to create another Federal Department that ranks at the top of the General Accounting Office's ''high-risk'' list of agencies in the Government that are most vulnerable to waste, fraud, and mismanagement. Managerial tools and flexibility are not needed to create a civil service, that, according to one expert, Paul Light, of the Brookings Institution, and former staff member to the Governmental Affairs Committee:

Underwhelms at virtually every task it undertakes. It is sluggish at hiring, hyper-inflated at appraising, permissive at promoting, weak-kneed at disciplining, and mind-numbingly elongated at firing.

Our goal in this new department must not be to replicate the failures Mr. Light outlines, but, rather, to make improvements. If we cannot improve our well-known operational shortcomings now that our Nation's security is at issue, when in the world will we ever be able to do so?

According to the legislation before us today, the mission of the new department is to ''promote homeland security,'' ''prevent terrorist attacks,'' and ''reduce the vulnerability of the United States to terrorism.'' I question how this new department will possibly be able to fulfill its mission if it is bogged down by the same old persistent management problems that have faced the rest of our Government for so many years.

First and foremost, I think most of us would agree with Paul Light, and other experts, that the Federal civil service system, the process the Federal Government uses to hire and promote workers, is broken.

Madam President, this is a logical stopping point for me. If I am reading the clock correctly, we are very close to the time of recess for our briefing. So, with that, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 3:30 p.m.

Thereupon, the Senate, at 2:28 p.m., recessed until 3:30 p.m. and reassembled when called to order by the Presiding Officer (Mr. REID).

HOMELAND SECURITY ACT OF 2002—Continued

AMENDMENT NO. 4486 TO AMENDMENT NO. 4471

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 4486.

Mr. WELLSTONE. Mr. President, 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 prohibit the Secretary of Homeland Security from contracting with any corporate expatriate)

After section 171, insert the following:

SEC. ___. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) to treat stock as not stock.

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

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

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

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

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I have 5 minutes, without losing my place in the debate, as in morning business.

The PRESIDING OFFICER (Mr. CARPER). Without objection, it is so ordered. The Senator is recognized for 5 minutes. Following his statement, he will have the floor.

(The remarks of Mr. WELLSTONE are printed in today's RECORD under ''Morning Business.'')

Mr. WELLSTONE. Mr. President, I rise to speak to a very simple amendment I introduced. I say to my colleagues, this actually was passed in the House in the homeland defense bill. It certainly is relevant that we bar the Secretary of Homeland Security from entering into contracts with U.S. companies that give up U.S. citizenship to avoid U.S. taxes.

I need to really summarize this amendment again. This is a very simple amendment that would bar the Secretary of Homeland Security from entering into contracts with U.S. companies that give up U.S. citizenship to avoid U.S. taxes.

To about 99.9 percent of people in Minnesota and probably to about 99.9 percent of the people in the country, this is a very reasonable proposition. My colleagues might remember that I had an amendment like this to the Defense appropriations bill which passed here by unanimous vote.

Before I get into the specifics of my amendment, let me make a quick comment about the relevancy of the amendment. I gather there is an agreement among the majority leader and the minority leader to move all nonrelevant amendments. That agreement won't affect this amendment because it was drafted to be relevant. It deals with government contracts. It deals with the Department of Homeland Security.

The underlying House bill, as I just mentioned, has a similar provision. So the substance of my amendment is

fully relevant to this bill. This is the appropriate place to have this debate, as we debate the question of whether we will have a Department of Homeland Security.

Former U.S. companies that have renounced their citizenship currently hold at least $2 billion worth of contracts with the Federal Government. I don't think companies that aren't willing to pay their fair share of taxes should be able to hold those contracts.

U.S. companies that play by the rules, that pay their fair share of taxes, should not be forced to compete with bad actors who can undercut their bids because of the tax loophole. I had a debate on a similar provision on ''Nightline.'' I said that the vast majority of companies in Minnesota and around the country, if they had the lawyers and the accountants, wouldn't do this because they wouldn't believe it was the right thing to do, or many of the smaller businesses in my State and all around the country don't have the lawyers and the accountants to really get such a loophole.

In the last couple of years, a number of prominent U.S. corporations, using creative paperwork, have transformed themselves into Bermuda corporations in order to avoid paying their share of U.S. taxes. These new Bermuda companies are basically shell corporations. They have no staff, no offices, no business activity in Bermuda. This exists for the sole purpose of shielding income from the IRS. That is what this is about.

By the way, I am talking about shielding not just profits made abroad but profits made in our country that are just shifted. There is a lot of cooking of the books that goes on. Does that sound familiar to any Senator?

U.S. tax law contains many provisions designed to expose such creative accounting and to require U.S. companies that are foreign in name only to pay the same taxes as other domestic corporations. But these bad corporate former citizens exploit a specific loophole in current law so that the country is treated as foreign for tax purposes and, therefore, pays no U.S. taxes on its foreign income—or, for that matter, on all-too-often a good part of its U.S. income. Additionally, these companies can use accounting tricks, as documented by the Senate Finance Committee in their investigations of this issue, to reduce their U.S. income on paper and their U.S. tax on even their U.S. income.

By the way, I thank staff on the Senate Finance Committee, majority and minority, for their help in working on this amendment. We have tried to do this in the right way. I will repeat this point. They use these accounting tricks, which have been documented by our Finance Committee, to reduce their U.S. income on paper and reduce U.S. tax even on U.S. income.

These are Enron-like schemes involving sham loans and other ''Imclone'' transfers that allow these companies to reduce taxes on a U.S. company, including income from Government contracts. This is called earnings stripping.

I have spent the last 2 weeks, or thereabouts, at the Minnesota State Fair. About half the State's population comes. It is quite a happening. It is the essence of grassroots democracy. I will tell you one thing, people are really indignant about a lot of these inside corporate scandals.

Some Senators may say: PAUL, you are just jumping on the issue. Well, I don't know; this has been my work for years. I will tell you this. Between having some of your savings and putting it in stock and seeing it erode in value, or your savings in a 401(k) eroding, or CEOs telling them they had an independent audit done and everything was great, to invest more of their 401(k), at the same time he dumped his stock and made $230 million in profit—people are tired of this behavior.

This is all about corporate accountability. That is what this amendment is all about. What I am saying is that these companies are not paying their fair share. If they want to renounce their citizenship so they don't have to pay their fair share of taxes, fine, but don't expect to get Government contracts.

Now, the loophole that we want to get rid of gives tens of millions of dollars of tax breaks to major multinational companies, and these are tax cheats. It also puts other companies that are unwilling or unable to use this loophole at a competitive disadvantage. No Minnesota company, or no American company, should be penalized for staying put in our country while others that renounce their U.S. citizenship get a tax break. This is a simple proposition. No company that does the right thing and stays in our country should be penalized for staying put while others renounce their U.S. citizenship just to get a tax break, to not pay their fair share of taxes.

The problem is that when these companies don't pay their fair share, the rest of American taxpayers and businesses are stuck with the bill. I think I can safely say that very few of the small businesses I have visited in Detroit Lakes, or Mankato, or Duluth, or Minneapolis, or Northfield, or Faribault, or on the Iron Range, can avail themselves of the Bermuda Triangle. As a matter of fact, they would not view it as a very patriotic thing to do. They cannot afford the big-name tax lawyers and accountants to show them how to do their books Enron style, but they probably would not do it anyway if it meant renouncing their citizenship. So the price they pay for their good citizenship, good corporate citizenship, their good business citizenship, is a higher tax bill.

Now, the House passed an amendment similar to this amendment on their homeland security bill. My amendment uses a different mechanism than the House bill to get at the same bad behavior. I have worked with Senator GRASSLEY and Senator BAUCUS to conform this amendment with their bill that would close the tax loophole. That is what I ultimately want to do. Here is how my amendment would work. If a U.S. company reincorporated in a foreign country and 50 percent or more of the shareholders of the new foreign corporation were the same as the shareholders of the old U.S. company, then that company would be barred from contracting with any homeland security agency if the company did not have substantial business activity in its foreign home. It is that simple. That is a perfect operational definition of a sham operation.

In other words, this is a two-part test, and if a company met both tests, it would be barred from contracting with the Department of Homeland Security.

First test: Are a majority of the shareholders of the new company the same as the shareholders of the old U.S. company? This test is designed to separate the true purchase of two real companies, which is fine, from a sham transaction done just for tax purposes when the owners change only the home country.

Second test: Does the new foreign company have substantial business activity in its new foreign home? If it doesn't, then the new foreign parent company is really just a paper shell designed to take advantage of a tax loophole.

A lot of this is self-explanatory. I am not a lawyer, and some of the technical material is hard for me, but this is not too difficult to figure out.

This is contained in the Grassley-Baucus tax bill. I believe Congress will close this tax loophole this year. There is growing support for doing so in the House. I have introduced legislation to close 24 loophole, and the Senate Finance Committee has reported a version of this legislation, which I strongly support, that would do so as well. It is not appropriate for the Senate to close the tax loophole on this bill—this is not a tax bill—but it is appropriate for us to say that if a U.S. company wants to bid for a contract for U.S. homeland security work, then it should not renounce its U.S. citizenship for a tax break.

We all make sacrifices in a time of war. The only sacrifice this amendment asks of Federal contractors is that they pay their fair share of taxes like everybody else.

Mr. President, when I was talking about a Mr. Denis Kozlowski, the reason I mentioned it, this was about Tyco Company, which has taken advantage of this scheme. It is highly lucrative for these corporations. Tyco International saved $400 million last year by chartering its space in Bermuda—$400 million. About a month ago, we learned that those savings may have helped the company buy the CEO a $19 million home in Boca Raton and a $6,000 shower curtain for his place in

Manhattan. That was in the Wall Street Journal. Here is Tyco International which saves $400 million, and the CEO gets a lot of help to buy a home and also uses $6,000 to purchase a shower curtain for his place in Manhattan.

Was the company using some of the money that they received in Government contracts—$220 million—to pay for that home and apparently a very nice shower curtain? Should we feel sorry for these corporations that have to scrape and pinch to find some tax savings? This is a corporate responsibility issue. I think in the House of Representatives, altogether, there were over 300 votes for a very similar amendment.

I know some of my colleagues have an honest-to-goodness philosophical objection to this approach, and I understand that and respect them for it. On this one, maybe it is the populist in me, but to me this is a straightforward proposition. If these companies want to engage in this kind of sham or scam, they want to renounce their citizenship, they are not going to get U.S. contracts from this new homeland defense agency. That is what this amendment says.

I will wait for other colleagues to speak. I will say to my colleague from Tennessee that I have been willing to accommodate anybody's schedule—if people want to put off the debate for a while and vote tomorrow, or whatever he wants to do. I wanted to begin and get the discussion going on the amendment, whatever fits in with the schedule, obviously.

Mr. President, I ask unanimous consent that Senator REID and Senator BAUCUS be added as original cosponsors.

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

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I thank the Senator from Minnesota. Senator LIEBERMAN can perhaps consult with the Senator from Minnesota as to the way we will proceed. If the Senator is willing to set aside the amendment for a moment, we will bring it back in due course and proceed with the discussion, if that is agreeable.

Mr. WELLSTONE. Mr. President, I say to the Senator from Connecticut, I will accommodate his schedule. I want to get the amendment up and have a debate. If the Senator from Connecticut wants to lay the amendment aside—whatever best accommodates his schedule. As long as my colleagues will be nice to me in the debate and praise me, I am willing to do anything he wants.

Mr. LIEBERMAN. It is easy to find common ground. I thank the Senator from Minnesota. I suggest Senator THOMPSON and I engage in some conversation with the Senator from Minnesota. For that purpose, 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. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DORGAN. Mr. President, my understanding is the pending business is the amendment offered by Senator WELLSTONE.

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. Mr. President, Senator WELLSTONE has offered an amendment that deals with a subject I mentioned this morning, and I wanted to speak a bit more about that subject. It is a subject that, by its title, most people would not think much about. It is called inversion.

What does inversion mean with respect to corporate America these days? Inversion is a process by which a corporation decides to renounce its American citizenship. A number of high-profile corporations have done that, saying, we wish to renounce our American citizenship and become citizens of another country—in a couple of cases, Bermuda. So an American corporation says, we no longer want to be an American corporation, we want to be a Bermuda corporation.

Why would a U.S. corporation decide it wants to renounce its citizenship? The answer, of course, is very simple. Because there are circumstances under which, in the renouncement of citizenship by a corporation, called an inversion, they can save millions, or tens of millions, or perhaps hundreds of millions, of dollars in taxation. So some companies make a decision, we would like to no longer be U.S. citizens in order that we might save money on our tax bill. I happen to think that is unpatriotic.

We are at war. Our country is at war with terrorists. Nearly 1 year ago, on 9/11, we were attacked with unspeakable horror by terrorists in New York City, in Washington, DC, at the Pentagon, and then there was the aircraft that crashed in Pennsylvania.

Since that time, of course, we have had a remarkable speech by President Bush, one of the best I have heard in my service in Congress, calling this country to cooperate and to work together for a common purpose, to wage this war on terrorism. Then in the middle of all of this, we read stories about corporations that decide they want to renounce their citizenship so they can save on taxation.

I ask a question of a company that decides it wants to renounce its American citizenship: If it gets in trouble somewhere around the world, if some dictator wants to expropriate its assets in some country around the world, whom is it going to call? The Bermuda Navy? The Bermuda Marines? The Bermuda Army? I do not think so.

It is shameful to see companies do what are called inversions and renounce their American citizenship. They have a perfect legal right to do it under today's law, but there are ways to try to plug that hole in our Tax Code, and a number of us are working on that.

The Senator from Minnesota offers another proposal with respect to this specific bill, and that is to say those companies that decide they want to renounce their American citizenship should not be bidding for contracts under homeland security.

We have a lot to do with respect to the needs in this country, and the requirement that we all get together, work together, stay together, to fight terrorism and do what we must as Americans to respond to this threat. There is something horribly out of step with our requirements as Americans, our requirements of citizenship, our requirements as the stewards of this democracy, to see some corporations in this country decide they no longer want to be American, they no longer want to have U.S. citizenship. Technically and currently under the law, they have a right to renounce their citizenship, but I think it sends a terrible message to our country and to the world when they do that.

Yes, they can save on taxes by doing it perhaps. The question then will be: Who will pay the taxes they do not pay? Which other Americans would they choose to burden with this additional tax bill? Americans working in the manufacturing plants they used to have in this country or perhaps still have in this country? Do they want to shift the burden to working people? That is what happens with respect to inversions.

I indicated I am going to hold some hearings on a couple of these issues. There is some unfinished business with respect to this issue of corporate responsibility. We passed a bill and the President signed it, and that is important because we have seen now the emergence and the disclosures of corporate scandals unparalleled in my lifetime.

You know, I have a card in my pocket. I put it in my pocket this morning, because it reminded me of something important. I was on an airplane recently. I was sitting in an aisle seat, and a man sitting two rows ahead of me in the aisle seat across the aisle, as we landed and before we disembarked, passed me his business card. His business card named him and the company for which he worked. He is president of the company. He wrote on the back of the card with a ballpoint pen and passed it to me. I had never met the man, did not know him. He said:

> Dear Senator DORGAN, Good morning. I am president of a corporation. I work very hard and I am honest. I believe there are more like me than not.

This is the president of a corporation. His first name is John.

I sent John a letter and said: I do not ever speak of corporate scandal without saying I think we ought to understand American business by and large in this country is run by wonderful men and women, good stewards of the investors' money, people who want to do the right thing, people who do not try to find where the line is and cross the line, people who do not cook the books, people who work long hours and are honest and do the right thing. That is the rule in American business, in my judgment. But it is also true that the emergence and the disclosures of these corporate scandals tarnish all in American business and injure those honest, hard-working people trying to run American companies. It injures the ability to raise capital because it destroys people's faith in the system. They invest in a stock in a company they have never visited. They buy a stock in a company they do not know much about, but they trust the CEO, they trust the financial statements, they trust the accounting firm that reviewed the statements, they trust the law firm that gave advice to the CEO, they trust the board of directors. So they invest in a share of stock in a company they have never visited or never seen.

But there have been far too many instances recently of corporate executives acting in complete disregard of their responsibilities as business leaders. And although we recently passed an accounting reform bill to tackle some of these problems, we have unfinished business. One issue involves inversions, the issue that Senator WELLSTONE is bringing to our attention today. Another important issue involves bankruptcies, and an amendment I tried to offer to the corporate responsibility bill. That amendment was blocked by the Senator from Texas, Mr. GRAMM. He blocked that amendment for a couple of days, and I was not able to put it on the bill, but it deals with this. It is an amendment that says, if in the year prior to the bankruptcy of a corporation, the major executives in the corporation are receiving millions of dollars in incentive and bonus payments, there ought to be a disgorgement and recapture of that money to go to the stockholders and the employees. It is very simple.

Since the time that I was blocked in offering that amendment, the Financial Times did an investigation and an evaluation of the 25 largest bankruptcies in our country since January of last year.

What did it show? It showed that 230 top executives in the 25 largest companies that filed for bankruptcy took $3 billion out of those companies in compensation as those companies headed towards bankruptcy.

Well, guess what. The investors lost their shirts, they lost their life savings, and, as the Financial Times says, the barons of bankruptcy, the executives running companies into bankruptcy, went off with a pocketful of gold.

There is something wrong with that. That is a piece of unfinished business. We ought to pass legislation that says prior bankruptcy, if executives are getting bonus and incentive payments as this company heads towards bankruptcy, there ought to be the right to recapture that money and use it to help offset the perks and costs with respect to investors and employees.

That is one piece of unfinished business. Another piece deals with inversions and the tax with respect to those corporations that want to renounce their American citizenship. There is unfinished business with respect to corporate responsibility. We did a wonderful thing in passing that bill. Senator PAUL SARBANES deserves our unending thanks for the work he did to put that bill together. The President signed it. It is a bill destined to give confidence to people, but there is more to do.

If we stop here we will have stopped before we got to the intersection. There is more to do. Part of that deals with inversion, and part of it deals with disgorgement and recapturing of funds as CEOs took companies into bankruptcy. I intend, in the coming weeks, to be among those in Congress who will address these issues. We should not decide the bill we passed represents the end of corporate responsibility legislation in the Senate.

I conclude by saying the fellow that passed me his business card on an airplane a few days ago is right. He said: I'm president of a corporation. I work very hard and I'm honest. I believe there are more like me than not.

He is right about that. Absolutely. And on behalf of people like him, we have a responsibility to be tough and to go after those who abuse their trust and steal money. We have a responsibility to see to it that they do more than 2 years of hard tennis at a minimum security institution somewhere.

The Senator from Minnesota does us a service by offering this subject on the floor of the Senate. There is more to do on inversion, but there is more to do beyond inversion and corporate responsibility, including disgorgement and recapturing of bankruptcy incentive and bonus payments to CEOs.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 4490 TO AMENDMENT NO. 4486

Mr. REID. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4490 to amendment 4486.

Mr. REID. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the Secretary of Homeland Security from contracting with any corporate expatriate)

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

SEC. ___. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) to treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a) of the

Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504(a) of such Code shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

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

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

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

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

Mr. REID. The Senator from New Hampshire is here and is going to ask that the present amendments be set aside so that he can offer an amendment. I will first take just a few minutes.

First of all, I commend the Senator from Minnesota for this amendment. I was on the Senate floor when he offered this amendment on a previous piece of legislation and spent some time talking about the merits of his legislation. It passed by voice vote. The Senator from Minnesota recognizes in the House something comparable to this has passed, so we have no problems with this legislation as to it being relevant or germane.

This legislation is important to reestablish confidence in what is going on in the country. This amendment is designed to attack a tax loophole that has allowed scores of U.S. corporations to move their headquarters, on paper only, to tax haven countries to avoid paying their fair share of our taxes.

Specifically, the amendment bars the Department of Homeland Security from awarding Government contracts for those corporate tax runaways.

It is a sad reality that under our current law these corporate expatriations are technically legal—I say technically. Legal or not, there is no reason the U.S. Government should reward tax runaways with lucrative Government contracts.

I had one of these big contractors talk to me. He brought with him one of my friends who was no longer in the Senate. Because of my close, warm feelings for the person who brought this man in, I wanted to try to help. But after listening, I said I cannot help because it is wrong.

These corporations have turned their back on their country in their country's hour of need, but they continue to come to Congress and the executive agencies with their hands outstretched asking for rewards. We need to end as soon as we can the practice of companies that hold billions of dollars in Federal contracts renouncing U.S. citizenship. It is wrong that the companies that play by the rules and meet the responsibilities of the country should be forced to compete with bad actors who shirk their tax bill.

If the corporations want Federal contracts so badly, I have advice: Come home. Come back to your country, to our country, and you will be eligible to bid on homeland security contracts. If you do not, you can't. Go lobby Bermuda or the Cayman Islands, but leave us alone.

Let me talk about a few of the companies involved that have handled this in an improper manner: Ingersoll-Rand. When I was a little boy and went with my dad down in the mines, Ingersoll-Rand was the name on the compressor that was above ground and on the jackhammer he used underground. In my mind, even today, I can see my father pick up that jackhammer and push it into that hard land and drill. Ingersoll-Rand is all he had, all I remember, an Ingersoll-Rand jackhammer. This company was founded in 1905. They have been headquartered in Woodcliff, NJ, for many decades, mostly manufacturing jackhammers, bobcat vehicles, club car golf carts, hardware products, security devices, control systems. In fact, one of the things they talk about in advertisements is their jackhammers made Mount Rushmore.

But times have changed. Last December, 3 months after September 11, Ingersoll-Rand put the finishing touches on renouncing its U.S. corporate citizenship. It filed paperwork to set up three British employees in a little office in Hamilton, Bermuda. Now it can avoid paying $40 million each year in U.S. taxes. This will not stop Ingersoll-Rand from lobbying for U.S. Government contracts. As we speak, the corporation holds over $40 million in Government contracts, virtually all of which are directly related to homeland defense or the military. These days, the company has been lobbying the Government to buy its airport security screening devices. If they renounce their Bermuda citizenship, I am happy to work with them and let them get the contract. That is fine.

There are many other companies. Fruit of the Loom, headquartered in Bowling Green, KY, for years, last year decided it wanted to do something else and moved offshore. They have millions of dollars in contracts.

Cooper Industries makes tools and hardware needed to transmit natural gas. They were founded in 1833 in Mount Vernon, OH. Last year, they had revenues of $4 billion, net income of $230 million, and they decided they could make a few extra bucks by moving offshore. That is what they have done.

I have page after page of companies that have decided to go offshore. Yet they have large amounts of Government contracts, where the underlying company had scores, hundreds of offshore Government corporations, legal entities set up so they could play around with our money.

Accenture, APW, Carnival Corporation, Cooper Industries, Enron, Everest Reinsurance, Foster Wheeler, Fruit of the Loom, Global Crossings, Gold Reserve, Halliburton, Harken Oil—Halliburton had units in St. Lucia, Liechtenstein, Barbados, Cayman Islands, Cyprus, the Netherlands Antilles, and the British Virgin Islands, among others—Helen of Troy, Leucadia Corporation, on and on.

The time has come. If they want to move offshore, let them get their contracts someplace else.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH of New Hampshire. Mr. President, my understanding is the pending business is the Wellstone amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. SMITH of New Hampshire. I ask unanimous consent the Wellstone amendment be temporarily laid aside for the purpose of offering an amendment.

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

Mr. REID. Mr. President, I couldn't hear. What was the request?

Mr. SMITH of New Hampshire. The request I made was to temporarily lay aside the Wellstone amendment for the purpose of offering an amendment, which I will not debate at this time.

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

The PRESIDING OFFICER. Does the Senator from New Hampshire yield the floor?

Mr. REID. Mr. President, I object. Will the Senator from New Hampshire restate his unanimous consent request?

Mr. SMITH of New Hampshire. I ask unanimous consent that the Wellstone amendment be temporarily laid aside for the purposes of offering my amendment on armed pilots.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 4491 TO AMENDMENT NO. 4471

Mr. SMITH. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. SMITH), for himself, Mrs. BOXER, Mr. MURKOWSKI, Mr. BURNS, Mr. BUNNING, and Mr. MILLER, proposes an amendment numbered 4491 to amendment 4471.

Mr. SMITH of New Hampshire. I ask unanimous consent the reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text Of Amendments.'')

Mr. SMITH of New Hampshire. Mr. President, this amendment is offered on behalf of myself and Senators BOXER, MURKOWSKI, BUNNING, BURNS, the Senator presiding, Senator MILLER, and others. Because there is an agreement with some of my colleagues that we would not debate it today, I will not

take any further time from the Senate, other than to say that this amendment is the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, which will be an amendment that will provide help for training for those flight attendants in the cabin, and for pilots to be able to carry weapons, lethal weapons, in the cockpit to protect our country, our citizens, and those in the aircraft from the aircraft becoming weapons of mass destruction.

The intention is to debate this tomorrow when my other colleagues are available, at a time to which the leaders will mutually agree. I very much appreciate the assistant leader, Mr. REID, allowing me to offer the amendment at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I would like to comment on the bill as it stands and some of the challenges relating to it rather than any specific amendment.

All of us, as we want to arrive at a position, fall back upon our own experience. I have some experience that I think is relative to this situation which I would share with the Senate. I have shared it with some members of the committee, but I have found in my time in the Senate that there is no such thing as repetition. Every speech is given as if it is brand new and no one has ever heard any of this before. I have learned that from some of my more senior colleagues here.

First when I arrived here, I found it a little distressing, but after I found out how often people listen to what you say, I decided it is probably a pretty good thing, because repeating something over and over again in this body, many times, is the only way you can get anybody to listen to you.

With that, let me share with you and my colleagues, and any others who may be listening, my experience with a similar situation when I served in the first term of the Nixon administration.

In the 18 months prior to President Nixon's election, Joe Califano, as the Chief of Staff to President Johnson, conceived of the idea of the Department of Transportation. We were one of the few industrialized countries in the world that did not have a ministry of transport, as it is called in most other countries. We found that our transportation functions were scattered all over the Government. Mr. Califano, consulting with President Johnson, convinced the President that the time had come to create the American version of a ministry of transport. So the Department of Transportation was born.

On paper, it looks like a department that was created at the Harvard Business School. You had a series of assistant secretaries who were staff officers. You had a series of administrators who were line officers. It was put together with modern business terminology and a complete understanding of how a large organization should be formed.

It took the Federal Highway Administration out of the Department of Commerce, where it was such a significant part of that Department that they had two Under Secretaries, one an Under Secretary for Transportation and the other an Under Secretary for everything else. It took the FAA from its status as an independent agency reporting directly to the President. It was called the Federal Aviation Agency. It was renamed the Federal Aviation Administration so that the terminology would be comparable.

It took the Coast Guard out of the Treasury Department. It goes all the way back to the time of Thomas Jefferson, perhaps, as being part of the Treasury Department looking for smugglers so they could collect duties on people who would bring goods into the United States. The Coast Guard represents a significant part of our transportation activity, and it was recognized it no longer belonged in the Treasury Department.

There was a fledgling group called the Urban Mass Transit Administration that was over at HUD, the Department of Housing and Urban Development. But they recognized it had nothing, really, to do with housing and belonged over in the new Department of Transportation.

They looked at some other areas where there needed to be some initiatives in transportation and created some new agencies solely for those—the Federal Rail Administration being the chief among them. Then it took some other isolated agencies, folded them in, put them on a piece of paper, and said: Here is your new department.

Alan Boyd, who was the Under Secretary of Commerce for Transportation, was made the new Secretary of Transportation and for 18 months struggled with the challenge of trying to bring these groups together. His service was terminated when President Johnson left office. John Volpe came down, as former Governor of the State of Massachusetts, to assume the Secretaryship of the Department of Transportation. The Under Secretary was James Beggs, who came over from NASA, where he had performed excellent service as an associate administrator there. I was hired to run the congressional liaison function for the Department.

As I say, the Department was 18 months old. When I walked into it to take over my new duties, I found that almost no one knew what those new duties would be because the challenge of bringing together, at a departmental level, all of the people involved in congressional liaison had not been successfully met in the 18 months previous. I am not putting any blame on Secretary Boyd or on any of the people who worked with him during that 18 months. As I became acquainted with the Department and its functions, I realized how difficult it was to bring together agencies that had no common culture, no common background, that had been operating in many different places across the Government, and turn them into a clearly, smoothly functioning single unit.

Indeed, there were some people in that organization who refused to admit they were even members of the Department of Transportation.

An anecdote: One of the personnel officers who worked for the Assistant Secretary for Administration got on the elevator and punched the button that said eighth floor. Someone behind her said: You are one of those DOT types. The eighth floor was the floor that had been recommissioned for the offices of the Secretary. The tenth floor was where the Administrator of the FAA worked. She turned around and said: We are all DOT types.

Her remark was not favorably received. The folks behind her in the elevator said: We are FAA. You are DOT.

It is a small anecdote, but it demonstrates that after 18 months there were still people who had a hard time bringing themselves into the new Department.

To my own specific experience, I found that the FAA still had its own congressional relations function. Urban Mass Transit didn't have one at all. They had not really brought anything over with them from HUD. The Federal Highway Administration had a well-entrenched congressional liaison function, and the Coast Guard had been at it for close to 200 years, and they were not about to give that up to anybody as unimportant as a Cabinet officer.

The new agencies that had been created didn't have any service. They didn't know what they were doing. Those officers who had been trying to perform congressional relations functions for the Secretary and the team of Assistant Secretaries that had been created under him had been floundering and flopping around trying to find their way in this morass.

Secretary Volpe and Under Secretary Beggs gave me the challenge of trying to pull all of this together. It was one of the most interesting and difficult experiences of my then-young life. That was enough years ago that I was a young man when I undertook that.

Eventually, we were able to pull all of those functions together into a single office reporting directly to the Secretary. I rearranged all of the functions so that everyone involved in that activity reported to me either directly or through my deputy. I said: I will give you an assignment—as if we were a consulting firm dealing with clients. You, sir, your client is the FAA. You, sir, your client is Urban Mass Transit, and so on. You will not be acceptable to me if your client is unhappy. If the Administrator of the FAA believes he is not getting the kind of congressional relations he deserves, he will complain directly to me as we meet together in the Secretary's staff meetings, and I will be around to see you. But at the same time, you work for me. And, through me, you work for Secretary Volpe.

This meant that when we had an issue that required more manpower and womanpower than that particular officer could provide, I could rally the resources of the office and the other officers to help on that particular issue at that particular time. We were much more flexible. I think we were much more efficient and effective.

As it turned out, a large percentage of President Nixon's domestic agenda fell under the Department of Transportation. Congress passed, with our help and liaison, a whole series of landmark bills setting down the transportation process for this country. It was one of the most stimulating experiences of my life.

What does that have to do with the Department of Homeland Security? In making the kinds of changes that I have described, I had to have management flexibility so that when, with the Secretary's authority, I didn't have—it came from the Secretary—I could say: You no longer work for the Administrator of the FAA; you now work for me. You no longer report to the Administrator of the Federal Highway Administration, you now work for me. This is how we are going to set your procedures, and this is how we are going to rationalize salaries within the office that I created.

I was able to do that because the enabling act that created the Department of Transportation gave the Secretary management flexibility to move people around within the Department without coming back to the Congress for approval. He had flexibility to change payroll.

One of the interesting things that occurred was that in the FAA, promotions were all made on even numbers; that is, you went from a GS–4 to a GS–6; from a GS–8 to a GS–10; from a GS–10 to a GS–12, and so on. In other parts of the Department they did two numbers per jump, but they were all on odd numbers.

As I brought all of these people together in the same offices, I had some GS–5's and GS–6's. The amount of money they were earning, frankly, was the same. It was very interesting to me, coming from the corporate world as I was at that time in this somewhat strange and challenging world of the U.S. personnel system. We had to rationalize that or the office didn't make any sense. We had to make some changes. We didn't do it in a way that damaged anyone. No one lost money. No one lost position. But someone had to transfer from the odd system to the even system, and adjustments had to be made. And they were made on the basis of what made the most sense for the office and how it would work. The flexibility that was written into the act made that possible.

One interesting thing that probably doesn't apply anymore but that came out of that experience was the result with respect to supergrades. In those days, a GS–16, GS–17, or GS–18 was called a supergrade, and each Department had a set number of supergrades. That was true of the Department of Transportation. I don't remember what the number was, but the Department could not have more than 25 or 35 or whatever the number was of supergrades.

As I went through this process of bringing all of these people together, I was able to walk into the Under Secretary's office and say: I am giving you back three supergrades—because so many of these people had held supergrade positions in the previous administration. The way we organized this, I only needed two supergrades—one for myself and one for my deputy and everybody else was a GS–10 or below.

I didn't realize what I was doing because the Under Secretary greeted me with one of the biggest smiles I have ever received and said: This is pure gold because there are other places in the Department where the positions deserve supergrades and I don't have any supergrades to give them. And you have just freed up three supergrades by virtue of your consolidation of this function.

I don't know where the supergrades went. But they went out to other deserving people.

That is why I feel so strongly in favor of President Bush's position that the Department of Homeland Security must be formed with flexibility for management and personnel and other decisions on the part of the Secretary. I have been there and I have seen how vital it is. If we had to go through the kinds of hoops that are created in the Federal personnel system in the reorganizing something as insignificant as my offices—I am talking about 30 to 35 people max; I am not talking about anything approaching the challenge of this new Department—if we had to go through all of those hoops in reorganizing my office, I would have spent the entire 2 years that I was there working on personnel issues and management issues instead of trying to get the program passed through the Congress—the landmark legislation that was passed. I still have the pens that President Nixon gave me and my picture in the Cabinet Room when those bills were signed. We would not have been able to get that done. We would have been snarled up in all of the internal management challenges of, well, we have to go to Congress to get this approved or that approved; we haven't got the flexibility to do it.

I have that personal experience that drives me to stand with the President on this issue and to say that I believe the President is correct when he says he will veto this bill, if that flexibility is not there.

None of us should have the false assumption that this Department will work for at least 3 and more likely 5 years. All of us should understand how difficult a management challenge this is going to be under the best of circumstances. The Department of Transportation, as I say, 18 months after its formation was still not working. John Volpe didn't come in and wave a magic wand to make it work overnight. John Volpe and Jim Beggs labored for a full 4 years beyond the 18 months that it had under President Johnson. It was only toward the end of those 4 years that you began to see things really meshed together and start to work together and see a real Department of Transportation instead of the old turf battles that had been there. The Department of Defense took longer than that to come together. It was the kind of reorganization more closely paralleling the size of the one we are now doing.

It is instructive to remember that the first Secretary of Defense, James Forrestal, committed suicide. The challenge of managing that difficult a bureaucracy was sufficiently great that this dedicated public servant—perhaps too dedicated because he took it so seriously—that he ultimately could not cope with it and committed suicide, which demonstrates how serious it is for us to do this right.

I do not want the new Secretary, whoever he or she may be, to have any more impediments placed on the challenge of making this Department work than are necessary. To not give the Secretary the management flexibility that the President has called for is asking for failure in this Department.

As I say, it is not going to work for at least 3, and more likely 5, years. That does not mean we should not do it. We should do it because if we wait a year, that will just push back a year the 3-to-5-year period that it will not work. But let's be realistic about it. Let's understand from the model of Government mergers, let's understand from the model of corporate mergers, how difficult this is going to be; and then let us, in the Congress, fashion a piece of legislation that says we are going to make it as easy as possible for the new Secretary to do all of the internal kinds of shifting and changing necessary to make it work closer to the 3-year figure than to the 5-year figure.

Now, I hope I am wrong. I hope it will work magnificently in 6 months. But life tells me that is not likely. So that is why I voted against this bill in committee. I said to Chairman LIEBERMAN: If you really needed my vote to report out this bill, I would give you my vote because I think the bill ought to be reported out. But since you don't need my vote, I want to register my deep concern about the management flexibility and lack thereof that is written into this bill. And the only way I can do that is to cast a vote against the bill.

Someone has asked me: Well, if it comes out of the Senate and the President is not given the management flexibility he has asked for, how will you vote on final passage? I will probably vote against it on final passage, even though some people say to me:

Oh, let it go to conference and we'll fix it in conference.

I have learned around here the motto ''let's fix it in conference'' does not always work. Very often it comes back from conference worse than when it went to conference, and then you are stuck.

So I am dedicated to the creation of the new Department. I will do everything I can to help the President and the Congress pass legislation that makes sense. But I cannot, from my own experience, believe this makes any sense if it does not go forward with complete management flexibility in every possible way.

A press conference was held today in which some Members of this body were quoted as saying that those of us who believe as I have just described are union baiters; that our whole motive here is to bash organized labor; our whole motive here is to attack honest working people.

Let me take you back to my experience at the Department of Transportation. It was my first experience in an executive branch organization. I had served on Capitol Hill as a staffer, as a Government employee, but I had never been a civil servant. And I went in with some of the standard prejudices that many people in the private sector have about civil servants: That they don't work very hard; that they are just serving their time until their 40-year period for retirement comes along; that they are not very entrepreneurial; that they are not interested in new ideas; that they take as their motto, ''We were here before you got here, and we will be here after you leave, so we don't need to pay any attention to you.''

There were some who had that view, there is no question. There is a very small percentage of civil servants who feel that way.

I was overwhelmed with admiration for the career civil service people in our Government who were dedicated, determined to make Government work, absolutely determined to do the very best job they could, and open to suggestions and comments that may have come from the political appointees.

We had an Assistant Secretary for Administration, a position that is a civil-service-protected position, who had been appointed by Alan Boyd. He was a known Democrat. But because his position had civil service protection, there was not anything that Secretary Volpe could do about it. He was as helpful to me in this reorganization effort that I have just described as anybody at the Department.

He sat down with me and helped take me through the labyrinth of Federal regulations. And when I made some mistakes—and I made several which were beauts—he did not jump all over me. He said: It's our fault for not having warned you in advance that that's what would happen if you did it that way. And if we had been there, we would have helped you do it another way. And let's see to it that it happens the other way.

These people do not need to be protected from competent managers. These people need to be motivated and excited about the creation of a new Department. If the new Department is being created with intelligent management and flexibility on the part of the management, the civil servants will respond, certainly those at the Department of Transportation. They will respond with enthusiasm: At least we are moving forward in an area where we have been deficient in the past. Thank you for the opportunity for this new kind of service that the old paradigm would not allow.

They will be supportive of this. Maybe their union managers are fearful of what management might do, but get a competent manager in as the Secretary and have him or her choose competent people as the Assistant Secretaries and the other administrators, give them the flexibility to do the right management thing, and the civil servants will not feel attacked. They will not feel under siege. They will feel liberated and excited. And they will be part of the solution because if this Department is going to work in 3 years rather than 5, it has to have the support of the civil servants; it has to have the kind of partnership between the civil servants and the political leadership that America has seen happen so often in so many other places.

So I reject the notion that my call for management flexibility is somehow an attack on the civil servants or an attack on their unions. Instead, it is reaching out and saying: Join with us to make the best kind of Department we possibly can and, thus, create for you the best working environment you can ever be in in your Federal career. Be part of something truly exciting, something truly significant and historic, the creation of a new Department in the 21st century dealing with 21st century challenges that this country has not had to face in its past history.

But don't let us start out with a traditional 19th-century-style management-labor confrontation. Do not let us start out with: We have to protect our turf and everything we have now, and we have absolutely no confidence at all that the management will do anything but attack us.

Let's put all of that aside and say: What are we dealing with here? As I say, we are dealing with a 21st century challenge of the kind this country has not faced in its history. We are trying to reorganize the assets of the Government to meet this challenge in a cohesive, coherent, intelligent way.

Let us never lose sight of that objective and keep our eye on that ball as we write this legislation and as we adopt amendments on the floor.

One of the first amendments that will be offered will be one to give the Secretary, through the President, the kind of management flexibility I have been talking about. I intend to support that as strongly as I know how, for all of the reasons I have laid out here.

I hope my colleagues will join with me.

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

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

Mr. CLELAND. Mr. President, I would like to speak on behalf of the homeland security agency bill.

It is with humble appreciation of the gravity of the task now before us that I rise to advocate the creation of the Department of Homeland Security.

Today, almost a full year since the forces of hatred attacked the American homeland, we are poised to transform the Federal Government into a sharper, more versatile instrument of peace and security for all of our citizens. The people of America and their leaders here in Washington, in both Chambers of the Congress, on both sides of the aisle, and at both ends of Pennsylvania Avenue, are united on the substance of this issue.

All agree we cannot stand idly by as the enemies of freedom plot our destruction. All agree that the homeland security apparatus of the Government is at present ill equipped for its grave task. And all agree that we are called, therefore, to take decisive action to retrofit the Federal Government for the more effective performance of its greatest commission—the protection of its citizens.

Thomas Jefferson once said the real goal of government is the protection of life and not its destruction. When Senators LIEBERMAN and SPECTER introduced legislation establishing a Department of Homeland Security in May, I am proud to say I was one of four Senators to sign on as an original cosponsor.

Since that time, we all now know, the administration, followed by every Member of Congress, has joined us in this critical reform effort, so that we find ourselves standing now on the threshold of an historic bipartisan achievement. A few points of difference on the details do remain. I look forward to a full and healthy debate on these over the next few days. But by and large, we are headed in the same direction, toward the same ultimate destination—the protection of our Nation.

I have no doubt that we will get there together. As my good friend Congressman JOHN LEWIS said after September 11:

> We may have come to this country aboard different ships, but we are all in the same boat now.

How true that is.

Under Senator LIEBERMAN's leadership, the Governmental Affairs Committee, upon which I sit, has outlined in its bipartisan homeland security legislation a blueprint for a robust new

Department that hews closely in most key respects to that envisioned by the President. The committee's measure would construct the Department around the core missions already identified by the President: Critical infrastructure protection, border and transportation protection, emergency preparedness and response, and science and technology.

With few exceptions, the existing agencies transferred to the new Department under the administration's proposal are the same as those transferred by the committee's bill. Often where the committee has diverged from what the administration has done, as in the case of the transfer of the Federal Law Enforcement Training Center in Brunswick, GA, to the new Department, the change has been made in close consultation with, and with the approval of, the administration. In other cases, changes are merely a fleshing out of proposals and concepts previously set forth by the administration.

Among the latter are two amendments I offered during markup of this legislation that pertain to the Federal response to terrorism of a biological nature. The administration's proposal laid a strong foundation by recognizing that public health agencies, such as the Centers for Disease Control and Prevention, the CDC, in Atlanta are absolutely central to an effective response to biological terrorism and by further recognizing that prudence requires that scientists who focus on bioterrorism not be separated from the vast expertise and resources of the rest of the public health sector.

My amendments, which the committee adopted during the July markup, are efforts to use the lessons of last fall's anthrax crisis culled from hours of testimony before our Governmental Affairs Committee to build on the solid foundation the President and HHS Secretary Thompson have set.

The inadequacy of our bioterrorism preparedness and response capability was exposed in dramatic and painful fashion last fall. In reaction, the Governmental Affairs Committee, under the distinguished leadership of Chairman LIEBERMAN and Senator THOMPSON, held a series of hearings investigating the roots and potential remedies of that inadequacy.

At a hearing convened at my request on April 18 this year, Secretary of Health and Human Services Tommy Thompson, buttressed by a panel of experts who followed him, testified to the following unmet needs in our Federal counterbioterrorism efforts:

First, a reorganization of the CDC's Bioterrorism Preparedness and Response Program, much like on a smaller scale what we are now doing with the Federal Government at large.

Second, clearer protocols of communication and coordination between public health and law enforcement officials.

And third, a greater commitment of resources to the CDC.

These recommendations comprise the three-point approach for filling in the gaps in our national bioterrorism defenses that I have been advocating for some months now. I am pleased that two of these largely have been incorporated into the bill we are now considering.

With respect to the first, I proposed, and the committee adopted, an amendment to create in the CDC a Bioterrorism Preparedness and Response Division. Why a division, Mr. President? Because that division answers directly to the head of the CDC. It is an entity located at the intersection of science and security, of public health and law enforcement, empowered to respond with speed and with a firm grounding in the science of biological warfare to the infectious terror some might seek to unleash upon this great Nation. The CDC's existing Bioterrorism Preparedness and Response Program is a relatively new initiative at the agency, having been created only in 1999 with a handful of personnel, little status within the agency, and meager funding.

The program remains as a subsidiary of the National Center for Infectious Diseases, a sub-branch of a sub-branch. It should come as little surprise then that the many witnesses who testified before our committee about last fall's crisis depicted a Federal response that was fragmented, confused, and largely inadequate.

CDC officials, both within and without the bioterrorism program, responded commendably, but their ability to do so was clearly constrained by, among other factors, an organizational structure that led inadequate focus to the unique aspects of a manmade threat to the public health.

The Bioterrorism Preparedness and Response Division, as described in this chart, will remedy that. Operating directly out of the Office of the Director of the CDC, the division will lead and coordinate the agency's counterbioterrorism activities. It will train and employ a cadre of public health professionals whose specialized training and focus is on bioterrorism, and it will serve as a nexus, a meeting ground, between the realms of public health and security, including homeland security and law enforcement.

There is a real need in the Federal Government for expertise in the intersection of health and security. Terrorists, as a matter of fact, hit the seam. They went right between the two. Officials thinking exclusively along either law enforcement or public health lines, as is too often the case under the current structure, will inevitably overlook key bits of information that are not fully appreciable, except by individuals with expertise in both areas.

In the case of bioterrorism—the word itself a fusing of health, bio, and security, terrorism—appreciating such bits of information and drawing critical conclusions based on these are absolutely essential to an effective Federal response. The cadre of bioterrorism specialists developed by the Bioterrorism Preparedness and Response Division would be specially trained accordingly.

In addition, while the threat posed by bioterrorism bears a strong resemblance to that posed by conventional disease outbreaks, there are real substantive differences between a manmade disease outbreak—a la the anthrax attack through envelopes that were obviously mailed by a human being—and a naturally occurring one—West Nile virus, Ebola virus, and the like. Our health officials are highly trained to cope with the latter, but most lack a sophisticated appreciation of the different considerations that attend a manmade attack.

The upshot is when a recognition of these different divergences can make a difference between effective and ineffective emergency response. For example, while epidemiologists knew that contracting inhalation anthrax naturally required exposure to between 5,000 to 10,000 spores, they failed in the early stages of the crisis to consider the ways in which the deliberate weaponization of anthrax, with a substance such as silica, might alter the level of exposure required for lethality. Consequently, two Postal Service workers died.

They are not to be criticized. They are scientists, after all, not criminal investigators. However, had bioterrorism specialists with training in both medicine and criminal behavior been on the case last fall, their unique expertise might have led to conclusions that in the hands of decisionmakers might have made a difference in recommendations and courses of action.

In academia, there is a growing recognition that the study of bioterrorism, though it shares much with the fields of public health and counterterrorism, is a distinct discipline. To cite just a few leading examples in the world of academia, Mr. President, Johns Hopkins University has established the Center for Civilian Biodefense Strategies; St. Louis University's School of Public Health has a Center for the Study of Bioterrorism; and the University of Texas medical branch has established a Center for Biodefense.

This bill will create in the Bioterrorism Preparedness and Response Division of the CDC a career track for the bioterrorism specialist, a place for graduates of programs such as these to put to use their unique expertise in the service of their country.

The chart behind me describes the organization of the counterbioterrorism efforts of the Federal Government with the establishment of the Bioterrorism Preparedness and Response Division and a Department of Homeland Security, as under the bill we are considering.

The second part of my plan for improving our bioterrorism defenses is

contained in an amendment also adopted by the committee in the July markup that mandates that law enforcement, homeland security, and public health personnel keep each other fully and currently informed in the event of a bioterrorist attack.

One of the objectives of a Bioterrorism Preparedness and Response Division of the CDC is to coordinate, cooperate, and communicate with other elements of the Federal Government that are involved in a biological attack on this country—Department of Homeland Security, law enforcement, Department of Justice, FBI, the Department of Health and Human Services, and State and local public health entities, all of which are in this boat together, Mr. President.

It was too frequently the case last fall that the different agencies with a role in the Federal response failed to communicate and coordinate with one another often or adequately enough. The requirement of full disclosure that will help put an end to that is upon us, but a significant part of the same problem relates to confusion in current law. Executive branch documents delineating the roles of law enforcement and public health agencies vis-a-vis one another say one thing while Federal statutes, most notably section 319 of the Public Health Service Act, say another.

In an effort to address this inconsistency, this legislation we are considering includes my amendment to direct the Secretary of Homeland Security to develop a Federal response plan that accords fully with the statutory authorities granted to the Secretary of Health and Human Services under the Public Health Service Act.

By so doing, this bill will mitigate in future crises a good bit of the confusion that prevailed last time. As we debate this legislation, I will offer an additional amendment to provide further clarity with respect to the roles of public health, law enforcement, and homeland security in the event of a bioterrorist attack. This amendment will provide the Secretary of Health and Human Services with the authority and flexibility he needs to carry out the responsibilities of the public health sector in the Federal response to bioterrorism.

Specifically, the amendment provides that no Federal agency may supersede the authority of the public health agencies to respond to a public health emergency in whatever manner is appropriate and necessary.

Last fall, public health authorities were at times muzzled, overridden, and generally kept out of the loop by law enforcement agencies. Each was doing its own thing, so to speak. Therein lies the problem. The problem arises because public health and law enforcement agencies both have essential roles to play in the event of an attack of terrorism that is also a threat to the public health. These roles are distinct but sometimes overlap. While both are vital, in the event of a terrorist-caused public health emergency, the unique life-and-death ramifications of such an attack mandate, in my view, that public health experts take the lead role in investigating and treating the attack. The amendment I will offer would give public health officials the authority and flexibility they need to do just that.

The third point of my bioterrorism response plan calls for providing the public health agencies that will play the central role in preparing for and responding to bioterrorism with the resources they need to do the job. We have to put our money where our mouth is—in this case, our money where our mission is, and our mission is to defend this Nation.

I commend the administration for proposing an unprecedented $4.3 billion for HHS's bioterrorism initiative in the next fiscal year, a 45-percent increase over the current year's funding level. These funds are badly needed. However, within this considerable request there is significant oversight. The administration has proposed actually a reduction in funds for revitalizing and securing the CDC's dilapidated, World War II-era facilities in Atlanta by $186 million in the next fiscal year, a Draconian cut of nearly two-thirds. That does not comport with putting our money where our mission is of defending this Nation.

As the chart behind me demonstrates, since fiscal year 2000 when Congress first got on board with the CDC's master plan, the revitalization of its ramshackle facilities, the budget for building facilities and security has steadily increased each year. I have been proud to be part of this increase. This increase accompanied a recognition on the part of Congress, especially the Senate, and made more acute in the aftermath of the anthrax crisis, that if the CDC is able to protect us all against the new, more insidious threats to the public health we now face, the agency must be equipped with adequate modern facilities and its labs must be fortified against potential terrorist designs.

The needed funds will not, of course, be appropriated through the legislation we are considering today, but I urge my colleagues to keep in mind, when the Labor-HHS appropriations bill reaches the floor, that the steps we are taking to combat bioterrorism in this legislation will require an adequate commitment of resources if they are to be effective.

In summary, the public health-related provisions of the Governmental Affairs Committee bill that were added during the markup of this bill are, in my view, perfectly aligned with the administration's approach and goals. While they are not contained in the administration's original proposal, they are really extensions on concepts contained therein.

On a separate but related matter, however, I must respectfully disagree with the approach contained in both the committee's and the administration's proposals. The legislation before us would transfer the strategic national stockpile—that is the vaccines that are strategically placed around America in secret locations known as the strategic national stockpile—from the CDC, where it has been successfully operated since its creation in 1999, to the Department of Homeland Security. I have serious reservations about the proposed transfer. Accordingly, I am continuing to work on a bipartisan basis with the chairman and ranking member of the Appropriations Subcommittee on Labor, Health and Human Services, and Education, and Chairman LIEBERMAN, the administration, and others, on an attempt to preserve the role of the CDC in the operation of the stockpile.

The stockpile is collectively 12 secret stashes of vaccines, medicines, and other medical supplies placed in strategic locations around the country, deliverable in a few short hours to any location in the country should the need for massive quantities of emergency medicines arise. Decisions related to deploying the medicines in the stockpile, what medicines to administer, who should receive medicines, what medicines should be in the stockpile, are essentially medical questions. They should, as such, be made by public medical professionals based on public health considerations. This is the reason, in point of fact, that the stockpile was assigned to the CDC in the first place.

The committee's bill would transfer final authority over the stockpile to the new department while leaving some operational responsibility with the CDC. I am afraid we are borrowing from Peter to pay Paul. Leaving aside the problems inherently associated with separating operational responsibility from accountability, this approach, while retaining some stockpile functions with the CDC, would undermine the most important reason to have the CDC involved at all; that is, to bring to bear the necessary expertise in making final decisions regarding the use of the stockpile.

If there were a core public health competency in the new department that could supervise the stockpile, then the reasons cited by the proponents of the transfer—primarily a desire to consolidate all emergency response functions in the new department—might be sufficient to justify the move. However, the public health expertise of the Federal Government was, by and large—correctly, in my view—left where it currently resides because of the important synergies, the command, control, cooperation, and communication, that would be lost if certain public health professionals were to be segregated from their colleagues in other public health sectors.

There is, consequently, no core public health competency in the new department. There is no assistant secretary for health, as some have proposed.

An interest in the effective administration of the stockpile demands then that it remain in the hands of those who do have public health expertise. The CDC has handled the stockpile effectively to date, coordinating smoothly its deployment on September 11 and during the anthrax crisis with FEMA and other emergency responders.

We should follow the old dictum that if it ain't broke, don't fix it. Whatever the Senate's final decision on this matter, however, let me reiterate I am fully on board with the President and his team on homeland security. We are all in the same boat. We cannot, we will not, stand by idly while those who hate us plot our demise. The fundamental reorganization of our homeland security apparatus is the surest step we can take now to gird ourselves for the threats to come. With sober understanding of the moment of the task now at hand, let us complete this good work.

Above the pyramid on the Great Seal of the United States, in reference to the founding of our Nation, it says, in Latin, ''God has favored our undertaking.'' May He grant us now His favor again.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. It is my understanding that the matter before the Senate is the Smith amendment.

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 4492 TO AMENDMENT NO. 4471

(Purpose: To amend title 49, United States Code to improve flight and cabin security on passenger aircraft)

Mr. REID. I send an amendment to the desk on behalf of Senators BOXER and SMITH.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. SMITH of New Hampshire, for himself, Mrs. BOXER, Mr. MURKOWSKI, Mr. BURNS, Mr. BUNNING, and Mr. MILLER, proposes an amendment numbered 4492 to amendment No. 4471.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. REID. Mr. President, before my friend from Georgia leaves—and I know the Senator from Vermont wishes to speak—I want to emphasize how important the Centers for Disease Control are to this country and to the world. I have traveled with the Senator from Georgia to the Centers for Disease Control and seen some of those old, dilapidated buildings, some of them built prior to World War II.

We should allow the Centers for Disease Control to have a space where they can work with some degree of quality. They are spread out all over the campus, and they need to be brought into one central location. That is what is being attempted.

I say to my friend, this entity was established many years ago to fight malaria in the southern part of the United States. After we whipped malaria, they had such a presence that we used them for a public health entity in this country. They have done remarkable work, and not only in America. I had the pleasure of traveling and representing this country on the continent of Africa during the August break. The Centers for Disease Control has spread throughout that continent. It is money that the taxpayers should be proud is being spent. Each day that goes by, because of the Centers for Disease Control, lives are being saved from mosquito-related problems and, of course, AIDS.

The Senator from Georgia has a tremendous responsibility to convey to the rest of the Senate the importance of the Centers for Disease Control and make sure they have adequate resources to do the job that is necessary to be done, especially post-September 11.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise today to express my concerns about a central component of the proposed Department of Homeland Security—the inclusion of the Federal Emergency Management Agency in the new department.

I understand that in the wake of the horrific events of September 11, we would look for ways to strengthen our Nation's defense to prevent any future catastrophe. I fully support that goal. But we must be cautious, very cautious, to make sure that we work to correct what went wrong and not interfere with what went right.

We know what went wrong, and I firmly hope that we, as a nation, will develop a comprehensive plan to address the shortcomings in our intelligence gathering and communication efforts. That, I believe, should be the prime goal of any new homeland defense effort.

What went right after September 11 was the response of the Federal Emergency Management Agency. In the days after the September 11 terrorist attacks I visited the Pentagon and World Trade Center. I saw firsthand how well FEMA responded to a horrific scene that all of the disaster drills and training exercises could not have prepared anyone for. I was incredibly impressed by what I saw. Thousands of workers from around the country came together to bring calm and order to an otherwise chaotic situation.

Of nearly 400 disasters that FEMA has responded to since the Oklahoma City bombing in 1995, only the attacks on the World Trade Center and the Pentagon were acts of terrorism. Through the coordination of FEMA's director, the agency demonstrated that it was capable of responding in such cases, and responding well.

Yet things have not always gone so smoothly with the Agency. We need only to look back to the 1980s, when FEMA's focus shifted to civil defense and left the Agency ill-prepared to respond to natural disasters. In 1985, after a tornado killed 65 people in Pennsylvania, FEMA's poor response prompted then-Congressman Tom Ridge to play a central role in efforts to refocus the Agency's mission on victims of natural disasters.

But it took time. After seeing the bungled responses to Hurricane Hugo in 1989 and Hurricane Andrew in 1992, my friend from South Carolina, Senator HOLLINGS summed up FEMA's performance by saying, ''A major hurricane is not one disaster, but two: The natural disaster of the hurricane itself, and the unnatural disaster of Federal efforts to aid the victims.''

Over the last decade, with help from Congress and new leadership, FEMA has worked hard to regain the trust of its constituents, especially those Americans affected by a major disaster. Now we must maintain FEMA's independence to ensure that an increased emphasis on terrorism will be in addition to, and not at the expense of, the Agency's natural hazard programs.

As it now stands, FEMA is a small, flexible agency with a director reporting directly to the President. This chain of command works well, but it would be lost if FEMA were moved into the Department of Homeland Security. Adding another layer of bureaucracy to the disaster declaration process can only slow vital response and recovery efforts.

Again, I firmly believe that it is critical to prepare America to respond to terrorist acts, but we must not lose sight of the fact that FEMA's primary focus is to respond to nature's fury. We know that fires, floods, tornadoes, earthquakes, and hurricanes will continue to cause injuries, deaths, and property damage every year.

Jeopardizing FEMA's abilities to deal with disasters is not the best way to secure our homeland.

As we move forward, we should be thoughtful and deliberate, and we should focus on fixing the failures and not tinkering with the successes.

Accordingly, at the appropriate time I will offer an amendment to remove the Federal Emergency Management Agency from the Department of Homeland Security. Preserving FEMA's independence is the best way to prepare our nation to respond to natural disasters and any future terrorist attacks we may face.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

TOM BURNETT, JR.

Mr. WELLSTONE. Mr. President, I rise to pay tribute to an American hero, Tom Burnett, Jr., who was a beloved husband and father and adored son and a very able business leader. He was a person who would not and did not sit quietly as terrorists carried out their plan last year on September 11.

Along with my colleague, Senator DAYTON, and with our colleague JIM RAMSTAD on the House side, we introduced legislation to designate a U.S. Postal Service facility in Bloomington, MN, as the Thomas E. Burnett, Jr. Post Office Building.

This legislation today is passing the House, and my expectation is that by the end of the day this will also pass the Senate. I don't know that there would ever be any Senator would disagree with this.

Tom Burnett, Jr. grew up in Bloomington, MN, and he was aboard flight 93 on September 11 of last year. America owes Tom Burnett a deep debt of gratitude for his bravery on that day. It is possible that Members of the Congress, including myself, could very well owe him our own lives. We will never know for sure.

Tom is believed by investigators to have been among those passengers who kept the hijackers from crashing flight 93 into a national landmark, most likely the White House or the Capitol. That, of course, would have likely resulted in many more deaths than already occurred on that day, and instead, as we all know, flight 93 crashed into a Pennsylvania field. After listening to a tape from the flight's black box, law enforcement officials have described a desperate struggle aboard the plane.

As FBI Director Mueller said after being briefed on the contents of the tape:

> We believe that those passengers were absolute heroes, and their actions during this flight were heroic.

Tom Burnett, Jr. was 38 years old when he died. A 1986 graduate of Carlson School of Management at the University of Minnesota and a member of the Apha Cappa Psi Fraternity, he had shown selfless leadership before. When he was quarterback of Thomas Jefferson High School in Bloomington, Tom's inspired play led his team to a conference championship game in 1990. He was a successful business leader as chief operating officer for a medical device manufacturer in California.

We will never forget his ultimate sacrifice and the ultimate sacrifice of many other heroes as well on September 11. Our thoughts and prayers today are with Tom's family: His wife Deena, and their daughters, Madison, Halley, and Anna-Clair, three little daughters; his parents, Thomas, Sr. and Beverly—I had a chance to talk to Bev just the other day—and his sisters, Martha O'Brien and Mary Margaret Burnett.

Bloomington will be very proud to have this post office named for Tom Burnett, Jr. We are all very proud of this son of Minnesota.

Again, I thank Congressman RAMSTAD for his leadership in the House. I know this bill is going to pass the House today, and my expectation is that it will pass the Senate as well.

I thank again Senator LIEBERMAN for his help in expediting this and making this happen. I know for a fact this is really very important to Tom's family and to all of Minnesota.

CONFIRMATION OF TERRENCE F. McVERRY

Mr. SPECTER. Mr. President, I seek recognition today to express my strong approval of the Senate's confirmation of Mr. Terrence F. McVerry who President Bush nominated for the United States District Court for the Western District of Pennsylvania. The American Bar Association has rated Mr. McVerry ''unanimously well-qualified'' to sit on the bench.

Mr. McVerry received his B.A. degree from Duquesne University in 1962 and his J.D. from Duquesne University School of Law in 1968. After finishing law school, Mr. McVerry started his legal career in the Allegheny County District Attorney's Office. He prosecuted hundreds of bench and jury trials with a concentration on major felonies and homicides. After serving in the District Attorney's Office, he and two colleagues formed their own private practice. He went on to serve as a partner in several other prestigious Pittsburgh firms.

Mr. McVerry has also served as a member of Pennsylvania House of Representatives and as a member of the Pennsylvania Commission on Sentencing. He served his country by joining the United States Army Reserve and the Pennsylvania Air National Guard. Former Pennsylvania Governor Tom Ridge nominated him to fill a judicial vacancy on the Court of Common Pleas to Allegheny County.

Currently, he serves as a Soldier for Allegheny County, Pennsylvania, where he is the chief legal officer and director of a governmental law department comprised of 36 attorneys. In this capacity, he is responsible for the representation of all branches and departments of a county government that has approximately 7,000 employees and responsible for nearly 1.3 million inhabitants.

Pennsylvania is fortunate to have an extremely well-qualified nominee like Mr. McVerry. This success is due to the bipartisan nominating commission which Senator SANTORUM and I have established. This commission reviews all federal judicial candidates and recommends individuals to Senator SANTORUM and myself. We then recommend these individuals to the President.

I thank my colleagues for their confirmation of Mr. Terrence McVerry to sit on the United States District Court for the Western District of Pennsylvania.

H.R. 3009, THE ANDEAN TRADE PREFERENCE EXPANSION ACT

Mr. SARBANES. Mr. President, I rise to urge my colleagues to join me in opposition to the motion before us, on passage of the conference report on H.R. 3009, the Andean Trade Preference Expansion Act. During the Senate's consideration of this act, the bill's managers stripped H.R. 3009 of the language approved by the House and offered a substitute amendment comprising three measures reported by the Finance Committee. The first, H.R. 3009, is indeed the Andean Trade Preference Expansion Act. But the amendment added as well two other major trade-related bills. The second measure, H.R. 3005, would grant the President fast-track authority for certain proposed trade negotiations, and also, retroactively, for other negotiations already underway. And the third, S. 1209, would reauthorize the Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance programs. H.R. 3009 thereby became a legislative vehicle for linking together three independent measures, all trade-related to be sure but each with its own focus and provisions.

Let me say first that I am troubled by this procedural maneuvering. The three measures, each with far-reaching and very different ramifications, were considered independently of one another in committee. In my view they should have been considered separately on the floor of the Senate; each should have been amended and voted up or down on its own merits. Linked together, each measure became a hostage to the other two, a procedure which in my view ill served the American people.

I am particularly concerned by the linking of trade promotion authority with trade adjustment assistance. TAA addresses specific problems which Congress has defined. In contrast, trade promotion authority is very broad, potentially reaching into areas we cannot even identify. In fact the term is a euphemism. What we have before us is the procedure known more precisely and accurately as ''fast-track,'' a procedure that radically redefines and limits the authority granted to Congress in article II, section 8 of the Constitution ''to regulate commerce with foreign nations.''

It is easily forgotten that ''fast-track'' is a relatively new innovation