tell the FBI, if asked, whom they consulted for legal advice. This would be a worthwhile, if minor, improvement. The Sununu bill also provides people the right to challenge gag orders attached to so-called section 215 court orders. But the benefit of that is offset by the fact that the bill severely constrains the court's discretion to modify or set aside those gag orders.

Some argue the conference report is an improvement over the original PATRIOT Act. The bill before us does indeed correct some of the flaws in the original PATRIOT Act. For example, the PATRIOT Act did not require that a roving wiretap order identify a specific target—raising concerns that it could authorize so-called John Doe roving wiretaps. I am pleased that the conference accepted language that I proposed to correct that flaw.

However, too many flaws remain, the most serious of which is the standard of review section 215 court orders.

As I said earlier, section 215 of the PATRIOT Act permits the Government to seek court orders, to compel the production of any tangible thing, including library, medical and business records, in foreign intelligence investigations. No problem there. However, under section 215, the Government need not describe, much less identify, a particular person to whom the records relate, even in general terms, as linked to a terrorist groups or organization. I believe that we ought to apply the same logic to section 215 orders that the conference report applies to roving wiretaps. We ought to require that records sought with section 215 orders have some connection to an alleged terrorist or terrorist organization. Unfortunately, the standard in the conference report does not include that. It fails to narrow the scope of records that the Government can subpoena under section 215 to less than the entire universe of records of people who, for instance, patronize a library or visit a doctor's office. Instead, fishing expeditions are authorized, which could result in invasions of the privacy of large numbers of innocent Americans.

Let's assume the FBI has information that a person, whose identity is not known to the FBI, is using computers at New York public libraries to view certain Web sites.

The FBI only knows that the person has knowledge of the particular Web sites. The person is not suspected of wrongdoing himself. The FBI wants to find out the person's identity as part of a foreign intelligence investigation into those Web sites. The agency believes that they might be able to identify the person if they could review all the computer user records held by public libraries in New York.

The conference report would presumably permit the FBI to obtain a court order compelling the New York Public Library to provide the records of all their patrons. That is truly a fishing expedition. The conference report would also allow the FBI to prohibit the library from telling patrons that their names had been handed over to the FBI. While the Sununu bill permits the library to challenge that prohibition in court, it does not permit meaningful court review because, under its terms, if the Attorney General or another specified senior official certifies that disclosure may endanger national security or harm diplomatic relations, the court must find bad faith on the part of the Government in making such certification for the court to modify or set aside the nondisclosure requirement. This virtually eliminates the court's discretion.

Another example. Assume the FBI has information that a person, whose identity is not known to the agency, is sending money to charitable organizations overseas. They know from a credible source that the person is being treated for HIV at a particular AIDS clinic in New York that has 10,000 patients. The FBI wants to find out the person's identity as part of a foreign intelligence investigation into links between unspecified overseas charities and terrorist organizations. The agency believes that they might be able to identify the person if they could review the AIDS clinic's 10,000 patient files.

The conference report would permit the FBI to obtain a court order compelling the AIDS clinic to provide the files of all of its patients. The conference report would allow the FBI to prohibit the AIDS clinic from telling its patients that their names had been handed over to the FBI. While the Sununu bill permits the clinic to challenge that prohibition in court, as I discussed earlier, it does not permit meaningful court review because the Attorney General's unilateral certification would have to be found by the court to have been made in bad faith for the gag order to be lifted.

It is argued in response to the fishing expedition argument that the Government must set forth "facts" supporting a section 215 application. But that requirement doesn't fix the fishing expedition flaw. I just set forth facts, in two hypotheticals. If those hypothetical facts would not support a broad search of the library or clinic's records, the supporters should say what language in the conference report would preclude a search.

When this bill left the Senate, it contained protections against fishing expeditions. The Senate bill required a showing that the records sought were not only relevant to an investigation but also either pertained to a foreign power or an agent of a foreign power, which term includes terrorist organizations, or were relevant to the activities of a suspected agent of a foreign power who is the subject of an authorized investigation or pertained to an individual in contact with or known to be a suspected agent. In other words, the order had to be linked to some suspected individual or foreign power. Those important protections are omitted in the bill before us.

Some kind of narrowing language needs to be included in the PATRIOT Act for section 215 orders, just as it was when this bill left the Senate. Without that language and that linkage, the PATRIOT Act authorizes the rankest kind of fishing expedition.

The conference report is also flawed in its treatment of national security letters, or NSLs. NSLs compel phone companies and banks, for example, to turn over certain customer records. The Government can issue an NSL without going to court. And, like section 215 court orders, the Government does not have to show any connection between the records sought and an individual who the Government thinks is a terrorist. And like section 215 orders, the Government can impose a gag order on the recipient of an NSL. Also, in the case of NSLs, the conference report does not permit meaningful judicial review of those gag orders.

Also troubling about the NSL authority is that there is no requirement that the Government destroy records acquired with an NSL that turn out to be irrelevant to the investigation under which they have been gathered. These are records that relate to innocent Americans, and the Government should be required to destroy them if they contain no relevant material.

It is argued that while these protections were in the bill that left the Senate, they are not in current law. That is true. But the reason we put sunset provisions in the law is so we could more reliably make changes if experience indicated the need for change. We understandably acted quickly after 9/11 to fill some holes in our laws that needed to be filled. We added sunset provisions so we could review the law we wrote with the benefit of greater thought, in an atmosphere more conducive to protecting our liberties than understandably was the situation immediately after a horrific, wrenching, deadly attack.

Finally, I must comment on a tactic used in this debate which runs against the very grain of the Senate. The majority leader used a procedural tactic to prevent any Senator from offering any amendment during consideration of the Sununu bill, amendments which could have addressed some of the flaws I just described. That tactic of stifling

consideration of any amendment is contrary to the normal procedures of the Senate and reflects poorly on what is sometimes billed as the greatest deliberative body in the world. The rules of the Senate were written with the intent of allowing the consideration of amendments. In this instance, the rules were misused to block any effort to offer amendments. I voted against ending debate on the Sununu bill and against proceeding to debate on the PATRIOT Act conference report because no amendments were allowed to be considered.

This conference report still falls short of what the American people expect Congress to achieve in defending their rights while we are advancing their security. As a result, although I support many of its provisions, I must oppose it.

Mr. KYL. Mr. President, I rise today to comment on the USA PATRIOT Improvement and Reauthorization Act conference report. I support the conference report and, in particular, the conference report's amendments to section 215, the FISA business records provision, because those amendments confirm that investigators may use section 215 to obtain records and other tangible items that are relevant to any authorized national security investigation other than a threat assessment. The conference report appropriately balances privacy concerns and national security needs by amending the method by which investigators can obtain relevant records but not changing or otherwise limiting the scope of records that can be obtained through a section 215 order. For example, where appropriate, investigators may still obtain sensitive records such as library or bookstore, medical, or tax return records, but they must obtain very high-level sign-off internally before asking the court to order those records' production. Similarly, the conference report imposes an obligation on the Attorney General to develop minimization guidelines for the retention and dissemination of U.S. person information obtained through a section 215 order, but leaves the Department with flexibility in obtaining the information in the first instance and in structuring those minimization procedures.

My support for the conference report turns on my understanding that it codifies our intent not to limit the scope of items and records that can be obtained through section 215. This stands in contrast to the so-called "three-part test" that passed the Senate last year, which really did run the risk of limiting our investigators' ability to obtain records relevant to authorized national security investigations. The conference report is clear: we are continuing to provide our investigators with the tools they need. Along with two of my fellow conferees, Senators ROBERTS and SESSIONS, I sent a letter to Chairman SPECTER on the eve of the conference vigorously objecting to the Senate's proposed three-

part test. As the three of us expressed in that letter, we believed that requiring use of the three-part test to show relevance would have been a serious mistake. I am pleased to see that the final conference report does not mandate the use of that test. I will have that letter added to the RECORD following my remarks.

I support the conference report, including its amendments to section 206 of the USA PATRIOT Act, which authorizes "roving" wiretap orders under FISA because I believe that the amendments to section 206 do not hamper investigators' ability to use this critical tool. In this day and age of sophisticated terrorists and spies who are trained to thwart surveillance, allowing investigators to seek a wiretap that follows a specified target—rather than a particular cell phone—is critical. The conference report explicitly preserves this ability, while clarifying the level of detail necessary for investigators to obtain this type of wiretap. Similarly, I support the conference report's amendments to section 206 because they recognize that there may be some situations where it will not be practicable for investigators to return to court within 10 days of directing surveillance at a new phone or place. The conference report wisely affords the FISA Court judges discretion to extend the period of time investigators will have to keep the court apprised of how roving wiretaps are being used.

I support the conference report, and I support the amendments set out in S. 2271, because I think they set out the proper standard for judicial review of nondisclosure orders accompanying section 215 FISA business records orders and national security letters. We all recognize the need for secrecy in national security investigations—both to avoid tipping off targets in a particular case, and to avoid giving our enemies a better picture of how we conduct our investigations. Our enemies are sophisticated and devote enormous time and energy to understanding how we operate, all in service of allowing their agents to evade our investigations. The conference report recognizes the need for secrecy when the Government obtains a section 215 order from a court or serves an NSL on a business. But it also responds to concerns raised that recipients should have an explicit right to judicial review of nondisclosure orders.

The standard in the conference report is the appropriate one, both constitutionally and practically, as it recognizes that sensitive national security and diplomatic relations judgments are particularly within the Executive's expertise. The Constitution has vested these determinations with the Executive, and courts have long recognized that judges are ill-suited to be second-guessing the Executive's national security and diplomatic affairs judgments. Disclosures that seem innocuous to a judge who quite naturally must view those disclosures without being fully

aware of the many other data points known to our enemies—may nonetheless be quite damaging. The conference report's standard is therefore the correct one. It will be the exceedingly rare case in which a judge will find, contrary to a certification by an executive branch official, that there is no reason to believe that the nondisclosure order should remain in place. It will be even rarer for a judge to find that one of the Senate-confirmed officials designated in the conference report has acted in bad faith.

I could not have supported the conference report or the explicit judicial review of nondisclosure orders if I thought that they would give judges the power to second-guess the informed national security and diplomatic relations judgments of our high-level executive branch officials. The conference report makes clear that judges will not have such discretion, which is why I am voting for this report.

Another provision in particular that I support is the new public reporting obligations for the FBI's use of national security letters. That reporting will allow Congress to better perform our oversight obligations without endangering national security. The reporting requirement is focused on what is the most relevant number to Congress and the public—the aggregate number of different U.S., persons about whom information is requested. The reporting requirement does not require the FBI to break down the aggregate numbers in its report by the different authorities that allowed the national security letters, which is critical to preventing our enemies from gaining too much information about the way we investigate threats to the national security. And the reporting obligation is limited to information about U.S. persons. I support this limited public reporting because I think it will provide valuable information for our public debate—but without revealing too much information about the FBI's use of this valuable tool and thus compromising its use.

I ask unanimous consent that the November 3 letter to Chairman SPECTER be printed in the RECORD.

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

U.S. SENATE,

*Washington, DC, November 3, 2005.*

HON. ARLEN SPECTER,

*Chairman, Committee on the Judiciary, Hart Senate Office Building, Washington, DC.*

DEAR CHAIRMAN SPECTER: We are writing to express our concern about legislative language that we understand that you are considering adding to section 215 of the USA Patriot Act, the business-records provision of the Foreign Intelligence Surveillance Act. We have learned that you have discussed with Chairman Sensenbrenner the possibility of adopting in the final bill a modified version of the three-part test for "relevance" that was added to the Senate bill when it was marked up in the Judiciary Committee.

We believe that adding the three-part test to the final bill would be a serious mistake. We are deeply troubled by the complications

that this language might cause for future anti-terrorism investigations. Given the continuing grave nature of the terrorist threat to the United States, and the complete absence of any verified abuses under the Patriot Act since it was enacted, we believe that congress should be strengthening, not diluting, the investigative powers given to United States intelligence agents. We would have great difficulty supporting a conference report that adds the three-part test to section 215.

As you know, §215 of the Patriot Act allows the FBI to seek an order from the FISA court for "the production of tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information." FISA defines "foreign intelligence" as information relating to foreign espionage, foreign sabotage, or international terrorism, or information respecting a foreign power that relates to U.S. national security or foreign policy.

Section 215 is basically a form of subpoena authority, albeit one whose use requires pre-approval by a judge. As then-Deputy Attorney General Comey noted, "orders for records under [§215] are more closely scrutinized and more difficult to obtain than ordinary grand jury subpoenas, which can require production of the very same records, but without judicial approval." Similarly, the Washington Post has noted in an editorial regarding §215 that similar authority "existed prior to the Patriot Act; the law extends it to national security investigations, which isn't unreasonable."

Some critics of the Patriot Act have noted that it currently does not require a finding that a §215 order be relevant to a foreign-intelligence investigation. The Justice Department has conceded in litigation that a subpoena must be relevant to a legitimate investigation, and both the Senate and House bills add an explicit relevance requirement to the Patriot Act.

The final Senate bill goes further, however. The night before the committee mark up of the bill, a set of additional changes to the bill was proposed in order to address continuing Justice Department concerns and to appease the Democrats, who had filed in excess of 80 amendments to the bill. This final managers' amendment included, among other things, a three-part test for determining whether a §215 subpoena is, in fact, relevant to a foreign-intelligence investigation.

We appreciate the need to move this bill expeditiously and to avoid an extended debate over amendments in the Judiciary Committee. It had been our understanding, however, that the last-minute changes that were made to the bill in order to speed legislative progress would be re-evaluated in conference. And we believe that the three-part test that was added to §215 is unsound.

The three-part test, as we understand its latest iteration, would require the FBI to show, before a §215 subpoena may issue, that there are reasonable grounds to believe that the records that are sought either pertain to, are relevant to the activities of, or pertain to an individual in contact with or known to a suspected agent of a foreign power.

We have several questions about the language of the three-part test. To begin with the first part, what does it mean for information to "pertain" to a foreign power or its agent? How is this standard different from the traditional relevance test? Obviously, all foreign-intelligence information in some way relates to a foreign power—FISA expressly defines "foreign intelligence" in terms of foreign powers and their activities. Does all information that is relevant to a foreign-intelligence investigation therefore also "pertain" to a foreign power? If it does, what is

the purpose of the three-part test? And if the two standards are not co-extensive, what investigations are blocked by the three-part test, and are these investigations something that we want to block?

Similarly, what is the scope of the "activities" of a suspected agent of a foreign power? Does it include activities in which one suspects that a foreign agent might generally be involved, without regard to a specific subset of dates, times, and locations? Also, has the FBI ever subpoenaed records in the course of an intelligence investigation that did not relate to the activities of a suspected foreign agent, but which nevertheless were relevant to a foreign-intelligence investigation? Also, are there likely scenarios that would meet the relevance test but that do not relate to the activities of a foreign power? If so, we should inform ourselves about these past cases and scenarios, and ask whether we would want to preclude an FBI investigation in those circumstances.

Finally, what does it mean for a person to be "in contact with" or "known to" a suspected foreign agent? Does "contact" require a showing of communication between the two, or mere association? If association is sufficient, must it be recurring? And if a single instance of association is sufficient, how long must that association last? Also, what is the purpose of the language requiring that the ultimate target of the subpoena be "known to" an agent of a foreign power? This language appears to preclude a subpoena if the FBI can show only that the foreign agent is known to the target, but not that the target is known to the foreign agent. Is this distinction intentional? Also, this part appears to bar investigations of targets who are seeking to make contact with a foreign power but have not yet consummated that contact. Do we want to bar the use of §215 in such circumstances?

Although we would hope that the three-part test would be construed broadly by the FISA court, we would expect that court to conclude that the test significantly retracts the permissible scope of FISA subpoenas. First, the court inevitably would assume that congress added the three-part test to the statute because it perceived a need to restrict the use §215. Further, the canon of statutory construction that each part of a statute should be interpreted so that it has independent meaning also recommends a narrow interpretation of the three-part test. If each part of the three-part test is to have independent meaning, it must restrict investigations to a greater extent than does the relevance test. It thus seems to us inevitable that if we adopt the three-part test, that test will bar some significant subset of investigations that otherwise would be permitted by current law and the relevance test.

Just as important as the substantive limits created by the three-part test, however, are the bureaucratic burdens that it certainly will entail. One of the consistent lessons taught by all of the investigations of the failures that led the 9/11 attacks is that seemingly small or technical barriers can make a critical difference to the success of a terrorism investigation.

In two separate instances that we now know of, federal investigators were in close pursuit of 9/11 conspirators prior to the attacks and might have been able to uncover or even disrupt the plot. In each instance, however, these investigations were seriously—perhaps critically—undermined by bureaucratic barriers that few would have thought significant before 9/11. Several weeks before the attacks, federal agents in Minneapolis had arrested Zacarias Moussaoui and sought a FISA warrant to search his belongings, which we now know included the names of two 9/11 hijackers and

a high-level organizer of the attacks who later was captured in Pakistan. The FBI was unable to obtain that warrant, however, because at the time FISA required that the target of the warrant be an agent of a foreign power—apparent lone-wolf terrorists such as Moussaoui, even when believed to be involved in international terrorism, could not be the target of a FISA warrant. Similarly, two weeks before the 9/11 attacks, federal agents learned that Khalid Al-Midhar, one of the eventual suicide pilots, was in the United States. Based on his past Al Qaeda associations, these agents understood that Al-Midhar was dangerous and they immediately initiated a search for him. These intelligence agents were barred from seeking assistance from the FBI's Criminal Division, however, because of the legal wall that at that time barred cooperation between intelligence and criminal investigators.

We understand that you and Chairman Sensenbrenner are considering adopting the three-part test as a permissive presumption, and that you would also allow the issuance of §215 orders that meet the relevance test but not the three-part test so long as those orders are subject to minimization procedures. Though such a system apparently would eventually allow any relevant investigation to go forward, its ultimate effect would be to greatly complicate the process of obtaining a §215 order. Current law simply requires a showing of relevance to an intelligence investigation. The proposed system, in addition to its alternative procedures and presumptions, introduces a host of legal issues discussed earlier. These issues not only will generate litigation, but will also produce considerable legal and operational aversion to the use of §215.

We think that it is inevitable that in some cases, agents will be dissuaded from or delayed in seeking a §215 subpoena by the burdens created by this proposed system. The risk may appear insignificant that these additional burdens would fatally undermine a critical anti-terrorism investigation. But again, the legal and technical barriers that seriously undercut the pre-9/11 Moussaoui and Al-Midhar investigations also must have seemed minor at that time. When agents are investigating a particular suspect, they typically will have no way of knowing if he is a lead to discovering a major terrorist conspiracy. Even the Moussaoui and Al-Midhar investigators could not have known the importance of their efforts. Thus even when a bureaucratic barrier can be overcome, it is easy to envision how it might cause investigators to abandon pursuit of one target in favor of competing targets, or to give that target a lower priority.

We appreciate that §215 has become controversial in the debate over the Patriot Act—that it is one of the few provisions specifically attacked by so-called civil liberties groups and in newspaper editorials. We understand the appeal of doing something that would appease these parties. Nevertheless, we believe that higher priorities must be given precedence in this case. Absent real evidence of abuse, we should not legislate on the basis of hypothetical scenarios. Our national-security investigators abide by the rules governing their conduct. We should provide them with all of the tools to do their jobs that are constitutionally available—especially when those tools already are available to agents conducting ordinary criminal investigations.

Few things would cause us greater regret than if another major terrorist attack were to occur on United States soil, and we were later to discover that procedural roadblocks that we had adopted in this conference report substantially impeded an investigation that might have prevented that attack.

Again, we strongly urge you to oppose adding the proposed three-part test to §215 of the Patriot Act, and we note that we would have great difficulty supporting a conference report that includes such a provision.

Sincerely,

JON KYL,  
U.S. Senator.  
PAT ROBERTS,  
U.S. Senator.  
JEFF SESSIONS,  
U.S. Senator.

Mr. CHAMBLISS. Mr. President, once again, I want to congratulate Chairman SPECTER and Chairman ROBERTS for their extraordinary work in forging a conference report on the reauthorization of the USA PATRIOT Act. I have previously expressed disappointment that many concessions were made during this process which I believe have resulted in a bill far weaker than the original PATRIOT Act which passed overwhelmingly in response to the terrorist attacks of 9-11 and which represented long-overdue modernization of our intelligence and criminal investigative techniques. Similarly, this bill is far weaker than that agreed to after the hard work of the House-Senate conferees.

Nevertheless, our failure to pass this important extension would once again relegate America's intelligence and criminal professionals to the dark ages of investigative techniques, shackle them with outdated constraints, and prevent them from finding and stopping those who are intent on murder, terror, and the ultimate annihilation of Western civilization.

Arguments against the PATRIOT Act have been largely, if not wholly, without factual basis. They are premised upon a misperception of what protects our liberties. For the last 5 years, it has been the PATRIOT Act which has, at once, helped to keep us safe and to protect our Constitutional rights and liberties. Those liberties have not been jeopardized by expanded governmental authority, but by violent attacks against our way of life by terrorists. Those who have systematically worked to weaken this important bill, and who, even now oppose it, have, in my view, lost site of that reality, whether intentionally or not.

The PATRIOT Act represented long-overdue reforms of both our criminal and intelligence investigative laws. It modernized outmoded and antiquated law enforcement provisions and provided for commonsense law enforcement at its best. The provisions of the PATRIOT Act have been responsibly and appropriately utilized by the dedicated men and women of Federal law enforcement and the intelligence community to accomplish amazing victories in the war on terrorism.

In my earlier statement in support of the conference report on December 19, 2005, I outlined in detail case after case in which provisions of the PATRIOT Act had been utilized to identify and successfully prosecute terror-criminals and to thwart terrorist plots designed to harm Americans. I will not recount

those cases again here, but suffice it to say that the PATRIOT Act has, in very tangible ways kept us safe and free.

I therefore urge my colleagues to vote for this reauthorization, even as we work to remove the burdensome restrictions on law enforcement and intelligence professionals which have been imposed on them during this renewal process. We owe that much to them and to the future generations of the free peoples of the world. We must not shrink from that solemn obligation.

Ms. CANTWELL. Mr. President, I rise today to speak about the PATRIOT Act.

Like many of my colleagues, I am confronted with a very difficult decision. There are rarely easy answers in the Senate and today is no exception. The healthy debate we have had in this body over the last few days has been vigorous and valuable.

Today, we have a solemn obligation to protect our Nation from those who may bring terror into our homes. At the same time, we have a responsibility to respect our rights and honor our privacy. These principles are not mutually exclusive: we can and must achieve both.

This is one of the most significant pieces of legislation shaping our ability to resist and eliminate terrorist activity on our home front. Our actions today will have tremendous consequences in the lives of all Americans in months, years, and decades ahead.

I am proud that in the rush and passions surrounding this bill, I have worked with my colleagues to insist on a serious, patient, and transparent debate in the Senate as we strive to find the right balance between protecting our civil liberties and fighting terrorism.

Despite my reservations and after great deliberation, I support reauthorization today.

I believe that we must not allow the PATRIOT Act to expire. With new provisions and improved meaningful oversight secured at last, empower our national leaders and policy makers with the accountability, wisdom, and prudence to use this legislation's powers in a way that does not undermine the freedoms we seek to protect.

Under provisions of this conference report, the Federal Government must now provide public information on its use of intelligence gathering tools like national security letters and FISA warrants. What is more, this legislation provides for formal audits of these programs. We must play close attention in order to learn lessons of the past and prevent abuse in the future.

I will join my colleagues in strongly pursuing additional sunset provisions I believe should have been included in this bill, to give Congress the opportunity to reassess whether these tools are yielding the intended results in the war on terror.

We have already made some critical reforms to implement meaningful over-

sight. We have managed to get some of the most controversial provisions to the sunset in another 4 years, despite the administration's desire to make them permanent. We have started with sunsets on the roving wiretaps and record requests from businesses and libraries. They are not enough, but they are a start.

Because of an important vote we took yesterday, we have removed America's libraries from the purview of national security letters. We're allowing recipients of records requests to challenge the gag orders on the requests and have removed disclosure requirements for the names of attorneys assisting with those challenges. We are seeing improvements on disclosure for "sneak and peek" warrants.

But I want to be clear, new powers must not be allowed to chip away at traditional privacy rights. We must closely watch how law enforcement uses these tools and be prepared to confront all abuses.

I believe that many provisions of the bill, particularly those sections dealing with electronic eavesdropping and computer trespass, remain seriously flawed and may infringe on civil liberties. And that is why I will continue our work to improve these protections even as we implement them.

At a time when we are making permanent broad powers for our law enforcement and intelligence communities without the full traditional safeguards of judicial review and congressional oversight my concerns have been exacerbated, truthfully, by the administration's explicit attempts to go around both the courts and the Congress with their wiretapping and secret listening posts.

So as the FBI and other agencies continue to expand and evolve, so will their powers. We will continue to ask who should be watching the watchers in oversight.

There is clearly more work to be done—Chairman ARLEN SPECTER and Ranking Member PAT LEAHY have worked together and are introducing legislation that addresses many of my outstanding concerns. I will be on that bill—we have made meaningful reforms.

I also want to thank Senator FEINGOLD for his continued dogged support for reform of this bill. I want him to know that I stand with him in the battle to gain further reforms.

Also included in this conference report is some good news for port security. Sadly, there is not the funding that we have repeatedly asked for from this administration—but at least new criminal penalties for smuggling goods through ports. There are tools to help crackdown further on money laundering overseas by terrorist organizations.

Finally, I am very pleased that the conference report includes essential and long overdue resources to combat our Nation's surging methamphetamine epidemic.

Meth, as a problem in our communities, will not simply disappear on its own. We must make it a top priority and work to end it together. That's why I had introduced similar legislation to address meth use, manufacture, and sale, and create a law regulating the commercially available products used to make meth, such as pseudoephedrine.

And that's why I am so glad to see the Combat Meth Act included in today's legislation. I was proud to cosponsor this legislation when Senators TALENT and FEINSTEIN introduced it, and I am pleased that it will be signed into law, providing comprehensive reforms and critical resources. The legislation enforces strict regulations and keeps records so that meth producers can't get their hands on those key ingredients. When a similar type of law was enacted in Oklahoma, it reduced meth lab busts in the state by 80 percent.

This legislation also provides valuable resources to State and local governments for law enforcement officials investigating and shutting down labs, investigating violent meth-related crimes, educating the public, and caring for children affected by the drug's scourge. The bill also confronts international meth trafficking new reporting and certification procedures.

My State, Washington, is sixth in the country in meth production. In 2004, 1337 meth lab sites were discovered in Washington State. That same year, 220 fatalities were linked to the drug. And we are first in the country, when it comes to the number of children found on raided sites. It is clear this is neither a small problem nor an isolated one.

But these aren't just numbers. They are parents and children, individual people with terrible stories of struggle and addiction. Acting here and now, to fight this epidemic, we can provide the resources to and protect our Nation's families and communities.

The events of September 11 have changed our country and its people forever. We were attacked on our own soil. Thousands have died; thousands were injured. Very simply, we must do all that we can to stop terrorism by finding and ending terrorist activities here and abroad. Our challenge is to do this without compromising the values that make Americans so unique. They are the same values that have allowed our Nation to become great: respect for personal autonomy and the rights of the individual; and tolerance of all regardless of race or religion.

They are the values that have always guided our Nation's leaders. It was Benjamin Franklin who said essentially:

Make sure we have our liberties. Make sure we protect the people from ourselves. Those who would give up their essential liberties for security deserve neither and get neither.

We must defend both.

We must maintain and take full advantage of meaningful oversight to ensure power is never abused. While I will

vote for this bill, I will also continue to work to improve this bill. I will continue to be vigilant and urge those working defend and secure our Nation to use these powers wisely and with great deliberation.

Mr. KYL. Mr. President, I rise today to comment on section 507 of the USA PATRIOT Improvement and Reauthorization Act conference report. This section originates in a bill that I introduced earlier in this year, S. 1088, the Streamlined Procedures Act. Section 507 is based on subsections (b) through (e) of section 9 of S. 1088. My Arizona colleague, Representative FLAKE, took an interest in this matter and sought to offer this provision as an amendment to a court security and police-officer protection bill last November. Mr. FLAKE's version of the provision is printed in House Report 109-279; it made a number of improvements to the original version in section 9 of my bill. Section 507 of the present conference report reflects most of Mr. FLAKE's improvements, such as the simplification of the chapter 154 qualification standard, which obviates the need for separate standards for those States that make direct and collateral review into separate vehicles and those States with unitary procedures, and Mr. FLAKE's enhanced retroactivity provisions.

Mr. FLAKE already has commented on section 507 in an extension of remarks, at 151 CONG. REC. E2639-40, December 22, 2005. I will not repeat what he said there and will simply associate myself with his remarks. Instead, I would like to focus today on why section 507 is necessary.

Section 507 expands and improves the special expedited habeas-corpus procedures authorized in chapter 154 of the U.S. Code. These procedures are available to States that establish a system for providing legal representation to capital defendants on State habeas review. Chapter 154 sets strict time limits on Federal court action, bars consideration of claims that were not adjudicated in State court, and sharply curtails amendments to petitions. The benefits that chapter 154 offers to States that opt in to its standards are substantial. Currently, however, the court that decides whether a State is eligible for chapter 154 is the same court that would be subject to its time limits. Unsurprisingly, these courts have proven resistant to chapter 154. Section 507 places the eligibility decision in the hands of a neutral party—the U.S. Attorney General, with review of his decision in the U.S. Court of Appeals for the District of Columbia Circuit, which does not hear habeas petitions. Section 507 also makes chapter 154's deadlines more practical by extending the time for a district court to review and rule on a chapter 154 petition from 6 months to 15 months.

As I mentioned earlier, section 507 of the present conference report is based on section 9 of the Streamlined Procedures Act. The SPA and habeas reform have been the subject of multiple hear-

ings in both the House and Senate during this Congress. In answers to written questions following their testimony at a July 13 hearing before the Senate Judiciary Committee, Arizona prosecutors John Todd and Kent Cattani provided detailed evidence of systematic delays in Federal habeas corpus review of State capital cases. Among the information that they provided was a comprehensive study undertaken by the Arizona Attorney General's Office of all capital cases in the State. This study examined the appeals of all prisoners currently on Arizona's death row—over 100 prisoners. Mr. Todd summarized the findings in his answers to written questions:

[S]tatistical information based on Arizona's current capital cases in Federal court, and anecdotal information derived from Arizona's current and former capital cases substantiate the significant problem of delay and lack of finality for victims. The AEDPA has not solved this problem.

There are 76 Arizona capital cases pending in Federal court. This represents over two thirds of Arizona's pending capital cases. Although some cases were filed within the last few months, over half of the cases have been pending in Federal court five years or more. Of those, thirteen cases have been pending for seven years. Ten cases have been pending for eight years. Five cases have been pending for more than fifteen years.

The AEDPA was a major step in making Federal habeas review more reliable and speedy. However, the Supreme Court's reversals of the Ninth Circuit exemplify the unwillingness of some court cultures to obey this Congress' directives if there is any ambiguity in the law.

Mr. Todd also gave a summary of the extreme delays experienced by the State of Arizona on Federal habeas review:

Only one of the 63 [Arizona death-penalty] cases filed under the AEDPA has moved from the Federal District Court to the Ninth Circuit. That case has been in the Ninth Circuit for over 5 years. Twenty-eight of Arizona's capital cases have been pending in District Court for between six and eight years.

[One Arizona death penalty case] has been on Federal habeas review for over 19 years. Two of those cases have been on Federal habeas review for over 18 years, one for over 16 years, another for over 14 years, still another for over 12 years. These cases alone establish a pattern of unreasonable delay. The [Arizona Attorney General's] report shows that these cases are not simply strange aberrations in an otherwise smooth functioning system of habeas review.

Mr. Todd concluded: "there is a serious problem of delay and lack of finality currently in Federal habeas review of state-court judgments, even after Congress' enactment of the AEDPA almost a decade ago. . . . Based on the attached review of the Arizona capital cases since enactment of the AEDPA, delay has not been eliminated or even reduced, rather it has been prolonged."

Similarly, in his answers to written questions, Kent Cattani, the Chief Counsel of the Capital Litigation Section of the Arizona Attorney General's Office, reviewed the Arizona Attorney General's study of Arizona capital cases and concluded as follows: "Federal habeas reform is necessary. After 9

years under the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), it is clear that the Act did not eliminate or even reduce the problem of delay in the Federal habeas process."

Interestingly, although the Judicial Conference of the United States has uniformly opposed all Federal habeas reform—it even objected in writing to SPA Section 8(a)'s requirement that circuit courts decide habeas cases within 300 days after briefing is completed—in its September 26, 2005 letter to Chairman SPECTER regarding the SPA, the Conference itself provides substantial evidence of a growing backlog and delays in resolution of capital habeas petitions. The September 26 letter notes the following facts: From 1998 to 2002, the number of State capital habeas cases pending in the Federal district courts increased from 446 to 721. During the same period, the percentage of State capital habeas cases pending in the Federal district courts for more than 3 years rose from 20.2 percent to 46.2 percent; in the Federal courts of appeals, the number of pending State capital habeas cases rose from 185 to 284; and the median time from filing of a notice of appeal to disposition for State capital habeas cases increased from 10 months to 15 months.

It is noteworthy that all of these increases in backlog and delay have taken place after the enactment of the AEDPA in 1996—a law that some critics of habeas reform assert has solved all of the problems with Federal habeas.

At the most recent hearing on the Streamlined Procedures Act, before the Senate Judiciary Committee on November 16, Ron Eisenberg, Deputy District Attorney for Philadelphia, summarized the problems and delays with Federal habeas review that he encounters in the course of his work. He stated:

I have served as a prosecutor for 24 years. I am the supervisor of the Law Division of the Philadelphia District Attorney's Office, a group of 60 lawyers. Many of those lawyers handle regular appeals in the Pennsylvania appellate courts. But more and more of our attorneys must devote themselves full time to Federal habeas corpus litigation. In the last decade, the number of lawyers employed exclusively on habeas work has increased 400%. Despite the limits supposedly imposed by law, the only certain limit on the Federal habeas process as it is currently administered is the expiration of the defendant's sentence.

But that leaves ample opportunity and motivation for litigation, because the cases that reach Federal habeas review involve the most dangerous criminals, who receive the most serious sentences—not just death penalties, but non-capital murders, rape, violent robberies and burglaries, brutal beatings, and shootings.

Too often, discussion of the proper scope of Federal habeas corpus review is really just a debate about the value of the death penalty, and the justness of imprisonment and punishment generally. To be sure, many Federal courts seem flatly unwilling to affirm capital sentences. In Pennsylvania, for example, almost every single contested death sentence litigated on habeas—over 20 cases in the last

decade—has been thrown out by Federal judges; only one has been upheld.

But the primary problem is one of process, not results. The truth is that, whether or not they end up reversing a conviction, Federal habeas courts drag out litigation for years of utterly unjustifiable delay, creating exorbitant costs for the state and endless pain for the victims.

This data and testimony confirm what many capital litigators and judges have told me is, in their view, an obvious and uncontested fact: the problems with Federal habeas corpus are systematic, they are severe, and they are growing worse. Yet even this information does not really tell us why this problem matters—why ordinary people, rather than just civil servants and judges, should be concerned about the functioning of the Federal habeas system. For that information, it is necessary to look at the impact of the current habeas system on the surviving victims of violent crimes. The current system and the delays that it engenders, particularly in capital cases, often are grossly cruel to these individuals. The perpetual litigation of Federal habeas cases denies the surviving family of a murder victim closure—it forces them to continually relive the crime, rather than be able to put the terrible events behind them.

Two parents of murder victims testified at hearings in this Congress about how they have been treated by the Federal habeas system. Their testimony makes a compelling case that this system is broken and in need of reform. And it highlights why we should all be concerned. What these individuals and their families—people who had already suffered so much—have experienced at the hands of the Federal courts should offend every American.

The first witness to testify was Carol Fornoff, who addressed the House Judiciary Committee's Crime Subcommittee on June 7 of last year. Mrs. Fornoff's 13-year-old daughter, Christy Ann, was murdered in 1984. Almost every Arizonan who lived in the State at the time knows the name Christy Ann Fornoff. Christy's murder was an event that shattered people's sense of security, that made them afraid to let their children play outside or go out of their sight. I remember the case vividly. And I was stunned when I learned last year that the man who killed Christy, although sentenced to death by the State of Arizona, still is litigating his conviction and sentence in Federal court. His Federal proceedings began in 1992—14 years ago. Just think about how long ago 1992 is. President Bush's father was the President at the time. Bill Clinton was the Governor of Arkansas. Saddam Hussein's invasion of Kuwait is closer in time to that date than the U.S. invasion of Iraq is to today. And yet the case of Christy's killer remains in Federal court.

Mrs. Fornoff made a powerful case for why we should find this unacceptable. She described the suffering of her family, how this decades-long litigation has denied them closure. I do not

think that anyone who heard Mrs. Fornoff's testimony would assert that there are no problems with the present system. Allow me to quote the main portion of Mrs. Fornoff's statement to the House Crime Subcommittee:

My husband Roger and I are here today to tell you about our daughter, Christy Ann Fornoff. Christy was our youngest daughter. She was a loving child, very gentle. She often seemed to make friends with the kids at school who weren't so popular. She was very dear to us.

In 1984, our family was living in Tempe, Arizona, and Christy was 13 years old. Christy and her brother Jason both held jobs as newscasters for the Phoenix Gazette, a local newspaper. Roger and I believed that jobs like this would teach our children responsibility, while also helping them earn a little money.

After dinner on Wednesday evening, May 9, 1984, both Christy and Jason had been invited to go jumping on trampolines. Jason went, but Christy had just had a cast removed from her ankle. Instead, she went to collect on newspaper subscriptions at an apartment complex near our house.

Christy delivered papers at this complex every day, it was just two short blocks from our house. Nevertheless, it was getting dusk, so I went with Christy; she rode her brother's bike while I walked alongside with our little dog.

At the first apartment that Christy visited, I was stopped by a neighbor who wanted to talk about our cute dog. Christy went on to the next apartment alone, and I followed a few minutes later. When I got there, the bike was outside, but there was no Christy. I started calling her name, but there was no answer. Our dog started to get nervous. After a few minutes, I ran home, and came back with my daughter's boyfriend. I asked the people at the apartment that Christy had gone to if they had seen her, and they said yes, ten minutes ago, and that she had left. I knew that Christy wouldn't just leave her brother's bike there.

I ran home again. My husband had just arrived at home and I told him that Christy was missing. He immediately called the police, and then he went to the apartment complex and began knocking on doors. Outside of one apartment, people standing nearby told us don't bother knocking on that door, that is the maintenance man, and he is looking for Christy. Shortly after, the maintenance man joined Roger in the search for Christy.

That night, police helicopters with searchlights examined every corner of our neighborhood. Our son drove up and down every alley in the area on his motorcycle. Christy's newspaper-collections book was found over a fence near the apartment complex. But no one found Christy.

Two days later, a policeman knocked at our door. Christy's body had been discovered wrapped in a sheet, lying behind a trash dumpster in the apartment complex. We were absolutely devastated. We had been hoping against hope, and couldn't believe that our beautiful daughter was dead.

Christy's body was taken to a morgue so that an autopsy could be performed. On Sunday, which was Mother's day, we were finally able to view Christy's body at the funeral home. Mother's Day has never been the same for me since.

Ten days after Christy's body was found, the maintenance man at the apartment complex—the same man who supposedly had been looking for her the night that she disappeared—was arrested for her murder. Christy had been sexually assaulted and suffocated. There was blood, semen, and hair on Christy's body that was consistent with that

of the maintenance man. Vomit on Christy's face matched vomit in the maintenance man's closet. Fibers on Christy's body matched the carpet and a blanket in the maintenance man's apartment. And police found Christy's hair inside of the apartment. We knew who had killed our daughter.

In 1985, the maintenance man was convicted of Christy's murder and sentenced to death. The conviction was upheld in a lengthy opinion by the Arizona Supreme Court. The killer raised many more challenges, but his last state appeals were finally rejected in 1992. By that time, we already felt like the case had been going on a long time—it had been seven years. We couldn't imagine that the killer would have any more challenges to argue.

But in 1992, the killer filed another challenge to his conviction in the United States District Court. That challenge then remained in that one court for another 7 years! Finally, in November of 1999, the district court dismissed the case. But then a few years later, the Federal Court of Appeals for the Ninth Circuit sent the case back to the district court for more hearings. Today, the case remains before that same Federal district court.

It has now been over 21 years since Christy was murdered. By this fall, the case will have been in the Federal courts for longer than Christy was ever alive.

I cannot describe to you how painful our experience with the court system has been. I cannot believe that just one court took over 7 years to decide our case.

Some might ask why we can't just move on, and forget about the killer's appeals. But it doesn't work that way. She was our daughter, our beautiful little girl, and he took her away. We want to know if he was properly convicted. We want to know, will his conviction be thrown out? Will there be another trial? I cannot imagine testifying at a trial again. And would they even be able to convict this man again? It has been 21 years. How many witnesses are still here, is all of the evidence even still available? Could this man one day be released? Could I run into him on the street, a free man—the man who assaulted and killed our little daughter? The courts have turned this case into an open wound for our family—a wound that has not been allowed to heal for 21 years.

I understand that the Federal government has the right to create such a system. It can let the Federal courts hear any challenge to a state conviction, at any time, with no limits. My question to you, Mr. Chairman, is why would we want such a system? Why would we want a system that forces someone like me to relive my daughter's murder, again and again and again? My daughter's killer already litigated all of the challenges to his case in the state courts. Why should we let him bring all of the same legal claims again, for another round of lawsuits, in the Federal courts? Why should this killer get a second chance? My daughter never had a second chance.

I understand that people are concerned about innocent people being behind bars, but that is not what my daughter's killer is suing about. Right now, the issue that is being litigated in the Federal courts is whether the trial court made a mistake by allowing the jury to hear that he told a prison counselor that he "didn't mean to kill the little Fornoff girl." He claims that the counselor was like his doctor, and that the statement is private, even though he said it in front of other prisoners. Earlier this year, a Federal court held a hearing on whether the killer had a right to prevent the jury from hearing about this statement. But the statement is irrelevant. Whether or not he said it, the evidence of his guilt—the hairs, the fibers, the bodily fluids—is overwhelming. The

issue that the killer is suing about was already resolved before by the Arizona Supreme Court—over 17 years ago. Yet here we are, 21 years after my daughter died, arguing about the same legal technicalities.

People might say that it is worth the cost to let the killer sue over every issue like this again and again. I don't think that it is worth the cost. When you and your colleagues are writing laws, Mr. Chairman, please think about people like me. Please think about the fact that every time that there is another appeal, another ruling, another hearing, I am forced to think about my daughter's death. Every time, I am forced to wonder, if only Christy hadn't had the cast on her ankle—if only she could have gone on the trampoline that evening, she would still be alive today. Every time that I hear a helicopter, I am terrified—I think of the police helicopters searching for Christy on the night that she disappeared. Every time that I hear a motorcycle, I think of my son, searching for Christy. Every time that the courts reopen this case, I am forced to wonder, why didn't I follow Christy to that second apartment—why did I let that neighbor stop me to talk? Every time, I am forced to think about how scared my little girl must have been when she died.

I urge you, Mr. Chairman, to do what you can to fix this system. My family and I have forgiven our daughter's murderer. But we cannot forgive a justice system that would treat us this way.

Another witness who testified before Congress last year on the need for Federal habeas reform is Mary Ann Hughes of Chino Hills, CA. Mrs. Hughes's son Christopher, then 11 years old, was murdered in 1983. As in the Fornoff case, the killer was captured, convicted, and sentenced to death—and is still litigating his case in Federal court today. Mrs. Hughes testified before the House Judiciary Committee's Crime Subcommittee on November 10, 2005. This is what she said:

Christopher was a beautiful little boy. He had just completed the fifth grade at a local Catholic school. His classmates later planted a tree in his memory at the school. Chris swam on the swim team and dreamed of swimming for the University of Southern California and being in the Olympics. He loved his younger brother, and in typical brotherly fashion would tease him one minute and be his best friend the next. Chris' younger brother is now 28-years-old. He has missed Chris every day since he was murdered. Our younger son was not yet born when Chris was murdered. I was pregnant during part of Cooper's trial with our third son. When he was born we gave him the middle name Christopher after the brother he never knew. Both boys have only in the last few years been able to face what happened to their brother. As the years have passed, we are reminded that Chris never got to finish grammar school, go to a prom, marry, have children of his own, or pursue his dreams.

On Saturday, June 4, 1983, Chris asked me for permission to spend the night at the home of his friend, Josh Ryen. We lived in what was then a very rural neighborhood. Josh was the only boy nearby who was really close to Chris' age and so they formed a bond. We were good friends with Josh's parents, Doug and Peggy Ryen. The Ryens lived just up the road from our home with their 10-year-old daughter Jessica and eight-year-old Josh. The last time I saw Chris alive he and Josh were riding off on their bicycles toward Josh's house. They were excitedly waving because they were so happy I had given Chris permission to spend that night with Josh.

The only thing Chris had to remember was to be home Sunday in time for church. The next time I saw Chris was in a photograph on an autopsy table during Cooper's preliminary hearing.

Unbeknownst to anyone, Cooper had been hiding in a house in Chino Hills just 126 yards from the Ryen's home. He had escaped two days earlier from a minimum security facility at a nearby prison. When Cooper was arrested for burglary in Los Angeles he used a false identity. His identity and criminal past should have caught up with him before he was wrongly assigned to the minimum security portion of the prison. The prison, however, mishandled the processing of an outstanding warrant for Cooper for escape from custody in Pennsylvania. He was being held pending trial for the kidnap and rape of a teenage girl who interrupted him while he was burglarizing a home. While staying at the hide-out house near the Ryens, Cooper had been calling former girlfriends, trying to get them to help him get out of the area. A manhunt was under way for Cooper, but the rural community surrounding the prison was never notified of the escape.

The failure of the California prison-system to protect the surrounding community from a dangerous felon marked the beginning of our family and community's being let down by our government. Within a few hours of Cooper's escape, prison officials realized who Cooper was and how dangerous he was. Nevertheless, they still failed to alert the community that he was at large. Our frustration and disappointment with our government's failings has only grown since that time as Cooper's case continues to wind its way down a seemingly endless path through our judicial system.

The morning following the murders, I remember being mad at Chris because he had not arrived home on time as promised so we could attend church. Then my anger turned to worry. I sent my husband Bill up to the Ryen home. He saw that the horses had not been fed, and that the Ryen station wagon was gone.

Uncharacteristically, the kitchen door was locked, so my husband walked around the house. He looked inside the sliding glass door of the Ryen's master bedroom. He saw blood everywhere. Peggy and Chris were lying on the ground and Josh was lying next to them, showing signs of life but unable to move. My husband could not open the sliding glass door, so he ran and kicked open the kitchen door. As he went into the master bedroom, he found 10-year-old Jessica lying on the floor in fetal position in the doorway, dead. He saw Doug and Peggy nude, bloodied, and lifeless. When he went to our son Chris, he was cold to the touch. Bill then knew that Christopher was dead.

My husband then forced himself to have enough presence of mind to get help for Josh, who miraculously survived despite having his throat slit from ear to ear. Josh, only eight years old, lay next to his dead, naked mother throughout the night, knowing from the silence and from the smell of blood that everyone else was dead. He placed his fingers into his throat, which kept him from bleeding to death during the 12 hours before my husband rescued him.

Everyone inside the home had been repeatedly struck by a hatchet and attacked with a knife. Christopher had 25 identifiable wounds made by a hatchet and a knife. Many of them were on his hands, which he must have put against his head to protect himself from Kevin Cooper's blows. Some were made after he was already dead. No one should know this kind of horror. That it happened to a child makes it even worse.

The killer had lifted Jessica's nightgown and carved on her chest after she died. The

killer also helped himself to a beer from the Ryen's refrigerator. We wondered what kind of monster would attack a father, mother, and three children with a hatchet, and then go have a beer. That question has long since been answered, but 22 years later we are still waiting for justice.

The escaped prisoner who committed this crime was caught 2 months later. He admitted that he had stayed in the house next door but denied any involvement in the murders. According to the California Supreme Court, however, the evidence of defendant's guilt was "overwhelming." Not only had the defendant stayed at the vacant house right next door at the time of the murders; the hatchet used in the murders was taken from the vacant house; shoe prints in the Ryen house matched those in the vacant house and were from a type of shoe issued to prisoners; bloody items, including a prison-issue button, were found in the vacant house; prison-issue tobacco was found in the Ryen station wagon, which was recovered in Long Beach; and the defendant's blood type and hair matched that found in the Ryen house. The defendant was convicted of the murders and sentenced to death in 1985, and the California Supreme Court upheld the defendant's conviction and sentence in 1991.

The defendant's Federal habeas proceedings began shortly thereafter, and they continue to this day—23 years after the murders. In 2000, the defendant asked the courts for DNA testing of a blood spot in the Ryen house, a t-shirt near the crime scene, and the tobacco found in the car. Despite the overwhelming evidence of his guilt, the courts allowed more testing. All three tests found that the blood and saliva matched the defendant, to a degree of certainty of 1 in 310 billion. Blood on the t-shirt matched both the defendant and one of the victims.

Mrs. Hughes went on to describe, in her November 10 testimony, the impact of this crime and the attenuated legal proceedings on her family:

"While I know that Cooper is the one who murdered my son, I will always bear the guilt of having given Chris permission to spend the night at the Ryen's house. I will always feel responsible for sending my husband to find the bodies of our son and the Ryen family. It is a guilt similar to the guilt that Josh feels to this day because he had begged me to let Chris spend the night. He thinks that Chris would still be alive if he had not spent the night. Of course, Cooper is responsible for all the pain and suffering that he inflicted that night and the continued pain that has followed, but it does not help stop the pain and guilt. Kevin Cooper is still here over 22 years later—still proclaiming his innocence and complaining about our judicial system.

As Josh explained when he finally got a chance to speak to the Judge about how he has been affected by Cooper's crimes: Cooper never shuts up. We continually get to hear more bogus claims and more comments from Cooper and his attorneys. Over the years I have learned to know when something has happened in Cooper's never-ending legal case: the calls from the media start up again, or, at times, the media trucks just park in

front of our house. We have no opportunity to put this behind us—to heal or to try to find peace—because everything is about Cooper. Our system is so grotesquely skewed to Cooper's benefit and seemingly incapable of letting California carry out its judgment against him.

[The] judicial system so out of balance in favor of the convicted that it literally enables them to victimize their victims and their families all over again through the Federal judicial system. We understood the rights of an accused and that Cooper's rights took precedence over ours as he stood trial. His trial was moved to another County because of the publicity surrounding the horrendous crimes. I had to drive a long distance to another County to watch the trial as it could not take place in our County. Cooper's defense attorney spent an entire year preparing to defend Cooper at trial. Everything was about Cooper's rights and none of our sensibilities or concerns could be dignified because Cooper had to have a fair trial. We understood and we waited for justice. In California, Cooper's appeal was automatic because he had received the death penalty for his crimes. The appeal took six years to conclude. We understood the need for a thorough appeal and we waited for justice.

By 1991, Cooper had received a fair trial and his appeal had been concluded. The California Supreme Court aptly observed that the evidence against Cooper, both in volume and consistency, was "overwhelming". Since then, we have waited and watched as the United States Supreme Court has denied Cooper's eight petitions for writ of certiorari and two petitions for writ of habeas corpus, and the California Supreme Court has denied Cooper's seven habeas corpus petitions and three motions to reopen Cooper's appeal. The Ninth Circuit affirmed the denial of Cooper's first Federal habeas petition, and denied him permission to file a successive petition in 2001, and again in 2003. But then, on Friday night, February 6, 2004, Cooper's attorneys filed an application with the Ninth Circuit requesting permission to file a successive habeas petition.

A three-judge panel of the Ninth Circuit denied Cooper's application to file a successive petition on Sunday, February 8, 2004. Cooper was scheduled to be executed at one minute after midnight on Tuesday, February 10, 2004. On Monday, February 9, 2004, my husband and I made the trip to Northern California from our home in Southern California. Relatives of the extended Ryen family flew in from all over the Country. Josh Ryen, now 30, left for dead at the age of eight, his entire immediate family murdered, drove hundreds of miles to reach the prison to witness the execution of Cooper. We all expected that finally, this case would be brought to a close.

Mrs. Hughes went on to describe, however, how on the eve of the execution, the en banc Ninth Circuit Court of Appeals sua sponte reviewed the denial of the petitioner's successive petition application and reversed the three-judge panel. The en banc decision stayed the killer's execution and permitted him to pursue a second round of Federal habeas-corporis litigation. This second round still is going on today—15 years after the California Supreme Court affirmed the conviction and sentence, and 23 years after the murders.

Section 2244(b)(3)(E) of title 28 states that "[t]he grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the

subject of a petition for rehearing or for a writ of certiorari." To us lesser lawyers, this provision might seem like it means that there shall be no en banc review of the three-judge panel's denial of the application. But the enlightened jurists of the Ninth Circuit have discovered that although subparagraph (E) bars the habeas petitioner from appealing the denial, the en banc court remains free to sua sponte grant review. Some might find it strange that Congress would have intended to bar the en banc courts of appeals from considering a case on the basis of a party's appeal and adversarial briefing, but intended to allow the same courts to hear the same case without a request for review and with no briefing. Typically, briefing is regarded as aiding a court's consideration of a case. Of course, the losing habeas petitioner typically does seek en banc review of the denial of the successive-petition application and file a brief in support of his request. I suppose that we are to trust that the en banc court of appeals does not read that brief, or that if it does so, it puts the brief out of its collective mind so that it might act "sua sponte" when it votes on whether to go en banc, lest its actions otherwise appear to violate subparagraph (E)'s clear command that the denial of the application is not "appealable."

In this case, I am prepared to believe that the judges did not read the briefs. Despite DNA evidence that linked the habeas petitioner to the murder scene to a degree of certainty of 1 in 310 billion, the en banc Ninth Circuit determined that the petitioner met section 2244's requirement that he present "clear and convincing evidence that . . . no reasonable factfinder would have found [him] guilty of the underlying offense." The Ninth Circuit's theory was that the police might have planted the blood evidence. As Mrs. Hughes noted in her November 10 testimony, however:

Of course, Cooper could not explain how or why police would plant a minute amount of blood on the t-shirt only to never use it as evidence against him at trial. Moreover, this evidence had been in police custody since 1984. Apparently, these supposed rogue police officers also anticipated the development of the Nobel Prize-winning science that would enable Cooper to have the blood tested for DNA. Cooper also could not explain how the police could have planted his blood at the crime scene within a few hours of discovering the bodies, while he was still at large.

The Ninth Circuit first granted sua sponte en banc review of the denial of a successive-petition application in the case of *Thompson v. Calderon*, 120 F.3d 1045, 9th Cir. 1997, a decision with other procedural irregularities so glaring that the Supreme Court did not even notice this aspect of the decision when it took it up and reversed, *Calderon v. Thompson*, 523 U.S. 538, 1998. The Sixth Circuit subsequently copied Thompson, thus allowing the Ninth Circuit to attribute this practice to other circuits when it again applied it in the case of the killer of Mary Ann Hughes's son.

Section 8(b) of the Streamlined Procedures Act would prevent the Ninth Circuit from doing this in the future. Unfortunately, I was unable to have that provision included in this conference report. I will try again in the future.

This year, it will have been 23 years since Christopher Hughes and Doug, Peggy, and Jessica Ryen were murdered. In 2004, after the Ninth Circuit authorized another round of litigation, a local newspaper described the impact of this crime and the ensuing years of appeals on the surviving family of the victims:

For nearly 20 years, since convicted murderer Kevin Cooper was sentenced to death for the 1983 slayings of a Chino Hills family and their young houseguest, families of the victims have waited silently for the day the hand of justice would grant them peace.

For those families, the last two decades have seemed like an eternity.

I lived through a nightmare," said Herbert Ryen, whose brother Douglas Ryen was among those killed, along with Douglas' wife Peggy, their 11-year-old daughter Jessica, and her 10-year-old friend Christopher Hughes.

[O]n the morning of Feb. 9, [2004,] the day of Cooper's scheduled death by lethal injection, word came down that the 9th U.S. Circuit Court of Appeals had decided to block the execution.

[T]o the Ryen and Hughes families, the stay just hours before Cooper's scheduled execution at San Quentin State Prison was nearly incomprehensible. The indefinite delay has left them in a sort of emotional limbo, questioning whether the legal system had abandoned them.

The bottom line is that this whole issue is not about Kevin Cooper . . . it is about the death penalty," said Mary Ann Hughes, the mother of Christopher Hughes. "We're so mad—mad because we feel as though the courts turned their back on my son."

They [Court of Appeals] are holding us hostage," Hughes said.

For Herbert Ryen and his wife Sue, waiting for justice has taken an equally destructive toll on their lives. The torment their family experienced following the murders, and the subsequent years lost to depression, could never be replaced, he said from his home in Arizona.

Mary Ann Hughes said the pain her family suffers is only amplified by the seemingly continuous bombardment of celebrities campaigning against Cooper's execution. She wonders who will cry out in anger for the victims.

One former television star and anti-death penalty activist, Mike Farrell of the popular series MASH, spoke of the case on a recent news program.

"He claimed that we must feel relieved since the stay of execution was granted," Hughes said. "How can [Farrell] have the audacity to say he knows what we are feeling?"

Farrell could not be reached for comment. Since Christopher's death, the Hughes family has chosen to remain out of the media spotlight. And until recently, their efforts were successful, due largely to the support of their surviving children, family members and a strong network of close friends, Hughes said.

The court's decision Feb. 9 has re-opened the case, forcing the families to re-live the nightmare they have fought so hard to leave behind, they say.

Mary Ann Hughes is left wondering about other families who have had loved ones taken from them, about the legal battles they have had to endure in their own quests for justice.

She thinks of the parents of Samantha Runion, the 5-year-old Orange County girl who was murdered in 2003, and of what her family could face in the next 20 years.

For Bill Hughes, the anguish is intensified—he will forever know the pain of walking into the Ryens' home the morning after the murders, and finding his son, dead and covered in blood near the Ryens' bedroom door. He was also the first to discover Joshua Ryen, also drenched in blood, clinging to life.

"It is a memory he will always have to live with," Mary Ann Hughes said.

Indeed, time has no friend to the victims' families, as California's recent appellate court ruling has further denied them closure, she added.

"What this decision has done to our legal system in California is unthinkable," she said. "Somewhere along the line, the courts have got to uphold the law, and we will wait it out until they do." (Sara Carter, "Families of Murder Victims Wait for Justice in Cooper Case," *Inland Valley Daily Bulletin*, February 24, 2004.)

The impact of this litigation on Mary and Bill Hughes and Herbert and Sue Ryen alone makes the handling of this case indefensible. No one, however, has borne the weight of our system of Federal collateral review more heavily in this case than has the one surviving victim of the June 4, 1983 attack. Josh Ryen was 8 years old when he was stabbed in his parents' bedroom and his parents and sister were murdered. He had been Christopher Hughes's neighbor and best friend. As of last year, however, Mary and Bill Hughes had not seen Josh since he was airlifted by helicopter from the scene of the murders to Loma Linda University hospital. Then on April 22, 2005, Josh Ryen appeared at the latest Federal habeas corpus hearing for the man who killed his family. He is now 30 years old. Pursuant to the recently enacted Crime Victims' Rights Act, he gave a brief statement before the court. I will quote Josh Ryen's statement in its entirety:

The first time I met Kevin Cooper I was 8 years old and he slit my throat. He hit me with a hatchet and put a hole in my skull. He stabbed me twice, which broke my ribs and collapsed one lung. I lived only because I stuck four fingers in my neck to slow the bleeding, but I was too weak to move. I laid there 11 hours looking at my mother who was right beside me.

I know now he came through the sliding glass door and attacked my dad first. He was lying on the bed and was struck in the dark without warning with the hatchet and knife. He was hit many times because there is a lot of blood on the wall on his side of the bed.

My mother screamed and Cooper came around the bed and started hitting her. Somehow my dad was able to struggle between the bed and the closet but Cooper bludgeoned my father to death with the knife and hatchet, stabbing him 26 times and axing him 11. One of the blows severed his finger and it landed in the closet.

My mother tried to get away but he caught her at the bottom of the bed and he stabbed her 25 times and axed her 7.

All of us kids were drawn to the room by mom's screams. Jessica was killed in the doorway with 5 ax blows and 46 stabs. I won't say how many times my best friend Chris was stabbed and axed, not because it isn't important, but because I don't want to hurt his family in any way, and they are here.

After Cooper killed everyone, and thought he had killed me, he went over to my sister

and lifted her shirt and drew things on her stomach with the knife. Then he walked down the hallway, opened the refrigerator, and had a beer. I guess killing so many people can make a man thirsty.

I don't want to be here. I came because I owe it to my family, who can't speak for themselves. But by coming I am acknowledging and validating the existence of Kevin Cooper, who should have been blotted from the face of the earth a long time ago. By coming here it shows that he still controls me. I will be free, my life will start, the day Kevin Cooper dies. I want to be rid of him, but he won't go away.

I've been trying to get away from him since I was 8 years and I can't escape. He haunts me and follows me. For over 20 years all I've heard is Kevin Cooper this and Kevin Cooper that. Kevin Cooper says he is innocent, Kevin Cooper says he was framed, Kevin Cooper says DNA will clear him, Kevin Cooper says blood was planted, Kevin Cooper says the tennis shoes aren't his, Kevin Cooper says three guys did it, Kevin Cooper says police planted evidence, Kevin Cooper gets another stay from another court and sends everyone off on another wild goose chase.

The courts say there isn't any harm when Kevin Cooper gets another stay and another hearing. This just shows they don't care about me, because every time he gets another delay I am harmed and have to relive the murders all over again. Every time Kevin Cooper opens his mouth everyone wants to know what I think, what I have to say, how I'm feeling, and the whole nightmare floods all over me again: the barbecue, me begging to let Chris spend the night, me in my bed and him on the floor beside me, my mother's screams, Chris gone, dark house, hallway, bushy hair, everything black, mom cut to pieces saturated in blood, the nauseating smell of blood, eleven hours unable to move, light filtering in, Chris' father at the window, the horror of his face, sound of the front door splintering, my pajamas being cut off, people trying to save me, the whap whap of the helicopter blades, shouted questions, everything fading to black.

Every time Cooper claims he's innocent and sends people scurrying off on another wild goose chase, I have to relive the murders all over again. It runs like a horror movie, over and over again and never stops because he never shuts up. He puts PR people on national television who say outrageous things and then the press wants to know what I think. What I think is that I would like to be rid of Kevin Cooper. I would like for him to go away. I would like to never hear from Kevin Cooper again. I would like Kevin Cooper to pay for what he did.

I dread happy times like Christmas and Thanksgiving. If I go to a friend's house on holidays I look at all the mothers and fathers and children and grandchildren and get sad because I have no one. Kevin Cooper took them from me.

I get terrified when I go into any place dark, like a house before the lights are on. I hear screams and see flashbacks and shadows. Even with lights on I see terrible things. After I was stabbed and axed I was too weak to move and stared at my mother all night. I smelled this overpowering smell of fresh blood and knew everyone had been slaughtered.

Every day when I comb my hair I feel the hole where he buried the hatchet in my head, and when I look in the mirror I see the scar where he cut my throat from ear to ear and I put four fingers in it to stop the bleeding which, they say, saved my life. Every year I lose hearing in my left ear where he buried the knife.

Helicopters give me flashbacks of life flight and my Incredible Hulks being cut off

by paramedics. Bushy hair reminds me of the killer. Silence reminds me of the quiet before the screams. Cooper is everywhere. There is no escape from him.

I feel very guilty and responsible to the Hughes family because I begged them to let Chris spend the night. If I hadn't done that he wouldn't have died. I apologize to them and especially to Mr. Hughes for having to find us and see his son cut and stabbed to death.

I thank the judge who gave my grandma custody of me because she took good care of me and loves me very much.

I'm grateful to the ocean for giving me peace because when I go there I know my mother and father and sister's ashes are sprinkled there.

Kevin Cooper has movie stars and Jesse Jackson holding rallies for him, people carrying signs, lighting candles, saying prayers. To them and you I say:

I was 8 when he slit my throat,  
It was dark and I couldn't see.  
Through the night and day I laid there, trying to get up and flee.

He killed my mother, father, sister, friend,  
And started stalking me.

I try to run and flee from him but cannot get away,

While he demands petitions and claims, some fresh absurdity.

Justice has no ear for me nor cares about my plight,  
while crowds pray for the killer and light candles in the night.

To those who long for justice and love truth  
which sets men free,  
When you pray your prayers tonight,  
please remember me.

Even those who oppose capital punishment—who would like to see it abolished—should not support a system that treats the victims of violent crimes in this way. Creating a fair, efficient, and expeditious system of Federal habeas review should be a bipartisan cause. Indeed, it was President Clinton who noted after the enactment of the 1996 AEDPA reforms that "it should not take eight or nine years and three trips to the Supreme Court to finalize whether a person in fact was properly convicted or not."

I believe that section 507 of the PATRIOT Reauthorization Act, by extending the benefits of chapter 154 to States that provide counsel to capital defendants on postconviction review, will help to achieve that goal. In *Murray v. Giarratano*, 492 U.S. 1, 1989, the Supreme Court held that States are not constitutionally required to provide counsel in State postconviction proceedings, even in capital cases. In AEDPA, Congress added chapter 154 to title 28 of the United States Code, offering the States an incentive to provide qualified counsel in such proceedings. Among the incentives was an expedited process, with time limits on both the district courts and the courts of appeals.

AEDPA left the decision of whether a State qualified for the incentive to the same courts that were impacted by the time limits. This has proved to be a mistake. Chapter 154 has received an extremely cramped interpretation, denying the benefits of qualification to States that do provide qualified counsel and eliminating the incentive for other States to provide counsel. In

*Ashmus v. Woodford*, 202 F.3d 1160, 2000, the Ninth Circuit held that California did not qualify because its competency standards were in the State's Standards of Judicial Administration rather than its Rules of Court, a hypertechnical reading of the statute. In *Spears v. Stewart*, 283 F.3d 992, 1018, 2001, the Ninth Circuit held that even though Arizona had established a qualifying system and even though the State court had appointed counsel under that system, the Federal court could still deny the State the benefit of qualification because of a delay in appointing counsel.

Section 507 of this bill abrogates both of these holdings and removes the qualification decision to a neutral forum. Under new section 2265, the Attorney General of the United States will decide if a State has established a qualifying mechanism, and that decision will be reviewed by the D.C. Circuit, the only Federal circuit that does not handle State-prisoner habeas cases and therefore is not impacted by the qualification decision. The requirements for certification are removed from section 2261(b) and placed in the new section 2265(a). The "statute or rule of court" language construed so severely by *Ashmus* is removed, allowing the States flexibility on how to establish the mechanism within the State's judicial structure. There is no longer any requirement, express or implied, that any particular organ of government establish the mechanism for appointing and paying counsel or providing standards of competency—States may act through their legislatures, their courts, through agencies such as judicial councils, or even through local governments.

Once a State is certified as having a qualifying mechanism, chapter 154 applies to all cases in which counsel was appointed pursuant to that mechanism, and to cases where counsel was not appointed because the defendant waived counsel, retained his own, or had the means to retain his own. "Pursuant" is intended to mean only that the State's qualifying mechanism was invoked to appoint counsel, not to empower the Federal courts to supervise the State courts' administration of their appointment systems. Paragraph (a)(3) of new section 2265 forbids creation of additional requirements not expressly stated in the chapter, as was done in the *Spears* case.

When section 507 was being finalized, I and others were presented with arguments that some mechanism should be created for "decertifying" a State that has opted in to chapter 154 but that allegedly has fallen out of compliance with its standards. I ultimately concluded that such a mechanism was unnecessary, and that it would likely impose substantial litigation burdens on the opt-in States that would outweigh any justification for the further review. The States are entitled to a presumption that once they have been certified as chapter-154 compliant, they

will substantially maintain their counsel mechanisms. After all, to this day, both California and Arizona have kept up their postconviction counsel mechanisms and standards since the late 1980s and the mid-1990s, respectively, even though neither State has ever received any benefits under chapter 154. This history alone suggests that it is unnecessary to provide a mechanism for "decertification" of States that have opted in. Moreover, if such a means of post-opt-in review were created, it inevitably would be overused and abused. In my home State of Arizona, defense attorneys in the past have boycotted the 154 system. The Ninth Circuit later used the delays in appointing chapter 154 counsel stemming from this boycott as grounds for denying Arizona the benefits of chapter 154 in the *Spears* case. In light of this history, I thought it best to create a system of one-time certification, with no avenues to challenge or attempt to repeal the State's continuing chapter-154 eligibility. The consequences of opting in to chapter 154 should not be perpetual litigation over the State's continuing eligibility. Even if defense lawyers in Arizona do boycott the State's system again, the resultant delays in appointing counsel are unlikely to prejudice their clients, who typically want delay in the resolution of their cases. And the occasional case where such delay might prejudice a petitioner simply is not worth the cost of creating opportunities to force the State to continually litigate its chapter 154 eligibility. Therefore, under section 507, once a State is certified for chapter 154, that certification is final. There is no provision for "decertification" or "compliance review" after the State has been made subject to chapter 154.

The incentive for a State to try to satisfy chapter 154's counsel requirement is the array of procedural benefits that 154 provides to States defending capital convictions and sentences on Federal habeas. Section 2266 applies a series of deadlines for court action on chapter 154 applications: district courts will be required to rule on such applications 15 months after they are filed.

Allow me as an aside to describe some of the back history of this particular deadline. Current pre-conference-report law gives district courts only 180 days to rule on a 154 petition. This probably is not enough time for district courts to rule on these cases, even with the streamlining provided by the rest of chapter 154. Nor was this reality obscure to Congress in 1996. I worked on developing this provision in my first year in the Senate, in cooperation with the Arizona Attorney General's Office and then-California Attorney General Dan Lungren, among others. The bill's managers initially adopted a 180-day deadline as a bargaining position, but had always intended to extend this limit to 1 year. Unfortunately, at a certain point in the legislative process, other partici-

pants decided that they would object to making any change whatsoever to the AEDPA, even to correct scrivener's or grammatical errors—or to liberalize this deadline. Thus we ended up with 180 days. In order to avoid imposing impossible burdens on the district courts, I proposed extending this deadline to 15 months in the SPA, and this extension has been included in section 507. I likely would receive a cool reception from Chief Judge McNamee upon my next visit to the Phoenix Federal courthouse had section 507 given Arizona access to chapter 154 without at least somewhat liberalizing this particular deadline.

Other relevant deadlines imposed by section 2263 are that the court of appeals must rule on a case 120 days after briefing has been completed. That court also must rule on a petition for rehearing and suggestion for rehearing en banc within 30 days of the filing of the petition and any reply. And if the court grants rehearing or goes en banc, it must decide the case within 120 days of doing so.

These deadlines are created by chapter 154 for a reason. In too many cases, Federal courts' resolution of capital habeas petitions has been unreasonably slow. In the *Fornoff* case, for example, the petition remained before the Federal district court from 1992 to 1999, and that court did not even hold an evidentiary hearing in the case during that time. And this is far from the most extreme example of habeas delay. At the end of her written testimony before the House Crime Subcommittee, Mrs. *Fornoff* included several examples of other cases involving habeas petitioners who had murdered children and whose Federal habeas proceedings have been unconscionably delayed. All of these examples involved delays in the district courts much longer than the 7-year delay in the case of the man who killed Christy Ann *Fornoff*: the several cases that Mrs. *Fornoff* described had remained before one Federal district court for periods of 10 years, 12 years, 13 years, and in one case, for 15 years. I quote the portion of Mrs. *Fornoff*'s testimony describing these cases:

Benjamin Brenneman [was] 12 years old [when he was killed in] 1981. This case is surprisingly similar to my daughter's case. Benjamin also was a newspaper carrier, and also was kidnaped, sexually assaulted, and killed while delivering newspapers at an apartment complex. Benjamin's killer tied him up in a way that strangled him when he moved. Police began by questioning a man in the building who was a prior sex offender. They found Benjamin's special orthopedic sandals in his apartment. When they interviewed him, he admitted that he kidnaped Benjamin, but claimed that "he was alive when I left him." Police found Benjamin's body in a nearby rural area the next day. (More information about the case is available in the court opinion for the State appeal, *People v. Thompson*, 785 P.2d 857.)

Benjamin's killer was convicted and sentenced to death. After the State courts finished their review of the case, the killer filed a habeas corpus petition in the Federal District Court in 1990. Today, 15 years later, the

case is still before that same court. In 15 years, the district court still has not ruled on the case! To put the matter in perspective, so far, and with no end in sight, the litigation before that one district court has outlived Benjamin by three years. This is simply unconscionable.

Michelle and Melissa Davis [were] ages 7 and 2 [when they were murdered in] 1982. An ex-boyfriend of the sister of Kathy Davis took revenge on the sister for breaking off their relationship by killing Kathy's husband and her two young daughters, Michelle and Melissa. The killer confessed to the crime. The State courts finished their review of the case in 1991. (*People v. Deere*, 808 P.2d 1181.) The next year, the defendant went to the Federal District Court. He remained there for the rest of the decade, until 2001. When he lost there, he appealed, and in 2003, the Federal Court of Appeals for the Ninth Circuit sent the case back to the district court for another hearing. Today, 14 years after State appeals were completed, and 23 years after Michelle and Melissa were taken from their mother, the case remains before the same district court.

Vanessa Ibarri [was] 12 years old [when she was killed in] 1981. Vanessa and her friend Kelly, also 12 years old, were both shot in the head while walking through a campground in 1981. Kelly survived, but Vanessa did not. The killer did not dispute that he shot the two girls. (The case is described in *People v. Edwards*, 819 P.2d 436.) The State courts finished their review of the case in 1991—already a long time. The killer then went to Federal court in 1993. The Federal District Court finally held an evidentiary hearing in December 2004, and dismissed the case in March of this year. Just now, 12 years after the case entered the Federal courts, and 24 years after the murders occurred, the appeal to the Federal Court of Appeals is just beginning.

Michelle Melander [was] 5 months old [when she was murdered in] 1981. Michelle, who was just a five-month-old baby, and her brother Michael, then 5 years old, were kidnaped in Parker, Arizona, in July 1981. The killer dropped off Michael along the road. Michelle's body was discovered six days later at a garbage dump several miles down the same road. She had been severely beaten and sexually mutilated. The State court opinion describes the many injuries that this helpless baby suffered. The man who committed this horrific crime later attempted to kidnap and rape a 10-year-old girl.

State courts finished their review of his case in 1991. (*People v. Pensinger*, 805 P.2d 899.) The case then went to Federal District Court in 1992. The defendant raised new claims that he had never argued in state court, so the Federal court sent the case back to state court. Five years later, the case returned to Federal court. Today, the case remains before the same Federal District Court where the Federal appeals began in 1992. Baby Michelle would be 24 years old now if she had lived, and there is no end in sight for her killer's appeals.

Other examples of extreme delays on Federal habeas have been provided to me by State prosecutors. Clarence Ray Allen, who was executed by the State of California earlier this year, had begun his Federal habeas proceedings in 1988—they lasted for over 17 years. Lawrence Bittaker was convicted of four murders, four kidnappings, and nine rapes by the State of California in 1981. He filed a habeas petition in the Federal district court in 1991. That petition still is pending before the same Federal district court today. Alejandro

Ruiz was convicted and sentenced to death for three murders in 1980. He initiated Federal habeas proceedings in 1989. Those proceedings still are pending before the same Federal district court today.

I do not mean to single out the Federal district courts for criticism. Inexplicable delays in Federal habeas review of State convictions appear throughout the Federal system. Section 2263's deadlines for issuing court-of-appeals decisions and resolving appellate rehearing petitions also are manifestly necessary. In *Morales v. Woodford*, 336 F.3d 1136, 9th Cir. 2003, for example, the Ninth Circuit took 3 years to decide the case after briefing was completed. And after issuing its decision, the court took another 16 months to reject a petition for rehearing. Similarly, in *Williams v. Woodford*, 306 F.3d 665, 9th Cir. 2002, the court waited 25 months to decide the case after briefing was finished—and then waited another 27 months to reject a petition for rehearing, for a total delay of almost 4½ years after appellate briefing had been completed. Section 2263 would have sharply reduced these delays.

Chapter 154 also creates uniform, clear rules for addressing defaulted and unexhausted claims. It bars all review of any claim that has not been addressed on the merits when the Federal petition is filed, unless the claim meets one of three narrow exceptions. Section 2264, by not extending the chapter 153 exhaustion requirement to chapter 154, allows Federal courts to treat defaulted and unexhausted claims the same way, rather than distinguishing between them and only dismissing the former unless they meet an exception, but returning the latter to State court for further exhaustion. Chapter 154 eliminates the need to ever send a claim to State court for further exhaustion.

As those familiar with the history of chapter 154 are aware, the chapter has its origins in the 1989 Powell Committee Report. See Judicial Conference of the United States, Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, Committee Report and Proposal, August 23, 1989. Then-Chief Justice Rehnquist had appointed former Justice Lewis Powell to chair this committee, which was charged with studying problems with Federal habeas corpus review of capital cases. The report identified a lack of finality and unnecessary delays in Federal collateral review of State capital cases, and recommended specific reforms. With a few significant changes, such as a more restrictive standard for holding evidentiary hearings and accommodation of the rule of *Teague v. Lane*, not to mention the changes that are about to be made by section 507, the Powell Committee Report's recommendations are what is now chapter 154. The Powell Report is thus a very useful guide to understanding chapter 154.

The Powell Committee Report explains, for example, why section 2264

eliminates the exhaustion rule and treats unexhausted claims the same way as defaulted claims. As the Report notes:

The Committee identified serious problems with the present system of collateral review. These may be broadly characterized under the heading of unnecessary delay and repetition. The lack of coordination between the Federal and state legal systems often results in inefficient and unnecessary steps in the course of litigation. Prisoners, for example, often spend significant time moving back and forth between the Federal and state systems in the process of exhausting state remedies.

The Powell Committee Report then describes its proposed approach to unexhausted claims:

Federal habeas proceedings under the proposal will encompass only claims that have been exhausted in state court. With the counsel provided by the statute, there should be no excuse for failure to raise claims in state court. The statute departs from current statutory exhaustion practice by allowing for immediate presentation of new claims in Federal court in extraordinary circumstances.

The Powell Committee Report further elaborates on this change to the exhaustion requirement in its comment following the presentation of the language that became section 2264:

If a petitioner asserts a claim not previously presented to the state courts, the district court can consider the claim only if one of three exceptions to the general rule listed in [section 2264(a)] is applicable. . . .

As far as new or "unexhausted" claims are concerned, section [2264] represents a change in the exhaustion doctrine as articulated in *Rose v. Lundy*, 455 U.S. 509 (1982). Section [2264] bars such claims from consideration unless one of the [subsection (a)] exceptions is applicable. The prisoner cannot return to state court to exhaust even if he would like to do so. On the other hand, if a [subsection (a)] exception is applicable, the district court is directed to conduct an evidentiary hearing [note that this aspect of the Powell Committee recommendation is superseded by section 2254(e)] and to rule on the new claim without first exhausting state remedies as *Rose v. Lundy* now requires. Because of the existence of state procedural default rules, exhaustion is futile in the great majority of cases. It serves the state interest of comity in theory, but in practice it results in delay and undermines the state interest in the finality of its criminal convictions. The Committee believes that the States would prefer to see post-conviction litigation go forward in capital cases, even if that entails a minor subordination of their interest in comity as it is expressed in the exhaustion doctrine.

Section 2264 implemented the Powell Committee's approach by limiting Federal habeas review under chapter 154 to "claims that have been raised and decided on merits in the State courts," and, in subsection (b), by declining to extend the exhaustion principles of section 2254(b) and (c) to chapter 154. This system shifts the focus away from and eliminates the need to exhaust State remedies for every claim. Section 2264 does not require exhaustion, but, rather, adjudication on the merits in State court or satisfaction of one of subsection (a)'s exceptions. If an unexhausted or otherwise not-adjudicated-on-the-merits claim can meet

one of those subsection (a) exceptions, then it can go forward, because the exhaustion requirement does not apply. And in any event, even if a chapter 154 prisoner, for whatever reason, still wanted to exhaust State remedies for a new claim after he has filed his Federal petition, he would not be able to do so and then return to Federal court: unlike chapter 153, chapter 154 sharply curtails amendments to petitions and thus would make it all but impossible to amend the newly exhausted claim back into the Federal petition. Under chapter 153's stay-and-abey regime, "a district court may, in its discretion, allow a petitioner to amend a mixed petition by deleting the unexhausted claims, hold the exhausted petition claims in abeyance until the unexhausted claims are exhausted, and then allow the petitioner to amend the stayed petition to add the now-exhausted claims." *James v. Ptiler*, 269 F.3d 1124, 9th Cir. 2001. As the courts have explained, chapter-153 habeas petitioners are permitted to "stay and abey" and then come back to Federal court because chapter 153 petitions are subject to the relatively liberal amendment standards of Federal Rule of Civil Procedure 15. See *Anthony v. Cambra*, 263 F.3d 568, 576-578 (9th Cir. 2000). This system would not be possible under chapter 154's section 2266(b)(3)(B), however. That subparagraph would bar the post-exhaustion amendment that restores the newly exhausted claims unless the amendment could meet the exacting standards of the successive-petition bar.

Instead of staying and abeying and further exhausting, the chapter 154 petitioner will go forward: his claims in the Federal petition will have either been raised and adjudicated on the merits in State court, they will satisfy one of the section 2264(a) exceptions, or they will be dismissed, and Federal adjudication of the merits of the claims that remain before the court will commence immediately. This streamlined approach is what makes chapter 154's deadlines for district court adjudication possible. Obviously, if applicants were expected to use the stay-and-abeyance system, and proceedings were put on hold so that another round of State-court review could be completed, district courts would not be able to resolve chapter 154 petitions within 15-month limit, much less the 180 days required prior to 2006, that is imposed by section 2266.

Section 2264's abolition of stay-and-abey would have made a real difference in some of the cases that I have described. For example, in the case of the man who killed Mary Ann Hughes's son, eliminating the need to return to State court to exhaust new claims would have reduced the delay in the Federal proceedings by nearly 3 years. And in the case of Michelle Melander, the baby girl who was killed in 1981 whose case is described in Carol Fornoff's testimony, the section 2264 system would have eliminated 5 years

of delay from the ongoing Federal proceedings in that case.

By requiring that chapter 154 courts only consider claims adjudicated on the merits in the State courts, and limiting the exceptions to that rule to those enumerated in section 2264(a), chapter 154 also effectively eliminates use of several other exceptions to the procedural-default doctrine that I believe have proven problematic. The chapter 153 procedural-default doctrine derives from the Supreme Court's own rules for allowing review of a State court judgment when respondent asserts the presence of an adequate and independent State bar to review of the Federal question. These exceptions are numerous, complex, and in some cases they are overly broad and simply do not provide an adequate justification for ignoring State procedural rules. It generally is not a significant burden on the States that the U.S. Supreme Court has granted itself such broad and amorphous authority to override State procedural requirements. The Supreme Court only decides a limited number of cases every year. But on Federal habeas, where every State criminal conviction effectively is subject to "appeal of right" in Federal court, application of the full panoply of the U.S. Supreme Court's exceptions to the adequate-and-independent State grounds rule has become burdensome and unwieldy.

One exception to the adequate-and-independent State grounds doctrine that has proved particularly problematic in the habeas context is the rule that a State procedural bar is not adequate to preclude further Federal review if the procedural requirement is "inconsistently applied" by the State courts. Viewed literally and without regard to the policies underlying the procedural default doctrine, the "inconsistently applied" standard can have a disturbingly broad sweep. This standard can be understood to void any State procedural rule that has been altered in any way or that is not strictly enforced in absolutely every case.

Unfortunately, some lower Federal courts have adopted this draconian interpretation. For example, the Ninth Circuit has held that if a State's highest court clarifies a State procedural rule or reconciles competing interpretations of that rule, then that rule was "inconsistently applied" prior to such clarification. As a result, the Ninth Circuit deems the State rule "inadequate" to be enforced on Federal habeas review prior to that point.

Another problematic area of chapter-153 procedural-default jurisprudence is particular Federal courts' interpretation of the "independence" requirement. A State procedural decision cannot serve as a bar to further review on the merits if it is not truly procedural—i.e., if it is in reality a decision on the merits of the Federal claim. Many State courts have incorporated into their procedural rules—particularly their deadlines for filing claims—an "ends of justice," "plain error," or

"manifest injustice" exception that allows State courts to hear the occasional egregious but untimely or otherwise improper claim. Presumably, in applying such an exception, these State courts perform at least a cursory review of the merits of every petition, even those that clearly are untimely. Technically, because these State courts conduct such review, their deadlines are not purely "procedural"—they involve some review, however fleeting, of the merits—and therefore these deadlines are not "adequate" for habeas purposes. The Ninth Circuit has adopted this rather extreme interpretation of the adequacy requirement.

It is difficult to understate the perverse consequences of the more extreme interpretations of the exceptions to the chapter-153 procedural default doctrine. By punishing State courts for ever departing from or even clarifying their procedural rules, or for exercising discretion to hear egregious cases, these interpretations deter State courts from making the kind of commonsense decisions that are essential to preventing a miscarriage of justice. No system of procedure will ever be perfect; every system will always require some exceptions in order to operate fairly and efficiently. Yet under some Federal courts' interpretations of procedural default, unless the State court adopts a zero-tolerance approach to all untimely claims, no matter how worthy of an exception, the State procedural rule is at risk of being voided for all Federal habeas cases.

In Arizona, litigants have seen the inevitable consequences of the Ninth Circuit's no-good-deed-goes-unpunished rule: when liberality towards criminal defendants is held against the State on Federal habeas, the State will outlaw such liberality. In his August 19, 2005, answers to written questions submitted to him by Senator LEAHY, Arizona prosecutor John Todd described the effect of the Ninth Circuit's application of an extreme "independence" requirement:

as a result of Federal court rulings, the Arizona Legislature repealed the requirement that all criminal cases be reviewed by the state appellate courts for fundamental error. When an appellate court in Arizona reviewed the entire record for fundamental error, it did not matter that the defendant procedurally defaulted the issue. If the error were serious enough, even if it was only an error of state law, a defendant would receive relief in state court through this fundamental error review. Fearing that the Ninth Circuit's decision in *Beam v. Paskett*, 3 F.3d 1301, 1305 (9th Cir. 1993), would open Arizona criminal cases to endless litigation, the Arizona Legislature repealed Ariz. Rev. Stat. Ann. §13-4035 in 1995.

This is not a result that anyone should want. States should not be discouraged from affording broad review to a prisoner's claims in State court or exercising flexibility in their application of procedural rules. Yet in the Ninth Circuit, State executives would be ill advised to adopt any procedural rule that affords courts any discretion

or includes any plain-error type exceptions.

The Ninth Circuit has accounted for a disproportionate share of all Federal court of appeals decisions identifying exceptions to the chapter-153 procedural default doctrine, and has issued several particularly extreme interpretations of the doctrine. The States in that circuit effectively are subject to a different habeas regime. The Ninth Circuit has now voided State procedural rules in six of the States under its jurisdiction. It has found State procedures either inadequate or insufficiently independent to limit Federal review in California, Oregon, Arizona, Washington, Idaho, and Nevada.

Section 2264 eliminates these problems. Rather than incorporating the procedural-default doctrine and all of its baggage, it starts fresh; it bars all claims not raised and decided on the merits unless one of three narrow exceptions applies. It does not matter under chapter 154 that a Federal court thinks that the State's rules are not "adequate" or are not sufficiently "independent," because the adequacy and independence of the State rule no longer are the basis for barring review of the claim in Federal court. Under chapter 154, that basis will be section 2264, which employs its own standard and exceptions. And under that section, no longer will the labyrinthine body of caselaw governing the Supreme Court's certiorari jurisdiction over cases decided on State-law grounds be applied to every State capital conviction on Federal collateral review.

Section 2264 also eliminates the overused "ineffective assistance gateway" that is a frequent feature of chapter 153 litigation. Under chapter 153, litigants often seek to recast claims that they know are defaulted as claims of ineffective assistance of counsel. They argue that the default should be excused because State trial or appellate counsel was ineffective. Chapter 154 does not include this exception. If a claim of ineffective assistance of trial or appellate counsel itself was raised and decided on the merits in State court, that same claim can be raised in Federal court. But otherwise, chapter 154 charges petitioners with the acts of their attorneys. The whole point of chapter 154 is to persuade States to establish mechanisms for providing defendants with qualified postconviction counsel. If a State has opted in to chapter 154, the petitioner presumptively received qualified counsel at all stages of his State proceedings, and opportunities to litigate issues of counsel competency should be scaled back. If the factual predicate of a claim could have been discovered through the exercise of due diligence, then per paragraph (3) of section 2264(a), regardless of what the attorney did or did not do, that claim does not qualify for an exception to the main rule of 2264(a) and it cannot be raised in Federal court.

It also bears mention that section 507 includes a retroactivity provision that

my Arizona colleague, Congressman FLAKE, thought particularly important. New section 2265(a)(2) provides that the date that a State established the mechanism by which it qualifies for chapter 154 "shall be the effective date of the certification under this subsection." This was intended to ensure that if a State established a mechanism for providing qualified counsel to capital defendants on postconviction review prior to the formal designation of a State as chapter-154 eligible—or even prior to the enactment of chapter 154—then all capital defendants who received counsel after the establishment of that mechanism shall be subject to chapter 154, even if they filed a Federal petition before the State is certified as chapter-154 eligible.

I had originally thought this provision sufficient to ensure that a State would receive the full benefits of chapter 154 even for Federal petitions filed before the State is certified as chapter-154 compliant. But questions of retroactivity often prove more complicated than they first appear. Representative FLAKE raised with me the question of whether even if a Federal petition filed precertification is deemed subject to chapter 154, Federal courts could still find that the procedural benefits of chapter 154 only apply to that case on a going-forward basis. In other words, the effective-date provision guarantees that even a pre-filing petition is now governed by chapter 154, but chapter 154's procedural restrictions might be construed to not apply to what is already in that petition. For States such as Arizona, this would mean—assuming, of course, that I am correct in predicting that the U.S. Attorney General will find Arizona 154-eligible—that section 507 does not completely undo the damage done by the Spears case. It is possible, for example, that in Spears itself or in subsequent cases that should have been subject to chapter 154, additional claims have been amended into the petition that would not satisfy 2266(b)(3)(B), or unexhausted claims already may have been returned to State court for further exhaustion and the Federal petition stayed.

Given that stay-and-abeey sometimes adds 5 years to the time that it takes to address a Federal petition, Mr. Flake and I decided that it should be made clear that the whole petition would be subject to chapter 154, not just new claims and amendments added after the State is certified as 154 eligible. To that end, subsection (d) was inserted into the middle of section 507 to ensure that the 154 changes—including the effective-date provision—would operate against pending cases. In effect, this provision guarantees the even for a pending case, the effective date provision applies retroactively and the case is regarded as always having been subject to chapter 154. Thus once a State is certified as 154-eligible and a particular petition falls within that chapter's sweep, the courts should re-

view the whole petition and treat it as if chapter 154 had been applicable since before the petition was filed. Claims added via post-answer amendments should be reviewed for consistency with section 2266(b)(3)(B). If they do not qualify, they should be struck, just as they would have been if the petition had been governed by chapter 154 at the time when the amendment was filed. And most importantly, no unexhausted claim in a chapter-154 petition may be permitted to serve as a basis for "stay and abey." Either that claim will satisfy one of the 2264(a) exceptions, and review of that claim and "raised and decided" claims in the petition will go forward immediately, or the claim will not meet the exception, it will be dismissed, and review of the rest of the proper claims in that petition will go forward immediately. In either event, review of all Federal petitions made subject to chapter 154 will go forward immediately, though the petitioner may, of course, continue to simultaneously pursue State review of the unexhausted claim, and the chapter 154 time deadlines will start running. Per paragraph (d)(2), that deadline does not run until section 507 is enacted with regard to a particular State—meaning that it does not run until the State is certified as chapter-154 eligible pursuant to section 507. Under section 507, once a petition is made subject to chapter 154, it can no longer be held in abeyance so that the petitioner can pursue State exhaustion of unexhausted claims.

Finally, I would like to thank those individuals who have been important to the enactment of section 507. This group includes Mike O'Neill and Brett Tolman of Chairman SPECTER's staff, Mike Volkov of Chairman SENSENBRENNER's staff, and Brian Clifford of Congressman FLAKE's staff. I also thank Kent Scheidegger of the Criminal Justice Legal Foundation, who came up with the idea that became section 507. Finally, I also thank Chairman SPECTER, who was willing to accommodate me on a matter of importance to prosecutors and crime victims in the State of Arizona by including section 507 in this conference report.

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

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

Mr. FEINGOLD. Mr. President, in a few minutes, the Senate will conclude a process that began over a year ago by reauthorizing the PATRIOT Act. I will have a few closing remarks, but first I want to take this opportunity to thank the extraordinary staff who have worked on this bill for so long. These men and women, on both sides of the aisle, have worked extremely hard, and

they deserve to be recognized. Before I yield the floor, I will recognize the staff by name.

Mr. President, beginning in November, when we first saw a draft of the conference report, I have spoken at length about the substance of this bill. I hoped that when we started the task of reauthorizing the PATRIOT Act at the beginning of last year, the end product would be something the whole Senate could support. We had a real chance to pass a bill that would both reauthorize the tools to prevent terrorism and fix the provisions that threaten the rights and freedoms of innocent Americans.

This conference report, even as amended by the bill incorporating the White House deal that we passed yesterday, falls well short of that goal. And so, of course, I will vote no.

Protecting the country from terrorism while also protecting our rights is a challenge for every one of us, particularly in the current political climate, and it is a challenge we all take seriously. I know many Senators who will vote for this reauthorization bill in a few minutes would have preferred to enact the bill we actually passed, without a single objection, in the Senate in July of last year.

I appreciate that so many of my colleagues came to recognize the need to take the opportunity presented by the sunset provisions included in the original PATRIOT Act to make changes that would better protect civil liberties than did the law we enacted in haste in October 2001. Nevertheless, I am deeply disappointed we have largely wasted this opportunity to fix the obvious problems with the PATRIOT Act.

The reason I spent so much time in the past few days talking about how the public views the PATRIOT Act was to make it clear that this fight was not about one Senator arguing about the details of the law. This fight was about trying to restore the public's trust in our Government. That trust has been severely shaken as the public learned more and more about the PATRIOT Act which we passed with so little debate in 2001 and as the administration resisted congressional oversight efforts and repeatedly politicized the reauthorization process. The revelations about secret, warrantless surveillance last year only confirmed the suspicions of many in our country that the Government is, unfortunately, willing to trample the rule of law and constitutional guarantees in the fight against terrorism.

The truth is, the negative reaction to the PATRIOT Act has been overwhelming. Over 400 State and local government bodies passed resolutions pleading with Congress to change the law. Citizens have signed petitions, library associations and campus groups have organized to petition the Congress to act. Numerous editorials have been written urging Congress not to reauthorize the law without adequate protections for civil liberties.

These things occurred because Americans across the country recognize that the PATRIOT Act includes provisions that pose a threat to their privacy and to their liberty. These are values—values—that are at the very core of what this country represents and of who we are as a people.

In 2001, we were viciously attacked by terrorists who care nothing for American freedoms and American values. We, as a people, came together to fight back, and we are prepared to make great sacrifices to defeat those who would destroy us. But what we will not do, and what we cannot do, is destroy our own freedoms in the process.

Without freedom, we are not America. If we do not preserve our liberties, we cannot win this war, no matter how many terrorists we capture or kill. That is why the several Senators who have said, at one time or another during this debate, things such as, "Civil liberties do not mean much when you are dead," are wrong about America at the most basic level. It seems they do not understand what America is all about. Theirs is a vision that the Founders of this Nation, who risked everything for freedom, would categorically reject, and so do the American people.

Americans want to defeat terrorism, and they want the basic character of this country to survive and prosper. They want to empower the Government to protect the Nation from terrorists, and they want protections against Government overreaching and Government overreacting. They know it might not be easy, but they expect the Congress to figure out how to do it. They do not want defeatism—defeatism—on either score. They want both security and liberty. And unless we give them both—and we can, if we try—then we have failed.

This fight is not over. The vote today will not assuage the deep and legitimate concerns the public has about the PATRIOT Act. I am convinced that in the end the Government will respond to the people, as it should. We will defeat the terrorists, and we will preserve the freedom and liberty that make this the greatest country on the face of the Earth.

It has been a particular privilege to work for so long and so closely with the bipartisan group that developed the SAFE Act. Each Senator is supported by dedicated and talented staff, and let me mention a few of them now. For Senator SUNUNU, Dave Cuzzi. Joe Zogby for Senator DURBIN; Brooke Roberts and Lisa McGrath for Senator CRAIG; Sam Mitchell with Senator SALAZAR; and Isaac Edwards with Senator MURKOWSKI. Let me also recognize Bruce Cohen, Julie Katzman, and Tara Magner with Senator LEAHY; and Chairman SPECTER's hardworking team—Mike O'Neill, Brett Tolman, and Nick Rossi. Other key staff on the Judiciary Committee include Joe Matal with Senator KYL; Christine Leonard with Senator KENNEDY; Steve Cash for

Senator FEINSTEIN; Paul Thompson with Senator DEWINE; Reed O'Connor with Senator CORNYN; and Bruce Artim with Senator HATCH; Cindy Hayden with Senator SESSIONS; Preet Bharara with Senator SCHUMER; Chad Groover with Senator GRASSLEY; Eric Rosen with Senator BIDEN; Ajit Pai with Senator BROWNBACK; Mary Chesser with Senator COBURN; Nate Jones with Senator KOHL; and James Galyean with Senator GRAHAM.

Staff for a number of Senators not on the committee worked very hard on this bill as well. Let me recognize Brandon Milhorn and Jack Livingston for Senator ROBERTS; Mike Davidson, who works for Senator ROCKEFELLER; Joe Bryan with Senator LEVIN; Alex Perkins and John Dickas with Senator WYDEN; Steve Taylor with Senator HAGEL; Ruchi Bhowmik with Senator OBAMA; Mirah Horowitz with Senator KERRY; Caryn Compton with Senator BYRD; Eric Buehlmann with Senator JEFFORDS; and Alan Hicks with Senator FRIST. And thanks also to Senator REID's staffers, Ron Weich and Serena Hoy, and to our Democratic floor staff—Marty Paone, Lula Davis, Gary Myrick, Chris Kang, and Mike Spahn for their help over the past several weeks of this debate.

Finally, let me sincerely thank my own tireless and dedicated staff: Mary Irvine, Paul Weinberger, Sumner Slichter, Chuck Stertz, Bob Schiff, Lara Flint, Farhana Khera, Alex Busansky, Sarah Preis, Margaret Whiting, Molly Askin, John Haffner, Bharat Ramamurti, Avery Wentzel, Tracy Jacobson, and Molly McNab.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. 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. FEINGOLD. Mr. President, I yield back my remaining time.

The PRESIDING OFFICER. The time is yielded back.

Mr. FEINGOLD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. 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. HATCH. Mr. President, I yield myself such time as I may need.

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

Mr. HATCH. In more than 4 years since the September 11, 2001, attack on the United States, the PATRIOT Act has helped to protect our homeland from subsequent terrorist attack. Reauthorizing this effective piece of legislation is an important victory in the

continued war on terror. The PATRIOT Act safeguards freedoms of American citizens while aggressively curtailing the opportunities terrorists have to strike. We have added many provisions designed to ensure that our civil liberties remain unaffected despite the fact that civil libertarians were completely unable to point to one incident or provide any example of abuses under the original PATRIOT Act.

As everybody knows, that act was negotiated in the Judiciary Committee when I was chairman, and I had a lot to do with it, along with Senator LEAHY and others. We found that the original PATRIOT Act functioned very well in the protection of our country.

The PATRIOT Act has enjoyed robust public support in Utah since its inception. According to Dan Jones and Associates, our leading pollster in Utah, every time the firm has polled Utahns in the last 4 years, 60 percent or more have voiced approval of the anti-terrorism measure. A poll of U.S. citizens reported that more than 60 percent of Americans believed that the Government should do more to protect this country from attack. Reauthorizing this act is definitely the right thing to do for our country at a time when we tend to forget that there are people and governments out there and in here that are committed to wiping the United States of America off the face of the Earth. I, for one, will stand up and say: Not on my watch.

We have held hearing after hearing listening to all sides' robust debate about how to change the PATRIOT Act. We have had some ridiculous suggestions, we have had some good suggestions, and we have had some that we have had to take on this bill that really are not very good. My prayer is that the terrorists will be foiled by our intelligence and law enforcement agencies before another attack. But we have to give those agencies the tools to do that. I have a lot of faith in the ability of law enforcement men and women to do the job effectively. My hope is that those who have agreed that we can take away some of the tools afforded these men and women are wrong, that we can prevent another attack and reduce the ability of law enforcement to prevent those attacks at the same time.

The additional language that has been demanded in this bill does exactly that. It has reduced our ability to be able to protect the Nation under the guise that we had to protect civil liberties that were never infringed upon in the 4 years that the PATRIOT Act has been in existence. I particularly commend Senators SPECTER and LEAHY for the work they have done, Congressman SENSENBRENNER in the House, and other members of the Judiciary Committee in the House. They have worked long and hard. There have been some provisions that we had to take in order to get this bill reauthorized to protect the American people that we wish we didn't have to take. I just hope this bill

will work as well as the original PATRIOT Act which has done so well in keeping us free of terror ever since 9/11.

I don't think anybody can doubt that. We held some 24 hearings over the years when I was chairman on the PATRIOT Act. I demanded that every hearing show us where the act has not acted properly, show us where there has been a violation, show us where there has been a violation of civil liberties, show us where somebody who is a noncriminal has been hurt by the PATRIOT Act. The fact is, not one time in all those hearings have they been able to come up with one illustration that people's civil liberties have been interfered with.

We passed a bill that was the Hatch-Dole bill back in, I believe it was 1996. It was the antiterrorism effective death penalty bill. That bill took care of domestic terrorism, but our laws were not up to speed with regard to international terrorism. So the PATRIOT Act was the way that we got our laws up to speed so that we could work against international terrorism. All of these provisions in the original PATRIOT Act we basically have in our anticrime laws. So what we did is, we had these laws that would enable law enforcement to do a lot of things to protect us against the Mafia, against child molesters, against pornographers. We brought the PATRIOT Act up to the level of those law enforcement tools. That is what the original PATRIOT Act did. That wasn't good enough for some of our colleagues. So there has been a lot of screaming and shouting about the PATRIOT Act, even though not one illustration has been given in the last, really, 5 years that would indicate that the original PATRIOT Act had interfered with anybody's just civil liberties.

We need to pass this bill such as it is. We need to pass it and enact it into law and give our law enforcement the tools they need to be able to protect us. I just wish we could have reenacted the original PATRIOT Act. But be that as it may, I compliment the chairman of the Judiciary Committee and the distinguished ranking member, Senator LEAHY, for the work they have done. I don't think it could have happened without them and without Chairman SENSENBRENNER and others in the House. I express my regard for them and my regard for this bill and hope everybody will vote for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I know some time has been specifically retained to the Senator from Vermont. Would the Chair be good enough to tell me how much time that is?

The PRESIDING OFFICER. Fourteen and a half minutes.

Mr. LEAHY. I thank my good friend.

Today's vote marks another stage in reauthorizing the USA PATRIOT Act. Our goal has always been to mend the PATRIOT Act, not to end it. To that

end we passed a bipartisan bill with better provisions last July after it was unanimously reported by the Judiciary Committee. I appreciate the kind words of the Senator from Utah. He voted for that bill. I voted for that bill. The distinguished chairman of the committee, Senator SPECTER, voted for the bill. We have all been chairman of that committee. The bill came here to the floor of the Senate, and the Senate voted it out unanimously. That was a good bill.

Then the House-Senate conference was hijacked. Democratic conferees were excluded at the request of the Bush-Cheney administration, and congressional Republicans wrote the bill. I worked to get that process and the bill back on track and, working with Chairman SPECTER, we were able to make some progress and get some helpful additions and changes. But the conference report that was insisted upon by the Bush-Cheney administration and passed by Republican leaders through the House was still flawed.

Last December, I worked with a bipartisan coalition of Senators to oppose final passage of that conference report and create some additional opportunities for improvements. That led to the Sununu bill which is in essence an amendment to the conference report. I supported Senator SUNUNU's efforts and praised him for it and those who worked with him. I voted for that bill. It contained some of the improvements I had pushed for. Our efforts to protect libraries from national security letters was very important to me. That is why I supported Senator SUNUNU's bill in spite of the worsening of the gag rule provisions insisted upon by the Bush-Cheney administration.

Now we turn to the conference report. Even with the Sununu bill, which I support, the conference report has not been improved sufficiently for me to support it. Just as I opposed it last December, I continue to oppose it. The bill that the Senate will adopt today falls far too short and impinges too greatly on the liberties of Americans.

The Founders made a profound choice when they framed the fourth amendment to our Constitution as a measure to ensure the right of the people to be secure. The word they used was "secure." The fourth amendment is, of course, about guaranteeing our privacy rights and the requirement of the judicial check on the Government invading our homes, our papers, and our effects. The Founders saw that as the right to be secure. As the Constitution and the Bill of Rights were written so carefully, every single word holds meaning. They saw a right to be secure, and so do I. I believe that Americans' security includes our national security, our security from terrorism, and also our right to be secure as Americans. That means exercising the liberties and rights and freedoms that define us across the world uniquely as Americans.

I do not believe this bill achieves the balance that we could have and should

have achieved. The final product would have been better had the Bush-Cheney administration and congressional Republicans not insisted on locking Democrats out of the negotiations throughout the process.

Still this bill, through our efforts, in some ways represents an improvement. It has better sunshine and reporting provisions. I worked hard to include these new provisions because sunshine, coupled with sunset provisions, adds up to more accountability in the use of these Government powers. But some key provisions remain significantly flawed.

I respect those who conclude that on balance the bill's virtues outweigh its vices. And it has both. But I believe we can and should do better. I believe America can do better.

I am one who worked diligently on the original PATRIOT Act in the days following the attacks of 9/11. I was chairman of the Judiciary Committee. We moved it through in record time. I also voted to reauthorize and improve a bipartisan version of the act back in July of 2005. I joined with Senator SUNUNU in leading the effort to ensure that the provisions did not expire when we reached an impasse last fall.

In the PATRIOT Act, we provided important and valuable tools for the protection of Americans from terrorism, and I have worked and voted to preserve them. But I am disappointed that this conference report represents a missed opportunity to get it right, to recalibrate the balance better, to respect the liberties and rights of Americans while protecting us from those who threaten harm.

I am concerned, as all Americans are, with our security. The Presiding Officer and I and thousands of others come to work every day in a building that was targeted for destruction by al-Qaida. I cannot think of anything I will do in my life that makes me more proud than to be in the Senate and come in this building every day. But I want this building secure for you, for me, and for everybody who works here. I know what it means to be targeted. I was a target of a letter laced with deadly anthrax. I was supposed to open it. A couple of innocent postal workers who touched the outside of the envelope died before it reached me, and it was stopped before it got to my desk. It doesn't hit much closer to home than that.

Many of us recall Benjamin Franklin's wise counsel. He was a man involved in a revolution against King George III. Had that revolution failed, he and his compatriots would have been hanged. When he was working to form a government that would respect liberty and protect people, he cautioned that those who would give up essential liberties for temporary security deserve neither liberty or security.

More than 200 years later, we should listen to Benjamin Franklin. We have to preserve our essential liberties or we do not preserve what makes us Americans.

The seriously bad parts of this bill are made unacceptable because we currently have an administration that does not believe in checks and balances and prefers to do so many things in secret. We now see the Bush-Cheney administration seeking to twist the authorization for use of military force against al-Qaida into a justification for the secret, warrantless wiretapping of Americans' e-mails and telephone calls. We see them claiming that they need not fulfill their constitutional responsibility to faithfully execute the laws but can pick and choose among the laws they decide to recognize. Even the Attorney General writes to the Judiciary Committee saying their position on the law evolves. I did not realize there were such legislative Darwinists in this administration that they believe so strongly in evolution when it suits their purpose.

Legislative action should be the clear and unambiguous legal footing for any Government powers. These matters should be governed by law, not by whim or some shifting conception of the President's inherent authority that is exercised in secret. Confronted with this administration's unique claims of inherent and unchecked powers, I do not believe the restraints we have been able to include in this reauthorization of the PATRIOT Act are sufficient.

I will continue to work to provide the tools that we need to protect the American people. I trust that Vermonters will understand that while I have repeatedly voted to extend and reauthorize the PATRIOT Act, this permanent measure falls short of what they deserve.

I will continue to work to provide the oversight and checks needed on the use of Government power. I know the Senate is going to adopt this measure now, but it is a pale shadow of what it could have been had the administration not stepped in and told the leadership in the House and the Senate that they had to get in line and do what the administration wanted, not what an independent Congress should do. It is not the best that the greatest democracy on Earth deserves. I will keep fighting for us to do better.

I will continue to work to improve the PATRIOT Act, and I will work to provide better oversight over the use of national security letters and to remove the un-American restraints on meaningful judicial review. I will seek to monitor how sensitive personal information from medical files, gun stores, and libraries is obtained and used. I will join Senators SPECTER, SUNUNU, CRAIG, and others in introducing a bill to improve the PATRIOT Act and reauthorization legislation in several important respects. Much is left to be done.

If Senators work together, much can be accomplished. We will be a more secure Nation if we do, and also our liberties will be more secure. Certainly, we owe that to the next generation, to protect the liberties so many other

generations have fought to provide for us.

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

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

Mr. FRIST. Mr. President, in a few moments, we will be passing the PATRIOT Act. By passing it, we will make America safer, while safeguarding our civil liberties and privacy. America will be safer because law enforcement will have the tools to track suspected terrorists and break up terrorist cells before harm is done to innocent Americans. America will be safer because the conference report goes beyond the original PATRIOT Act to combat terrorist financing and money laundering, protect our mass-transportation systems and the railways, secure our seaports, and fight methamphetamine drug abuse—what has grown to become the No. 1 drug problem in America—and it does so by restricting access to the ingredients that make that poisonous drug.

Today we are making a statement that we cannot return to a pre-9/11 structure that could cost innocent Americans their lives. We will not return to the days of the pre-9/11 bureaucratic wall that blocked information sharing between law enforcement and intelligence. We cannot go back. We must go forward.

Due to persistent delays and obstruction by some of my friends on the other side of the aisle, I has taken far too long to get to today's vote. By remaining focused on our goals, focused on governing with meaningful solutions, to act on principles and to make America safer and security our No. 1 priority, we will prevail today.

I am proud to cast my vote to support the PATRIOT Act, and I urge my colleagues to do the same.

The PRESIDING OFFICER (Mr. COLEMAN). Under the previous order, the hour of 3 p.m. having arrived, the Senate will proceed to vote on the adoption of the conference report to accompany H.R. 3199.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

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

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUE) is necessarily absent.

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

The result was announced—yeas 89, nays 10, as follows:

(Rollcall Vote No. 29 Leg.)

YEAS—89

Alexander	Dole	Menendez
Allard	Domenici	Mikulski
Allen	Dorgan	Murkowski
Baucus	Durbin	Nelson
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Obama
Biden	Feinstein	Pryor
Bond	Frist	Reed
Boxer	Graham	Reid
Brownback	Grassley	Roberts
Bunning	Gregg	Rockefeller
Burns	Hagel	Salazar
Burr	Hatch	Santorum
Cantwell	Hutchison	Sarbanes
Carper	Inhofe	Schumer
Chafee	Isakson	Sessions
Chambliss	Johnson	Shelby
Clinton	Kennedy	Smith
Coburn	Kerry	Snowe
Cochran	Kohl	Specter
Coleman	Kyl	Stabenow
Collins	Landrieu	Stevens
Conrad	Lautenberg	Sununu
Cornyn	Lieberman	Talent
Craig	Lincoln	Thomas
Crapo	Lott	Thune
Dayton	Lugar	Vitter
DeMint	Martinez	Voinovich
DeWine	McCain	Warner
Dodd	McConnell	

NAYS—10

Akaka	Harkin	Murray
Bingaman	Jeffords	Wyden
Byrd	Leahy	
Feingold	Levin	

NOT VOTING—1

Inouye

The conference report was agreed to.

#### UNANIMOUS CONSENT AGREEMENT—S. 2320

Mr. FRIST. Mr. President, I ask unanimous consent that the cloture vote on the motion to proceed to S. 2320, the LIHEAP bill, be vitiated.

I further ask consent that immediately after the consent, the Senate proceed to the consideration of the bill, provided further that Senator ENSIGN or his designee be immediately recognized in order to make a Budget Act point of order and that Senator SNOWE or her designee be recognized in order to move to waive. I further ask that there then be one-half hour of debate, equally divided, prior to a vote on the motion to waive.

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

Under the previous order, the cloture motion is vitiated.

Mr. FRIST. Mr. President, we will be having a vote in 30 minutes. In all likelihood, that will be the last vote of the day.

#### MAKING AVAILABLE FUNDS FOR THE LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM, 2006

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 2320) to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006 and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senator from

Nevada is to be recognized. The Senate will be in order.

Mr. COBURN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, the pending bill, S. 2320, offered by the Senator from Maine, increases direct spending in excess of the allocation to the Health, Education, Labor, and Pensions Committee. Therefore, I raise a point of order against the bill, pursuant to section 302(f) of the Congressional Budget Act.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, pursuant to section 904(c) of the Congressional Budget Act of 1974, I move to waive the applicable points of order. I move to waive the point of order under the applicable provisions of the rules and statutes.

The PRESIDING OFFICER. The motion to waive is debatable. There is 30 minutes equally divided.

Who yields time? The Senator from Maine.

Ms. SNOWE. Mr. President, I rise today to ask the Senate to do the right thing and to oppose this budget point of order brought up against this legislation that will provide emergency funding for the Low Income Home Energy Assistance Program.

I thank the majority leader for his assistance in advancing this legislation. It is the culmination of his considerable efforts over the last few months to bring forward this legislation. I thank the minority leader as well for recognizing the importance and vitality of this issue, and promoting this amendment forward as well.

Mr. President, I know you are sitting in the chair, but you have been one of the leaders on this issue, trying to get additional commitment for funding for low-income fuel assistance, particularly for this winter, along with my colleague, Senator COLLINS of Maine. This legislation addresses a nationwide crisis by bipartisan consensus and fiscal responsibility. This legislation shifts the fiscal year for LIHEAP funding into the Deficit Reduction Act of 2005, which was already signed into law, from 2007 to 2006. This will provide an additional \$1 billion for all those Americans who simply cannot wait any longer for relief from home heating fuel costs that have skyrocketed over last year's heating bill.

The vote we will be taking this afternoon is on the budget point of order against this bill. I would like to elaborate on why this legislation is absolutely vital to increasing the funding for low-income fuel assistance for all parts of the country that depend upon this program.

There has been a lot of misinformation with respect to exactly what this bill is all about. First of all, it is budget neutral. Don't take my word for it; it is the conclusion of the Congressional Budget Office. All of the funds

under this bill have already been appropriated and accounted for within the budget. All this measure will do is shift the funds from fiscal year 2007 to 2006. There is no additional, there is no new spending.

This approach is not only fiscally sound and budget neutral, but, critically, it will allow States the flexibility to allocate funds to the residents who are struggling to pay for energy bills this year. The White House and our Senate leadership recognize this is the fiscally responsible solution to resolve this crisis.

I know some have said essentially we believe the LIHEAP program should be funded through contingency measures such as this legislation. That is what this legislation does, it utilizes the existing formula. It is not only cold weather States but also warm weather States that will benefit under this legislation.

I regret some of the misinformation that has been circulated with respect to LIHEAP as to who will benefit, which States will benefit under this legislation. I submit that in a year of high energy costs—and it has been a year of high energy costs, anywhere from 30 percent to 50 percent—it has devastated our State of Maine, Minnesota, and all parts of the country that have had to rely on home heating oil or natural gas or whatever the alternative. But the fact remains, the prices have increased 30 percent to 50 percent over last year's, and last year's prices went up 20 percent to 30 percent. That factor is not in dispute.

The additional factor is that we are using the same distribution formula. I believe that needs to be understood because I have seen some of the papers distributed as to which States will benefit. It is totally inaccurate. Nothing has changed with respect to that formula.

On the issues that are important to know about this increase in LIHEAP funding, No. 1, it is budget neutral; No. 2, it will not increase spending; and No. 3, the distribution formula remains the same. I regret that we have seen so much misinformation and mischaracterization with respect to the funding formula under this legislation.

Finally, we have heard: Well, it is a mild winter. I would like you to come to Maine, if you think it is a mild winter, and you ask all those people about the 30 percent to 50 percent increases. The current low-income fuel assistance program has not had an increase in real dollar terms since 1983. I happened to be in the House of Representatives when we created this program. It has not increased in real terms. If anything, it has been reduced. I regret that we have reached this point in time with respect to this vital program that so many low-income individuals depend upon who can barely make ends meet given the extent of the costs this winter with respect to home heating oil.

We are now talking about a program that has not increased in net terms

since 1983, when oil was \$29 a barrel. Today it is more than \$60 a barrel. Eighty-four percent of the people qualified for LIHEAP funds—and 80 percent of my State—are dependent upon home heating oil. It is a crushing financial burden.

Let there be no mistake about the fact that this program is vital. It is significant. It is essential to so many of the families in my State and across the country. The urgency of this legislation has escalated to an emergency. Last year, Americans struggled because of the high cost of energy. This year, they continue to struggle. We know the personal terms in which people have been devastated by the increased costs of energy.

I hope the Senate would waive the budget point of order because this amendment, this legislation, is budget neutral, and it does depend upon the existing distribution formula. Both cold weather States and warm weather States stand to benefit. There has also been a mischaracterization and misinterpretation about the distribution of this funding under this legislation. In fact, it was the agreement that we reached before Christmas. That was essentially the agreement we reached before Christmas. The very distribution formula we agreed to, the one which has been the status quo, the one which we agreed to with those who represent warm weather States, is exactly what this legislation before us is all about. Nothing has changed. I deeply regret to see what has been distributed and circulated that would suggest otherwise because it simply is not true.

Mr. President, I reserve the remainder of my time.

Ms. LANDRIEU. Will the Senator vote for a question?

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. The Senator from Maine has made a very passionate plea and one with which I tend to agree. I am a supporter of this program and a supporter of making the formula even more fair for the Southern States that have very high energy costs as well—different but high. But would the Senator agree that another way to bring down prices of oil and gas would be to increase the supply of oil and gas into our country? Would the Senator at least acknowledge that is another way to help people?

Ms. SNOWE. Mr. President, I would like to reclaim my time because I don't think we ought to debate the question here today. I don't think there is any question about that.

But in the meantime, we have to address an emergency, and that emergency exists in my State and many other States across the country, including the Senator's State. I think it is a matter of fairness and it is a matter of equity and it is a matter of balance.

I think indisputable about why we need this legislation and why we need this funding now. I hope Members of

the Senate will recognize that. This is fairly distributed for warm and cold weather States. I hope we can increase the supply. But right now we have to deal with the emergency that is presented in my State and many other States across the country.

I reserve the remainder of my time.

Ms. LANDRIEU. I thank the Senator. I don't want to take any more time. I am going to support bringing this bill up because I believe, as the Senator outlined, it is an emergency and something we need to do.

But I want to say for the Record that there are other ways we can lower the price. Louisiana and the gulf coast is prepared to do that. I hope, as we move on with this debate, we can get to that issue as well.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, first of all, I was in the meeting with Senator SNOWE before Christmas. This is not the formula that we had agreed on in those meetings.

Second of all, the formula that she says will benefit the warmer States is not accurate. It is not historically accurate. It is not accurate with regards to the contingency funding. Contingency funds were released in January. There are 29 States that will be worse off under the Snowe proposal, if this money is put through the regular formula, the warmer States benefit. The whole formula was set up so that mostly colder States would benefit from the first dollars, and then if dollars are added, the warmer States would benefit.

But the way this amendment is set up that is, in fact, not what happens.

We have a budget point of order. People have to know that we are not voting on cloture on the bill or cloture on a motion to proceed to the bill, but we are actually voting on a budget point of order.

This has been described as a mild winter. There is plenty of evidence for that, especially on the east coast. I think the only two States that could arguably say it has been a harsher winter than normal are Oregon and Washington. And most of the rest of the country has had a fairly mild winter.

The point that somehow the Northeast needs this more because they have more higher heating expenses isn't true. Electricity in most of the country now is generated by natural gas. Because of the environmental concerns plants have switched over to natural gas. Air conditioning in the Southern States is just as critical as heat in Northern States. When it gets hot enough, people die from heat.

The LIHEAP formula was set up to be able to help warmer States and help low-income people in those warmer States. Frankly, this proposal does not do that. It does not do that fairly. If this money were all put through the regular formula this would be a fair proposal.

That is why the Senator from Louisiana's State would lose around \$18 mil-

lion if this formula were done differently, as she would like to see it done, versus the way Senator SNOWE has this drafted.

I didn't think this is the time for us to be waiving budget points of order. We are facing difficult fiscal times, and we need to show some fiscal restraint around here. Hopefully, we can sustain this budget point of order.

I reserve the remainder of our time.

Mr. INHOFE. Mr. President, I say to the Senator from Nevada, frankly, I think the Senator from Louisiana made a very good point coming up and saying this makes sense. I had an amendment that would allow us to go into BLM lands to extract natural gas and for LNG plants. That was taken out in the highway bill up in Massachusetts.

It doesn't seem at all reasonable to me that you would support something such as this for electricity and at the same time turn around and oppose every effort we have to try to get more natural gas to bring to these homes.

I certainly agree. I had an amendment to do that. It doesn't look like there will be an opportunity to entertain that amendment. Without that, I think it is unreasonable to expect that we would be able to do this.

Mr. ENSIGN. Mr. President, there is no question that one of the reasons this was even in the bill—in the Defense bill—was because ANWR was in there to help pay for extra money for LIHEAP. One of the reasons they say this is paid for is because they are taking money out of 2007 and moving it into 2006. We know this is a phony argument. We have seen it done around here time and time again. They are budget games that are played so they can say things are budget neutral. How do you spend \$1 billion and call it budget neutral? You are not taking something else and cutting spending someplace else. You are only shifting to the next year.

This budget point of order is real, and this budget point of order I think should be sustained.

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

The PRESIDING OFFICER. The Senator from Maine has 5 minutes 48 seconds.

Ms. SNOWE. I yield to my colleague, Senator COLLINS, 2 minutes.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I commend you and Senator SNOWE for working so hard on this very vital issue.

I want my colleagues to understand exactly what is at stake here.

Early Tuesday morning, my State suffered a terrible tragedy—three people, including a woman and her 10-year-old son, died when their house caught fire and burned to the ground. There was the most deadly fire in Maine in 6 years. They lived in Limestone, ME, a town in northern Maine. On the night of the fire, temperatures were below zero. The family had run out of heating

oil, and as a result, was using wood stoves to provide the heat. According to the firefighters, the fire started near one of the wood stoves in the kitchen.

This is literally a matter of life and death.

At Christmastime, when I was home in my hometown of Caribou, ME, two elderly women were hospitalized with hypothermia.

This is not theoretical. It is not theoretical when there is ice in the toilet and when our elderly and low-income are at risk of illness, disease, and, yes, even death because they cannot afford the high cost of home heating oil.

The least we can do in a country as wealthy as ours is to provide some modest assistance. And those who say that the winter is almost over, come to where I am from in northern Maine. Believe me, there is a lot more winter to come.

Maine has run out of its LIHEAP funding. It is time for us to provide this modest help.

Thank you, Mr. President. I thank my colleague from Maine.

The PRESIDING OFFICER. The Senator from Oklahoma.

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

The PRESIDING OFFICER. There is 20 minutes 43 seconds.

Mr. COBURN. Mr. President, I agree with both Senators from Maine. Our goal is not to have additional LIHEAP funding. Our goal is to make sure we don't steal it from our grandchildren, robbing from the unborn and the young in this country to do something in the name of good. It is not moral at all.

What we are saying is pay for it. To say it is paid for, to say you are paying for it, there is \$1 billion allocated for next year, we are going to take that away and that is going to have to be paid for by somebody. You know who is going to pay for it? Our grandchildren.

If we want to help the people of Maine, there are a couple of things we can do. No. 1, you can use your TANF money for LIHEAP right now. That is allowed under Federal law. There is no reason anybody in Maine doesn't have the LIHEAP funds. You have money in your TANF account right now that you can transfer to solve that problem in terms of the acute problem.

The second thing you ought to know is that there is \$11.2 billion in unobligated funds in Health and Human Services right now that the administration could release for LIHEAP. We don't have to be doing this. If it truly is an emergency, the administration has the money right now to send to Maine to do that. Your Governor has the ability to take TANF money right now and support LIHEAP in Maine.

But it is unconscionable for us to steal from the next generation and steal from the next budget cycle saying that we have paid for it. We haven't paid for anything. What we are doing is sacrificing the standard of living for future generations in this country through this type of process.

If you want to bring the bill to the floor, which we have offered the Senator from Maine, come to the floor, offer to spend \$1 billion and give us the cuts to pay for it. Let us make the hard decisions that we were charged with to make among priorities in this country.

The other point I would make is there was an offer by the chairman of the Budget Committee last year to put an additional \$1 billion in this fund. The Senator from New Hampshire offered to put another \$1 billion by taking a small percentage across the board from Health and Human Services. This body voted that down. This body said we don't want to take a little bit from everybody else to pay for additional LIHEAP. We wouldn't even vote for it.

Now, when we are going to steal it from our children—the people who can't defend themselves, the future taxpayers of this country—then we are going to say it is OK, I believe it is morally wrong.

The people who need help today can get it. They can get it from the TANF funds in the State of Maine and the Northeast. They can get it from Health and Human Services, unallocated and unspent money that is sitting there right now.

We are not for not helping people, and it is not true to characterize it that way. We want to help anybody who truly needs our help.

The distribution under this formula, if you were to divide the money by everybody who could be eligible under LIHEAP, comes to \$35 a house.

The other point I would make, since LIHEAP started, we have averaged \$160 million a year in weatherization. That is \$3.2 billion in weatherization. There are some people who would suggest that multiple homes have been winterized multiple times. There has been no oversight on weatherization. There has been no oversight on how the money has been spent. We have not done our job in terms of oversight to make sure the money that goes for LIHEAP is spent in the proper way.

I believe it very noble that the Senators from Maine want to help their constituency. Let us help you help your constituency but let us not steal it from the next generation.

I reserve the remainder of our time. The PRESIDING OFFICER (Ms. COLLINS). The Senator from Maine.

Ms. SNOWE. Madam President, how much time remains?

The PRESIDING OFFICER. There is 3 minutes 36 seconds.

Ms. SNOWE. Madam President, I ask unanimous consent to have an additional 10 minutes on each side so we can make sure that everyone who wants to speak has a chance to speak on this issue.

The PRESIDING OFFICER. Is there objection?

Mr. ENSIGN. Madam President, reserving the right to object, we have a lot of requests from folks who are trying to get out. I guess there are planes leaving. How about 2 minutes for each side.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Ms. SNOWE. Madam President, I yield 2 minutes to the Senator from Minnesota.

Mr. COLEMAN. Madam President, I want to add my voice to this. This is not about theoretical discussions. I understand we have debates about oversight.

I held a hearing on this in Minnesota a couple of months ago.

By the way, winter is still there. And it is not just a matter of winter still being there. In Minnesota, we have some programs that allow heat not to be turned off and people have to pay that back through the course of the summer.

I had a mom come forward who has three kids, who is working and going to school, who is talking about having to give up going to school so she can pay the heating bill. I had a senior woman come forward who is paying 50 percent of her income for heat and medicine.

This is not a theoretical debate. This is about life and death. This is about suffering.

Clearly, we have an opportunity and an obligation. I hope we do it and simply do the right thing. This is a rich country. Those who need to be heard, those who are raising their voices and asking us to do the right thing in a way that is being paid for, we can debate that all we want. But the bottom line is we have the opportunity to do what is right.

I urge my colleagues to do the right thing and support the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. Madam President, I want to reiterate a little about what Senator COBURN talked about, whether this bill is paid for; if people want to truly pay for this legislation then we must cut other areas of spending. This is about priorities. If this is a priority—and a lot of people think it is, the Senator from Minnesota and the Senators from Maine and others from around the country believe it is a priority—then other sacrifices must be made to meet this priority. We need to set priorities in this country.

There are those of us who believe that deficits are real. They are absolutely real. People get up and talk about them all the time. But when it comes right down to whether you are willing to make tough choices instead of just increasing the spending and passing that debt on to the next generation, they aren't willing to offer other spending cuts so that we are not increasing the deficit.

That is the point that Senator COBURN and myself are trying to make. It is time to start being fiscally responsible around here instead of just passing this debt on to the next generation.

I reserve the remainder of our time.

The PRESIDING OFFICER (Mr. CHAFEE). Who yields time?

The Senator from Maine.

Ms. SNOWE. Mr. President, I yield 1 minute to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, we are here because people are suffering throughout the country, most particularly the coldest States.

Americans throughout this country—in the southland and in the northwest—understand that in Maine in the winter and in Washington State in the winter, people are freezing.

Senator COLLINS' very poignant and very telling story about what happens when people are desperately cold should be remembered by all of us.

I think it is astounding that we talk about poor people, trying to help them with a little bit of money for their heat and suggest that we take it from other poor people who use TANF money to feed their children so the other people can have heat. We talk of being responsible and say: Now we have to cut the deficit. I didn't hear that message weeks ago when we were talking about huge tax cuts to benefit the wealthiest Americans. That was not being responsible.

We have a chance to help people, a last chance to help people this year who are literally freezing. It we do not take it, shame on us.

Mr. COBURN. How much time remains?

The PRESIDING OFFICER. The Senator from Maine has 3 minutes, and the Senator from Oklahoma has 7 minutes 20 seconds.

Mr. COBURN. I yield 2 minutes to the Senator from Alabama.

Mr. SESSIONS. Mr. President, the budget point of order is not a technical budget point of order. It was a technical point of order with regard to the asbestos bill. This bill would provide \$1 billion more in 2006 than the budget authorized. If we are going to spend \$1 billion more than the budget authorized, how can that not be in violation of the budget?

There are two aspects: first, you say it is paid for in the future. That is irrelevant to whether the Budget Act is violated, even if it were paid for. Second, we have been around here long enough to know we are not going to cut LIHEAP next year by \$1 billion. We know that.

As much as we would like to accommodate this spending—I can understand the desire of the Senators to do so—we should not do it because it violates the budget in a very fundamental way.

It clearly is an unfair allocation of funds compared to my State, which receives \$17 million less if it were distributed according to the discretionary plan, as opposed to the fundamental formula.

I yield back my remaining time.

The PRESIDING OFFICER. Who yields time?

Ms. SNOWE. Mr. President, I yield 1 minute to the Senator from Connecticut.

Mr. DODD. I ask unanimous consent to be added as a cosponsor.

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

Mr. DODD. Mr. President, let me add to the words spoken by others. With all due respect, we hear people talking about deficit financing, and I could not agree more. Twenty years ago I offered a pay-as-you-go bill that got 12 votes in the Senate. We ought to be doing that.

With all due respect, we have people in deep trouble, people not in a position to have resources to take care of themselves. Those here who live in the Northeast or the Midwest and the upper tier States understand this problem.

I cannot say how many times I have voted when matters affected the South or the West or when other parts of the country were devastated. I do so proudly. I tell my constituents in Connecticut that they are Americans, they are hurting, they need our help, and I give them my vote when they are in trouble.

I find it astounding when I listen to Members who say my constituents cannot get help in their time of need. That is what we are asking. It is cold where we live. We have a month and a half of winter left.

The Senators from Maine are asking for little consideration. The next time some Senator from some part of the country says they have a problem in the gulf States, we will not hear the Senators from Maine saying: I am sorry, we cannot deficit finance that. We will take care of our people.

That is what we are asking you to do today: Help us take care of our people. Support this, please.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. COBURN. I yield 2 minutes to the Senator from Mississippi.

Mr. LOTT. Mr. President, I thank the Senator from Oklahoma for yielding.

Mr. President, I have sort of a long history with this program. Years ago on my watch we started this temporary program, this emergency program called LIHEAP, energy assistance. Well, here we are, 10 years later, almost 10, it is still here, and it is growing.

I guess one thing that shocked me, and this is an admission against my interests, when I realized it went from being "heating" assistance to being "heating and air-conditioning" assistance, I began to think: How far will this go?

I was in the ninth grade before we had air-conditioning, and we survived. We did not suffocate. It was damn hot down there on the Mississippi gulf coast. You could not open your windows because mosquitos would come in because we did not have screens on the windows.

So, now, millions is going into air-conditioning. And then we have heat. What is it we are not going to give people for free? Is there any limit? Is there

any limit to the amount of money? I thought we were having global warming. I thought it was a mild winter.

Yes, my bills have gone up. Mine have gone up astronomically in my State because of the disaster.

I thank the Senators from Maine, particularly Senator SNOWE, for this not being connected to the flood insurance proposal. Flood insurance is a completely different issue, and because people paid for this coverage, it has already been paid for, they paid the Government for their flood insurance, and now they are going to say: Gee, because the Senate once again does not do its job and is playing games with us, we are not going to get the checks for the coverage we already paid for? I don't understand that.

Second, Senator COBURN and others who are opposed to this LIHEAP proposal have acted responsibly. They could have been obstructionist, the way they have been on other bills around here, to insist on a vote on a motion to proceed. The Senators from Maine are going to make their case. Those who are opposed to it will make our case. We will have a vote. One side or the other will win, and then I recommend we go forward at that point.

I do think if we are going to have this program, we at least need a formula that is a national formula. I do not like the program. I would prefer not a nickel of it go to my State, but I would not be doing my job if I did not insist on a formula that is fair to all of us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Just to make a few final points because, again, there has been a lot of misunderstanding, mischaracterizations, misinterpretations of the facts. The facts are, this program has not grown. That is indisputable.

Look at this chart and see where we are. The level of funding for LIHEAP is equivalent to 1983 buying power, when oil per barrel costs were at \$29. Today it is more than \$60. The buying power for any household that depends on low-income fuel assistance has decreased from 50 percent in 2001 down to 19.5 percent. Look at the cost of home heating oil. That is where we are today.

I go unchallenged when it comes to matching fiscal responsibility. There are a number of issues I have offered in the Senate to accomplish that. That has not occurred. I agree we have to do much more. But the fact is, this \$1 billion was included in the Deficit Reduction Act that most Members voted for in this Senate last year that included this funding and included this formula. Those are the facts. The \$1 billion and the formula were already included in the Deficit Reduction Act. This is not increasing spending. It is budget neutral. It is the same funding formula that everyone agreed to that would help both cold weather and warm weather States. That is indisputable.

I hope at least we could debate the true and accurate facts. That is what this is all about.

This is a national issue. It is not a regional issue, it is a national issue. It is a national crisis. I hope the Senate will vote to waive the budget point of order so we can provide the \$1 billion that was allocated in 2007 and advance it to 2006.

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. COBURN. Mr. President, first of all, the Senator from Connecticut makes a great point. This is not about regionalization. This is about paying for something.

The Senator from Maine is absolutely right. It was in the act we passed this last fall. But it was in there for next year. It was advance funding so we would pay for the money for next year.

So if in fact we take this money now and move it out of next year, we are going to have to come up with another \$1 billion. You can play the games with the numbers all you want, but the fact is, we are going to have to come up with another \$1 billion.

The other thing I point out, we are not in great financial shape. We added half a trillion dollars. I was one of the few Republicans who did not vote with the rest of my side in terms of the tax cuts this last time through. I have been straightforward in addressing the financial problems our country had.

I ask Members to look at this chart put out by NOAA that says, in fact, for every area seeking today, they are either above normal or much above normal in terms of their temperatures this year. My poor State, Oklahoma, is red hot. It was 92 degrees yesterday in Oklahoma. We set an all-time record. We had 20 or 30 days over 100 this past summer.

I am not debating whether we should help people. I am debating can we help people without killing our children. The offer was made several times to the people offering this amendment: We will help you find offsets to pay for this so we do not take it from future generations. That was rejected, straightforward.

The fact is, we have to be responsible. We are going to have to come to a point in time where we will have to make a hard choice. If we do not, here is what will happen. The international financial community is going to do it for us. Interest rates are going to go sky high. The value of the dollar will fall through the floor. Talk about leaving a heritage to our children. We will leave a heritage of poverty to our children.

It is time for us to make the hard decision. Let's support this point of order because it is right. If we do not support this point of order, the budget does not mean anything, nor do the budget rules mean anything, nor do the appropriations categories mean anything.

I yield back the remainder of our time, and I call for a vote.

Ms. COLLINS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

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

The legislative clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from Texas (Mrs. HUTCHISON).

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER) and the Senator from Hawaii (Mr. INOUE) are necessarily absent.

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

The yeas and nays resulted—yeas 66, nays 31, as follows:

[Rollcall Vote No. 30 Leg.]

YEAS—66

Akaka	Dorgan	Murray
Baucus	Durbin	Nelson (FL)
Bayh	Feingold	Obama
Bennett	Frist	Pryor
Biden	Grassley	Reed
Bingaman	Harkin	Reid
Burns	Hatch	Rockefeller
Burr	Jeffords	Salazar
Byrd	Johnson	Santorum
Cantwell	Kennedy	Sarbanes
Carper	Kerry	Schumer
Chafee	Kohl	Smith
Clinton	Landrieu	Snowe
Cochran	Lautenberg	Specter
Coleman	Leahy	Stabenow
Collins	Levin	Stevens
Conrad	Lieberman	Sununu
Dayton	Lincoln	Talent
DeWine	Lugar	Thune
Dodd	Menendez	Voinovich
Dole	Mikulski	Warner
Domenici	Murkowski	Wyden

NAYS—31

Alexander	DeMint	Martinez
Allard	Ensign	McCain
Allen	Enzi	McConnell
Bond	Feinstein	Nelson (NE)
Brownback	Graham	Roberts
Bunning	Gregg	Sessions
Chambliss	Hagel	Shelby
Coburn	Inhofe	Thomas
Cornyn	Isakson	Vitter
Craig	Kyl	
Crapo	Lott	

NOT VOTING—3

Boxer	Hutchison	Inouye
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The PRESIDING OFFICER. On this vote the yeas are 66, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to, and the point of order falls.

The Senator from Arizona.

AMENDMENT NO. 2899

Mr. KYL. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. KYL], for himself and Mr. ENSIGN, proposes an amendment numbered 2899.

Mr. KYL. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To make available funds included in the Deficit Reduction Act of 2005 for allotments to States for the Low-Income Home Energy Assistance Program for fiscal year 2006)

Strike all after the first word and insert the following:

**1. FUNDS FOR LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.**

Section 9001 of the Deficit Reduction Act of 2005 is amended—

(1) in subsection (a)—

(A) by striking “for a 1-time only obligation and expenditure—” and all that follows through “2007” the first place it appears and inserting “\$1,000,000,000 for fiscal year 2006”;

(B) by striking “; and”; and

(C) by striking paragraph (2);

(2) by redesignating subsection (b) as subsection (c);

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

“(b) LIMITATION.—None of the funds made available under this section may be used for the planning and administering described in section 2605(b)(9) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(b)(9)).”;

(4) in subsection (c) (as redesignated by paragraph (2)), by striking “September 30, 2007” and inserting “September 30, 2006”.

Mr. KYL. Mr. President, let me briefly describe what the amendment does. I appreciate the fact that most of my colleagues are leaving, and we will have to have the debate next week. Since the budget point of order was not sustained, we are going to proceed to the consideration of the addition of \$1 billion to the LIHEAP funding for low-income energy assistance. Of course, in the colder States, that generally takes the form of assistance in the heating oil bills to heat their homes. We have, however, in other States a crisis in the middle of the summer when it is so hot that folks have a hard time paying the air conditioner bills. The issue is essentially the same.

It has been pointed out by one individual that more people actually die as a result of heat than cold. In any event, we are pleased to see \$2 billion already having been spent for the low-income energy assistance program in those colder States.

What we are talking about here is the addition of another \$1 billion. We are saying, as to this other \$1 billion, it should be spent pursuant to the formula in the law. What our amendment does is to say take this additional \$1 billion, spend it pursuant to the formula under the law.

That formula is broken into two parts. The first is \$250 million and the second is \$750 million. The formula for the first \$250 million disburses it a certain way, and for the last \$750 million, it disburses it somewhat differently. That formula actually ends up getting money to all of the States but in a different mix than the first \$2 billion, which is so-called contingency funding, which was almost all given to support folks in the Northeast part of the United States, in the colder part of the country.

The problem is that by the time we get to the summertime, almost all of the money is used, and anybody who

needs it for air-conditioning assistance, of course, has nowhere to turn. Last summer, when we had the record-high temperatures in Arizona, we found that there was no money. We finally located about \$183 million, if memory serves me, and by the time we located that funding, it was virtually too late to do very much good.

That is the reason, at this point in the year, if we are going to spend an additional billion dollars, we need to spend it pursuant to a formula under which all States can receive funding, that it is distributed fairly and spread out evenly so that the States that have air-conditioning problems will receive the benefit from it just as those States that have problems with the cold.

Mr. President, I suspect there is little point to further debating this amendment at this time. I hope that when Members return, we will be able to vote on this amendment. If we are going to add the additional billion dollars, at least let's do it in a way that is more fair. I think something like 38 States lose under the proposal of the Senator from Maine, and they would actually be made more whole if my amendment is adopted. I hope at that time we will act favorably on this amendment.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I rise in support of the proposal Senator KYL has offered. I do believe it represents a step toward fairness. But I do reiterate that I believe the budget point of order should not have been waived, and that we actually spent, under this proposal that has been cleared so far, another billion dollars this year than we had within our budget. That is a bad thing. It is those kinds of steps that get us into real trouble in spending.

We have my colleagues who say they care about spending; oh, they care about spending. But time and time again, when a vote comes up that actually has something to do with our deficit, they are AWOL. I thought it was amusing that not long ago, a Senator referred to a vote he cast 15 years ago as if that is going to prove he is frugal. We have a vote right now. This was the vote. This was a clear vote. It had to do with whether we had any intention to be disciplined in the way we handle money. They say: Well, we need this money. But the truth is we have had the warmest January on record. This has been a very mild winter. For that, we can be most thankful.

Is this an emergency? Well, what happens next year if it really is an average or cold year and we don't have this billion dollars? It has already been spent this year. And they say the heating oil prices don't fall, they go up. They say the heating oil prices will go up again next year. Where are we going to come up with that billion dollars? We don't even have a proposal here to offset it.

With regard to the funding formula we have seen, if we can fund this bil-

lion dollars in the way that has been proposed, my State, which suffers from a lot of hot days—and in small houses and in mobile homes that are not cooled, people do die. That is a tough time. If we are going to have this fund, it is only fair that the poor people in my State have a chance to participate in it, not just a select group.

So I just return to the fundamental principle. We are indeed moving a piece of legislation that spends \$1 billion more this year than we authorized in spending. The fact that it came from next year's money doesn't answer the question. We are spending a billion dollars more than we were authorized to spend under our budget. What good is a budget if we don't adhere to it?

What we have is some tax-and-spend people here. They vote against tax cut extensions, they vote to raise taxes, and they vote to raise spending. That is what it is about. They say they are frugal. They say they are responsible. Those of us who are trying to contain spending and maintain a low tax rate for the American people, they say somehow we don't care about our people. That is not correct.

We are at a point in time when our Federal budget is allowing for an increase in spending every year, and we will see again this year a very sizable increase. We will have before the Budget Committee an effort to contain just a little bit the growth of entitlements. Do you know what I am hearing, Mr. President? I am hearing we don't have the votes in the Budget Committee to even have a modest containment of spending on entitlement programs, which is where the growth is—about \$870 billion for discretionary spending and \$1.2 trillion for entitlements. The discretionary budget this year will come in almost flat this year, with little increase. But entitlement spending is going up at about a rate of 7 percent or so. It is just driving our deficits. We cannot even begin to discuss that, apparently, because people want to raise taxes and spend. They want to tax and spend. It is not the right way to go. That is not what this country was founded on.

When you look at the Europeans who have done tax and spend—look at Germany, with 11.5 percent unemployment, and France has 9.5 percent unemployment. That is what the statist Socialist economies produce. How did they get there? Because their congresses could not resist the demand to fund every feel-good program that comes along the pike. That is why. Then when you meet with a businessman from Germany, he says: I know we have to do something, Senator. Maybe we can cut back on this, but people are so dependent on these government programs, so used to them in Germany, that we cannot quite get the votes to stop it. We know if we don't do it, it can wreck our economy, but we cannot get the votes because people become addicted to it, they like it. They feel like anything they once received, if it

is not received the next year, the demagogues say it is a big cut and you have been denied something you are entitled to.

So I just say that if I seem a bit frustrated, you can know that I am. We have had a lot of good discussion about how to contain the growth of entitlements—and I am not a bit sure that is going to bear fruit this year—just to maintain the current tax level and keep taxes from being increased next year. Now we come along on top of a generous LIHEAP program and add \$1 billion more, in violation of the budget agreement. We just voted to waive the Budget Act and do it anyway with 66 votes. I am telling you, this is not the way to get spending under control in this country. It is the way to move our country to a statist economy. That is not our strength.

Our unemployment is not 11.5. Our unemployment is not 9.5. Ours is 4.7. In my State of Alabama, it is 3.5. We didn't get there by taxing and spending; we got there by reducing the burden of government on the private sector and allowing the private sector to flourish. Tax revenues are up in every city in the State, I do believe. I traveled 26 counties last week. Every mayor and county commissioner I talked to is seeing increases in sales tax revenues. Many are telling me they have a 14-, 15-, to 18-percent increase in taxes. Why? Because the economy is booming. Companies are hiring people. They are bidding up the wages. They cannot find people, and they have to pay higher wages. People are making more money, and they pay taxes on that. So revenue to the Federal Government is up. Yes, we have a deficit, but revenue is up.

People don't pay taxes to Uncle Sam if they don't make money. They are paying more taxes because they are making more money. We have a free market economy that allows growth and vitality. So I think this vote is an important vote for us as a people. It is a sad vote to me to see many people who claim to be frugal, claim to care about spending, but when the chips are down and we have a clearly dangerous bill like this one, a bill that we ought to be able to vote down overwhelmingly, we could not even get 40 votes to say no. We could not find 40 votes to say no to this plan. I don't blame Senators for trying to do this. They say that you in the South want help. Well, scrutinize the help we are asking for. If we are asking for something that is unfair, say so, vote against it. Don't come in here and vote for everything this one wants, everything that one wants, and everything that one wants, and then walk in here and say the deficit is too big and now we have to raise taxes. That is where we are headed. I think everybody here knows that. There are a lot on the other side of the aisle, and apparently some on this side, for whom that is a strategy. That is a strategy. The strategy is to increase spending and then say you cannot have lower

taxes and we have to have higher taxes and we have to raise taxes. They don't want to say it publicly and openly, but that is what they are working toward.

That is a big divide in the Congress, as I see it. I hate that we have a dispute over this spending, but apparently we have. It is discouraging to see the vote. But I think, as we continue to talk about it, perhaps the American people will talk to their Senators and Congressmen. When I travel around, they talk to me about spending. Of course, they want their projects. They say: Oh, don't cut that. But overall, they want constraint.

I believe the American people fundamentally will respect us if we maintain some discipline. That means, on the discretionary account, staying within our budget figure, which is basically flat spending. When we are in a crisis, we try to keep our spending level. We have a deficit. We ought to stay level. We are not slashing anything. We have to stop going for more and more red ink, more and more new spending programs that we have not had before to fund heating oil in the warmest winter on record.

We are going to keep talking about it. There will be more votes in this Congress and in this Senate. We did pretty well last year. We did do some reduction—modest reduction in entitlements with the Medicaid Program. We limited the growth of Medicaid, and we were proud of ourselves. Over 5 years, it was going up 41 percent before we passed the cost-saving bill, and now it is going up 40 percent. We thought we were quite proud of ourselves to save a little money that way. If we would do that on the other accounts, like Medicaid and Medicare and some other accounts—just a little bit—we would have big numbers as we go along and make a real difference in what we are doing. But it looks like that may not happen.

So we are going to have to, I guess, reengage the American people, reengage the Members of Congress, and they are going to be asked by constituents: How did you vote? How did you vote on LIHEAP? Did you vote to spend another \$1 billion? Maybe we can begin to have the American people talk some sense into those of us in Congress.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I have some remarks to make in tribute to a combat infantry and armored brigade from Mississippi which has returned from Iraq. I ask unanimous consent that I may speak as in morning business.

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

(The remarks of Mr. COCHRAN are printed in today's RECORD under "Morning Business.")

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### MORNING BUSINESS

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

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

#### TRIBUTE TO THE SERVICE OF THE 155TH SEPARATE ARMORED BRIGADE

Mr. COCHRAN. Mr. President, I am pleased to pay tribute to the service of the 155th Separate Armored Brigade of the State of Mississippi. The 155th has a rich history of extraordinary military service to our Nation. It has participated in the War of 1812, the American Civil War, the Spanish-American War, both World Wars, Desert Shield and Desert Storm, and operations in Bosnia.

Recently, the 155th completed a year-long tour in support of Operation Iraqi Freedom. The 4,000-member brigade combat team was attached to the II Marine Expeditionary Force and deployed to the Al Anbar Province of Iraq. They conducted operations that included rebuilding infrastructure, hunting down insurgents, and supporting elections. Each of these activities made an indelible impact on the people of this fledgling democracy and improved their chances of surviving and prospering in a much safer and secure environment.

It is truly remarkable what our soldiers have accomplished. They served in a combat environment where they thwarted continuing attacks from a determined insurgency. They endured the hardships of being away from their families. They suffered the loss and injury of their fellow comrades. They had to endure the worry for their families' well-being as Hurricanes Katrina and Rita devastated the gulf coast. Through it all, they remained dedicated and determined to carry out their mission.

As Mississippians have done for centuries, these soldiers left their families and the comforts of home to answer the call of duty. This was not done without cost. During its deployment, the 155th lost 24 soldiers who made the ultimate sacrifice. These soldiers left behind wives, children, and loved ones. They answered the call of duty and gave their lives for America's freedom and security. This wasn't done for fame or fortune. It was done out of a commitment to duty and service to our great country. They are true heroes.

The 155th is the modern-day "Mississippi Rifles" that has carried on the

proud traditions of Mississippi and our Nation.

As we honor these brave men and women, it is appropriate for us to also honor their families. No one understands the hardships of war and sacrifice more than a soldier's family. For 18 months, these Mississippians sacrificed as their loved ones answered our Nation's call. Although their lives were disrupted, they assumed the role of both mother and father. Their resilience and courage during Hurricanes Katrina and Rita continue to be admired by us all.

Of course, they did not accomplish all of this alone. Our Mississippi communities came together to provide support which ranged from countless letters and packages, to daily support at home that included clearing storm debris and ensuring shelter for their loved ones, to support for the families of fallen comrades and those who were seriously wounded.

As we pay tribute to the accomplishments of the 155th and give thanks to their sacrifice and service, it is important we remember our country is still at war. The State of Mississippi has over 500 of its citizens deployed in Iraq, Kuwait, and Afghanistan continuing to fight the global war on terrorism. In addition, we have citizen-soldiers in various stages of mobilization preparing to answer our Nation's call. Our country's military is the most committed and powerful in the world, and they are well prepared to serve in our hometowns and across the globe. We will keep them in our prayers as they continue their great legacy of sacrifice and service.

#### BOULDER CITY 75TH ANNIVERSARY

Mr. REID. Mr. President, I rise today to commemorate the 75th anniversary of Boulder City, NV.

Boulder City lies 24 miles east of Las Vegas, and 40 miles from Searchlight near Lake Mead. It's very close to my hometown, Searchlight, and it is a city dear to my heart. Boulder City is a Nevada treasure, and I am proud to honor them today.

Boulder City was created by the Federal Government on March 11, 1931, to provide housing to the thousands of people who built the Hoover Dam. Because Boulder City was operated as a Government reservation, the residents could not buy homes and unlike its neighboring cities, liquor and gambling were prohibited. In fact, gambling is prohibited in Boulder City to this day.

As the first planned community built in the United States, Boulder City has gone to great lengths to maintain its small town feel. Boulder City only sees about 400 new residents each year due to a growth control ordinance that was enacted in 1979.

Boulder City is most widely known as the home of the Hoover Dam. Twenty-one thousand men worked for 5 years and poured more than 5 million

barrels of cement to complete the work on the \$49 million dam. Forty-nine million dollars adjusted for inflation equals \$676 million. Named after President Herbert Hoover, the dam is located in the Black Canyon of the Colorado River. It sits on the border between Nevada and Arizona and sees 13,000 to 16,000 people cross it each day.

Mr. President, it is important that everyone understand that Boulder City is more than just the home of the Hoover Dam, more than just a tourist attraction. It is a city whose people exemplify what being a Nevadan is all about. I invite all my colleagues here in the Senate and all the people of this great country to experience a part of Nevada that I love.

#### HONORING OUR ARMED FORCES

STAFF SERGEANT GREGSON GOURLEY

Mr. HATCH. Mr. President, it is my solemn duty to rise before the Senate to pay tribute to one of the great sons of Utah, SSG Gregson Gourley.

Sergeant Gourley, who grew up in Sandy and Midvale, UT was killed last week with three other members of the 1st Battalion, 327th Infantry Regiment, 101st Airborne Division (Air Assault) near Hawijah, Iraq.

As I sat down to learn more about Sergeant Gourley's life, I was struck by his dedication to service. He first served as a missionary in Pennsylvania for The Church of Jesus Christ of Latter-Day Saints, then spent 16 years as a member of our Armed Forces. His aspiration for the future was to begin a career in law enforcement.

According to what his comrades have said, Sergeant Gourley's service surpassed the motto of his battalion: "Above the Rest." Not surprisingly, he had previously been decorated for meritorious service.

I believe that his grandmother, Adena Gourley, said it best, when reflecting on the sergeant's life:

He was a very gentle person. He has a great desire to be an outstanding soldier and an outstanding man.

Mrs. Gourley, I can say that, by all accounts, he achieved those goals.

Sergeant Gourley's passing is a further tragedy because he leaves behind a wife, three sons under the age of 10, and a newborn daughter.

To his boys, and especially little Alexa, over the years you will learn more about your father and that he was a remarkable man. But you should always remember that your father was a hero, a man anyone would be proud to call father, and our country will forever owe a debt of great gratitude to him for his unselfish service to our country.

I hope my colleagues will all join me in saluting the bravery of Sergeant Gourley, and in sending our condolences, prayers, and best wishes to his family during their time of sorrow.

SERGEANT RICKEY E. JONES

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep

sense of gratitude to honor the life of a brave young man from Kokomo. Sergeant Rickey Jones, 22 years old, was one of four soldiers who died on February 22 when their vehicle was hit by a roadside bomb during a patrol near Hawijah, 150 miles north of Baghdad. With his entire life before him, Rickey risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

A 2002 graduate of Kokomo High School, Rickey joined the Army because of concerns about a tight local job market at the time. After his first tour in Iraq, he returned with a new world view and volunteered for a second tour of duty. His mother told local media that the change in her son was unmistakable and that during his time in the Army, Rickey had matured into a man and a true soldier. Rickey's brother, Michael, spoke of his admiration for Rickey's patriotism, saying, "Rickey was proud of what he did and proud to serve his country. He died proud." Other family members fondly recalled that Rickey was a loving person and the pride of his family, who simply wanted to help ensure a better quality of life for Iraqi children.

Rickey was killed while serving his country in Operation Iraqi Freedom. He was a member of the 1st Battalion, 327th Infantry Regiment, 101st Airborne Division based at Fort Campbell, KY. Today, I join Rickey's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Rickey, a memory that will burn brightly during these continuing days of conflict and grief.

Rickey was known for his dedication to his family and his love of country. Today and always, Rickey will be remembered by family members, friends and fellow Hoosiers as a true American hero, and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Rickey's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: "We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here." This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Rickey's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of Rickey Jones in the official record of the United States Senate for his service to this country and for his profound commitment to freedom, democ-

racy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Rickey's can find comfort in the words of the prophet Isaiah who said, "He will swallow up death in victory; and the Lord God will wipe away tears from off all faces."

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Rickey.

#### LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On March 30, 1999, Tracey Thompson was murdered in Wilcox County, GA. Thompson was a transgender person that was found bleeding from a head wound after walking a half-mile to a local farmhouse. According to police, she was beaten with a baseball bat, and desecrated in a way that made the attack an apparent hate crime.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that are born out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### COMMEMORATING THE 45TH ANNI- VERSARY OF THE PEACE CORPS

Mr. CHAFEE. Mr. President, I rise today to pay special tribute to the Peace Corps on its 45th anniversary.

This week has been designated as National Peace Corps Week, and I am pleased to have the opportunity to salute the men and women of our Nation who have contributed their time and energy to serve as Peace Corps volunteers. Thanks to the selflessness of these Americans, the Peace Corps has reached a 30-year high in membership, serving in 75 countries across the globe.

The mission of the Peace Corps today has changed dramatically since it was established by President John F. Kennedy in 1961. Today, volunteers are providing assistance to developing nations around the world, working to find ways to address huge global challenges such as the need for HIV/AIDS prevention, and are embarking on other missions to further our diplomatic goals across the globe.

I also applaud the domestic efforts of the Crisis Corps Volunteers, in their assistance with relief in regions damaged by Hurricane Katrina. Members of

this special unit of Peace Corp volunteers were also deployed to Sri Lanka and Thailand to assist with rebuilding tsunami-devastated areas.

Today, I am proud to honor 27 Rhode Islanders currently serving in the Peace Corps. I wish them the very best in all their endeavors and I thank them for their service to our country in this important time in history. Their names are as follows:

Catherine M. Alexander, Courtney E. Briar, Anthony J. Cabral, Mayerlin Caridad Mejia, Rebecca L. Champlin, Caroline C. Cutting, Jennifer S. Doo, Shayne E. Doyle, Catherine Farrell, Amanda H. Fogle-Donmoyer, Heron E. Greensmith, Geoffrey L. Jones, Jesse B. Joseph, Anna D. Karolyshyn, Maria K. Kasparian, Christopher A. Kelley, Caroline N. Klein, Marie A. Kobayashi, Mark A. Lange, Andrew J. Moulton, Leana A. Nordstrom, David M. Reynolds, Ralph W. Riccio, Christi M. Turner, Evan R. Usler, Deborah L. Vittner, and Erica K. Zaiser.

### KRESMIR COSIC

Mr. HATCH. Mr. President, I would like to take a moment to recognize one of the greatest foreign athletes to play in my home State of Utah—Kresmir Cosic.

My dear friend from Yugoslavia fell victim to cancer in 1995, but this Saturday, Brigham Young University will officially retire Kresmir's No. 11 jersey during a ceremony at BYU's final home game this season. It is a fitting tribute to a four-time Olympian and two-time all-American already enshrined in the Basketball Hall of Fame.

Kresmir—or Kresh, as I called him—is a legend at BYU, but he will most likely be remembered for opening the door for foreign athletes in American colleges and the NBA. He truly had a global influence—Drazen Petrovic, Toni Kukoc, Dino Radja, and Vlade Divac are just a few players who owe their success in America to their former coach from Yugoslavia.

When I visited Yugoslavia one time, Kresh heard that I would be in Zagreb and drove up from Zadar so he could introduce me to one of his former players, who was a leader of The Church of Jesus Christ of Latter-day Saints in the area. He arrived in a VW bug, and to see Kresh unwind out of that little car was a humorous experience.

I considered Kresh to be a tremendous friend. When he became the deputy ambassador for his country, he went out of his way to see me, and I was more than pleased to be an advisor and help him. He tirelessly walked the halls on Capitol Hill, trying to dispel misunderstandings about Croatia and Bosnia and the Serbian war waging in his native land.

The last time I saw Kresh was at Johns Hopkins Medical Center. The doctors thought he was in a coma, but when I spoke to him, tears came to his eyes, and a warm look of caring showed he understood my words of consolation.

After his death, when once again I was in his native land, I was pleased to

see his wife, the person he loved so much.

Mr. President, I have only mentioned just a few highlights from the life of this great man. I ask unanimous consent to have printed in the RECORD a touching article from the Deseret Morning News that summarizes why so many of us in Utah are looking forward to finally seeing his jersey hang from the Marriott Center's rafters this weekend.

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

[From the Deseret Morning News]

#### LATE COUGAR COSIC'S TALENT, FUN COULDN'T BE CONTAINED

(By Dick Harmon)

Kresimir Cosic could barely fit into my '63 Volkswagen that day. But who'd have guessed this world, as well, could hardly contain him and, at the age of 46, gave him back to God.

I was just 17, puttering around in my Bug when I saw the 6-foot-11 Cosic walking down the sidewalk of a street in Provo on his way to basketball practice. I stopped and asked if he wanted a ride. He said he did and he crammed himself into the car. It was like putting a praying mantis in a thimble.

The first thing Cosic did was reach over and turn on the radio. He broke out in a big smile, turned his face to mine and said: "I love the music."

In a nutshell, that epitomized all you need to know about Cosic, the Yugoslavian. He loved life. He loved basketball, and he loved playing to the largest crowds in the college game when they hatched out the Marriott Center back in 1972.

To Cosic, music played when he had a basketball in "his hands. He may have been one of the most entertaining players who ever lived. Certainly he was the most gifted passing center to play the game. As they say in Europe, Cosic was Magic Johnson before Magic Johnson.

On Saturday, folks at BYU will officially retire Cosic's No. 11 jersey during a ceremony at the final home game this season, against New Mexico. There is a generation of BYU fans who never saw Cosic play. They got robbed.

"When we toured Europe a couple of summers ago, everywhere we went, they knew BYU basketball because of Cosic," BYU coach Dave Rose said.

Cosic's resume reads like he invented basketball. In Europe, and in his native Yugoslavia, he just about did. A four-time Olympian and two-time all-American, Cosic is enshrined in the Basketball Hall of Fame in Springfield, Mass.

Cosic died in May 1995 of lymphatic cancer. The week before he passed, he was distraught when he talked to his former coach, Glenn Potter, because he felt he'd defeated the cancer, but in the process, he'd contracted hepatitis and was going to get a liver transplant. "The next thing I knew, he died," Potter said.

Cosic's passion for the game overwhelmed his approach to play. Cosic took more pleasure in passing the ball and setting up teammates than shooting. Still he could be heard yelling "Opa, Opa" (I'm open, I'm open). He thought himself a point guard, but he was a devastating inside player, a master of the hook, fade-away, running jumper, set shot and long bomb. He was a showman, a Globetrotter-type star who oozed charisma on the court in an era absent of freshman varsity players, dunks and 3-point lines.

Imagine, if he played today.

"This was before the 3-point shot, and you weren't allowed to dunk the ball," remembered guard Belmont Anderson, now a podiatrist in Las Vegas. "He had a Larry Bird range with his outside shot. When he'd take it, the coaches would yell, 'no, no, no . . . good shot, Kresh.' They frowned on taking the long shot because you weren't rewarded for it. Imagine what he'd have done if the 3-point shot was in back then or if he was allowed to dunk."

Cosic was famous for leading the fast break, making a pinpoint pass or doing a jackknife lay-up, tucking in his knees, going airborne, looking like a camel in flight. He once took off against UCLA's Sidney Wicks, and the Bruin big man looked perplexed—he'd never seen a 6-11 guy playing point guard.

"He loved to dribble the ball up court," Potter said. "I remember one day in scrimmage he took off with the ball leading the break, and our point guard, Bernie Fryer, ran up behind him and stole the ball. He was upset. They were on the same team."

Said Anderson: "If you were cutting for the basket and he had the ball, you had to be alert because Cosic could hit you with a pass, and if you weren't ready, it would hit you in the head."

Cosic was a master of behind-the-back and between-the-leg deliveries, Potter added. "I remember one game in the Smith Fieldhouse, Moni Sarkalahti cut for the basket and Cosic passed the ball between his own legs, between the legs of the center guarding him, and hit Moni in the hands for a lay-in."

Former BYU assistant coach Pete Witbeck called Cosic the best center in the college game, better than Bill Walton.

Joe Watts, now executive director of the Utah Golf Association, was a sportswriter covering Cosic's final home game in Provo when he penned: "The thought leaves me with an empty feeling, a loneliness, a sadness, like I'll be losing a friend. Something really good will be leaving my life. Kresimir Cosic has brought me, and many others, some of our most enjoyable moments in basketball. He is without any question the greatest passing center I have ever seen in the game. That alone has been thrilling."

UTEP's Don Haskins, on whom Hollywood based the movie "Glory Road," called Cosic the best center in the Olympics. It was a Cosic long bomb at UTEP that handed Haskins his first defeat on the Miner home court since joining the WAC, a five-year perfect league home record.

Cosic could have had a solid NBA career. He would have sold tickets and helped TV ratings. Instead, he chose to return home to Yugoslavia and help develop others and play for the Yugoslavian Olympic team. He later became the Croatian ambassador to the United States.

"That tells you a lot about Cosic when compared to players today who won't even play in the Olympics," Anderson said. "Cosic cared about the game, his country, more than money and fame."

Potter remembers Cosic's late return from playing in the Olympics before his senior year. He missed several deadlines to return to Provo. Potter called Cosic twice and asked when he'd come back.

"Coach, I'll be there," Cosic said twice.

Finally, when he showed up in Provo, Potter asked Cosic why he'd been delayed so long, for nearly a month. Cosic told him when he was touring Yugoslavia with a national club team, he once told an audience in a gym he had a film for them to see later. It was "Man's Search for Happiness," an LDS Church film explaining the plan of salvation. After that, Cosic said, his phone was bugged and his passport was confiscated.

Potter recalls an exhausted Cosic leaning against the basketball standard at practices

that year. Potter asked him what was up and Cosic told him he was tired, he'd gone to bed about 3 or 4 in the morning the past few weeks. Potter asked him why.

Unknown to Potter, Cosic stayed up translating the Book of Mormon into Croatian. "It's something he thought was worthwhile and he had to do."

Potter remembers Cosic coming in his BYU office and debating tactics of the game, arguing strategy.

The bottom line was to give him the ball. He was such a good passer you wanted him to have the ball in his hands.

When Cosic returned to Zadar, Yugoslavia, to coach, he invited Potter to visit him three times. One day Cosic called Potter and asked him to come to Zadar and help him with a coaching problem.

"What is it?" Potter asked.

"Coach, I don't know what to tell the guards to do."

Potter about keeled over laughing. "All those times in my office, arguing."

Cosic ended up a European hero, opening the door for foreign athletes in American colleges and the NBA. Aside from filling the new Marriott Center night after night in the early '70s, his influence was global. Those who learned at his hand or were influenced by Cosic include Drazen Petrovic, Toni Kukoc, Dino Radja and Vlade Divac—all players on Yugoslavia's 1984 Olympic team coached and handpicked by Cosic.

In his final years, working in Washington, D.C., as ambassador, Cosic worked to dispel misunderstandings about Croatia and Bosnia and the Serbian war waging in his native country.

Cosic told then Deseret News Washington correspondent Lee Davidson he'd like to get back into coaching basketball someday but wasn't sure if it was in the cards, with the cancer and all.

"But it is what I would like to do, not necessarily what I will do. You never know what will happen. My country may need me to do something more. Or maybe God will have other ideas."

He was right. Within six months of that interview, he died.

#### ADDITIONAL STATEMENT

##### A TRIBUTE TO VERMONT'S OLYMPIANS

● Mr. JEFFORDS. Mr. President, I rise today to recognize the outstanding accomplishments of the Vermonters participating in the recent Winter Olympics in Turin, Italy. These Olympians proudly follow a long line of Vermonters competing at the highest levels of winter sports.

Three Vermonters made particularly extraordinary impressions in Turin: Hannah Teter, Bud Keene, and Lindsey Jacobellis.

Hannah Teter, of Belmont, VT, was the first Vermonter to medal in Turin when she earned the gold in the women's halfpipe competition. Hannah is very much a product of Vermont, growing up amidst the beauty of the Green Mountains in a family that embraced the outdoors. More importantly, Hannah was raised on homemade maple syrup, one of Vermont's most treasured products.

In her halfpipe competition in Turin, despite already holding a comfortable lead, Hannah won the gold medal with

a bold and inspired final run. Though I will not pretend to perfectly understand terms like front-side 900, I can tell you that Hannah's snowboarding acrobatics were some of the most impressive athletic sights I have ever seen.

Coaching Hannah to her success was Bud Keene of Moscow, VT, the U.S. Olympic snowboard team's halfpipe coach. Bud was an avid snowboarder long before the sport was included in the Olympics. Bud coached at Mount Mansfield before becoming an assistant snowboarding coach during the 2002 Olympics. Bud was named the head halfpipe coach for the 2006 Olympics and he led the team to a remarkable performance: the U.S. won an amazing two gold medals and two silver medals in the men's and women's halfpipe competitions. Bud deserves a lot of credit for the unparalleled success of the American snowboarding team at this year's games.

Vermont's second Olympic medal also came in snowboarding when Lindsey Jacobellis of Stratton, VT, earned the silver medal in the women's snowboardcross. As many know, snowboardcross is a dangerous and difficult event that requires snowboarders to navigate a narrow 1,000-yard course while avoiding the three other competitors trying to navigate the terrain at the same time. Lindsey survived two of these incredible races just to qualify for the final medal heat, where she emerged with a silver medal in a race so challenging that two of her competitors crashed and one left the course on a stretcher.

In addition to Hannah, Lindsey, and Bud, I would like to commend the other Vermonters who traveled to Turin for the Olympics. These accomplished men and women include snowboarder Kelly Clark of Mount Snow, cross-country skier Andrew Johnson of Greensboro, freestyle skier Hannah Kearney of Norwich, alpine skier Chip Knight of Stowe, cross-country skier Andrew Newell of Shaftsbury, honorary Vermonter Jimmy Cochran of the famed Olympic ski family in Richmond, and countless other athletes who have trained, studied, or lived in Vermont and competed in Turin.

I would also like to acknowledge two Olympians who are currently serving our country in the Vermont National Guard: SP Jeremy Teela and SGT Tuffield "Tuffy" Latour. An Alaskan, Jeremy competed in the biathlon in Turin, while Tuffy coached the U.S. Men's bobsled team.

We are very lucky in Vermont to have the privilege of watching and following such an impressive group of athletes. There are many reasons why our small State has so many top-tier competitors but, to steal a line from Hannah Teter, I bet one of those reasons is Vermont's great maple syrup.●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGE FROM THE HOUSE

At 12:02 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, with an amendment:

S. 1777. An act to provide relief for the victims of Hurricane Katrina.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 335. Concurrent resolution honoring and praising the National Association for the Advancement of Colored People on the occasion of its 97th anniversary.

#### ENROLLED BILL SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

S.449. An act to facilitate shareholder consideration of proposals to make Settlement Common Stock under the Alaska Native Claims Settlement Act available to missed enrollees, eligible elders, and eligible persons born after December 18, 1971, and for other purposes.

The enrolled bill was signed subsequently by the President pro tempore (Mr. STEVENS).

The message also announced that pursuant to 22 U.S.C. 276h, and the order of the House of December 18, 2005, the Speaker appoints the following members of the House of Representatives to the Mexico-United States Interparliamentary Group, in addition to Mr. KOLBE of Arizona, Chairman, and Mr. MCCAUL of Texas, Vice Chairman, appointed on February 16, 2006: Mr. DREIER of California, Mr. MANZULLO of Illinois, Mr. DELAHUNT of Massachusetts, Mr. FALOMAVAEGA of American Samoa, Mr. ENGLISH of Pennsylvania, Mr. WELLER of Illinois, Mr. REYES of Texas, Mrs. DAVIS of California, and Mr. FORTUÑO of Puerto Rico.

#### MEASURES REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 335. Concurrent resolution honoring and praising the National Association for the Advancement of Colored People

on the occasion of its 97th anniversary; to the Committee on the Judiciary.

#### ENROLLED BILL PRESENTED

The Secretary of the Senate reported that today, March 2, 2006, she had presented to the President of the United States the following enrolled bill:

S. 449. An act to facilitate shareholder consideration of proposals to make Settlement Common Stock under the Alaska Native Claims Settlement Act available to missed enrollees, eligible elders, and eligible persons born after December 18, 1971, and for other purposes.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-5836. A communication from the Board of Trustees, National Railroad Retirement Investment Trust, transmitting, pursuant to law, the Trust's Annual Management Report for Fiscal Year 2005; to the Committee on Finance.

EC-5837. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Postponement of Deadline for Making an Election to Deduct Certain Losses Attributable to Hurricanes Katrina, Rita, and Wilma" (Notice 2006-17) received on February 22, 2006; to the Committee on Finance.

EC-5838. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Supplemental Clean Renewable Energy Bond Notice" (Notice 2006-7) received on February 22, 2006; to the Committee on Finance.

EC-5839. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Applicable Federal Rates—March 2006" (Rev. Rul. 2006-10) received on February 22, 2006; to the Committee on Finance.

EC-5840. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Energy Efficient Home Credit; Manufactured Homes" (Notice 2006-28) received on February 27, 2006; to the Committee on Finance.

EC-5841. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Qualifying Gasification Project Program" (Notice 2006-25) received on February 27, 2006; to the Committee on Finance.

EC-5842. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Qualifying Advanced Coal Project Program" (Notice 2006-24) received on February 27, 2006; to the Committee on Finance.

EC-5843. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Certification of En-

ergy Efficient Home Credit" (Notice 2006-27) received on February 27, 2006; to the Committee on Finance.

EC-5844. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Nonbusiness Energy Property Credit" (Notice 2006-26) received on February 27, 2006; to the Committee on Finance.

EC-5845. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Special Rules Regarding Certain Section 951 Pro Rata Share Allocations" ((RIN1545-BE71) (TD9251)) received on February 27, 2006; to the Committee on Finance.

EC-5846. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "TD 9250, Application of Section 367 in Cross Border Section 304 Transactions" (RIN1545-BD46) received on February 27, 2006; to the Committee on Finance.

EC-5847. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Bureau of Labor Statistics Price Indexes for Department Stores—December 2005" (Rev. Rul. 2006-8) received on February 27, 2006; to the Committee on Finance.

EC-5848. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Medicare Secondary Payer Amendments" (RIN0938-AN27) received on February 27, 2006; to the Committee on Finance.

EC-5849. A communication from the Administrator, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report entitled "Assistance Provided to Foreign Aviation Authorities for Fiscal Year 2005"; to the Committee on Commerce, Science, and Transportation.

EC-5850. A communication from the Under Secretary and Director, United States Patent and Trademark Office, transmitting, pursuant to law, the report of a rule entitled "Clarification of Filing Date Requirements for Ex Parte and Inter Partes Reexamination Proceedings" (RIN0651-AC02) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5851. A communication from the Executive Secretary and Chief of Staff, U.S. Agency for International Development, transmitting, pursuant to law, the report of the confirmation of a nominee for the position of Inspector General, received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5852. A communication from the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, a report entitled "2005 Report to Congress on Apportionment of Membership on the Regional Fishery Management Councils"; to the Committee on Commerce, Science, and Transportation.

EC-5853. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report entitled "Aviation and the Environment: A National Vision Statement, Framework for Goals and Recommended Actions"; to the Committee on Commerce, Science, and Transportation.

EC-5854. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report entitled "2004 Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance"; to the Committee on Commerce, Science, and Transportation.

EC-5855. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Naples and Sanibel, Florida)" (MB Docket No. 05-134) received on February 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5856. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Prospect, Kentucky, and Salem, Indiana)" (MB Docket No. 05-120) received on February 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5857. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Grand Portage, Minnesota)" (MB Docket No. 04-433) received on February 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5858. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Beaumont and Mont Belvieu, Texas)" (MB Docket No. 04-426) received on February 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5859. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ocala, Florida and St. Simons Island, Georgia)" (MB Docket No. 05-267) received on February 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5860. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Memphis and Arlington, Tennessee, and Saint Florian, Alabama)" (MB Docket No. 05-140) received on February 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5861. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Roma, Texas)" (MB Docket No. 05-142) received on February 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5862. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Water Mill and Noyack, New York)" (MB Docket No. 03-44) (RM-10650) received on

February 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5863. A communication from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations (Johnstown and Jeannette, Pennsylvania)" (MB Docket No. 05-52) (RM-10300) received on February 22, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5864. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zones (including 5 regulations): [COTP Western Alaska-06-002], [CGD09-06-002], [COTP Western Alaska-06-001], [CGD13-06-002], [CGD09-05-142]" (RIN1625-AA00) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5865. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Security Zones (including 3 regulations): [CGD05-06-009], [COTP Honolulu 06-002], [CGD09-06-001]" (RIN1625-AA87) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5866. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Operation Regulations (including 3 regulations): [CGD05-06-005], [CGD01-06-005], [CGD01-06-011]" (RIN1625-AA09) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5867. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Cape Fear River, and Northeast Cape Fear River, NC" (RIN1625-AA09) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5868. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 Feet (18.3 Meters) Length Overall and Using Pot Gear in the Bering Sea and Aleutian Islands Management Area" (I.D. No. 020106A) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5869. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska" (I.D. No. 012006A) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5870. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Program" (I.D. No.

120805C) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5871. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area" (I.D. No. 011806K) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5872. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled "Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Temporary Rule; Inseason Retention Limit Adjustment" (I.D. No. 011206I) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5873. A communication from the Acting Deputy Assistant Administrator, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf Grouper Recreational Management Measures" (RIN0648-AT45) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5874. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures—Amdt. No. 3148" (RIN2120-AA65) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5875. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Part 95 Instrument Flight Rules—Amdt. No. 459; Miscellaneous Amdts. (9)" (RIN2120-AA63) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5876. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Federal Register Dispositions for Petitions for Exemption; Docket No. FAA-2005-22982" (RIN2120-AI69) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5877. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Service Difficulty Reports—Docket No. FAA-2000-7952" (RIN2120-AI08) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5878. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Maintenance Recording Requirements; Docket No. 2005-23495" (RIN2120-AI67) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5879. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in

Specified Aviation Activities" (RIN2120-AH14) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5880. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Noise Stringency Increase for Single-Engine Propeller-Driven Small Airplanes; Docket No. FAA-2004-17041" (RIN2120-AH44) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5881. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-200B, 747-200C, 747-200F, 747-400F, 747SR, and 747SP Series Airplanes" (RIN2120-AA64)(2005-NM-101) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5882. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; BAE Systems Limited Model Avro 146-RJ Airplanes" (RIN2120-AA64)(2005-NM-084) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

EC-5883. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Airbus Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model C4-605R Variant F Airplanes; and Airbus Model A310 Series Airplanes" (RIN2120-AA64)(2004-NM-74) received on February 27, 2006; to the Committee on Commerce, Science, and Transportation.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPECTER, from the Committee on the Judiciary, without amendment:

S. 2178. A bill to make the stealing and selling of telephone records a criminal offense.

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. SPECTER for the Committee on the Judiciary.

Terrance P. Flynn, of New York, to be United States Attorney for the Western District of New York for the term of four years.

Jack Zouhary, of Ohio, to be United States District Judge for the Northern District of Ohio.

Stephen G. Larson, of California, to be United States District Judge for the Central District of California.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DEMINT:

S. 2352. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

By Mr. DEMINT:

S. 2353. A bill to suspend temporarily the duty on certain integrated machines for manufacturing pneumatic tires; to the Committee on Finance.

By Mr. NELSON of Florida (for himself, Ms. COLLINS, Mr. ROCKEFELLER, Mrs. BOXER, Mr. KERRY, Ms. MIKULSKI, Mr. FEINGOLD, Mr. DORGAN, and Mr. KOHL):

S. 2354. A bill to amend title XVIII of the Social Security Act to reduce the coverage gap in prescription drug coverage under part D of such title based on savings to the Medicare program resulting from the negotiation of prescription drug prices; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Ms. CANTWELL, Mr. FRIST, Mrs. BOXER, Mrs. HUTCHISON, Mr. MCCAIN, Mr. DOMENICI, and Mr. BINGAMAN):

S. 2355. A bill to amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction, financing, or reckless permitting (on one's land) the construction or use of a tunnel or subterranean passageway between the United States and another country; to the Committee on the Judiciary.

By Mr. LEAHY:

S. 2356. A bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts, and for other purposes; to the Committee on the Judiciary.

By Mr. KENNEDY:

S. 2357. A bill to provide for economic security and prosperity; to the Committee on Finance.

By Mr. OBAMA:

S. 2358. A bill to amend title 38, United States Code, to establish a Hospital Quality Report Card Initiative to report on health care quality in Veterans Affairs hospitals; to the Committee on Veterans' Affairs.

By Mr. OBAMA:

S. 2359. A bill to amend title XVIII of the Social Security Act to establish a Hospital Quality Report Card Initiative under the Medicare program to assess and report on health care quality in hospitals; to the Committee on Finance.

By Mr. WYDEN:

S. 2360. A bill to ensure and promote a free and open Internet for all Americans; to the Committee on Commerce, Science, and Transportation.

By Mr. DORGAN (for himself, Mr. BINGAMAN, Mrs. BOXER, Mr. CARPER, Mrs. CLINTON, Mr. DAYTON, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. HARKIN, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. MENENDEZ, Ms. MIKULSKI, Mr. OBAMA, Mr. PRYOR, Mr. REID, Mr. ROCKEFELLER, Mr. SALAZAR, Ms. STABENOW, Mr. WYDEN, Mr. KOHL, Mr. SCHUMER, and Mr. NELSON of Florida):

S. 2361. A bill to improve Federal contracting and procurement by eliminating fraud and abuse and improving competition in contracting and procurement and by enhancing administration of Federal contracting personnel, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BYRD:

S. 2362. A bill to establish the National Commission on Surveillance Activities and the Rights of Americans; to the Committee on the Judiciary.

By Mr. BURR (for himself, Mr. JEFFORDS, Mr. LEAHY, Mr. ALLARD, Mr. SALAZAR, Mr. CARPER, Mr. ROBERTS, Mr. BROWNBACK, Mr. KENNEDY, Mr.

KERRY, Mrs. DOLE, Mr. SANTORUM, Mr. SPECTER, Mr. CORNYN, Mrs. HUTCHISON, Mr. WYDEN, and Mr. FRIST):

S. 2363. A bill to extend the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999; considered and passed.

By Ms. CANTWELL (for herself, Mr. BINGAMAN, Mr. HARKIN, Mr. LAUTENBERG, Mrs. BOXER, Mr. LIEBERMAN, Mrs. CLINTON, Mr. MENENDEZ, Mr. AKAKA, Mr. DODD, and Mr. KERRY):

S. 2364. A bill to provide lasting protection for inventoried roadless areas within the National Forest System; to the Committee on Energy and Natural Resources.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COLEMAN (for himself, Mr. SMITH, Mr. VOINOVICH, Mr. COBURN, and Mr. KYL):

S. Res. 387. A resolution recognizing the need to replace the United Nations Human Rights Commission with a new Human Rights Council; to the Committee on Foreign Relations.

By Mr. FRIST (for himself, Mr. SANTORUM, and Mr. BROWNBACK):

S. Res. 388. A resolution urging the Government of National Unity of Sudan and the Government of Southern Sudan to implement fully the Comprehensive Peace Agreement that was signed on January 9, 2005; considered and agreed to.

#### ADDITIONAL COSPONSORS

S. 333

At the request of Mr. SANTORUM, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 333, a bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran.

S. 654

At the request of Mr. LEAHY, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 654, a bill to prohibit the expulsion, return, or extradition of persons by the United States to countries engaging in torture, and for other purposes.

S. 908

At the request of Mr. MCCONNELL, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 985

At the request of Mrs. CLINTON, the names of the Senator from New York (Mr. SCHUMER) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 985, a bill to establish kinship navigator programs, to establish kinship guardianship assistance payments for children, and for other purposes.

S. 1172

At the request of Mr. SPECTER, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

S. 1283

At the request of Mrs. CLINTON, the names of the Senator from Minnesota (Mr. DAYTON), the Senator from South Dakota (Mr. JOHNSON), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Delaware (Mr. CARPER) were added as cosponsors of S. 1283, a bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes.

S. 1289

At the request of Ms. MIKULSKI, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1289, a bill to provide for research and education with respect to uterine fibroids, and for other purposes.

S. 1376

At the request of Mr. COCHRAN, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 1376, a bill to improve and expand geographic literacy among kindergarten through grade 12 students in the United States by improving professional development programs for kindergarten through grade 12 teachers offered through institutions of higher education.

S. 2157

At the request of Mrs. BOXER, the names of the Senator from Montana (Mr. BURNS) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2157, a bill to amend title 10, United States Code, to provide for the Purple Heart to be awarded to prisoners of war who die in captivity under circumstances not otherwise establishing eligibility for the Purple Heart.

S. 2178

At the request of Mr. SCHUMER, the names of the Senator from Minnesota (Mr. COLEMAN), the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Oklahoma (Mr. COBURN) were added as cosponsors of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2231

At the request of Mr. BYRD, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2231, a bill to direct the Secretary of Labor to prescribe additional coal mine safety standards, to require additional penalties for habitual violators, and for other purposes.

S. 2243

At the request of Mr. MENENDEZ, the name of the Senator from New Jersey

(Mr. LAUTENBERG) was added as a cosponsor of S. 2243, a bill to make college more affordable by expanding and enhancing financial aid options for students and their families and providing loan forgiveness opportunities for public service employees, and for other purposes.

S. 2253

At the request of Mr. DOMENICI, the names of the Senator from Wyoming (Mr. ENZI) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. 2253, a bill to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing.

S. 2320

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 2320, a bill to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes.

At the request of Ms. SNOWE, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2320, supra.

S. 2333

At the request of Mr. SCHUMER, the names of the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Wisconsin (Mr. KOHL), the Senator from Connecticut (Mr. DODD) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 2333, a bill to require an investigation under the Defense Production Act of 1950 of the acquisition by Dubai Ports World of the Peninsular and Oriental Steam Navigation Company, and for other purposes.

S. 2351

At the request of Mrs. BOXER, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2351, a bill to provide additional funding for mental health care for veterans, and for other purposes.

S. RES. 383

At the request of Mr. BROWNBACK, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. Res. 383, a resolution calling on the President to take immediate steps to help improve the security situation in Darfur, Sudan, with an emphasis on civilian protection.

At the request of Mr. BIDEN, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Florida (Mr. MARTINEZ), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Massachusetts (Mr. KERRY), the Senator from Michigan (Mr. LEVIN), the Senator from South Dakota (Mr. JOHNSON), the Senator from California (Mrs. BOXER) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. Res. 383, supra.

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. Res. 383, supra.

At the request of Mr. FRIST, his name and the names of the Senator from Ohio (Mr. VOINOVICH) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. Res. 383, supra.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NELSON of Florida (for himself, Ms. COLLINS, Mr. ROCKEFELLER, Mrs. BOXER, Mr. KERRY, Ms. MIKULSKI, Mr. FEINGOLD, Mr. DORGAN, and Mr. KOHL):

S. 2354. A bill to amend title XVIII of the Social Security Act to reduce the coverage gap in prescription drug coverage under part D of such title based on savings to the Medicare program resulting from the negotiation of prescription drug prices; to the Committee on Finance.

Mr. NELSON of Florida. Mr. President, I am pleased to be joined by my colleague and cosponsor Senator SUSAN COLLINS as we introduce the Medicare Prescription Drug Gap Reduction Act of 2006.

For years now, I have advocated for providing seniors with meaningful prescription drug coverage. Seniors in this country should never have to choose between their meals and their medications.

Unfortunately, Congress created a Medicare prescription drug plan that is confusing and contains a huge coverage gap. These are some of the reasons that I did not support the legislation that created this program. But this flawed plan is what passed. Our job now is to help seniors by fixing the underlying law. I have spoken with Medicare beneficiaries across Florida and they are understandably concerned about the new prescription drug benefit. One issue of great concern to Floridians is the large gap in coverage called the "doughnut hole."

The Medicare drug benefit contains a large coverage gap during which beneficiaries continue to pay premiums but get no drug coverage at all. For most plans, Medicare will pay 75 percent of initial drug costs up to \$2,250 after a \$250 deductible. But then the program pays nothing until drug expenses reach \$5,100. This lack of coverage for drug spending is often called Medicare's doughnut hole.

More than one-third of all Medicare beneficiaries are projected to have drug spending that falls in the doughnut hole's range, according to the Congressional Budget Office (CBO). Millions of beneficiaries will pay premiums yet receive no coverage during this time. This is simply unacceptable.

In response, we are introducing the Medicare Prescription Drug Gap Reduction Act of 2006 which will reduce the impact of the doughnut hole on Medicare beneficiaries.

Our bill allows the Secretary of Health and Human Services (HHS) to negotiate on behalf of Medicare beneficiaries for lower drug prices. Unfortu-

nately, the law that created the new Medicare drug program actually prohibits the Secretary from using the purchasing power of over 40 million seniors to negotiate for lower prescription drug prices. The savings generated from allowing negotiations would then be applied towards reducing the doughnut hole, providing more drug coverage for Medicare beneficiaries.

A recent analysis was conducted by researchers at the Johns Hopkins Center for Hospital Finance and Management on the Medicare doughnut hole. They concluded that "the gap in coverage could be completely eliminated if Medicare paid the same prices as the Veterans' Administration, or Department of Defense and 75 percent of the gap could be eliminated if Medicare paid the same prices as the Federal Ceiling Price." Our bill gives the Secretary authority similar to entities like the Veterans' Administration and the Department of Defense, to negotiate contracts and obtain the lowest possible prescription drug prices for Medicare beneficiaries.

Allowing the Federal Government to utilize market forces to negotiate for lower prescription drug prices and using these savings to alleviate the impact of the doughnut hole is a commonsense approach to providing Medicare beneficiaries with affordable prescription drugs.

This issue boils down to just one goal—helping seniors. We urge all of our colleagues, from both sides of the aisle, to join us in this effort to help lower prescription drug costs for Medicare beneficiaries.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2354

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Prescription Drug Gap Reduction Act of 2006".

#### SEC. 2. REDUCING COVERAGE GAP.

Section 1860D-2(b) of the Social Security Act (42 U.S.C. 1395w-102(b)) is amended—

(1) in paragraph (3)(A), by striking "paragraph (4)" and inserting "paragraph (4), subject to the increase described in paragraph (7)"; and

(2) by adding at the end the following new paragraph:

"(7) INCREASE OF INITIAL COVERAGE LIMIT BASED ON MEDICARE SAVINGS DUE TO NEGOTIATION OF DRUG PRICES.—For each year (beginning with 2006), the Secretary shall increase the initial coverage limit for the year specified in paragraph (3) so that the aggregate amount of increased expenditures from the Medicare Prescription Drug Account as a result of such increase under this paragraph in the year (as estimated by the Office of the Actuary of the Centers for Medicare & Medicaid Services) is equal to the aggregate amount of reduced expenditures from such Account that the Office of the Actuary estimates will result in the year as a result of

the application of the amendment made by section 3(a) of the Medicare Prescription Drug Gap Reduction Act of 2006.”.

**SEC. 3. NEGOTIATING FAIR PRICES FOR MEDICARE PRESCRIPTION DRUGS.**

(a) IN GENERAL.—Section 1860D-11 of the Social Security Act (42 U.S.C. 1395w-111) is amended by striking subsection (i) (relating to noninterference) and inserting the following:

“(1) AUTHORITY TO NEGOTIATE PRICES WITH MANUFACTURERS.—

“(1) IN GENERAL.—Subject to paragraph (4), in order to ensure that beneficiaries enrolled under prescription drug plans and MA-PD plans pay the lowest possible price, the Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs, consistent with the requirements and in furtherance of the goals of providing quality care and containing costs under this part.

“(2) MANDATORY RESPONSIBILITIES.—The Secretary shall be required to—

“(A) negotiate contracts with manufacturers of covered part D drugs for each fallback prescription drug plan under subsection (g); and

“(B) participate in negotiation of contracts of any covered part D drug upon request of an approved prescription drug plan or MA-PD plan.

“(3) RULE OF CONSTRUCTION.—Nothing in paragraph (2) shall be construed to limit the authority of the Secretary under paragraph (1) to the mandatory responsibilities under paragraph (2).

“(4) NO PARTICULAR FORMULARY OR PRICE STRUCTURE.—In order to promote competition under this part and in carrying out this part, the Secretary may not require a particular formulary or institute a price structure for the reimbursement of covered part D drugs.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173).

By Mrs. FEINSTEIN (for herself, Mr. KYL, Ms. CANTWELL, Mr. FRIST, Mrs. BOXER, Mrs. HUTCHISON, Mr. MCCAIN, Mr. DOMENICI, and Mr. BINGAMAN):

S. 2355. A bill to amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction, financing, or reckless permitting (on one's land) the construction or use of a tunnel or subterranean passageway between the United States and another country; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, our borders are our Nation's first line of defense. They are the key to our homeland, and ensuring their integrity is vital to our national security.

But there are some who seek to create a means of entering our country illegally. For years, they've tried to go around the border checkpoints. Now they are trying to go under them through sophisticated border tunnels.

In fact, there have been 40 border tunnels financed and constructed since 9/11—to move humans, drugs, and weapons under the border. Twenty-one of these were on the California-Mexico border—eight since January of this year.

This is a serious issue not just for San Diego and California, but for the entire country.

Surprisingly, there is no law on the books now that makes it a crime to construct, finance, build, or use a tunnel into the United States.

Last week, I toured a recently discovered tunnel in San Diego with San Diego Mayor Jerry Sanders, Police Chief Bill Lansdowne, Sheriff Bill Kolender and various Federal Government officials from the Department of Homeland Security.

This tunnel is the largest, most sophisticated underground passageway ever discovered; approximately half a mile long (8 football fields); at its deepest point, more than nine stories below ground; equipped with a drainage system, cement flooring for traction, lighting, and a pulley system; disguised as a produce distribution company known as “V & F Distributors, LLC”; and accessible only through a small office inside this warehouse, covered by four square tiles.

The Bureau of Immigration and Customs Enforcement began investigating the case two years ago, and raided the tunnel last month from the Mexican side not knowing if or where an opening on the U.S. would be found. They discovered over 2,000 pounds of marijuana on the Mexican side of the border and approximately 300 on the U.S. side.

The legislation which I am introducing today—joined by Senator KYL as the Republican lead, as well as Senators FRIST, CANTWELL, BOXER, HUTCHISON, MCCAIN, BINGAMAN and DOMENICI—throws the book at those who build these tunnels and subterranean passageways into the United States.

It would: criminalize the construction or financing of an unauthorized tunnel or subterranean passage across an international border into the United States with a term of imprisonment up to 20 years; punish those who recklessly permit others to construct or use an unauthorized tunnel on their land with a term of imprisonment of up to 10 years; punish those who use a tunnel to smuggle aliens, weapons, drugs, terrorists, or illegal goods by doubling the sentence for the underlying offense; in addition to imprisonment, ensure that assets involved in the offense, or any property traceable to the offense, may be subject to forfeiture; and instruct the U.S. Sentencing Commission to promulgate or amend sentencing guidelines to provide for criminal penalties for persons convicted under this bill, and to take into account the gravity of this crime when considering the base offense levels.

The legislation is critical. We must secure every aspect of our borders.

Since 9/11: forty border tunnels have been discovered in the United States; all but one have been on the southern border; twenty-one of the tunnels were along the California-Mexico border; eight of the tunnels were discovered in San Diego since the beginning of the

year; these tunnels range in complexity from simple “gopher holes” a few feet long at the border to massive drug-cartel built mega-tunnels, costing hundreds of thousands to millions of dollars to construct.

The need for this legislation is urgent. We must secure every aspect of our borders, including those we can't always see. And it is in our national security interest that we find these tunnels and prosecute those who construct, finance or recklessly permit the use of these tunnels on their land or property to the fullest extent of the law.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 2355

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Border Tunnel Prevention Act”.

**SEC. 2. CONSTRUCTION OF BORDER TUNNEL OR PASSAGE.**

(a) IN GENERAL.—Chapter 27 of title 18, United States Code, is amended by adding at the end the following:

**“§ 554. Border tunnels and passages**

“(a) Any person who knowingly constructs or finances the construction of a tunnel or subterranean passage that crosses the international border between the United States and another country, other than a lawfully authorized tunnel or passage known to the Secretary of Homeland Security and subject to inspection by the Bureau of Immigration and Customs Enforcement, shall be imprisoned for not more than 20 years.

“(b) Any person who recklessly permits the construction or use of a tunnel or passage described in subsection (a) on land that the person owns or controls shall be imprisoned for not more than 10 years.

“(c) Any person who uses a tunnel or passage described in subsection (a) to unlawfully smuggle an alien, goods (in violation of section 545), controlled substances, weapons of mass destruction (including biological weapons), or a member of a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))) shall be subject to twice the penalty that would have otherwise been imposed had the unlawful activity not made use of such a tunnel or passage.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 27 of title 18, United States Code, is amended by adding at the end the following:

“Sec. 554. Border tunnels and passages.”.

(c) CRIMINAL FORFEITURE.—Section 982(a)(6) of title 18, United States Code, is amended by inserting “554,” before “1425.”.

**SEC. 3. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.**

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall promulgate or amend sentencing guidelines to provide for increased penalties for persons convicted of offenses described in section 554 of title 18, United States Code, as added by section 1.

(b) REQUIREMENTS.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that the sentencing guidelines, policy statements, and official commentary reflect the serious nature of the offenses described in section 554 of title 18, United States Code, and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) provide adequate base offense levels for offenses under such section;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including—

(A) the use of a tunnel or passage described in subsection (a) of such section to facilitate other felonies; and

(B) the circumstances for which the sentencing guidelines currently provide applicable sentencing enhancements;

(4) ensure reasonable consistency with other relevant directives, other sentencing guidelines, and statutes;

(5) make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(6) ensure that the sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

By Mr. LEAHY:

S. 2356. A bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today I am introducing the “War Profiteering Prevention Act of 2006.” This bill creates criminal penalties for war profiteers and cheats who, for ill-gotten gain, would exploit the United States Government’s taxpayer-funded war and reconstruction efforts in Iraq and elsewhere around the world. I am pleased that Senator DORGAN has also included this legislation in the “Honest Leadership and Accountability in Contracting Act of 2006” that is also being introduced today.

I previously introduced this legislation in 2003. It came to be cosponsored by 21 Senators, including Senators CLINTON, DODD, FEINSTEIN, JOHNSON, KERRY, LANDRIEU, BILL NELSON, WYDEN, DAYTON, DURBIN, FEINGOLD, HARKIN, JEFFORDS, KENNEDY, KOHL, LIEBERMAN and REID. The Senate Appropriations Committee unanimously accepted these provisions during a Senate Appropriations Committee markup of the \$87 billion appropriations bill for Iraq and Afghanistan for Fiscal Year 2004, and it passed the Senate. It was the right thing to do then, and it is the right thing to do now.

Regrettably, the Republican leadership in the House stripped this legislation out of that appropriations bill, and we regrettably have been witnessing the results in the meantime. Billions appropriated for the continuing war efforts and for reconstruction are unaccounted for, and fraud has been rampant. The recent report of the special inspector general confirms that U.S. taxpayer funds appropriated for reconstruction have been lost and diverted.

There are, of course, anti-fraud laws to protect against waste of tax dollars at home. But none expressly prohibits

war profiteering, and none expressly confers jurisdiction for fraud overseas. This bill would criminalize “war profiteering”—overcharging taxpayers in order to defraud and to profit excessively from a war, military action, or reconstruction efforts. It would prohibit any fraud against the United States involving a contract for the provision of goods or services in connection with a war, military action, or for relief or reconstruction activities. This new crime would be a felony, subject to criminal penalties of up to 20 years in prison and fines of up to \$1 million or twice the illegal gross profits of the crime.

The bill also prohibits false statements connected with the provision of goods or services in connection with a war or reconstruction effort. This crime would also be a felony, subject to criminal penalties of up to 10 years in prison and fines of up to \$1 million or twice the illegal gross profits of the crime. These are strong and focused sanctions that are narrowly tailored to punish and deter fraud or excessive profiteering in contracts, here and abroad, related to the United States Government’s war or reconstruction efforts.

Congress has sent more than a quarter of a trillion dollars to Iraq with too little accountability and too few financial controls. Disturbingly, there are widespread reports of waste, fraud and war profiteering in Iraq, and the special inspector general examining the use of reconstruction funds in Iraq recently found that billions of taxpayer dollars remain unaccounted for.

For example, a recent report on 60 Minutes revealed that more than \$50 billion of U.S. taxpayer funds have gone to private contractors hired to guard bases, drive trucks, feed and shelter the troops and rebuild in Iraq. This is more than the entire annual budget of the Department of Homeland Security.

In addition, just this week, the New York Times, reported that the Army has decided to reimburse a Halliburton subsidiary—Kellogg Brown & Root—for nearly all of its disputed costs on a \$2.41 billion no-bid contract to deliver fuel and repair oil equipment in Iraq, even though the Pentagon’s own auditors had identified more than \$250 million in charges as potentially excessive or unjustified. That article further notes that the Army’s decision to pay all but 3.8 percent of these questionable charges lies well outside the normal practice of the military.

The recent revelations about contract fraud and abuse in Iraq make clear that the approach to reconstruction in Iraq has been a formula for mischief. We need strong disincentives for those who would take advantage of the chaos of war to defraud American taxpayers.

We also need to strengthen the tools available to federal prosecutors to combat war profiteering. Despite well-publicized allegations of fraud and war

profiteering in Iraq, so far the Government has brought only one case to recover these funds—a civil lawsuit brought under the False Claims Act. That case involves a contractor accused of overcharging the Government millions of dollars under a contract to help distribute new Iraqi currency during the first months after the collapse of the Hussein government. The Government’s ability to recover funds in that case is being questioned by the defendant, however, who argues that legal technicalities may constrain current law from reaching all of the conduct of contractors working in Iraq or elsewhere overseas. This bill would address this problem by providing clear authority for the Government to seek criminal penalties and to recover excessive profits for war profiteering overseas. It should already be law, but three years ago the House Republican leadership rejected it.

Every penny of our taxpayers’ money must be expended carefully and purposefully and protected from waste. The message sent by this bill is that any act taken to financially exploit the crisis situation in Iraq or elsewhere overseas for exorbitant financial gain is unacceptable, reprehensible—and criminal. Such deceit demeans and exploits the sacrifices that our military personnel and National Guard are making in Iraq and Afghanistan.

When U.S. taxpayers have been called upon to bear the burden of reconstruction contracts—where contracts are awarded in a system that offers little competition and even less accountability—concerns about wartime profiteering are a grave matter. Historical efforts to stem such profiteering have been successful: Congress implemented excessive-profits taxes and contract renegotiation laws after both World Wars, and again after the Korean War. Advocating exactly such an approach, President Roosevelt once declared it our duty to ensure that “a few do not gain from the sacrifices of the many.” Then, as now, our Government cannot in good faith ask its people to sacrifice for reconstruction efforts that allow so many others to profit unfairly.

There is urgency to this important measure because criminal statutes cannot be applied retroactively. These controls should have been put in place at least three years ago; they need to be in place now. I urge that the Senate make prompt passage of this legislation a high priority. I hope that this time the House Republican leadership will have learned the hard lessons of the last three years and that, this time, they will allow this bill’s enactment, on behalf of the Nation’s taxpayers. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2356

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “War Profiteering Prevention Act of 2006”.

**SEC. 2. PROHIBITION OF PROFITEERING.****(a) PROHIBITION.—**

(1) **IN GENERAL.**—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

**“§1039. War profiteering and fraud relating to military action, relief, and reconstruction efforts****“(a) PROHIBITION.—**

“(1) **IN GENERAL.**—Whoever, in any matter involving a contract or the provision of goods or services, directly or indirectly, in connection with a war, military action, or relief or reconstruction activities within the jurisdiction of the United States Government, knowingly and willfully—

“(A)(i) executes or attempts to execute a scheme or artifice to defraud the United States; or

“(ii) materially overvalues any good or service with the specific intent to defraud and excessively profit from the war, military action, or relief or reconstruction activities; shall be fined under paragraph (2), imprisoned not more than 20 years, or both; or

“(B)(i) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

“(ii) makes any materially false, fictitious, or fraudulent statements or representations; or

“(iii) makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry;

shall be fined under paragraph (2) imprisoned not more than 10 years, or both.

“(2) **FINE.**—A person convicted of an offense under paragraph (1) may be fined the greater of—

“(A) \$1,000,000; or

“(B) if such person derives profits or other proceeds from the offense, not more than twice the gross profits or other proceeds.

“(b) **EXTRATERRITORIAL JURISDICTION.**—There is extraterritorial Federal jurisdiction over an offense under this section.

“(c) **VENUE.**—A prosecution for an offense under this section may be brought—

“(1) as authorized by chapter 211 of this title;

“(2) in any district where any act in furtherance of the offense took place; or

“(3) in any district where any party to the contract or provider of goods or services is located.”.

(2) **TABLE OF SECTIONS.**—The table of sections for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

“1039. War profiteering and fraud relating to military action, relief, and reconstruction efforts.”.

(b) **CIVIL FORFEITURE.**—Section 981(a)(1)(C) of title 18, United States Code, is amended by inserting “1039,” after “1032.”.

(c) **CRIMINAL FORFEITURE.**—Section 982(a)(2)(B) of title 18, United States Code, is amended by striking “or 1030” and inserting “1030, or 1039”.

(d) **RICO.**—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting the following: “, section 1039 (relating to war profiteering and fraud relating to military action, relief, and reconstruction efforts)” after “liquidating agent of financial institution”).”.

By Mr. KENNEDY:

S. 2357. A bill to provide for economic security and prosperity; to the Committee on Finance.

Mr. KENNEDY. Mr. President, these have not been easy times for vast num-

bers of Americans. In many ways, the American dream is in peril for millions of our fellow citizens as global forces have caused the economy to shift against them.

Complacency is not the answer. Few things more affect the way we live than our shrinking and rapidly changing world. Unless we begin to address this immense challenge more effectively, the Nation will pay a high price for years and years to come. Now is the right time to reinvest in America's future, which is why I am today introducing the Right TRACK Act.

American families across the Nation know the problem. It is measured in jobs moving overseas, stagnant or even falling wages and benefits, our schools losing ground compared to other nations, and fewer opportunities to attain the American dream. Indeed, the course we are on today is a course that will make the American dream the impossible dream.

America cannot move forward if we cut back on investments in education, invention, and innovation, as the administration has proposed. We cannot compete in the world if our companies and our workers are saddled with soaring costs for health care. We cannot advance if we fail to invest in our own employees by paying them a decent wage, by taking steps to enable companies to keep jobs here at home, and by investing wisely in our own economic growth.

The 20th century was widely hailed as the American century, but the 21st century is up for grabs. No nation is guaranteed a future of lasting prosperity. We have to work for it. We have to sacrifice for it.

We have a choice. We can continue to be buffeted by the harsh winds of the global economy or we can think anew and guide the currents of globalization with a new progressive vision that strengthens America and equips our citizens to move confidently to the future.

Competing better in a race to the bottom is not the answer. Equality of opportunity—a bedrock principle of our democracy—is suffering already. Today, children born of parents in the bottom 20 percent of income have only a 1 in 15 chance of reaching the top 20 percent in their lifetimes. Also disturbing is the fact that those born in the middle are more likely to sink to the bottom than to rise to the top. And those born at the top are likely to stay at the top.

We cannot and should not compete by lowering wages. Instead, we must open new doors and new avenues for all Americans to make the most of their God-given talents and rekindle the fires of innovation in our society. By doing so, we can turn this era of globalization into a new era of opportunity for America.

As Thomas Jefferson said, “Every generation needs a new revolution.” And I believe the revolution for this generation is to master our own destiny in the new global economy.

What is most required is a new vision for America's future in the global community. Our goal is to rekindle the American Dream, so that if people work hard and play by the rules, they can succeed in life, be better off than their parents, live in good neighborhoods, raise strong families in safe surroundings, work in decent jobs with decent pay and decent benefits and a decent retirement.

To do all that, we must make a commitment to lifelong education, to prepare every man, woman, and child for the new world of intensifying competition and increasingly sophisticated technologies.

We must create high-quality jobs for the years ahead by investing in research and development, encouraging innovation, and modernizing all aspects of our infrastructure.

We must level the playing field for American businesses and employees, to ensure fair worldwide competition and preserve good jobs in the United States.

And we must make a fair commitment to assist and care for workers and communities harmed by the forces of globalization.

We can do all that, but only if we make the right choices, and the time to start is now.

I strongly believe that our highest priority must be a world class education for every American. We must seek a future where America competes with other nations, not by reducing our employees' pay and outsourcing their jobs but by raising their skills.

As a Nation, we must invest in Americans by ensuring access to the highest quality educational opportunities. We must make the American worker and manager the best educated, best trained, and most capable in the world. We need to nourish the capacities of every person in the nation.

To do that, we must begin in the earliest years. Research proves conclusively that what we do for children's early education and development does more to ensure their later success in school than any other investment we can make. It is far less costly to society to spend millions to put young children on the right track from the start, instead of spending billions to rescue them from the wrong track later. In fact, one study concludes that in the long run, we save \$13 for every dollar invested in the early education of our youngest citizens. Prevention works in health care, and it can work in education too.

For generations, we have treated education as a three-legged stool—elementary and middle school, high school, and college. To create a solid foundation for the future, we have to add a fourth leg—early childhood education.

In elementary and secondary education, the No Child Left Behind Act was a pioneering reform that held great promise when it was signed into law by President Bush 4 years ago.

No Child Left Behind was not just an abstract goal. It was a moral commitment to every parent and every child and every school in America, and I was proud to stand with President Bush when he signed it. It soon became clear, however, that to the administration, it was more a slogan than a promise. Too many parents, too many children, too many schools are still waiting for the help we pledged.

We can't reform education without the resources needed to pay for the reforms. Promises alone won't provide the qualified teachers, high standards in every classroom, good afterschool activities, and the range of supplemental services that every good school needs if it is to provide the right help for students who need it.

No Child Left Behind was also a promise that every child counts—Black or White or Brown, rich or poor. It was a promise that disabled children too will have the qualified teachers and individual support they need to succeed in school and in life.

We must also do more to help students prepare for college, afford college, be admitted to college and complete college. In 1950, when I graduated from school, only 15 percent of jobs required some postsecondary training. Today, the number is over 60 percent and rising rapidly.

However, we are witnessing a growing gulf in college attendance between the rich and poor. The gap is shameful. Each year, 400,000 college-ready students don't attend a 4-year college because they can't afford it. Never before has the financial challenge of attending college been greater for young students.

It is time for America to agree that cost must never be a barrier to college education. Every child in America should be offered a contract, when they reach eighth grade, making clear that if they work hard, finish high school, and are accepted for college, we will guarantee them the cost of earning a degree. The Right TRACK Act authorizes Federal grants to States to support the creation of "Contract for Educational Opportunity" grants to cover students' unmet need up to the cost of attendance at 2-year and 4-year public colleges in that State.

Perhaps nowhere is it more obvious that we are falling behind than in math and science. For a nation that prides itself on innovation and discovery, the downward slide is shocking. In recent years, we have dropped to 28th in the industrial world in math education. Each year, China graduates three times as many engineers as we do. Other nations are gaining on us because they give higher priority to education.

The last time America was shocked into realizing we were unacceptably behind in math and science was in 1958, when the Soviet Union launched Sputnik. Republican President Eisenhower and a Democratic Congress responded by passing the National Defense Education Act, and almost overnight we

doubled the Federal investment in education.

In fact, throughout our history, we have remade American education to conquer the challenges of each time. In the mid-1800s, with the Industrial Revolution in full swing, we created free and mandatory public schools before most other nations did. And to stay ahead, we rapidly established public high schools at the start of the last century to keep pace with a growing economy.

Once again, we did something comparable at the end of World War II. We passed the GI Bill of Rights and gave every returning veteran the chance for a college education. The Nation reaped a \$7 return for every dollar it invested in their education. The result was the "greatest generation," and it would never have happened without the GI bill.

That is the kind of initiative we need today, because the need is just as great. We need a new Education Bill of Rights, a new National Defense Education Act, for our own day and generation in science and math.

Let's make college free for students training to become math or science teachers.

Let's make college and graduate school free for low- and middle-income math and science students.

Let's see that our standards are internationally competitive, so that our high school graduates can succeed in this new economy. Let's offer incentives and other support for schools to develop and implement rigorous standards and courses in math and science.

The Right TRACK Act responds to each of these challenges. The legislation provides grants to low- and middle-income students studying in science, technology, engineering, and math fields, as well as critical-need foreign languages. The bill provides larger grants to students studying to become teachers in these fields who agree to work in a high poverty school for at least 4 years. It also provides teachers with tax credits, increased loan forgiveness as additional incentives to continue to teach where they are needed the most and invests in teacher training programs supporting their continuing education.

The Right TRACK Act also provides resources to states to create P-16 Preparedness Councils to help States with their efforts to improve State standards and ensure that they are aligned with the expectations of colleges, employers, and the armed services. The bill also provides funding to States working in collaboration to establish common standards and assessments.

The bill also directs resources to high need schools so they can invest in math, science, engineering, and technology textbooks and laboratories to ensure their students have equal access to a curriculum that will provide them with the skills they need to be successful in the 21st century global economy.

It is becoming increasingly important for students to become exposed to

and immersed in other languages and cultures. In recent years, foreign language needs have significantly increased throughout the public and private sector due to the presence of a wider range of security threats, the emergence of new nation states, and the globalization of the U.S. economy. American businesses increasingly need employees experienced in foreign languages and international cultures to manage a culturally diverse workforce. Foreign language proficiency is a consideration in 44 percent of hiring decisions and 66 percent of retention decisions. Currently, the U.S. Government requires 34,000 employees with foreign language skills in 100 languages across more than 80 Federal agencies.

The Right TRACK Act responds to these needs by providing grants for elementary and secondary critical-need language programs, summer institutes to improve teachers' knowledge and instruction of foreign languages and international content, and study abroad and foreign language study opportunities for high school students, undergraduate, and graduate students.

We must also continue to invest in our current workforce. The Right TRACK Act builds on existing formula funds for job training with competitive grants to support innovative strategies to meet emerging labor market needs.

From our earliest days as a nation, education has been the engine of the American dream. Our country is home to the greatest universities in the world, and our education system has produced the world's leading scientists, writers, musicians, and inventors. We cannot let these achievements stall now. Slogans aren't strong enough. We have to put first things first and give children, parents, schools, communities and States the support they need to refuel the amazing engine of education and keep our country great in the years ahead.

Beyond education, we must recognize that the foundation of our prosperity in this global world is to remain on the cutting edge of technology and medical and scientific breakthroughs in the years ahead and translate those advances into reliable products and services. A strong and fully developed infrastructure will provide the backbone for that success.

America has always been a world leader in research and development, but we can no longer take our success for granted. Even in highly skilled industries, where our technology and infrastructure have preserved our competitive advantage we are increasingly at risk today. Rapidly growing economies in Asia, Eastern Europe, and South America are now formidable competitors, developing their economies into engines of growth based not just on low wages but on well-educated citizens, advanced infrastructure, and well-run businesses.

In Bangalore, India, a G.E. center employs more than 2,200 Ph.D.s. These workers are not sewing buttons on

shirts; they are carrying out advanced research on jet engines and developing mathematical models for investment. An Intel research and development center in the same city employs 3,000 engineers designing the next generation of computer chips.

However, despite increasing international competition, the Federal commitment to research outside the defense arena has declined under the Bush administration. Of particular concern is the drop in funding for basic research. Much of the research conducted by private companies is focused on getting a product quickly to market. That is not the basic research that lays new foundations for new discoveries. Funding for basic research has declined in the past few years at the National Institutes of Health, the National Science Foundation, the Department of Energy, and other key scientific agencies. And overall the Federal investment in research which once exceeded one percent of our GDP is now less than half a percent.

We cannot allow this trend to continue. The Right TRACK Act will help America maintain its position as the leader in innovation. The Right TRACK Act will not only make the R&D credit permanent but expand it to encourage small businesses, universities, and Federal laboratories to collaborate on research. And it will increase R&D funding for major Federal research agencies by 10 percent that we double it in 7 years.

Innovation is important for its own sake, but it is also what creates jobs. We are currently seeing our investment in R&D paying dividends in high growth, high technology industries such as nanotechnology. We need to help usher these new technologies out of the laboratory and into the marketplace. The Right TRACK Act would encourage investment in nanotechnology businesses and increase support for critical programs at the Department of Commerce that help manufacturers adopt and commercialize new technologies.

We also must invest in innovation and infrastructure—highways, mass transit, new sources of clean energy, health I.T., and more. The Right TRACK Act will authorize funds for capital improvements to Amtrak and expands and increases tax credits for school renovation and construction that will equip schools with 21st century technology.

These investments not only improve the quality of our lives, but they also create the quality jobs that drive our economy forward.

Broadband infrastructure is a perfect example. Two years ago, President Bush declared that every American should have access to affordable broadband technology by the year 2007. But the administration still has no plan to get us there. In the meantime, we have fallen to 16th in the world in broadband access behind countries such as Japan and the Netherlands that

have broadband speeds four and five times faster than ours.

Widespread use of basic broadband would add \$500 billion to our economy and create 1.2 million jobs. Clearly, this is the kind of infrastructure we should invest in to produce good jobs and economic growth in the future. The Right TRACK Act also puts us on the “right track” to take full advantage of that economic opportunity.

We also live in an age exploding with medical miracles. A generation ago, few could possibly have imagined the advances in science and biology that have revolutionized the practice of medicine. No one today can predict how new discoveries in the life sciences will improve our lives and change the world, but we can be certain the effects will be profound.

Thanks to the genius and dedication of scientists, doctors, and business leaders, the potential of medical research is virtually limitless. Diagnosing a faulty heart valve or blocked artery once meant risky and traumatic exploratory surgery. Today, doctors make the diagnosis with a miniature camera and fiber optic cable, and the patient can walk out of the office moments later.

A few years ago, it seemed inconceivable that anyone could decipher the entire genetic code—the very blueprint of life. But today, doctors across the globe can read that sequence on their computer screens and use the information to search for new ways to treat cancer, diabetes, Alzheimer’s, Parkinson’s and other major illnesses.

Continuing at the forefront of the life sciences may well be the most important way for America to retain its leadership in the world economy in the coming years.

Another of the fundamental challenges of the global economy is that our companies are losing business and our people are losing jobs because they are not competing on a level playing field.

Foreign governments manipulate their currencies to give their products an unfair advantage. They refuse to enforce basic labor protections like a minimum wage. They use abhorrent practices like child labor and forced labor. As a result, these countries can produce goods much more cheaply and dominate the global marketplace.

Our own trade deficit is skyrocketing because we are producing less at home and buying more from other nations. Last year, we imported a record \$726 billion more than we exported—an all-time high.

We can’t continue down this reckless path. It is too damaging to our economy. Over \$2.2 trillion of our national debt today is owed to foreign investors and foreign governments. America has always controlled its own destiny but when foreigners are bankrolling our Government, our destiny is no longer in our hands.

It is not just our companies that suffer—our workers are also struggling be-

cause the playing field is so uneven. More and more of our companies are shipping U.S. jobs overseas. Fifty-four percent of America’s top companies have already done so. Even governments are part of the offshoring bandwagon. In my home State of Massachusetts, the State government has hired contractors that used workers from India to process Medicaid data and answer questions about food stamps.

The Nation as a whole has lost nearly 3 million manufacturing jobs since 2001. The pain is widespread—48 States have lost manufacturing jobs under President Bush. These are not just blue-collar jobs. Millions of high-paying, white-collar jobs are also at risk of being shipped overseas, especially in the fields of medicine and computers.

The disappearance of these good jobs is reducing our standard of living and threatening the very existence of the American middle class. President Bush’s so-called economic recovery has the worst job creation record of any recovery since World War II.

Those fortunate enough to have jobs are finding that their wages are stagnant even though other costs are soaring. College tuition is up 46 percent since 2001. Housing costs are up 49 percent. Health insurance is up 58 percent. Gasoline is \$2.33 a gallon—40 percent higher than it was 5 years ago.

The foundation of the America dream is weakening. That is because more of what our economy produces in this recovery now goes to business profits and executive suite salaries, and less to employees, than at any time since such records began in 1929. Wages are down, but profits are up by more than 60 percent.

There is a better way. We need policies that reject the Walmart-ization of the American workforce.

We must level the playing field in the competition for good jobs and demonstrate leadership in promoting fair wages for workers around the world. This is not just an economic issue—it is a moral issue. The Right TRACK Act will help raise living standards worldwide by prioritizing the elimination of forced labor and child labor in U.S. trade agreements and providing incentives for multinational corporations to treat their foreign workers with respect. It will also level the playing field for American businesses by ensuring that countries cannot manipulate their currencies to give their goods an unfair advantage in the global market.

Rejecting the race to the bottom also means reaffirming our commitment to workers here at home. We must stop rewarding companies by giving them favorable tax breaks for shipping jobs overseas. The Right TRACK Act corrects this nonsensical policy by eliminating the tax loophole that allows companies to avoid paying taxes on money they have earned overseas. The act also addresses the offshoring epidemic by requiring companies to give workers better notice when their jobs could be offshored to other countries

and ensuring that the Government does not use hard-earned tax dollars to ship jobs overseas.

Our commitment to workers at home also demands that we give them their fair share of the economic growth that globalization brings. In this century, just as in the last, we must ensure that workers can organize and have a voice at work. The Right TRACK Act preserves the basic rights of American workers by protecting employees who try to organize from employer intimidation, supporting the democratic right of a majority of workers to choose a representative through fair and neutral card-check procedures, and requiring employers to come to the table and negotiate a first contract.

We owe a particular duty to those Americans who lose their jobs due to the effects of trade or economic downturns. When workers lose their jobs in the global economy, we should help in the difficult and painful transition to new employment with top-notch job training and income assistance for their families until they get another paycheck. The Right TRACK Act gives workers and communities harmed by trade the support they deserve. It expands the Trade Adjustment Assistance Program to include service workers and workers who lose their jobs due to increased trade with countries like China and India. It also improves funding levels for training programs, provides wage insurance for older workers who lose their jobs, and helps workers to retain their health care coverage during times of transition.

And it is a scandal that the minimum wage has been stuck at \$5.15 an hour for the past 9 years, below the poverty line for a family of three. It is the lowest the minimum wage has been in real value in more than 50 years. How can so many Republicans in Congress keep voting against any increase? Why can't we all at least agree that no one who works for a living in America should have to live in poverty? The Right TRACK Act gives these hardworking Americans a long overdue raise by increasing the minimum wage to \$7.25 an hour in three steps.

America has to rise to each and every dimension of this challenge. We can do it by creating a new culture of innovation and creativity that keeps our Nation in the lead in the global market place—by equipping every American to compete and win in the new global economy. Only then will our economy continue to grow and prosper. Only then will the good jobs of the future be made in the U.S.A.

The same can-do spirit of innovation, invention, and progress that brought us the automobile, the airplane, and the computer can do it again. Those advances brought the American dream closer for all, and we can't afford to let it slip away now.

The essence of the American dream is the ability to provide a better life for yourself and your family. At its very

heart are a good job, first-class education, good health care, and a secure retirement. Some say the dream is out of reach in today's global economy. But I am here today to tell you it doesn't have to be that way. We can revitalize the American dream.

I have full confidence in our ability to meet these challenges and reach new heights of discovery, prosperity, and progress. Passing the Right TRACK Act that I've introduced today is an important step towards ensuring that the American dream remains attainable for generations to come, and I urge my colleagues to support it.

By Mr. OBAMA:

S. 2358. A bill to amend title 38, United States Code, to establish a Hospital Quality Report Card Initiative to report on health care quality in Veterans Affairs hospitals; to the Committee on Veterans' Affairs.

By Mr. OBAMA:

S. 2359. A bill to amend title XVIII of the Social Security Act to establish a Hospital Quality Report Card Initiative under the Medicare program to assess and report on health care quality in hospitals; to the Committee on Finance.

Mr. OBAMA. Mr. President, today I am introducing legislation that would expand and improve quality reporting for our Nation's hospitals through the establishment of a national Hospital Quality Report Card Initiative.

Study after study has documented that health care quality in the United States is inconsistent and inadequate. The landmark 2003 RAND report by Beth McGlynn found that the chance of Americans getting recommended care is not much greater than the flip of a coin. For many conditions, the chances are even worse—only about a third of diabetics and a quarter of patients with atrial fibrillation and hip fractures receive the right treatment, as do only about 10 percent of patients with alcohol dependence. Patients are suffering, and the financial costs of poor care are staggering. We can and must do more to ensure that every patient gets the right care, at the right time, in the right way.

One way to help improve health care quality is to measure and report the quality of care in our nation's hospitals. Hospital quality reports can help patients and consumers choose the hospital that will best serve their health needs. Purchasers and payers can use hospital quality information to help their decision-making about where employees and members can go for care. Hospitals and health care professionals would similarly benefit from identification of areas of need, and opportunities for quality improvement and cost containment. And finally, with greater quality reporting and transparency, we can begin to have an honest dialogue about health care quality and how to reform our health care system.

Several States have already developed and implemented hospital report card initiatives, and I am proud to say that Illinois began its own report card initiative in January of this year—an initiative that I spearheaded when I served in the Illinois State Senate.

On the national level, the Centers for Medicare and Medicaid Services (CMS) and the Hospital Quality Alliance have partnered to identify and encourage submission of quality measures for several health conditions, on a voluntary basis, in exchange for greater federal reimbursement. The Deficit Reduction Act codified this initiative earlier this year.

The Hospital Report Card Act, which I am introducing today, takes quality measurement one step further, by mandating that the Secretary expand and improve upon current quality reporting for hospitals. Within 18 months, the Secretary would establish a formal Hospital Report Card Initiative, and publish reports on individual hospital quality using data submitted for the value based purchasing program at CMS, but also including other data available to the Secretary. The report cards would report quality measures that align with those used in the National Healthcare Quality Report, including measures of effectiveness, safety, timeliness, efficiency, patient-centeredness, and equity. In addition, the report cards would provide information on other quality priorities for patients, such as staffing levels of nurses, rates of infections acquired in hospitals, volume of procedures performed, and availability of specialized care. The Secretary would also report measures of relevance to a number of priority populations, including women, children and minorities.

The bill requires the Secretary to take steps to ensure that all reported data is accurate and fairly represents hospital quality, and that hospitals have an opportunity to participate in the development of the report card initiative. I also want to make sure that sick patients have full access to the best hospitals, and so the report cards will risk-adjust quality data, so that hospitals are not inadvertently penalized for caring for more challenging patient populations.

We are hearing a lot of rhetoric about patient empowerment and consumer-driven health plans. However, we can't expect patients to make the best choices for their health care in the absence of accurate information on quality and costs. Similarly, we can't expect hospitals to recognize their areas of deficiencies or strengths without a critical look inwards. Finally, we can't expect the Nation at large to support and embrace healthcare reform without greater awareness of quality problems.

The Hospital Quality Report Card Act will help the Nation take one step closer to improving health care quality and containing costs, and I hope my colleagues will join me in passing this critical legislation.

By Mr. WYDEN:

S. 2360. A bill to ensure and promote a free and open Internet for all Americans; to the Committee on Commerce, Science, and Transportation.

Mr. WYDEN. Mr. President, a headline in today's Wall Street Journal warns consumers that they will soon face a "pay to play" Internet where those businesses and consumers who want to continue to see equal content get equal treatment will have to pay more. Rather than let them continue to have the freedom to choose whatever content, applications and services they want, the big network operators want to control the content consumers can access. Allowing the big network operators to discriminate on the Net is bad news for consumers, small businesses, schools, libraries, nonprofits and any other user who enjoys their freedom of access.

That is why today I am proposing legislation that will codify the principle of network neutrality. I want consumers, small businesses and every other Internet user to continue to enjoy tomorrow the full array of content, service and applications they enjoy today.

My legislation, the Internet Non-Discrimination Act of 2006, will establish the principle of network neutrality by requiring the operators of the network to treat all content on the Internet equally. It will ensure transparency so that everyone can easily determine all rates, terms and conditions for the provision of any communications. Transparency coupled with a complaint process before the Federal Communications Commission will encourage compliance.

This legislation has been developed in consultation with a number of consumer groups and businesses, and I ask unanimous consent the text of the bill be printed in the RECORD.

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

S. 2360

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Non-Discrimination Act of 2006".

#### SEC. 2. FINDINGS.

Congress finds the following:

(1) Since passage of the Telecommunications Act of 1996, the Internet has grown robustly. Today, Americans are changing how they access the Internet, moving from dial-up to broadband for their home connections. According to the Pew Internet and American Life Project, 72 percent of Americans use the Internet and 59 percent of Americans with home Internet have a high-speed Internet connection.

(2) Americans use the Internet for many daily activities. Over 17 percent of Americans have sold something over the Internet. Everyday, approximately 60,000,000 Americans use search engines to get access to information. 80 percent of Americans have looked online for health care information. In growing numbers, Americans are using the Internet to place phone calls, watch their fa-

vorite televisions shows or movies, and play games.

(3) The growth of the Internet and its success are due in large part to the freedom that has always existed on the content and applications layer of the Internet. Innovation has thrived on this layer, as anyone with a good idea has the ability to access consumers. The continuation of this freedom is essential for future innovation.

(4) Freedom on the content and applications layer has also led to robust competition for retail goods for consumers. Consumers can shop at thousands upon thousands of retailers from their home computers, including small businesses located miles away in other towns, States, and even countries.

(5) Such freedom is leading to the development of important new entertainment offerings, on-demand video and movie purchases, Internet Protocol television, and enhanced gaming options. The entertainment options available in the future will only be limited by the bandwidth that can be used and the innovation of people all over the world.

(6) Despite the growth of the Internet and increased access to the Internet for Americans, there is very little choice in who provides them high-speed Internet access. According to an April 2005 White Paper by Harold Feld and Gregory Rose, et. al., entitled, "Connecting the Public: The Truth About Municipal Broadband" only 2 percent of Americans get high-speed Internet access from someone other than their local phone company or cable provider. According to the Federal Communications Commission, approximately 20 percent of Americans do not have a high-speed Internet access provider that offers them service.

(7) As more and more Americans get high-speed access to the Internet without having much choice of who their provider will be, it is important that Congress protect the freedom on the Internet to ensure its continued success.

#### SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) APPLICATION OR SERVICE.—The term "application or service" means any information or service—

(A) by which an end-user through software or a device engages in an exchange of data or information; and

(B) conveyed over communications.

(2) BITS.—The term "bits" or "binary digits" means the smallest unit of information in which form data is transported on the Internet as a single digit number in base-2.

(3) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(4) COMMUNICATIONS.—The term "communications"—

(A) means any voice, video, or data application or service, regardless of the facilities or technology used, that—

(i) is a transmission to subscribers by use of—

(I) the public rights-of-way;

(II) spectrum;

(III) numbering or addressing resources; or

(IV) other inputs licensed or managed by a unit of local government, or a private entity working in concert with such unit of local government, for the benefit of the public;

(ii) is offered to the public, or as to such classes of subscribers as to be effectively available directly to the public, with or without a fee; and

(iii) enables an end user, as part of such service, to transmit content of their own design or choosing between or among points specified by such user;

(B) includes interactive on-demand services, as such term is defined in section 602(12)

of the Communications Act of 1934 (47 U.S.C. 522(12)); and

(C) does not include cable service, as such term is defined in section 602(6) of the Communications Act of 1934 (47 U.S.C. 522(6)).

(5) CONTENT.—The term "content" means information—

(A) in the form of writing, signs, signals, pictures, and sounds of all kinds, including stored information requested by an end user; and

(B) that is generated based on the input or request of such user.

(6) PERSON.—The term "person" means any natural person, partnership, firm, association, corporation, limited liability company, or other legal entity.

(7) NETWORK OPERATOR.—

(A) IN GENERAL.—The term "network operator" means any person who owns, operates, controls, or resells and controls any facility that provides communications directly to a subscriber.

(B) OBLIGATIONS.—Any obligation imposed on a network operator by the provisions of this Act shall apply only to the extent that such network operator is engaged in providing communications.

(8) SUBSCRIBER.—The term "subscriber" means any person who—

(A) is an end user of an application or service provided through communications; and

(B) consumes or provides goods provided through such application or service.

(9) TRANSMISSION COMPONENT.—The term "transmission component" means the portion of communications which enables an end user to transmit content of their own design and choosing between or among points specified by such user.

#### SEC. 4. OBLIGATIONS OF NETWORK OPERATORS.

(a) IN GENERAL.—A network operator shall—

(1) not interfere with, block, degrade, alter, modify, impair, or change any bits, content, application or service transmitted over the network of such operator;

(2) not discriminate in favor of itself or any other person, including any affiliate or company with which such operator has a business relationship in—

(A) allocating bandwidth; and

(B) transmitting content or applications or services to or from a subscriber in the provision of a communications;

(3) not assess a charge to any application or service provider not on the network of such operator for the delivery of traffic to any subscriber to the network of such operator;

(4) offer communications such that a subscriber can access, and a content provider can offer, unaffiliated content or applications or services in the same manner that content of the network operator is accessed and offered, without interference or surcharges;

(5) allow the attachment of any device, if such device is in compliance with part 68 of title 47, Code of Federal Regulations, without restricting any application or service that may be offered or provided using such a device;

(6) treat all data traveling over or on communications in a non-discriminatory way;

(7) offer just, reasonable, and non-discriminatory rates, terms, and conditions on the offering or provision of any service by another person using the transmission component of communications;

(8) provide non-discriminatory access and service to each subscriber; and

(9) post and make available for public inspection, in electronic form and in a manner that is transparent and easily understandable, all rates, terms, and conditions for the provision of any communications.

(b) PRESERVED AUTHORITY OF NETWORK OPERATORS.—Notwithstanding the requirements described in subsection (a), a network operator—

(1) may—

(A) take reasonable and non-discriminatory measures to protect subscribers from adware, spyware, malware, viruses, spam, pornography, content deemed inappropriate for minors, or any other similarly nefarious application or service that harms the Internet experience of subscribers, if such subscribers—

(i) are informed of the application or service; and

(ii) are given the opportunity to refuse or disable any such preventative application or service;

(B) support an application or service intended to prevent adware, spyware, malware, viruses, spam, pornography, content deemed inappropriate for minors, or any other similarly nefarious application or service that harms the Internet experience of subscribers, if such subscribers—

(i) are informed of the application or service; and

(ii) are given the opportunity to refuse or disable any such preventative application or service; and

(C) take reasonable and non-discriminatory measures to protect the security of the network of such operator, if such operator faces serious and irreparable harm; and

(2) shall—

(A) give priority to an emergency communication;

(B) comply with any court-ordered law enforcement directive; and

(C) prevent any activity that is unlawful or illegal under any Federal, State, or local law.

#### SEC. 5. COMPLAINTS REGARDING VIOLATIONS.

(a) COMPLAINT.—Any aggrieved party may submit a written complaint to the Commission seeking a ruling that a network operator has violated a requirement described in section 4(a).

(b) CONTENT OF COMPLAINT.—In any complaint submitted under subsection (a) an aggrieved party shall make a prima facie case that—

(1) a network operator violated a requirement of section 4(a);

(2) such violation was not a preserved authority described in subparagraph (A) or (B) of section 4(b)(1); and

(3) such violation is harmful to such party.

(c) 7-DAY ACCEPTANCE PERIOD.—Not later than 7 days after the date of the submission of a complaint under subsection (a), the Commission shall issue a decision regarding its acceptance or denial of the prima facie case made by an aggrieved party.

(d) CEASE AND DESIST.—

(1) IN GENERAL.—If the Commission accepts the prima facie case of an aggrieved party under subsection (c), a network operator shall be required to cease and desist the action that is the underlying basis of the complaint for the duration of the proceeding on such complaint, until such time as the Commission may rule that a violation of a requirement of section 4(a) has not occurred.

(2) AUTHORITY TO EXTEND CEASE AND DESIST ORDER.—The Commission shall have the authority to extend any cease and desist order to any similarly situated person as the Commission determines necessary and appropriate.

(e) BURDEN OF PROOF.—If the Commission accepts the prima facie case of an aggrieved party under subsection (c), a network operator shall bear the burden of proving that—

(1) no violation of section 4(a) occurred; or

(2) such violation was a preserved authority described in section 4(b).

(f) FINAL DECISION.—

(1) 90-DAY PERIOD.—Not later than 90 days after the date of the submission of a complaint under subsection (a), the Commission shall issue a final decision regarding the request for a ruling contained in such complaint.

(2) FAILURE TO ISSUE DECISION.—If the Commission fails to issue a decision at the expiration of the 90-day period described in paragraph (1), a violation of a requirement of section 4(a) shall be deemed to have occurred.

(g) RULES OF CONSTRUCTION.—

(1) DELEGATION.—

(A) IN GENERAL.—Nothing in this section shall be construed—

(i) to prevent the Commission from delegating any authority granted to it under this section to a relevant office or bureau pursuant to the authority granted the Commission under section 5(c) of the Communications Act of 1934 (47 U.S.C. 155(c)); or

(ii) to limit the Commission from adopting any appropriate procedures pursuant to any other provision of law.

(B) LIMITATION.—The rule established under subparagraph (A) shall only apply if at the expiration of the 90-day period described in subsection (f)(1)—

(i) the Commission issues a final decision that is ripe for judicial review; or

(ii) a violation of a requirement of section 4(a) shall be deemed to have occurred under subsection (f)(2).

(2) PETITION FOR RECONSIDERATION.—

(A) IN GENERAL.—Nothing in this section shall be construed to affect the ability of any eligible party to file a petition for reconsideration under section 405 of the Communications Act of 1934 (47 U.S.C. 405).

(B) TIMING.—

(i) 90-DAY PERIOD.—Not later than 90 days after the date of the submission of a petition for reconsideration under section 405 of the Communications Act of 1934 (47 U.S.C. 405), the Commission shall issue an order granting or denying such petition.

(ii) FAILURE TO ISSUE AN ORDER.—If the Commission fails to issue a decision at the expiration of the 90-day period described in clause (i), the previous decision of the Commission shall be considered affirmed and final for purposes of judicial review.

(3) JUDICIAL REVIEW.—Notwithstanding section 402(b) of the Communications Act of 1934 (47 U.S.C. 402(b)) and any other provision of law, any appeal of a decision of the Commission under this section shall be made to United States district court for the district in which the principle place of business of the aggrieved party is located.

(4) INTERVENTION BY THIRD PARTIES.—Nothing in this section shall be construed to prevent any interested person from intervening in any appeal of a decision of the Commission in accordance with section 402(e) of the Communications Act of 1934 (47 U.S.C. 402(e)).

#### SEC. 6. PENALTIES.

(a) IN GENERAL.—If the Commission issues a ruling under section 5 that a network operator is in violation of a requirement of section 4(a), such network operator shall be subject to the penalties prescribed under section 501 of the Communications Act of 1934 (47 U.S.C. 501).

(b) SEPARATE VIOLATIONS.—Each violation of a requirement of section 4(a) shall be treated as a separate incident for purposes of imposing penalties under subsection (a).

By Mr. BYRD:

S. 2362. A bill to establish the National Commission on Surveillance Activities and the Rights of Americans; to the Committee on the Judiciary.

Mr. BYRD. Mr. President, before the Presidents Day recess, I spoke about

recent egregious examples of domestic surveillance by the executive branch, and I announced my intention to introduce legislation to establish a commission to investigate the instances of warrantless wiretapping and spying on U.S. citizens by the National Security Agency and other departments of Government.

I am not the lone voice raising questions about the legality of this program and its effect on the rights of law-abiding American citizens. I am only one—only one—in a growing chorus—a growing chorus—of concerned individuals. Since the New York Times broke the story of the NSA's wiretapping program, many in this Chamber on both sides of the aisle have questioned the legality of the warrantless wiretapping and have called for investigations into possible violations of the Foreign Intelligence Surveillance Act, as well as other transgressions against the spirit or the letter of our revered Constitution.

Many of our country's foremost constitutional scholars and professors of law have expressed their categorical opposition to the NSA's program, citing possible violations of both the Constitution and the Foreign Intelligence Surveillance Act. They agree that "the program appears on its face"—on its face—"to violate existing law."

These concerns have, of course, been dismissed by the same branch of Government that hatched the domestic spying program. Did you hear that? I will say it again. These concerns have been dismissed by the same branch of Government that hatched the domestic spying program. But this stonewalling—yes, that is stonewalling—this stonewalling is only part of the story. Important questions about NSA's program have been answered with strained and tenuous justifications or claims of the dire need for secrecy and, as a result, Congress's access to information has been severely—severely, severely—curtailed, by whom? By whom? Guess what, by the administration; by the administration.

There are some things we do know. We know that top officials in the Department of Justice who were concerned about questions of legality and lack of oversight of the program refused to endorse continued use of the NSA's wiretapping. That isn't all. We also know because of these concerns this secret program was suspended. Do you get that? This secret program was suspended temporarily due to questions about its legality.

What most Americans don't know is that FBI agents complained about the utility of the wiretapping program. Voluminous amounts of information and records that were gleaned from this secret eavesdropping program were sent from the National Security Agency to the Federal Bureau of Investigation, and FBI officials repeatedly complained that they were being drowned by a river of useless information that

diverted their resources from pursuing important counterterrorism work. Such complaints raise the question of whether the domestic wiretapping program may have backfired by sending our top counterterrorism agencies on wild-goose chases, thus making our country less secure instead of making our country more secure.

We know that one member of the Foreign Intelligence Surveillance Court, Judge James Robertson, resigned—yes, resigned—4 days after the New York Times first detailed the NSA's warrantless—warrantless—domestic surveillance. We know that only the chief judge of the FISA Court, the secret court charged with approving requests to conduct domestic surveillance, had any knowledge of this clandestine wiretapping program. The other judges, who are sworn to strict secrecy, learned of the program just as many of our citizens did—through reports in the press. Yes, thank God for a free press.

We know that although most of the judges of the Foreign Intelligence Surveillance Court were kept in the dark about the program, at least one of the judges was tipped off by an attorney within the Department of Justice that some of the information being presented to the court to secure warrants was improperly obtained, meaning the Government had apparently circumvented a court-ordered screening process to eliminate tainted evidence.

We know that in a February 28 letter to Senate Judiciary Committee Chairman ARLEN SPECTER, Attorney General Gonzales admitted that the Justice Department's legal justification for the wiretaps has "evolved over time."

What does that mean? Does it mean that there actually was no legal basis for the NSA to spy on American citizens when it first began the surveillance? Does it mean the Department had to gin up some legal basis for the spying once the program became public? Does it mean the administration's reliance on the use-of-force resolution to justify its snooping was simply a ploy—just a ploy—an "after the fact" face-saving device meant to give the administration cover for having violated the civil liberties of Americans?

We know that earlier this week, 18 Members of the House of Representatives sent a letter to President Bush requesting that he appoint a special counsel to investigate the NSA's warrantless surveillance of our citizens. In their letter, the House Members noted that with no clear information coming from the administration, they and all of America have been forced to rely primarily on press reports to determine the scope of the NSA's activities.

With so many questions unanswered by the administration, it is absolutely imperative that there be an objective investigation of this program and any violations of law that may have occurred.

We are in a supercharged political year—we know that, you know that,

everybody knows that—an election year for one-third of the Senate, including this Senator from West Virginia, and for the entire House of Representatives. And the Senate Intelligence Committee as of today has refused to initiate a serious investigation into this matter. But an investigation has to go forward. The efficacy of our laws and our Constitution is at stake. That is why I am proposing legislation to establish a nonpartisan commission to review and investigate domestic surveillance in America, along with serious allegations of abuse. In this way, we will be sure to safeguard our first and fourth amendment rights as enumerated in this Constitution, as well as evaluate the actual effectiveness of such programs in combating terrorist threats.

James Madison wrote in his essay, "Political Reflections," that "[t]he fetters"—the fetters, f-e-t-t-e-r-s—" [t]he fetters imposed on liberty at home have ever been forged out of the weapons provided for defense against real, pretended, or imaginary dangers from abroad.

No one is suggesting that the threat of terrorist attacks is anything but a real threat, and one that must be of the Congress's utmost priority. But the suggestion that the American people would be safer in their homes if they just forego their constitutionally protected rights is a deliberately deceptive assertion that may forge the fetters that bind law-abiding citizens. Make no mistake about it: It is these ill-conceived strictures that may ultimately destroy precious liberties.

In fact, it is because our forefathers were fearful of re-creating the same tyrannous form of government from which many of them had fled, that the Bill of Rights—the Bill of Rights, those first 10 amendments—the Bill of Rights was added to the Constitution to better secure for all time—all time—the freedom from oppression that ever looms from an overly powerful executive. Get that. Get that. Let me say that again. It was because our forefathers, thank God, were fearful of re-creating the same tyrannous, the same tyrannical form of government from which many of them had fled that the Bill of Rights was added to the Constitution to better secure, for all time, the freedom from oppression that ever looms from an overly powerful executive. And you better believe it. You better believe it. Hear me. Hear me now. I will always speak out against an all-powerful executive, under either party.

In a climate of fear, liberties have been sacrificed time and again under the guise of keeping the Nation from harm. Fear. Yes, fear is a powerful tool for manipulation; useful for easing the American people out of their liberties and into submission. Fear. When the public is confronted with a situation, real or imagined, that inspires fear, the public rightfully look to their leaders—look to their leaders, Mr. President—for protection from foreboding con-

sequences. The claim of wartime necessity always strengthens the hands of a President. Let me say that again. The claim of wartime necessity always strengthens a President, any President, Republican or Democrat. And often facts are sealed from the prying eyes of Congress by a purported need for secrecy.

But Senators, and that includes this Senator from West Virginia, Senators have a sworn duty—a sworn duty, a sworn duty—sworn right up there at that desk with their hand on the Bible—the holy Bible, the holy Bible, the holy Bible—with their hand on the Bible to check executive power. We have to be on guard every moment of every day. The executive branch, whether it be Democratic or Republican, is always reaching—always reaching, always reaching—always grabbing more power, more power, more power, and we have to be on guard. We have a sworn duty to check executive power and, as long as I live, I am going to stand for the checking of the executive power; I don't care whether it is a Democrat or Republican in the White House or an Independent. It makes no difference. We have a sworn duty. We swear. We put our hand on the Bible before God and man, and we swear to check executive power at all times—at all times—in times of crisis or otherwise. Each of us here, and there are 100 here, and each of this 100, 100 Senators, we are each bound to defend the Constitution and each bound to defend the liberties that the Constitution gives to all Americans, at all times, in times of peace and in times of war.

History has shown us many times that a climate of fear can take a hefty toll on our freedoms. That is your freedoms. That is your freedoms. That is your freedoms. Worse still are liberties surrendered in vain, resulting in little added security.

There is no doubt that constitutional freedoms will never be abolished in one fell swoop—never—for the American people cherish their freedoms, and they would not tolerate such a loss if they could perceive it; if they could see it coming, if they could hear it, if they could feel it, if they could perceive it. But the erosion of freedom rarely comes as an all-out frontal assault; rather, it is gradual, noxious, creeping, cloaked in secrecy and glossed over by reassurances of greater security.

The American people are a people born of sacrifice, and the sacrifices that the American people are willing to endure speak well of the tenacity and the strength that makes the United States of America what it is. Some may be tempted to accept on blind faith the administration's—any administration's, any administration's—promise of increased security, and they may see it as a duty to capitulate their rights for that flimsy promise. May we all pause to reflect on the hard-won liberties—the hard-won liberties—for which earlier generations fought and

died. Remember Nathan Hale. He died. He regretted that he had but one life to give, to lose, one life to lose for his country. Remember Patrick Henry: "Give me liberty or give me death," he said. John Paul Jones: "We have only begun to fight."

So may we all pause to reflect, as we have just done, on the hard-won liberties for which earlier generations fought and died before we easily accept convincing rhetoric. Rhetoric is cheap. Talk is cheap. To suggest that innocent Americans surrender rights to preserve freedom is a false choice. It is also a slippery slope, one that is fraught with ever more secrecy and the certainty of egregious abuses of our Bill of Rights and of our laws over time.

The commission that I propose would determine how to best protect the homeland, as well as the most effective ways of gathering needed intelligence. It will examine the procedures for the NSA's use and retention of intelligence obtained without warrants, and the method and scope of dissemination of such information to other agencies. It will investigate any questions raised by the Foreign Intelligence Surveillance Court concerning the legality of the domestic spying program. It will examine the obligation of the President—do you get that? Do you hear that, Mr. President? Republican or Democrat. It will examine the obligation of the President to brief Members of Congress—not just one or two or three or four—on warrantless surveillance of American citizens. It will lift the fog—lift the fog—of secrecy and clandestine government activity misaimed at law-abiding citizens and perhaps, most importantly, it will shed much needed sunshine—let the sunshine in—much needed sunshine on any unlawful or unconstitutional executive—executive, executive intrusions into the lives of ordinary Americans.

By Ms. CANTWELL (for herself, Mr. BINGAMAN, Mr. HARKIN, Mr. LAUTENBERG, Mrs. BOXER, Mr. LIEBERMAN, Mrs. CLINTON, Mr. MENENDEZ, Mr. AKAKA, Mr. DODD, and Mr. KERRY):

S. 2364. A bill to provide lasting protection for inventoried roadless areas within the National Forest System; to the Committee on Energy and Natural Resources.

Ms. CANTWELL. Mr. President, I rise along with Senators BINGAMAN, HARKIN, LAUTENBERG, BOXER, LIEBERMAN, CLINTON, MENENDEZ, AKAKA, DODD and KERRY to introduce the Roadless Conservation Act of 2006.

Since Teddy Roosevelt established the national forest system 100 years ago, we have cherished these amazing public lands. They have provided both timber for our economy, and quiet solace for our souls. However, only a fraction of the vast natural forests that once covered our nation remain. I believe it is our duty to protect these lands before we have no natural forest legacy to pass on to our children.

Simply put, the Roadless Area Conservation Act of 2006 represents a balanced and reasoned approach to forest management on untouched public lands. This legislation reasserts safeguards in place in 2001 to protect our nation's the last remaining pristine forest lands, 58.5 million acres, from logging, road-building, and other environmentally damaging development. In Washington State alone there are 2,015,000 acres of National Forest system lands that qualify for protection as Roadless areas under the legislation.

The bill would prohibit new road construction or reconstruction in inventoried roadless areas while maintaining opportunities for hunting, fishing, hiking, mountain-biking, snowmobiling, cross-country skiing and other forms of outdoor recreation in our National Forests.

The legislation also includes a number of important exemptions to allow new road construction for human health and safety, oil and gas development, and other previously approved economic activities, such as ski trails.

What is more, it allows for hazardous fuels reduction, forest stewardship projects, and targeted economic activities. This legislation also helps address the serious fiscal challenge presented by the more than \$8.6 billion dollar maintenance and reconstruction backlog on the 386,000 miles of existing U.S. Forest Service roads.

Of course, this might not sound new. And you'd be right. In many ways, we've travelled these roads before. The Clinton Administration finalized the Roadless Area Conservation Rule in January 2001, following three years of official review and public participation, over 600 public meetings—45 public meetings in Washington state alone—and hearings on each National Forest and in each Forest Service region.

During his confirmation hearing I asked Attorney General John Ashcroft if the administration would uphold the Roadless regulation. He pledged that he would. In May 2001, then-USDA Secretary Ann Venemen also pledged that the administration would stand by the Rule.

But that's not what happened. Through a series of subtle yet unmistakable steps the administration has allowed these protections to be undermined steadily. They've rolled over for logging companies and developers. They've cooked up loopholes for State-based petitions or settlements that could weaken or eliminate the protections afforded to these unique lands. And finally, in May of 2005, they dropped the pretense altogether when the U.S.D.A. Forest Service repealed the 2001 Roadless Area Conservation Rule, eliminating these vital roadless forest land protections.

The need for action today is more urgent than ever. These are national forest lands that provide unmatched outdoor recreation opportunities, critical fish and wildlife habitats, and promote

clean drinking water for millions of Americans. This bill would not apply or effect state, tribal, county, municipal, or private lands and does not impact existing U.S. Forest Service roads, trails, or activities on those roads and trails.

The 2001 Roadless Rule has received unprecedented public support, including over four million comments submitted to the U.S. Forest Service asking that it not be overturned. Most recently, over 250,000 Americans, including over 100 current and former Olympic athletes, have filed a formal petition under the Administrative Procedures Act (APA) to reverse the Bush Administration's decision to eliminate the 2001 Rule. This legislation enjoys the support and endorsement of such groups as National Wildlife Federation, Trout Unlimited, the Heritage Forests Campaign, the Wilderness Society, and the Sierra Club.

I've worked to protect these pristine forest lands since the day I came into office, and I'll keep fighting to make sure this bill gets signed into law. We've heard it loud and clear: Americans don't want to see their hunting, fishing, and hiking areas turned into a reckless patchwork of road-building, logging, and mining.

Let's act today and pass the Roadless Conservation Act of 2006. The American people and future Americans deserve nothing less.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2364

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Roadless Area Conservation Act of 2006".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) IN GENERAL.—Congress finds that—

(1) there is a compelling need to establish national protection for inventoried roadless areas of the National Forest System in order to protect the unique social and ecological values of those irreplaceable resources;

(2) roadless areas protect healthy watersheds and their numerous benefits including—

(A) protecting downstream communities from floods and tempering the effects of drought;

(B) ensuring a supply of clean water for domestic, agricultural, and industrial uses;

(C) helping maintain abundant and healthy fish and wildlife populations and habitats;

(D) providing the setting for many forms of outdoor recreation; and

(E) providing drinking water to millions of citizens from the more than 354 municipal watersheds found on roadless areas;

(3) maintaining roadless areas in a relatively undisturbed condition—

(A) saves downstream communities millions of dollars in water filtration costs; and

(B) is crucial to preserve the flow of affordable, clean water to a growing population;

(4) the protection of roadless areas can maintain biological strongholds and refuges for many imperiled species by halting the

ongoing fragmentation of the landscape into smaller and smaller parcels of land divided by road corridors;

(5) roadless areas conserve native biodiversity by serving as a bulwark against the spread of nonnative invasive species;

(6) roadless areas provide unparalleled opportunities for hiking, camping, picnicking, wildlife viewing, hunting, fishing, cross-country skiing, canoeing, mountain-biking, and similar activities;

(7) while roadless areas may have many wilderness-like attributes, unlike wilderness areas, the use of mechanized means of travel is allowed in many roadless areas;

(8) roadless areas contain many sites sacred to Native Americans and other groups that use roadless areas for spiritual and religious retreats;

(9) from the inception of Federal land management, it has been the mission of the Forest Service and other agencies to manage the National Forest System for the dual purposes of resource extraction and conservation;

(10) consistent with that dual mission, this Act—

(A) protects social and ecological values, while allowing for many multiple uses of inventoried roadless areas; and

(B) does not impose any limitations on the use of, or access to Nation Forest System, State, or private land outside inventoried roadless areas;

(11) establishing a consistent national policy for the protection of inventoried roadless areas—

(A) ensures that the considerable long-term ecological and economic benefits of protecting roadless areas for future generations are properly considered;

(B) diminishes the likelihood of controversy at the project level; and

(C) enables the Chief of the Forest Service to focus on the economic and environmental benefits of reducing hazardous fuel buildups in portions of the landscape that already have roads;

(12) the National Fire Plan indicates that fires are almost twice as likely to occur in roaded areas as in roadless areas, because roadless areas are generally located further away from communities and are harder to access;

(13) the report entitled "Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy" (65 Fed. Reg. 67480) advocates a higher priority for fuel reduction on land that is near communities and readily accessible municipal watersheds;

(14) the Forest Service has an enormous backlog of maintenance needs for the existing 386,000 mile road system of the Forest Service that will cost millions of dollars to eliminate;

(15) no State or private land owner would continue to build new roads in the face of such an enormous backlog;

(16) failure to maintain forest roads—

(A) limits public access; and

(B) causes degradation of water quality and wildlife and fish habitat; and

(17) protection of roadless areas—

(A) will impact less than 0.5 percent of the national timber supply; and

(B) will have a negligible impact on oil and gas production because—

(i) the entire National Forest System provides only approximately 0.4 percent of the quantity of oil and gas that is produced in the United States; and

(ii) roadless areas provide only a fraction of the quantity of oil and gas that is produced in the National Forest System.

(b) PURPOSE.—The purpose of this Act is to provide, within the context of multiple-use management, lasting protection for inven-

toried roadless areas within the National Forest System.

#### SEC. 3. DEFINITIONS.

In this Act:

(1) CLASSIFIED ROAD.—

(A) IN GENERAL.—The term "classified road" means a road wholly or partially within, or adjacent to, National Forest System land that is determined to be needed for long-term motor vehicle access.

(B) INCLUSIONS.—The term "classified road" includes a State road, county road, privately-owned road, National Forest System road, and any other road authorized by the Forest Service.

(2) INVENTORIED ROADLESS AREA.—The term "inventoried roadless area" means 1 of the areas identified in the set of inventoried roadless area maps contained in the document entitled "Forest Service Roadless Areas Conservation, Final Environmental Impact Statement, Volume 2", dated November 2000.

(3) RESPONSIBLE OFFICIAL.—The term "responsible official" means a Forest Service line officer or employee with the authority and responsibility to make decisions regarding the protection and management of inventoried roadless areas under this Act.

(4) ROAD.—The term "road" means a motor vehicle travelway over 50 inches wide, unless designated and managed as a trail.

(5) ROAD CONSTRUCTION.—The term "road construction" means activity that results in the addition of classified road or temporary road miles.

(6) ROAD IMPROVEMENT.—The term "road improvement" means activity that results in—

(A) an increase of the traffic service level of an existing road;

(B) an expansion of the capacity of the road; or

(C) a change in the original design function of the road.

(7) ROADLESS AREA CHARACTERISTICS.—The term "roadless area characteristics" means resources or features that are often present in and characterize inventoried roadless areas, including—

(A) high quality or undisturbed soil, water, and air;

(B) sources of public drinking water;

(C) diversity of plant and animal communities;

(D) habitat for—

(i) threatened, endangered, candidate, or sensitive species, and species proposed for listing, under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(ii) species dependent on large, undisturbed areas of land;

(E) primitive, semiprimitive nonmotorized, and semiprimitive motorized classes of dispersed recreation;

(F) reference landscapes;

(G) natural appearing landscapes with high scenic quality;

(H) traditional cultural properties and sacred sites; and

(I) other locally identified unique characteristics.

(8) ROAD MAINTENANCE.—The term "road maintenance" means ongoing upkeep of a road necessary to retain or restore the road in accordance with approved road management objectives.

(9) ROAD REALIGNMENT.—The term "road realignment" means an activity that results in—

(A) a new location of all or part of an existing road; and

(B) treatment of the old roadway.

(10) ROAD RECONSTRUCTION.—The term "road reconstruction" means an activity that results in improvement or realignment of an existing classified road.

(11) TEMPORARY ROAD.—The term "temporary road" means a road that is—

(A) authorized by contract, permit, lease, other written authorization, or emergency operation; and

(B) not intended to be part of the forest transportation system and not necessary for long-term resource management.

(12) UNCLASSIFIED ROAD.—The term "unclassified road" means a road on National Forest System land that is not managed as part of the forest transportation system, including—

(A) an unplanned road, abandoned travelway, or off-road vehicle track that has not been designated and managed as a trail; and

(B) a road that was once under permit or other authorization and was not decommissioned on the termination of the authorization.

#### SEC. 4. PROHIBITION ON ROAD CONSTRUCTION AND ROAD RECONSTRUCTION IN INVENTORIED ROADLESS AREAS.

(a) PROHIBITION.—Except as provided in subsection (b), road construction and road reconstruction may not take place in an inventoried roadless area of the National Forest System.

(b) EXCEPTIONS.—Road construction and road reconstruction may take place, including through the use of appropriated funds, in an inventoried roadless area of the National Forest System if the responsible official determines that—

(1) a road is needed to protect public health and safety in a case of an imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property;

(2) a road is needed to conduct—

(A) a response action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); or

(B) a natural resource restoration action under—

(i) that Act;

(ii) section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(iii) the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.);

(3) a road is needed pursuant to a reserved or outstanding right, or as provided for by law or treaty;

(4) a road realignment is needed—

(A) to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a classified road that cannot be mitigated by road maintenance; and

(B) to provide for essential public or private access, natural resource management, or public health or safety;

(5) road reconstruction is needed to implement a road safety improvement project on a classified road determined to be hazardous on the basis of accident experience or accident potential with respect to the road;

(6)(A) a Federal-aid highway project authorized under chapter 1 of title 23, United States Code, is—

(i) in the public interest; or

(ii) consistent with the purposes for which the land was reserved or acquired; and

(B) no other reasonable and prudent alternative to the project exists; or

(7)(A) a road is needed in conjunction with—

(i) the continuation, extension, or renewal of a mineral lease on land that is under lease by the Secretary of the Interior as of January 12, 2001; or

(ii) the issuance of a new lease issued immediately on the date of expiration of an existing lease described in clause (i);

(B) road construction or road reconstruction under this paragraph will be conducted in a manner that—

(i) minimizes the effects on surface resources;

(ii) prevents unnecessary or unreasonable surface disturbance; and

(iii) complies with all applicable laws (including regulations), lease requirements, and land and resource management plan directives; and

(C) a road constructed or reconstructed under this paragraph will be removed on the earlier of—

(i) the date on which the road is no longer needed for the purposes of the lease; or

(ii) the date of termination or expiration of the lease.

(c) ROAD MAINTENANCE.—A classified road in an inventoried roadless area may be maintained.

#### SEC. 5. PROHIBITION ON TIMBER CUTTING, SALE, OR REMOVAL IN INVENTORIED ROADLESS AREAS.

(a) PROHIBITION.—Except as provided in subsection (b), timber may not be cut, sold, or removed in an inventoried roadless area of the National Forest System.

(b) EXCEPTIONS.—Timber may be cut, sold, or removed in an inventoried roadless area if the responsible official determines that the cutting, sale, or removal of the timber is expected to be infrequent and—

(1) the cutting, sale, or removal of generally small diameter timber—

(A) will improve or maintain 1 or more roadless area characteristics; and

(B) is needed—

(i) to improve habitat for threatened, endangered, candidate, or sensitive species, and species proposed for listing, under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

(ii) to maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under a natural disturbance regime of the current climatic period;

(2) the cutting, sale, or removal of timber is incidental to the implementation of a management activity not otherwise prohibited by this Act;

(3) the cutting, sale, or removal of timber is needed and appropriate for personal or administrative use, in accordance with part 223 of title 36, Code of Federal Regulations; or

(4) roadless characteristics have been substantially altered in a portion of an inventoried roadless area as a result of the construction of a classified road and subsequent timber harvest, if—

(A) the road construction and subsequent timber harvest occurred after the area was designated an inventoried roadless area and before January 12, 2001; and

(B) timber is cut, sold, or removed only in the substantially altered portion of the inventoried roadless area.

#### SEC. 6. SCOPE AND APPLICABILITY.

(a) EFFECT.—This Act does not—

(1) revoke, suspend, or modify any permit, contract, or other legal instrument authorizing the occupancy and use of National Forest System land issued or entered into before January 12, 2001;

(2) compel the amendment or revision of any land and resource management plan;

(3) revoke, suspend, or modify any decision concerning any project or activity made before January 12, 2001; or

(4) apply to road construction, reconstruction, or the cutting, sale, or removal of timber in an inventoried roadless area of the Tongass National Forest if a notice of availability of a draft environmental impact statement for such activity has been published in the Federal Register before January 12, 2001.

(b) LIMITATION ON REVISION.—The prohibitions and restrictions established in this Act are not subject to reconsideration, revision, or rescission in any subsequent project decision or amendment or revision to any land and resource management plan carried out in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604).

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 387—RECOGNIZING THE NEED TO REPLACE THE UNITED NATIONS HUMAN RIGHTS COMMISSION WITH A NEW HUMAN RIGHTS COUNCIL

Mr. COLEMAN (for himself, Mr. SMITH, Mr. VOINOVICH, Mr. COBURN, and Mr. KYL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 387

Whereas the United Nations Human Rights Commission (hereinafter “UNHRC”) has lost its credibility as an instrument for the promotion or protection of human rights, instead allowing repressive regimes to shield themselves from criticism for their human rights violations;

Whereas Secretary-General Kofi Annan has also acknowledged that, “the Commission’s declining credibility has cast a shadow on the reputation of the United Nations system”;

Whereas the primary deficiency of the Human Rights Commission is directly related to its membership, where 6 of the 53 current members, namely China, Cuba, Eritrea, Saudi Arabia, Sudan, and Zimbabwe, are listed as the worst human-rights abusers by Freedom House, and many other members have serious deficiencies concerning commitments to democracy and human rights according to the Department of State Country Reports on Human Rights Practices;

Whereas the lack of membership criteria of the UNHRC, particularly when combined with the relatively large membership of 53 countries, hinders efforts to filter out countries with poor human rights records from membership;

Whereas the UNHRC spends a disproportionate amount of time vilifying Israel, its primary target for criticism, but fails to direct such sustained criticism at states engaged in the systematic abuse of human rights, with 30 percent of all country-specific resolutions critical of human rights records over the history of the UNHRC have been directed at Israel alone, while there has never been a single such resolution on China, Syria, or Zimbabwe;

Whereas the UNHRC has consistently failed to take decisive action against member states implicated in the massive violation of human rights, which is evidenced by the fact that the UNHRC has never held a special emergency session on Sudan despite millions of deaths over 2 decades in Sudan, but the UNHRC has held a special sitting to criticize Israel on the death of Sheikh Ahmed Yassin, the leader of Hamas;

Whereas the UNHRC only meets for 6 weeks each year, providing the UNHRC with insufficient time to review and take action against the most flagrant human rights violators;

Whereas Israel has been consistently discriminated against by being denied full participatory rights in regional group meetings associated with the operation of the UNHRC, while non-United Nations members

such as the Holy See (WEOG) and the Palestinian observer participate in these meetings;

Whereas the overwhelming failures of the UNHRC led to an international consensus that it must be abolished and replaced with a new Human Rights Council, and the United Nations Summit Outcome Document, signed by all United Nations member states in September 2005, stated that “Pursuant to our commitment to further strengthen the United Nations human rights machinery, we resolve to create a Human Rights Council. The Council will be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner. The Council should address situations of violations of human rights, including gross and systematic violations and make recommendations thereon. It should also promote effective coordination and the mainstreaming of human rights within the United Nations system.”; and

Whereas efforts by the United States and other committed democracies to carry out the mandate of the Summit Document to create a new credible Human Rights Council have been strongly opposed by human rights abusers at the United Nations: Now, therefore, be it

*Resolved, That—*

(1) the United States remains strongly committed to the creation of a new Human Rights Council to replace the discredited United Nations Human Rights Commission (hereinafter “UNHRC”), and the proposal for such a Council should work to assure the integrity of its membership as well as provide a strong mandate for action;

(2) the Senate urges the President to use the present opportunity that has been generated by the international recognition of the need to replace the current UNHRC, and to refrain from supporting any proposal for a Human Rights Council that would result either in only cosmetic changes or changes that would even further degrade the membership and mandate of the current UNHRC;

(3) the Senate urges the President and the governments of other member countries of the United Nations to continue with negotiations for the creation of a Human Rights Council that is a credible human rights institution; and

(4) it is the sense of the Senate that an acceptable proposal for a credible Human Rights Council would—

(A) establish criteria for membership that would serve to exclude the worst human rights abusers, and such criteria would include, but should not be limited to, the automatic exclusion of member countries that are subject to Security Council sanctions;

(B) include a provision allowing full participation by Israel in all operations associated with the Council;

(C) set a size limit that is consistent with the goal of ensuring that only countries that respect human rights are members of the primary human rights body of the United Nations;

(D) establish a human rights review requirement that is tied to a mandatory outcome and takes place prior to elections for membership;

(E) exclude any provision that prevents the consecutive election of member countries to the Council; and

(F) utilize a formula for the distribution of membership among United Nations member countries that gives priority to countries that respect human rights, while also giving consideration to geographical distribution, the representation of different forms of civilization, and the principal legal systems.

**SENATE RESOLUTION 388—URGING THE GOVERNMENT OF NATIONAL UNITY OF SUDAN AND THE GOVERNMENT OF SOUTHERN SUDAN TO IMPLEMENT FULLY THE COMPREHENSIVE PEACE AGREEMENT THAT WAS SIGNED ON JANUARY 9, 2005**

Mr. FRIST (for himself, Mr. SANTORUM, and Mr. BROWNBACK) submitted the following resolution; which was considered and agreed to:

S. RES. 388

Whereas the people of Sudan have been devastated by war for all but 10 years since Sudan gained its independence in 1956;

Whereas the second civil war in Sudan between the Government of Sudan in the north and the Sudan People's Liberation Movement in the south lasted for more than 20 years;

Whereas more than 2,000,000 people died and more than 4,000,000 people were internally displaced or became refugees as a direct or indirect result of the civil war in Sudan;

Whereas, on January 9, 2005, the Government of Sudan and the Sudan People's Liberation Movement signed the Comprehensive Peace Agreement, which ended Sudan's 21-year civil war;

Whereas the Comprehensive Peace Agreement provides for a new constitution, new arrangements for power sharing and wealth sharing, and a 6-year interim period to be followed by a referendum in Southern Sudan so that the people of Southern Sudan can decide their political future;

Whereas the parties have implemented parts of the Comprehensive Peace Agreement, such as the ratification of the new constitution and the formation of the Government of National Unity and the Government of Southern Sudan;

Whereas the overall pace of implementation of the Comprehensive Peace Agreement has been slow and insufficient;

Whereas the recommendations of many of the commissions established by the Comprehensive Peace Agreement have yet to be implemented;

Whereas 1 of the keys to a lasting and durable peace in Sudan is the full and timely implementation of the Comprehensive Peace Agreement by all sides, wholly consistent with the letter, spirit, and intent of the agreement;

Whereas, despite the signing of the Comprehensive Peace Agreement and an end to the civil war, there has been little progress made in ending the genocide in Sudan's western region of Darfur;

Whereas hundreds of thousands of innocent civilians have died in Darfur as a result of violence, disease, and malnutrition, and millions more have been internally displaced or sought refuge in refugee camps in neighboring Chad;

Whereas millions of the people across Sudan continue to suffer from the effects of war, including displacement and war-related disease, hunger, and malnutrition;

Whereas the United States and the international community must not neglect the humanitarian and reconstruction needs of the people of Southern Sudan;

Whereas, according to the World Food Program, more than 2,900,000 people in Southern Sudan have been severely affected by the civil war;

Whereas the people of Southern Sudan are in desperate need of reconstruction assistance to build and improve vital infrastructure components, such as an education system, a health care system, and a transpor-

tation system, that are nearly nonexistent in Southern Sudan;

Whereas the current humanitarian crisis in Southern Sudan is considered 1 of the worst in decades; and

Whereas the reconstruction process in Southern Sudan is vital to delivering the benefits of peace to the people of Southern Sudan and stability to the region: Now, therefore, be it

*Resolved*, That the Senate—

(1) strongly urges the new Government of National Unity of Sudan to implement fully the Comprehensive Peace Agreement in a timely manner consistent with the letter, spirit, and intent of the agreement;

(2) calls on the Government of National Unity to meet the terms of the Comprehensive Peace Agreement to achieve an equitable distribution of wealth and resources between the North and the South and to provide a full and transparent accounting of Sudan's oil revenues;

(3) urges the United States Government—

(A) to maintain appropriate pressure on the Government of National Unity to implement fully the Comprehensive Peace Agreement;

(B) to maintain sanctions and pressure on the Government of National Unity until the Comprehensive Peace Agreement has been fully implemented and the crisis in Darfur has been resolved; and

(C) to address, as appropriate, any legal barriers which prevent humanitarian and reconstruction operations in Southern Sudan;

(4) supports the continued provision of humanitarian and reconstruction assistance from the United States to the people of Southern Sudan, in addition to the assistance allocated for the people of Darfur, so that the people of Sudan may experience and appreciate the benefits of peace;

(5) strongly urges the Government of National Unity to use the Comprehensive Peace Agreement as the basis for negotiation of a peaceful resolution of the conflicts in Darfur and other areas of Sudan; and

(6) strongly urges all countries in the region and the international community to support actively the full implementation of the Comprehensive Peace Agreement.

**AMENDMENTS SUBMITTED AND PROPOSED**

**SA 2899.** Mr. KYL (for himself and Mr. ENSIGN) proposed an amendment to the bill S. 2320, to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes.

**SA 2900.** Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 2320, supra; which was ordered to lie on the table.

**TEXT OF AMENDMENTS**

**SA 2899.** Mr. KYL (for himself and Mr. ENSIGN) proposed an amendment to the bill S. 2320, to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes; as follows:

Strike all after the first word and insert the following:

**1. FUNDS FOR LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.**

Section 9001 of the Deficit Reduction Act of 2005 is amended—

(1) in subsection (a)—

(A) by striking “for a 1-time only obligation and expenditure—” and all that follows through “2007” the first place it appears and inserting “\$1,000,000,000 for fiscal year 2006”;

(B) by striking “; and”;

(C) by striking paragraph (2);

(2) by redesignating subsection (b) as subsection (c);

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

“(b) LIMITATION.—None of the funds made available under this section may be used for the planning and administering described in section 2605(b)(9) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(b)(9)).”;

(4) in subsection (c) (as redesignated by paragraph (2)), by striking “September 30, 2007” and inserting “September 30, 2006”.

**SA 2900.** Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 2320, to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. . . . PROTECTION FOR MEDICARE BENEFICIARIES WHO ENROLL IN THE PRESCRIPTION DRUG BENEFIT DURING 2006.**

(a) EXTENDED PERIOD OF OPEN ENROLLMENT DURING ALL OF 2006 WITHOUT LATE ENROLLMENT PENALTY.—Section 1851(e)(3)(B) of the Social Security Act (42 U.S.C. 1395w-21(e)(3)(B)) is amended—

(1) in clause (iii), by striking “May 15, 2006” and inserting “December 31, 2006”; and

(2) by adding at the end the following new sentence:

“An individual making an election during the period beginning on November 15, 2006, and ending on December 15, 2006, shall specify whether the election is to be effective with respect to 2006 or with respect to 2007 (or both).”.

(b) ONE-TIME CHANGE OF PLAN ENROLLMENT FOR MEDICARE PRESCRIPTION DRUG BENEFIT DURING ALL OF 2006.—

(1) IN GENERAL.—Section 1851(e) of the Social Security Act (42 U.S.C. 1395w-21(e)) is amended—

(A) in paragraph (2)(B)—

(i) in the heading, by striking “FOR FIRST 6 MONTHS”;

(ii) in clause (i), by striking “the first 6 months of 2006,” and all that follows through “is a Medicare+Choice eligible individual,” and inserting “2006,”; and

(iii) in clause (ii), by inserting “(other than during 2006)” after “paragraph (3)”; and

(B) in paragraph (4), by striking “2006” and inserting “2007” each place it appears.

(2) CONFORMING AMENDMENT.—Section 1860D-1(b)(1)(B)(iii) of the Social Security Act (42 U.S.C. 1395w-101(b)(1)(B)(iii)) is amended by striking “subparagraphs (B) and (C) of paragraph (2)” and inserting “paragraph (2)(C)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173).

**NOTICES OF HEARINGS/MEETINGS**

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. Domenici, Mr. President, I would like to announce for the information of

the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, March 9, 2006 at 10 a.m., in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to consider the nominations of:

Raymond L. Orbach, of California, to be Under Secretary for Science, Department of Energy.

Alexander A. Karsner, of Virginia, to be an Assistant Secretary of Energy Efficiency and Renewable Energy, vice David Garman.

Dennis R. Spurgeon, of Florida, to be Assistant Secretary of Energy, Nuclear Energy.

David Longly Bernhardt, of Colorado, to be Solicitor of the Department of the Interior, vice Sue Ellen Wooldridge.

For further information, please contact Judy Pensabene of the committee staff at (202) 224-1327.

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON ARMED SERVICES

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 2, 2006, at 9:30 a.m., in open session to receive testimony on the Defense authorization request for fiscal year 2007 and the future years Defense program.

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

##### COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on March 2, 2006, at 10 a.m. to conduct a hearing on "Continued Examination of Implementation of the Exon-Florio Amendment: Focus on Dubai Ports World's Acquisition of P&O."

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

##### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, March 2, 2006, at 10 a.m., on USF Distributions.

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

##### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, March 2, at 10 a.m. The purpose of this hearing is to review the proposed fiscal year 2007 Department of Interior budget.

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

##### COMMITTEE ON FOREIGN RELATIONS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 2, 2006, at 9 a.m., to hold a closed briefing on A Nuclear Iran: Challenges and Responses.

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

##### COMMITTEE ON FOREIGN RELATIONS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 2, 2006, at 10:30 a.m., to hold a hearing on A Nuclear Iran: Challenges and Responses.

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

##### COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Thursday, March 2, 2006, at 10 a.m. in SD-430.

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

##### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Thursday, March 2, 2006, at 10 a.m. for a business meeting to consider pending committee business.

#### Agenda

##### Legislation

1. S. 2128, Lobbying Transparency and Accountability Act of 2005.

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

##### COMMITTEE ON THE JUDICIARY

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, March 2, 2006, at 9:30 a.m. in Senate Dirksen Office Building room 226.

##### I. Nominations

Jack Zouhary, to be U.S. District Judge for the Northern District of Ohio; Stephen G. Larson, to be U.S. District Judge for the Central District of California; Steven G. Bradbury, to be an Assistant Attorney General for the Office of Legal Counsel; John F. Clark, to be Director of the United States Marshals Service; and Terrance P. Flynn, to be U.S. Attorney for the Western District of New York.

##### II. Bills

S. 1768—A bill to permit the televising of Supreme Court proceedings, Specter, Leahy, Cornyn, Grassley, Schumer, Feingold, Durbin; S. 829—Sunshine in the Courtroom Act of 2005, Grassley, Schumer, Cornyn, Leahy,

Feingold, Durbin, Graham, DeWine, Specter; S. —Comprehensive Immigration Reform, Chairman's Mark; S. 489, Federal Consent Decree Fairness Act, Alexander, Kyl, Cornyn, Graham, Hatch; S. 2178—Consumer Telephone Records Protection Act of 2006, Schumer, Specter, Cornyn, DeWine, Feinstein, Feingold, Kyl, Kohl, Durbin; S. 2039—Prosecutors and Defenders Incentive Act of 2005, Durbin; Specter, DeWine, Leahy, Kennedy, Feinstein, Feingold; and S. 2292—A bill to provide relief for the Federal judiciary from excessive rent charges, Specter, Leahy, Cornyn, Feinstein.

##### III. Matters

S.J. Res. 1—Marriage Protection Amendment, Allard, Sessions, Kyl, Hatch, Cornyn, Coburn, Brownback.

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

##### COMMITTEE ON VETERANS' AFFAIRS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, March 2, 2006, to hear the legislative presentations of the Fleet Reserve Association, the Air Force Sergeants Association, the Retired Enlisted Association, the Gold Star Wives of America, and the Military Officers Association of America. The hearing will take place in room 106 of the Dirksen Senate Office Building at 10 a.m.

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

##### SELECT COMMITTEE ON INTELLIGENCE

Mr. KYL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 2, 2006 at 2:30 p.m. to hold a closed briefing.

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

##### SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. KYL. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management Support be authorized to meet during the session of the Senate on March 2, 2006, at 2 p.m., in open session to receive testimony on military installations, military construction, environmental programs, and base realignment and closure programs, in review of the defense authorization request for fiscal year 2007.

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

#### UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent at 5 p.m. on Monday, March 6, the Senate proceed to executive session to consider en bloc Calendar Nos. 517, 518, and 519. I further ask consent the following Senators be allocated 5 minutes each for debate in relation to the nominations: the two Senators from Georgia, two Senators

from West Virginia, the chairman and ranking member of the Judiciary Committee. I further ask consent at 5:30 the Senate proceed to executive session for votes on the confirmation of the nominations, in the order listed, with no intervening action or debate; further, that following those votes, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

#### IMPLEMENTATION OF THE SUDAN PEACE AGREEMENT

Mr. FRIST. I ask unanimous consent the Senate proceed to consideration of S. Res. 388, submitted earlier today.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 388) urging the Government of the National Unity of Sudan and the Government of Southern Sudan to implement fully the Comprehensive Peace Agreement that was signed on January 9, 2005.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I applaud my Senate colleagues for supporting this resolution urging all parties in Sudan to implement fully the Comprehensive Peace Agreement that ended Sudan's decades-long civil war.

For more than 50 years, Sudan has been plagued by war and violence. In fact, since gaining independence in 1956, the people of Sudan have known only 10 years of peace. But, last January, following painstaking negotiations and numerous unsuccessful attempts at peace, the Government of Sudan in the north and the Sudan People's Liberation Movement in the south signed the Comprehensive Peace Agreement, bringing an end to Sudan's second civil war that lasted more than 20 years.

This second civil war led to the deaths of more than 2 million people, and an additional 4 million were internally displaced or became refugees. I have visited Sudan on a number of occasions, and I have met with the victims and survivors of this tragedy. The CPA offers the Sudanese people a chance at a peaceful and secure life. It is time for the agreement to be fully implemented.

In the past year, the government of Sudan and the SPLM have taken concrete steps to implement certain parts of the CPA. For example, the two sides have ratified a new national constitution and have formed a government of National Unity in Khartoum and a Government of Southern Sudan based in Juba in the south.

However, the overall pace of implementation has been slow and insufficient, and both parties have failed to meet certain benchmarks or adopt the recommendations of the commissions established to monitor the CPA's implementation. These include the formation of Joint Integrated Units, which

aim to integrate forces from both the north and the south, a more equitable distribution of resources between the north and the south, and a full and transparent accounting of Sudan's oil revenues.

The implementation of the CPA is particularly urgent for the people of Southern Sudan. In this region alone, the World Food Program estimates that more than 2.9 million people were severely and adversely affected by the civil war.

Last month, I met with Mrs. Rebecca Garang. She currently serves as the Minister for Roads and Transport for the Government of Southern Sudan. She is also the wife of the late John Garang, the long-time leader of the SPLM who successfully negotiated the CPA but died tragically in a helicopter crash last summer.

During our talks, Mrs. Garang stressed the humanitarian and reconstruction needs of the Southern Sudanese people. They are in desperate need of assistance to build and improve vital infrastructure components such as an education system, a health care system, and a transportation system that are virtually non-existent in Southern Sudan.

At the end of the current six-year interim period, the CPA provides for the people of Southern Sudan to decide their own political future in a referendum. But in order to achieve John Garang's vision of a new, united Sudan, the people of Southern Sudan must see the tangible benefits of peace.

Implementing the CPA can also have a positive impact on ending the genocide in Sudan's western region of Darfur. Unfortunately, since the signing of the agreement, little progress has been made in ending this genocide. Hundreds of thousands have already died as a result of violence, disease, and malnutrition. And, millions more have been internally displaced or continue to languish in refugee camps in neighboring Chad.

However, the CPA can serve as a basis for a peacefully negotiated end to the genocide in Darfur. For this reason, it is even more vital for the full and complete implementation of the Comprehensive Peace Agreement.

Until that time, the United States should continue to apply pressure on the Government of National Unity in Khartoum to fully implement the CPA. This includes maintaining the sanctions that are currently in place.

In addition, we need to continue to expand our humanitarian and reconstruction assistance to the people of Southern Sudan. Delivering to them the real benefits of peace will strengthen their support of the CPA and for a united Sudan.

During my travels to Sudan, I have heard first-hand accounts of the violence, suffering, and insecurity endured by so many in Sudan. Much of the Sudanese population has never known or experienced any sustained period of peace, stability, or security. This needs to change.

Those in leadership in Sudan need to proceed with full implementation of the Comprehensive Peace Agreement. And, I urge the United States and the international community to take concrete, assertive steps to demonstrate their continued solidarity with the Sudanese people to help them achieve their goal of a peaceful and stable Sudan.

I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 388) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 388

Whereas the people of Sudan have been devastated by war for all but 10 years since Sudan gained its independence in 1956;

Whereas the second civil war in Sudan between the Government of Sudan in the north and the Sudan People's Liberation Movement in the south lasted for more than 20 years;

Whereas more than 2,000,000 people died and more than 4,000,000 people were internally displaced or became refugees as a direct or indirect result of the civil war in Sudan;

Whereas, on January 9, 2005, the Government of Sudan and the Sudan People's Liberation Movement signed the Comprehensive Peace Agreement, which ended Sudan's 21-year civil war;

Whereas the Comprehensive Peace Agreement provides for a new constitution, new arrangements for power sharing and wealth sharing, and a 6-year interim period to be followed by a referendum in Southern Sudan so that the people of Southern Sudan can decide their political future;

Whereas the parties have implemented parts of the Comprehensive Peace Agreement, such as the ratification of the new constitution and the formation of the Government of National Unity and the Government of Southern Sudan;

Whereas the overall pace of implementation of the Comprehensive Peace Agreement has been slow and insufficient;

Whereas the recommendations of many of the commissions established by the Comprehensive Peace Agreement have yet to be implemented;

Whereas 1 of the keys to a lasting and durable peace in Sudan is the full and timely implementation of the Comprehensive Peace Agreement by all sides, wholly consistent with the letter, spirit, and intent of the agreement;

Whereas, despite the signing of the Comprehensive Peace Agreement and an end to the civil war, there has been little progress made in ending the genocide in Sudan's western region of Darfur;

Whereas hundreds of thousands of innocent civilians have died in Darfur as a result of violence, disease, and malnutrition, and millions more have been internally displaced or sought refuge in refugee camps in neighboring Chad;

Whereas millions of the people across Sudan continue to suffer from the effects of war, including displacement and war-related disease, hunger, and malnutrition;

Whereas the United States and the international community must not neglect the humanitarian and reconstruction needs of the people of Southern Sudan;

Whereas, according to the World Food Program, more than 2,900,000 people in Southern Sudan have been severely affected by the civil war;

Whereas the people of Southern Sudan are in desperate need of reconstruction assistance to build and improve vital infrastructure components, such as an education system, a health care system, and a transportation system, that are nearly nonexistent in Southern Sudan;

Whereas the current humanitarian crisis in Southern Sudan is considered 1 of the worst in decades; and

Whereas the reconstruction process in Southern Sudan is vital to delivering the benefits of peace to the people of Southern Sudan and stability to the region: Now, therefore, be it

*Resolved*, That the Senate—

(1) strongly urges the new Government of National Unity of Sudan to implement fully the Comprehensive Peace Agreement in a timely manner consistent with the letter, spirit, and intent of the agreement;

(2) calls on the Government of National Unity to meet the terms of the Comprehensive Peace Agreement to achieve an equitable distribution of wealth and resources between the North and the South and to provide a full and transparent accounting of Sudan's oil revenues;

(3) urges the United States Government—

(A) to maintain appropriate pressure on the Government of National Unity to implement fully the Comprehensive Peace Agreement;

(B) to maintain sanctions and pressure on the Government of National Unity until the Comprehensive Peace Agreement has been fully implemented and the crisis in Darfur has been resolved; and

(C) to address, as appropriate, any legal barriers which prevent humanitarian and reconstruction operations in Southern Sudan;

(4) supports the continued provision of humanitarian and reconstruction assistance from the United States to the people of Southern Sudan, in addition to the assistance allocated for the people of Darfur, so that the people of Sudan may experience and appreciate the benefits of peace;

(5) strongly urges the Government of National Unity to use the Comprehensive Peace Agreement as the basis for negotiation of a peaceful resolution of the conflicts in Darfur and other areas of Sudan; and

(6) strongly urges all countries in the region and the international community to support actively the full implementation of the Comprehensive Peace Agreement.

#### TO IMPROVE THE SECURITY SITUATION IN DARFUR, SUDAN

Mr. FRIST. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of and the Senate now proceed to S. Res. 383.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 383) calling on the President to take immediate steps to help improve the security situation in Darfur, Sudan, with an emphasis on civilian protection.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 383) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 383

Whereas, the April 8, 2004, N'Djamena Ceasefire Agreement, calling for an end to hostilities in Darfur, Sudan, has been flagrantly violated by all parties to the agreement;

Whereas the Government of Sudan continues to commit crimes against humanity and engage in genocidal acts in Darfur;

Whereas the signing of the Comprehensive Peace Agreement between the Government of Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/SPLA) on January 9, 2005, has not resulted in an improvement of the security situation in Darfur;

Whereas United Nations Secretary-General Kofi Annan has indicated that, "People in many parts of Darfur continue to be killed, raped, and driven from their homes by the thousands.;"

Whereas United Nations officials have stated that at least 70,000 people have died due to violence and insecurity in Darfur, but that the total may be as high as 400,000 people;

Whereas nearly 2,000,000 people have been internally displaced, 3,000,000 people are dependant on international assistance to survive, and over 200,000 people are refugees in neighboring Chad due to the conflict in Darfur;

Whereas escalating tensions along the border between Chad and Sudan have increased instability in Darfur;

Whereas neither the mandate nor the troop strength of the African Union Mission in Sudan (AMIS) is adequate to protect civilians in Darfur;

Whereas the United States has demonstrated leadership on the Sudan issue by having United States Permanent Representative to the United Nations John Bolton, in his first action as President of the United Nations Security Council, request in February 2006 that Secretary-General Annan initiate contingency planning for a transition from AMIS to a United Nations peacekeeping operation;

Whereas, although the United Nations Security Council has concurred with this recommendation and taken steps toward establishing a United Nations peacekeeping mission for Darfur, it could take up to a year for such a mission to deploy fully;

Whereas, as the deteriorating security situation in Darfur indicates, the people of Darfur cannot wait that long for security to be reestablished;

Whereas the international community currently has no plan to address the immediate security needs of the people of Darfur; and

Whereas all members of the international community must participate in efforts to stop genocide, war crimes, and crimes against humanity in Darfur: Now, therefore, be it

*Resolved*, That the Senate—

(1) strongly condemns—

(A) the continued attacks on civilians in Darfur by the Government of Sudan and Government-sponsored militias; and

(B) the continued violations of the N'Djamena Ceasefire Agreement by the Government of Sudan and rebels in Darfur, particularly the Sudan Liberation Army;

(2) commends the Africa Union Mission in Sudan (AMIS) for its actions in monitoring the N'Djamena Ceasefire Agreement in Darfur and its role in diminishing some acts of violence;

(3) calls upon all parties to the N'Djamena Ceasefire Agreement—

(A) to abide by the terms of the N'Djamena Ceasefire Agreement; and

(B) to engage in good-faith negotiations to end the conflict in Darfur;

(4) calls upon the Government of Sudan immediately—

(A) to withdraw all military aircraft from the region;

(B) to cease all support for the Janjaweed militia and rebels from Chad; and

(C) to disarm the Janjaweed;

(5) calls on the African Union to request assistance from the United Nations and NATO to strengthen its capacity to deter violence and instability until a United Nations peacekeeping force is fully deployed in Darfur;

(6) calls upon the United Nations Security Council to approve as soon as possible, pursuant to Chapter VII of the Charter of the United Nations, a peacekeeping force for Darfur that is well trained and equipped and has an adequate troop strength;

(7) urges the President to take steps immediately to help improve the security situation in Darfur, including by—

(A) proposing that NATO—

(i) consider how to implement and enforce a declared no-fly zone in Darfur; and

(ii) deploy troops to Darfur to support the African Union Mission in Sudan (AMIS) until a United Nations peacekeeping mission is fully deployed in the region; and

(B) requesting supplemental funding to support a NATO mission in Darfur and the African Union Mission in Sudan (AMIS);

(8) calls upon NATO allies, led by the United States, to support such a mission; and

(9) calls upon NATO headquarters staff to begin prudent planning in advance of such a mission.

Mr. FRIST. Mr. President, both of these resolutions have to do with the Sudan, a country where for the last really 23 years there has been real turmoil in terms of a civil war underway that is addressed in part under S. Res. 388, the Sudan Peace Agreement, and then, more recently, over the last 3 years, in a western part of Sudan, the Darfur region, where we have seen genocide underway, as we have spelled out on the floor over the last year and talked about.

Both of these resolutions address a human tragedy that has played out over the last several years. The first, the Sudan Peace Agreement, is a reaffirmation of a peace agreement which has been made that we need to support. And it is probably the only way we can reverse what has been a tragedy that has killed about 2 million people and caused 5 million people to be displaced from their homes throughout Sudan over the last 23, 24 years.

The Darfur crisis is one that we have described on this floor many times. And as we have followed it, since February a year and a half ago, things have gotten better and worse and better and worse. Right now they are not going very well. So I appreciate Senators BIDEN and LUGAR putting forth that resolution.

EXTENDING THE EDUCATIONAL FLEXIBILITY PROGRAM OF THE EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2363, introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2363) to extend the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I rise today to express my strong support for the extension we are passing tonight of the Education Flexibility Partnership Act.

I authored the original legislation to create Ed-Flex, as it is more commonly known, back in 1999 after learning through my chairmanship of the Senate Budget Committee Task Force on Education about the excessive red tape attached to Federal education funding.

I listened to school administrators and education leaders who told me again and again about the bureaucratic challenges they faced when trying to improve education.

After seeing how a demonstration project involving 12 States achieved such impressive results in improving student performance, I wrote legislation to expand the program to all 50 States.

The Ed-Flex program gives greater flexibility to States in using Federal funds in exchange for greater accountability for student achievement.

The program does not change the amount of funding available—but it eliminates some of the strings attached. Schools must still use the Federal funds for the purposes for which they were designed, and health, safety, civil rights, and disabled requirements cannot be waived.

Ed-Flex was an early attempt at education reform aimed at improving student achievement, and paved the way for the No Child Left Behind Act just 2 years later.

It allows educators to find new ways of improving the quality of education for every child, and it set the stage for acknowledging the connection between flexibility and accountability in improving student performance.

Ed-Flex encourages innovation within America's schools and allows our students the opportunity to succeed academically and globally.

I thank Senator BURR for his leadership on this extension of Ed-Flex, and for the support of my colleagues on both sides of the aisle for their recognition of this important tool for America's students.

Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any state-

ments relating to the bill be printed in the RECORD.

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

The bill (S. 2363) was read the third time and passed, as follows:

S. 2363

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. EDUCATIONAL FLEXIBILITY PROGRAM EXTENSION.**

(a) **EXTENSION AUTHORITY.**—Notwithstanding any other provision of law, the Secretary of Education is authorized to carry out the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999 (20 U.S.C. 5891b), until the date of enactment of an Act that reauthorizes programs under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), for any State that was an Ed-Flex Partnership State on September 30, 2004.

(b) **DESIGNATION.**—

(1) **IN GENERAL.**—Any designation of a State as an Ed-Flex Partnership State that was in effect on September 30, 2004, shall be extended until the date of enactment of an Act that reauthorizes programs under part A of title I of the Elementary and Secondary Education Act of 1965, if the Secretary of Education makes the determination described in paragraph (2).

(2) **DETERMINATION.**—The determination referred to in paragraph (1) is a determination that the performance of the State educational agency, in carrying out the programs for which the State has received a waiver under the educational flexibility program, justifies the extension of the designation.

**ORDERS FOR FRIDAY, MARCH 3, 2006**

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Friday, March 3. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then resume consideration of S. 2320, the LIHEAP funding bill.

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

**PROGRAM**

Mr. FRIST. Mr. President, today the Senate overwhelmingly, finally adopted the PATRIOT Act conference report with a vote of 89 to 10. We spent a great deal of time considering this bill, and I am pleased and relieved that we reached a final conclusion on this important legislation. It has a very careful balance of civil liberties and at the same time guarantees elimination of that barrier between law enforcement and our intelligence community to make sure that men and women and children and families are protected here in our homeland. It has been tough to get to this point with a lot of negotiation and a lot of delay and postponement, but finally we have completed that important bill.

We are now considering the LIHEAP bill, and we hope to complete action on that bill early next week. Also, next week we will begin work on the lobbying reform measure. We made progress on the whole effort of lobbying reform both in the Government Affairs Committee today, as well as in the Rules Committee earlier in the week.

Next week we will be busy with votes each day as we work through initially LIHEAP and then the lobbying bill. Tomorrow I will have more to say on both the sequencing and timing of the lobbying bill and LIHEAP. The next votes will occur on Monday at 5:30 in the evening on the confirmation of three district judges.

**ADJOURNMENT UNTIL 9:45 A.M. TOMORROW**

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:22 p.m., adjourned until Friday, March 3, 2006, at 9:45 a.m.

**NOMINATIONS**

Executive nominations received by the Senate March 2, 2006:

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

JOHN W. COX, OF TEXAS, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, VICE CARIN M. BARTH, RESIGNED.

**DEPARTMENT OF STATE**

GEORGE MCDADE STAPLES, OF KENTUCKY, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE DIRECTOR GENERAL OF THE FOREIGN SERVICE, VICE W. ROBERT PEARSON, RESIGNED.

**UNITED STATES POSTAL SERVICE**

MICKEY D. BARNETT, OF NEW MEXICO, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR A TERM EXPIRING DECEMBER 8, 2013, VICE ROBERT F. RIDER, TERM EXPIRED.

KATHERINE C. TOBIN, OF NEW YORK, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR A TERM EXPIRING DECEMBER 8, 2012, VICE S. DAVID FINEMAN, TERM EXPIRED.

**IN THE AIR FORCE**

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIG. GEN. THOMAS J. LOFTUS, 1717

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIGADIER GENERAL CHRIS T. ANZALONE, 9968  
BRIGADIER GENERAL KURT A. CICHOWSKI, 2191  
BRIGADIER GENERAL THOMAS F. DEPPE, 3181  
BRIGADIER GENERAL PAUL A. DETTMER, 6272  
BRIGADIER GENERAL WILLIAM L. HOLLAND, 4785  
BRIGADIER GENERAL RONALD R. LADNIER, 6699  
BRIGADIER GENERAL ERWIN F. LESSEL III, 5416  
BRIGADIER GENERAL JOHN W. MALUDA, 2572  
BRIGADIER GENERAL MARK T. MATTHEWS, 6697  
BRIGADIER GENERAL GARY T. MCCOY, 2911  
BRIGADIER GENERAL STEPHEN J. MILLER, 1561  
BRIGADIER GENERAL THOMAS J. OWEN, 4009  
BRIGADIER GENERAL RICHARD E. PERRAULT, JR., 4091  
BRIGADIER GENERAL POLLY A. PEYER, 0565  
BRIGADIER GENERAL DOUGLAS L. RAABERG, 5158  
BRIGADIER GENERAL JEFFREY A. REMINGTON, 2881  
BRIGADIER GENERAL ROBERTUS C. N. REMKES, 6917  
BRIGADIER GENERAL FREDERICK F. ROGGERO, 8985  
BRIGADIER GENERAL MARSHALL K. SABOL, 5866  
BRIGADIER GENERAL PAUL J. SELVA, 5397  
BRIGADIER GENERAL RICHARD E. WEBBER, 3908  
BRIGADIER GENERAL THOMAS B. WRIGHT, 4649  
BRIGADIER GENERAL MARK R. ZAMZOW, 0418

March 2, 2006

CONGRESSIONAL RECORD—SENATE

S1663

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. WILLIAM H. WALKER IV, 4035

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. JOSEPH C. CARTER, 2435

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS DEPUTY JUDGE ADVOCATE GENERAL OF THE UNITED STATES NAVY AND FOR APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 5149:

*To be rear admiral*

CAPT. JAMES W. HOUCK, 4314