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Senate

The Senate met at 9 a.m., and was called to order by the PRESIDENT pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Monsignor Robert Fuhrman, the Church of St. Gabriel, in Saddle River, NJ.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray:

Almighty Father, terror and tyranny are our enemies. Disunity is our enemy too. But United States are States that endure! At this time of international stress we stand before You and wonder: Could there one day be worldwide tranquility? May we know peace? Will all Your people ever recognize their responsibilities to each other as the one human family?

Loving God, our countless personal freedoms distinguish us and allow us to fulfill our potential and Your plan. Help all Americans to count our blessings so that we will remain unified, especially so the war may end quickly, with evil suffering a singular defeat.

Lord, the Congress leads by serving, by representing and expressing the will of the people who are privileged to be Americans. Guide the Senate in the light of Truth. Give these men and women the support and the challenge of a united people who never let patriotism wane. A house divided against itself will fall. May this House never fall.

We make all our prayers with confidence in You who live and reign forever and ever. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CONRAD BURNS, a Senator from the State of Montana, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Ms. MURKOWSKI). The majority leader is recognized.

SCHEDULE

Mr. FRIST. Madam President, this morning the Senate will be in a period for morning business until 10 a.m. Members who wish to make statements in support of our troops are encouraged to do so over the next hour.

At 10 a.m., the Senate will proceed to executive session to consider the nomination of Timothy Tymkovich, to be Circuit Judge for the Tenth Circuit. Under the previous order, there will be up to 6 hours for debate on the nomination. It is hoped that the nomination will not require all of the 6 hours and that we will be able to yield back time and have a vote a little bit earlier.

The Senate will recess at 12:30 p.m. for the weekly party luncheons.

We are also attempting to reach agreements on several other pieces of legislation, including the CARE Act, the FISA bill, and other bills relating to our Armed Forces personnel. We will also continue to process nominations, including judges, as they become available.

As a reminder, a fourth cloture vote will occur on the Estrada nomination during tomorrow's session.

Finally, I expect the Senate to begin the supplemental appropriations bill on Wednesday, if that bill becomes ready for floor action. I hope we can expedite the consideration of that bill this week so that we are able to continue the flow of resources to our troops in the field.

Therefore, all Senators should expect a very busy week with rollcall votes each day.

Madam President, I yield the floor. I wish to make a brief statement about our troops, but I will be happy to yield.

Mr. REID. I do not have anything.

HONORING OUR ARMED FORCES

Mr. FRIST. Madam President, we are now 12 days into Operation Iraqi Freedom. As I mentioned yesterday, I had the opportunity to visit the post of the 101st Airborne Division this weekend. It was a remarkable opportunity for me, and I wish to share with you a couple of my thoughts on that visit.

Our troops over the last 12 days have advanced 220 miles and now are sitting about 50 miles outside of Baghdad. We are all exposed, on the television and through our briefings, to the repetitive pounding of military targets day and night throughout Iraq. The key point, I believe, is that we do keep building our momentum both in Iraq and in America.

We have achieved many key objectives, and we will—there is no question—we will achieve our ultimate objective, and that is to disarm Saddam Hussein and to liberate the Iraqi people from his oppressive rule.

I am confident about that for so many reasons, but a lot of it has become real to me in a very personal sense after my visit to the 101st Airborne Division. For example, SP John G. Young is assigned to the A Company, 8th Battalion, 101st Airborne Division. He left Fort Campbell on March 1 of this year for Kuwait. He is crew chief on a CH–47 somewhere in the Iraqi desert. He is newly married. He is expecting a child in a few months and is doing an extraordinary job in Operation Iraqi Freedom. We thank him, we thank his mother, and we thank his wife for their courage.

At the 101st Airborne Division, Karyn, my wife, and Jonathan, my son, and I attended church services with the spouses and children of the Fort Campbell 101st Airborne Division. There are 50 chaplains as part of the 101st Airborne Division and 46 of those chaplains are overseas in Iraq and Kuwait. Seeing these families and the faces of these very young children as the pastor gathered them around the pulpit and

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

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came down and sat on the floor with the children asking them what their impressions were, what they pray for—the children were very young, 2, 3, 4, up to about 7 years of age.

One said: I pray for my daddy who is somewhere in the desert.

Another little girl raised her hand as they sat, about 20 of them, around the pastor, and said: I pray that Saddam Hussein quits doing bad things to other people.

The innocence, the understanding, and the wisdom of these young children was very apparent.

I also had a chance to talk to Michele Schumer, whose husband is a member of the Special Forces and is currently deployed in Iraq. Michele is the mother of a child in kindergarten and has another child on the way.

We talked to Adra Barna, a mother of 3-year-old twin girls, who clearly had her hands full as we watched her manage them during the church service. Her husband is deployed in Iraq as well.

I talked to Julie Sparkman. She and her husband are newlyweds. It is hard for anyone at any point to be separated, but to be separated shortly after marriage clearly introduces all sorts of feelings that we all can share with Julie and her husband. Having just been married, imagine the fear when there was that first grenade attack at Camp Pennsylvania: Was my husband involved in that or not? Was he injured or not? He was not, but again, we can personalize in many ways the experiences that result from the tremendous service of these young men and women.

Above all, these families are patriotic. I thought the atmosphere would be very somber. In truth, it was very upbeat, optimistic, and energetic. These young spouses are so proud of their husbands being able to serve all of us and able to literally put their lives on the line for those causes of freedom, democracy, and peace.

In closing, the families of Fort Campbell did ask me to share with the President their support and their prayers for the tremendous job he is doing as Commander in Chief. They are concerned about their loved ones but proud they are able to serve the United States of America.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with the time to be equally divided between the Senator from Texas and the Democratic leader or their designees.

The Senator from Montana.

HONORING OUR ARMED FORCES

Mr. BURNS. Madam President, I rise to share another story that comes from the battlefield of Iraq. There are a thousand of these stories, but I think it is the way we start our day as a reminder of exactly what is going on at ground level—in other words, where the rubber hits the road.

In the last 12 or 13 days, we have seen how deeply committed our men and women in uniform are. They fight for a great cause of disarming Saddam Hussein's regime from its weapons of mass destruction, but also at the same time they understand that they are our brother's keeper.

What brought this home to me was a picture of this one marine carrying his injured comrade from the battlefield. It is as awe inspiring as any imagine that might come from the field of conflict. One man hurt his leg. His buddy slings him over his back and carries him safely, like a firefighter rescuing somebody from a burning building. Only in this case, it looks as though the enemy was not being cooperative or too helpful.

Men serving in battle form iron bonds. They have to because it is for the person next to them and for their country. Those bonds often forge the determination and the will to win. We can see the grim determination etched in the face of the marine who is doing the carrying. He seems to be thinking: It is all right, buddy. We will be out of here. You are in good hands.

Then perhaps when they reached the point where they were saved, the guy being carried likely responded: You do it for me, Semper Fi.

Some would say these two marines are heroes. But I would not put them in the hero class. They are America. They are the story of America. The marine who was hurt is from Oregon. The marine who saved him is from South Carolina. It does not matter what State one is from; their bond is in the unit in which they serve and in the miniature stars-and-stripe patch sewn on every shoulder of every sleeve.

For the marine from Oregon, his bond was his family heritage. His father was a career marine who rose to the top rank of sergeant major. His father was in Beirut, Lebanon, in 1983 when terrorists bombed the Marine barracks, losing 241 of his buddies. The father served in combat in 1991 during Operation Desert Storm. The day after the son shipped out for Kuwait, that marine's father died. The son returned home to the funeral, returned to the scene, and caught up with his unit.

The depth of commitment of our brave Americans is shown on the battlefields not only here but also in our history. It is a cause to them and one that inspires us. May we who are in the policy business learn our lesson to be that inspiring. We, too, should be where most of them are, where the rubber hits the road. This is where it is carried out.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Madam President, I ask unanimous consent to speak for up to 10 minutes.

The PRESIDING OFFICER. The Senator has that right.

Ms. SNOWE. Madam President, I rise today to pay tribute to the more than 43 United States soldiers who have sacrificed their lives in the mission to liberate the Iraqi people and to disarm Saddam Hussein: The 16 who are missing, the 7 who have been captured, the 109 who have been injured, and all of those men and women on the ground, in the skies, and on the seas, who are so bravely supporting the cause of Operation Iraqi Freedom.

By now, we have all seen the images on our television screens, yet little can we truly comprehend the real nature of the dangers they face, and the courage they must summon. Let us then dedicate these days to the acknowledgment of their heroism, for how profoundly grateful and blessed we are that these men and women are committed to serving our Nation and the ideals for which it stands during this pivotal and tumultuous chapter in America's proud history.

In particular, I rise this morning to honor two Maine sons—Marine MAJ Jay Thomas Aubin and Marine CPL Brian Matthew Kennedy—who were among the twelve U.S. and British Marines killed Thursday, March 20 when their CH–46E Sea Helicopter crashed in Kuwait, just seven miles from the Iraq border. While I never had the opportunity to meet these two exceptional Marines in person, over the last week I feel I have come to know them, at least in some small but very meaningful way.

MAJ Aubin and CPL Kennedy embodied the Marine Corps values of honor, courage and dedication—no matter the odds, no matter the fight. They had the mental, moral and physical strength to follow the U.S. Marine decree to do the right thing, in the right way, for the right reasons. Both men willingly and knowingly laid their lives on the line to support and defend the U.S. Constitution and protect our national security. Both men believed in their mission.

Marines are often described as a family. They are initiated en masse by boot camps and extreme conditions many of us cannot even begin to imagine. They train together day in and day out and understand each other's struggles, fears, and feelings of pride. And they fight together, bound by a common code and a calling, gallantly facing any enemy whose goal is the destruction of our way of life.

Indeed, they live by one simple truth, that risking American lives is sometimes necessary to defending America's freedom. This realization and their willingness to act upon it is what makes the sacrifice of MAJ Aubin and CPL Kennedy all the more poignant.

So we must celebrate their lives and memories as the extraordinary people

they truly were. I attended a service this past weekend in Winslow, ME, for MAJ Aubin. The day was made all the more special as CPL Kennedy's mother, Melissa Derbyshire, was also in attendance, and my heart goes out to both families brought together by sorrow in what for them is surely the most difficult of times. It is through remembrance that these two great Mainers will live on, so today and forevermore we will remember.

The eldest of three sons, MAJ Jay Thomas Aubin was a native of Skowhegan. As a young child, his undying first love was flight. His grandfather was an airplane mechanic and his father spent his spare time buying, selling and flying airplanes. His mother, Nancy Chamberlain, said Jay started flying when he was two years old. She recalls that his father, Thomas Aubin, had some two-seater planes and would take him flying from Norridgewock Airport. His brothers Joel and Jeffrey always considered him to be the ''overachiever of the family'', pointing out his ''student of the month'' and ''student of the year'' awards from Skowhegan Area High School and his participation in after-school activities, like band and wrestling. He even set up his own ''boot camp'' in his senior year so he would be in top physical shape.

Jay joined the Marines straight out of high school and was fortunate enough to meet the woman who would later become his wife, Rhonda who was also a Marine at the time. They were married and have two children, Alicia, 10 and Nathan, 7. Jay was in the Marines for 4 years, came home to Maine and enrolled in Southern Maine Technical College in 1989 and earned an associate's degree in applied science and, later, a bachelor's degree in business management from the University of Southern Maine.

His love and dedication to the Marines was so strong that upon graduation Jay re-enlisted as an officer. A true testimony to his skill and leadership, he was invited to join the elite corps that pilots the Presidential helicopter, Marine One. But before he was able to assume this new duty, he was asked to become a ''Top Gun'' instructor in night flight for helicopter pilots. He, Rhonda and their children moved to Yuma, AZ, in June, 2002 to complete his latest mission and he remained there until he was called to go to Kuwait.

After his tragic death, his mother received a letter Major Aubin had mailed two days before his helicopter went down. It said, ''I want to thank you for everything over the years. You always tried your best to put us first at your expense.'' With that letter, it was as though his mother, Nancy, could hear her son's voice one last time—and what she heard was a message of undying gratitude and love.

In recent days, his friends and family have described him as ''genuine and friendly and always smiling'' and ''passionate about his job and his country.'' His alma mater held a memorial service to honor him and has established a scholarship in his name. This is a man who was well loved and who touched the lives of everyone around him, especially his family. His aunt, Rella Collins, describes him as ''the best of the best. He did us all proud.'' According to his mother in his last conversation before he departed, Jay was at peace with his mission, remarking ''If anything happens to me, just remember I'm happy and I'm doing what I love to do.''

The same has been said about Corporal Brian Matthew Kennedy, whose mother, Melissa Derbyshire, and stepfather, John Derbyshire, live in Port Clyde, Me. John's description of Brian gets to the heart of his character—''This man loved living and life itself. His greatest pleasures were cooking, eating lobster and mussels, his friends, lacrosse, rock climbing and doing his best at any task he was given to do—just as he did his job as a Marine crew chief aboard the CH–46 helicopter.'' Corporal Kennedy graduated from Glenbrook South High School in Glenview, IL with honors in 1995 and then attended Purdue University before transferring to Texas Tech. He enlisted in the Marines in 1999, according to his own words, ''because he thought he could do the best job.''

He had been a Marine for 3 years when he was lost to us in last weeks' helicopter crash. His family members speak of his sacrifice. His mother, Melissa, recalls him having to wait in line for 3 hours to just call home. Brian told his mother he would do his best to come home, but she says she ''was lucky enough to know him for 25 years'' and she remembers him ''always laughing and having a good time.'' Brian's father, Mark Kennedy, speaks of his son's time in the Marines, saying Brian was ''very pleased to be in Kuwait and was thrilled to have the assignment he had. He gave his life in an effort to contribute to the freedom of the Iraqi people.''

We will all agree that these brave young men did not die in vain—indeed, in the words of Melissa Derbyshire, ''they died for all of us.'' The loss of life is the ultimate tragedy of war, but from it, we can hope, will come peace. It is the Jay Aubin's and Brian Kennedy's of our unique history that have enabled America to become the greatest democracy civilization has ever known. They are a constant reminder of the sacrifice of one generation for the next. It has been said we are the land of the free precisely because we are the home of the brave.

At the first national Memorial Day service, in 1868, General James A. Garfield, the future President, addressed the difficulty in speaking of fallen Americans. During a ceremony at Arlington National Cemetery, Garfield said:

''With words,'' Garfield said, ''we make promises, plight faith, praise virtue. Promises may not be kept; plighted faith may be broken; and vaunted virtue may be only the cunning mask of vice.

''We do not know one promise these men made, one pledge they gave, one word they spoke; but we do know they summed up and perfected, by one supreme act, the highest virtues of men and citizens. For love of country they accepted death and thus resolved all doubts, and made immortal their patriotism and virtue.''

James A. Garfield could not have said it better. The enormity of the contribution made by our military men and women overwhelms the words we have within our grasp to honor that contribution. The entire nation will be forever indebted to Major Jay Thomas Aubin and Corporal Brian Matthew Kennedy. The Aubin, Chamberlain, Kennedy and Derbyshire families are in my thoughts and prayers, and I hope all of the Senate will join me in honoring these two outstanding, exceptional, extraordinary Marines today.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. BOXER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. BOXER. Madam President, Senator LINCOLN has been coming here every morning on behalf of the Democratic side of the aisle, and I know Senator HUTCHISON and others have come on behalf of the Republican side. Senator LINCOLN asked me to come down here to pay tribute to our young men and women. It is an honor for me to do this.

Very sadly, this morning I come down to pay tribute to five young Americans who were killed in the Iraqi war, all of them from California or based in California. I have done this before. We have lost an additional 10 to whom I have payed tribute already, and that is a very large proportion of those who have been lost.

As we pray for all of those in harm's way, I think it is important to put a human face on war, and therefore I come down to discuss the great loss we feel in our State.

First is Navy Hospital Corpsman Third Class Michael Vann Johnson, Jr., age 25, killed on Tuesday, March 25, in Iraq, while attending to injured marines. He was assigned to the Naval Medical Center, 3rd Marine Division Detachment, in San Diego, CA. Michael was born and raised in Arkansas and graduated from Parkview High School in Little Rock. He attended the University of Central Arkansas in Conway before joining the Navy in 1997. He is survived by his wife in San Diego, his parents, and his seven siblings. I send them my deepest condolences.

MAJ Kevin Nave, age 36, was killed March 26, in a vehicle accident in Iraq,

assigned to the 3rd Battalion, 5th Marine Regiment, 1st Marine Division, Camp Pendleton, CA. His wife and his two children live in Oceanside, CA. He is from Union Lake, MI. He was on the football team and wrestling squad at Waterford Kettering High School in White Lake Township, MI.

LCpl William W. White, age 24, was killed in a vehicle accident on March 29, in Iraq. He was assigned to the 3rd Amphibious Assault Battalion, 1st Marine Division, Camp Pendleton, CA. He was from Brooklyn, NY.

GySgt Joseph Menusa, age 33, from San Jose, CA, died on Thursday, March 27, from a gunshot wound. He was assigned to the 1st Combat Engineer Battalion, 1st Marine Division, Camp Pendleton, CA. He was born in the Philippines and moved to San Jose when he was just 10 years old. He served in the 1991 gulf war and was a marine recruiter in the San Francisco Bay area. His wife and his young son live at Camp Pendleton.

LCpl Jesus A. Suarez Del Solar, age 20, died Thursday, March 27, in combat action in Iraq. He is from Escondido, CA. He was assigned to the 1st Light Armored Reconnaissance Battalion, 1st Marine Division, Camp Pendleton, CA. He moved from Mexico to the United States in the late 1990s with his family. He attended San Pasqual High School in Escondido and graduated from Escondido's Valley High School in 2001. He is survived by his wife and his 1-year-old son, as well as many family members in Los Angeles County, San Diego, and Mexico.

As I said, I have already read the names of 10 others into the CONGRESSIONAL RECORD:

CPL Randal Kent Rosacker, age 21; LT Thomas Mullen Adams, age 27; CAPT Ryan Beaupre, age 30; 2LT Therrel Shane Childers, age 30; LCpl Jose Gutierrez, age 22; CPL Brian Matthew Kennedy, age 25; SSG Kendall Watersbey, age 29; SGT Michael Bitz, age 31; CPL Jose Garibay, age 21; CPL Jorge Gonzalez, age 20.

So, Madam President, out of the 43 who were killed, 15 were from or based in the State of California. And my State mourns them. May these beautiful young Americans rest in peace. And may the war end soon.

I pray for the wisdom of those who send these young men and women on their mission.

The people of my State feel very strongly on both sides about this war. I say to them today that they have every right to express themselves for and against this war; that those are indeed the freedoms that are the basis of our Nation. I also say to both sides that however one feels about the policy of this war—people know how I felt—I voted for the Levin resolution because I did not want us to go it alone, or virtually alone, because I was fearful of what could happen; and I felt it was important to lead the world as a superpower. Whether you are for or against this war, this isn't about who loves the troops more.

These troops are our children. I am a mother. I am a grandmother. These troops are our children. Some of them are parents themselves. So let us not deal with who loves our young people more. The debate is about policy, and there will be much time to debate that policy as there was before this war. And anyone who has a feeling about that policy has a right—I would say a duty—to express that view regardless of what that view is because that is what makes our country strong, that is what makes us different from other places.

So that is my message to the people of my State: to respect each other's differences. This isn't a debate about who loves the troops more; it is about policy.

California is contributing mightily to the military effort in Iraq. I have read you the names of many who have died so far. Tens of thousands of military men and women have been deployed from my State.

One of them, Patrick Sailors, is a chief warrant officer in the Marine Reserves, and he is the brother of one of my most treasured staff members, Kelly Gill, who works out of my Fresno office. He is a member of the Marine Wing Communications Squadron 48, attached to the 3rd Marine Aircraft Wing, 1st Marine Expeditionary Force that is now in Iraq.

Chief Warrant Officer Sailors has spent 17 years in the Marine Corps and is a second-generation marine. His wife Liz and their two children are awaiting his return to their home in Galt, CA. His parents, Delbert and Carol Sailors, live in California as well.

I pray that Patrick Sailors and all of our men and women are safely returned to their families as soon as possible.

Madam President, one of the things I have noticed—I am sure you have noticed—is that many of those who are losing their lives are parents. Before the vote on the resolution giving the President the authority to go to war without U.N. backing, I had a conversation with one of the most treasured Members of this body who had fought in World War II. He pointed out to me that so many of our people who are over in Iraq are members of the Reserves and the Guard. They have families. They have children. They have spouses.

I am very concerned about those families and about the children of those dual-military families. I am very concerned about deploying a mother and a father into a combat zone at the same time.

Two weeks ago I introduced S. 687 which would prohibit the concurrent deployment of both parents with minor children to a combat zone. I hope my colleagues will join me in this legislation.

In discussing education legislation back home, it has come to my attention that in school districts where there is a heavy population of military families, they are finding that the young children there are crying out for help during this time. Impact aid is something that we give to these areas to help them meet the needs of those families. Clearly, they need this help at this time.

There are two ways to help: One is to push forward with impact aid—I hope we will do that—and, secondly, to help me with this legislation which would say that two parents of a minor child cannot go to a combat zone at the same time.

Last week there was an editorial in the Washington Post entitled ''Mothers at War.'' The editorial calls on the Department of Defense to consider staggering the deployment of two parents so the impact on children is minimized. That is exactly what my legislation does. I hope I will get help with it.

It is a horror to lose one parent in a war and one that one never, ever gets over. To lose two parents in such a circumstance would be beyond devastation. The Department of Defense should work to ensure that the children of dual military families never have to suffer seeing both parents sent off to a combat zone at the same time. This is an issue whose time has come.

I ask, what is the order at this time?

The PRESIDING OFFICER (Mr. CORNYN). Morning business is to conclude at 10.

Mrs. BOXER. Is it the understanding, further making a parliamentary inquiry, that the Democrats have until 10 or is that not determined?

The PRESIDING OFFICER. The Senator is correct.

Mrs. BOXER. I will continue until 10.

Mr. REID. Madam President, if the Senator from California will yield, the Senator from Texas is here to speak. I am sure the Republican leadership would not care if we extended morning business so she could complete her statement. I have spoken to the distinguished Senator from Colorado who will speak about a Colorado judge who will be up next.

I ask unanimous consent that the Senator from Texas be allowed to continue as in morning business after the hour of 10 until she completes her statement.

The PRESIDING OFFICER. Is there objection?

Mr. ALLARD. No objection.

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

Mrs. BOXER. I wanted to make sure I was functioning under the rules. It is very important that we have a chance to pay tribute to the young men and women who are out there. The debate over what the expectations were in this war will go on for many weeks and months and years. I am not here to debate that. What I am here to say is that when all of us said that war is a last resort—and that was stated by everyone—I think we see daily why we said that. We see daily why we have to try everything short of war that we can.

In my own history in the Senate, I have voted to go to war twice. I voted

not to go twice. Each of us in our own mind makes this decision. Of course, our voters will decide whether we were correct or not. But regardless of the policy fights, what we have to continually remember, every single minute, is that we have our sons and daughters over there right now.

Unlike other wars, many of them are parents. So the tragedy of losing them cuts deeper and deeper than were they not, because the tragedy cuts to the parents and the grandparents and to the spouses and to the children. And for a child to really never know their father or mother cuts very deep.

I pray that this war ends soon. I pray that we don't see more of these deaths and casualties and POWs. I pray that the POWs are treated right—they must be treated right according to the Geneva Conventions—that we find out more about them and that the Red Cross can get in there and see that they are OK. I pray that we won't see casualties to innocent children and women. I pray for a lot.

Today I pay tribute to my Californians who will never come back and see our beautiful State. I hope I won't have to come here in the days and weeks to come with more names.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I begin by saying I appreciate Senator ENZI. Senator ENZI came to the floor to speak about a subject very important to him. I asked him if he would mind letting us spend this entire hour in a tribute to the troops. He readily agreed. I appreciate his courtesy because we are reserving the first hour of every day when our troops are in the field to giving tribute to them, talking about some of the events that have happened in the field, talking about some of the acts of heroism, the individual acts, showing pictures of what life is like over there. I have done that on several occasions. I will again.

Today I want to talk about our prisoners. As the distinguished Chair understands—the Presiding Officer at this time is the other Senator from Texas—Texas is the base for the largest number of our active-duty military. One in 10 active-duty personnel calls Texas home. It is the home base for 114,000 active-duty service members. California comes in second with 107,000. North Carolina comes in third with 86,000. So we do feel a personal effect of this war. We also feel a sense of pride that it is our young men and women, along with all of those from the other States, who are out there on the front lines, protecting the freedom we enjoy so much every day.

I would like to talk about some of those who have made the ultimate sacrifice and some of those about whom we are not sure at this time. Cpl Brian Matthew Kennedy, U.S. Marine Corps, 25 years old, from Houston, TX, grew up in Glenville, IL. He called his mom on March 18 to tell her he was about to go into action. ''It was very short and very special,'' she says of the call. Three days later, he died, when his Sea Knight helicopter crashed in Kuwait. He said to his dad: We are ready. We are ready. We are trained. We are ready to go. He was very proud. His parents are very proud of him.

SSgt Phillip Jordan, U.S. Marine Corps, 42 years of age, Brazoria, TX: Everyone called him Gump because he was so relentlessly upbeat. His son Tyler, 6, wants to be a marine like his father who was killed in a fire fight after a group of Iraqi soldiers feigned surrender.

Some are missing. Specialist James Kiehl, U.S. Army, 22, Comfort, TX, a computer technician with the 507th Maintenance Company: Kiehl was among the missing in the convoy ambush near An Nasiriya. His father Randy has been monitoring war news on two televisions, three phone lines, and a computer, keeping up a strong front and a strong face for the media, just in case they showed James any footage from back home.

PVT Ruben Estrella-Soto, U.S. Army, 18, El Paso: His father opposed his enlisting but he wanted to study engineering, and he was enthusiastic about going into the military and getting his education. He disappeared in the ambush on March 23 along with his friend Edgar Hernandez, who later turned up on Iraqi TV. But Estrella-Soto's fate was unknown. ''Not knowing anything is hard,'' Ruben Estrella, Sr., told reporters.

CWO Johnny Villareal Mata, U.S. Army, 35, Pecos, TX: Mata grew up in a desert town just 200 miles from Fort Bliss, where his 507th Maintenance Company is based.

SP Edgar Adan Hernandez, U.S. Army, 21 years old, Alton, TX: ''He's got a noble character,'' his mother, Maria de la Luz Hernandez, says in Spanish. She then inadvertently slipped into the past tense: ''He was a good brother, a good son, respectful to the whole world.'' Hernandez, though, she believes is really alive. And he, too, was shown on Iraqi TV.

Captured: Army SP Shoshana Johnson, 30 years old, El Paso, TX: Her name means ''rose'' in Hebrew, the inspiration of an aunt who once worked as a nurse in Brooklyn. But her family is Panamanian American, and although she grew up in an Army family, she never expected to find herself on the front line. She is funloving, her younger sister Nikki says. She also says, ''She is outgoing, independent and trustworthy—definitely not the kind of person who stays in front of the TV day in and day out.'' Shoshana's dream was to be a chef, but culinary school costs a lot of money, and Army cook was close enough. It seemed safe enough, too.

But early on the morning of March 23, her father, Claude, was flipping through the channels looking for a cartoon show for Shoshana's two-year-old daughter, Janelle. He happened to catch a newscast on the Spanish language network, Telemundo. ''They said five Americans had been captured in Iraq. I caught one African-American female, 30 years old, from the 507th. Her name was Shana. I said it's got to be her.''

It was. Now her large extended family, including more than a dozen cousins, is watching and waiting. They are inspired by the relatives of Elizabeth Smart who helped stay in the forefront of the press until their 15-year-old kidnapped daughter was returned. ''We just want her to be treated humanely,'' Nikki told Newsweek, ''and to return home swiftly and safely.''

I talked to the mother of one of those killed in Afghanistan last week and she said, ''What I want is to make sure that my son did not die in vain.'' I assured her that her son did not die in vain; that the war on terrorism is going to protect the freedom for children and grandchildren throughout America, and our staying vigilant and staying on course will ensure that none of those who are already dead or are missing will be forgotten. They have paid a heavy price for freedom and we will always revere and respect them for what they have done for our country.

That concludes the tributes for today. The Senate is setting aside 1 hour every day for people to come to the floor and talk about some of the wonderful acts that are being done by our young men and women on the field as we speak today—protecting the way of life we have come to enjoy.

Mr. WYDEN. Mr. President, I speak today with a profound sense of loss. A brave, young soldier from my home State of Oregon, Brandon S. Tobler, was killed in Iraq. Oregon's first war fatality, Army Reserve SP Brandon Tobler, who was only 19, lost his life in a Humvee accident during a sand storm. I have the last correspondence Brandon's parents received from their son, an e-mail sent just 2 weeks prior to his death on March 22, 2003.

Brandon was the only son of Leon and Gail Tobler of Portland. He grew up there and joined the military to help pay for college. He was in a convoy headed to Baghdad providing engineering support to the combat troops. Private Tobler's death reminds us that a soldier doesn't have to be on the combat line to face tremendous danger and possible death. His letter reminds of the bravery of each and every person who puts on a uniform for the United States. Private Tobler will be laid to rest in the Willamette National Cemetery in Portland, OR, on April 3, 2003.

I ask unanimous consent that Brandon's letter be printed in the RECORD.

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

HEY MOM AND DAD, How are things with you, I hope you are both doing ok. I am doing fine, things here are going ok we are just keeping busy. I am a little stressed but other than that I am alright, I have been loaded down with a lot of tasks that I have

not even been trained for, but I think I am doing an ok job. Anyway I am sorry that I have not written you guys lately and I know I have been writing Val a bit more than you guys and that is something I really intend to change, I just want you guys to know that I miss you guys a lot and love you guys even more and I thank you both for the person you made me become and all of the things you have struggled to get me over the years. I really appreciate the support that you guys have given me and accepting my enlistment in the Army. I feel that if I can make a difference out here then I have done my part. If I can save one life, if I can do something that makes a family sleep easier at night without fear then I have done my purpose, cause I know now that's what my calling is in life, not to make money or be powerful and wealthy but to simply make a difference. And I thank you my loving parents for all that you have done to get me this far, but now I have to take the next step and make a difference for someone else out there. Well go ahead and pass this around to everyone in the family, Val too . . . And to the family my love and best wishes and prayers go out to you, little Veronica or shall I say big Veronica, I miss playing with her and being her big cousin but at least my being here will help keep her safe and grow up happy and full of life as she is already. So to my family, if you see a soldier one of my comrades in arms, please thank them for the service they give, pray for them because we as soldiers give up sooo much to come out here and in sometimes make the ultimate sacrifice in the name of freedom and soldiers could always use encouragement and a thanks. . . Well my love to you guys and I'll see you soon. . .

Love to all,

BRANDON.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF TIMOTHY M. TYMKOVICH, OF COLORADO, TO BE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the consideration of Executive Calendar No. 55, which the clerk will report.

The legislative clerk read as follows:

Nomination of Timothy M. Tymkovich, of Colorado, to be United States Circuit Judge for the Tenth Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 6 hours of debate, with the time equally divided in the usual form.

The Senator from Colorado is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ALLARD. Mr. President, I strongly support the confirmation of Tim Tymkovich as a Federal judge on the Tenth Circuit Court of Appeals. The nomination is before the Senate. I ask my colleagues to join me in supporting his confirmation.

Two years ago, one of the most talented lawyers in the State of Colorado faced a rather large but very exciting dilemma. Most of us would not look at his particular situation as a dilemma at all but, instead, view it as a welcome set of exciting career opportunities.

With the new administration filling vacancies and political appointments, he was offered the chance to serve the people of the United States, a chance to use his skills as a premier attorney through the Federal Government. This lawyer had practiced both civil litigation and appeals with an emphasis on regulatory and administrative law, particularly in the areas of telecommunications and public utilities. He served for 5 years as Colorado's solicitor general. He served as a law clerk to Justice William H. Erickson of the Colorado Supreme Court.

With all this experience under his belt, he had to decide whether to pursue a career with the Department of the Interior under the leadership of fellow Coloradan Gale Norton or to continue working in his successful law practice and to answer the call of his countrymen and President and to strive to serve the Nation as a judge on the Tenth Circuit Court of Appeals.

What choice did the attorney of whom I speak make? What path did Tim Tymkovich choose? He chose to pursue the Federal judgeship and to fulfill his sincere desire to lead a life of public service, a life dedicated to upholding the law and our Constitution.

On May 25, 2001, President Bush nominated Mr. Tymkovich to the Tenth Circuit Court of Appeals. On February 12, 2003, under the leadership of Senator ORRIN HATCH, the chairman of the Senate Judiciary Committee, Mr. Tymkovich finally received a hearing. Today, nearly 2 years later, the Senate has picked up his nomination for consideration by the entire body.

Today's actions, 23 months after his nomination, move us closer to fulfilling the Senate's duty as laid out in the Constitution through the advise and consent clause of article II. This vote has been a long time in the making. After several letters, several floor statements, and almost 2 years after the original date of his nomination, Tim Tymkovich is finally getting an up-or-down vote.

I thank Senator HATCH for moving his nomination out of the committee. I thank the majority leader, Senator FRIST, for scheduling this debate and the vote later on today.

The nominating process is a grueling one. To be confirmed, Mr. Tymkovich, along with his fellow nominees, put his life on hold to await action by the Senate on his nomination. In Mr. Tymkovich's case, he had to endure 2 years of uncertainty, not knowing whether he should change his law firm partnership, pursue other options, or wait for the Senate to grind forward, with each step and every decision scrutinized by the Senate. Undoubtedly, he had other career opportunities, other choices that would have led to remarkable successes. As you will recall, I mentioned the Department of the Interior possibility at the beginning of my remarks. Yet he chose to pursue the Tenth Circuit court nomination.

As we have witnessed with the Miguel Estrada debate, the judicial nomination process has broken down into partisan politics and entrenchment, taking a heavy toll on the life of the nominee and on the quality of justice delivered to the American people.

Today we have the opportunity to begin to correct this dangerous path we have been traveling. Tim Tymkovich has my unqualified support. Confirmation of his nomination by this body will prove to be a great service to the people of the United States. His nomination has enjoyed broad bipartisan support—support from judges and colleagues, both Democrat and Republican policymakers.

I have a series of charts highlighting support for his confirmation, charts I would like to share with you today.

The first chart quotes Roy Romer, former Governor of Colorado, and, I might add, former Democratic National Committee chairman who served under the tenure of President Bill Clinton and who is now superintendent of the Los Angeles United School District. Mr. Romer is a strong supporter of Mr. Tymkovich and has expressed his sentiment to the Judiciary Committee.

Governor Romer, in a letter to the committee, wrote:

Mr. Tymkovich served the State of Colorado from 1991 through 1996 during the latter part of my tenure as Governor of the State of Colorado. He served with distinction and was a strong advocate in legal matters for Colorado. He also demonstrated a capacity to work closely with Colorado Democrats, as well as Republicans, as Solicitor General. . . . He was always a straight shooter in giving legal advice to me and my top staff.

Governor Romer believes his past legal experiences have given Mr. Tymkovich a broad understanding of the varied legal issues that may come before him on the Tenth Circuit. Governor Romer believes Mr. Tymkovich will bring strong legal credentials to the court and a judicial temperament that should garner the support of the Senate.

I ask unanimous consent that the letter from Governor Romer be printed in the RECORD.

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

LOS ANGELES UNIFIED SCHOOL DISTRICT, BOARD OF EDUCATION,
September 6, 2002.

Re Nomination of Timothy M. Tymkovich to the Tenth Circuit Court of Appeals.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I write this letter in support of the nomination of Timothy M. Tymkovich to the Tenth Circuit Court of Appeals in Colorado. I have both worked with Mr. Tymkovich in his capacity as Colorado's Solicitor General or as a private practitioner in Denver.

Mr. Tymkovich served the State of Colorado from 1991 through 1996 during the latter part of my tenure as Governor of the State of Colorado. He served with distinction and was a strong advocate in legal matters for Colorado. He also demonstrated a capacity to work closely with Colorado Democrats as well as Republicans as Solicitor General, both in my Administration and in Colorado's General Assembly. He was always a straight shooter in giving legal advice to me and my top Staff. He is currently in private practice in Denver and has represented Chris Romer's Colorado Education Network on state taxation and public policy matters. He recently helped craft an analysis of Colorado's constitutional budget law that could have important positive implications for our State in a lean economic year.

Mr. Tymkovich is a native of Colorado and I believe his past legal experiences have given him a broad understanding of the varied legal issues that may come before him in the Tenth Circuit. In addition, he has served Colorado in many ways in both the public and private sectors. He presently serves as Chairman of the Colorado Board of Ethics (which advises the Governor and executive branch on state ethics matters) and he recently chaired a bipartisan task force on civil justice reform. He currently is a member of the American Bar Association's American Bar Foundation and the American Law Institute, two important organizations dedicated to the impartial administration of justice. The ABA has already found him qualified to serve on the Tenth Circuit.

Mr. Tymkovich's nomination is currently waiting review by the Senate Judiciary Committee. He has bipartisan support in Colorado and both major newspapers in Colorado have praised his nomination. I believe that he will bring strong legal credentials and a judicial temperament that should garner the support of the United States Senate.

I urge you to favorably review Mr. Tymkovich's nomination and refer it to the full Senate of the United States.

Sincerely,

ROY ROMER,
Superintendent of Schools.

Mr. ALLARD. Mr. President, Mr. Tymkovich is well respected for his approach to the law and for problem solving. He manages cases and clients with civility and understanding, setting a high example for the legal community.

On a second chart, I highlight excerpts from an editorial written by the Rocky Mountain News. On June 3, 2001, the paper editorialized:

If Senators give Tymkovich a serious look, they'll find someone who combines intellectual heft and steady temperament.

On February 16, 2003, the News restated their endorsement of Mr. Tymkovich, writing:

We wish him prompt confirmation.

Mr. President, I ask unanimous consent that the two editorials from the Rocky Mountain News be printed in the RECORD.

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

[From the Rocky Mountain News, June 3, 2001]

GOOD CHOICE FOR COURT

It remains to be seen whether Tim Tymkovich's nomination for the 10th Circuit Court of Appeals will founder on U.S. Senate partisanship. He once was, after all, state solicitor general under Gale Norton, now one of President Bush's most controversial Cabinet members.

But if senators give Tymkovitch a serious look, they'll find someone who combines the intellectual heft and steady temperament that most senators profess to seek in a prospective Federal judge.

Previously, Tymkovitch's most visible moment involved the state's defense of voter-passed Amendment 2, which the courts overturned. But however unsuccessful his defense of that amendment may have been, his arguments were measured and well-crafted—just as they have been on many other legal topics.

[From the Rocky Mountain News, Feb. 16, 2003]

TYMKOVICH'S HEARING

Tim Tymkovich, former Colorado Solicitor General, waited nearly 21 months for a hearing before the Senate Judiciary Committee on his nomination for the 10th Circuit U.S. Court of Appeals.

Why, that's just about long enough for an elephant to give birth, which is no accident, because the intolerable delays in judicial confirmations is very much a matter of elephants—and donkeys.

When Sen. Jim Jeffords of Vermont defected from the Republican party and turned over control of the Senate to the Democrats, they made a determined effort to prevent President Bush from naming philosophically compatible judges, as presidents of both parties have long done.

Tymkovich, nominated just days after Jeffords' switch, was caught in the political gridlock.

He finally had his hearing Wednesday. We wish him prompt confirmation.

Mr. ALLARD. Mr. President, the Denver Post, a paper that endorsed Al Gore over George Bush, stated on May 30, 2001, that Tim Tymkovich:

has gained a local reputation as a thoughtful, insightful attorney who knows the law and works hard to uphold it. . . .We urge the Senate to confirm Tymkovich to fill a seat that has sat vacant since 1999. . . .

I ask unanimous consent that the Denver Post article be printed in the RECORD.

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

[From the Denver Post, May 30, 2001]

TYMKOVICH SHOULD SERVE WELL

We hope the new Democratic majority on the U.S. Senate will set aside partisan politics when it considers Denver attorney Tim Tymkovich's nomination to serve on the 10th U.S. Circuit Court of Appeals.

But we also hope the American Bar Association will continue to voluntarily scrutinize all nominees headed to the Senate, even though the Bush administration stripped the ABA of its official role in screening judicial candidates prior to their nomination.

Tymkovich should be no exception, though he has gained a local reputation as a thoughtful, insightful attorney who knows the law and works hard to uphold it.

He first gained real notice when, as state solicitor general, he was assigned to defend amendment 2, a Colorado initiative that would have banned laws to protect gays.

Then-Attorney General Gale Norton was legally obliged to defend the amendment. The fact that the U.S. Supreme Court rejected this sloppily worded and unconstitutional amendment doesn't reflect on Tymkovich's legal skills or politics.

Indeed, Jean Dubofsky, a former Colorado Supreme Court justice who successfully led the legal challenge against Amendment 2, supports Tymkovich's nomination.

Tymkovich is only 44, but he has been practicing law in the public and private arenas since 1982 and is a long-time member of the American Bar Association, the American Law Institute and the International Society of Barristers.

He also is a member of the Federalist Society, which comes as no surprise considering how that group's conservative, Libertarian orientation dovetails with the conservative slant of the Bush administration.

Still, we don't expect Bush to be nominating liberal Democrats to lifelong positions on the federal bench anytime soon. And Tymkovich is far less conservative than his fellow nominee to the 10th U.S. Circuit Court. Michael McConnell, a law professor at the University of Utah, has defended vouchers for religious schools and argued to reinterpret the Constitution's division between church and state.

The conservative Christian's experience in pubic law is far deeper than Tymkovich's, but his reputation as an ideologue likely will stymie his chances with the Senate.

While we cannot support McConnell, we urge the Senate to confirm Tymkovich to fill a seat that has sat vacant since 1999, when Judge John Porfilio took senior status.

We also encourage the Senate to carefully defend the Judiciary from any Bush efforts at 'court packing,' whereby nominees are selected for their political philosophy rather than their legal expertise.

Federal judges and justices are obligated to carefully apply the law of the land, not the politics of the president in power.

Mr. ALLARD. Mr. Tymkovich understands the West, its community, and its past. He has traveled extensively throughout the States of the Tenth Circuit with his wife Suzanne, a western historian and novelist, as well as an accomplished attorney in her own right. Together they traveled near and far, covering the old stomping grounds of legendary western figures such as Butch Cassidy and others.

Undoubtedly, this deep knowledge of western heritage will aid in his duties and his understanding of the law, as well as the rich judicial history of the Tenth Circuit.

Tim Tymkovich's commitment to public service is unparalleled. I have had many conversations with him, and know him to be a man of keen intellect and integrity. Through our many conversations, I have developed a strong understanding of Tim's deep commitment to public service and his strong personal respect for the rule of law in protecting people and the interests of the State.

Tim Tymkovich's legal credentials reveal a man who values independence

and fairness in the judicial process. A man who understands the implication of a lifetime appointment to our Nation's courts, a man who truly believes that there is no higher professional calling than to serve the American people through the impartial administration of the law. He will serve our Nation with the utmost of respect to our country and our Constitution, and for this reason, I urge my colleagues to vote favorably to confirm his nomination.

No one has a better understanding of the character and intellectual prowess of an attorney than his or her co-workers and peers. The legal profession is filled with practicing attorneys, lawyers who work in private firms, in the public sector, and who serve the public from the bench. The impression left on other attorneys by encounters with them at various stages of litigation and negotiation is obviously an important factor in determining whether a nominee is well suited for the bench. They work day-in and day-out with the nominee and have first hand knowledge about the type of judge a particular attorney will make. At this time, I would like to share some of the comments made by Mr. Tymkovich's colleagues.

In the third chart, I have reprinted a statement from William H. Erickson, former Chief Justice to the Colorado Supreme Court, and to whom Mr. Tymkovich served as a law clerk. Justice Erickson stated:

> I served on the Colorado Supreme Court for twenty-five years and had the privilege of working with a number of outstanding law clerks. Tim was one of the finest clerks that served in my chambers. He has an outstanding legal background that qualifies him for service on the Tenth Circuit.

Justice Erickson has maintained a close relationship with Tim, his wife, and their two sons, and has expressed over and over again his strong belief that he would—and will—make a significant addition to the Tenth Circuit.

In a letter to the Senate Judiciary Committee, Justice Erickson wrote that,

> As counsel to the Columbine Review Commission that investigated the Columbine High School shooting, Tymkovich served with great distinction and materially assisted the Commission's preparation of a report that hopefully will prevent other school shootings.

In a letter to Senator HATCH dated January 23, 2003, five former justices of the Colorado Supreme Court urged the Senate's timely consideration of his nomination. The justices, including Justice Jean Dubofsky, wrote:

> Over the past nearly twenty years, each of us has had the opportunity to observe Timothy M. Tymkovich as a practitioner employed by or appearing before the Colorado Supreme Court. During that time, Mr. Tymkovich served as a law clerk employed by one of the justices of our court and later as counsel representing the State of Colorado before the Court. We have also had the opportunity to observe Mr. Tymkovich as an attorney serving in bar organizations such as the American Law Institute, the American Bar Foundation and as a staff attorney of public commissions. Based on our professional experiences, we are of the unanimous judgment that he is well qualified and most able to serve as an appellate judge of the United States Court of Appeals.

This group of justices, coming from varied political backgrounds and differing professional experiences and diverse legal careers and different racial, gender and ethnic backgrounds, unanimously support the confirmation of Tim Tymkovich by the entire Senate. An endorsement of this kind cannot, and must not, be taken lightly. These justices, Jean Dubofsky, Joseph Quinn, William Neighbors, Gregory Scott, and Luis Rovira, consider Mr. Tymkovich to possess the necessary attributes of a Federal judge, and that Colorado and the Nation should no longer be subjected to undue delay on his nomination.

The justices' letter ends with this powerful statement:

> . . . [W]e speak as one voice, resolute in our belief that the people are entitled to and that Mr. Tymkovich is most deserving of consideration . . . Mr. Tymkovich's experience, practice, public service, temperament and skills will serve the people of the United States well.

Their unqualified support speaks volumes about Tymkovich's credentials. This powerful and unequivocal endorsement deserves repeating:

> . . . [W]e speak as one voice, resolute in our belief that the people are entitled to and that Mr. Tymkovich is most deserving of consideration . . . Mr. Tymkovich's experience, practice, public service, temperament and skills will serve the people of the United States well.

This statement deserves our attention and our respect.

I ask for unanimous consent that the letter from these five justices be printed in the RECORD.

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

JANUARY 23, 2003

Re Senate consideration of the nomination of Timothy M. Tymkovich as a Judge of the United States Court of Appeals for the Tenth Circuit.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN HATCH: We are all former justices of the Colorado Supreme Court. We write to express our personal and professional concern and seek the timely consideration of the nomination of Timothy M. Tymkovich as a Judge of the United States Court of Appeals for the Tenth Circuit. Ever mindful of the Separation of Powers Doctrine as well as the Supremacy Clause of the United States Constitution, we do not write to impose or suggest our will should prevail over that of the United States Senate. Instead, as private citizens with a unique perspective concerning the attibutes and abilities of Mr. Tymkovich, we write to petition your attention to our concern to urge that a hearing be scheduled for Mr. Tymkovich.

Over the past nearly twenty years, each of us has had the opportunity to observe Timothy M. Tymkovich as a practitioner employed by or appearing before the Colorado Supreme Court. During that time, Mr. Tymkovich served as a law clerk employed by one of the justices of our court and later as counsel representing the State of Colorado before the Court. We have also had the opportunity to observe Mr. Tymkovich as an attorney serving in bar organizations such as the American Law Institute, the American Bar Foundation and as a staff attorney of public commissions.

Based on our professional experiences, we are of the unanimous judgment that he is well qualified and most able to serve as an appellate judge of the United States Court of Appeals.

Consistent with our professional assessments, the President of the United States has seen fit to nominate Mr. Tymkovich to serve as a judge on the Tenth Circuit Court of Appeals. However, while nominated more than a year ago, we understand that his nomination is currently awaiting consideration by the Senate Judiciary Committee that you chair. We do not propose to instruct the Chair in the conduct of the Senate's business, for we are not able nor do we intend to assume such a role or purpose. Nonetheless, we do ask that the President's nomination of Mr. Tymkovich be considered expeditiously.

Mr. Chairman, despite coming from varied political backgrounds and differing professional experiences as diverse legal careers and different racial, gender and ethnic backgrounds, we are of the unanimous opinion that Mr. Tymkovich should be considered by your Committee and confirmed by the entire Senate. We also conclude and share the opinion that he not only possesses the attributes we appreciate in judges, both federal and state, but that he is entitled to fair and civil treatment by the Senate Judiciary Committee. The citizens of Colorado and indeed our Nation should no longer be subjected to undue delay confronted by anything other than a full and fair review of his nomination in accordance with the rules of the United States Senate.

Without listing his considerable accomplishments as an attorney engaged in public service and private practice, we speak as one vote, resolute in our belief that the people are entitled to and that Mr. Tymkovich is most deserving of consideration by your Committee. The President's nomination is a considerate one and Mr. Tymkovich's experience, practice, public service, temperament and skills will serve the people of the United States well.

Together, therefore, we respectfully urge you to place his nomination before the Senate Judiciary Committee so that a fair and prompt review of Mr. Tymkovich's credentials can be made without much further delay.

Moreover, we most strongly recommend and heartily urge the Senate Judiciary Committee refer his nomination to the full Senate of the United States for a definitive vote as soon as practicable.

Very truly yours,

JEAN E. DUBOFSKY,
Justice.
JOSEPH O. QUINN,
Chief Justice.
WILLIAM D. NEIGHBORS,
Justice.
GREGORY KELLAN SCOTT,
Justice.
LUIS D. ROVIRA,
Chief Justice.

As the end of the second year of his nomination approaches, I sincerely hope that my colleagues will act today to fill the 4-year vacancy on the Tenth Circuit, so that the people of Colorado, Utah, New Mexico, Oklahoma and Nebraska, and indeed the Nation, will no

longer be short-changed by a vacant bench. While this seat has remained empty for nearly 4 years, the States that comprise the Tenth Circuit have experienced unprecedented population growth, and causing a docket overload at the Federal level. The vacancy must be filled, and Tymkovich is the proper person to fill the seat.

The events of September 11 clearly demonstrate an active effort by the enemies of the United States to destroy the liberties and freedom of our Nation. The most basic of our country's values and traditions came under attack, and now we are taking action against those perpetrators. In the wake of tragedy, Congress has enacted new laws that provide financial assistance to businesses, families and defense, and we are currently taking strong military measures to suffocate terrorists and destroy the hateful organizations that work to undermine our society and destroy our liberty.

I am sure that my colleagues will agree that a necessary component of providing justice and protecting liberty and freedom is an efficient court system, a court equipped with the personnel and resources that enable it to fulfill its constitutional role. Today, this body has another opportunity to restore the faith of the citizenry and to fill a 4-year vacancy. I urge the Senate to show the American people that the Senate is indeed interested in serving justice, in protecting our laws and our people, and to support the nomination of Tim Tymkovich. He is highly qualified and will serve his country with the utmost of patriotism, and respect for adherence to constitutional principles. He respects our laws. I strongly urge my colleagues to vote for the nomination of Tim Tymkovich to the Tenth Circuit Court of Appeals.

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. ALLARD. I ask unanimous consent the quorum call be rescinded.

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

Mr. ALLARD. I ask unanimous consent the time used during the quorum call time be charged equally to both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. FEINGOLD. Mr. President, I voted against the nomination of Timothy Tymkovich to be a judge on the U.S. Court of Appeals for the Tenth Circuit in the Judiciary Committee, and I will do so again today. I would like to take a few minutes to explain my decision.

I cannot support the nomination of Mr. Tymkovich because I am not convinced that he will give all those who appear before him a fair and impartial hearing. I am concerned that he lacks a commitment to apply and uphold our Constitution's equal protection guarantees, especially in protecting gay Americans from discrimination.

In 1996, in a case called Romer v. Evans, the Supreme Court ruled unconstitutional a Colorado ballot initiative that sought to overturn city ordinances prohibiting discrimination based on sexual orientation. As solicitor general of Colorado, Mr. Tymkovich defended the ballot initiative on behalf of the State. Obviously, I know it was his job to do that. But I am concerned that it is his personal belief—his personal belief—that gay Americans do not have a right to equal protection and equal justice under the laws, and he did not convince me he would put aside those personal beliefs when he becomes a judge.

Mr. Tymkovich wrote a law review article that was published in 1997 by the University of Colorado about the Romer decision. In this article, which, I might add, he wrote and published after he left his job as Colorado's solicitor general, he, in my view, went beyond representing his client and actually presented his personal views. He forcefully promoted the view that laws against discrimination based on sexual orientation in activities like employment, housing, and education in places like Denver, Aspen, and Boulder somehow conferred ''special rights or protections'' on gays and lesbians. Let me quote a bit from his article. He wrote:

> A number of governmental entities in Colorado had granted special rights or protections to homosexuals and bisexuals: the cities of Denver, Boulder, and Aspen enacted ordinances prohibiting discrimination based on sexual orientation in jobs, housing, and public accommodations; the Colorado Civil Rights Commission had moved to extend the state's civil rights act to ban discrimination based upon sexual orientation; the governor of Colorado issued an order prohibiting job discrimination for state employees based on sexual orientation and began to fashion ''sensitivity'' training for the state's executive branch; and public educational institutions had begun adopting policies prohibiting discrimination based on sexual orientation.

Mr. Tymkovich's view is that employers and landlords have the ''liberty,'' or right, to discriminate against individuals based on their sexual orientation. He wrote:

> Eliminating the liberty of landlords and employers to take account of homosexuality send the unmistakable message that homosexual behavior, like race, is a characteristic which only an irrational bigot would consider. By restoring government neutrality of this difficult and divisive moral issue, Amendment 2 promotes freedom and diversity by allowing different groups in the community to hold, and act on, different views on this question.

I sought to question Mr. Tymkovich about this. And when I attempted to probe Mr. Tymkovich at his confirmation hearing about his view that civil rights laws like the city ordinances at issue in Romer somehow confer ''special rights'' on gay Americans, he was suddenly and, to me, almost inexplicably evasive. I was frustrated with Mr. Tymkovich's reluctance to answer questions that would reveal his thought process. I was interested in his views on an important issue for our Nation—civil rights and the distinction he saw between rights for African Americans and rights for gay Americans. Even though he had already shared his personal views on the question of gay rights in a law review article—a public forum—he suddenly seemed reluctant to discuss those views with the committee.

I asked Mr. Tymkovich a question as follows:

> As you discussed in your article, you believe that the Supreme Court was wrong to be hostile to the political decision of a majority of Colorado voters who supported adoption of the Colorado amendment. You state that Colorado voters made ''a seemingly good-faith policy choice.''
>
> If I understand you correctly, you agree with Justice Scalia's dissent in Romer and that the court improperly injected itself into a political debate. Is that your view?

That was the conclusion of my question. Here was Mr. Tymkovich's initial response:

> Senator, that's an excellent question, and I appreciate the opportunity to clarify and reflect on the issue below.
>
> As you know from your participation in this body, there are important issues of public policy debate that cross party lines or are bipartisan and very difficult issues. In Colorado, the question of whether or not to add sexual orientation to State and local anti-discrimination laws has been a very important and ongoing political debate in our State. And certainly, Amendment 2 was in part within that context and dialogue. And certainly many people respectfully disagreed with the legislative pronouncement there, and I think the point I was trying to make in those remarks and certainly in the case is that the courts were not a good forum for airing sort of political or legislative policy-type arguments, and that the courts are best able to address a constitutional principle when they have the concrete facts and law before them and not sort of rhetorical or legislative-type pronouncements.
>
> The Amendment 2 case had a strong mix of sort of a policy debate in that sense, and I think my comment was that the policy debate and certainly the arguments we made to the courts is that that would be better left to the political process.

I then followed up by saying:

> I am taking that as a yes, that you agree with Justice Scalia that the Court improperly injected itself into a political debate. Do you believe that the Court should have—is that fair?

Mr. Tymkovich responded:

> Senator, I think Justice Scalia accepted some of the presentation of the State, but then rejected others. So I don't wholly agree or disagree with the dissent in the case, but it does reflect some of the arguments that were made.

I then asked:

Do you agree with that point?

Mr. Tymkovich responded:

I agree—the presentation that the state made to the Supreme Court was that it was a policy debate and not subject to the Supremacy Clause of the equal protections. But, again, as I testified earlier, that argument, that presentation was not accepted by the Court, and regardless of my personal views, I am perfectly capable and willing to impartially apply that precedent.

The reason I am going through this is that it is important to make a record for this point. Mr. Tymkovich and I then had a dialog that lasted quite a few pages of the transcript where I repeatedly asked him to discuss his personal views on this issue, not simply the position he had argued on behalf of the State, given that he had discussed them in the law review article. He essentially refused to answer the question.

I ask unanimous consent that the full transcript of my questioning of Mr. Tymkovich be printed in the RECORD.

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

Senator FEINGOLD. I will go back to the issue of gay rights and your involvement as Solicitor General of Colorado in the case that led to the U.S. Supreme Court's *Romer v. Evans* decision. As has been discussed by Senator Schumer and Senator Sessions, you defended the ballot initiative on behalf of the State of Colorado. It was, I agree, your job to do that and I accept that. But I do want to ask you a bit about what perhaps goes beyond the zealous advocacy for your client, and this is the article that we are discussing, the 1997 University of Colorado Law Review, that forcefully presents your view that laws against discrimination based on sexual orientation in activities like employment, housing, and education in places like Denver, Aspen, and Boulder somehow conferred special rights or protections on gays and lesbians.

Let me ask you this: Do you believe that title VII of the Civil Rights Act of 1964, the landmark legislation prohibiting employment discrimination based on race, confers special rights on African Americans?

Mr. TYMKOVICH. Senator, the anti-discrimination laws in Colorado and at the Federal level are important protections to minorities and others that have faced discrimination. So to the extent that the baseline was no, you know, Federal or State protections based on ethnicity or race, the addition of those laws to the legislative pronouncement provides a protection, an additional protection that would not be available under the common law. So in that sense, certainly under Colorado law, additional protections are provided through the discrimination laws, and I might add that's an important part of the legislative process to identify and protect injustices out there.

Senator FEINGOLD. But what about my question? Does Title VII of the Civil Rights Act of 1964 confer special rights on African Americans?

Mr. TYMKOVICH. I'm not sure exactly what you mean by ''special rights,'' Senator, but I would say——

Senator FEINGOLD. Well, I am referring to the fact that your article seemed to say that the Colorado law conferred special rights or protections on gays and lesbians. I am asking you whether or not Title VII of the Civil Rights Act of 1964 in that same spirit in your view confers special rights on African Americans?

Mr. TYMKOVICH. No, Senator. I think it provides a civil remedy, some laws provide a criminal remedy, on behalf of discrimination, and certainly that's the intent and purpose of those laws.

Senator FEINGOLD. In that same spirit, do you think that Title VII wrongly protects Americans from employment discrimination based on race, ethnicity, national origin, religion, age, disability, or gender? Do you believe that an American who brings a claim of job discrimination based on any one or more of these categories is somehow enjoying special rights or protections?

Mr. TYMKOVICH. No, Senator. They're simply enjoying the protections that this body has provided to those particular groups.

Senator FEINGOLD. As you discussed in your article, you believe that the Supreme Court was wrong to be hostile to the political decision of a majority of Colorado voters who supported adoption of the Colorado amendment. You state that Colorado voters made ''a seemingly good-faith policy choice.''

If I understand you correctly, you agree with Justice Scalia's dissent in *Romer* and believe that the Court improperly injected itself into a political debate. Is that your view?

Mr. TYMKOVICH. Senator, that's an excellent question, and I appreciate the opportunity to clarify and reflect on the issue below.

As you know from your participation in this body, there are important issues of public policy debate that cross party lines or are bipartisan and very difficult issues. In Colorado, the question of whether or not to add sexual orientation to State and local anti-discrimination laws has been a very important and ongoing political debate in our State. And certainly Amendment 2 was in part within that context and dialogue. And certainly many people respectfully disagreed with the legislative pronouncement there, and I think the point I was trying to make in those remarks and certainly in the case is that the courts were not a good forum for airing sort of political or legislative policy-type arguments, and that the courts are best able to address a constitutional principle when they have the concrete facts and law before them and not sort of rhetorical or legislative-type pronouncements.

The Amendment 2 case had a strong mix of sort of a policy debate in that sense, and I think my comment was that the policy debate and certainly the arguments we made to the courts is that that would be better left to the political process.

Senator FEINGOLD. I am taking that as a yes, that you agree with Justice Scalia that the Court improperly injected itself into a political debate. Do you believe that the Court should have—is that fair?

Mr. TYMKOVICH. Senator, I think Justice Scalia accepted some of the presentation of the State, but they rejected others. So I don't wholly agree or disagree with the dissent in the case, but it does——

Senator FEINGOLD. Do you agree with that point?

Mr. TYMKOVICH [continuing]. Reflect some of the arguments that were made.

Senator FEINGOLD. Do you agree with that point?

Mr. TYMKOVICH. I agree—the presentation that the State made to the Supreme Court was that it was a policy debate and not subject to the Supremacy Clause of the equal protections. But, again, as I testified earlier, that argument, that presentation was not accepted by the Court, and regardless of my personal views, I am perfectly capable and willing to impartially apply that precedent.

Senator FEINGOLD. That isn't what I am asking. I have asked your personal view, and I take it that your personal view is that the Court did the wrong thing here and improperly injected itself into the political debate. I understand that you would follow the law based on the Court's decision.

Mr. TYMKOVICH. I would follow the law.

Senator FEINGOLD. Do you believe that the Court should have given more consideration to the privacy, associational, and religious rights of persons who do not condone homosexual behavior?

Mr. TYMKOVICH. Senator, the lower courts in Colorado had identified that there were religious and associational factors that would be implicated by the laws that were preempted by Amendment 2. I think, again, that that, as I've tried to explain in my previous testimony, is part of the political give-and-take, the public policy give-and-take in crafting a gay rights law that would accommodate certain interests, and certainly that's part of the policy debate that we've seen in our State. Certainly the Amendment 2 provision would have required that debate to go at the statewide level, and as I recall, even during the judicial proceedings on Amendment 2, there was a move to enact a statewide initiative that would——

Senator FEINGOLD. Okay. I accept that, but I am asking you your personal view. You are an expert on this. Do you think the Court should have given more consideration—you, do you think the Court should have given more consideration to the privacy, associational, and religious rights of persons who do not condone homosexual behavior?

Mr. TYMKOVICH. Senator, I think that in that case, as others, as an advocate, as a representative of my client, we were presenting what we thought were the best arguments based on the applicable case law——

Senator FEINGOLD. I am asking your view right now.

Mr. TYMKOVICH [continuing]. To the Supreme Court.

Senator FEINGOLD. I am not asking in your role as an advocate. I am asking in your view should the Court have taken that more into account?

Mr. TYMKOVICH. I think, as I've testified earlier, indicated in my article, that I believe that we had strong arguments based on the existing precedent at the time and asked that the Court accept that.

Senator FEINGOLD. Well, you seem to be refusing to give your own view on this, and I don't know why. This isn't a pending case. This is a case that was resolved by the Supreme Court. You have strong opinions indicated I here, and I don't understand why you can't give me your personal view.

Mr. TYMKOVICH. I think I've reflected the views that we presented to the Court, and as I've testified——

Senator FEINGOLD. You did do that and that is all you have done, and you are not answering my question.

Throughout our Nation's history, proponents of racial discrimination have used the argument that they should be free to discriminate based on their privacy, associational, or religious rights. In *Brown v. Board of Education of Topeka, Kansas,* the Supreme Court injected itself into a contentious political debate where in some parts of the country separate but equal schools were defended to the point of literally spilling blood over the issue.

Do you believe that *Brown v. Board of Eduation* was wrongly decided and that the Supreme Court should not have injected itself into the policy question of maintaining school segregation?

Mr. TYMKOVICH. Senator, it's an important question because certainly the history of discrimination in this country has had a very mixed and very sorry record at times, and the *Brown* decision is certainly a reflection of part of that history.

One of the reasons I went to law school was the influence of a book I read about the *Brown* case called ''Simple Justice'' that traced the history of the legal development from *Plessy v. Ferguson* to the *Brown* decision, and a very powerful historical book about the legal and social and ideological aspects of discrimination in this country.

So certainly *Brown* is one of the cornerstones of American jurisprudence, and certainly its foundation is a very important part——

Senator FEINGOLD. So you obviously don't disagree with that decision, and that is why I want to ask you: What is the difference in your mind between African Americans and gay people in terms of whether laws protecting them from discrimination are permissible?

Mr. TYMKOVICH. Senator, I think that it's a very important part of the public policy debate to analyze the rationale and the reasons for a particular legislative judgment. I don't sit here today as having a legislative agenda. I do not. My goal as a Tenth Circuit judge, if confirmed, would be to impartially and fairly and open-mindedly apply the law. You're asking me for a legislative judgment, and I certainly——

Senator FEINGOLD. No. I am asking you your personal opinion, having studied this in law school, having the question of discrimination having been one of the inspirations for your going to law school, and doing extremely well, I might add, and being a very distinguished lawyer. I am asking you what your thought process is here. I am asking you what your thought process is here. What is the difference between discrimination against African Americans and gay people?

Mr. TYMKOVICH. Senator, I think that, you know, again, to answer your question from a public policy standpoint, I believe that this body, Congress, which has debated whether or not to add sexual orientation to Title VII or to Federal law, and certainly the debate at the State level would be to take the testimony and the experiences of gay and lesbian Americans and apply that to the particular circumstances at work.

In Colorado, that's an important dialogue that is ongoing about to what extent the laws ought to be modified and changed to prevent discrimination and violence and harassment against gay and lesbian people. I support that legislative debate in our State. I don't think it's appropriate for me to take a personal view to the Federal bench, and I can commit to the body that I'd be able to apply the discrimination laws faithfully and carefully as a Tenth Circuit judge——

Senator FEINGOLD.—Well, Mr. Chairman, my time is up, but let me just say that I certainly respect Mr. Tymkovich and wish him well. But this process where we can't even get at sort of the thought process of a nominee on something as simple and important as how you relate discrimination against African Americans to the issue of discrimination against gay people, to me, Mr. Chairman, this is the problem we are having, that we are really not being given a chance to examine how these individuals will simply go through their thought process as judges, not whether there is a right answer or a wrong answer, but how will they go through the judicial process and how will they go through that thought process.

I think that is legitimate, and, again, I respect you and certainly you have tried to respond to me. But it makes it very, very difficult to analyze, especially in light of the fact that this nominee wrote an article, an extensive article about this very important subject, and all I am trying to do is to get his thought process as it compared to another body of law that he obviously thinks is valid.

So, with that, Mr. Chairman, I conclude and thank you and thank Senator Kennedy.

Mr. FEINGOLD. Mr. President, this kind of evasive testimony only makes it more difficult to analyze whether or not a nominee is well suited for a position on a Federal appeals court.

I was also troubled by Mr. Tymkovich's insistence that the Romer case presented a political question and should not have been decided by the courts.

The courts have played an important role in ensuring civil rights for all Americans. If our Nation left all questions of civil rights to the legislatures, school segregation might still be practiced in parts of the country today. In Brown v. Board of Education of Topeka, KS, the Supreme Court did its job by injecting itself in a contentious political debate and protecting the right of African Americans to equal education.

I understand that these are President Bush's nominees and that he has the right to nominate whomever he wants to the bench. But as much as it is our duty to fill vacancies in the Federal judiciary, it is also our duty to give great scrutiny to those nominees who have a record that calls into question their ability to give all those litigants who would appear before them a fair and impartial hearing.

I am more than pleased to vote to confirm judicial nominees that are fair-minded and supported by a consensus of Senators and the legal community, and, once again, I urge the President to send such nominees to the Senate. I have voted in favor of three previous Bush nominees to the Tenth Circuit, but I do not believe that Mr. Tymkovich is the right person for this seat.

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

Mr. CRAIG. Mr. President, I ask unanimous consent that time under the quorum call be divided equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CAMPBELL. Mr. President, I am pleased that Timothy Tymkovich's nomination to serve on the Tenth Circuit Court of Appeals has come before the full Senate for consideration here today.

Almost 7 weeks ago today, on February 12, 2003, along with my friend and colleague, Senator ALLARD, I was pleased to introduce Tim Tymkovich to the Judiciary Committee for his confirmation hearing.

Today, I am once again pleased to be able to speak in strong support of Tim Tymkovich's nomination to serve on the Tenth Circuit Court of Appeals.

Tim Tymkovich is well qualified to serve on the Tenth Circuit. He is a native Coloradan, an excellent jurist and an all-around outstanding person. I believe he will be a terrific addition to the Tenth Circuit Court of Appeals.

Since he earned his juris doctor at the University of Colorado's School of Law back in 1982, Tim has had an outstanding career, including a well-balanced combination of service in both the public sector and in private practice.

Tim's public service experience includes his service as a clerk to the former Colorado Supreme Court Chief Justice William Erickson from 1982 to 1983.

From 1991 to 1996, Tim Tymkovich skillfully served as Colorado's solicitor general.

In between these years of public service, Tim earned an excellent reputation in private practice with several leading law firms.

For the past 2 years, Tim has served as counsel to Colorado Governor Owen's Columbine Review Commission, which reviewed the public agency and law enforcement response to the tragic Columbine High School shootings of 1999.

At the same time, he co-chaired the Governor's Task Force on Civil Justice Reform, which has led to significant improvements in Colorado's civil justice and practice.

Tim currently serves as a partner in the prestigious Denver-based law firm, Hale, Hackstaff, & Tymkovich.

Two of Colorado's leading newspapers have positively endorsed Tim, saying among other things, that he has gained a local reputation as a thoughtful, insightful attorney who knows the law and works hard to uphold it. That was the Denver Post, May, 2002.

They have also commented that if the Senate gave Tim Tymkovich a serious look, we would find someone who combines intellectual heft and steady temperament.

I have taken a good look at Tim Tymkovich, and I fully agree with these insightful assessments.

Tim's nomination enjoys substantial bipartisan support, including the support of Colorado Attorney General Ken Salazar and Colorado's well-known former Governor, Roy Romer.

Tim Tymkovich's nomination for the Tenth Circuit Court of Appeals has been pending since he was first nominated for this position back on May 25, 2001.

it is now approaching 2 years since he was first nominated. Despite Tim Tymkovich's outstanding qualifications, it has not been an easy task for the Judiciary Committee to get this nomination to the floor of the Senate today.

I want to take a moment to say a special word of heartfelt appreciation for my good friend and Judiciary Committee Chairman ORRIN HATCH for his remarkably fair, evenhanded and steadfast stewardship of judicial nominees, including Tim Tymkovich's nomination. Senator HATCH deserves all of our appreciation.

It is time for the full Senate to complete our work and hold a straight up-or-down rollcall vote on Tim Tymkovich's worthy nomination.

I strongly urge my colleagues to vote in favor of Tim Tymkovich's nomination to serve on the Tenth Circuit Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CAMPBELL. Mr. President, I ask unanimous consent that the time be charged equally to both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BUNNING. Mr. President, I ask unanimous consent to speak as in morning business for approximately 10 minutes.

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

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

Mr. BUNNING. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I understand we are on the nomination of Timothy Tymkovich to the U.S. Circuit Court of Appeals for the Tenth Circuit.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. I thank the distinguished Presiding Officer. As he knows, being a member of the Judiciary Committee, while the debate time was scheduled by the committee, at the same time they scheduled hearings on various judicial nominees, including a very controversial nominee to another circuit court. As have others, including the distinguished Chair, I have tried to balance my time from place to place and attend to both matters ongoing simultaneously. I am sorry that I could not be here to open the debate but was at the hearing helping to open those proceedings.

Today we consider Mr. Tymkovich as the fourth of President Bush's nominees to this circuit to be considered by the Senate. Three of the nominees to the Tenth Circuit were given hearings and confirmed during the time I was chairman of the Judiciary Committee.

President Bush sent up Harris Hartz of New Mexico to the Tenth Circuit. I arranged to get him a hearing and vote on the floor. In fact, I voted for him. President Bush sent up Terrence O'Brien of Wyoming. I arranged to get him a hearing and a vote on the floor. I voted for him. President Bush sent up Michael McConnell of Utah, a highly controversial, extraordinarily conservative nominee, heavily backed by the Federalist Society and others. I arranged to get a hearing for him, and I voted for him.

I mention that because it is in stark contrast to the treatment of President Clinton's nominees to vacancies on the Tenth Circuit. We were fair and took action on three of President Bush's nominees to the Tenth Circuit last year. Today the Senate is debating and voting on his last remaining nominee to that circuit.

Let us recall what happened when Republicans were in charge and there was a Democratic President. President Clinton nominated two outstanding lawyers to this vacancy, the one about which we talk today. James Lyons, whom I have known it seems forever, is a brilliant lawyer. He would have been an outstanding federal judge, one who in that position would be totally impartial, would fit the qualifications necessary for a judge—that is, when you walked in the court, you would know, whether you are Republican or Democrat, rich, poor, plaintiff, defendant, black, white or anything else, that you would be treated fairly. Mr. Lyons was not treated fairly. He was not even allowed to have a hearing let alone consideration by the Judiciary Committee or a vote by the Senate.

Then President Clinton nominated Christine Arguello, an outstanding Hispanic woman. She was not allowed to have a hearing either. It was not that she was not qualified. In fact, speaking of these two, Mr. Lyons was among the many Clinton nominees given the highest qualification by the American Bar Association. Like so many others who fit in that category, he was never allowed even to have a hearing. It was not a question of voting up or down. Republicans were in the majority. They could have voted him down. But both these well qualified nominees were not even allowed to have a hearing.

Ms. Arguello is a talented Hispanic attorney. Her nomination had widespread support from her community and State. Both Republicans and Democrats called and wrote to me on her behalf. But as with so many circuit court vacancies on the Tenth Circuit, the Fourth Circuit, the Fifth Circuit, the Sixth Circuit, the Eighth Circuit, the Ninth Circuit, the District of Columbia Circuit, and around the country, these qualified nominees, whose only sin was that they were nominated by a Democratic President, were not allowed to have hearings or votes.

The Republican-controlled Senate made it very clear: We will not hold hearings or vote on them. Someday there will be a Republican President, and then we will fill these seats in a campaign to stack the courts.

This was very clear. This happened during President Clinton's first term in the Senate—the Republican Senate blocking his nominations from even having a hearing because Republicans thought he would never get reelected and then they could put in Republicans to fill those judicial vacancies. It is very clear. Everybody here heard the comments in the cloakroom and in the Senators' dining room. Look at the record, in the 1996 session, the Republican Senate majority would not consider or confirm a single nominee to a circuit court anywhere in the country, not one. During that entire year only 17 judges were confirmed and all were to the district courts.

President Clinton then had a landslide reelection victory. We naively assumed that the Senate Republicans would work with us to help fill the many judicial vacancies that had been perpetuated. Not so. They thought maybe 4 years later they might have another chance and there might be a Republican administration and they could get the courts to do what we wanted. Despite vacancies that reached over 100, Republicans denied there was a vacancies crisis and insisted on slow and searching inquiries on those lucky nominees who were considered at all. Of course, more than 50 of President Clinton's judicial nominees were never given a hearing and a vote. Others, the lucky ones, were delayed for years and years before Senate Republicans would allow a vote.

Then in the most recent presidential election, as we know, Al Gore got half a million more votes but did not become President. I respect the electoral system. President Bush won the electoral vote, and there was a 1-vote margin in the Supreme Court determining that. All of a sudden, all these seats that have been kept open year after year because Republicans would not allow anybody to come forward, were valuable opportunities.

When Democrats were the Senate majority, we tried to help, to work with the administration and with Senate Republicans. Take, the Tenth Circuit. Even though President Clinton's nominees had been unfairly held up, we did not do the same thing to President Bush's nominees. We proceeded to confirm 100 of his judicial nominees in 17 months. We proceeded on three of his nominees to the Tenth Circuit and filled three of the four vacancies on that circuit by adjournment last year.

With respect to this remaining nomination, that of Timothy Tymkovich, I

must say—not just because of the shameful, inexcusable way James Lyons and Christine Arguello were treated by the Republicans—I have serious misgivings about this nomination. Mr. Tymkovich has worked to undermine environmental protections and other Federal programs in the name of States rights. He has a particular view of States rights, one that I believe will color his decision making and result in hostility to Federal legislation designed to protect all Americans' civil rights and all Americans' environmental rights.

In 1996, Mr. Tymkovich testified before the Senate Governmental Affairs Committee, where he made strident comments about his perceptions of States' rights. His testimony indicated that his support for ''States' rights'' was conveniently focused on rolling back Federal regulation in areas where he had substantive disagreements with Federal policy. He testified in favor of the so-called Tenth Amendment Enforcement Act, which called on Congress to eliminate implied preemption, a form of preemption that has been consistently recognized by the United States Supreme Court.

He claimed that the Federal Government had interfered in Colorado's State's rights. Mr. Tymkovich complained that the Federal Government had been ''especially intrusive into State affairs in the area of the environment.'' He cited as examples of such interference and ''overreaching'' the EPA's opposition to a State ''self-audit'' program. That State program would have granted enforcement immunity to polluters that voluntarily came forward and agreed to address problems in the future. Immunity would have applied no matter how damaging the polluters' actions had been. The State legislation was opposed by the EPA because it violated State obligations under several Federal statutes—the Clean Air Act and Clean Water Act, among others. Mr. Tymkovich chided the EPA for refusing to give the same immunity to polluters. In addition to his statements about the self-audit program, Mr. Tymkovich protested the EPA's rejection of State programs in water and air quality programs that did not meet Federal standards.

Mr. Tymkovich also complained in his hearing testimony that the Federal Government violated States' rights by requiring Colorado to follow Federal Medicaid law if the State chose to accept Federal Medicaid funding. He argued that States should be allowed to accept Federal Medicaid funding and then refuse to use those funds as prescribed by Federal law; that is, to deny the termination of pregnancies in the limited situation where a Medicaid-qualified woman has been the victim of rape or incest. He argued that States should be allowed to accept Federal Medicaid funding, but absolutely refuse to use these funds—funds that come from all of us from the State of Vermont, the State of Alabama, and every place else as prescribed by Federal law. He argued: We will use your money, but you have no say in how we use it.

Finally, Mr. Tymkovich claimed that the Federal ''motor voter'' law was an ''intrusion'' that ''impose[d] special burdens.'' He called the law an ''unfunded mandate'' that ''unquestionably interferes with the States' internal affairs.'' In summary, he argued that ''Congress has long ignored State interests.''

I am also concerned about Mr. Tymkovich's involvement in attempts to weaken Title IX. As State solicitor general, Mr. Tymkovich appealed a decision by a Federal District Court finding that Colorado State University had violated Title IX of the Education Amendments of 1972. The suit, Roberts v. Colorado State Board of Agriculture, was originally brought by members of the women's fast-pitch softball team, which had been cut by the university. The plaintiffs argued that the termination of support for the team was a violation of Title IX. The District Court issued a permanent injunction that required the university to reinstate funding for the program and to provide the team with equal benefits to other sports programs at the college.

Mr. Tymkovich appealed the case to the Tenth Circuit, arguing that additional evidentiary requirements should be placed upon Title IX plaintiffs. The Tenth Circuit affirmed the lower court's ruling, finding that the university had not shown that it had fully and effectively accommodated the interests and abilities of women athletes.

Title IX has been vital to the inclusion of women and girls in all facets of education, especially athletics. You do not have to be a parent or grandparent to know that now, if you go into any schoolyard and you look at those playing sports at the grade school and high school level, you see boys and girls playing. At the college level, you see both young men and young women playing sports. This has been important to all of us.

I am also concerned about the personal hostility Mr. Tymkovich has shown to Americans based on their sexual orientation, and about his failure to accept the importance of civil rights laws. As Colorado solicitor general, he argued a case before the Colorado and U.S. Supreme Courts, in which he unsuccessfully defended Colorado's 1992 ballot initiative that added a broadly-worded provision in the Colorado Constitution prohibiting any legal protections based upon sexual orientation. Ultimately, the Supreme Court of the United States found that the Colorado law was motivated by prejudice, not rationality, and thus ran afoul to the most basic premise of the equal protection clause.

So after he litigated the Romer case, and after a conservative Supreme Court ruled against him, he authored a bitter law review article both defending his position and chastising the decisions of the Supreme Court of the United States and of the Supreme Court of Colorado. He criticized Justice Kennedy's decision in Romer as ''an important case study of the Supreme Court's willingness to block a disfavored political result—even to the point of ignoring or disfiguring established precedent.'' He also referred to the U.S. Supreme Court's oral argument process as ''judicial histrionics.'' He concluded by saying this was ''another example of ad hoc, activist jurisprudence, without constitutional mooring.''

Mr. President, I say this because this is a man who claims he would be perfectly willing to follow the decisions of the Supreme Court. In fact, the most revealing aspect of his law review is his failure to acknowledge and respect the decision of the Supreme Court and the views and integrity of those on the other side of the argument from him.

I have voted for hundreds of judges nominated by both Republican and Democratic Presidents. My personal belief is that it is not whether they are Democrats or Republicans, liberal or conservative, pro-life or pro-choice, or whatever they might be; that is not the issue. The issue is whether, when somebody comes before that court, that they know that they are going to be treated with fairness, treated with respect, with courtesy, no matter which side they are on or what legal position they support in that litigation.

A Federal judge has an enormous amount of power. If somebody comes into court and they know the case is already decided, that the judge has already determined, based on who you are, how the case is going to be decided, then I think you have a real problem that goes to the integrity of the courts and certainly to the independence of the courts, and it determines which way those courts are going to be seen.

Why is that important in Mr. Tymkovich's case? Because he shows what type of a judicial temperament he would have. A most revealing aspect of his law review article is his failure to acknowledge and respect the views or integrity of those on the other side of the legal debate. His article made me ask myself why he felt compelled to continue to advocate for the positions he was taking once the case had been concluded, once the Supreme Court had determined what the law was.

He obviously feels very strongly personally about these matters. That is fine and that is his right. But that does not mean that he should be confirmed to a lifetime appointment on a Federal circuit court. Had he merely served as the attorney advocating a position in court, he could have chalked his involvement in the Romer case up to professional advocacy in support of a provision adopted in Colorado. Instead, he went well beyond professional legal advocacy. His advocacy went to the point of raising the question whether this

man will be able to be fair to all litigants. He wrote that ''our society prohibits, and all human societies have prohibited, certain activity not because they harm others, but because they are considered, in the traditional phrase 'contra bonos mores', i.e. immoral.''

In short, the article seems replete with heavy anti-homosexual rhetoric. The hallmark of a good judge is his or her ability to be fair to all who come before the court. I have very grave doubts that Mr. Tymkovich can or will act in an unbiased or fair manner involving civil rights. His expressions seem otherwise.

Equally disturbing about this incident is Mr. Tymkovich's apparent unwillingness candidly to admit error either to the courts or the Judiciary Committee. You have to wonder if he would be fair and impartial as a judge in a court.

In a case in which Mr. Tymkovich was involved in private practice, he represented the Republican and Libertarian parties, along with several State legislators, in their challenge to the constitutionality of Colorado's Fair Campaign Act. In the course of his representation, which saw him before both the trial court and the Tenth Circuit, Mr. Tymkovich erroneously agreed to consensual dismissal of one of his client's claims before the district court. While each court differed about the merits of the alleged claims, both agreed that Mr. Tymkovich voluntarily dismissed a claim that (1) there was no other means of challenging and (2) which he evidently still desired to litigate. In a case of such high importance, and for a person being nominated to a court of such significance, his actions in this case appear to include a rather serious mistake that reflects upon his competency.

Equally disturbing about this incident is Mr. Tymkovich's apparent unwillingness to candidly admit his error either to the courts or the Judiciary Committee. Mr. Tymkovich continued to argue the matter and assert that the District Court behaved improperly and without reason in dismissing his client's first amendment claim. So, too, did he fail to reveal his error in his Senate Questionnaire. Although he truthfully stated that he won some of the claims he pursued, his careful wording on his Senate Questionnaire seems particularly crafted to avoid this aspect of the case.

I note for those who have recently trumpeted the ABA ratings as an important indicator of professional competence—especially when a close friend of President Bush is in charge of those ratings—Mr. Tymkovich received a rating that was partially ''not qualified,'' indicating that a number of evaluators did not consider him suited to the position on the Tenth Circuit in which he was nominated.

I am concerned that Mr. Tymkovich is yet another of President Bush's nominees to the circuit court who is going to work to undermine Federal laws and programs designed to guarantee protection of civil rights and the environment. I will vote against him.

I will vote against him because I do not believe that people can walk into his court and believe they are going to be treated fairly. I fear that people who come into his court and see that the person on the other side fits into the judge's narrow view of who is acceptable and what is acceptable will think that other person is going to win and I am going to lose no matter what the merits are.

This is the last remaining vacancy on the Tenth Circuit. We had 7 years without a new judge of that circuit. Even though President Clinton tried, Republicans refused to allow his nominees to go forward to be considered.

When I became chairman, we moved three judges who were nominated by President Bush through to confirmation. None of them were people I would have ever nominated. I voted for all of them. I thought even though we were opposed and apart philosophically that they could be fair. I did it notwithstanding my own deep concern about the unreasonable unfairness of the Republicans in not allowing a vote, not even a hearing, on President Clinton's nominees. I was determined not to do that to President Bush. I thought it was absolutely wrong when it was done to President Clinton. So three of those four nominees went forward and they all sit on that court today as President Bush's lifetime appointments to the Tenth Circuit.

We have worked hard to reverse the growing number of vacancies on the Federal courts and on the circuit courts, vacancies that were maintained under the Republican Senate majority when President Clinton was in the White House. Even though President Clinton nominated qualified, moderate people, they were not allowed to have hearings. We tried to change that. Perhaps it is a case where no good deed goes unpunished. We tried to demonstrate to this new White House that we could be different.

In January 1995, when the Republican majority took control of the confirmation process, there were only 16 vacancies on the circuit courts. When I became chairman in the summer of 2001, there were 33 circuit court vacancies. At the end of last year, these vacancies had been cut by almost 25 percent, even though 9 new circuit vacancies arose during that time.

We held the first hearing for a nominee to the Fourth Circuit in 3 years, and confirmed him and another most controversial nominee, even though seven of President Clinton's nominees to that circuit never received a hearing.

We proceeded with the first hearing for a nominee to the Fifth Circuit in 7 years and confirmed her, even though three of President Clinton's nominees to that circuit were never given a hearing.

We proceeded with the first hearing on a nominee to the Sixth Circuit in almost 5 years, confirmed her, and another controversial nominee to that circuit, even though three of President Clinton's nominees to that circuit never received a hearing.

We proceeded with the first hearings on a nominee to the Tenth Circuit in 6 years. We confirmed three, even though two of President Clinton's nominees to that circuit were never allowed hearings.

There is today no current vacancy on the First Circuit to which we confirmed a conservative nominee last year. There are no current vacancies on the Eighth Circuit to which we confirmed 3 of President Bush's nominees in spite of the irresponsible treatment the Republican Senate majority had afforded Bonnie Campbell of Iowa.

I have been in the Senate with six Presidents, President Ford, President Carter, President Reagan, former President Bush, President Clinton, and the current President Bush. On judicial nominees, each of the five previous Presidents had their own views of who they wanted on the courts, and that is their prerogative whom they nominate. Each one of those Presidents sought to unite rather than divide when it came to the Federal judiciary. I think each understood that the integrity and independence of the Federal courts has to be protected. Each one of those five Presidents actually worked with Members of both parties in the Senate for nominees to go forward. I remember sitting in many meetings with Presidents of both parties.

This President is the first one in my experience in 29 years, who seems to have no interest whatsoever in working with the Senate. He seems perfectly happy with what was done in the past by members of his party, and now with members of his party willing to change the rules—ignore the rules and go forward and do things that have never been done before—so long as they win.

In the short run, you win. In the long run, you hurt badly the integrity and the independence of the Federal court. That is one thing we should think of. These are lifetime appointments. They are not the terms of Senators or Presidents. Presidents have 4-year terms. Senators have 6-year terms. The Federal bench has a lifetime term.

Finally, even though his term is approximately halfway over, I urge the President to try for a few months to be a uniter, not a divider and work with the Senate on nominating judges. We showed we were willing to move judges much faster for him when the Democrats were in control than the Republicans did when they were in control and there was a Democratic President.

Work with us. You are going to have better courts; all Americans will have better courts. You can still appoint a lot of Republicans—that is fine. But you could have an independent court, not courts that are going to be seen by a growing—and it is growing—number

around this country as an arm of the Republican Party. Professor Sheldon Goldman was recently quoted in an article by Stephanie B. Goldberg in MS. Magazine as saying: ''If courts are perceived as being governed by political ideology, they lose public support and are no longer seen as an independent branch of government. They're just an arm of the regime.'' Courts should not be an arm of the Democratic Party or the Republican Party. It is one branch of Government that should be independent. This White House seems to want to change that.

Over more than 200 years of history, Presidents occasionally have been unable to resist the temptation of court-packing schemes, such as in the case of John Adams or Franklin Roosevelt. Those were wisely rejected. If the White House is unwilling to have an independent judiciary, I hope the Senate will show enough courage to reject that.

Before observing the absence of a quorum I ask unanimous consent that the time run equally against both sides.

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

Mr. LEAHY. 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.

The PRESIDING OFFICER. In my capacity as the Senator from Alabama, I ask unanimous consent that the order for the quorum call be rescinded.

RECESS

The PRESIDING OFFICER. Hearing no objection, under the previous order, the hour of 12:30 having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Virginia.

ADDITION OF COSPONSORS—S. CON. RES. 31

Mr. WARNER. Mr. President, I would like to submit to the Chair a unanimous consent request.

Mr. President, pending at the desk is S. Con. Res. 31 relating to the subject of prisoners of war. I commend the Senator from Pennsylvania, Mr. SANTORUM, for his work on this resolution, approaching me and others about the need for this resolution days ago. By inadvertence, and I accept responsibility for that, he was omitted from the list of cosponsors.

At this time, I ask unanimous consent that the Senator from Pennsylvania, Mr. SANTORUM, be added as a cosponsor to S. Con. Res. 31, which is at the desk. I thank the Chair.

Mr. ALLARD. If the Senator from Virginia will yield?

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

Mr. ALLARD. I would also like to be listed as a cosponsor on that resolution.

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

Would you add the Senator from Ohio?

Mr. WARNER. Mr. President, I ask that the distinguished Presiding Officer, the Senator from Ohio, be added as a cosponsor.

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

Mr. WARNER. For the benefit of the Senate, it is being discussed now as to when this resolution might be brought up. It is bipartisan. Senator LIEBERMAN is one of the original cosponsors, together with the distinguished majority leader, Senator FRIST, Senator STEVENS, Senator INOUYE, myself, and now the others.

So those Senators having an interest should so notify the Presiding Officer.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF TIMOTHY M. TYMKOVICH, OF COLORADO, TO THE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT—Continued

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, the order of business on the floor, if I am not mistaken, is the nomination of Mr. Timothy Tymkovich for lifetime appointment to the United States Court of Appeals for the Tenth Circuit. I rise in opposition to that nomination.

Initially, it is worth noting that the Tenth Circuit is closely divided between Republican and Democratic appointees, and the seat for which Mr. Tymkovich was nominated is a seat that the Republican-controlled Senate has denied on more than one occasion. In fact, they have denied it to a moderate Hispanic-American Clinton nominee in the year 2000, Colorado Attorney General Christine Arguello. She would have been the first and only Hispanic-American judge on the Tenth Circuit, but the Republicans, then in control of the Senate, refused to give Ms. Arguello a hearing or a vote.

The Republican-controlled Senate also refused to give a hearing or vote to another Clinton nominee for the Tenth Circuit, James Lyons, thus ensuring that this vacancy which we debate today would be theirs to fill. That is what led us to this moment in time where this nomination is being considered on the floor of the Senate.

I asked Mr. Tymkovich some questions when he appeared before the Judiciary Committee, and I would like to relate to you some of his answers. One of them relates to his membership in the Federalist Society.

There is nothing illegal about the Federalist Society, nor any reason why someone would deny their membership, but it has become a strange coincidence how many Bush administration nominees are members of the Federalist Society. I have said that when you chart the DNA of Bush administration judicial nominees, you are likely to find, more often than not, the Federalist Society chromosome.

So I started asking questions, and some of my colleagues are now joining me. Why? What is it about this organization that is becoming such an important element on a resume of someone seeking a judgeship in the Bush administration?

I asked Mr. Tymkovich, who is not only a member of the Federalist Society, but who is on its Colorado board of advisers, the following question:

> One of the goals of the Federalist Society is ''reordering priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law.''

I went on to ask him:

> Which priorities do you believe need to be reordered? What is the role of federal judges and the courts in reordering such priorities? On which traditional values should there be a premium, and why? The Federalist Society also states that its objective ''requires restoring the recognition of the importance of these norms among lawyers, judges, and law professors.''

I asked Mr. Tymkovich:

> If you are confirmed, how will you as a judge restore, recognize, or advance these norms?

I do not believe these were trick questions. I believe they were open-ended questions so Mr. Tymkovich could tell us what it is about the Federalist Society that he understands to be their mission, and whether he agrees or disagrees.

Mr. Tymkovich's entire response is the following:

> I am not aware of the context of the quotations in the question, but all seem to address the role of a policy commentator as contrasted with the role of a federal judge. If confirmed as a judge to the Tenth Circuit, I would set aside any personal views and apply the precedent of the Supreme Court and the Tenth Circuit.

The quotations in my question are straight from the ''Our Purpose'' page of the Federalist Society Web site. They constitute the mission statement of the organization and are central to its identity.

Mr. Tymkovich's assertion that he is not aware of them raises important questions. His responses to this committee during the hearing indicate that he was, at times, evasive in other answers as well.

But there is one particular reason why I oppose Mr. Tymkovich, and it relates to the issue of discrimination.

I have said on the floor of the Senate and in the Judiciary Committee that several weeks ago I had a unique opportunity to visit the State of Alabama for the first time, to go there with Democratic and Republican Members of Congress, on a delegation led by our Congressman from Atlanta, GA, JOHN LEWIS, to visit some of the most important spots in America in the civil rights movement.

We went to Birmingham, AL, and visited the Baptist church where four little girls were killed with a firebomb on a Sunday morning.

I went to Selma, AL, with Congressman JOHN LEWIS, and stood at the spot where he was beaten by the Alabama State troopers and the militia, suffering a concussion, at the time the march to Montgomery was turned back.

We went to Montgomery, AL, and stood on the street corner where Rosa Parks boarded the bus and refused to give up her seat.

The importance of this cannot be overstated for a person in my generation because the civil rights movement was part of my formation as a young person. The civil rights movement was something I valued for what it brought to America. It was a struggle I witnessed as a young student and appreciated as I grew older.

Congressman JOHN LEWIS said to us, as we were visiting these important historic sites, something that was not part of the formal program. He said: There never would have been a civil rights movement in Alabama, there would not have been a march from Selma to Montgomery, were it not for one Federal judge, Frank Johnson.

Frank Johnson, a Federal district court judge—Republican, appointed by President Eisenhower—had the courage to stand up to the establishment in Alabama and other Federal courts and to fight against discrimination. He made important rulings, striking the Montgomery County ordinance which allowed for segregation on buses, striking laws which did not allow fair representation in the legislature of Alabama, and, of course, signing the order which allowed the march from Selma to Montgomery.

Because of his courage, he was shunned by leaders in society. He could not go back to his old country club. He had to start using the public golf courses. But there was worse. His mother's life was threatened. Bombs were going to be detonated at his home and her home. Security was necessary around the clock. But he persevered. And because of his courage and his determination, the civil rights movement was a reality.

America is a better place because of one Federal district court judge who, given a chance to stand up against prejudice and bigotry, did the right thing for America.

I thought to myself, as all of these judicial nominees come to the Senate, through the Judiciary Committee, where is the next Frank Johnson? Where is the next person who will stand up and fight for civil rights, the challenge of our generation?

I thought over that particularly when I considered the candidacy and the nomination of Mr. Tymkovich for this circuit court judgeship. Mr. Tymkovich already has had his chance to speak out on the issue of discrimination. Sadly—sadly—he came out on the wrong side. Mr. Tymkovich appears to be hostile to laws prohibiting discrimination based on sexual orientation. This isn't an easy issue for a lot of Members of Congress. There are people who feel very strongly against those with a different sexual orientation, gays and lesbians in American society. I, for one, was raised in a conservative small town, East Saint Louis, IL. I raised my family in another small town, Springfield, IL. It was not until I got involved in congressional politics that I stepped back and said: I have to take a look at this issue. I have to decide whether this is a civil rights issue and, if it is, which side of history I will be on.

I have tried, though my record is not perfect, to stand for the proposition that discrimination against any American based on race, religion, national origin, gender, disability, age, or sexual orientation is wrong. I think that is a standard that America—all of America—should hold high. But, unfortunately, when it came to Mr. Tymkovich, and discrimination against people because of sexual orientation, he took an opposite course. He zealously supported Colorado's amendment 2, which eliminated the legal rights for gays, lesbians, and bisexuals by banning all legislative, executive, or judicial action at any level of State or local government designed to protect them. In other words, amendment 2 commanded that there be no recourse for any gay person in Colorado who was fired or not hired, denied housing, harassed in school, or subject to similar acts of discrimination.

When I took a look at the Supreme Court case where this amendment was challenged, they listed some of the local ordinances that were at issue. They listed Colorado municipalities and what they were attempting to protect: Aspen, CO, had a local ordinance prohibiting discrimination in employment, housing, and public accommodation based on sexual orientation; Boulder, CO, and Denver, CO the same thing; an executive order prohibiting employment discrimination for all State employees classified and exempt on the basis of sexual orientation; the Colorado insurance code, forbidding health insurance providers from determining insurability and premiums based on an applicant's or a beneficiary's or an insured's sexual orientation; and other provisions prohibiting discrimination based on sexual orientation at State colleges.

These were the laws which amendment 2 in Colorado would have wiped off the books. Mr. Tymkovich came to the U.S. Supreme Court and argued that these local ordinances should be wiped off the books, or at least that amendment 2 should be allowed to stand.

The amendment was approved by a majority of Colorado voters, so the Supreme Court had to really face the basic issue as to whether amendment 2 was an equal justice issue, and whether, in fact, the Colorado voters could vote to take away the rights of individuals because of sexual orientation.

The Supreme Court decided by a vote of 6 to 3 that the position argued by Mr. Tymkovich was wrong. Only three of the most conservative Justices on the Supreme Court felt otherwise: Justices Scalia and Thomas, and Chief Justice Rehnquist. They dissented, but six other Supreme Court Justices said the Colorado decision to pass amendment 2 violated the equal protection of the laws in the United States and that Mr. Tymkovich's position arguing in favor of it was wrong by a vote of 6 to 3. The man before us today asking for a lifetime appointment to the Tenth Circuit was found by the U.S. Supreme Court to be mistaken in his position.

That is not the first time that has ever occurred. Lawyers argue cases, and sometimes they have no choice. They need to come before the court representing their clients. Whether it is a State, locality, business or an individual, they come before the court and make the best case, and the court rules. Sometimes they are on their side and sometimes they are opposed. In this case the Supreme Court ruled against Mr. Tymkovich.

What troubles me is what happened after that. After the Supreme Court issued its decision, Mr. Tymkovich decided to author a Law Review article. It is a lengthy article in the 1997 University of Colorado Law Review. It is entitled ''A Tale of Three Theories: Reason and Prejudice in the Battle Over Amendment 2.''

Mr. Tymkovich and a couple other writers went on to explain why the Supreme Court was just plain wrong. Mr. Tymkovich wrote that the Supreme Court decision in Romer v. Evans is ''merely another example of ad hoc activist jurisprudence without constitutional mooring. If the test of an independent judiciary lies in its response to difficult political decisions, Romer is cause for great uneasiness about the health of self-government.''

There is a paragraph in this article which I find particularly offensive. Mr. Tymkovich, in describing the lifestyle of those with different sexual orientations, likens them to people who practice bestiality. Those are not my words. They are the words written by Timothy M. Tymkovich who now seeks a lifetime appointment to the second highest court in the nation.

Mr. Tymkovich decided in this article to establish what he considers to be a moral rationale for discrimination. It is not the first time that has happened. If you will look back in our history, there has scarcely been a time when discrimination was practiced in America that someone didn't rationalize it or moralize it. Whether the objects of that discrimination were Native Americans, African Americans, Asians, Catholics, the Irish, they have used some sort of moral rationale to say that a position of discrimination is actually the moral thing to do.

Mr. Tymkovich took exactly that position when it came to discrimination against people based on sexual orientation.

That position goes way beyond the norm in America. Mr. Tymkovich tries to argue in his article that this is all about States' rights. I understand there is an important balance between Federal power and State power. The Constitution acknowledges that. But, historically, those who want to support discrimination have usually found their refuge in the dark shadows of States' rights. The Federal Government should not step in, they argue, to establish constitutional principles of equal justice under the law. They argue: let the States establish those standards, knowing full well that you won't have a uniform standard across the country. You will not have uniform protection under the law.

The Supreme Court, in the case of Romer v. Evans, saw it differently. Thank goodness they did. ''One century ago,'' Justice Kennedy wrote, ''the first Justice Harlan admonished this Court that the Constitution neither knows nor tolerates classes among citizens.''

They went on to say, during the course of this opinion:

> ''If a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.''

They said Mr. Tymkovich's logic and argument in Romer v. Evans were a basic denial of equal protection under the law. Now Mr. Tymkovich wants an opportunity to go to the second highest court in the land and argue his point of view for a lifetime. I am sorry. That is a bad choice. It is a bad choice for the Tenth Circuit and a bad choice for America.

Throughout my service in Congress, I have tried to support every effort to end discrimination based on race, gender, ethnic origin, religious belief, age, disability, or sexual orientation. Fair and equal treatment of all Americans is a cornerstone of our society and our political system. Unfortunately, despite the great progress we have made, the struggle for civil rights and equal treatment under the law continues today.

Federal judges, such as Frank Johnson, stood up 40 years ago under risk of personal harm and risk to their families and said: I will stand up for equal protection under the law—when it came to African Americans. I am sorry to say that based on his arguments and his own words, I cannot believe that Mr. Tymkovich could ever rise to that challenge.

If we want to turn our backs and ignore the reality of people who have polished their prejudices to a high sheen with legal niceties, we are ignoring a basic responsibility of the Senate of the United States. If we tolerate intolerance, that is a form of intolerance. The intolerance of Mr. Tymkovich, as evidenced in this Law Review article, from which he has not backed away, is something we should not sustain, should not encourage, and should not approve with our vote. If Mr. Tymkovich has his way, the struggle for civil rights and equal treatment under the law will be even greater and more difficult for future generations. That is why I will vote to oppose his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I would have to say that Tim Tymkovich's nomination is far from a partisan process. In fact, he has been supported in a bipartisan way. I have a list of people who have supported him. I would like to share some of the comments, letters, and statements made in support of Mr. Tymkovich's nomination.

He is widely respected in Colorado as a fair attorney who works well with others regardless of political philosophy. Just listen to the names of these supporters and you will quickly recognize that there is tremendous and broad support for his nomination from people who have worked with him on a daily basis, his peers; for example, Roy Romer, former Democratic Governor of Colorado, with whom Mr. Tymkovich had to work on a fairly regular basis since he was Solicitor General.

Let's look at what the Governor of the State of Colorado said about Tim Tymkovich:

> Mr. Tymkovich served the State of Colorado from 1991 through 1996 during the latter part of my tenure as governor of the State of Colorado. He served with distinction and was a strong advocate in legal matters for Colorado. He also demonstrated a capacity to work closely with Colorado Democrats as well as Republicans as Solicitor General . . . He was always a straight shooter in giving legal advice to me and my top staff.

We are all involved in politics. Sometimes in the political process there is a disconnect from what politicians may say and what they may do. Timothy Tymkovich is not a politician. He a dedicated public servant. People like the former Governor of Colorado, the former head of the National Democratic Party, recognize his commitment to doing the right thing.

I cannot believe, if he carried on with some of the arguments that have been made by the opposition, that we would have support from individuals such as the former head of the national Democrat party.

The following are supporters of Tim Tymkovich:

Michael Huttner, partner in Foster, Graham, and Huttner, a law firm in Denver; William H. Erickson, former Chief Justice on the Colorado Supreme Court; John M. Hereford, executive director of Great Outdoors; William H. Hanson, a Colorado attorney; Robert F. Nagel, a resident of Boulder, Colorado, a professor of law at the University of Colorado School of Law; the Rocky Mountain News; the Denver Post; Jean Dubofsky, Colorado Supreme Court Justice. On amendment 2, she took the opposite point of view in arguing the case between the Supreme Court. Mr. Tymkovich, as solicitor general for the State of Colorado, had an obligation, regardless of his personal feelings, to argue on behalf of the people of Colorado. Jean Dubofsky, arguing on the opposite side before the Supreme Court, argued against the amendment. She has written a letter in support of his confirmation. She was his opposition on arguing on amendment 2, which my colleague from Illinois just mentioned in his remarks; she argued against Mr. Tymkovich in the position of the people of Colorado, as far as amendment 2. She said she had to respect him because he was such an eloquent advocate for the people of Colorado, he was intellectual, he made great intellectual arguments, and he is recognized throughout the legal profession in Colorado as somebody who is objective, straightforward and, above all, respects the law, respects the rule of law.

I want to just note that, again, Jean Dubofsky, an ''unabashed liberal,'' according to the Denver Post, supports Tim Tymkovich in the strongest terms. Not only was Dubofsky a justice on the Colorado Supreme Court, but she argued against Tim Tymkovich on amendment No. 2; she was opposing counsel. Tim Tymkovich now has the endorsement of not only her but five other former supreme court justices for Colorado. He is well recognized for his legal efforts in trying to enforce the law.

I think in the committee hearing Tim Tymkovich answered the questions that were put forth, and he answered them in a straightforward manner. Here are a couple of key statements he made in committee I think we need to keep in mind on the floor of the Senate. I quote what he said in committee:

> I believe an appellate judge has to set aside his or her personal views and faithfully apply applicable Supreme Court precedent.

In other words, he sets aside his own personal views to enforce and to properly interpret the law. What more can you ask? We have three branches of Government: executive, legislative, and judicial. Our forefathers had in mind the legislative branch where we make the laws. We have the executive branch, which administers the laws passed by the Congress, and we have the judicial branch, which is set up to interpret the law and to apply the law.

In response to other questions before the committee, this is what he said about amendment No. 2, and what he said about the article referred to in my colleague's comments earlier in the debate, where Mr. Tymkovich referred to the article written on amendment No. 2:

> The article itself describes the public policy arguments that were presented to the voters during the initiative's political campaign, not my own.

As solicitor general of the State of Colorado, he was invited by the Journal to write the article, and he complied to write that article, stating in a factual way the arguments both pro and con for amendment No. 2 in the State of Colorado.

My colleague from Illinois also talked about the previous nomination, and he implied that somehow or other, with the Christine Arguello nomination by President Clinton, there was a political process. Again, I state in the strongest terms that that simply is not true. Carlos Lucero, a Hispanic from Colorado, is the first to serve as a Hispanic on the Tenth Circuit Court of Appeals. I supported him at the time. Christine Arguello's name came up for district court. I am the one who nominated her to be on the District Court of Colorado. It wasn't a nomination, but I sent a recommendation to the President of the United States. She was never nominated by the President. Then at the last minute, her name was put forward—right at about the time we were ready to adjourn the Senate—for a position on the Tenth Circuit Court of Appeals. Frankly, the Senate didn't have time to act on a last-minute nomination put forward by the President.

Many of us have worked hard to make sure that Hispanics have an opportunity to serve on our courts. I think it is important that we continue to push for that. So let me make it clear. I am the Senator who nominated Christine Arguello. I was working with the White House and the Clinton administration to get Mrs. Arguello nominated in the first place. As we have witnessed many times, the politics of August nominations are often nothing more than political gestures aimed at grabbing headlines but have no chance of completing the confirmation process simply because the nomination came too late in the process.

Again, I emphasize, I nominated Christine Arguello. This is the plain and simple truth and we need to recognize that.

Mr. Tymkovich is further recognized for his work by Joseph Quinn, Colorado Supreme Court Justice; Gregory Scott, Colorado Supreme Court Justice; Luis Rovira, Colorado Supreme Court Justice; the Colorado Department of Public Safety, Suzanne Mencer, and Nancy Lewis of the Colorado Organization of Victims' Assistance; Barbara O'Brien, President of the Colorado Children's Campaign; Rebecca Coppes Conway, a Colorado attorney. They have all listed their names as supporters.

You have already heard statements and letters from Governor Romer, the justices, and the newspapers. Here is what the rest of them had to say about Mr. Tymkovich. Suzanne Mencer and Nancy Lewis of the Colorado Department of Public Safety and the Colorado Organization for Victim's Assistance wrote a letter to Chairman Hatch, and I quote:

> We have each known Mr. Tymkovich for a considerable period of time and believe that his sensitivity to the rights of crime victims, as well as his great legal skills, will serve our citizenry well. As Solicitor General, Mr. Tymkovich was instrumental in the creation of the first appellate victim services unit within the office of the Attorney General. Mr. Tymkovich's legal expertise was also significant in the determination of the proper course of action for passage of the Colorado Constitutional Victim Rights Amendment.

The letter went on to describe his superb legal skills and well-recognized victims expertise, and concluded:

> His performance has shown not only an understanding of legal issues surrounding crime victimization but also a very great sensitivity to the attendant human cost.

I can go on and talk about the number of people who respect the expertise and the capabilities of Mr. Tymkovich, but the fact is that he has bipartisan support and the Senate should go ahead and confirm him without any further delay.

I ask unanimous consent that the time until 3:45 be equally divided in the usual form for the consideration of the pending nomination, and that at 3:45 today the Senate proceed to a vote on the confirmation of the nomination with no further intervening action or debate. I understand both leaders have agreed to this request.

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

Mr. ALLARD. I ask unanimous consent that the time be equally divided during the quorum call between advocates and opponents of the nomination.

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

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

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

The Senator from Minnesota.

Mr. DAYTON. Mr. President, I rise today to oppose the confirmation of this nominee. I do so because his stated views on important judicial matters are not only wrong but also wrong minded, wrong about the particulars of the decisions which he opposes, wrong minded about the proper role and responsibilities of the judiciary under our Constitution.

The nominee has stated: Our society prohibits, and all human societies have prohibited, certain activities not because they harm others but because they are considered immoral.

In this category, the nominee includes sadomasochism, cock fighting, bestiality, sodomy, and homosexuality. The nominee made those comments in an article he wrote for the University of Colorado Law Review. He was expressing his pique at a decision by the U.S. Supreme Court, with six Judges in the majority, which overturned a Colorado ballot initiative prohibiting any legal protections based upon sexual orientation. As Colorado Solicitor General, he had unsuccessfully defended that initiative before the U.S. Supreme Court. By his own words, in that law review article, the nominee demonstrated why the majority of the U.S. Supreme Court was right in its understanding and application of the U.S. Constitution and the role of the judiciary in our society and the nominee is wrong.

The nominee's personal opinion presumably is that homosexuality is immoral. He is entitled to his own opinions. He is not entitled, however, to make his personal opinions the moral code of American society and then to make judicial decisions based upon them. Our country is based upon a foundation of laws which are, in turn, based upon the U.S. Constitution. It is not a society run on the personal prejudices imposed by those who are in power upon the rest of the citizenry.

The judiciary is the ultimate protector of individuals whom some cultural gestapos would otherwise ostracize, demonize, and criminalize. In the extreme, where countries have their laws made that are enforced by the self-proclaimed guardians of the public more or less, which always quite conveniently match entirely with their own personal beliefs, democracy is always and inevitably sacrificed on the altar of prejudice and intolerance, masquerading as higher ideals. A democracy must be able to permit people's differences, especially in their personal lives. We are not required to like someone else's actions. We are not required to agree with their particular views. But we do have to understand and accept their rights to their personal differences from us and our society's tolerances of those differences as being the essence and the test of a democracy.

Any totalitarian government—communist, fascist, Saddam Husseinist—tolerates the behavior and beliefs which conform to their own personal views, but those whose words, beliefs, or actions are different from theirs are not tolerated and not permitted. They are dehumanized, incarcerated, and even executed because they or their views or their actions are different from those who hold the power.

For those of us in a democracy, this is one of the most difficult principles to really understand, and even more difficult for us to put into practice, but that is why we have the judiciary. That is why these are lifetime appointments to the U.S. Federal courts: so that the men and women the President nominates and we confirm can make unpopular decisions, take positions that would get elected officials probably unelected because they do not follow the laws that are derived from the U.S. Constitution. The more unpopular those rights are, the more crucial it is for the judiciary to uphold them.

Unfortunately, this nominee would rather pander to his ideological pals

and perhaps to popular opinion than respect the greater wisdom of the judiciary and the U.S. Supreme Court which he now wishes to join at a lower level. If he does not respect their wisdom and their courage now, it is extremely unlikely that he will acquire either of those qualities when he dons judicial robes. It is a reason again why the penchant of this administration to nominate to high judgeships people who have never before been a judge, as this nominee has not, assures a lack of understanding of the responsibilities and the role, a shallowness, an ignorance and, if they are confirmed, the likely regular abuses based on those misunderstandings and those biases.

I also disagree with the nominee and his characterization that gay men and lesbian women are seeking special rights when, in fact, anyone who views these matters with any understanding of reality, whether he or she disagrees or agrees with those practices, cannot possibly believe they are not subject to regular and sometimes brutal violations of legal rights, civil rights, and human rights. To twist and distort that need for the protections which the United States court system has, to afford to those who are oppressed and discriminated against and who are the victims of prejudices of those who are not willing to relent, by either greater wisdom in the spirit of our democracy or often the biblical junctions which they purport to represent, if the courts will not stand with those individuals to protect them, then there is no recourse and there is no protection.

With this nominee, sadly, there is an unwillingness to even admit the reality of circumstances, much less to evidence any understanding of his responsibilities as a judge to uphold this Constitution and what it means for all citizens: The right of life, liberty, and the pursuit of happiness.

Remember the admonition: Inasmuch as you have done so to these the least of my brothers, you have done so unto me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Colorado has 24 minutes, and the minority has 14 minutes 14 seconds.

Mr. ALLARD. Mr. President, I reiterate what five former Colorado Supreme Court justices say about Mr. Tymkovich in their letter of recommendation to Chairman ORRIN HATCH on the Judiciary Committee in the Senate. These are individuals who know Mr. Tymkovich. He practiced before them. He worked with them because he was solicitor general for the State of Colorado.

Based on our professional experiences, we are of the unanimous judgment that he is well qualified and most able to serve as an appellate judge of the United States court of appeals.

Mr. President, we need to recognize that this letter comes from former Colorado Supreme Court justices with varied political backgrounds. They all differ on professional experiences. They all had diverse legal careers. They had different racial, gender and ethnic backgrounds. But they came up with a unanimous opinion that Mr. Tymkovich should be confirmed by the entire Senate. That speaks loads. His peers, working with him on a daily basis, understand his capabilities.

Mr. President, we have heard both sides present arguments, discuss the nominee, as well as the mechanics of our constitutional judicial nomination process. Now it is time to finish the job and to move to an up or down vote on his nomination. I believe Mr. Tymkovich to be a very well-qualified attorney, an attorney who will maintain high principles and a strong dedication to the law. He has the overwhelming support of the Colorado legal community. His support comes from professionals and clients with varied political backgrounds and differing professional and real-life experiences. His support comes from people with diverse legal careers and job history, and different race, gender and ethnic backgrounds. He is unanimously supported by five former justices of the Colorado Supreme Court, including Jean Dubojsky, an attorney who served as opposing counsel to one of our Nation's most high profile constitutional cases.

Dubofsky and fellow justices consider Tymkovich to possess the necessary attributes of a Federal judge, and that Colorado and the Nation should no longer be subjected to undue delay on his nomination. I strongly urge my colleagues to support the nomination of Mr. Tim Tymkovich. His confirmation would fill a vacancy on the Tenth Circuit Court of Appeals that has sat vacant for 4 years.

In my opening statement, I concluded by stating that a necessary component of providing justice and protecting liberty and freedom is an efficient and properly equipped court. A court that has the personal and judicial resources that enable it to fulfill its constitutional obligations. Tim Tymkovich is highly qualified, and will serve the judiciary in the best tradition of our Nation's most respected courts.

Before I conclude, before we move to a final vote, I would like to leave you with a final thought, an important statement made by five justices of the Colorado Supreme Court.

''. . . [W]e speak as one voice, resolute in our belief that the people are entitled to and that Mr. Tymkovich is most deserving of consideration . . . Mr. Tymkovich's experience, practice, public service, temperament and skills will serve the people of the United States well.

Their unqualified support tells us a great deal about Tymkovich's credentials and his suitability to the Federal bench. This statement deserves our attention and our respect.

I urge my colleagues to support the nominee, and to vote for the confirmation of Tim Tymkovich to the Tenth Circuit of the United States Court of Appeals.

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

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

Mr. ALLARD. Mr. President, I ask unanimous consent that the time during the quorum call be divided equally between both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SUNUNU. Mr. President, I ask unanimous consent I be allowed to speak as in morning business, with the time allotted against the time for the nomination.

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

(The remarks of Mr. SUNUNU pertaining to the submission of the resolution are printed in today's RECORD under ''Submitted Resolutions.'')

Mr. SUNUNU. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ALLARD. Mr. President, I ask unanimous consent that the time during the quorum call be divided equally between both sides.

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

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

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

Mr. KENNEDY. How much time remains on Senator LEAHY's time?

The PRESIDING OFFICER. The Senator has 2½ minutes.

Mr. KENNEDY. Mr. President, I yield myself the 2½ minutes.

I urge my colleagues to vote against the nomination of Timothy Tymkovich

to the Tenth Circuit because I do not believe he has met his burden of showing that he has the qualifications, fairness, and commitment to core constitutional values required of an appellate court judge. The positions that Mr. Tymkovich has taken raise serious questions about his ability to be open-minded in cases involving gay rights and privacy, reproductive choice, and the power of the Federal Government with regard to the States.

As State Solicitor General, Mr. Tymkovich defended Colorado's antigay ballot initiative, Amendment 2, which was struck down by the Supreme Court in Romer v. Evans for violating the equal protection clause. The Romer decision vindicated the ability of gays and lesbians to employ the political process to secure antidiscrimination protections, in the same manner as other American citizens. Justice Kennedy, the author of the Romer decision, perhaps put it best when he said ''it is not within our constitutional tradition to enact laws like Amendment 2. . . . Central to both the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance.''

As State solicitor, Mr. Tymkovich had a duty to defend Amendment 2, but I am concerned about the content and the tenor of the comments made by Mr. Tymkovich in a law review article he wrote after the Court decided Romer in which he harshly criticized the Court's reasoning and its decision. Not simply content to disagree with the Romer decision, Mr. Tymkovich berates the Romer Court for its ''ad hoc, activist jurisprudence'' and its ''willingness to block a disfavored political result.'' Mr. Tymkovich defends the antigay ordinance as the exercise of freedom against immoral behavior. Employing language that is a frightening parallel to that used by advocates against Federal laws prohibiting racial discrimination in the 1960s, Mr. Tymkovich suggests that prohibiting discrimination on the basis of sexual orientation is an improper infringement on an individual's liberty interest.

Mr. Tymkovich's statements lead one to question whether he will understand the vital role that the equal protection clause and antidiscrimination legislation plays in protecting minorities against popularly-enacted laws. According to Mr. Tymkovich, ''it is always legitimate public policy for voters or legislatures to repeal disfavored laws. No law, including civil rights legislation can be seen as a one-way street. In the end, this important point was lost on the U.S. Supreme Court.'' The harsh tone of the criticism raises concerns about how Tymkovich will approach the civil rights cases that come before him, and raises questions about his judgment and temperament.

At his hearing and in answers to written questions, Mr. Tymkovich did state that he would follow Romer, and that he would be fair in antidiscrimination cases involving sexual orientation and other matters. But it is difficult to reconcile the assertion she made at his hearing with the strong statements in his article.

As solicitor general, Mr. Tymkovich unsuccessfully defended Colorado's decision to cut off, in violation of Federal law, State Medicaid funding for abortions for poor women who had become pregnant due to rape or incest. Again here, Mr. Tymkovich can argue that he was simply doing his job. However, in testimony before Congress in 1996, Mr. Tymkovich criticized the Medicaid requirements as an unwarranted intrusion into a matter of state concern. In that same testimony, Mr. Tymkovich also criticized the Federal ''Motor Voter'' law as intrusive because it poses ''special burdens'' on States; criticized the EPA's decision to prosecute polluters who violated Federal environmental law standards as infringing on state prerogatives, and argued against the doctrine of implied preemption. This testimony, in his capacity as one of the top legal advisors to the State Attorney General, leads me to question whether Tymkovich would have the proper respect for congressional authority to pass laws that impact States.

Finally, Mr. Tymkovich received a partial rating of ''not-qualified'' from the American Bar Association. While such a rating is not automatically disqualifying, when combined with my other questions about Mr. Tymkovich, it leads me to conclude that I cannot support his nomination.

Our Federal courts and the American people deserve judges of the highest caliber: judges who are fair, open, and impartial, who are highly qualified, who possess unimpeachable integrity, and who are committed to core constitutional values. The nominee has the burden to show the Senate that he or she meets that standard and is worthy of confirmation. Unfortunately, Mr. Tymkovich has failed to do so.

I am concerned about what seems like the right-wing ideological bent of the nominees that the administration continues to send forward. I urge this administration to work with the Senate, both Democrats and Republicans, to nominate moderate judges who are qualified, fair, and have bipartisan support. This can be easily done. But the administration continues to insist on its unilateral right to pack the courts with judges hostile to civil rights and to the enforcement of important Federal laws with profound impacts on the lives of Americans.

The central values of our society—whether our society will continue to be committed to equally, freedom of expression, and the right to privacy—are at issue with each of these nominations. The Constitution does not contemplate a Senate that acts as a rubber stamp. A genuine advice and consent role is essential. If the administration continues to nominate judges who would weaken the core values of our country and roll back the civil rights laws that have made our country a more inclusive democracy, the Senate should reject them. I urge the Senate to reject his nomination.

Mr. KOHL. Mr. President, I rise today in opposition to the nomination of Timothy Tymkovich to the U.S. Court of Appeals for the Tenth Circuit. Having reviewed his record and his testimony at his confirmation hearing, I am left with only one conclusion—he does not warrant confirmation to an appellate judgeship.

It is not merely the extreme, highly ideological positions he has taken on a variety of important legal questions that compels me to oppose his confirmation. But his record is replete with these positions on issues from environmental protection to a woman's right to choose. He has consistently advocated an extreme reading of ''States rights'' that would eviscerate the ability of the Federal Government to protect Americans from a variety of dangers. He believes that Federal clean air and water regulations, Federal funding for abortions for victims of rape and incest, and even ''motor voter'' provisions designed to make it easier for citizens to exercise their fundamental right to vote all unconstitutionally interfere with State sovereignty and autonomy.

But what most disturbs me concerning Mr. Tymkovich—and, in my view, plainly disqualifies him for a Federal appellate judgeship—is the animus he has shown towards one group of Americans. He has argued that it is appropriate for the State to forbid localities from passing laws forbidding discrimination on the basis of sexual orientation. And his advocacy of this position was not limited to representing his client, the State of Colorado, in the courts. After the Supreme Court rejected these arguments, and held such laws were contrary to basic principles of equal protection, he published a law review article defending his position. In this article, he stated that it was permissible for the State to deny protection from discrimination to gays just as it would be permissible for the State to forbid certain immoral activity such as ''sadomasochism, cockfighting, bestiality, suicide, drug use, prostitution and sodomy.'' Such ugly arguments reflect an intolerance and hostility to equal rights that have no place in our Federal courts.

Anyone who reviews my record on judicial nominations knows that I do not lightly oppose Federal judicial nominees. But this nominee's extreme positions and opposition to equal rights for all Americans—regardless of their sexual orientation—leave me no choice.

Mr. HATCH. Mr. President, I am pleased that the full Senate is considering the nomination of Timothy Tymkovich to the U.S. Court of Appeals for the Tenth Circuit.

Timothy Tymkovich, a graduate of Colorado College and the University of

Colorado School of Law, has worked as a partner in private practice since 1996 with the firm of Hale Hackstaff Tymkovich, representing clients in matters involving State licensing and regulatory issues. He has also acquired some expertise in State and Federal election issues, and he has represented a variety of political parties and candidates. Since 1997 he has represented Great Outdoors Colorado, a highly successful State program which devotes lottery monies to fund wildlife and land conservation efforts and State recreation programs.

Mr. Tymkovich has been a great public servant for the State of Colorado, serving from 1991 to 1996 as the State Solicitor General, where he acted as the chief appellate lawyer for the citizens of Colorado. In that capacity he ably represented the State in State and Federal courts, including the Colorado Supreme Court, the Tenth Circuit Court of Appeals, and the U.S. Supreme Court. He provided legal assistance to the Colorado General Assembly and acted as a liaison to Colorado's congressional delegation. He acted as the Attorney General's delegate to Colorado's judicial selection process. He also worked to reform State criminal, consumer protection and antitrust laws.

When he left the office of Solicitor General, the Denver Post editorialized, ''In an age in which lawyers and government workers are often held in low esteem, Tymkovich, a member of both groups, has stood in stark contrast to both stereotypes.'' The Post added, ''Tymkovich has set a high standard of service.''

Mr. Tymkovich is well respected by his peers for his professionalism and commitment to the field of law. He is a member of the prestigious American Law Institute, which selects members on the basis of professional achievement and demonstrated interest in the improvement of the law; the International Society of Barristers, an honor society made up of 650 trial attorneys in the United States and elsewhere; the American Bar Foundation, which is the research arm of the American Bar Association; and the Colorado Bar Foundation. He currently serves as Chair of the Colorado State Board of Ethics, which acts to advise the Colorado governor and executive branch on ethics issues.

From 1999 to 2001 he served as counsel to the Columbine Review Commission, which was responsible for reviewing all aspects of the 1999 shootings at Columbine High and making recommendations to the Governor regrading ways to respond to, and even prevent, future assaults of the same type. From 1998 to 2000 he served as Chair to the Colorado Governor's Task Force on Civil Justice Reform, which issued findings on the status of civil justice in Colorado and offered recommendations for improvements.

Mr. Tymkovich's nomination has drawn powerful support from all corners. He enjoys the unqualified endorsements of Colorado Senators CAMPBELL and ALLARD; a number of former Colorado Supreme Court justices, including Justices Erickson, Dubofsky, Neighbors, Rovira, Quinn, and Scott; Colorado Governor Bill Owens; the Colorado Attorney General, Ken Salazar; and Colorado's major newspapers, the Denver Post and the Rocky Mountain News. Significantly Mr. Tymkovich is also supported by former three-term Colorado Governor Roy Romer, who has served as the national vice chair of the Democratic Leadership Council, national co-chairman of the Clinton-Gore '96 campaign, co-chairman of the Democratic National Platform Committee in 1992, and chair of the Democratic Governors' Association in 1991.

I firmly believe Mr. Tymkovich will make a great member of the Tenth Circuit. I urge all of my colleagues to vote to confirm this highly qualified nominee.

Unfortunately there seems to be confusion about Mr. Tymkovich's record on several fronts.

First, some have confused Mr. Tymkovich's advocacy with his personal views. As an advocate for Colorado, Mr. Tymkovich had a duty to defend the laws of Colorado, including Amendment 2. It is entirely unfair and erroneous to state that Mr. Tymkovich has provided his personal views or opinions on these issues. He has not.

Second, it has been said that Mr. Tymkovich compared Amendment 2 to prohibitions on cockfighting and other activities. He has not. As he pointed out to Senator LEAHY on February 26, he was quoting a Supreme Court opinion for the simple proposition that there is Supreme Court precedent for a moral component as a rational motivation for an electorate. This wasn't Mr. Tymkovich's personal opinion, it was what the Supreme Court has said on this issue. Mr. Tymkovich made this point clear a month ago.

I raise these points because some seem to be attempting to reshape Mr. Tymkovich's record on the floor into a form I do not recognize. This man has a distinguished legal career. He is supported by Democrats and Republicans alike. He has served as a successful litigator and he was an excellent Solicitor General for Colorado. Those who know him support him and know he will be a terrific judge.

''SPECIAL'' RIGHTS

I would like to respond to the allegation that Mr. Tymkovich views protection for gays and lesbians as providing ''special treatment'' for them.

First of all, Mr. Tymkovich's use of the term ''special treatment'' mirrored the terminology used by participants in the political debate over Amendment 2's passage.

Second, as part of his job as Solicitor General, Mr. Tymkovich had to defend the provisions of Amendment 2, which was intended to disallow laws recognizing ''minority states,'' ''quota preference,'' ''protected status,'' or ''claim of discrimination'' on the basis of sexual orientation.

Never did Mr. Tymkovich in his brief or his law review article argue that homosexuals should not enjoy the Fourteenth Amendment protections available to all.

In the Colorado brief before the U.S. Supreme Court, Mr. Tymkovich specifically pointed out, sponsors of the Amendment intended to prevent a new preferred status designation. To quote the brief: ''Individuals would retain precisely the same rights under State and Federal law that they had prior to the enactment of the special protections'' disallowed by Amendment 2, and Through Amendment 2, Colorado has simply defined the package of civil rights available to homosexuals and bisexuals under the Colorado Constitution as no larger than that provided by the Constitution and laws of the United States.''

It is important to note that Mr. Tymkovich's testimony before Congress in 1996 represented the views of the Colorado Attorney General. He was not there to provide his own views; he was there as an official representative of the State. In fact, Mr. Tymkovich noted during his February 12 hearing that he agreed with some of the testimony, while he disagreed with other parts.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Mr. ALLARD. Mr. President, it is my understanding that we have less than a minute remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLARD. Mr. President, I want to make a brief comment before we vote to remind the Members of the Senate that they have heard evidence today that indicates Tim Tymkovich is fairminded, he respects the rule of law, and he has exhibited intelligence and the proper temperament to serve on the Tenth Circuit Court of Appeals.

I ask that my colleagues join me in voting to confirm Tim Tymkovich as a Federal judge on the Tenth Circuit Court of Appeals. In my view, when confirmed, he will be not just a good judge, he will be a great judge.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is, Will the Senate advise and consent to the nomination of Timothy M. Tymkovich, of Colorado, to be United States Circuit Judge for the Tenth District?

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

Mr. REID. I announce that the Senator from Connecticut (Mr. LIEBERMAN) is necessarily absent.

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

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 113 Ex.]

YEAS—58

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

NAYS—41

Akaka	Durbin	Lautenberg
Baucus	Edwards	Leahy
Biden	Feingold	Levin
Bingaman	Feinstein	Mikulski
Boxer	Graham (FL)	Murray
Byrd	Harkin	Nelson (FL)
Cantwell	Hollings	Reed
Carper	Inouye	Reid
Clinton	Jeffords	Rockefeller
Corzine	Johnson	Sarbanes
Daschle	Kennedy	Schumer
Dayton	Kerry	Stabenow
Dodd	Kohl	Wyden
Dorgan	Landrieu	

NOT VOTING—1

Lieberman

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of this action.

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

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

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

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I ask unanimous consent to speak as in morning business for 12 minutes.

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

CONSUMER ROCKET MOTOR PROPELLANTS

Mr. ENZI. Madam President, I come to you today on behalf of students and 4–H members and Scouts around the world. Start counting backwards from 10 to zero: 10, 9, 8, 7—and depending on the context, people will instantly be reminded of their youth, sitting in front of a dimly lit television, watching a rocket take flight as we began the study of space flight and space travel. We were much younger then and all around me kids from all over the State and all around the country were excited and fascinated by the new age of rocketry and, later, space travel.

When Russia launched its Sputnik, it created a sensation, and their success, spurred on by the climate of the cold war, challenged us in the United States to reach for the skies.

Wyoming isn't called the Pioneer State for nothing, and so my classmates and I were determined we would do everything we could to learn about this new branch of science and involve ourselves in the race for space. It was not too long after that President John F. Kennedy issued a challenge to the Nation to land a man on the Moon and return him safely to Earth.

What seemed to be against all the odds soon became reality when Neil Armstrong walked on the Moon, taking a small step for man and a giant leap for mankind.

Even today, those of us who saw those events firsthand on the television will never forget what a miracle it was. It fired our imaginations as it taught the Nation a powerful lesson: If we can make this impossible dream come true for the Nation, of what more are we capable if we dare to try? Perhaps that lesson is what made our Nation what it is today and why we have continued to defy the odds of what is possible for us as a nation, and even for each of us as individuals.

Then came September 11 and we, as a nation, faced another challenge. The call for increased security that resulted from those cowardly and cruel attacks has had some unforeseen consequences, however.

One of them was brought to my attention when a constituent called to share his concern regarding the future of his favorite hobby, model rocketry. He said some of the restrictions of the Homeland Security Act could make it more difficult, if not impossible, for him and his fellow enthusiasts to purchase fuel for their model rockets.

As I looked into his problem, I was surprised to see that the use of ammonium perchlorate composite propellant, better known as APCP, had caught the eye of the Bureau of Alcohol, Tobacco, and Firearms. Although it had been regulated in the past by its placement on the explosives list, the ATF had considered consumer rocket motors as propellant-activated devices and exempt from any ATF permit requirements.

Then, in 1997, the ATF decided to regulate rocket motors that contained more than 62.5 grams of APCP. Those that contained less than that amount were still exempt, but those that contained more would not be available for interstate purchase and transport without a permit.

Since many rocket enthusiasts travel from State to State to participate in their events, this provision could have made for a lot of needless redtape. To avoid it, many of those participating in this hobby carried their rocket bodies to the events and purchased the rocket motors from vendors at the local launch. With a little ingenuity and cooperation from local vendors, most rocketeers legally avoided the need to purchase and obtain permits.

Now the provisions of the Homeland Security Act have created a new problem. Under the new law, a permit will be required for all rocket motors containing more than 62.5 grams of APCP, whether or not the motor is used in or out of State. And that begins on May 24 of this year—a problem rapidly approaching. The new law creates a problem where there was none before and imposes a solution that will only create unnecessary hardship for those who are studying about rockets or pursuing a hobby as a model rocket enthusiast.

According to the U.S. Product Safety Commission, a rocket motor with less than 62.5 grams of APCP can be used by minors without adult supervision. That is the U.S. Product Safety Commission: 62.5 grams or less can be used by minors without adult supervision. It could not be very bad. Now a rocket with any more than that requires adult supervision and a permit. Such an arbitrary limit makes no sense when it means a 62-gram rocket can be used by your children out playing in a field with their friends, while another gram of fuel puts it in a category that requires adult supervision, Federal intervention, attention, inspection, and expensive, cumbersome permits.

The permit that is required costs $100, and it requires the submission of fingerprints, a photograph, and a background check. Although the homeland security bill tried to introduce a limited permit that could be obtained for $25 and a background check, the newly designed permit is restricted to intrastate use and purchase only and would not have any use for rocketeers who travel to events in other States.

My concern about the impact of these regulations, and the process necessary to obtain permits, and the bureaucracy that would be necessary to do that, and to fulfill the requirements for background checks is that it will certainly slow the participation of our young adults in studying rockets and pursuing their dreams of space travel.

As I learned from my own experience—and I was one of those rocket people back at the time of Sputnik—the study of rockets had a ripple effect throughout my own education. It taught me a lot about math, when we had to calculate the amount of fuel we needed and the rate at which the rocket would travel at speed-calculating heights, figuring trajectories, figuring the amount of Gs that would be on a passenger. It taught us about the study of weather, as we would examine reports about our own launch date and temperature and cloud cover that would affect our ability to observe the

launch, and weather balloons for measuring the winds aloft, to better tell where it would go, and to make the calculations about how high we were able to fly on any particular day.

We invented much. When I started doing rockets, there were not the model rockets available at the hobby shops. We had to have the motors turned out at the local shop, after we designed them for the proper characteristics. It led to a lot of invention.

It also expanded our horizons, as our experiences with rockets translated to our own lives. My friends and I often thought, if we could master the skies and heavens with our rockets, what more would we be able to do in our daily lives? It is an answer we are still developing as we each pursue paths in life—some very far away from rockets.

As we grow older, we all want to make sure our children and our grandchildren have it better than we did. This is one area in which they will not have it better than we did—in fact, may not have it at all—if we fail to act. If we fail to come up with a reasonable compromise on this issue, we will have failed to fuel the dreams of the next generation in a vital field of science by our shortsighted efforts to regulate the fuel of the rockets.

Our children will not be the only ones affected by this provision, however. The impact of this regulation will also be felt by the trucking industry which was recently told that it would be liable for the prevention of the possession of explosives by prohibited persons who are their employees. As some shippers do not currently do extensive background checks on their employees, they have decided to stop shipping the motors, including these rocket motors, at all.

Although some companies will continue to ship rocket motors, they will charge very high hazardous material fees that would hit the consumers in the pocketbook. Small businesses will be hit hard by the fees which will have to be paid by the consumer, and even larger and more successful businesses will be unable to avoid the one-two punch of the permit process and the higher transportation and delivery fees.

Even small businesses in other countries will feel the pinch. I was surprised to receive a call from the president of the United Kingdom's largest model rocket group. He thanked me for my interest in the issue because the U.S. ships most of the model rockets used in the United Kingdom. The supply of model rocket motors in other countries is limited, and their hobby is intricately linked with ours.

To remedy these problems, I introduced S. 724 last week. My bill provides an exemption for permit requirements for the purchase and transport of rocket motors, including those with more than 62.5 grams of APCP.

In section 845 of the Federal explosives law, my bill provides an exemption from explosives permit requirements for the components of rocket motors. This exemption is similar to the exemption in the same section enjoyed by antique firearms users for black powder, as black powder also makes the explosives list. The limit there is 50 pounds; quite a bit different than 62.5 grams.

The current language has been tightened up from the original draft to ensure that the exemption is only provided for valid uses. The language specifies that the exemption only applies to nondetonable rocket propellant—a very important word. There are some high-energy APCP composites that have additional chemicals in their composition that make them detonate instead of burning at a moderate rate. These are not used in amateur or sport rocketry and are not exempt under my language.

The APCP my bill refers to, which is found in model rockets, burns but does not explode. In addition, the language in my bill does not exempt rockets that carry various components of weaponry.

On the transportation issue, it appears that some companies are only shipping those articles that are specifically mentioned as exempt from explosives requirements under section 845. My bill provides the exemption for rocket motor components under this section, giving shippers a clear exemption to resume shipping rocket motors.

I have been joined by Senators BENNETT, INHOFE, COLEMAN, CRAPO, BURNS, ALLARD, and SANTORUM in introducing this bill.

Some of my other colleagues have expressed concern that this legislation goes too far. They have questioned me about the possibility of individuals stockpiling APCP to build a bomb.

First, I would contend that the ATF does not appear concerned about this possibility. Under their proposed 62.5-gram exemption, an individual would be able to buy as many rocket motors as they wanted that were under 62.5 grams.

A rocket motor is fairly simple. I ask unanimous consent to show a three-dimensional object on the floor.

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

Mr. ENZI. I have one of those 62.5 gram rocket motors here. This is what is allowed to be bought in as much quantity as you want. But a quarter of an inch bigger than this and you can't have it without $100 and a special permit. It is very simple, the fuel with the hole through the center. When you buy them, the APCP comes in this chunk that is removable from the rest of the rocket motor parts.

If the ATF considers APCP a dangerous explosive, then their 62.5 gram exemption itself is dangerous. The ATF is basically saying it is OK to buy as many sticks of dynamite as you want, but we won't let you have a whole box. I reiterate that rocket motors compare more to flares than to dynamite. Hundreds of hours are spent constructing these rockets.

A lot of work goes into the rocket body. Nobody wants to blow theirs apart. So they are a safe form of fuel.

Simply put, my legislation is designed to allow another generation to experience the thrills and excitement of model rocketry. It is being introduced to correct a change in the law that Congress never intended. When we voted to take action to prevent the actions of terrorists, we never intended to prevent our children from pursuing projects in science class, hobbyists from pursuing their hobbies, and our families from engaging in father-son or mother-daughter or any mixture of projects that promote learning and the pursuit of the frontiers of space. If you have never been to a rocketry event or seen a rocket launch in person, I urge you to do so if the opportunity ever presents itself. If you have gone to one of those events, you will remember how it left you looking towards the heavens, mindful of your dreams, and feeling encouraged to pursue them.

That is not a bad gift to give our children and theirs. It is extensive throughout the world, I can tell, from the calls I have gotten about this since I got involved in it.

I urge my colleagues to join me in this effort which will have a great impact on our lives in the years to come.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

TROOPS PHONE HOME FREE ACT OF 2003

Mr. MCCAIN. Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. 718, the Troops Phone Home Free Act of 2003; that the only amendment in order be a McCain substitute amendment; further, that there be 1 hour of debate equally divided between Senator MCCAIN and the Democratic leader or his designee; that at the expiration or yielding back of time, the amendment be adopted, the bill, as amended, be read a third time and passed, without intervening action or debate.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 718) to provide a monthly allotment for free telephone calling time to members of the United States armed forces stationed outside the United States who are directly supporting military operations in Iraq and Afghanistan.

AMENDMENT NO. 434

Mr. MCCAIN. I ask unanimous consent that the McCain substitute be adopted at this time for consideration.

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

The amendment (No. 434) was agreed to, as follows:

(Purpose: To make minor changes in the plan to provide a monthly allotment of free telephone calling time to members of the United States armed forces stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan)

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Troops Phone Home Free Act of 2003''.

SEC. 2. PURPOSE.

It is the purpose of this Act to support the morale of the brave men and women of the United States armed services stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan (as determined by the Secretary of Defense) by giving them the ability to place calls to their loved ones without expense to them.

SEC. 3. FINDINGS.

The Congress finds the following:

(1) The armed services of the United States are the finest in the world.

(2) The members of the armed services are bravely placing their lives in danger to protect the security of the people of the United States and to advance the cause of freedom in Iraq.

(3) Their families and loved ones are making sacrifices at home in support of the members of the armed services abroad.

(4) Telephone contact with family and friends provides significant emotional and psychological support to them and helps to sustain and improve morale.

SEC. 4. DEPARTMENT OF DEFENSE TELECOMMUNICATIONS BENEFIT.

(a) IN GENERAL.—As soon as possible after the date of enactment of this Act, the Secretary of Defense shall provide, wherever practicable, prepaid phone cards, or an equivalent telecommunications benefit which includes access to telephone service, to members of the armed forces stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan (as determined by the Secretary) to enable them to make telephone calls to family and friends in the United States without cost to the member.

(b) MONTHLY AMOUNT.—The value of the benefit provided by subsection (a) shall not exceed $40 per month per person.

(c) END OF PROGRAM.—The program established by subsection (a) shall terminate on the date that is 60 days after the date on which the Secretary determines that Operation Iraqi Freedom has ended.

(d) FUNDING.

(1) USE OF EXISTING RESOURCES.—In carrying out this section, the Secretary shall maximize the use of existing Department of Defense telecommunications programs and capabilities, private support organizations, private entities offering free or reduced-cost services, and programs to enhance morale and welfare.

(2) USE OF APPROPRIATED FUNDS.—In addition to resources described in paragraph (1) and notwithstanding any limitation on the expenditure or obligation of appropriated amounts, the Secretary may use available funds appropriated to or for the use of the Department of Defense that are not otherwise obligated or expended to carry out this section.

SEC. 5. DEPLOYMENT OF ADDITIONAL TELEPHONE EQUIPMENT.

The Secretary of Defense shall work with telecommunications providers to facilitate the deployment of additional telephones for use in calling the United States under this Act as quickly as practicable, consistent with the availability of resources. Consistent with the timely provision of telecommunications benefits under this Act, the Secretary should carry out this section and section 4 in a manner that allows for competition in the provision of such benefits.

SEC. 6. NO COMPROMISE OF MILITARY MISSION.

The Secretary of Defense shall not take any action under this Act that would compromise the military objectives or mission of the Department of Defense.

Mr. MCCAIN. Just to be clear, at the expiration or yielding back of time, the amendment is adopted, and the bill, as amended, will be read a third time and passed, without intervening action or debate?

The PRESIDING OFFICER. That is correct.

Mr. MCCAIN. I thank the Chair.

This legislation, introduced on behalf of Senators ALLEN, CHAMBLISS, LINDSEY GRAHAM, CRAIG, MILLER, and others, would improve the ability of American service personnel fighting overseas to communicate with their loved ones at home. It provides a monthly allotment of free telephone calling time to members of the Armed Forces outside of the United States who are directly supporting or involved in military operations in Iraq or Afghanistan for such period of time as the conflict continues in both areas.

I have discussed this issue with the Department of Defense and at this time they have not gotten back to me. I spoke to the Deputy Secretary of Defense. She supports the idea. There may be some changes proposed by the Department of Defense, but I am confident of their support.

This legislation would direct the Secretary of Defense to provide these troops with the financial ability to call home by providing a prepaid calling card or equivalent telecommunications benefit up to $40 every month. The bill would also direct the Secretary to work with telecommunications providers to facilitate the deployment of additional telephones for use by our troops. Our military mission must remain a priority of the Department of Defense. Therefore, the bill makes clear that the Secretary shall not take any action to implement the bill that would compromise our overall military objectives. Moreover, the bill gives the Secretary complete discretion on how best to implement it. If it is simply impractical to provide the benefit to certain soldiers, then the Secretary may refrain, obviously, from providing it. If the cost of providing the service to one branch of the military or the other is more costly, then the Secretary can determine the most equitable method of distributing the benefit.

The bill also directs the Secretary to maximize the use of all resources to fulfill the goals of the act and, thus, he may use existing programs, private support programs, or offers from private entities to make telephone service available to our troops. For example, I received a generous offer today from Joseph Wright, CEO of PanAmSat Corporation. In his letter he said:

> [This bill] is a terrific idea and I would like to support it. . . .We would be willing to provide satellite services free to support your initiative.

The only intended beneficiaries of this bill are the troops serving this country. It is not intended to benefit any particular provider. Thus the bill urges the Secretary to implement the bill in a manner that is consistent with the timely provision of the benefits but also in a manner that allows for competition in the provision of such benefits.

All of us are aware of the importance of communicating with one's family and friends, particularly when you are in a time of crisis and combat. This is a modest attempt to try and help these men and women who are serving. Some of them have already been there for a very long time. The USS Abraham Lincoln has been at sea in the area for more than 300 days. Communications with their loved ones at home is obviously a very important aspect of preserving family and also communicating with friends as well. Modern technology enables our service personnel to communicate with their loved ones by phone, and these real-time discussions can provide significant emotional and psychological support to both the soldier and the family.

Unfortunately, for some the cost of placing these calls can be prohibitively expensive. On March 18, 2003, USA Today reported on the high cost of telephone calls from bases in Kuwait:

> It cost one soldier $35 to make two quick phone calls home to his wife.

Likewise, my office was recently told the story of a Marine corporal who didn't have enough money to call his son in the States on his birthday.

Last Friday, I asked the country's telephone companies to commit to ensure that families of service personnel don't have their telephone lines disconnected due to a short-term inability to pay the costs incurred for calls from troops overseas. I also asked for a commitment to implement special reduced rates where feasible for telephone calls with members of the Armed Forces overseas.

Madam President, the response has been overwhelming. From the smallest companies serving a few hundred customers to the largest of companies, around 60 companies have agreed to make these commitments. I wish to quote from a few of these letters and I will have many printed in the RECORD at the appropriate time. Some of them are extremely touching, believe it or not.

One that especially got my attention was from the Andrew Telephone Company in Andrew, IA. They will not disconnect service from servicemen's families for the duration of the war. They write:

> We don't offer long distance, but we will assist subscribers to find the best rates possible. Andrew is a community of 450 and we have 19 young men and women serving at this time. Yours, Mil Cornelius, President.

Remarkable. Andrew, IA, a community of 450 and they have 19 young men and women serving at this time. That is a very wonderful commitment.

We have commitments from small companies from Andrew Telephone Company to Quest, Southern Bell, SBC, Verizon, AT&T, MCI, Sprint. All the major corporations in America have also made these commitments. I am extremely grateful to them. More importantly, I am sure the service men and women and their families all over America are grateful as well.

Just a couple more: William P. Heaston, vice president of PrairieWave Communications in Sioux Falls, SD, wrote:

I am a retired Army officer, who served in Vietnam and other remote areas. I can assure you that PrairieWave fully appreciates the benefit to morale and military service that the ability to communicate with loved ones brings.

William E. Morrow, CEO of Grande Communications in San Marcos, TX, writes:

We are proud of our troops and know their families are in need of our support during these difficult times. This is the least we can do in light of their great sacrifice for our country.

All of them make statements along those lines.

OmniTel Communications:

We will also be providing cash credits as a donation on the billing, which have yet to be determined, of these families later this year to help defray other costs they may have incurred.

OmniTel Communications supports our Armed Forces in its critical action and wish the very best to all Americans who have to make very serious decisions for the future of our great country.

Ronald Laudner, CEO, OmniTel Communications, Nora Springs, IA.

I appreciate the overwhelming response from the major corporations and the smallest telephone companies in America. Obviously, as I said, the men and women who are serving in harm's way as we speak will also be grateful.

I also want to state the obvious to the men and women serving in the most dire and dangerous situations and cannot make a phone call now. They will be rotated out and they will be in places where they will be able to do so, and those are the ones who I am sure their families will want to hear from urgently.

I thank my colleagues for this bill. It will go to the other body. We will have, I think, a brief period of time for the Department of Defense to make whatever input they would like to have in this legislation. I hope we can pass it as quickly as possible and send it to the President. I thank my friend, Senator ALLEN, and I thank especially Senator CHAMBLISS, who is chairman of our Personnel Subcommittee, who has been very much involved in this issue as well.

I reserve the remainder of my time.

I ask unanimous consent to have printed in the RECORD a representative sample of responses I received from telephone companies, large and small, throughout the country, and a list of all of the companies that have responded to my request.

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

From: Mil Cornelius [andrtel@netins.net]
Sent: Monday, March 24, 2003 7:06 p.m.
To: Bailey, Bill (Commerce)
Subject: McCain Request

Andrew Telephone Company, Andrew, IA will not disconnect service from Servicemen's families for the duration of the war. We do not offer long distance, but will assist subscribers to find the best rates possible.

Andrew is a community of 450, and we have 19 young men and women serving at this time.

Yours,

MILT CORNELIUS,
President.

From: Ronald Laudner Jr. [rjljr@omnitelcom.com]
Sent: Monday, March 24, 2003 11:48 a.m.
To: Bailey, Bill (Commerce)
Subject: Senator McCain's Request

MR. BAILEY: Omni Tel Communications will do our best to determine who each of the families are that have given of themselves to defend our country. If we can garner the information on which families are affected, and I might add that with the number of communities we serve and the geographical proximity to several different companies of the armed forces this will be a large task, we will concur with the request made by Senator McCain.

We also will be providing cash credits as a donation on the billing, which have yet to be determined, of these families later this year to help defray other costs they may have incurred.

Omni Tel Communications supports our armed forces in this critical action and wish the very best to all Americans who have to make very serious decisions for the future of our great country.

Sincerely,

RONALD LAUDNER,
CEO, Omni Tel Communications,
Nora Springs, IA.

From: Abbott Jr., Herschel L.
Sent: Monday, March 24, 2003 6:10 p.m.
To: Bailey, Bill (Commerce)

BellSouth is continuing to study the feasibility of implementing customer specific pricing plans to provide discounts for families to communicate with members of the military serving overseas. We will provide an update on the status of these efforts as soon as possible.

I hope this responds to Senator McCain's inquiry.

Kindest regards,

HERSCHEL L. ABBOTT, Jr.

MCI,
Ashburn, VA, March 25, 2003.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science and Transportation, Russell Senate Office Building, Washington DC.

DEAR CHAIRMAN MCCAIN: MCI shares your desire to support our military personnel and their families during these difficult times. We also understand how important communications are to our service men and women and their families. On March 21, 2003, MCI reinstated its military personnel collections policy that was last used during the Afghanistan deployment. This policy allows MCI to negotiate very liberal deferred payment arrangements designed to meet the needs of the military members and their families.

MCI is also examining the possibility of special discounts to make it easier for our service personnel to communicate with their loved ones.

MCI is proud to support our troops.

Sincerely,

WAYNE B. HUYARD.

AT&T,
Morristown, NJ, March 24, 2003.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: Like all Americans, AT&T strongly supports the efforts our Armed Services personnel undertake on our nation's behalf in times of peace and in times of war. That support has evolved into a long tradition at AT&T of close cooperation with the United States government to provide the men and women who serve in our military the best telecommunications services in the world. As I write this letter, AT&T is providing service to sailors, marines, soldiers, and airmen on virtually every major U.S. military base worldwide and on every Navy ship at sea.

That tradition continues as AT&T now steps up to the challenge of providing communications services to our nation's troops deployed in the conflict with Iraq. As part of that effort, earlier this week AT&T announced that it would donate 160,000 prepaid phone cards worth $3 million to the USO for use by U.S. troops fighting the war with Iraq. This continues AT&T's tradition of donating service dating back to Operation Desert Storm as well as the Balkan conflict.

Today, from United States military bases in Kuwait, service men and women can call home in a number of convenient and cost-effective ways, including through the use of prepaid cards, standard calling cards, commercial credit cards, and collect calling. Special military prepaid card rates, for instance, allow military personnel to call the United States for 22 cents to 30 cents per minute with no surcharge per call. In addition, our special Global Military Saver Plus card, which has been heavily promoted to military personnel, is available at $0.50 per minute with no per-call surcharge and a monthly fee of only $1 for each month in which it is used. On a promotional basis, AT&T has also lowered the cost of calling from military bases in Kuwait to the United States using standard calling cards, commercial credit cards, and collect calling to 50 cents per minute with a maximum per call surcharge of $1.50 and, in some cases, no surcharge at all. Ship-to-shore calling is also available aboard Navy ships at rates of between $1 and $3 per minute, reflecting unique cost and capacity issues.

The retail rates for the military prepaid cards and ship-to-shore service are set by the Army Air Force Exchange Service (AAFES) and Navy Exchange Command (NEXCOM) based on rates set by AT&T in contracts with both AAFES and NEXCOM. Absent some unforeseen and extraordinary request from AAFES or NEXCOM that would materially increase our infrastructure costs, AT&T will not increase the underlying contractual rates for these services to AAFES and NEXCOM for the remainder of the year and through 2004. This commitment applies for calling from American military bases in the region, including Afghanistan and Pakistan, and from Navy ships engaged in this action. Additionally, for the duration of large scale armed hostilities in Iraq and for a period of 3 months thereafter, AT&T will not increase its special promotional rates for calling from military bases in Kuwait using standard calling cards, commercial credit cards, and collect calling.

AT&T is also working with AAFES to determine service requirements going forward as events play out in the region, especially Iraq. Of course, we do not provide service to U.S. military personnel in Iraq today, and do not know the full circumstances under which we may be called to do so. Whatever the circumstances, however, we will, working with AAFES, use our best efforts to provide the men and women who serve in our military in Iraq with the lowest reasonable calling rates possible.

AT&T is committed to bringing calling services to our troops as quickly as possible in Iraq and elsewhere around the world. As the number of U.S. troops has grown in the Persian Gulf region, AT&T teams have worked around the clock to meet the communications needs of those troops. That work is ahead of schedule, and likely to be expanded under the direction of the U.S. military, which determines equipment deployment plans. As those deployment plans are finalized, we will do all we can to bring service on line with the reliability and quality that consumers rightfully have come to expect from AT&T.

Senator, AT&T is honored to be able to help and support our U.S. troops during the conflict in Iraq. As President of AT&T Consumer Services, the unit of AT&T responsible for providing personal communications services to military service personnel around the world, I can assure you that, in keeping with its finest traditions, AT&T remains dedicated to connecting our troops with the people they love back home.

Best regards,

JOHN POLUMBO,
President and CEO.

TELEPHONE COMPANIES THAT RESPONDED TO MCCAIN LETTER

Alenco Communications, Inc.
All West Communications
American Discount Telecom
Andrew Telephone Company
AT&T
ATX Communications Inc.
BellSouth
Bentleyville Communications Corp.
Call America
Cbeyond
CC Communications
Choice One
Citizens Telephone Co.
Coastal Communications
Cox Communications
Covad
Cox Communications
Cunningham Telephone Company
Deerfield Farmers Telephone Co.
DFT Communications
EPIK Communications
Eschelon Telecom
Farmers Telephone Company
FairPoint Communications
Focal Communications
GCI
Grande Communications
Green Hill Telephone Companies
Hamilton Telecommunication
Home Telephone Co.
InterBel Telephone
Iowa Telecom
ITC DeltaCom, Inc.
Jefferson Telephone Co.
Jordan-Soldier Telephone Co.
KMC Telecom
LecStar Telecom Inc.
Le-Ru Telephone Company
MCI
Monroe Telephone
New Edge Network, Inc.
New Edge Networks
Nii Communications
Nortex Communications Co.
NW Iowa Telephone Co.
OmniTel Communications
One Eighty
PacWest
Pae Tec
Peace Valley Telephone Company
Pigeon Telephone Co.
Qwest
Prairie Wave
Ritter Communications Holdings, Inc.
Rothsay Telephone Co.
SBC
Sprint
Supra Telecom
Talk America, Inc.
TDS Metrocom
The Rainier Group
TXU Communications
USLEC Communications
VeriSign
Verizon
Walnut Telephone Company
Wilson Telephone Co.
Xspedius Communications.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ALLEN. Madam President, first, I very much commend Senator MCCAIN for his leadership in introducing this very important, thoughtful, and considerate measure, S. 718. I am proud to be a cosponsor of it with him, Senator CHAMBLISS, and others.

The purpose of this bill is to support the morale of the brave men and women of the U.S. armed services who are stationed outside the United States, directly supporting military operations in Afghanistan or Iraq, by giving them the ability to call their loved ones without an expense to them.

When you look at the findings, they all make very good sense, especially that

telephone contact with family and friends provides significant emotional and psychological support to them and helps to sustain and improve morale.

As you read the language of the bill, it all makes great sense as a matter of legislation. To give you an idea how it might have an impact on real people and real lives, and also the lives that have been lost, I will refer to an article today in The Washington Post, where a young man from Virginia lost his life. This young man's name is SGT Donald C. May, Jr. His father had fought in Vietnam. Young Mr. May joined the Marines as soon as he graduated from high school at Meadowbrook High School in Chesterfield County, VA. He reenlisted and eventually became a tank commander. His father received two Purple Hearts as a tank commander in Vietnam. Unfortunately, his father died in a boating accident while fishing a few years back.

At any rate, SGT May moved and bounced around for several years. He went to North Carolina, where he met his wife Deborah, and eventually they went off to California where he was stationed. He left in January for the Middle East, and it was then, in January, that his mother last talked to him on the phone. As his mother recalled in this article, he said, ''Mom, this is what I have trained for all my life. This is what I am meant to do. I am ready.''

He talked a bit later with his wife and he told her that he had decided not to reenlist because he wanted to be home more with his two children, Mariah, almost 7, and Jack, almost 2. His wife Deborah is pregnant with their third child, a son, to be named William. Mrs. May, the mother, said her daughter-in-law was treated twice in the last few days for premature labor. The baby is due in mid-May.

Brenda May's last communication with her son arrived a week ago. It was a letter dated March 3.

So when you think of this story of this brave, courageous hero, who made the ultimate sacrifice for our country, for our safety, for our freedom, for our security, and to liberate the people of Iraq, what a gift he has given to this country—his life, his future, to be holding his baby boy William, to be with his children as they grow up. That is the greatest gift he could give to this country, and I surely hope the people of Iraq, when liberated, will also get down on their knees and thank God for people of this man's courage.

When you listen to the story of him last talking on the telephone to his mother and wife in January, the last communication in a letter dated March 3, the reality is that was his last communication.

I know that you, Madam President, and all Americans can readily understand how this measure would have had an impact. If he could get to a telephone to actually have his mother, to have his wife, hear his voice and have him hear their voices, to tell him that they love him, for them to tell him how proud they are for what he is doing. Obviously, they would be asking him to stay safe. But there would have been the ending on that telephone call undoubtedly where his mother, his wife, and his children would have said: I love you.

While this measure looks like $40 a month and a telephone call, in some cases that may be the last contact. That is why this measure is so important, and I commend Senator MCCAIN and all of my colleagues for introducing it. I urge my colleagues to pass it very shortly.

I am also hopeful that later this week we can take up S. 721. This is a measure I have introduced with Senators MCCAIN, CHAMBLISS, GRAHAM OF South Carolina, WARNER, BURNS, MILLER, and STEVENS to expand the combat zone exclusions and to provide tax exclusions to personnel serving in Cuba and the Horn of Africa in support of Operation Enduring Freedom.

This legislation will help expand the combat zone tax exclusion to include the period in transit to qualified combat zones and to provide full income tax exclusion to other personnel. The pay for these personnel would not be, with the passage of this bill, subject to Federal or State taxes for any month in which they serve in one of these areas. The legislation also provides tax breaks for individuals serving in Operation Enduring Freedom, the global

war on terrorism, in Guantanamo Bay, Cuba, and the Horn of Africa. If this measure were to pass, the pay for these personnel would not be subject to Federal or State taxes for any month in which they serve in one of these areas.

As a matter of past precedent, in 1995, Congress passed legislation designating Bosnia-Herzegovina, Croatia, and Macedonia as comprising qualified hazardous duty areas. Military personnel serving there on peacekeeping duties are eligible for the same tax exclusion as personnel serving in combat zones.

I also point out that officers do not receive a full income tax exclusion. Any income above the level of the highest enlisted rank is subject to Federal and State taxes. This makes absolutely no sense to me whatsoever, and I know that Senator CHAMBLISS has another measure that will provide parity between officers serving in the Guard and Reserve.

The other point of this matter is that the pay of personnel in transit to a combat zone is subject to income taxes until they actually cross into the combat zone area.

What we are seeing is some of the ships are steaming at full speed when otherwise not necessary in an effort to give personnel as much tax-excluded income as possible. My view is that as soon as those battleship groups leave the ports, whether it is Wilmington, Norfolk, or San Diego, that is when the combat zone exclusion ought to apply. I think this is a commonsense, equitable matter. I think we should not be having our families back home worried about paying taxes when their brave loved one—whether that may be their husband, wife, son, daughter, mother or father—is leaving home. They should not be having to worry about paying taxes when they are serving, whether they are Reserves, Guard, or active military, in these areas supporting this operation for our security and also to liberate Iraq.

I urge my colleagues to pass S. 718, the Troops Phone Home Free Act of 2003. It is the proper and compassionate thing to do. It also expresses our gratitude and appreciation not just to the troops but the loved ones home who need to have that reassurance and the pleasure of hearing their loved one's voice.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise today in support of the Troops Phone Home Free Act introduced by my colleague from Arizona, Senator MCCAIN. This legislation would allow troops who are on the front lines in Operation Iraqi Freedom and Enduring Freedom to place phone calls to their loved ones without cost to them or their families. It would provide prepaid phone cards for the soldiers and provide more phones in the Middle East and in Afghanistan so our troops can have more flexibility to communicate with their families.

This is an important measure not only for the morale of our brave men and women who are overseas fighting in a war but also to their families and loved ones who are sacrificing dearly for their country.

There is nobody in this great body that we serve in who has a greater appreciation for a soldier to have the ability to pick up the phone and call his or her family than Senator MCCAIN. I admire and respect him for his service to our country, and I am very pleased to be in support of his bill to make sure that every member of our Armed Forces serving in Iraq today, in Enduring Freedom in Afghanistan, has the opportunity to communicate with their families.

We think of our brave men and women and the great job they are doing—which they are and I am so proud of all of them—but we have to also remember they have families back home. They have friends and loved ones here who are making just as big a sacrifice as they are making by serving our country. I think it is only right and fair that we give them as many benefits as we possibly can, and this is simply one more way of saying we appreciate the great work they are doing.

I also rise in support of S. 721, which is Senator ALLEN's bill to extend the combat zone where our men and women are serving. Again, from a Guard and Reserve standpoint, we are calling up these men and women on a much more regular basis today than ever before, and it is extremely important that we show support for all of our men and women serving in combat, active duty, Guard, and Reserve. This provides some equity in the payment to all of those men and women who are serving in combat in any part of the world to which they are called. So I do rise in strong support of Senator ALLEN's bill.

I also rise to introduce legislation, along with my colleagues Senator MCCAIN, Senator GRAHAM of South Carolina as well as Senator ALLEN, that I believe will be a positive step in assisting commanders in the Reserve and the National Guard. The men and women who serve our country in the Reserve and National Guard make up a critical component of an All-Volunteer Force and have chosen to put their lives on the line for the freedom of their families and their country, and we thank them. We continue to be on our knees in prayer for their continued safety and for their families as they serve around the world. The legislation I bring to the floor today represents a small step in recognizing the sacrifices that specifically the commanding officers in the Reserve and the National Guard are making as we speak. This initiative will provide a well-deserved benefit to at least 500 reservists and 1,500 National Guardsmen. Currently, National Guard and Reserve commanders are not entitled to command responsibility pay, even though they serve in a similar capacity to their active duty counterparts. This bill will allow for an added benefit of $50 per month for junior officers, $100 a month for mid-level officers, and $150 a month for Guard and Reserve senior officers who serve as commanders. This pay will apply whether they are full-time wing commanders of a Reserve component airlift wing or whether they are serving as a commander in an inactive duty training capacity. The purpose of this bill is to create further equity between our active and Reserve components. The amount of money involved is relatively small, but this measure serves as a powerful symbol that we value the contribution and sacrifice of our citizen soldiers stationed around the world serving the United States of America and the cause of freedom.

There is one special story about which I would like to speak very briefly. It is a story on the front page of virtually every major newspaper in America this morning. It is a story about CPT Chris Carter in the United States Army, a young captain from Watkinsville, GA, of whom I am so extremely proud, a story about Captain Carter who risked his life on a bridge over the Euphrates River, which was under siege, a bridge which they were seeking to have explosives removed from so we could take that bridge to make sure our troops ultimately got safely across the bridge. It is a story of CPT Chris Carter who, during the midst of a firefight, saw some innocent civilians, Iraqi civilians, crossing that bridge, coming over to the side he and his troops were on. He saw innocent civilians being caught in that firefight and one man being killed and a woman, an Iraqi woman, bleeding and pleading for help. Captain Carter got off of his vehicle, rushed to the bridge, behind his vehicle so that he could have some cover, until he got behind an iron post on that bridge. After he got behind the iron post on that bridge and under fierce fire coming from the other side, he risked his own life to go to that Iraqi woman and to pull her to safety and secure medication for her and ultimately have her transported to a medical facility where she is being treated.

I am so proud of every one of our men and women who are fighting in Operation Iraqi Freedom today. But it is men and women like Chris Carter of whom I am especially proud. He is not just a great Georgian, he is a great American and a great member of the United States Army.

I had a great conversation with his father this morning. His father obviously is extremely proud of him. He is one of those young men who will be able to take advantage of these benefits we have been talking about here today, Senator MCCAIN, Senator ALLEN, and myself. He is one of the young men who will be able to take that phone card under Senator MCCAIN's bill and call home to his family to tell them exactly what did happen and let them have an opportunity to tell him how very proud of him they are.

Again, I commend Senator MCCAIN. I appreciate very much the strong support of Senator ALLEN and Senator GRAHAM as we introduce these measures to try to make life a little more pleasant for our troops as they are separated from their families, and also to make sure their families have the opportunity to communicate with them, and have the financial resources to continue to provide for their families while they are serving in combat areas so that they can concentrate on doing the job they are sent to do and know that their families are being well taken care of, and know they are going to have the ability to communicate by telephone with their families on a regular basis.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I yield such time as she may consume to the Senator from Maine.

Ms. COLLINS. Mr. President, I commend the Senator from Arizona for his initiative.

I ask unanimous consent I be added as a cosponsor of his legislation, the Troops Phone Home Free Act. I think it is a wonderful initiative.

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

Ms. COLLINS. I also commend the Senator from Georgia, who heads the Personnel Subcommittee on the Armed Services Committee, with whom I am very privileged to serve. He brings great leadership to the effort. I am proud to be a member of his subcommittee.

DEATH GRATUITY

Later tonight I am hopeful the Senate will consider legislation, S. 704, which I introduced last week with my colleagues on the Armed Services Committee, the chairman, Senator JOHN WARNER, and my colleague, Senator JOHN MCCAIN. I recognize the contributions and cosponsorship of Senators BEN NELSON and GEORGE ALLEN. The legislation we have introduced will send an important message to our troops who are engaged in combat, even as we speak, that our Nation is so grateful for their service.

Our bill would raise the amount paid to the families of military personnel killed while on active duty. It would increase it from $6,000 to $12,000. This payment, which is known as the death gratuity, would be paid retroactive to September 11, 2001, so that the troops who have been killed in the battle against terrorism would also be eligible for this doubled benefit.

As are all of my colleagues, I am very saddened by the loss of American life in Operation Iraqi Freedom. The young men and women of our military represent the very best our Nation has to offer. They do not join the military for monetary gain nor to have a comfortable lifestyle. They serve our Nation out of a sense of patriotism that should make each and every American proud. The mercy they are showing even today to Iraqi prisoners of war is testament to the strength of character that is the core of our military values. In many cases, we ask our own troops to take additional risks in order to avoid injuring or killing innocent civilians. That they do this without question or regret speaks well not only of our military but of our Nation.

When the Commander in Chief sends our troops into harm's way, we hope and pray each and every one of them will come back home unharmed. While we know this will not be possible, that knowledge does not lessen our shock and our sadness when we learn of the loss of lives.

My State of Maine has experienced two such losses since the war began. Last Saturday, I attended a memorial mass in Windsor, ME, in honor of the life and sacrifice of CPT Jay Aubin. CPT Jay Aubin and CPL Brian Kennedy, both proud members of the United States Marine Corps, perished in a helicopter crash in the Kuwaiti desert in the very first few days of the conflict. I met with the parents of both these brave marines, both of whom were present at this memorial mass last Saturday. Hundreds of Mainers gathered to pay tribute to the sacrifice of these brave marines and their families.

As I stand on the floor of the Senate, I once again want to assure their families we honor and recognize their service and their sacrifice. When we send a young man or woman into harm's way, our Nation has in return a sacred obligation to them and to their families. We must ensure they go forth with the utter and complete confidence, should the worst happen, should they be called upon to make the ultimate sacrifice, that their country will care for their families and honor their service. The death gratuity is a small token, but it assists the grieving families with their immediate financial needs. There are a variety of other programs that provide for longer term support, but in the initial hours and days after a family has endured such a terrible loss, these funds help to alleviate monetary concerns. This benefit is commonly provided within 72 hours to the family of the service member who is killed while on active duty.

The last time the death gratuity was raised was in 1991 during the period of the gulf war when it was doubled from $3,000 to $6,000. With more than a decade having passed, it is time for Congress to move forward and increase this sum in recognition of those who are today fighting in Operation Iraqi Freedom and in the war against terrorism. It is the least we can do to honor their sacrifice. I offer this legislation in tribute to the families of those whose loved ones are today engaged in combat in the Persian Gulf. Too often we forget the sacrifices they make so that their loved one, their husband, wife, father, mother, brother, or sister, can serve our Nation. They are asked to accept long deployments and frequent moves while at the same time providing their loved one with the support they need to do their jobs.

Truly, what these families do is heroic. Passage of this legislation will send a clear and strong message to them that this Congress and this Nation is grateful for their sacrifice. Again, it is my hope we will pass this legislation by unanimous consent later this evening. In the meantime, my thoughts are with our troops as they fight in the battles in Iraq, in Afghanistan, in the war against terrorism, and I pray they will soon return home in victory.

Mr. President, I yield the floor and 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. MCCAIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. MCCAIN. Mr. President, I ask unanimous consent that all time be yielded back and we move to consideration of the legislation, S. 718.

The PRESIDING OFFICER. Without objection, all time is yielded back.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time and passed, as follows:

S. 718

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Troops Phone Home Free Act of 2003''.

SEC. 2. PURPOSE.

It is the purpose of this Act to support the morale of the brave men and women of the United States armed services stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan (as determined by the Secretary of Defense) by giving them the ability to place calls to their loved ones without expense to them.

SEC. 3. FINDINGS.

The Congress finds the following:

(1) The armed services of the United States are the finest in the world.

(2) The members of the armed services are bravely placing their lives in danger to protect the security of the people of the United States and to advance the cause of freedom in Iraq.

(3) Their families and loved ones are making sacrifices at home in support of the members of the armed services abroad.

(4) Telephone contact with family and friends provides significant emotional and psychological support to them and helps to sustain and improve morale.

SEC. 4. DEPARTMENT OF DEFENSE TELECOMMUNICATIONS BENEFIT.

(a) IN GENERAL.—As soon as possible after the date of enactment of this Act, the Secretary of Defense shall provide, wherever practicable, prepaid phone cards, or an equivalent telecommunications benefit which includes access to telephone service, to members of the armed forces stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan (as determined by the Secretary)

to enable them to make telephone calls to family and friends in the United States without cost to the member.

(b) MONTHLY AMOUNT.—The value of the benefit provided by subsection (a) shall not exceed $40 per month per person.

(c) END OF PROGRAM.—The program established by subsection (a) shall terminate on the date that is 60 days after the date on which the Secretary determines that Operation Iraqi Freedom has ended.

(d) FUNDING.—

(1) USE OF EXISTING RESOURCES.—In carrying out this section, the Secretary shall maximize the use of existing Department of Defense telecommunications programs and capabilities, private support organizations, private entities offering free or reduced-cost services, and programs to enhance morale and welfare.

(2) USE OF APPROPRIATED FUNDS.—In addition to resources described in paragraph (1) and notwithstanding any limitation on the expenditure or obligation of appropriated amounts, the Secretary may use available funds appropriated to or for the use of the Department of Defense that are not otherwise obligated or expended to carry out this section.

SEC. 5. DEPLOYMENT OF ADDITIONAL TELEPHONE EQUIPMENT.

The Secretary of Defense shall work with telecommunications providers to facilitate the deployment of additional telephones for use in calling the United States under this Act as quickly as practicable, consistent with the availability of resources. Consistent with the timely provision of telecommunications benefits under this Act, the Secretary should carry out this section and section 4 in a manner that allows for competition in the provision of such benefits.

SEC. 6. NO COMPROMISE OF MILITARY MISSION.

The Secretary of Defense shall not take any action under this Act that would compromise the military objectives or mission of the Department of Defense.

Mr. MCCAIN. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. TALENT. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

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

PETER ARNETT, TRAITOR

Mr. BUNNING. Mr. President, I rise today to comment on and express outrage over the recent actions and words of journalist Peter Arnett. In fact, I hesitate to even use the term ''journalist'' when referring to Mr. Arnett. This word implies a certain degree of objectivity and balance which this man knows absolutely nothing about. ''Traitor'' is a better word to describe Mr. Arnett.

This past weekend Mr. Arnett appeared on state-controlled Iraqi television. With a uniformed Iraqi anchor translating, Mr. Arnett told the Iraqi people that the American war plan had failed due to their continued resistance and that coalition forces were in the process of drafting new battle plans. To quote Arnett:

> Clearly, the American war plans misjudged the determination of the Iraqi forces.

Saddam Hussein couldn't have written his script any better.

Clearly, Mr. Arnett has no idea what he is talking about. This is the same man who reported in 1991 during the first gulf war that the United States had blown up a baby milk factory. Military sources confirmed that this target was in fact hit. The fact that Mr. Arnett conveniently left out was that this ''baby milk factory'' was actually a biological weapons plant.

I will never understand how and why Mr. Arnett always thinks he knows so much more than our military and intelligence officials. I am pretty sure our military leaders on the ground and civilian leaders in the Pentagon, who are briefed around the clock, know a whole heck of a lot more than Mr. Arnett. I hope Mr. Arnett is not getting his info from the same source who told him that U.S. forces used the nerve agent—sarin gas—against villagers in Laos during the Vietnam war.

This story, reported in 1998 by Mr. Arnett, could hold no water and CNN rightly fired Arnett for his reckless words and actions. Now, 6 years after that bogus claim, Peter Arnett has once again found himself in search of employment.

Both National Geographic Explorer and NBC News have fired Arnett for this latest stunt by Peter Arnett on Iraqi-controlled television. I am trying to figure out why these entities even hired him in the first place with his pathetic track record of recent years.

We all firmly believe in the first amendment which protects the freedom of religion, speech, press and assembly. However, no U.S. citizen should be allowed to provide aid, and comfort, through false information, to the enemy during wartime.

Of course the media doesn't mention the word ''treason'' like many of us have over Mr. Arnett's comments. That would be an indictment of one of their own and a pock on their profession.

Mr. Arnett can apologize all he likes for being a ''useful idiot'' for Saddam and his barbaric regime, but that's not enough for me and it's certainly not enough for our soldiers and many Americans. I think Mr. Arnett should be met at the border and arrested should he come back to America.

I dare Mr. Arnett to take a good look at our soldiers in uniform and tell them they have failed in this mission and objective.

These men and women embody everything that is great about America and freedom. They come from small towns and big cities. They come from families both rich and poor. They come from all religions and races. The one thing all these Americans have in common is their love for America and freedom.

They love this Nation and cherish its very idea so much that they are willing to sacrifice their own lives to ensure that we can live in a country free of government tyranny like that under which those in Iraq have lived.

This war has lasted almost 13 days. Thus far we have lost about 50 U.S. soldiers and have 17 missing in action.

As I stand here today, our coalition forces are surrounding Baghdad and will bring about the demise of Saddam Hussein and his regime. We will help liberate the Iraqi people from deceit and hopelessness and tyranny.

Mr. Arnett, you need to retire or think about a second career as a fiction writer. I understand you are looking for work and that the socialist, anti-American Daily Mirror in the United Kingdom has already picked you up.

To those news organizations that have already picked up Mr. Arnett, and others that may hire him, I have two things to say: One, you have every right to hire him. Two, we have every right to call your news organization a joke and a sympathizer to traitors.

I believe it is about time we made an example of Mr. Arnett's lies and deceit and let the media know we are watching.

While we are giving the media top access and protection in this war, we must demand that they not hang out to dry our soldiers and Americans. If they do so, there should be consequences.

Some believe freedom of speech is an absolute right and that journalists have the right to say and report anything they want. I, and many others, do not believe this. I do not believe journalists should be allowed to lie and opine and aid our enemies in the time of a war.

There is a line journalists are not meant to cross, and Mr. Arnett crossed this line many years ago, and he continues to do so. It is time we held this man accountable for his actions.

THE SMALL BUSINESS DROUGHT RELIEF ACT OF 2003

Mr. KERRY. Mr. President, I rise to thank my colleagues for voting last night in favor of the Small Business Drought Relief Act of 2003. Time is of the essence for disaster victims; small businesses across the country have been waiting 8 months for Congress to take action and force the Small Business Administration to comply with the law and open its disaster loan program to them. They are frustrated, and understandably so.

You see, the SBA doesn't treat all drought victims the same. The agency only helps those small businesses whose income is tied to farming and

agriculture. However, farmers and ranchers are not the only small business owners whose livelihoods are at risk when drought hits their communities. The impact can be just as devastating to the owners of rafting businesses, marinas, and bait and tackle shops. Sadly, these small businesses cannot get help through the SBA's disaster loan program because of something taxpayers hate about government bureaucracy.

The SBA denies these businesses access to disaster loans because its lawyers say drought is not a sudden event and therefore it is not a disaster by definition. However, contrary to the agency's position that drought is not a disaster, as of July 16, 2002, the day this legislation was introduced last year, the SBA had in effect drought disaster declarations in 36 States. That number has grown to 48, demonstrating that problem has gotten worse and even more small businesses are in need.

As I have said time and again, the SBA has the authority to help all small businesses hurt by drought in declared disaster areas, but the agency won't do it. For years the agency has been applying the law unfairly, helping some and not others, and it is out of compliance with the law. The Small Business Drought Relief Act of 2003 would force SBA to comply with existing law, restoring fairness to an unfair system, and get help to small business drought victims that need it.

I thank the Chair of the Committee on Small Business and Entrepreneurship, Senator SNOWE, for all her work to ensure passage of this bill, as well as our many colleagues who are cosponsors—Senators BOND, LANDRIEU, EDWARDS, JOHNSON, BINGAMAN, LEVIN, BAUCUS, DASCHLE, HOLLINGS, LIEBERMAN, WARNER, CRAPO, HARKIN, REID, ALLEN, BENNETT, and ENZI.

Mr. President, I ask unanimous consent that letters of support from Governors who advocated prompt passage of this legislation last year be printed in the RECORD.

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

SOUTHERN GOVERNORS' ASSOCIATION,
Washington, DC, August 19, 2002.

Hon. JOHN KERRY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR KERRY: We are deeply concerned that small businesses in states experiencing drought are being devastated by drought conditions that are expected to continue through the end of the summer. We urge you to support legislation that would allow small businesses to protect themselves against the detrimental effects of drought.

Much like other natural disasters, the effects of drought on local economies can be crippling. Farmers and farm-related businesses can turn in times of drought to the U.S. Department of Agriculture. However, non-farm small businesses have nowhere to go, not even the Small Business Administration (SBA), because their disaster loans are not made available for damage due to drought.

To remedy this omission, Sen. John Kerry (D-Mass.) introduced the Small Business Drought Relief Act (S. 2734) on July 16, 2002, to make SBA disaster loans available to those small businesses debilitated by prolonged drought conditions. This bill was passed by the Senate Small Business Committee just eight days later. Also, the companion legislation (H.R. 5197) was introduced by Rep. Jim DeMint (R–S.C.) on July 24, 2002. Both bills are gaining bipartisan support, and we hope you will cosponsor this important legislation and push for its rapid enactment in the 107th Congress.

As 11 southern states are presently experiencing moderate to exceptional drought conditions this summer, we cannot afford to wait to act. We urge you to cosponsor the Small Business Drought Relief Act and push for its consideration as soon as possible.

Sincerely,

Gov. Don Siegelman of Alabama; Gov. Mike Huckabee of Arkansas; Gov. Roy E. Barnes of Georgia; Gov. Paul E. Patton of Kentucky; Gov. M.J. ''Mike'' Foster, Jr. of Louisiana; Gov. Parris N. Glendening of Maryland; Gov. Ronnie Musgrove of Mississippi; Gov. Bob Holden of Missouri; Gov. Michael F. Easley of North Carolina; Gov. Frank Keating of Oklahoma; Gov. Jim Hodges of South Carolina; Gov. Don Sundquist of Tennessee; Gov. Rick Perry of Texas; Gov. Mark Warner of Virginia; Gov. Bob Wise of West Virginia.

OFFICE OF THE GOVERNOR,
Carson City, NV, July 23, 2002.

Hon. JOHN F. KERRY,
Chairman, Committee on Small Business, Russell Building, Washington, DC.

Hon. CHRISTOPHER BOND,
Ranking Member, Committee on Small Business, Russell Building, Washington, DC.

DEAR SENATORS KERRY AND BOND: Much of Nevada and the Nation have been experiencing extreme drought over the past several years. In Nevada we have seen the effects of this situation through catastrophic range and forest fires, insect infestations and loss of crops and livestock.

Prolonged drought causes a drastic reduction in stream and river flow levels. This can cause the level of lakes to drop so significantly that existing docks and boat ramps cannot provided access to boats. In the case of range and forest fires we have seen small innkeepers and hunting and fishing related businesses that have their entire season wiped out in a matter of a few hours.

Unfortunately for some small businesses, drought assistance is available only for agriculture related small businesses, such as feed and seed stores. For businesses that are based on tourism around lakes and rivers, there is currently no drought assistance available.

The Small Business Administration (SBA) is not currently authorized to help these businesses because a drought is not a sudden occurrence. Nonetheless, a drought is an ongoing natural disaster that causes great damage to these small businesses.

I would like to lend my support to S. 2734. The Small Business Drought Relief Act. This bill would amend the guidelines and authorize the SBA to offer assistance to small businesses affected by prolonged drought. With passage of this bill, Governors would be allowed to ask SBA for an administrative declarations of economic injury because of drought. The low interest loans SBA can offer these businesses would allow many of them to weather the drought and remain economically viable for future operation.

Sincerely,

KENNY C. GUINN,
Governor.

STATE OF NORTH CAROLINA,
OFFICE OF THE GOVERNOR,
Raleigh, NC, July 18, 2002.

Hon. JOHN EDWARDS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR EDWARDS: I am writing to thank you for your support for legislation introduced in the Senate to add drought as a condition for which small businesses may apply for Small Business Administration Economic Injury Disaster Loans.

The Small Business Drought Relief Act (S. 2734) will correct the current situation facing our small businesses in North Carolina. SBA disaster assistance is not available despite a historic drought that is impacting not just our agriculture sector, but causing real business and revenue losses, which threaten some firms with job layoffs or even bankruptcy.

These businesses need help, and access to low-interest SBA loans can offer a lifeline to allow paying bills and making payrolls until business returns to normal.

I urge you to push for rapid action on this important enhancement to SBA's ability to help our people through this time of trouble.

With kindest regards, I remain

Very truly yours,

MICHAEL F. EASLEY.

STATE OF SOUTH CAROLINA,
OFFICE OF THE GOVERNOR,
Columbia, SC, July 9, 2002.

Hon. JOHN KERRY,
U.S. Senate, Russell Building, Washington, DC.

DEAR SENATOR KERRY: The State of South Carolina is in its fifth year of drought status, the worst in over fifty years. Some parts of the state are in extreme drought status and the rest is in severe drought status.

Ninty-nine percent of our streams are flowing at less than 10% of their average flow for this time of year. 60% of those same streams are running at lowest flow on record for this date. The levels of South Carolina's lakes have dropped anywhere from five feet to twenty feet. Some lakes have experienced a drop in water level so significant that tourist and recreational use has diminished.

State and national climatologists are not hopeful that we will receive any significant rainfall in the near future. To end our current drought, we would need an extended period of average to above average rainfall.

Droughts, particularly prolonged ones such as we are experiencing now, have extensive economic effects. For farmers who experience the economic effects of such a drought, assistance is available through the USDA. For small businesses, assistance is available only for agriculture related small businesses, i.e. feed and seed stores. For businesses that are based on tourism around Lakes and Rivers, there is currently no assistance available.

We have reports of lake and river tourism dependent businesses experiencing 17% to 80% declines in revenue. The average decline in revenue is probably near 50% across the board.

My staff has contacted Small Business Administration and they are not authorized to offer assistance to these businesses because a drought is not defined as a sudden occurrence. Nonetheless, a drought is an ongoing natural disaster that is causing great economic damage to these small business owners.

I am requesting that you assist us in this situation by proposing that the Small Business and Entrepreneurship Committee take action to at least temporarily amend the SBA authorizing language and allow them to offer assistance to small businesses affected by prolonged drought. This would allow Governors to ask SBA for an administrative declaration of economic injury because of

drought. The low interest loans SBA can offer these businesses would allow many of them to weather the drought and remain in business for the long run.

My staff has also been in contact with Senator Hollings' legislative staff. I hope together, we can find an expedient solution to the plight of these small business owners. Short of finding a way to control the weather, this may be our only option to help their dire situation.

Sincerely,

JIM HODGES.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred September 19, 2001, in Fairhaven, MA. An Arab-American family was harassed and assaulted by its neighbors. After being followed and harassed with racial slurs, the Arab-American father was attacked with a baseball bat. He was treated at a local emergency room. The tires on his son's car were slashed, as well.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

DANIEL PATRICK MOYNIHAN

Mr. HAGEL. Mr. President, the passing of Senator Daniel Patrick Moynihan is a loss for all of us. Pat Moynihan committed his remarkable life to his country: serving four Presidents, representing our Nation as Ambassador to India and the United Nations, and representing the State of New York as a Senator. His deep intellect and unyielding candor will be missed.

As a junior colleague, I was struck by Senator Moynihan's generosity with his time and graciousness of spirit. I had the privilege of sitting next to Senator Moynihan on the trip to Rhode Island for the funeral of our colleague the late Senator John Chafee. As we traveled, I was out of my depth listening to him discuss different styles of architecture in between offering endearing stories about our departed colleague.

Of all his gifts, Pat Moynihan's ability to recognize great issues before they were commonly observed was his greatest. In public policy, he had an ability to appreciate and make sense of the larger picture rarely found in a politician. From the plight of broken families and inner cities, to the collapse of the Soviet Union, to the danger of ethnic conflict in the Balkans, to Social Security reform, Moynihan was prophetic. In one of his last public speeches, at last year's Harvard Commencement, Moynihan again offered words that carry far more weight today than when he delivered them less than a year ago:

> Certainly we must not let ourselves be seen as rushing about the world looking for arguments. There are now American armed forces in some 40 countries overseas. Some would say too many. Nor should we let ourselves be seen as ignoring allies, disillusioning friends, thinking only of ourselves in the most narrow terms. That is not how we survived the 20th century. Nor will it serve in the 21st.

Senator Moynihan's wit and wisdom will be greatly missed. My thoughts and prayers go to Liz Moynihan and the Moynihan family.

THE NORWICH CADETS

Mr. LEAHY. Mr. President, recognition and congratulations are in order for a school and a group of young men known throughout Vermont for their honor, integrity and prowess on the hockey rink.

Norwich University, the nation's oldest private military college, sits in the picturesque town of Northfield, VT. It is a quaint college town, and it is a unique college, hosting a mix of military cadets and more traditional college students.

The cadets, as their hockey team is known, have a reputation for being an NCAA Division III hockey powerhouse. It is cold in Northfield this time of year, but a few weeks ago, Norwich University's Kreitzberg Arena was warmed by a sellout crowd gathered to watch the Cadets capture their second NCAA Division III hockey title in just four years.

The Cadets staged a come-from-behind 2–1 win over Oswego State on March 22 to capture the title. After trailing 1–0 going into the third period, Norwich was looking at the possibility of being shut out, something that has not happened to the program in 278 consecutive games, a streak dating back to the 1993–94 season. Junior defensemen Lou DiMasi, a Vermont native, was quoted by the Burlington Free Press on the team's third period comeback, saying: ''There was no way we were going to let it get away.'' Junior defensemen Aaron Lee scored his thirteenth goal of the season in the third period to tie the game, and senior team captain Toza Crnilovic notched the game-winning goal for the championship.

Norwich coach Mike McShane has built a remarkable record over the past 8 years, winning the Eastern College Athletic Conference East crown five times and reaching five ''Frozen Fours.'' Since Mike McShane began coaching the Cadets, the team has had five 20-win seasons accompanied by a long list of individual accomplishments for members of Cadet teams, including national players of the year and a long list of All-Americans.

Following the game, Coach McShane attributed part of the team's success to the great support the Cadets have from Norwich and Northfield. ''We've got great support here and that helps a lot. You saw the president and the chairman of the board of trustees out there at center ice in the celebration. You don't see that at many schools.''

Norwich finished the season with an impressive record of 27–3, and many of the Cadets' stars will be returning next year. And, as surely as the sugar rises each year in the maples, Vermonters next year will be closely following the Cadets through another great season. Until next winter, the Cadets have earned the right to bask in the glow of knowing they have accomplished another successful season, bought with hard work, skill and determination.

ADDITIONAL STATEMENTS

OREGON HEALTH CARE HEROES

• Mr. SMITH. Mr. President, I rise today to salute Chance and Dr. Lisa Steffey as Oregon Health Care Heroes for their willingness to save a deeply needed community health clinic in Oregon's beautiful, rural community of La Pine.

A hero is someone who sets aside personal interest to act for another person's welfare. That is exactly what Dr. Steffey and her husband did when they purchased the La Pine Community Clinic in Oregon. Because of their courage and willingness to take a risk, an Oregon community with extremely limited health care resources will continue to have a local place to access health services.

Despite warnings that purchasing the community health clinic was a significant financial risk, the couple forged ahead. Without their intervention, the clinic would have closed, leaving many residents without access to local care. Many of the clinic's clients are Medicaid and Medicare patients who would have been forced to travel significant distances to find care had the Steffeys not seen an opportunity.

La Pine has been named a Health Professional Shortage Area where many residents do not have access to care. Low Medicare and Medicaid reimbursements make it difficult for doctors to serve the area, which is home to many who rely on these programs for health coverage. But with the Steffeys' dedication, and the temporary help of Central Oregon Independent Health Services, the clinic is now financially stable and serving the families of La Pine.

Many rural Oregon residents face incredible hurdles accessing health services. The shortage of providers willing to serve in rural areas, combined with the particularly low federal reimbursement levels offered to rural providers, has caused an exodus of health services

from the country. Add this to the large number of uninsured families who live in these communities, and the crisis facing rural health care delivery is clear.

Despite numerous efforts to increase reimbursement rates for rural health services and our ongoing quest to cover the millions of uninsured across America, rural people are still hurting. It takes people like the Steffeys, who are willing to make a sacrifice to meet the needs of rural communities today, while we continue to work towards solutions for tomorrow.

On March 1, 2003, Dr. and Mr. Steffey took ownership of the La Pine Community Clinic. I hope that their vision is rewarded with great success. I join the many grateful residents of La Pine in naming them as Oregon Health Care Heroes and thank them for bringing hope and healing to La Pine.●

GEORGETOWN FIRE COMPANY'S 100TH ANNIVERSARY

● Mr. BIDEN. Mr. President, I rise today to give congratulations to one of the great local fire departments in Delaware, the Georgetown Fire Company, which is celebrating its 100th anniversary this month. This anniversary is a tribute to those who had the vision to found the fire department and to those volunteers who have carried on this tradition all the way through today.

We are very lucky in Delaware to have such a rich history of volunteer community fire departments. With the addition of the Georgetown Company, we have had 15 fire companies in our state celebrate 100 years of service. In fact, we have even had 3 companies—Lewes, Carlisle of Milford, and Good Will of New Castle—celebrate 200 years of service.

With such successes though, it is easy to forget the humble beginnings of many of these departments. On April 11, 1903, the town commissioners of Georgetown announced in a town meeting that it would be forming a fire company to bring down the cost of fire insurance. Before the establishment of a fire company, the community had relied on so-called bucket brigades and a hand-drawn ladder wagon.

When it was founded, there were fourteen charter members of the Georgetown Fire Company and only one piece of fire equipment. Today, there are almost one hundred members of the company and an entire fleet of state of the art fire equipment.

And as a testament to the unceasing dedication of the volunteers who serve in this company and to the respect and veneration it has in the community, almost half of the members of the Georgetown Fire Company are life members or honorary members. Many members of the company who have served their town as volunteer firefighters for decades never stop serving.

The Georgetown Fire Company has become an integral part of the community it has served. It has saved the lives and the property of many. In the town of Georgetown, everyone knows who the real heros are.

It is my privilege to share the company's great history with my colleagues and with our fellow citizens today. We honor the company's 100th anniversary and the extraordinary commitment that it has never stopped showing to its community. Congratulations to all of the officers, members, and friends of the Georgetown Fire Company. It is very well deserved.●

COMMENDING JOHN KOERNER ON HIS RETIREMENT FROM THE U.S. FISH AND WILDLIFE SERVICE

● Mr. JOHNSON. Mr. President, I rise to recognize Mr. John Koerner's long, distinguished career with the United States Fish & Wildlife Service. John began his career in 1972 in Valentine, NE at Fort Niobrara National Wildlife Refuge. Before he arrived at his ''dream location'' of Sand Lake National Wildlife Refuge, he was stationed in the South Dakota communities of Madison, Pierre and Waubay. John has now managed the Sand Lake NWR for 15 years. This refuge has a wonderful reputation within the refuge system, and that reputation reaches far beyond its borders. In 1988, because of its importance to migratory birds, Sand Lake was designated as the 16th Wetland of International Importance in the United States. This designation was proposed under John's guidance, and supported by myself and U.S. Senator TOM DASCHLE.

During his time in South Dakota, John has been instrumental in reaching out to the public he serves through effective outreach and environmental programs. The annual Eagle Day event held at Sand Lake Refuge has grown from one carload of visitors attending the first Eagle Day event to well over 1,200 visitors attending in 2002. John has also enhanced the youth, education and outreach programs during his time at the refuge.

John has been an articulate and outspoken voice on water and conservation issues concerning the James River. His coordination efforts with local, State and Federal agencies, during major flooding events and day-to-day operations have been an asset to Sand Lake Refuge and to the communities and landowners up and down the James River. His knowledge of the James River has been very helpful to South Dakota's congressional delegation.

John's coordination efforts with all of South Dakota's congressional offices have been beneficial to both the FWS and the citizens of South Dakota. His knowledge of FWS history, compatibility issues, and his vast experience has provided him with a ''common sense'' approach to resolving issues before they become major problems. I know that John Koerner has provided extremely valuable assistance to my offices in working through many of the difficult issues that have been brought forward during his tenure.

I commend John Koerner for his work with the U.S Fish & Wildlife Service. His contributions will benefit many generations to come.●

TRIBUTE TO ORLANDO ''TUBBY'' SMITH

● Mr. BUNNING. Mr. President, today I honor and pay tribute to University of Kentucky Basketball coach and friend Orlando ''Tubby'' Smith. Coach Smith was selected today as the 2003 Naismith College Basketball Coach of the Year.

Earlier this year, Tubby was also named the Nation's top coach by the Sporting News, ESPN, and the Basketball Times. Coach Smith led the University of Kentucky Wildcats to an outstanding 32–4 record this season, including a NCAA season-high 26 game winning streak. The Wildcats' winning streak this season was the Nation's longest in seven years.

Coach Smith is more than just a basketball coach to his players at the University of Kentucky. He is a skilled teacher of the game of basketball, but he also teaches his players important lessons about life and instills a sense of character in them that allows them to excel both on and off the court.

Tubby and his wife Donna are also very active in many communities across Kentucky. Over the past 5 years, they have raised over $1.5 million for the Tubby Smith Foundation. Through annual auctions, golf tournaments and other events, Tubby and Donna have devoted much of their time and energy to assisting underprivileged children in Kentucky through their foundation.

I am proud to have Coach Smith represent the great Commonwealth of Kentucky. He is a fantastic basketball coach and a prominent community leader. I ask my colleagues in the Senate to join me in congratulating him on receiving the 2003 Naismith College Basketball Coach of the Year Award.●

SOUTH DAKOTA STATE UNIVERSITY LADY JACKRABBITS

● Mr. JOHNSON. Mr. President, I rise today to recognize and congratulate the South Dakota State University Lady Jackrabbits. The Jackrabbits, under head coach Aaron Johnston and assistant coach Laurie Melum, won the National Division II Basketball Tournament against Northern Kentucky March 29 in St. Joseph, MO.

Coach Johnston's squad went through the 2002–2003 season with a school-record 32 wins against just three losses. The Jackrabbits entered the tournament with an impressive 32–3 mark and defeated Cal State–Bakersfield and Bentley before rallying to overtake Northern Kentucky, 65–50, for the first ever women's basketball national title.

The team was guided this season by the leadership provided by seniors Melissa Pater and Karly Hegge. Joining

them were Jackrabbit juniors Stacie Cizek and Brenda Davis. All-tournament team member and NCAA Division II Elite Eight Most Outstanding Player Pater was joined on the all-tournament team by freshman Heather Sieler.

As Hegge told the Sioux Falls Argus Leader following the title victory, ''After A.J. [Coach Aaron Johnston] first started coaching, he used the phrase, 'Don't stop believing.' That's what we tried to do, not stop believing and just keep on going.'' This title reflects that devotion and conviction South Dakota residents pride themselves on.

I want to acknowledge Dean Dr. Laurie Nichols, Athletic Director Dr. Fred Oien, Head Coach Aaron Johnston, Assistant Coach Laurie Melum, and Graduate Assistant Sheila Roux for their guidance and support to help make this year's team so successful. I also want to congratulate all of this year's team members: seniors Melissa Pater and Karly Hegge; juniors Stacie Cizek and Brenda Davis; sophomores Stephanie Bolden, Megan Otte, Brooke Dickmeyer, Dianna Pavek, Shannon Schlager, and Christine Gilbert; and freshmen Heather Sieler and Christine Gilbert, for their hard work, dedication and commitment this season. Finally, I want to acknowledge the great work of team manager Laci Greenfield, and the hard-working efforts of cheerleaders Christina Bennett, Emmie Johnson, Eve Becker, Jill McClung, Julie Raeder, and Katie Jacobson.

Again, congratulations to the South Dakota State University Lady Jackrabbits on winning their first women's basketball national title.●

GEORGIAN SOLDIER SAVES CIVILIAN

● Mr. MILLER. Mr. President, today I share with my colleagues the story of a 3rd Infantry soldier, and a fellow Georgian, who risked his own life to save a civilian caught in the crossfire in Iraq. The following article was printed in the April 1 edition of the Atlanta Journal-Constitution.

Michael Carter wanted to talk about his son, CPT Chris Carter, 31, whose heroic rescue of an Iraqi woman flashed across the newswires Monday, but the batteries on his cordless phone were running down.

''I didn't know about it until the phone rang this morning,'' he said Monday afternoon, adding that it hadn't stopped ringing since.

Constant phone calls kept him from logging on to the Internet and reading about Chris, commander of A Company, part of the 3rd Battalion, 7th Regiment of the 3rd Infantry Division (Mechanized).

''I've been so busy with phone calls, I have not had time to download it,'' said Carter, 63.

He and his wife Shirley, 60, live in Watkinsville, where Chris grew up and attended Oconee County High School. On Monday pretty much everyone in Watkinsville wanted to call and congratulate the family.

Chris was an ROTC student at the University of Georgia and a member of the Georgia Army National Guard. He was commissioned as an officer, trained with the 82nd Airborne Division and took the mountain section of his wilderness training with the 5th Ranger Training Battalion's Camp Merrill, near Dahlonega.

Of medium height and a stocky build, Carter loves to hunt, fish, and sing Hank Williams, Jr. songs, said his girlfriend, Amanda Cofer, 24, an assistant to State Senators Mitch Seabaugh and Dan Moody.

Carter distinguished himself Monday when he left his Bradley fighting vehicle and dashed out on a bridge during a firefight outside of Hindiyah, to try to bring an Iraqi woman to safety.

An Associated Press account of the rescue began with Carter saying, ''We've got to get her off that bridge'' and then determining to save her.

The woman had apparently tried to race across the bridge when the Americans arrived, but was caught in the crossfire.

Soldiers who had spotted her through the smoke at first thought she was dead, as was a man sprawled in the dust nearby. But the woman sat up and waved for help during breaks in the gunfire.

According to AP reporter Chris Tomlinson's account, Carter ''ordered his Bradley armored vehicle to pull forward while he and two men ran behind it. They took cover behind the bridge's iron beams.

''Carter tossed a smoke grenade for more cover and approached the woman, who was crying and pointing toward a wound on her hip. She wore the black chador, common among older women in the countryside. The blood soaked through the fabric, streaking the pavement around her.

''Medics placed the woman on a stretcher and into an ambulance; Carter stood by, providing cover with his M16A4 rifle. Then she was gone, and Monday's battle for this town of 80,000, 50 miles south of Baghdad, raged on.''

When Carter's girlfriend, Cofer, heard about the rescue, her first thought was, ''Get back in the vehicle!'' she said.

Cofer and Carter met last October during a victory celebration in Buckhead after the Georgia Bulldogs beat the University of Kentucky in football. ''I knew immediately he was a special person,'' she said. Carter was deployed to Kuwait the next month.

''He is the kind of man every parent in America would be glad to have as a son,'' said Carter's father, who is retired from the Environmental Protection Agency.

Though the Carters haven't heard from their son for 3 weeks, they keep up with him through the news.

''We have more current information on him than any other parent in the United States,'' said the father, adding that Carter's vehicle has been host to an embedded reporter during much of the campaign. ''Every day since he's been over there he's been in some newspaper. The next best thing to being able to talk to him personally has been to read the papers.''

Carter then excused himself to answer the door. Television cameramen were ringing the bell.●

THE KIWANIS CLUB OF DEARBORN ON THE CELEBRATION OF THEIR 75TH ANNIVERSARY

● Mr. LEVIN. Mr. President, today it is my pleasure to congratulate the Kiwanis Club of Dearborn, MI for 75 years of distinguished service addressing the needs of children, seniors, and the disadvantaged throughout the Dearborn community and my home State of Michigan.

As a member of Kiwanis International, the Kiwanis Club of Dearborn is part of a larger organization that holds community service at its core. Since its founding in 1915, Kiwanis International has united individuals to respond to the changing needs of their communities. Kiwanis groups promote awareness of vital issues such as child health and development, literacy, substance abuse, and senior care. Kiwanis Clubs nationwide take practical steps to respond to these concerns through volunteer service projects and fundraising. Today, the Kiwanis family includes 500,000 members in over 80 countries.

Since 1928, the Kiwanis Club of Dearborn has taken an active role in performing community service. Through their annual ''Peanut Sale'' fundraiser, the Kiwanis Club of Dearborn has generated thousands of dollars each year for charity organizations. Recipients of the money raised at this benefit include Children's Hospital, the Salvation Army, the DeSales School for the Deaf, the Hemophilia Foundation, and the Special Olympics. This year, the club raised a record $54,000, a sum which has earned them recognition as a leader in fundraising initiatives. Furthermore, the club can be commended for donating all moneys raised to charity, due to the absence of administrative costs. The Kiwanis Club of Dearborn also produces ''Kiwani Talk,'' a television show that informs viewers of services available to the public. In the past 10 years, this program has aired 500 episodes relaying pertinent information to the community. The emergence of two additional clubs, the Outer Drive Kiwanis Club and the East Dearborn Kiwanis Club, is testament to the commitment of the Kiwanis Club of Dearborn to continued community service and the appeal of their message.

I am confident that my Senate colleagues will join me in thanking the Kiwanis Club of Dearborn for their 75 years of service dedicated to improving the lives of many in the Dearborn community. The dedication to community

service is an inspiring example of human kindness and selflessness. We wish them continued success as they work to make our communities better places to live.●

MESSAGE FROM THE HOUSE

At 2:16 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1166. An act to amend the Small Business Act to expand and improve the assistance provided by Small Business Development Centers to Indian tribe members, Native Alaskans, and Native Hawaiians.

H.R. 1208. An act to authorize appropriations for fiscal years 2004 and 2005 for United States contributions to the International Fund for Ireland, and for other purposes.

H.R. 1505. An act to designate the facility of the United States Postal Service located at 2127 Beatties Ford Road in Charlotte, North Carolina, as the ''Jim Richardson Post Office.''

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 58. concurrent resolution honoring the City of Fayetteville, North Carolina, and its many partners for the Festival of Flight, a celebration of the centennial of Wilbur and Orville Wright's first flight, the first controlled, powered flight in history.

The message further announced that the Speaker appoints the following Members as additional conferees in the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 151) to amend title 18, United States Code, with respect to the sexual exploitation of children:

From the Committee on Education and the Workforce, for consideration of section 8 of the Senate bill and sections 222, 305, 508 of the House amendments, and modifications committed to conference: Mr. HOEKSTRA; MR. GINGREY; and Mr. HINOJOSA.

From the Committee on Transportation and Infrastructure, for consideration of section 303 and title IV of the House amendments, and modifications committed to conference: Mr. YOUNG of Alaska; Mr. PETRI; and Mr. MATHESON.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1208. An act to authorize appropriations for fiscal years 2004 and 2005 for United States contributions to the International Fund for Ireland, and for other purposes; to the Committee on Foreign Relations.

H.R. 1505. An act to designate the facility of the United States Postal Service located at 2127 Beatties Ford Road in Charlotte, North Carolina, as the ''Jim Richardson Post Office,'' to the Committee on Governmental Affairs.

The following bill was read, and referred as indicated:

H.R. 1166. An act to amend the Small Business Act to expand and improve the assistance provided by Small Business Development Centers to Indian tribe members, Native Alaskans, and Native Hawaiians; to the Committee on Small Business and Entrepreneurship.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 58. Concurrent resolution honoring the City of Fayetteville, North Carolina, and its many partners for the Festival of Flight, a celebration of the centennial of Wilbur and Orville Wright's first flight, the first controlled, powered flight in history; to the Committee on the Judiciary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1729. A communication from the Chief, Regulation and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Special Anchorage Areas/Anchorage Grounds Regulations; Boothville, Anchorage, Venice, LA (CGD08–02–017)'' received on March 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1730. A communication from the Chief, Regulation and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; (Including 4 Regulations) [CGD08–03010] [CGD08–03–012] [CGD07–03–31] [CGD1–03–019] (1625–AA09)(2003–0001)'' received on March 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1731. A communication from the Chief, Regulation and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: (Including 3 regulations) [COTP Pittsburgh 02–0] [COTP Los Angeles-Long Beach 02–005] [COTP Western Alaska 02–001] (1625–AA00)(2003–0002)'' received on March 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1732. A communication from the Chief, Regulation and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: (Including 4 Regulations) [COTP Los Angeles-Long Beach 03–001] [COTP San Francisco Bay 03–003] [COTP San Diego 03–003] [COTP Tampa 03–006] (1625–AA00) (2003–0001)'' received on March 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1733. A communication from the Attorney, Research and Special Programs Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft (2137–AD29)'' received on March 25, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1734. A communication from the Attorney, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Extension of Computer Reservations Systems Regulations (2105–AD24)'' received on March 26, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1735. A communication from the Deputy Assistant Administrator, Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Framework 15 to the Atlantic Sea Scallop Fishery Management Plan (0648–AQ28)'' received on March 27, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1736. A communication from the Associate Deputy Assistant Administrator, National Oceanic and Atmospheric Administrator, National Ocean Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Announcement of Funding Opportunity to Submit Proposals for the Monitoring and Event Response for Harmful Algal Blooms (MERHAB) Program FY2004 (0648–ZB12)'' received on March 27, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1737. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report of a Bill to amend title 49, United States Code, to authorize appropriations for the Federal Aviation Administration for fiscal years 2004, 2005, 2006 and 2007 and for other purposes, received on March 26, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1738. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Rotable Spare Parts; Capitol Expenditures (Rev. Rul. 2003–37)'' received on March 26, 2003; to the Committee on Finance.

EC–1739. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Appeals Settlement Guidelines: All Industries—Section 302/318 Basis Shifting Transactions'' received on March 26, 2003; to the Committee on Finance.

EC–1740. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Civil Cause of Action for Violation of Section 362 or Section 524 of the Bankruptcy Code (RIN1545–AY08)(TD 9050)'' received on March 26, 2003; to the Committee on Finance.

EC–1741. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs] (RIN1545–BA36)(1545–AW92)'' received on March 24, 2003; to the Committee on Finance.

EC–1742. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Labor Statistics Price Indexes for Department Stores—January 2003 (Rev. Rul. 2003–33)'' received on March 24, 2003; to the Committee on Finance.

EC–1743. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Amendments to Rules for Determination of Basis of Partners's Interest; Special Rules (RIN1545–BA50)(TD9049)'' received on March 24, 2003; to the Committee on Finance.

EC–1744. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Business Disaster Grant Payments (Notice 2003–18)'' received on March 18, 2003; to the Committee on Finance.

EC–1745. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—April 2003 (Rev.

Rul. 2003–35)'' received on March 24, 2003; to the Committee on Finance.

EC–1746. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—April 2003 (Rev. Rul. 2003–35)'' received on March 24, 2003; to the Committee on Finance.

EC–1747. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 911 Waiver Rev. Proc. 2002-update (Rev. Proc. 2003–26)'' received on March 24, 2003; to the Committee on Finance.

EC–1748. A communication from the Board Members, Railroad Retirement Board, transmitting, pursuant to law, the report of a Bill to amend the Railroad Retirement Act to solve several technical problems that have arisen in connection with the establishment of and actions by the National Railroad Retirement Investment Trust, received on March 24, 2003; to the Committee on Finance.

EC–1749. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of the establishment of Danger Pay to U.S. Government Civilian Employees in Kuwait, received on March 24, 2003; to the Committee on Foreign Relations.

EC–1750. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the Annual Report covering defense Articles and Services that were licensed for Export; to the Committee on Foreign Relations.

EC–1751. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans and Approval Under Sections 110 and 112(I); State of Kansas (FRL7471–9)'' received on March 24, 2003; to the Committee on Environment and Public Works.

EC–1752. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; State of Missouri (FRL7471–6)'' received on March 24, 2003; to the Committee on Environment and Public Works.

EC–1753. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Water for Sustainable Cities in China Project'' received on March 24, 2003; to the Committee on Environment and Public Works.

EC–1754. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Minor Clarification of National Primary Drinking Water Regulation for Arsenic (FRL7472–5)'' received on March 24, 2003; to the Committee on Environment and Public Works.

EC–1755. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Significant New Uses of Certain Chemical Substances (FRL 6758–7)'' received on March 24, 2003; to the Committee on Environment and Public Works.

EC–1756. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Philadelphia County, Pennsylvania Construction, Modification and Operation Permit Programs (FRL 7474–2)'' received on March 27, 2003; to the Committee on Environment and Public Works.

EC–1757. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans and Designation of Areas; California—Indian Wells Valley PM10 Nonattainment Area (FRL7461–5)'' received on March 27, 2003; to the Committee on Environment and Public Works.

EC–1758. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Indiana (FRL7470–7)'' received on March 27, 2003; to the Committee on Environment and Public Works.

EC–1759. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bacillus pumilus GB 34; Exemption from the Requirements of a Tolerance (FRL7286–9)'' received on March 27, 2003; to the Committee on Environment and Public Works.

EC–1760. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled ''Ground Level Ozone: Compilation of States' Recommendations and Initial Regional Office Responses on Areas That Are Not Attaining the 8-hour Ground-Level Ozone National Ambient Air Quality Standards: Guidance Memorandum''; to the Committee on Environment and Public Works.

EC–1761. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled ''Rubber Tire Manufacturing: Air Toxins Rule: Amendments''; to the Committee on Environment and Public Works.

EC–1762. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled ''Rubber Tire Manufacturing: Air Toxins Rule: Fact Sheet''; to the Committee on Environment and Public Works.

EC−1763. A communication from the Director, Office of Congressional Affairs, Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Radiation Exposure Reports: Labeling Personal Information (RIN3150–AH–07)'' received on March 24, 2003; to the Committee on Environment and Public Works.

EC−1764. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Traffic Control Devices on Federal-Aid and Other Streets and Highways; Standards (2125–AE78)'' received on March 26, 2003; to the Committee on Environment and Public Works.

EC−1765. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the report submitting legislation which authorizes appropriations for fiscal year 2004, received on March 25, 2003; to the Committee on Environment and Public Works.

EC−1766. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, Department of Defense, transmitting, pursuant to law, the 2003 report on National Defense Stockpile (NDS) requirements; to the Committee on Armed Services.

EC−1767. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, Department of Defense, transmitting, pursuant to law, the Conference Report to accompany the Bob Stump National Defense Authorization Act for Fiscal Year 2003, received on March 26, 2003; to the Committee on Armed Services.

EC−1768. A communication from the Assistant Secretary of Defense, Health Affairs, Department of Defense, transmitting, pursuant to law, the report relative to outreach to Gulf War veterans, received on March 27, 2003; to the Committee on Armed Services.

EC−1769. A communication from the General Counsel, Department of Defense, transmitting, pursuant to law, the report relative to proposed legislative initiatives to be included in the National Defense Authorization Act for Fiscal Year 2004, received on March 27, 2003; to the Committee on Armed Services.

EC−1770. A communication from the Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''CHAMPUS Appeals and Hearings Procedures; Formal Review (Administrative Corrections) (0720–AA74)'' received on March 27, 2003; to the Committee on Armed Services.

EC−1771. A communication from the General Counsel, Department of Defense, transmitting, pursuant to law, the report relative to certification that Kazakhstan and Ukraine are committed to the courses of action described in section 1203 (d) of the Cooperative Threat Reduction Act of 1993, received on March 25, 2003; to the Committee on Armed Services.

EC−1772. A communication from the Attorney, Research and Special Programs Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Materials: Security Requirements for Officers and Transporters of Hazardous Materials (2137–AD67)'' received on March 25, 2003; to the Committee on Armed Services.

EC−1773. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, Department of Defense, transmitting, pursuant to law, the report of the Department of Defense 2002 inventory of activities that are not inherently governmental functions, received on March 27, 2003; to the Committee on Governmental Affairs .

EC−1774. A communication from the Chairman, Defense Nuclear Facilities Safety Board, transmitting, pursuant to law, the Performance Report for Fiscal Year 2002; to the Committee on Governmental Affairs.

EC−1775. A communication from the Chairman, Federal Trade Commission, transmitting, pursuant to law, the Federal Trade Commission's Office of Inspector General (OIG) Semiannual report for the period ending September 30, 2002, received on March 27, 2003; to the Committee on Governmental Affairs.

EC−1776. A communication from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, the Securities and Exchange Commission's combined Governmental Performance and Results Act Annual Performance Report for fiscal year 2002 and the Annual Performance Plan for fiscal year 2004, received on March 27, 2003; to the Committee on Governmental Affairs.

EC−1777. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the report relative to summarizing the disposition of sixteen cases in which I granted equitable relief during calendar year 2002, received on March 27, 2003; to the Committee on Veterans' Affairs.

EC–1778. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the Seventh Report describing the administration of the Montgomery GI Bill (MGIB) educational assistance program, received on March 27, 2003; to the Committee on Veterans' Affairs.

EC–1779. A communication from the Deputy General Counsel, Veterans Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''VA Homeless Providers Grant and Per Diem Program (2900–AL30) (Interim Final Rule)'' received on March 27, 2003; to the Committee on Veterans' Affairs.

EC–1780. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pesticides; Tolerance Exemptions for Active and Inert Ingredients for Use in Antimicrobial Formulations (Food-Surface Sanitizing Solutions): Withdrawal of Direct Final Rule (FRL 7299–4)'' received on March 27, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1781. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''S-Metolachlor; Pesticide Tolerance (FRL7299–8)'' received on March 27, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1782. A communication from the Chief Justice, Supreme Court of the United States, transmitting, pursuant to law, the report to Congress of the amendments to the Federal Rules of Appellate Procedure that have been adopted by the Supreme Court of the United States, received on March 27, 2003; to the Committee on the Judiciary.

EC–1783. A communication from the Chief Justice, Supreme Court of the United States, transmitting, pursuant to law, the report relative to the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States, received on March 27, 2003; to the Committee on the Judiciary.

EC–1784. A communication from the Chief Justice, Supreme Court of the United States, transmitting, pursuant to law, the report relative to the amendments to the Federal Rules of Evidence that have been adopted by the Supreme Court of the United States, received on March 27, 2003; to the Committee on the Judiciary.

EC–1785. A communication from the Chief Justice, Supreme Court of the United States, transmitting, pursuant to law, the report relative to the amendments to the Federal Rule of Civil Procedure, received on March 27, 2003; to the Committee on the Judiciary.

EC–1786. A communication from the Chief Financial Officer, Paralyzed Veterans of America, transmitting, pursuant to law, the report of the Audited Financial Statement for the fiscal year 2002; to the Committee on the Judiciary.

EC–1787. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report relative to amending section 41.107(c)(1) of Part 22 of the Code of Federal Regulations, received on March 20, 2003; to the Committee on the Judiciary.

EC–1788. A communication from the Secretary, Judicial Conference of the United States, transmitting, pursuant to law, the report of a draft bill to create additional Article III judgeships and convert temporary judgeships to permanent judgeships in the U.S. court of appeals and district courts, received on March 26, 2003; to the Committee on the Judiciary.

EC–1789. A communication from the Program Manager, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107–296 (RIN1140–AA00)'' received on March 25, 2003; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Appropriations, without amendment:

S. 762. An original bill making supplemental appropriations to support Department of Defense operations in Iraq, Department of Homeland Security, and Related Efforts for the fiscal year ending September 30, 2003, and for other purposes (Rept. No. 108–33).

By Ms. COLLINS, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 380. A bill to amend chapter 83 of title 5, United States Code, to reform the funding of benefits under the Civil Service Retirement System for employees of the United States Postal Service, and for other purposes.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

[Treaty Doc. 106–48 Joint Convention on Safety of Spent Fuel and Radioactive Waste Management (Exec. Rept. No. 108–5)]

TEXT OF THE RESOLUTION OF RATIFICATION AS REPORTED BY THE COMMITTEE ON FOREIGN RELATIONS

Resolved (two-thirds of the Senators present concurring therein).

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO CONDITIONS.

The Senate advises and consents to the ratification of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on September 5, 1997 (Treaty Document 106–48), subject to the conditions of section 2.

SEC. 2. CONDITIONS.

The advice and consent of the Senate to ratification of the Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management is subject to the following conditions, which shall be binding upon the President:

(1) COMMITMENT TO REQUEST AND REVIEW REPORTS—Not later than 45 days after the deposit of the United States instrument of ratification, the President shall certify to the appropriate committees of Congress that the United States will:

(A) request copies of all national reports submitted pursuant to Article 32 of the Convention; and

(B) comment in each review meeting held pursuant to Article 30 of the Convention (including each meeting of a subgroup) upon aspects of safety significance in any report submitted pursuant to Article 32 of the Convention by a Contracting Party that is receiving United States financial or technical assistance relating to the improvement of its nuclear and radiological safety and security practices.

(2) COMPLETE REVIEW OF INFORMATION BY THE LEGISLATIVE BRANCH OF GOVERNMENT.—

(A) UNDERSTANDING.—The United States understands that neither Article 36 nor any other provision of the Convention shall be construed as limiting the access of the legislative branch of the United States Government to any information relating to the operation of the Convention, including access to information described in Article 36 of the Convention.

(B) PROTECTION OF INFORMATION.—The Senate understands that the confidentiality of information provided by other Contracting Parties that is properly identified as protected pursuant to Article 36 of the Convention will be respected.

(C) CERTIFICATION.—Not later than 45 days after the deposit of the United States instrument of ratification, the President shall certify to the appropriate committees of Congress that the Comptroller General of the United States shall be given full and complete access to—

(i) all information in the possession of the United States Government specifically relating to the operation of the Convention that is submitted by any other Contracting Party pursuant to Article 32 of the Convention, including any report or document; and

(ii) information specifically relating to any review or analysis by any department, agency, or other entity of the United States, or any official thereof, undertaken pursuant to Article 30 of the Convention, of any report or document submitted by any other Contracting Party.

(D) REPORTS TO CONGRESS.—Upon the request of the chairman of either of the appropriate committees of Congress, the President shall submit to the respective committee an unclassified report, and a classified annex as appropriate, detailing—

(i) how the objective of a high level of nuclear and radiological safety and security has been furthered by the operation of the Convention;

(ii) with respect to the operation of the Convention on an Article-by-Article basis—

(I) the situation addressed in the Article of the Convention;

(II) the results achieved under the Convention in implementing the relevant obligation under that Article of the Convention; and

(III) the plans and measures for corrective action on both a national and international level to achieve further progress in implementing the relevant obligation under that Article of the Convention; and

(iii) on a country-by-country basis, for each Contracting Party that is receiving United States financial or technical assistance relating to nuclear or radiological safety or security improvement—

(I) a list of all nuclear facilities within the country, including those installations operating, closed, and planned, and an identification of those nuclear facilities where significant corrective action is found necessary by assessment;

(II) a review of all safety or security assessments performed and the results of those assessments for existing nuclear facilities;

(III) a review of the safety and security of each nuclear facility using facility-specific data and analysis showing trends of safety or security significance and illustrated by particular issues at each facility;

(IV) a review of the position of the country as to the further operation of each nuclear facility in the country;

(V) an evaluation of the adequacy and effectiveness of the national legislative and regulatory framework in place in the country, including an assessment of the licensing system, inspection, assessment, and enforcement procedures governing the safety and security of nuclear facilities;

(VI) a description of the country's on-site and off-site emergency preparedness; and

(VII) the amount of financial and technical assistance relating to nuclear or radiological

safety or security improvement expended as of the date of the report by the United States, including, to the extent feasible, an itemization by nuclear facility, and the amount intended for expenditure by the United States on each such facility in the future.

(3) TREATY INTERPRETATION.—The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997, relating to condition (1) of the resolution of ratification of the Intermediate-Range Nuclear Forces (INF) Treaty, approved by the Senate on May 27, 1988.

SEC. 3. DEFINITIONS.

As used in this resolution:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) CONTRACTING PARTY.—The term ''Contracting Party'' means any nation that is a party to the Convention.

(3) CONVENTION.—The term ''Convention'' means the Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on September 5, 1997 (Treaty Document 1060948).

(4) NUCLEAR FACILITY.—The term ''nuclear facility'' has the meaning given the term in Article 2(f) of the Convention.

(5) UNITED STATES INSTRUMENT OF RATIFICATION.—The term ''United States instrument of ratification'' means the instrument of ratification of the United States of the Convention.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. CLINTON (for herself, Mr. SCHUMER, Mrs. FEINSTEIN, Ms. LANDRIEU, Mrs. MURRAY, Ms. CANTWELL, and Ms. COLLINS):

S. 749. A bill to authorize the Secretary of the Interior to establish the Votes for Women History Trail in the State of New York; to the Committee on Energy and Natural Resources.

By Mr. MCCAIN (for himself, Mr. DODD, Mr. ALLEN, Mr. BREAUX, Mr. WARNER, Mr. AKAKA, Mr. BENNETT, Mrs. LINCOLN, Ms. COLLINS, Mr. HOLLINGS, Mr. CHAFEE, Mr. FITZGERALD, Ms. LANDRIEU, Mr. BROWNBACK, Mr. CAMPBELL, Mr. HAGEL, Mr. ROBERTS, Mr. SARBANES, Mr. SMITH, and Ms. SNOWE):

S. 750. A bill to amend title II of the Social Security Act to increase the level of earnings under which no individual who is blind is determined to have demonstrated an ability to engage in substantial gainful activity for purposes of determining disability; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. DASCHLE, Mr. JOHNSON, Mr. CAMPBELL, Mr. BINGAMAN, Mr. INOUYE, and Mr. AKAKA):

S. 751. A bill to amend part A of title IV of the Social Security Act to reauthorize and improve the operation of temporary assistance to needy families programs operated by Indian tribes, and for other purposes; to the Committee on Finance.

By Mr. BINGAMAN (for himself and Mrs. HUTCHISON):

S. 752. A bill to amend the Internal Revenue Code of 1986 to treat distributions from publicly traded partnerships as qualifying income of regulated investment companies, and for other purposes; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. BREAUX, Mr. BAUCUS, and Mr. GRASSLEY):

S. 753. A bill to amend the Internal Revenue Code of 1986 to provide for the modernization of the United States Tax Court, and for other purposes; to the Committee on Finance.

By Mr. FRIST:

S. 754. A bill to amend the Public Health Service Act to improve immunization rates by increasing the distribution of vaccines and improving and clarifying the vaccine injury compensation program, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. HATCH, Mr . THOMAS, Mrs. LINCOLN, and Mr. ROCKEFELLER):

S. 755. A bill to amend the Internal Revenue Code of 1986 to provide a uniform definition of child, and for other purposes; to the Committee on Finance.

By Mr. THOMAS (for himself and Mr. GREGG):

S. 756. A bill to amend the Internal Revenue Code of 1986 to modify the qualified small issue bond provisions; to the Committee on Finance.

By Mr. CHAMBLISS (for himself, Mr. GRAHAM of South Carolina, Mr. MCCAIN, and Mr. ALLEN):

S. 757. A bill entitled the ''Guard and Reserve Commanders Pay Equity Act''; to the Committee on Armed Services.

By Mr. LIEBERMAN (for himself, Ms. SNOWE, Mr. DODD, Mr. ALLEN, Mrs. CLINTON, Mr. HARKIN, and Mr. AKAKA):

S. 758. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for certain energy-efficient property; to the Committee on Finance.

By Mr. DURBIN (for himself, Mr. ALLARD, Mr. CONRAD, Mr. HARKIN, Mr. JOHNSON, Mr. LEAHY, Mr. DORGAN, and Mr. JEFFORDS):

S. 759. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for individuals and businesses for the installation of certain wind energy property; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DEWINE, Mr. DURBIN, Mr. GREGG, Mr. BINGAMAN, Mr. FEINGOLD, Ms. SNOWE, Mr. ROCKEFELLER, Mr. SANTORUM, and Mr. LEAHY):

S. 760. A bill to implement effective measures to stop trade in conflict diamonds, and for other purposes; to the Committee on Finance.

By Mrs. HUTCHISON:

S. 761. A bill to exclude certain land from the John H. Chafee Coastal Barrier Resources System; to the Committee on Environment and Public Works.

By Mr. STEVENS:

S. 762. An original bill making supplemental appropriations to support Department of Defense operations in Iraq, Department of Homeland Security, and Related Efforts for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SUNUNU (for himself, Mr. GREGG, Ms. SNOWE, and Ms. COLLINS):

S. Res. 102. A resolution recognizing the 40th anniversary of the sinking of the U.S.S. *Thresher* (SSN 593); considered and agreed to.

ADDITIONAL COSPONSORS

S. 91

At the request of Mr. EDWARDS, his name was added as a cosponsor of S. 91, a bill to amend title 9, United States Code, to provide for greater fairness in the arbitration process relating to livestock and poultry contracts.

S. 202

At the request of Mr. DEWINE, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. 202, a bill to amend the Internal Revenue Code of 1986 to allow as a deduction in determining adjusted gross income that deduction for expenses in connection with services as a member of a reserve component of the Armed Forces of the United States, to allow employers a credit against income tax with respect to employees who participate in the military reserve components, and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

S. 274

At the request of Mr. GRASSLEY, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 274, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 349

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 349, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 385

At the request of Mr. EDWARDS, his name was added as a cosponsor of S. 385, a bill to amend the Clean Air Act to eliminate methyl tertiary butyl ether from the United States fuel supply, to increase production and use of renewable fuel, and to increase the Nation's energy independence, and for other purposes.

S. 413

At the request of Mr. NICKLES, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 413, a bill to provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos exposure, to ensure that individuals who suffer harm, now or in the future, from illnesses caused by exposure to asbestos receive compensation for their injuries, and for other purposes.

S. 451

At the request of Ms. SNOWE, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 451, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes.

S. 457

At the request of Mr. LEAHY, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 457, a bill to remove the limitation on the use of funds to require a farm to feed livestock with organically produced feed to be certified as an organic farm.

S. 480

At the request of Mr. HARKIN, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 480, a bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 518

At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 518, a bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy.

S. 544

At the request of Mr. DODD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 544, a bill to establish a SAFER Firefighter Grant Program.

S. 554

At the request of Mr. GRASSLEY, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 554, a bill to allow media coverage of court proceedings.

S. 558

At the request of Mr. MCCAIN, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 558, a bill to elevate the position Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretary for Indian Health, and for other purposes.

S. 652

At the request of Mr. CHAFEE, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 652, a bill to amend title XIX of the Social Security Act to extend modifications to DSH allotments provided under the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

S. 664

At the request of Mr. BAUCUS, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 664, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 669

At the request of Ms. SNOWE, the names of the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 669, a bill to provide more child support money to families leaving welfare, to simplify the rules governing the assignment and distribution of child support collected by States on behalf of children, to improve the collection of child support, and for other purposes.

S. 684

At the request of Mr. WYDEN, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 684, a bill to create an office within the Department of Justice to undertake certain specific steps to ensure that all American citizens harmed by terrorism overseas receive equal treatment by the United States Government regardless of the terrorists' country of origin or residence, and to ensure that all terrorists involved in such attacks are pursued, prosecuted, and punished with equal vigor, regardless of the terrorists' country of origin or residence.

S. 705

At the request of Mr. MCCAIN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 705, a bill to amend title 37, United States Code, to alleviate delay in the payment of the Selected Reserve reenlistment bonus to members of Selected Reserve who are mobilized.

S. 706

At the request of Mr. MCCAIN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 706, a bill to amend title 10, United States Code, to provide Survivor Benefit Plan annuities for surviving spouses of Reserves not eligible for retirement who die from a cause incurred or aggravated while on inactive-duty training.

S. 709

At the request of Mrs. DOLE, the names of the Senator from Tennessee (Mr. FRIST) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 709, a bill to award a congressional gold medal to Prime Minister Tony Blair.

S. 711

At the request of Mr. MCCAIN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 711, a bill to amend title 37, United States Code, to alleviate delay in the payment of the Selected Reserve reenlistment bonus to members of Selected Reserve who are mobilized.

S. 712

At the request of Mr. MCCAIN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 712, a bill to amend title 10, United States Code, to provide Survivor Benefit Plan annuities for surviving spouses of Reserves not eligible for retirement who die from a cause incurred or aggravated while on inactive-duty training.

S. 718

At the request of Mr. MCCAIN, the names of the Senator from New Hampshire (Mr. GREGG) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. 718, a bill to provide a monthly allotment of free telephone calling time to members of the United States armed forces stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan.

S. 718

At the request of Ms. COLLINS, her name was added as a cosponsor of S. 718, supra.

S. 721

At the request of Mr. ALLEN, the names of the Senator from Montana (Mr. BURNS), the Senator from Alaska (Mr. STEVENS), and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. 721, a bill to amend the Internal Revenue Code of 1986 to expand the combat zone income tax exclusion to include income for the period of transit to the combat zone and to remove the limitation on such exclusion for commissioned officers, and for other purposes.

S. 740

At the request of Mr. LIEBERMAN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 740, a bill to amend title XVIII of the Social Security Act to improve patient access to, and utilization of, the colorectal cancer screening benefit under the medicare program.

S. CON. RES. 6

At the request of Ms. LANDRIEU, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. Con. Res. 6, a concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued in honor of Daniel ''Chappie'' James, the Nation's first African-American four-star general.

S. CON. RES. 7

At the request of Mr. CAMPBELL, the names of the Senator from Wisconsin (Mr. KOHL), the Senator from Maryland (Mr. SARBANES), and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. Con. Res. 7, a concurrent resolution expressing the sense of Congress that the sharp escalation of anti-Semitic violence within many participating States of the Organization for Security and Cooperation in Europe (OSCE) is of profound concern and efforts should be undertaken to prevent future occurrences.

S. CON. RES. 26

At the request of Ms. LANDRIEU, the names of the Senator from California

(Mrs. BOXER) and the Senator from Minnesota (Mr. COLEMAN) were added as cosponsors of S. Con. Res. 26, a concurrent resolution condemning the punishment of execution by stoning as a gross violation of human rights, and for other purposes.

S. CON. RES. 27

At the request of Mr. BOND, the names of the Senator from Wyoming (Mr. THOMAS) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. Con. Res. 27, a concurrent resolution urging the President to request the United States International Trade Commission to take certain actions with respect to the temporary safeguards on imports of certain steel products, and for other purposes.

S. CON. RES. 31

At the request of Mr. LIEBERMAN, the names of the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Colorado (Mr. ALLARD) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S. Con. Res. 31, a concurrent resolution expressing the outrage of Congress at the treatment of certain American prisoners of war by the Government of Iraq.

S. CON. RES. 31

At the request of Mr. LUGAR, his name was added as a cosponsor of S. Con. Res. 31, supra.

AMENDMENT NO. 429

At the request of Mr. ROCKEFELLER, his name was added as a cosponsor of amendment No. 429 proposed to S. Con. Res. 23, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2004 and including the appropriate budgetary levels for fiscal year 2003 and for fiscal years 2005 through 2013.

AMENDMENT NO. 429

At the request of Mr. LEAHY, his name was added as a cosponsor of amendment No. 429 proposed to S. Con. Res. 23, supra.

AMENDMENT NO. 429

At the request of Ms. MIKULSKI, her name was added as a cosponsor of amendment No. 429 proposed to S. Con. Res. 23, supra.

AMENDMENT NO. 429

At the request of Mr. FEINGOLD, his name was added as a cosponsor of amendment No. 429 proposed to S. Con. Res. 23, supra.

AMENDMENT NO. 429

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of amendment No. 429 proposed to S. Con. Res. 23, supra.

AMENDMENT NO. 429

At the request of Mrs. BOXER, her name was added as a cosponsor of amendment No. 429 proposed to S. Con. Res. 23, supra.

AMENDMENT NO. 429

At the request of Mr. DAYTON, his name was added as a cosponsor of amendment No. 429 proposed to S. Con. Res. 23, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. CLINTON (for herself, Mr. SCHUMER, Mrs. FEINSTEIN, Ms. LANDRIEU, Mrs. MURRAY, Ms. CANTWELL, and Ms. COLLINS):

S. 749. A bill to authorize the Secretary of the Interior to establish the Votes for Women History Trail in the State of New York; to the Committee on Energy and Natural Resources.

Mrs. CLINTON. Mr. President, today, I am introducing the Votes for Women's History Trail Act today in honor of Women's History Month. I recognize that this is a very difficult time in the history of our country. Our brave soldiers are putting their lives on the line in a war halfway around the world. At times like this it is important to remember our pioneers, the people who fought for equality and liberty for all Americans. Their courage should serve as an inspiration at troubling times like these.

The Votes for Women's History Trail Act would create a moving memorial to the women's suffrage movement in upstate New York, home to many of the most notable figures and events in the fight for women's suffrage. The Women's Rights movement began in 1848 when the first Women's Rights Convention occurred in Seneca Falls, NY. Although this convention was planned on very short notice, more than 300 people descended on Seneca Falls to challenge the subordination of women to men and call for equal rights.

After the Seneca Falls convention, the women's movement, lead in large part by Elizabeth Cady Stanton and Susan B. Anthony, continued their efforts to break down barriers for women. At times, they suffered major setbacks. Susan B. Anthony was arrested when she tried to vote by claiming that the 14th amendment entitled her to as a ''citizen.'' In 1875, the United States Supreme Court upheld the decision, forcing the women's movement to pursue a different strategy. They were undeterred and launched statewide campaigns for voting rights for women. Their efforts eventually paved the way for the passage of the 19th amendment in 1920—72 years after the first Women's Rights Convention.

These pioneers believed that women ought to be full and equal partners in the social, cultural, religious, economic, educational, and political life. To a large degree, their vision has been realized. But the journey is not complete. Women still earn only $.73 for every dollar earned by men. They are still underrepresented in the highest levels of virtually every occupation and field, including the United States Congress.

The Votes for Women's History Trail Act would create a fitting tribute to this critical period in our history and to the people whose strength and clarity of vision led us through the journey. For young children and older Americans alike, it would serve as an important reminder of how very far we have come.

The National Park Service has already conducted a feasibility study about this trail. Their study concluded that the Votes for Women's History Trail is of historical value, national significance, and possesses significant potential for public use and enjoyment. The study examined over 300 properties and narrowed the list to the 20 of the most significant and easily accessible to the public.

I am proud to introduce this bill on behalf of Senators SCHUMER, FEINSTEIN, LANDRIEU, CANTWELL, and MURRAY, and STABENOW. I look forward to working with them and so many of my other colleagues to make the Votes for Women's History Trail a reality.

By Mr. MCCAIN (for himself, Mr. DODD, Mr. ALLEN, Mr. BREAUX, Mr. WARNER, Mr. AKAKA, Mr. BENNETT, Mrs. LINCOLN, Ms. COLLINS, Mr. HOLLINGS, Mr. CHAFEE, Mr. FITZGERALD, Ms. LANDRIEU, Mr. BROWNBACK, Mr. CAMPBELL, Mr. HAGEL, Mr. ROBERTS, Mr. SARBANES, Mr. SMITH, and Ms. SNOWE):

S. 750. A bill to amend title II of the Social Security Act to increase the level of earnings under which no individual who is blind is determined to have demonstrated an ability to engage in substantial gainful activity for purposes of determining disability; to the Committee on Finance.

Mr. MCCAIN. Mr. President, I rise today to introduce an important piece of legislation, which will have a tremendous impact on the lives of blind people throughout the country. In 1996, with the passage of the Senior Citizens Freedom to Work Act, Congress broke the historic 20-year link between blind people and senior citizens in regards to the Social Security earnings. Previously, that linkage to earnings limits helped many blind people become self-sufficient and productive members of society.

The Senior Citizens Freedom to Work Act raised the earnings limit for seniors, without giving blind people the same opportunity. My intent when I sponsored that legislation was not to break the link between blind people and the senior population. Since then, I have worked with a bipartisan group of senators, in the spirit of fairness, to ensure that the blind population receives a raise in earnings limits, similar to that afforded to seniors under the 1996 Act. We must not continue policies which discourage blind individuals from working and contributing to our nation. I believe we should provide blind people with the opportunity to be productive and ''make it'' on their own.

Today I am joined by my good friend Senator DODD, and a bipartisan group of senators, in introducing the Blind Empowerment Act of 2003. This bill is

similar in purpose to the Blind Person's Earnings Equity Act, which I sponsored in previous Congresses. Over a five year period of time, the Blind Empowerment Act raises the earnings exemption for blind persons to afford them with greater flexibility to achieve their professional and personal goals, without sacrificing Social Security benefits.

The earnings test treatment of our blind and senior populations historically has been identical. From 1977, blind persons and senior citizens shared the identical earnings exemption threshold under Title II of the Social Security Act. The earnings limit for the blind is currently $1,330 a month for fiscal year (FY) 2003, had the link not been broken in the Senior Citizens Freedom to Work Act, it would be $2,560 today. Senior citizens are now given unlimited opportunity to increase their earnings without losing a portion of their Social Security benefits. The blind, however, have been left behind.

The Social Security earnings test imposes as great a work disincentive for blind people as it once did for senior citizens. In fact, the earnings test probably provides a greater aggregate disincentive for blind individuals because many blind beneficiaries are of working age and are capable of valuable and productive work.

Blindness is often associated with adverse social and economic consequences. Many blind individuals who desperately want to work encounter enormous obstacles to achieve sustained employment or any employment at all. They take great pride in being able to work and contribute to society. By linking the blind with seniors in 1977, Congress provided a great deal of hope and an incentive for blind people to enter the work force. By not allowing blind individuals the opportunity to increase their earnings, as we have for senior citizens, we are now taking that hope away from them.

Blind people are likely to respond favorably to an increase in the earnings test by working more, which will increase their tax payments and purchasing power allowing the blind to make a greater contribution to the general economy. In addition, encouraging blind individuals to work and allowing them to work more without being penalized would bring additional revenue into the Social Security trust funds as well as the federal Treasury.

I hope that this Congress will finally address issues regarding the overall structure of the Social Security system and work towards solutions that will strengthen the system for seniors of today and tomorrow without placing an unfair burden on working Americans. It is absolutely crucial that we include raising the earnings test for blind individuals as a part of any Social Security bill we enact this year.

I urge each of my colleagues to join me in sponsoring the Blind Empowerment Act of 2003, to restore fair and equitable treatment for our blind citizens and to give the blind community increased financial independence. Our Nation would be better served if we restore hope for the blind and provide them with the freedom, opportunities and fairness afforded to our Nation's seniors.

I ask unanimous consent that the text of the Blind Empowerment Act of 2003 be printed in the RECORD.

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

S. 750

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

The Act may be cited as the ''Blind Empowerment Act of 2003''.

SEC. 2. INCREASE IN AMOUNT DEMONSTRATING SUBSTANTIAL GAINFUL ACTIVITY IN THE CASE OF BLIND INDIVIDUALS.

Section 223(d)(4) of the Social Security Act (42 U.S.C. 423(d)(4)) is amended—

(1) by striking the second sentence of subparagraph (A); and

(2) by adding at the end the following new subparagraph:

''(C)(i) No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of monthly earnings in any taxable year that do not exceed an amount equal to—

''(I) in the case of earnings in the taxable year beginning after December 31, 2002, and before January 1, 2004, $1,330 per month;

''(II) in the case of earnings in the taxable year beginning after December 31, 2003, and before January 1, 2005, $1,720 per month;

''(III) in the case of earnings in the taxable year beginning after December 31, 2004, and before January 1, 2006, $2,110 per month;

''(IV) in the case of earnings in the taxable year beginning after December 31, 2005, and before January 1, 2007, $2,500 per month; and

''(V) in the case of earnings in taxable years beginning after December 31, 2006, the dollar amount determined for purposes of this clause under clause (ii).

''(ii) The Commissioner of Social Security shall, on or before November 1 of 2006 and of every year thereafter, determine and publish in the Federal Register the monthly dollar amount for purposes of clause (i) in the case of taxable years beginning with or during the succeeding calendar year. Such dollar amount shall be the larger of—

''(I) the monthly dollar amount in effect under clause (i) for taxable years beginning with or during the calendar year in which the determination under this clause is made, or

''(II) the product of $2,500 and the ratio of the national average wage index (as defined in section 209(k)(1)) for the calendar year before the year in which the determination under this clause is made to the national average wage index (as so defined) for 2004,

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.''.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to taxable years beginning after December 31, 2002.

Mr. DODD. Mr. President, I rise today with my colleague from Arizona, Senator JOHN MCCAIN, to reintroduce legislation that we've sponsored in the past, the ''Blind Empowerment Act of 2003.'' This legislation would restore the 20-year link between blind people and senior citizens with respect to the Social Security earnings limit. It will have a tremendous impact on the lives of many blind people, helping them become more self-sufficient and productive members of society.

Today there are nearly 1.1 million Americans who are blind, with 75,000 more becoming blind each year. With today's technology, blind and visually-impaired individuals can do just about anything. Blind people today are employed as farmers, lawyers, secretaries, nurses, managers, childcare workers, social workers, teachers, librarians, stockbrokers, accountants, and journalists, among many other things. The Federal Government should do all within its power to facilitate and encourage the blind and visually-impaired to enter the workforce. Many public and private initiatives provide the technical advancement necessary to educate and employ the blind at the same level as their sighted peers. For example, the National Federation of the Blind, NFB, has created an institute to utilize technological advancements for the blind in an effort to promote employment of the blind throughout the nation. The NFB helps employers provide adaptive technology, consultation, and training so that they can better accommodate the needs of blind and visually-impaired employees.

In 1996, Congress passed the Senior Citizens Freedom to Work Act, which broke the longstanding linkage between the treatment of blind people and seniors under Social Security. This allowed the earnings limit to be raised for seniors, but not for the blind. As a result, blind people do not have the opportunity to increase their earnings without jeopardizing their Social Security benefits. In 2002, that limit was at $14,800. If a blind individual earns more than that, his or her Social Security benefits are not protected.

The purpose of the Senior Citizens Freedom to Work Act was to allow seniors to continue contributing to society as productive workers while still receiving social security benefits. Historically, the earnings test treatment of seniors and blind people has been identical under Title II of the Social Security Act. With this legislation, we must do the same for the blind population of America as we have done for the seniors. We must provide blind people the same opportunity to be productive and contribute to their own stability. We must not discourage these individuals from working.

The current earnings test provides a disincentive for the blind population, many of whom are working age and capable of productive work. Work provides one of the fundamental ways individuals express their talents and allow them to make a contribution to society and to their loved ones. Blind individuals face constant hurdles when it comes to employment. Parents,

teachers, or counselors may tell them they can't do it. Employers sometimes don't even give them the opportunity to try. But blind people and others with severe visual impairments take great pride in being able to work, just like the rest of us. They are likely to respond favorably to an increase in the earnings test because they want to work. We don't want to create yet another hurdle to employment for blind individuals with the Social Security earnings test. By allowing those with visual impairments to work more without penalty, we would increase both their tax contribution and their purchasing power. By doing so we would also bring additional funds into the Social Security trust fund and the Federal Treasury.

I urge my colleagues to join me in sponsoring this important legislation to restore the fair and equal treatment for the blind citizens of America. The ''Blind Empowerment Act of 2003'' will provide the blind population with the same freedom and opportunities as our Nation's seniors and the rest of the citizens of this nation.

By Mr. BAUCUS (for himself, Mr. DASCHLE, Mr. JOHNSON, Mr. CAMPBELL, Mr. BINGAMAN, Mr. INOUYE, and Mr. AKAKA):

S. 751. A bill to amend part A of title IV of the Social Security Act to reauthorize and improve the operation of temporary assistance to needy families programs operated by Indian tribes, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, today, I am re-introducing the American Indian Welfare Reform Act, an important step in improving the lives of this country's Native Americans. I originally introduced this bill last year and worked to include important elements of it in the welfare reform reauthorization bill approved by the Finance Committee. Unfortunately, we did not finish work on welfare reform reauthorization. So I am again offering this bill, with some improvements based on advice from tribes and other experts. I am glad to be joined by Senators DASCHLE, JOHNSON, CAMPBELL, BINGAMAN, INOUYE, and AKAKA.

In 1996 we enacted a sweeping welfare reform law. It was a long past-due fundamental change and ended a failed system for helping low-income families in America. I was a strong supporter of that law. This year, we continue to work to reauthorize it. As we in the Finance Committee have reviewed the evidence I have been struck by how successful it has been. The ranks of those dependent on welfare in this country has been reduced by half in just five years. There is more to be done, of course. Child poverty has declined but not by as much as the fall in the welfare caseload, for example. I plan to work with my Finance Committee colleague Senator GRASSLEY on comprehensive legislation to renew and improve the 1996 law.

One often overlooked important aspect of the 1996 law is that it didn't just devolve authority to States—it also permitted Indian tribes to operate their own welfare programs for the first time. The new welfare program, Temporary Assistance for Needy Families, TANF, is very flexible. Tribes can take advantage of that flexibility to design culturally-appropriate programs to move people from welfare to work. This is smart policy and is consistent with the important value of tribal sovereignty. I support it.

My own State of Montana is home to several tribes and I have given much thought to how we can build upon the provisions of the 1996 welfare law to help them and their members. Too often in Montana—and elsewhere—poverty has an Indian face. The numbers are cold and hard. According to the Census Bureau, 25.9 percent of American Indians live in poverty, more than twice the national poverty rate. The average household income for Indians in 2000 was only 75 percent of that of the rest of Americans. This is simply not right. We must do better. Welfare reform needs to work for everyone.

Luckily, the provisions of the 1996 law provide a good start. Now we must build upon them. The legislation I introduce today, the product of extensive dialogue and consultation, does that in several important ways.

First, more than 30 tribes—including the Confederated Salish-Kootenai and Fort Belknap tribes of Montana—have taken advantage of the opportunity to operate their own TANF programs. This bill contains provisions to help those tribes improve their programs. For example, under current law, tribes operating TANF are not eligible for the TANF high performance bonus or the TANF contingency fund while state TANF programs are. This oversight is rectified by this bill.

Second, there are many tribes interested in operating TANF programs who do not believe the current set-up allows them to do so. They want to exercise their sovereignty and adapt their program to better fit the needs of their people. We should help them do so. To that end, I propose creating a new grant fund to improve tribal governmental capacity. We have funded State administrative capacity for decades, helping States buy computer systems and train workers. We should do the same for tribal human services administration. Under this bill, a tribe which wants to operate TANF but needs to upgrade its computers to do it could receive the funding it needs—which will enable it to take over TANF.

Third, there are some tribes not interested in running a TANF program or a long time from being able to do it. Their low-income families will continue to receive assistance from State programs. I have included provisions to facilitate State-tribe dialogue in these cases so that the state can better understand the unique circumstances of each Indian reservation. There is also an important provision to allow States the same flexibility in designing welfare-to-work programs on high unemployment reservations that tribes gain when they operate TANF programs. We must ensure all Indian families are able to get help when they need it.

Finally, there is the all-important issue of economic development. A General Accounting Office review of Census Bureau data found that 25 of the 26 counties in the U.S. with a majority of American Indians had poverty rates ''significantly'' higher than average. Welfare reform is about moving people to work. On most of our Indian reservations there is simply far too little work to be had. Like everyone else, Indians want to work. We need to do better in giving them the opportunity.

This legislation provides tribes with an expanded authority to issue bonds, which will encourage additional economic activity on reservations, such as housing construction. This means more jobs, as well as a better quality of life. It also includes grants to help tribes improve their own economic development strategies. Tribes with uniform commercial codes and effective micro-enterprise programs can see more business activity on their lands. This bill helps tribes helps themselves. We need to let Indians find their own way to prosperity, not impose top-down strategies. But we must make sure they have the tools to get there.

This is an important bill. It includes other key provisions. One is a fine bill originally introduced by Senators DASCHLE and MCCAIN to allow tribes to receive direct Federal reimbursement for operating foster care programs. Another provision funds research on tribal welfare reform programs so we can learn what works as well as providing funds for ''peer-learning'' so that tribes can learn from one another. I am a strong supporter of welfare reform. We need to make sure it works for everyone. This bill does that.

I ask unanimous consent that a summary of the legislation be printed in the RECORD.

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

SUMMARY OF THE AMERICAN INDIAN WELFARE REFORM ACT

1. FINDINGS

The Federal Government bears a unique trust responsibility for American Indians. Despite this responsibility, Indians remain remarkably impoverished. According to the Census Bureau, 25.9 percent of American Indians live in poverty, more than twice the national poverty rate. The average household income for Indians in 2000 was only 75 percent of that of the rest of Americans. In some states with substantial Indian populations the welfare caseload has become increasingly Indian because some Indians face substantial barriers in moving from welfare to work. A General Accounting Office review of Census Bureau data found that 25 of the 26 counties in the U.S. with a majority of American Indians had poverty rates ''significantly'' higher than average. Further, many Indian tribes are located in isolated rural areas, far from economic opportunity. Tribal

Temporary Assistance for Needy Families, TANF, programs have demonstrated remarkable success in moving Indians from welfare to work. Tribal governments have not been afforded equal opportunity to administer foster care and adoption assistance programs. Welfare reform has not brought enough change to Indian Country.

2. THE TRIBAL TANF IMPROVEMENT FUND

The 1996 welfare reform law permits tribes to opt to operate their own Temporary Assistance for Needy Families, TANF, programs. A new Tribal TANF Improvement Fund of $500 million, to be available for 5 years, would be created to build upon these programs and allow more tribes to start them. It would have four parts:

Tribal Capacity Grants. State governments have benefitted from decades of federal investment in their administrative capacity, particularly in their information management systems. $185 million of the Fund would be reserved for grants to improve tribal human services program infrastructure, with a priority for management information systems and training. Tribes applying to operate TANF would be given priority. Tribes already operating TANF, applying to operate IV-E foster care programs with direct federal funding, and operating the new consolidated tribal job training program would also be eligible for grants. HHS would be required to assure that tribes of all sizes received funding and to maximize the number of tribes which receive funding. Tribes would be eligible for one grant per year.

Adjusted Tribal TANF Grants. Tribes which take over operation of TANF often experience significant increases in caseload as poor families apply for help for the first time because they are more comfortable asking assistance from the tribe or simply because they are more able to access services. Yet tribal TANF allocations are based on estimates of Indians served by state programs in 1994, which can leave the tribe facing funding levels which are too low. To better support families in tribal TANF programs, $140 million of the fund would be reserved for grants to tribal TANF programs where the tribe can demonstrate it has a significantly higher true caseload than originally estimated. Tribes with cash assistance caseloads two years after beginning operation of a TANF program which are 20 percent higher than originally estimated would be eligible for additional funding. The funds would be allocated proportionate to a tribe's size and service population as well as the caseload increase, on the basis of a formula to be determined by HHS in consultation, by region, with tribes. The funding level would be $35 million per year, from FY 2004–2007.

Tribal TANF MOE Incentive. A key factor in tribes being able to operate TANF programs has been the willingness and ability of states to contribute funding as part of the broader state maintenance of effort, MOE, requirement. To encourage states to do this, up to an additional $160 million would be available for ''rebates'' of TANF funds to states which provide MOE support to tribal TANF programs. For each $1 in MOE funds provided, the federal government would provide an additional 50 cents in TANF funding to the state. If funding is insufficient, HHS would provide pro-rata funding to ensure each state contributing MOE receives a share of the incentive funds.

Technical Assistance. HHS would receive $15 million to provide technical assistance to tribes. At least $5 million of these funds would be reserved to support peer-learning programs among tribal administrators and at least $5 million would be reserved for grants to tribes to conduct feasibility studies of their capacity to operate TANF.

III. TRIBAL TANF HIGH PERFORMANCE BONUS AND CONTINGENCY FUND ACCESS

There are separate sources of funding within TANF that tribes do not have the ability to access. To better support tribal TANF programs, 3 percent of the current TANF ''high performance'' bonus—or $6 million/year—would be reserved for distribution to tribal TANF programs. The criteria would be determined by HHS through consultation with tribes, but should involve effectiveness in moving TANF recipients into employment and self-sufficiency. In addition, $50 million of the $2 billion TANF Contingency fund would be reserved for tribal TANF programs operating in situations of increased economic hardship. The criteria for tribal access to the Contingency Fund would also be determined by HHS through consultation with the tribes, but would include a worsening economic condition, loss of reservation employers, or a loss of state match funding. In addition, current restrictions on the use of ''carryover'' TANF funds would be eliminated, permitting tribes to spend prior year TANF funds with just as much flexibility as current year TANF funds.

IV. ECONOMIC DEVELOPMENT

There are four elements in the bill to stimulate more economic activity on economically-depressed reservations.

Expanded tribal authority to issue tax-exempt private activity bonds. Currently, tribes have a limited authority to issue private activity bonds for ''essential'' governmental functions and for certain manufacturing-related purposes. This provision would allow bonds to be used for residential rental properties and qualified mortgage bonds, spurring construction. In addition, tribes could allocate authority for financing businesses that would qualify as enterprise zone businesses if the reservation were a zone. All property financed would have to be on the reservation of the issuing tribal government and qualified tribal governments would have to have an unemployment rate of at least 20 percent. Casinos and certain other forms of businesses could not be financed by the bonds. The authority would be for calendar years 2004–2008, and up to $10 million total would be available for each qualifying tribe.

Tribal Development Grants. A key part of tribal economic development is the investment climate on the reservation. Tribes with clear legal codes and which encourage micro-enterprise activities are more likely to generate economic growth. To facilitate this, the Administration for Native Americans within HHS would receive $50 million to distribute in grants to tribes, tribal organizations and non-profit organizations to provide technical assistance to tribes in the areas of: Development and improvement of uniform commercial codes; creating or expanding small business or micro-enterprise programs; development and improvement of tort liability codes; creating or expanding tribal marketing efforts; for-profit collaborative business networks; and telecommunications.

Job Access and Reverse Commute Grants. A lack of transportation often hinders tribal economic development. To help address this need, tribes would be made directly eligible to receive Job Access and Reverse Commute grants from the federal Department of Transportation, which would permit tribes to pursue innovative TANF strategies around transportation. A tribal set-aside of 3 percent would be established in the program. Matching funds could be provided by tribes on an in-kind basis or with other federal funds, such as TANF.

Transportation Grants. A lack of transportation also often hinders individual Indians from moving from welfare-to-work. This need is particularly acute given the remote nature of many reservations. To assist Indians in acquiring reliable automobiles, a $10 million per year grant program would be created, beginning in FY 2004. Tribes would be given priority in receiving grants to create car ownership assistance programs. This program is based on a proposal originally put forward by Senator Jeffords.

V. TRIBAL JOB TRAINING PROGRAMS

There are currently two tribal job training programs, the NEW program and Welfare-to-Work grantees. To simplify and better co-ordinate programs, a new Tribal Employment Services Program, TESP, would be created in the Department of Labor by combining the two programs. It would be funded at $37 million annually and distributed to current Tribal NEW and Welfare-to-Work grantees as well as new applicants. TESP funds could be used for employment training efforts for those on, or at-risk of being on, public assistance. Tribes could also use the funds to assist non-custodial parents of children on, or at risk of being on, public assistance. To encourage state-tribal partnerships, TANF funds transferred to tribal TESP programs would be governed by TESP rules, not TANF rules. The bill also clarifies that the single plan, single budget, and single reporting requirements of PL 102–477 should be respected.

VI. TRIBAL CHILD CARE

The availability and quality of child care is basic to the success of welfare reform. Tribal welfare reform efforts are no exception. The tribal set-aside within the Child Care and Development Block Grant, CCDBG, would be increased to 5 percent to better support tribal welfare reform programs. HHS would be required to go through a negotiated rulemaking process, in consultation with tribal representatives, to determine an equitable allocation of the base funding among tribes. In addition, each tribe receiving CCDBG funding would develop their own health and safety standards, subject to approval of HHS. Tribal child care programs would have additional authority to use funds for construction and renovation.

VII. ''EQUITABLE ACCESS''

Many American Indians are—and will continue to be—served by state TANF programs. States will be required to consult with tribes within their borders on TANF state plans. Under current law, states are required to provide ''equitable access'' to services for Indians. State and tribal TANF plans would be required to describe how ''equitable access'' is provided to encourage better State-tribal co-operation. HHS would also be required to include in the annual TANF report to Congress state-specific information on the demographics and caseload characteristics of Indians served by state TANF programs.

In addition, HHS would be required to convene a new advisory committee on the status of non-reservation Indians. Too little is known about how these Indians are faring. The committee is to make recommendations for ensuring these Indians receive appropriate assistance. The committee would include federal, state, and tribal representatives as well as representatives of Indians not residing on reservations. A majority of those on the committee would be representatives of Indians not residing on reservations. GAO would also be required to conduct a study of the demographics of Indians not residing on reservations, including economic and health information, as well as reviewing their access to public benefits.

VIII. ''JOBLESSNESS''

As acknowledged by the 1996 welfare law, the federal time limit on assistance is not an appropriate policy on Indian reservations with severe unemployment. This provision

would be adjusted so that the time limit will not apply during months where the joblessness is above 20 percent, provided that TANF recipients are not in sanction status. In addition, in these areas of high joblessness, states would have flexibility to define work activities required for TANF participants, provided the recipient is participating in activities in accordance with an Individual Responsibility Plan and the state has included information in its state plan describing its policies in Indian Country areas of high joblessness, Tribal TANF programs already have flexibility in work activity definition.

IX. ALASKA PROVISIONS

The 1996 limits the ability of tribes in Alaska to design and operate programs. These provisions involving differential treatment for Alaskan Natives, such as those requiring tribal TANF programs to be ''comparable'' to the state program, would be removed.

X. TRIBAL FOSTER CARE PROGRAMS

Due to a long-standing oversight, tribes are not allowed to receive direct federal reimbursement when they operate foster care programs to take care of abused and neglected children. The provisions of S. 331, the Daschle-McCain legislation to rectify this oversight and allow tribes to receive direct federal funding to operate foster care programs, are included.

XI. FOOD STAMPS, MEDICAID, AND SCHIP

Up to 10 tribes operating TANF programs could receive waivers to perform eligibility determinations and/or operate Food Stamps, Medicaid, and the State Children's Health Insurance Program, SCHIP, as well. Matching requirements could be waived but not program integrity requirements. In addition, the programs would remain consistent with state rules. However, tribes would be able to demonstrate their ability to operate these programs and to serve low-income Indian families better.

XII. CHILD SUPPORT ENFORCEMENT

HHS would be required to promulgate final regulations concerning tribal child support programs within one year of enactment. In addition, HHS would be required to submit a report to Congress on the most appropriate ways of including tribal programs in the methodology of determining child support incentive payments.

XIII. ''BREAK THE CYCLE'' DEMONSTRATION PROGRAM

Inter-generational poverty is a frequent occurrence on Indian reservations. In an effort to reach the children of TANF recipients, a ''Break the Cycle'' demonstration program would be created. Up to 10 tribes would receive grants to develop programs aimed at ensuring children of TANF recipients complete high school or receive G.E.D.s. The tribes would submit proposals involving mentoring, tutoring, altering TANF rules, or teen pregnancy prevention towards this goal, and could collaborate with States. It would be authorized at $20 million per year for FY 2005–2008.

XIV. SOCIAL SERVICES BLOCK GRANT (SSBG)

SSBG is an important source of flexible funding to address the needs of the elderly, disabled, and low-income families. But tribes do not currently receive SSBG funds. Under this bill, when funding for SSBG exceeds $2.4 billion in a year, $10 million plus 2 percent of all funds beyond $2.4 billion is reserved for tribes. All tribes operating social service programs would be eligible for a share. HHS is required to develop a distribution formula through a consultation process with the tribes.

XV. RESEARCH

While there have been a handful of important initial studies of welfare reform in Indian Country, much remains unknown about how it has impacted Native Americans. Therefore, $2 million would be provided to HHS for research on tribal welfare programs and efforts to reduce poverty among American Indians in general. These funds could also be used to assist tribes in collecting data. To expend the funds, HHS would first have to issue a planned course of research and consultation with the tribes. Research funding applicants which propose to include tribal governments and tribal colleges in their work would have priority.

By Mr. BINGAMAN (for himself and Mrs. HUTCHISON):

S. 752. A bill to amend the Internal Revenue Code of 1986 to treat distributions from publicly traded partnerships as qualifying income of regulated investment companies, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today with my colleague from Texas, Senator HUTCHISON to introduce legislation that will allow publicly traded partnerships to sell their stock to mutual funds so they can raise sufficient capital for new investments in pipelines and infrastructure. Because of current restrictions, publicly traded partnerships are hindered in their ability to sell their equity to mutual funds even though their equity is sold on public exchanges. The overwhelming majority of these partnerships are energy-related companies that need the ability to raise capital from mutual funds to build pipelines and other facilities. This legislation would be a strong shot in the arm for the economy as it encourages companies to begin new projects that are currently on hold for lack of capital. It also provides us with the ability to expand our pipeline network to meet our current demands for natural gas. I look forward to working with my colleagues to advance this important legislation.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce a bill with Senator BINGAMAN that takes an important step toward modernizing the Internal Revenue Code.

Decades ago, investment companies which manage mutual funds were limited in the amount of income they could receive from investments in partnerships.

At the time, this restriction was established to address legitimate concerns and protect the interests of investors. Ownership interests in partnerships can be illiquid, so it is difficult to get one's money out of the investment. Partnerships are also not required to be transparent in their financial statements, so it could be difficult for investors to accurately assess a business

However, the world has changed. Some partnerships have been able to go public and offer shares on the stock markets, so the problem of liquidity is solved. By going public, they must meet much higher standards of financial transparency, including regularly publishing audited financial statements for investors. Currently, 50 publicly traded partnerships trade on major U.S. stock exchanges; 14 of these companies are headquartered in my home State, Texas.

Unfortunately, tax laws have not reflected this change in the business and financial worlds. Mutual funds are still restricted in how much they can invest in any partnership, including those that are publicly traded. This significantly impedes the ability of these companies to raise capital. It limits their ability to grow and create jobs.

Publicly traded partnerships play an important role in the economy. About half are in the energy sector, actively involved in building and operating infrastructure to gather, process and transport oil and natural gas. These partnerships also include timber and real estate companies. It is clear we need a healthy energy sector to ensure the availability of oil and gas at reasonable prices.

The bill Senator BINGAMAN and I introduce today will lead to a dramatic increase in the flow of capital to these companies. Mutual funds, which often purchase a majority of equity offerings, will be able to participate in stock offerings from publicly traded partnerships. This will expand the investor base and lower the cost of capital, ultimately helping to lower energy prices.

Our bill will also provide millions of investors an opportunity, through their mutual funds, to participate in another investment opportunity if their professional mutual fund managers believe it is an attractive investment.

It is wrong for the Federal Government to use the tax code to make decisions for investors. The bill we are introducing will modernize our tax laws so families can make their own financial planning decisions. This legislation will also provide an important source of capital for key areas of the economy. I hope my colleagues will support this long overdue improvement.

By Mr. HATCH (for himself, Mr. BREAUX, Mr. BAUCUS, and Mr. GRASSLEY):

S. 753. A bill to amend the internal Revenue Code of 1986 to provide for the modernization of the United States Tax Court, and for other purposes; to the Committee on Finance.

Mr. HATCH. Mr. President, I rise today to introduce the Tax Court Modernization Act. I am joined in this legislation by my colleague Senator BREAUX, and by the Chairman and Ranking Democrat of the Finance Committee, Senator GRASSLEY and Senator BAUCUS.

The United States Tax Court plays an important role in our tax system. However, it has been years since Congress has taken a good hard look at the Tax Court. This bipartisan piece of legislation will improve this Court in a number of ways, and I would like to take a moment to summarize some of its provisions.

First, the TCMA would make minor changes in the Tax Court's jurisdiction. These are small changes that will

have a big impact on the Court's efficiency. For example, the bill would allow the Tax Court to hire employees on its own, just as other courts do. Currently, the Tax Court is forced to hire through the Executive Branch's Office of Personnel Management, entangling the executive power with the judicial power. Restoring the constitutional separation of powers in the hiring process will increase the independence of the Tax Court.

Second, the TCMA would improve the way that Tax Court judges receive retirement benefits and other non-salary benefits. I believe that Tax Court judges should be treated the same way that bankruptcy, Court of Federal Claims, and Article III judges are treated when it comes to fringe benefits.

Tax Court judges are often not provided with the same benefits as similarly appointed Article I and Article III judges. For example, Congress allows Article III, bankruptcy, and Court of Federal Claims judges to participate in the Thrift Savings Plan in addition to the Civil Service Retirement System, while Tax Court judges are ineligible to participate in this program. These disparities in the treatment of our Tax Court judges affect the Court's ability to attract and retain seasoned judges, as well as talented employees.

I have spent many years observing the Federal judiciary. I have spent many years trying to improve the Judicial Branch of our government and to make it the very finest court system the world has ever known. I look forward to working with my colleagues on the Senate Finance Committee on this important piece of legislation. I urge my colleagues, both on the Finance Committee and in the Senate as a whole, to support this legislation.

Mr. BAUCUS. Mr. President, I rise today to support the Tax Court Modernization Act. I am pleased to be an original cosponsor of this important legislation.

In 1969, Congress elevated the U.S. Tax Court as a Federal court of record under Article I of the Constitution of the United States.

Congress created the Tax Court to provide a judicial forum in which affected persons could dispute tax deficiencies determined by the Commissioner of the Internal Revenue Service prior to payment of the disputed amounts. That means that the Tax Court's jurisdictional requirements are, in part, a recognition that lower and middle income taxpayers cannot necessarily pay the tax deficiency before taking their dispute to court.

Congress also closely linked the legislation governing the Tax Court with the laws governing the Article III District Courts. Unfortunately, the Congress did not include the Tax Court in the changes made for Article III courts.

This legislation is designed to restore parity between the Tax Court and Article III courts, and to modernize their personnel and pension systems.

I also want to thank Senators BREAUX and HATCH for their efforts in moving this legislation forward. The Finance Committee intends to markup the Tax Court Modernization Act tomorrow. It is my hope that the Committee favorably reports the legislation. I also hope that, soon after Committee action, Majority Leader FRIST and Minority Leader DASCHLE bring the Tax Court Modernization Act to the floor for swift passage.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. HATCH, Mr. THOMAS, Mrs. LINCOLN, and Mr. ROCKFELLER):

S. 755. A bill to amend the Internal Revenue Code of 1986 to provide a uniform definition of child, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, today Senator GRASSLEY and I are taking a significant step forward in our efforts to simplify the tax code. Today, we are introducing an important simplification legislation—the Uniform Definition of Child Act.

This legislation is based on the support of many for simplification in this area of the tax law. The President's FY 2004 budget, which was released on April 15, 2002, includes a simplification proposal to provide a uniform definition of a qualifying child. This is the first in a series of Department of Treasury ''white papers'' on simplification.

The concept of a uniform definition of qualifying child also enjoys support from the American Bar Association, the American Institute of CPAs, the Tax Executives Institute, the Internal Revenue Service's Taxpayer Advocate, and staff of the Joint Committee on Taxation.

Under current law, the complexity in this area is daunting. There are five commonly used provisions that provide benefits to taxpayers with children: the dependency exemption, the child credit, the earned income credit, the dependent care credit, and head of household filing status.

Each of the five provisions uses variations of four principal criteria to determine whether a taxpayer qualifies for applicable tax benefits with respect to a particular child: age of the child, relationship of the child to the taxpayer, residency of the child with the taxpayer, and the amount of financial support provided the child by the taxpayer.

Thus, a taxpayer is required to apply different definitions with respect to the same child when determining eligibility for these provisions. A taxpayer who qualifies with respect to a child for one provision does not necessarily qualify for another. As a result, publications, forms, instructions and schedules that are applicable to child related provisions number about 200 pages for the preparation of an individual income tax return.

A tremendous number of families are impacted by these Code provisions. For example, 44 million taxpayers claimed the dependency exemption in the 2001 tax year. The IRS also indicates that a significant portion of the issued math error notices are attributable to these five provisions of the Internal Revenue Code. In 1999, for example, 44 percent of the 7.6 million math error notices were attributable to these provisions—40 percent of the total math error notices were attributable the dependency exemption, the child tax credit and the earned income tax credit alone.

The legislation reduces complexity through reconciliation of the varying child definitions into a single definition for a ''qualifying child.'' The uniform child definition generally establishes eligibility for all five tax benefits if the child meets the age requirements described below, a relationship requirement, and a residency requirement—i.e., the child has the same principal place of abode as the taxpayer for more than one-half the taxable year.

The residency requirement is an important departure from current law in which the child tax benefits frequently rely upon financial support tests which impose significantly higher administrative burdens in the form of additional record-keeping not otherwise required under the tax law. The legislation also preserves the tax rights of children who provide more than half of their own support by excluding those children from the uniform definition of a qualifying child.

The underlying policy objectives of the present law provisions are retained. For example, the legislation retains underlying policy by not adjusting the ages of qualification—i.e., under age for the dependent care credit, under age 17 for the child tax credit, and under age 19—or age 24 if a full-time student for the dependency exemption, the earned income tax credit, and head of household filing status.

The legislation applies a single relationship test to the varying Code sections. Significantly, the proposal retains current law as an alternative to the extent that a person does not meet the revised uniform child definition—e.g., an elderly parent can still be claimed for purposes of the dependency exemption.

Under the Uniform Definition of Child Act, there will be instances in which multiple taxpayers qualify with respect to a given child. To address this issue, the proposal extends the present law earned income credit tie-breaker rule to the other benefits for multiple eligible claimants. That rule awards the tax benefit (i) to a parent over a non-parent, (ii) to the parent with longer residency or the highest AGI if residency is not determinative between parents, and (iii) to the taxpayer with the highest AGI if all claimants are non-parents. Finally, the legislation continues to allow divorced or separated spouses to assign the dependency exemption and the child tax credit to non-custodial parents provided that certain support and residency tests are met.

Simplification of the tax code should be more than just rhetoric. It is time for us to put legislation behind our words. We intend to continue to look at other areas of the tax code in need of simplification.

Senator GRASSLEY and I also want to thank our Finance Committee colleagues, Senators HATCH, THOMAS and LINCOLN, for their support of the Uniform Definition of Child Act of 2003. Simplification of the tax laws for the families of our nation is not partisan, it is not political, it is simply common sense.

Mr. President, I ask unanimous consent that the Uniform Definition of Child Act of 2003 be printed in the RECORD.

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

S. 755

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Uniform Definition of Child Act of 2003''.

SEC. 2. UNIFORM DEFINITION OF CHILD, ETC.

Section 152 of the Internal Revenue Code of 1986 is amended to read as follows:

''SEC. 152. DEPENDENT DEFINED.

''(a) IN GENERAL.—For purposes of this subtitle, the term 'dependent' means—

''(1) a qualifying child, or

''(2) a qualifying relative.

''(b) EXCEPTIONS.—For purposes of this section—

''(1) DEPENDENTS INELIGIBLE.—If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

''(2) MARRIED DEPENDENTS.—An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

''(3) CITIZENS OR NATIONALS OF OTHER COUNTRIES.—

''(A) IN GENERAL.—The term 'dependent' does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

''(B) EXCEPTION FOR ADOPTED CHILD.—Subparagraph (A) shall not exclude any child of a taxpayer (within the meaning of subsection (f)(1)(B)) from the definition of 'dependent' if—

''(i) for the taxable year of the taxpayer, the child's principal place of abode is the home of the taxpayer, and

''(ii) the taxpayer is a citizen or national of the United States.

''(c) QUALIFYING CHILD.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying child' means, with respect to any taxpayer for any taxable year, an individual—

''(A) who bears a relationship to the taxpayer described in paragraph (2),

''(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

''(C) who meets the age requirements of paragraph (3), and

''(D) who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins.

''(2) RELATIONSHIP TEST.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

''(A) a child of the taxpayer or a descendant of such a child, or

''(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

''(3) AGE REQUIREMENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual—

''(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

''(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

''(B) SPECIAL RULE FOR DISABLED.—In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

''(4) SPECIAL RULE RELATING TO 2 OR MORE CLAIMING QUALIFYING CHILD.—

''(A) IN GENERAL.—Except as provided in subparagraph (B) and subsection (e), if (but for this paragraph) an individual may be claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

''(i) a parent of the individual, or

''(ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

''(B) MORE THAN 1 PARENT CLAIMING QUALIFYING CHILD.—If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

''(i) the parent with whom the child resided for the longest period of time during the taxable year, or

''(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

''(d) QUALIFYING RELATIVE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying relative' means, with respect to any taxpayer for any taxable year, an individual—

''(A) who bears a relationship to the taxpayer described in paragraph (2),

''(B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount (as defined in section 151(d)),

''(C) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins, and

''(D) who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

''(2) RELATIONSHIP.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

''(A) A child or a descendant of a child.

''(B) A brother, sister, stepbrother, or stepsister.

''(C) The father or mother, or an ancestor of either.

''(D) A stepfather or stepmother.

''(E) A son or daughter of a brother or sister of the taxpayer.

''(F) A brother or sister of the father or mother of the taxpayer.

''(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

''(H) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as such individual's principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

''(3) SPECIAL RULE RELATING TO MULTIPLE SUPPORT AGREEMENTS.—For purposes of paragraph (1)(C), over one-half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

''(A) no one person contributed over one-half of such support,

''(B) over one-half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over one-half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

''(C) the taxpayer contributed over 10 percent of such support, and

''(D) each person described in subparagraph (B) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

''(4) SPECIAL RULE RELATING TO INCOME OF HANDICAPPED DEPENDENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1)(B), the gross income of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

''(i) the availability of medical care at such workshop is the principal reason for the individual's presence there, and

''(ii) the income arises solely from activities at such workshop which are incident to such medical care.

''(B) SHELTERED WORKSHOP DEFINED.—For purposes of subparagraph (A), the term 'sheltered workshop' means a school—

''(i) which provides special instruction or training designed to alleviate the disability of the individual, and

''(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

''(5) SPECIAL SUPPORT TEST IN CASE OF STUDENTS.—For purposes of paragraph (1)(C), in the case of an individual who is—

''(A) a child of the taxpayer, and

''(B) a student,

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account in determining whether such individual received more than one-half of such individual's support from the taxpayer.

''(6) SPECIAL RULES FOR SUPPORT.—For purposes of this subsection—

''(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent,

''(B) amounts expended for the support of a child or children shall be treated as received from the noncustodial parent (as defined in subsection (e)(3)(B)) to the extent that such parent provided amounts for such support, and

''(C) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

''(e) SPECIAL RULE FOR DIVORCED PARENTS.—

''(1) IN GENERAL.—Notwithstanding subsection (c)(4) or (d)(1)(C), if—

''(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

''(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

''(ii) who are separated under a written separation agreement, or

''(iii) who live apart at all times during the last 6 months of the calendar year, and

''(B) such child is in the custody of 1 or both of the child's parents for more than ½ of the calendar year,

such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) are met.

''(2) REQUIREMENTS.—For purposes of paragraph (1), the requirements described in this paragraph are met if—

''(A) a decree of divorce or separate maintenance or written agreement between the parents applicable to the taxable year beginning in such calendar year provides that—

''(i) the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, or

''(ii) the custodial parent will sign a written declaration that such parent will not claim such child as a dependent for such taxable year, and

''(B) in the case of such an agreement executed before January 1, 1985, the noncustodial parent provides at least $600 for the support of such child during such calendar year.

''(3) CUSTODIAL PARENT AND NONCUSTODIAL PARENT.—For purposes of this subsection—

''(A) CUSTODIAL PARENT.—The term 'custodial parent' means the parent with whom a child shared the same principal place of abode for the greater portion of the calendar year.

''(B) NONCUSTODIAL PARENT.—The term 'noncustodial parent' means the parent who is not the custodial parent.

''(4) EXCEPTION FOR MULTIPLE-SUPPORT AGREEMENTS.—This subsection shall not apply in any case where over one-half of the support of the child is treated as having been received from a taxpayer under the provision of subsection (d)(3).

''(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

''(1) CHILD DEFINED.—

''(A) IN GENERAL.—The term 'child' means an individual who is—

''(i) a son, daughter, stepson, or stepdaughter of the taxpayer, or

''(ii) an eligible foster child of the taxpayer.

''(B) ADOPTED CHILD.—In determining whether any of the relationships specified in subparagraph (A)(i) or paragraph (4) exists, a legally adopted individual of the taxpayer, or an individual who is placed with the taxpayer by an authorized placement agency for adoption by the taxpayer, shall be treated as a child of such individual by blood.

''(C) ELIGIBLE FOSTER CHILD.—For purposes of subparagraph (A)(ii), the term 'eligible foster child' means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

''(2) STUDENT DEFINED.—The term 'student' means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

''(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

''(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

''(3) PLACE OF ABODE.—An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.

''(4) BROTHER AND SISTER.—The terms 'brother' and 'sister' include a brother or sister by the half blood.

''(5) TREATMENT OF MISSING CHILDREN.—

''(A) IN GENERAL.—Solely for the purposes referred to in subparagraph (B), a child of the taxpayer—

''(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

''(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping,

shall be treated as meeting the requirement of subsection (c)(1)(B) with respect to a taxpayer for all taxable years ending during the period that the individual is kidnapped.

''(B) PURPOSES.—Subparagraph (A) shall apply solely for purposes of determining—

''(i) the deduction under section 151(c),

''(ii) the credit under section 24 (relating to child tax credit),

''(iii) whether an individual is a surviving spouse or a head of a household (as such terms are defined in section 2), and

''(iv) the earned income credit under section 32.

''(C) COMPARABLE TREATMENT OF CERTAIN QUALIFYING RELATIVES.—For purposes of this section, a child of the taxpayer—

''(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

''(ii) who was (without regard to this paragraph) a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping,

shall be treated as a qualifying relative of the taxpayer for all taxable years ending during the period that the child is kidnapped.

''(D) TERMINATION OF TREATMENT.—Subparagraphs (A) and (C) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18).

''(6) CROSS REFERENCES.—

''For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(h)(2)(B), and 213(d)(5).''.

SEC. 3. MODIFICATIONS OF DEFINITION OF HEAD OF HOUSEHOLD.

(a) HEAD OF HOUSEHOLD.—Clause (i) of section 2(b)(1)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

''(i) a qualifying child of the individual (as defined in section 152(c), determined without regard to section 152(e)), but not if such child—

''(I) is married at the close of the taxpayer's taxable year, and

''(II) is not a dependent of such individual by reason of section 152(b)(2) or 152(b)3), or both, or''.

(b) CONFORMING AMENDMENTS.—

(1) Section 2(b)(2) of the Internal Revenue Code of 1986 is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(2) Clauses (i) and (ii) of section 2(b)(3)(B) of such Code are amended to read as follows:

''(i) subparagraph (H) of section 152(d)(2), or

''(ii) paragraph (3) of section 152(d).''.

SEC. 4. MODIFICATIONS OF DEPENDENT CARE CREDIT.

(a) IN GENERAL.—Section 21(a)(1) of the Internal Revenue Code of 1986 is amended by striking ''In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))'' and inserting ''In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual''.

(b) QUALIFYING INDIVIDUAL.—Paragraph (1) of section 21(b) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) QUALIFYING INDIVIDUAL.—The term 'qualifying individual' means—

''(A) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

''(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

''(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.''.

(c) CONFORMING AMENDMENT.—Paragraph (1) of section 21(e) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) PLACE OF ABODE.—An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.

SEC. 5. MODIFICATIONS OF CHILD TAX CREDIT.

(a) IN GENERAL.—Paragraph (1) of section 24(c) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) IN GENERAL.—The term 'qualifying child' means a qualifying child of the taxpayer (as defined in section 152(c)) who has not attained age 17.''.

(b) CONFORMING AMENDMENT.—Section 24(c)(2) of the Internal Revenue Code of 1986 is amended by striking ''the first sentence of section 152(b)(3)'' and inserting ''subparagraph (A) of section 152(b)(3)''.

SEC. 6. MODIFICATIONS OF EARNED INCOME CREDIT.

(a) QUALIFYING CHILD.—Paragraph (3) of section 32(c) of the Internal Revenue Code of 1986 is amended to read as follows:

''(3) QUALIFYING CHILD.—

''(A) IN GENERAL.—The term 'qualifying child' means a qualifying child of the taxpayer (as defined in section 152(c), determined without regard to paragraph (1)(D) thereof and section 152(e)).

''(B) MARRIED INDIVIDUAL.—The term 'qualifying child' shall not include an individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for section 152(e)).

''(C) PLACE OF ABODE.—For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States.

''(D) IDENTIFICATION REQUIREMENTS.—

''(i) IN GENERAL.—A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.

''(ii) OTHER METHODS.—The Secretary may prescribe other methods for providing the information described in clause (i).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 32(c)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (C), (D), (E), and (F), respectively.

(2) Section 32(c)(4) of such Code is amended by striking ''(3)(E)'' and inserting ''(3)(C)''.

(3) Section 32(m) of such Code is amended by striking ''subsections (c)(1)(F)'' and inserting ''subsections (c)(1)(E)''.

SEC. 7. MODIFICATIONS OF DEDUCTION FOR PERSONAL EXEMPTION FOR DEPENDENTS.

Subsection (c) of section 151 of the Internal Revenue Code of 1986 is amended to read as follows:

''(c) ADDITIONAL EXEMPTION FOR DEPENDENTS.—An exemption of the exemption amount for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year.''

SEC. 8. TECHNICAL AND CONFORMING AMENDMENTS.

(1) Section 21(e)(5) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''paragraph (2) or (4) of'' in subparagraph (A), and

(B) by striking ''within the meaning of section 152(e)(1)'' and inserting ''as defined in section 152(e)(3)(A)''.

(2) Section 21(e)(6)(B) of such Code is amended by striking ''section 151(c)(3)'' and inserting ''section 152(f)(1)''.

(3) Section 25B(c)(2)(B) of such Code is amended by striking ''151(c)(4)'' and inserting ''152(f)(2)''.

(4)(A) Subparagraphs (A) and (B) of section 51(i)(1) of such Code are each amended by striking ''paragraphs (1) through (8) of section 152(a)'' both places it appears and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(B) Section 51(i)(1)(C) of such Code is amended by striking ''152(a)(9)'' and inserting ''152(d)(2)(H)''.

(5) Section 72(t)(7)(A)(iii) of such Code is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(6) Section 129(c)(2) of such Code is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(7) The first sentence of section 132(h)(2)(B) of such Code is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(8) Section 153 of such Code is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(9) Section 170(g)(3) of such Code is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(10) The second sentence of section 213(d)(11) of such Code is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(11) Section 529(e)(2)(B) of such Code is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(12) Section 2032A(c)(7)(D) of such Code is amended by striking ''section 151(c)(4)'' and inserting ''section 152(f)(2)''.

(13) Section 7701(a)(17) of such Code is amended by striking ''152(b)(4), 682,'' and inserting ''682''.

(14) Section 7702B(f)(2)(C)(iii) of such Code is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(15) Section 7703(b)(1) of such Code is amended—

(A) by striking ''151(c)(3)'' and inserting ''152(f)(1)'', and

(B) by striking ''paragraph (2) or (4) of''.

SEC. 9. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after December 31, 2003.

By Mr. THOMAS (for himself and Mr. GREGG):

S. 756. A bill to amend the Internal Revenue Code of 1986 to modify the qualified small issue bond provisions; to the Committee on Finance.

Mr. THOMAS: Mr. President, I am pleased to rise to introduce legislation with my distinguished colleague from New Hampshire, Mr. Gregg. Specifically, the bill we offer today would amend the Internal Revenue Code of 1986 to modify the qualified small issue bond provisions. Current restrictions built into the law decades ago prevent small manufacturers from realizing the full financial benefit from these bonds.

The manufacturing sector is a key component of the U.S. economy. It was particularly hard-hit in the most recent recession and continues to struggle. More than two million high-wage, quality jobs have been lost. These losses occurred in both large and small manufacturing facilities. Reversing the decline is critical for our Nation's economic well-being.

This bill targets a problem faced by many small manufacturers: the lack of investment capital. These manufacturers need access to financial resources to build, to grow, to employ new workers and to survive. One of the lowest-cost capital investment options currently available is tax-exempt Industrial Development Bonds or IDBs. These bonds are issued by state governments throughout the country and provide an excellent financial resource for companies looking to build or expand their manufacturing facilities.

The maximum IDB available for qualified projects was set in 1978 at $10 million. The purchasing power of that amount has declined by more than fifty percent over time, severely reducing the effectiveness of this financial tool. In addition, the ten million dollar ceiling is subject to a dollar reduction for other funding used in the project. These limits create a significant and unnecessary barrier. To help small manufacturers and acknowledge the technological advances made in the past 25 years, it is time to change the law.

This bill makes the necessary changes to ensure that the law reflects economic realities. It increases the bond cap and capital expenditure amounts from ten to twenty million dollars. An inflation adjuster is added to avoid a similar reduction in purchasing power in the future. Finally, we would expand the definition of manufacturing facilities to capture new technologies, namely biotech and software production.

Many factors are responsible for the current decline in the manufacturing sector. Our bill will not solve all the problems, but it does break down the capital investment barrier facing many small manufacturers. These businesses, and the communities in which they are located, need our help. This proposal will go a long way in achieving that objective and I urge all my colleagues to become a cosponsor.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 756

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATIONS TO SMALL ISSUE BOND PROVISIONS.

(a) INCREASE IN AMOUNT OF QUALIFIED SMALL ISSUE BONDS PERMITTED FOR FACILITIES TO BE USED BY RELATED PRINCIPAL USERS.—

(1) IN GENERAL.—Clause (i) of section 144(a)(4)(A) (relating to $10,000,000 limit in certain cases) is amended by striking ''$10,000,000'' and inserting ''$20,000,000''.

(2) COST-OF-LIVING ADJUSTMENT.—Section 144(a)(4) is amended by adding at the end the following:

''(G) COST-OF-LIVING ADJUSTMENT.—In the case of a taxable year beginning in a calendar year after 2002, the $20,000,000 amount under subparagraph (A) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.''.

(3) CLERICAL AMENDMENT.—The heading of paragraph (4) of section 144(a) is amended by striking ''$10,000,000'' and inserting ''$20,000,000''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to—

(A) obligations issued after the date of the enactment of this Act, and

(B) capital expenditures made after such date with respect to obligations issued on or before such date.

(b) DEFINITION OF MANUFACTURING FACILITY.—

(1) IN GENERAL.—Section 144(a)(12)(C) (relating to definition of manufacturing facility) is amended to read as follows:

''(C) MANUFACTURING FACILITY.—For purposes of this paragraph, the term 'manufacturing facility' means any facility which is used in—

''(i) the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property),

''(ii) the manufacturing, development, or production of specifically developed software products or processes if—

''(I) it takes more than 6 months to develop or produce such products,

''(II) the development or production could not with due diligence be reasonably expected to occur in less than 6 months, and

''(III) the software product or process comprises programs, routines, and attendant documentation developed and maintained for use in computer and telecommunications technology, or

''(iii) the manufacturing, development, or production of specially developed biobased or bioenergy products or processes if—

''(I) it takes more than 6 months to develop or produce,

''(II) the development or production could not with due diligence be reasonably expected to occur in less than 6 months, and

''(III) the biobased or bioenergy product or process comprises products, processes, programs, routines, and attendant documentation developed and maintained for the utilization of biological materials in commercial or industrial products, for the utilization of renewable domestic agricultural or forestry materials in commercial or industrial products, or for the utilization of biomass materials.

''(D) RELATED FACILITIES.—For purposes of subparagraph (C), the term 'manufacturing facility' includes a facility which is directly and functionally related to a manufacturing facility (determined without regard to subparagraph (C)) if—

''(i) such facility, including an office facility and a research and development facility, is located on the same site as the manufacturing facility, and

''(ii) not more than 40 percent of the net proceeds of the issue are used to provide such facility,

but shall not include a facility used solely for research and development activities.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to obligations issued after the date of the enactment of this Act.

By Mr. LIEBERMAN (for himself, Ms. SNOWE, Mr. DODD, Mr. ALLEN, Mrs. CLINTON, Mr. HARKIN, and Mr. AKAKA):

S. 758. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for certain energy-efficient property; to the Committee on Finance.

(At the request of Mr. DODD, the following statement was ordered to be printed in the RECORD.)

● Mr. LIEBERMAN. Mr. President, I rise today to introduce a bill, with Senator OLYMPIA SNOWE, to encourage the use of fuel cells, a clean and cutting-edge energy technology. Specifically, the bill would give consumers a tax credit for purchasing residential and commercial fuel cell systems to power their electricity. The tax credit would apply to stationary and portable fuel cell systems, and would be applicable for 5 years.

First used for space missions in the 1960s, fuel cells use an electrochemical reaction to convert energy from hydrogen-rich fuel sources into electricity. Because no combustion is involved, fuel cells produce virtually no air pollution and significantly reduce carbon dioxide emissions. Fuel cell units in operation today are capable of running 24 hours a day, 7 days a week, with only routine maintenance. They are installed around the world in power plants, hospitals, schools, banks, military installations, and manufacturing facilities. Smaller units for homeowners and small businesses will enter the commercial market shortly.

Fuel cell technology offers a clean, secure, and dependable source of energy that should be part of our national energy strategy. With oil and gas prices now reaching record highs, fuel cells are one excellent answer to our heightened energy demand and dependence on foreign oil. This legislation will power fuel cell technology by speeding its market introduction and by increasing its uses in our everyday lives.

Mr. President, I ask that the bill be printed in the RECORD.●

S. 758

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREDIT FOR CERTAIN ENERGY-EFFICIENT PROPERTY.

(a) BUSINESS PROPERTY.—

(1) IN GENERAL.—Subparagraph (A) of section 48(a)(3) of the Internal Revenue Code of 1986 (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) energy-efficient building property,''.

(2) ENERGY-EFFICIENT BUILDING PROPERTY.—Subsection (a) of section 48 of such Code is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) ENERGY-EFFICIENT BUILDING PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'energy-efficient building property' means a fuel cell power plant that—

''(i) generates electricity using an electrochemical process,

''(ii) has an electricity-only generation efficiency greater than 30 percent, and

''(iii) generates at least 0.5 kilowatt of electricity using an electrochemical process.

''(B) LIMITATION.—In the case of energy-efficient building property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(i) 30 percent of the basis of such property, including expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property and for piping or wiring to interconnect such property, or

''(ii) $1,000 for each kilowatt of capacity of such property.

''(C) SPECIAL RULES.—For purposes of subparagraph (A)(ii)—

''(i) ELECTRICITY-ONLY GENERATION EFFICIENCY.—The electricity-only generation efficiency percentage of a fuel cell power plant is the fraction—

''(I) the numerator of which is the total useful electrical power produced by such plant at normal operating rates, and expected to be consumed in its normal application, and

''(II) the denominator of which is the lower heating value of the fuel source for such plant.

''(ii) DETERMINATIONS MADE ON BTU BASIS.—The electricity-only generation efficiency percentage shall be determined on a Btu basis.

''(D) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

''(E) TERMINATION.—Such term shall not include any property placed in service after December 31, 2008.''.

(3) LIMITATION.—Section 48(a)(2)(A) of such Code (relating to energy percentage) is amended to read as follows:

''(A) IN GENERAL.—The energy percentage is—

''(i) in the case of energy-efficient building property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''.

(4) CONFORMING AMENDMENTS.—

(A) Section 29(b)(3)(A)(i)(III) of such Code is amended by striking ''section 48(a)(4)(C)'' and inserting ''section 48(a)(5)(C)''.

(B) Section 48(a)(1) of such Code is amended by inserting ''except as provided in paragraph (4)(B),'' before ''the energy''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(b) NONBUSINESS PROPERTY.—

(1) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. NONBUSINESS ENERGY-EFFICIENT BUILDING PROPERTY.

''(a) CREDIT ALLOWED.—

''(1) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the nonbusiness energy-efficient building property expenditures which are paid or incurred during such year.

''(2) LIMITATION.—The credit allowed under paragraph (1) with respect to property placed in service by the taxpayer during the taxable year shall not exceed an amount equal to the lesser of—

''(A) 30 percent of the basis of such property, or

''(B) $1,000 for each kilowatt of capacity of such property.

''(b) NONBUSINESS ENERGY-EFFICIENT BUILDING PROPERTY EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'nonbusiness energy-efficient building property expenditures' means expenditures made by the taxpayer for nonbusiness energy-efficient building property installed on or in connection with a dwelling unit—

''(A) which is located in the United States, and

''(B) which is used by the taxpayer as a residence.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

''(2) NONBUSINESS ENERGY-EFFICIENT BUILDING PROPERTY.—The term 'nonbusiness energy-efficient building property' means energy-efficient building property (as defined in section 48(a)(4)) if—

''(A) the original use of such property commences with the taxpayer, and

''(B) such property meets the standards (if any) applicable to such property under section 48(a)(3).

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

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following shall apply:

''(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such

calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

''(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

''(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

''(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

''(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of nonbusiness energy-efficient building property expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(5)(C)).

''(d) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(e) TERMINATION.—This section shall not apply to any expenditure made after December 31, 2008.''.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 1016 of such Code is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting ''; and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 25C(d), in the case of amounts with respect to which a credit has been allowed under section 25C.''.

(B) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Nonbusiness energy-efficient building property.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to expenditures made after December 31, 2003.

Ms. SNOWE. Mr. President, I rise today with my colleague from Connecticut, Senator LIEBERMAN, to introduce a bill that will promote the expanded use of an environmentally sound and efficient energy technology—fuel cell power.

The United States has had a long, inseparable relationship with energy. The Americans of the 19th century would not have populated the West as they did without the railroad and its steam engines. New York's Pearl Street Station, designed by Thomas Edison in 1882, demonstrated the immense possibilities of large-scale electricity generation that would revolutionize our Nation and the world. And, of course, the 20th century is posted with landmark American innovations an inventions in oil use and production, nuclear power, and solar energy.

As we begin our journey into the 21st century, we must begin a new chapter for energy use through fuel cell power. Fuel cells are not a futuristic dream, as every manned U.S. space mission has relied upon fuel cells for electricity and drinking water. From a New York City police station to a postal facility in Alaska to hospitals, schools, banks, military installations and manufacturing facilities around the world, fuel cell units are efficiently generating dependable power 24 hours a day, 7 days a week for upwards of 2 years with only routine maintenance.

Fuel cell technology offers a clean, secure, efficient, and dependable source of energy that should be part of our national energy strategy. Not only do fuel cells deliver the high quality, reliable power that is considered an absolute necessity for many portions of our society, they reduce grid demand while improving grid flexibility. Fuel cells are an ideal energy source to address the Nation's pressing energy needs.

Using electro-chemical reaction to convert energy from hydrogen-rich fuel cell sources into electricity, fuel cells reduce the need for fossil fuel consumption. And, since no combustion is involved, fuel cells produce virtually no air pollution and significantly reduce carbon dioxide emissions, the major greenhouse gas thought to be responsible for climate change variability. In fact, a 200 kilowatt fuel power plant produces less than one ounce of pollutants for every 1,000 kilowatt hours of electricity it yields. In comparison, the average fossil fuel plans produces nearly 25 pounds of pollutants to generate the same 1,000 kilowatt hours of electricity. That is 400 times the amount of a fuel cell power plant.

The current problem is that it is difficult for the consumer to take advantage of fuel cells because, as with any new technology, the introductory price is high. To create the market incentives necessary to speed the commercialization of this technology, the Lieberman-Snow legislation provides a property owner a five year, $1,000 per kilowatt stationary fuel cell tax credit, including labor and installation costs, for business and non business power plants—stationary and portable—that have an electrical generation efficiency greater than 30 percent and generate at least 0.5 kilowatts of electricity using an electrochemical process. To put this electrical generation in perspective, a home uses approximately 1 to 2 kilowatts of power, on average.

By lowering the initial price for consumers, market introduction and production volume of fuel cells will be accelerated with the end result being a significant reduction in manufacturing costs. The decrease in price would enable even more consumers to use one of the cleanest, most reliable and most efficient means to generate electricity. This tailored fuel cell tax credit for a stationary and portable fuel cells is designed to benefit the widest range of potential fuel cell customers and manufacturers with a meaningful incentive for the purchase of fuel cells for residential and commercial use.

As summer approaches, power shortages and interruptions can be expected throughout the country. We must increase our investment and commitment to non-traditional energy sources such as fuel cells. This reliable, combustion-free power provided by fuel cells in a sensible alternative that is available today. I urge my colleagues to support us for a sensible fuel cell power tax credit.

By Mr. DURBIN (for himself, Mr. ALLARD, Mr. CONRAD, Mr. HARKIN, Mr. JOHNSON, Mr. LEAHY, Mr. DORGAN, and Mr. JEFFORDS):

S. 759. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for individuals and businesses for the installation of certain wind energy property; to the Committee on Finance.

Mr. DURBIN. Mr. President, I rise today to introduce the Residential, Farm, Ranch and Small Business Energy Systems Act of 2003, also known as the Small Wind Energy Systems Act. I am honored to be joined by Senators ALLARD, CONRAD, HARKIN, JOHNSON, LEAHY and DORGAN in introducing this legislation.

In order to foster a forward-looking energy policy, the United States needs to broaden its energy portfolio beyond fossil fuels, which are a finite energy source. Any serious attempt to create a

national energy policy must include innovative proposals for exploring and developing the use of alternative and renewable energy sources. The legislation I am introducing today would help spur the production of electricity from a limitless source—wind.

This bill, similar to legislation I introduced last year, offers a tax credit to help defray the cost of installing a small wind energy system to generate electricity for individual homes, farms, ranches and businesses. The credit can be applied only to systems up to 75 kW, and is equal to 30 percent of the cost of installation, up to $1,000 per kilowatt. I am offering this legislation in the hope that this tax credit will help make it economical for people to invest in small wind systems, thereby reducing pressures on the national power grid and increasing America's energy independence one family and business at a time.

Small wind systems are the most cost-competitive home-sized renewable energy technology, but the high upfront cost has been a barrier. A typical small, rural wind system rated at 10 kW costs $30,000–$35,000 to install. A 30 percent business investment credit would make wind energy more viable for rural America. In addition, farmers and ranchers can utilize a small wind energy system while simultaneously continuing to use their land for crop growing or grazing. Facilitating the production of renewable energy on land that is already being worked for other purposes would be a boon to our economy, environment, and national security. Finally, the tax credit would help us promote a healthier environment. A typical small system can offset seven tons of carbon dioxide per year; carbon dioxide is the most significant contributor to climate change.

I am pleased to see that others in the Senate are working to promote renewable energy. In the context of our deliberations on energy policy, I hope to work with Senators GRASSLEY and BAUCUS, and others, in order to build on these efforts. In particular, I hope we can expand the residential credit provided for wind energy systems in the Energy Tax Incentives Act of 2003, S. 597, so that the cap is raised to $1,000 per kilowatt. In addition, I hope to add wind to the business investment credit section of the tax code. Although there is currently in law a business investment credit for solar and geothermal power, there is currently no Federal program to support small wind systems being installed by farmers and ranchers. The Energy Tax Incentives Act of 2003 would add fuel cells to this section of the code. I hope I can work with my colleagues to also add wind to this section, because we need to encourage investments in this source of energy.

Last year, a portion of this legislation was included in the Senate energy bill by unanimous consent. I hope to build on this success this year, by securing passage of the full measure.

For the good of our rural economy, homeowners and business owners, the environment and energy security, I encourage my colleagues to support this legislation. I ask unanimous consent that the legislation be printed in the RECORD.

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

S. 759

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Residential, Farm, Ranch, and Small Business Wind Energy Systems Act of 2003'' or the ''Small Wind Energy Systems Act of 2003''.

SEC. 2. CREDIT FOR RESIDENTIAL WIND ENERGY PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. RESIDENTIAL SMALL WIND ENERGY SYSTEMS.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the qualified wind energy property expenditures made by the taxpayer during such year.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed $1,000 for each kilowatt of capacity.

''(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless such property meets appropriate fire and electric code requirements.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.—For purposes of this section—

''(1) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE DEFINED.—

''(A) IN GENERAL.—The term 'qualified wind energy property expenditure' means an expenditure for qualified wind energy property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer, including all necessary installation fees and charges.

''(B) QUALIFIED WIND ENERGY PROPERTY.—The term 'qualified wind energy property' means a qualifying wind turbine—

''(i) the original use of which commences with the taxpayer, and

''(ii) which carries at least a 5-year limited warranty covering defects in design, material, or workmanship, and, for any qualifying wind turbine that is not installed by the taxpayer, at least a 5-year limited warranty covering defects in installation.

''(C) QUALIFYING WIND TURBINE.—The term 'qualifying wind turbine' means a wind turbine of 75 kilowatts of rated capacity or less which at the time of manufacture and not more than one year from the date of purchase meets the latest performance rating standards published by the American Wind Energy Association or the International Electrotechnical Commission and which is used to generate electricity.

''(2) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of qualified wind energy property and for piping or wiring to interconnect such property to the dwelling unit or to the local energy grid shall be taken into account for purposes of this section.

''(3) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of storage shall not be taken into account for purposes of this section.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following shall apply:

''(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of a qualified wind energy property is for nonbusiness purposes and for generation of energy to be sold to others, only that portion of the expenditures for such property which is properly allocable to use for nonbusiness purposes and for generation of energy to be sold to others shall be taken into account.

''(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to any qualified wind energy property shall be treated as made when the original installation of such property is completed and the property has begun to be used to generate energy.

''(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original

use of the constructed or reconstructed structure by the taxpayer begins.

''(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

''(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken in to account expenditures which are made from subsidized energy financing (as defined in section 48(a)(5)(C)).

''(f) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any qualified wind energy property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(g) TERMINATION.—This section shall not apply to property installed in taxable years beginning after December 31, 2008.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25C(b) of the Internal Revenue Code of 1986, as added by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(c) of such Code, as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B) of such Code is amended by inserting ''and section 25C'' after ''this section''.

(C) Section 24(b)(3)(B) of such Code is amended by striking ''23 and 25B'' and inserting ''23, 25B, and 25C''.

(D) Section 25(e)(1)(C) of such Code is amended by inserting ''25C,'' after ''25B,''.

(E) Section 25B(g)(2) of such Code is amended by striking ''section 23'' and inserting ''sections 23 and 25C''.

(F) Section 26(a)(1) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(G) Section 904(h) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(H) Section 1400C(d) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c) of the Internal Revenue Code of 1986, as in effect for taxable years beginning before January 1, 2004, is amended by striking ''section 1400C'' and inserting ''sections 25C and 1400C''.

(2) Section 25(e)(1)(C) of such Code, as in effect for taxable years beginning before January 1, 2004, is amended by inserting '', 25C,'' after ''sections 23''.

(3) Subsection (a) of section 1016 of such Code is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C.''.

(4) Section 1400C(d) of such Code, as in effect for taxable years beginning before January 1, 2004, is amended by inserting ''and section 25C'' after ''this section''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Residential wind energy property.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to expenditures after December 31, 2002, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

SEC. 3. CREDIT FOR BUSINESS INSTALLATION OF SMALL WIND ENERGY PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3) of the Internal Revenue Code of 1986 (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) qualified wind energy property installed before January 1, 2009,''.

(b) QUALIFIED WIND ENERGY PROPERTY.—Subsection (a) of section 48 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) QUALIFIED WIND ENERGY PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified wind energy property' means a qualifying wind turbine—

''(i) installed on or in connection with a farm (as defined in section 6420(c)), a ranch, or an establishment of an eligible small business (as defined in section 44(b)) which is located in the United States and which is owned and used by the taxpayer,

''(ii) the original use of which commences with the taxpayer, and

''(iii) which carries at least a 5-year limited warranty covering defects in design, material, or workmanship, and, for any qualifying wind turbine that is not installed by the taxpayer, at least a 5-year limited warranty covering defects in installation.

''(B) LIMITATION.—In the case of any qualified wind energy property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(i) 30 percent of the basis of such property, including all necessary installation fees and charges, or

''(ii) $1,000 for each kilowatt of capacity of such property.

''(C) QUALIFYING WIND TURBINE.—For purposes of this paragraph the term 'qualifying wind turbine' means a wind turbine of 75 kilowatts of rated capacity or less which at the time of manufacture and not more than one year from the date of purchase meets the latest performance rating standards published by the American Wind Energy Association or the International Electrotechnical Commission and which is used to generate electricity.

''(D) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for any qualified wind energy property unless such property meets appropriate fire and electric code requirements.''.

(c) LIMITATION.—Section 48(a)(2)(A) of the Internal Revenue Code of 1986 (relating to energy percentage) is amended to read as follows:

''(A) IN GENERAL.—The energy percentage is—

''(i) in the case of qualified wind energy property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''.

(d) CONFORMING AMENDMENT.—Section 29(b)(3)(A)(i)(III) of the Internal Revenue Code of 1986 is amended by striking ''section 48(a)(4)(C)'' and inserting ''section 48(a)(5)(C)''.

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DEWINE, Mr. DURBIN, Mr. GREGG, Mr. BINGAMAN, Mr. FEINGOLD, Ms. SNOWE, Mr. ROCKFELLER, Mr. SANTORUM, and Mr. LEAHY):

S. 780. A bill to implement effective measures to stop trade in conflict diamonds, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I rise today to introduce the Clean Diamond Trade Act. Technically, this act will implement a certification process for imports of rough diamonds. But, as many of you know, this bill goes far beyond technicalities. This bill will help put an end to trade in conflict diamonds. As many of you know, conflict diamonds are diamonds mined and used by rebel movements in many African nations as a source of revenue to fuel armed conflict and the activities of rebel movements aimed at undermining or overthrowing legitimate governments in African countries. Millions of people have been driven from their homes by wars that have been fought for control of these diamonds. Families and entire countries have been torn apart.

That is why it is vitally important that we pass this legislation. Passage of this legislation would be a true bipartisan success and a significant step forward in stopping trade in conflict diamonds. And I would like to thank my colleagues for helping to develop the compromise legislation in this Act. I would especially like to recognize the hard work of Senators GREGG, DEWINE, DURBIN, BINGAMAN, and FEINGOLD, whose devotion and dedication to stopping trade in conflict diamonds is unsurpassed.

Prior attempts to move similar bills have stalled in both the House and the Senate. As Chairman of the Finance Committee, I took great care to try and achieve the right balance so that we might implement a certification process that meets our international responsibilities, that can pass the House and the Senate, and most importantly, that works.

The Clean Diamond Trade Act will implement the Kimberley Process Certification Scheme. This is an international agreement establishing minimal acceptable international standards

for national certification schemes relating to cross-border trade in rough diamonds. It represents over two years of negotiations among more than 50 countries, human rights advocacy groups, the diamond industry and non-government organizations.

The next plenary session of the Kimberley Process is scheduled to convene in Johannesburg, South Africa, from April 28 to the 30, 2003. The U.S. played a leadership role in crafting the Kimberley Process Certification Scheme, and it is critical that we implement the certification process before April 28 if we are to retain this leadership. We also need to do this to ensure that the flow of legitimate diamonds into and out of the United States will continue without interruption. Most important, we need to do everything we can to stop trade in conflict diamonds as soon as possible.

Mr. President, we plan to mark-up this legislation in the Finance Committee tomorrow morning. I am confident the bill will receive strong bipartisan support in committee and am hopeful we can pass this bill by unanimous consent in the full Senate before we adjourn for the April recess. The people and countries in Africa affected by the damage of conflict diamonds deserve our support. Passing this bill is the right thing to do.

Mr. DEWINE. Today, Mr. President, violent conflicts and other global threats and humanitarian concerns extend across many parts of our world. We are at war with Iraq. North Korea possesses nuclear weapons. HIV/AIDS is pandemic. And, terrorism threatens our daily lives.

Our world is, indeed, a very dangerous and unstable place. We know this. And, while we are well aware of the many global ''hotspots''—the conflicts and the violence and the human suffering—there are parts of the world, which I believe, we have neglected. There are parts of the world, where human tragedy is the order of the day—where children are killed, where women are raped and beaten, and where people are routinely tortured—their bodies maimed and mutilated.

One area of the world where such atrocities are occurring on a daily basis is in Sierra Leone, Africa. For at least a decade, Sierra Leone, one of the world's poorest nations, has been embroiled in civil war. Rebel groups—most notably, the Revolutionary United Front (RUF)—have been fighting for years to overthrow the recognized government. In the process, violence has erupted as the rebels have fought to seize control of the country's profitable diamond fields, which in turn, helps finance their terrorist regime.

Once in control of a diamond field, the rebels confiscate the diamonds and then launder them onto the legitimate market through other nearby nations, like Liberia. Known as ''conflict'' or ''blood'' diamonds, these gems are a very lucrative business for the rebel groups. In fact, over the past decade, the rebels have smuggled out of Africa approximately $10 billion dollars in these diamonds.

It is nearly impossible to distinguish the illegally gathered diamonds from legitimate or ''clean'' stones. And so, regrettably and unwittingly, the United States—as the world's biggest buyer of diamonds—has contributed to the violence. Our nation accounted for more than half of the $57.5 billion in global retail diamond trade last year, and some estimates suggest that illegal diamonds from Africa account for as much as 15 percent of the overall diamond trade.

Since the start of the rebel's quest for control of Sierra Leone's diamond supply, half of the nation's population of 4.5 million have left their homes, and at least a half-million have left the country. But, it is the children of Sierra Leone who are bearing the biggest brunt of the rebel insurgency. For over eight years, the RUF has conscripted children—children often as young as 7 or 8 years old—to be soldiers in their make-shift army. They have ripped at least 12,000 children from their families.

As a result of deliberate and systematic brutalization, child soldiers have become some of the most vicious—and effective—fighters within the rebel factions. The rebel army—child-soldiers included—has terrorized Sierra Leone's population, killing, abducting, raping, and hacking off the limbs of victims with their machetes. This chopping off of limbs is the RUF's trademark strategy. In Freetown, the surgeons are frantic. Scores of men, women, and children—their hands partly chopped off—have flooded the main hospital. Amputating as quickly as they can, doctors toss severed hands into a communal bucket.

The RUF frequently and forcibly injects the children with cocaine in preparation for battle. In many cases, the rebels force the child-soldiers at gunpoint to kill their own family members or neighbors and friends. Not only are these children traumatized by what they are forced to do, they also are afraid to be reunited with their families because of the possibility of retribution.

Mr. President, I cannot understate nor can I fully describe the horrific abuses these children are suffering. The most vivid accounts come from the child-soldiers themselves. I'd like to read a few of their stories, taken from Amnesty International's 1998 report, ''Sierra Leone—A Year of Atrocities against Civilians.'' According to one child's recollection:

> Civilians were rounded up, in groups or in lines, and then taken individually to a pounding block in the village where their hands, arms, or legs were cut with a machete. In some villages, after the civilians were rounded up, they were stripped naked. Men were then ordered to rape members of their own family. If they refused, their arms were cut off and the women were raped by rebel forces, often in front of their husbands . . . victims of these atrocities also reported women and children being rounded up and locked into houses which were then set [on fire].

A young man from Lunsar, describing a rebel attack, said this:

> Ten people were captured by the rebels and they asked us to form a [line]. My brother was removed from the [line], and they killed him with a rifle, and they cut his head with a knife. After this, they killed his pregnant wife. There was an argument among the rebels about the sex of the baby she was carrying, so they decided to open her stomach to see the baby.

According to Komba, a teenager:

> My legs were cut with blades and cocaine was rubbed in the wounds. Afterwards, I felt like a big person. I saw the other people like chickens and rats. I wanted to kill them.

Rape, sexual slavery and other forms of sexual abuse of girls and women have been systematic, organized, and widespread. Many of those abducted have been forced to become the ''wives'' of combatants.

According to Isatu, an abducted teenage girl:

> I did not want to go; I was forced to go. They killed a lot of women who refused to go with them.

She was forced to become the sexual partner of the combatant who captured her and is now the mother of their three-month-old baby:

> When they capture young girls, you belong to the soldier who captured you. I was 'married' to him.

We are losing these children—an entire generation of children. If the situation does not improve, these kids have no future. But, as long as the rebel's diamond trade remains unchallenged, nothing will change.

That is why I have been working with Senators DURBIN, FEINGOLD, and GREGG for over two years to pass legislation that would help stem this illegal trade in conflict diamonds. Together, we have worked extensively with our House colleagues, including my good friend and former colleague from Ohio, Tony Hall, and FRANK WOLF from Virginia, to develop much needed legislation to help remove the rebel's market incentive.

And, while we have not yet been successful in getting this legislation signed into law, I credit my colleagues' continued commitment to this often forgotten issue. I know our countless congressional hearings, meetings, letters and legislative initiatives have encouraged the Administration and the international community to keep this issue alive. We have kept the pressure on, and we are beginning to see some positive results.

Mr. President, just this past January 1st, an international agreement called the Kimberley Process Certification Scheme was launched. Specifically, this is a voluntary, international diamond certification system among over 50 participant countries, including all of the major diamond producing and trading countries. This is a positive step in the right direction, and I commend the tireless work of human rights

advocates and the diamond industry for making this certification system a reality.

Because of their success, Mr. President, today we are faced with the urgent need of providing legislative measures to enable effective U.S. implementation of the certification scheme. We need to provide the Administration with the authorization necessary to ensure U.S. compliance with this global, regulatory framework. That is why I am here today to introduce legislation that commits the United States to mandatory implementation of the Kimberley Process Certification Scheme.

I join my distinguished colleagues, Senators GRASSLEY, DURBIN, FEINGOLD, BINGAMAN, TALENT, and SNOWE, to introduce the ''Clean Diamond Trade Act.'' This legislation is very similar to a measure introduced in the House last week, H.R. 1415. Our bill is very simple. The whole idea behind it is to commit the United States to a system of controls on the export and import of diamonds, so that buyers can be certain that their purchases are not fueling the rebel campaign.

Specifically, our legislation would prohibit the import of any rough diamond that has not been controlled through the Kimberley Process Certification Scheme. Put simply, this means that every diamond brought into the United States would require a certificate of origin and authenticity, indicating that a rebel or terrorist group has not laundered it onto the legitimate market.

Additionally, the bill calls on the President to report annually to Congress on the control system's effectiveness and also requires the General Accounting Office to report on the law's effectiveness within two years of enactment.

Finally, Mr. President, our bill emphasizes that the Kimberley Process Certification Scheme is an ongoing process and that our government should continue to work with the international community to strengthen the effectiveness of this global regulatory framework. As the world's biggest diamond customer—purchasing well over half of the world's diamonds—our nation has a moral responsibility to show continued leadership on this issue.

Quite candidly, there are a lot of things in this world—a lot of terrible, tragic things—that we don't have the power to change or to fix. But today, we can change something. We can make a difference. We have the power to help put an end to the indescribable suffering and violence caused by diamond-related conflicts. We have that power, and we must use it. And so, I urge my colleagues to join me in support of this much-needed legislation.

We have an obligation—a moral responsibility—to help stop the violence, the brutality, the needless killing and maiming. No other child should kill or be killed in diamond-related conflicts. I believe that it is absolutely imperative that we pass the bill we have introduced quickly and help end these atrocities once and for all.

It is the humane thing to do. It is the right thing to do. It is the only thing to do.

I thank the Chair and yield the Floor.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 102—RECOGNIZING THE 40TH ANNIVERSARY OF THE SINKING OF THE USS THRESHER (SSN 593)

Mr. SUNUNU (for himself, Mr. GREGG, Ms. SNOWE, and Ms. COLLINS) submitted the following resolution; which was considered and agreed to:

S. RES. 102

Whereas the USS Thresher was first launched at Portsmouth Naval Shipyard on July 9, 1960;

Whereas the USS Thresher departed Portsmouth Naval Shipyard for her final voyage on April 9, 1963, with a crew of 16 officers, 96 sailors, and 17 civilians;

Whereas the mix of that crew reflects the unity of the naval submarine service, military and civilian, in the protection of the Nation;

Whereas at approximately 7:47 a.m. on April 10, 1963, while in communication with the surface ship USS Skylark, and approximately 300 miles off the coast of New England, the USS Thresher began her final descent;

Whereas the USS Thresher was declared lost with all hands on April 10, 1963;

Whereas from the loss of the USS Thresher, there arose the SUBSAFE program, which has kept United States' submariners safe at sea ever since as the strongest, safest submarine force in history;

Whereas from the loss of the USS Thresher, there arose in our Nation's universities the ocean engineering curricula that enables the United States' preeminence in submarine warfare; and

Whereas the crew of the USS Thresher demonstrated the ''last full measure of devotion'' in service to this Nation, and this devotion characterizes the sacrifices of all submariners, past and present: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the 40th Anniversary of the sinking of the USS Thresher;

(2) remembers with profound sorrow the loss of the USS Thresher and her gallant crew of sailors and civilians on April 10, 1963; and

(3) expresses its deepest gratitude to all submariners on ''eternal patrol'', who are forever bound together by their dedicated and honorable service to the United States of America.

SEC. 2. TRANSMISSION OF RESOLUTION.

The Secretary of the Senate shall transmit a copy of this resolution to the Chief of Naval Operations and to the Commanding Officer of the Portsmouth Naval Shipyard to be accepted on behalf of the families and shipmates of the crew of the USS Thresher.

AMENDMENTS SUBMITTED & PROPOSED

SA 434. Mr. MCCAIN (for himself, Mr. ALLEN, Mr. GRAHAM, of South Carolina, Mr. CHAMBLISS, Mr. CRAIG, and Mr. MILLER) proposed an amendment to the bill S. 718, to provide a monthly allotment of free telephone calling time to members of the United States armed forces stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan.

TEXT OF AMENDMENTS

SA 434. Mr. MCCAIN (for himself, Mr. ALLEN, Mr. GRAHAM of South Carolina, Mr. CHAMBLISS, Mr. CRAIG, and Mr. MILLER) proposed an amendment to the bill S. 718, to provide a monthly allotment of free telephone calling time to members of the United States armed forces stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Troops Phone Home Free Act of 2003''.

SEC. 2. PURPOSE.

It is the purpose of this Act to support the morale of the brave men and women of the United States armed services stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan (as determined by the Secretary of Defense) by giving them the ability to place calls to their loved ones without expense to them.

SEC. 3. FINDINGS.

The Congress finds the following:

(1) The armed forces of the United States are the finest in the world.

(2) The members of the armed services are bravely placing their lives in danger to protect the security of the people of the United States and to advance the cause of freedom in Iraq.

(3) Their families and loved ones are making sacrifices at home in support of the members of the armed services abroad.

(4) Telephone contact with family and friends provides significant emotional and psychological support to them and helps to sustain and improve morale.

SEC. 4. DEPARTMENT OF DEFENSE TELECOMMUNICATIONS BENEFIT.

(a) IN GENERAL.—As soon as possible after the date of enactment of this Act, the Secretary of Defense shall provide, wherever practicable, prepaid phone cards, or an equivalent telecommunications benefit which includes access to telephone service, to members of the armed forces stationed outside the United States who are directly supporting military operations in Iraq or Afghanistan (as determined by the Secretary) to enable them to make telephone calls to family and friends in the United States without cost to the member.

(b) MONTHLY AMOUNT.—The value of the benefit provided by subsection (a) shall not exceed $40 per month per person.

(c) END OF PROGRAM.—The program established by subsection (a) shall terminate on the date that is 60 days after the date on which the Secretary determines that Operation Iraqi Freedom has ended.

(d) FUNDING.—

(1) USE OF EXISTING RESOURCES.—In carrying out this section, the Secretary shall maximize the use of existing Department of Defense telecommunications programs and capabilities, private support organizations, private entities offering free or reduced-cost services, and programs to enhance morale and welfare.

(2) USE OF APPROPRIATED FUNDS.—In addition to resources described in paragraph (1)

and notwithstanding any limitation on the expenditure or obligation of appropriated amounts, the Secretary may use available funds appropriated to or for the use of the Department of Defense that are not otherwise obligated or expended to carry out this section.

SEC. 5. DEPLOYMENT OF ADDITIONAL TELEPHONE EQUIPMENT.

The Secretary of Defense shall work with telecommunications providers to facilitate the deployment of additional telephones for use in calling the United States under this Act as quickly as practicable, consistent with the availability of resources. Consistent with the timely provision of telecommunications benefits under this Act, the Secretary should carry out this section and section 4 in a manner that allows for competition in the provision of such benefits.

SEC. 6. NO COMPROMISE OF MILITARY MISSION.

The Secretary of Defense shall not take any action under this Act that would compromise the military objectives or mission of the Department of Defense.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, April 2, 2003, at 10 a.m. in Room 485 of the Hart Senate Office Building to conduct a hearing on S. 556, a bill to Reauthorize the Indian Health Care Improvement Act.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, April 9, 2003, at 10 a.m. in Room 485 of the Hart Senate Office Building to conduct a hearing on S. 285, to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, and for other purposes; S. 558, a bill to Elevate the Director of the Indian Health Service to be Assistant Secretary for Indian Health, and for other purposes; and S. 555, to establish the Native American Health and Wellness Foundation, and for other purposes.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Tuesday, April 1 at 9:30 a.m. to conduct a hearing to consider the nominations of: Ricky Dale James to be a Member of the Mississippi River Commission; Rear Admiral Nicholas A. Prahl, NOAA, to be a Member of the Mississippi River Commission; and from Richard W. Moore, nominated to be Inspector General of the Tennessee Valley Authority; and other pending nominations.

The meeting will be held in SD 406.

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

COMMITTEE ON FINANCE

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, April 1, 2003, at 10 a.m., to hear testimony on Taxpayer Alert: Choosing a Paid Preparer and the Pitfalls of Charitable Car Donations.

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

COMMITTEE ON FINANCE

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, April 1, 2003, at 12 p.m., to hear testimony on the Nominations of Mark Van Dyke Holmes, to be Judge of the United States Tax Court; Diane L. Kroupa, to be Judge of the United States Tax Court; Robert Allen Wherry, Jr., to be Judge of the United States Tax Court; and Harry A. Haines to be Judge of the U.S. Tax Court.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, April 1, 2003, at 9:30 a.m., to hold a hearing on NATO.

Witnesses

Panel 1: ''A View From Brussels.'' The Honorable Nicholas R. Burns, U.S. Permanent Representative to North Atlantic Treaty Organization, Brussels, Belgium.

9:45: Business Meeting to ratify the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.

Panel 2: ''New Members & A Changing Alliance.'' Dr. Ronald D. Asmus, Senior Transatlantic Fellow, German Marshall Fund, Washington, DC;

Mr. Bruce Jackson, President, Project on Transitional Democracies, Washington, DC.

Full committee open: Senator LUGAR will preside, March 31, 2003.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, April 1, 2003, at 9:45 a.m., to hold a business meeting to ratify the ''Joint Convention on the Safety of Spent Fuel Management'' and on the ''Safety of Radioactive Waste Management,'' T. Doc. 106–48.

The Committee will consider and vote on the following agenda item:

Treaty: Joint Convention on the Safety of Spent Fuel Management, and on the Safety of Radioactive Waste Management, T. Doc. 106–48.

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

COMMITTEE ON THE JUDICIARY

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a judicial nominations hearing on Tuesday, April 1, 2003, at 10 a.m., in the Dirksen Senate Office Building Room 226.

Panel I: The Honorable Bob Graham;

The Honorable Bill Nelson;

The Honorable Mary Landrieu;

The Honorable Bill Frist.

Panel II: Carolyn B. Kuhl, to be U.S. Circuit Judge for the Ninth Circuit.

Panel III: Cecilia M. Altonaga, to be U.S. District Judge for the Southern District of Florida;

Patricia Head Minaldi, to be U.S. District Judge for the Western District of Louisiana.

The PRESIDING OFFICER. Without objection it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. CRAIG. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, April 1, 2003 at 2:30 p.m. to hold a hearing on Intelligence Matters.

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

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. CRAIG. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management Support of the Armed Services Committee be authorized to meet during the session of the Senate on Tuesday, April 1, 2003, at 9:00 a.m., in open session to continue to receive testimony on the impacts of environmental laws on readiness and the related administration legislative proposal in review of the defense authorization request for fiscal year 2004.

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

SUBCOMMITTEE ON SEAPOWER

Mr. CRAIG. Mr. President, I ask unanimous consent that the Subcommittee on Seapower of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, April 1, 2003, at 2:30 p.m., in open session to receive testimony on Navy and Marine Corps development priorities, procurement priorities, and Navy shipbuilding programs, in review of the defense authorization request for fiscal year 2004 and the future years defense program.

Witnesses

Panel I: Admiral Vernon E. Clark, USN, Chief of Naval Operations; General Michael W. Hagee, USMC, Commandant of the Marine Corps.

Panel II: The Honorable John J. Young, Jr., Assistant Secretary of the Navy for Research, Development, and Acquisition; Vice Admiral Michael G.

Mullen, USN, Deputy Chief of Naval Operations for Resources, Requirements, and Assessments.

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

PRIVILEGE OF THE FLOOR

Mr. ALLARD. Mr. President, I ask unanimous consent to allow my judicial nomination staffer, Cory Gardner, to be allowed to sit next to me on the floor along with a member of Senator HATCH's Judiciary staff, Ryan Higginboth.

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

THE CALENDAR

Mr. TALENT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the following calendar items en bloc: Calendar No. 54 and Calendar No. 55.

The PRESIDING OFFICER. The clerk will report the bills by title.

The legislative clerk read as follows:

A bill (S. 711) to amend title 37, United States Code, to alleviate delay in the payment of the Selected Reserve reenlistment bonus to members of Selected Reserve who are mobilized.

A bill (S. 712) to amend title 10, United States Code, to provide Survivor Benefit Plan annuities for surviving spouses of Reserves not eligible for retirement who die from a cause incurred or aggravated while on inactive-duty training.

There being no objection, the Senate proceeded to consider the bills.

Mr. MCCAIN. Mr. President, I rise to talk about two bills—S. 711 and S. 712. I am honored to cosponsor these bills with Senators LINDSEY GRAHAM, CHAMBLISS, and ALLEN. There may be others that also wish to cosponsor these bills to support our service men and women.

S. 711 simply authorizes a Selective Re-enlistment Bonus, SRB, for National Guard and Reserve service members who would be eligible for SRB if they were in a nonmobilized or drilling status. However, when they are mobilized under a Presidential select Reserve callup and they re-enlist during that period, National guardsmen and reservists are prohibited from receiving SRB payments until after they get off active duty or mobilization status sometimes 1 to 2 years later.

S. 712 authorizes Survivor Benefit Plan, SBP, benefits to survivors of National Guard and Reserve service members who die while performing inactive duty training or weekend drills.

This legislation provides equity with active duty service members and is consistent with Defense Department regulations when National guardsmen and reservists are mobilized under a Presidential select Reserve callup.

However, since January there have been 13 Reserve Component deaths during weekend military training while their units were preparing for Operations Enduring Freedom and Iraqi Freedom where families of National guardsmen and reservists did not receive the survivor benefit payments.

Furthermore, this legislation would cover those Reserve Component personnel who were serving in a drill status in the Pentagon during the attacks on the United States on 9/11.

This bill has the support of the Military Coalition, a consortium of nationally prominent uniformed services and veterans organizations representing more than 5.5 million members, the National Guard, and the Senate Armed Services Committee.

The roles and missions of the Reserve components has changed over the past several years, as the active duty force has evolved from the downsizing of our military forces during the last decade. I suspect that more changes will come as our national military strategy continues to evolve.

Instead, we have a military force that continues to rely more on the Reserve Components—men and women in the National Guard and Reserves—to go to war and to perform other critical military tasks abroad and at home. Many combat, combat support and other support missions are being carried on the backs of our active and Reserve Component forces—soldiers, sailors, airmen and marines.

For example, in March 2001, the Army National Guard 29th Infantry Division took command of the American peacekeeping mission in Bosnia. The significance of this deployment was enormous, considering that more than 75 percent of the 4,000 U.S. Army soldiers on the ground were Army Reserve and Guard soldiers from 17 states—not just headquarters' staff, but operational units as well.

More recently, in October 2002, Fighter/Attack Squadron 201's commanding officer received the call to mobilize that many Reserve Component commanding officers have recently received. With few exceptions over 100 Navy reservists mobilized with their 12 F/A–18 Hornet A-plus jets, and began work-ups with Carrier Air Wing 8 in Nevada and full day and night carrier qualifications at sea. The impact of this accomplishment cannot be overstated. It was the first time since the Korean War that an entire Naval Air Reserve Squadron has deployed aboard an aircraft carrier, and this time VFA–201's base was not Fort Worth, Texas but the flight deck of the USS Theodore Roosevelt, CVN–71.

The reports from the field are outstanding. VFA–201, like hundreds of other aviators during the first night of ''shock and awe,'' flew their Hornets downtown to Baghdad. The pilots and their maintenance crews hailed from Texas, Arizona, California, New Mexico, Georgia, Florida, Nevada, Utah and Colorado. They are citizen soldiers. Thirteen of eighteen VFA–201 pilots are airline pilots who took a temporary leave of absence from their airline jobs.

They were similar to active duty sailors, yet they were different. Because they were reservists, every aviator has cruise experience, over 1,000 flight hours, and many have over 1,000 or 2,000 hours in the F/A–18. VFA–201's squadron aviators provided leadership to the air wing in strike planning, flight execution and carrier operations. Their day and night time boarding rates and landing grades have exceeded all other Carrier Air Wing 8's squadrons.

While these are only two of the deployments that have taken place in recent years, they highlight the ever-increasing role of reservists in defending America's security interests around the world, and mark a radical departure from the past.

The figures are quite staggering when considered in total.

Today, nearly 60,000 reservists and National Guardsmen, including volunteers, are deployed under three Presidential callup orders for Bosnia, Kosovo, and Southwest Asia. For Operations Noble Eagle, Enduring Freedom and Iraqi Freedom over 275,000 men and women from the National Guard and the Reserves have been mobilized.

During each of the past 5 years, Reserve and National Guard service members have performed between 12 and 13.5 million duty days in support of the active force. These numbers are a direct contrast to 1990, when 1 million duty days were performed at a time when there were 25 percent more reservists.

Reservists also currently make up more than half of the airlift crews and 85 percent of the sealift personnel that are needed to move troops and equipment in either wartime or peacetime operations. In addition, reserve medical and construction battalions and other specialists are critical to a wide range of operations.

National Guard and Reserve service members are performing many vital tasks: from direct involvement in military operations to liberate Iraq in the air, on the ground, and on the sea; to guarding nuclear power plants in the United States; to providing support to the War on Terrorism through guarding, interrogating, and providing medical service to al-Qaida detainees; to rebuilding schools in hurricane-stricken Honduras and fighting fires in our western states; from overseeing civil affairs in Bosnia, to augmenting aircraft carriers short on active duty sailors with critical skilled enlisted ratings during at-sea exercises as well as periods of deployment.

I believe that the civilian and uniformed leadership of our Armed Forces and the Congress must recognize this involvement, and at a minimum provide equality in benefits for Reserve Component service members when they put on the uniform and perform their weekend drills or other critical training evolutions. Reservists, on duty, who resemble their active duty counterparts during training evolutions and are deployed at times around the world, should be treated equally when the administration and Congress provide for quality of life benefits.

I hope that all my colleagues will support these bills as a small expression of support and willingness to provide not just equality in quality of life benefits for our National guardsmen and reservists but support to all our men and women—our treasure—who are sacrificing so much for our nation, our freedoms and the freedom of the Iraqi people.

Mr. TALENT. Mr. President, I ask unanimous consent that the bills be read a third time and passed, en bloc; that the motions to reconsider be laid upon the table, en bloc; and that any statements relating to the bills be printed in the RECORD.

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

The bills (S. 711 and S. 712) were read the third time and passed, as follows:

S. 711

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PAYMENT OF SELECTED RESERVE REENLISTMENT BONUS TO MEMBERS OF SELECTED RESERVE WHO ARE MOBILIZED.

Section 308b of title 37, United States Code, is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

''(d) PAYMENT TO MOBILIZED MEMBERS.—In the case of a member entitled to a bonus under this section who is called or ordered to active duty, any amount of such bonus that is payable to the member during the period of active duty of the member shall be paid the member during that period of active duty, notwithstanding the service of the member on active duty pursuant to such call or order to active duty.''.

S. 712

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SURVIVOR BENEFIT PLAN ANNUITIES FOR SURVIVING SPOUSES OF RESERVES NOT ELIGIBLE FOR RETIREMENT WHO DIE FROM A CAUSE INCURRED OR AGGRAVATED WHILE ON INACTIVE-DUTY TRAINING.

(a) SURVIVING SPOUSE ANNUITY.—Paragraph (1) of section 1448(f) of title 10, United States Code, is amended to read as follows:

''(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of—

''(A) a person who is eligible to provide a reserve-component annuity and who dies—

''(i) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

''(ii) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan; or

''(B) a member of a reserve component not described in subparagraph (A) who dies from an injury or illness incurred or aggravated in line of duty during inactive-duty training.''.

(b) CONFORMING AMENDMENT.—The heading for subsection (f) of section 1448 of such title is amended by inserting ''OR BEFORE'' after ''DYING WHEN''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of September 10, 2001, and shall apply with respect to performance of inactive-duty training (as defined in section 101(d) of title 10, United States Code) on or after that date.

TO INCREASE THE AMOUNT OF DEATH GRATUITY TO ARMED FORCES MEMBERS

Mr. TALENT. Mr. President, I ask unanimous consent that the Armed Services Committee be discharged from further consideration of S. 704 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 704) to amend title 10, United States Code, to increase the amount of the death gratuity payable with respect to deceased members of the Armed Forces.

There being no objection, the Senate proceeded to consider the bill.

Mr. TALENT. Mr. President, I ask unanimous consent that the bill be read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 704) was read the third time and passed, as follows:

S. 704

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN DEATH GRATUITY PAYABLE WITH RESPECT TO DECEASED MEMBERS OF THE ARMED FORCES.

(a) INCREASE IN DEATH GRATUITY.—Section 1478(a) of title 10, United States Code, is amended by striking ''$6,000'' and inserting ''$12,000''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on September 11, 2001, and shall apply with respect to deaths occurring on or after that date.

RECOGNIZING 40TH ANNIVERSARY OF SINKING OF USS ''THRESHER''

Mr. TALENT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 102, which was submitted earlier today by Senator SUNUNU.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 102) recognizing the 40th anniversary of the sinking of the USS *Thresher*.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SUNUNU. Mr. President, this legislation pays tribute to the 129 officers, sailors, and civilians who lost their lives aboard the USS *Thresher* 40 years ago next week.

The loss of these brave individuals was a tragedy for the U.S. submarine service, for the Navy, and the Nation. Yet out of this tragedy, the Navy was able to learn important lessons about submarine safety and acted to correct design and construction concerns that existed on other subs, and prevent engineering and design flaws on future submarines. These measures have served to benefit our Navy ever since.

Built at the Portsmouth Naval Shipyard and commissioned in August of 1961, the USS *Thresher* was the lead ship in a new class of nuclear-powered attack submarines.

In the fall of 1961 and throughout 1962, the *Thresher* was put through its paces along the eastern seaboard to test its new technological and weapons advancements. Once these tests were completed, the *Thresher* returned to New England for an overhaul where she remained until the spring of 1963.

On April 9, 1963, the *Thresher* departed the Portsmouth Naval Shipyard to conduct deep sea diving exercises some 200 miles off the coast of New England. In the morning hours of April 10, 1963, after reaching her assigned depth, the USS *Thresher*, signaled her companion surface ship, the USS *Skylark*, that it was experiencing difficulties. Shortly thereafter, the crew of the *Skylark* realized that something had gone very wrong as they heard the sound of the *Thresher* breaking apart.

In the investigation that followed this terrible accident, the conclusion was reached that the *Thresher* in all likelihood had sunk due to a failure in its piping, a subsequent loss of power, and an inability to blow the ballast tanks which would have allowed the sub to rise. To this day, the remains of the *Thresher* rest some 8,500 feet below the ocean's surface.

As a result of the *Thresher* incident, the Navy initiated two significant changes to enhance submarine safety. The first of these was the SUBSAFE program, which ensured that every submarine in the fleet and every future submarine built had to pass a rigorous testing program on hull integrity systems as well as pressure-related parts. No sub would go into service without a 100-percent certification.

Second, this tragedy inspired the Navy to encourage a new ocean engineering discipline within a handful of prestigious educational institutions. Today, engineers in this discipline are trained to design and implement systems that can withstand the rigors of a lifetime's use in ocean waters.

Today, I join with Senators GREGG, SNOWE and COLLINS to submit this resolution to honor the naval and civilian crew of the USS *Thresher*.

This resolution will provide Senate recognition of the 40th anniversary of the *Thresher* incident—April 10—and pay tribute to her valiant crew. The resolution also calls on the Senate to express its deep gratitude to all American submariners who are on ''eternal patrol.''

Next week, on the 40th anniversary of the *Thresher* accident, Senators GREGG, SNOWE, COLLINS and I will submit another resolution that will call on the Secretary of the Army to erect a modest memorial at Arlington National

Cemetery to honor the men and women who were lost on the *Thresher* as well as other nuclear submariners lost at sea.

The memorial would be designed not to detract in any way from the solemn nature of Arlington. In fact, I believe it would provide visitors a place of reflection where they can pay their respects to all of these brave individuals.

Our Nation's submarine force is often referred to as the ''silent service.'' They are the original stealth fighters, and, as such, submarines and their crews have proven to be a critical component of our Nation's defense. It is only fitting that we pay tribute to those who risk their lives for us as well as those who have paid the ultimate sacrifice.

I encourage my colleagues to join Senators GREGG, SNOWE, COLLINS and me in honoring these individuals by supporting both of these measures. And I ask for their speedy consideration by the Senate.

The 129 men of the USS *Thresher* who lost their lives deserve our recognition and our gratitude. Therefore, I ask unanimous consent that the names of these men—the 16 officers, 96 crew and 17 civilian technicians aboard the *Thresher* be printed in the RECORD.

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

UNITED STATES SHIP ''THRESHER'' (SSN 593)

IN MEMORIAM, APRIL 10, 1963

OFFICERS

Allen, Philip Harcourt, Lieutenant Commander
Babcock, Ronald Clare, Lieutenant Junior Grade
Biederman, Robert Donald, Lieutenant
Billings, John Hilary, Lieutenant Commander
Collier, Merrill Francis, Lieutenant
DiNola, Michael John, Lieutenant Commander
Garner, Pat Mehaffy, Lieutenant Commander
Grafton, John Gilbert, Lieutenant Junior Grade
Harvey, John Wesley, Lieutenant Commander
Henry, James John, Jr., Lieutenant Junior Grade
Krag, Robert Lee, Lieutenant Commander
Lyman, John Sheldon, Jr., Lieutenant Commander
Malinski, Frank John, Lieutenant Junior Grade
Parsons, Guy Carrington, Jr., Lieutenant Junior Grade
Smarz, John, Jr., Lieutenant
Wiley, John Joseph, Lieutenant Junior Grade

SHIPS CREW

Arsenault, Tilmon J., Chief Engineman
Bain, Ronald Eugene, Engineman Second Class
Bell, John Edward, Machinist's Mate First Class
Bobbitt, Edgar Solon, Electrician's Mate Second Class
Boster, Gerald Charles, Electrician's Mate Third Class
Bracey, George, Steward Third Class
Brann, Richard Paul, Engineman Second Class
Carkoski, Richard James, Engineman First Class
Carmody, Patrick Wayne, Storekeeper Second Class
Cayey, Steven George, Torpedoman's Mate Second Class
Christiansen, Edward, Seaman
Claussen, Larry William, Electrician's Mate Second Class
Clements, Thomas Edward, Electronics Technician Third Class
Cummings, Francis Michael, Sonarman Second Class
Dabruzzi, Samuel Joseph, Electronics Technician Second Class
Davison, Clyde Elcott, III, Electronics Technician Third Class
Day, Donald Clifford, Engineman Third Class
Denny, Roy Overton, Jr., Electrician's Mate First Class
Dibella, Peter Joseph, Seaman
Dundas, Don Roy, Electronics Technician Second Class
Dyer, Troy Earl, Electronics Technician First Class
Forni, Ellwood Henry, Chief Sonarman
Foti, Raymond Peter, Electronics Technician First Class
Freeman, Larry Wayne, Fire Control Technician Second Class
Fusco, Gregory Joseph, Electrician's Mate Second Class
Gallant, Joseph Andrew, Chief Hospitalman
Garcia, Napoleon Tomas, Chief Steward
Garner, John Edmond, Yeoman Seaman
Gaynor, Robert William, Engineman Second Class
Gosnell, Robert Howard, Seaman
Graham, William Edward, Chief Sonarman
Gunter, Aaron Jackie, Chief Quartermaster
Hall, Richard Charles, Electronics Technician Second Class
Hayes, Norman Theodore, Electronics Mate First Class
Heiser, Laird Glenn, Machinist's Mate First Class
Helsius, Marvin Theodore, Machinist's Mate Second Class
Hewitt, Leonard Hogentogler, Chief Electrician's Mate
Hoague, Joseph Hartshorne, Torpedo-man's Mate First Class
Hodge, James Porter, Electrician's Mate Second Class
Hudson, John Francis, Engineman First Class
Inglis, John Penfield, Seaman
Johnson, Brawner Garth, Fire Control Technician First Class
Johnson, Edward Albert, Chief Engineman
Johnson, Richard Lee, Radioman Seaman
Johnson, Robert Eugene, Chief Torpedoman's Mate
Johnson, Thomas Benjamin, Electronics Technician First Class
Jones, Richard William, Electrician's Mate Second Class
Kaluza, Edmund Joseph, Sonarman Second Class
Kantz, Thomas Charles, Electronics Technician Second Class
Kearney, Robert Dennis, Machinist's Mate Third Class
Keiler, Ronald Dean, Interior Communications Electrician Second Class
Kiesecker, George John, Machinist's Mate Second Class
Klier, Billy Max, Engineman First Class
Kroner, George Ronald, Commissaryman Third Class
Lanouette, Norman Gilbert, Quartermaster First Class
Lavoie, Wayne Wilfred, Yeoman First Class
Mabry, Templeman Norwood, Jr., Engineman Second Class
Mann, Richard Herman, Jr., Interior Communications Electrician Second Class
Marullo, Julius Francis, Jr., Quartermaster First Class
McClelland, Douglas Ray, Electrician's Mate Second Class
McCord, Donald James, Machinist's Mate First Class
McDonough, Karl Paul, Torpedoman's Mate Third Class
Middleton, Sidney Lynn, Machinist's Mate First Class
Muise, Ronald Arthur, Commissaryman Second Class
Musselwhite, James Alton, Electronics Technician Second Class
Nault, Donald Emery, Commissaryman First Class
Noonis, Walter Jack, Chief Radioman
Norris, John Daniel, Electronics Technician First Class
Oetting, Chesley Charles, Electrician's Mate Second Class
Pennington, Roscoe Cleveland, Chief Electrician's Mate
Peters, James Glen, Senior Chief Electrician's Mate
Phillippi, James Frank, Sonarman Second Class
Philput, Dan Andrew, Engineman Second Class
Podwell, Richard, Machinist's Mate Second Class
Regan, John Sage, Machinist's Mate First Class
Richie, James Patrick, Radioman Second Class
Robison, Pervis, Seaman
Rountree, Glenn Alva, Quartermaster Second Class
Rushetski, Anthony Alexander, Electronics Technician Second Class
Schiewe, James Michael, Electrician's Mate First Class
Shafer, Benjamin Nathan, Master Chief Electrician's Mate
Shafer, John Davis, Senior Chief Electrician's Mate
Shimko, Joseph Thomas, Machinist's Mate First Class
Shotwell, Burnett Michael, Electronics Technician Seaman
Sinnett, Alan Dennison, Fire Control Technician Second Class
Smith, William Harry, Jr., Boilerman First Class
Snider, James Leonard, Machinist's Mate First Class
Solomon, Ronald Hal, Chief Electrician's Mate
Steinel, Robert Edwin, Sonarman First Class
Van Pelt, Roger Edwin, Interior Communications Electrician First Class
Walski, Joseph Alfred, Radioman First Class
Wasel, David Allan, Radioman Seaman
Wiggins, Charles Louis, Fire Control Technician First Class
Wise, Donald Edward, Chief Machinist's Mate
Wolfe, Ronald Eugene, Quartermaster Seaman
Zweifel, Jay Henry, Electrician's Mate Second Class

CIVILIANS

Abrams, Fred Philip, Inspector, Portsmouth Naval Shipyard
Beal, Daniel W., Jr., Electronic Engineer, Portsmouth Naval Shipyard
Charron, Robert E., Electronic Technician, Portsmouth Naval Shipyard
Corcoran, Kenneth James, Progressman, Portsmouth Naval Shipyard
Critchley, Kenneth James, Progressman, Portsmouth Naval Shipyard
Currier, Paul Chevalier, Progressman, Portsmouth Naval Shipyard
DesJardins, Richard Roy, Mechanical Engineer, Portsmouth Naval Shipyard
Dineen, George J., Electrician, Portsmouth Naval Shipyard
Fisher, Richard Kaye, Mechanical Engineer, Portsmouth Naval Shipyard
Guerette, Paul Alfred, Engineering Technician, Portsmouth Naval Shipyard
Jaquay, Maurice Frank, Sonar Field Engineer, Raytheon Company
Kuester, Donald William, Electronics Engineer, Naval Ordnance Laboratory
Moreau, Henry Charles, Leadingman, Portsmouth Naval Shipyard
Palmer, Franklin James, Leadingman, Portsmouth Naval Shipyard

Prescott, Robert Dan, Marine Engineer, Portsmouth Naval Shipyard
Stadtmuller, Donald T., Field Engineer, Sperry Gyroscope Company
Whitten, Lawrence Eugene, Electronic Engineer, Portsmouth Naval Shipyard

Mr. GREGG. Mr. President, today I wish to honor the brave Americans who served on the USS *Thresher*. The nuclear submarine USS *Thresher*, named after a shark, was built with extreme pride by yankee craftsmen working at the Portsmouth Naval Shipyard, Portsmouth, NH. After operations in the Atlantic and Caribbean, she returned to the Portsmouth Naval Shipyard for overhaul, and then on April 10, 1963 she went back to sea for post-overhaul trials. Sadly, during those deep-diving trials, the *Thresher* was lost off the coast of New England, along with all 96 sailors, 16 officers, and 17 civilians on board, falling more than 8,000 feet below the sea.

The sailors, officers and civilians aboard the USS *Thresher* made the ultimate sacrifice in support of our Nation. They are remembered daily throughout New Hampshire, and Maine, and certainly within the U.S. Navy. This measure we introduced recognizes the courage and bravery these men demonstrated in risking their lives in the development of the United States Navy's submarine program, a program which has proven invaluable to the American military. The tragedy of the USS *Thresher* demonstrates the inherent danger of submarine service.

On this the 40th anniversary of the tragedy, it is fitting that the Senate remembers with profound sorrow the loss of the USS *Thresher* and her gallant crew of sailors and civilians; and expresses its deepest gratitude to all submariners on eternal patrol, who are forever bound together by their dedicated and honorable service to the United States of America. May our country never forget those who gave their last full measure on the USS *Thresher*.

Mr. TALENT. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

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

The resolution (S. Res. 102) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 102

Whereas the U.S.S. Thresher was first launched at Portsmouth Naval Shipyard on July 9, 1960;

Whereas the U.S.S. Thresher departed Portsmouth Naval Shipyard for her final voyage on April 9, 1963, with a crew of 16 officers, 96 sailors, and 17 civilians;

Whereas the mix of that crew reflects the unity of the naval submarine service, military and civilian, in the protection of the Nation;

Whereas at approximately 7:47 a.m. on April 10, 1963, while in communication with the surface ship U.S.S. Skylark, and approximately 300 miles off the coast of New England, the U.S.S. Thresher began her final descent;

Whereas the U.S.S. Thresher was declared lost with all hands on April 10, 1963;

Whereas from the loss of the U.S.S. Thresher, there arose the SUBSAFE program, which has kept United States' submariners safe at sea ever since as the strongest, safest submarine force in history;

Whereas from the loss of the U.S.S. Thresher, there arose in our Nation's universities the ocean engineering curricula that enables the United States' preeminence in submarine warfare; and

Whereas the crew of the U.S.S. Thresher demonstrated the ''last full measure of devotion'' in service to this Nation, and this devotion characterizes the sacrifices of all submariners, past and present: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the 40th Anniversary of the sinking of the U.S.S. Thresher;

(2) remembers with profound sorrow the loss of the U.S.S. Thresher and her gallant crew of sailors and civilians on April 10, 1963; and

(3) expresses its deepest gratitude to all submariners on ''eternal patrol'', who are forever bound together by their dedicated and honorable service to the United States of America.

SEC. 2. TRANSMISSION OF RESOLUTION.

The Secretary of the Senate shall transmit a copy of this resolution to the Chief of Naval Operations and to the Commanding Officer of the Portsmouth Naval Shipyard to be accepted on behalf of the families and shipmates of the crew of the U.S.S. Thresher.

ORDERS FOR WEDNESDAY, APRIL 2, 2003

Mr. TALENT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m., Wednesday, April 2. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period for morning business until 11 a.m., with the time equally divided between Senator HUTCHISON and the minority leader or their designees.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Reserving the right to object, before the unanimous consent request is completed, I will state that we had a very successful appropriations meeting today. It was completed in less than 2 hours. There were a number of amendments that the chairman and ranking member, Senator BYRD, agreed to, and the committee accepted their recommendations. We were able to resolve what we thought would be the more contentious matter relating to the airline industry. We are well down the road to complete this legislation in the time set forth by Senator BYRD and Senator STEVENS, which will be sometime on Thursday.

Senator DASCHLE has asked the Democratic Senators to do what they could to expedite this matter. We have a limited number of amendments, most of which deal with homeland security. Senator STEVENS is aware of the general nature of our amendments and we will be ready to offer those starting tomorrow morning, as soon as they complete their opening statements.

As I indicated, the Democratic leader has indicated he wants us to work as quickly, as expeditiously, and as completely as possible, making sure we have the number of amendments we feel strongly about but not overload this bill with extraneous amendments. We look forward to having this matter completed sometime Thursday.

I have no objection to the initial request.

Mr. TALENT. Mr. President, I further ask unanimous consent that at 11 a.m., the Senate proceed to the consideration of the supplemental appropriations bill as reported by the Appropriations Committee. I further ask consent that at 1:30 p.m., the Senate then proceed to executive session and there then be 30 minutes of debate equally divided in the usual form prior to the cloture vote on the nomination of Miguel Estrada to be a circuit judge for the DC Circuit; provided further that if cloture is not invoked, the Senate then return to legislative session.

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

PROGRAM

Mr. TALENT. Mr. President, for the information of all Senators, the Senate will be in a period for morning business tomorrow morning until 11 a.m. to allow Members to continue to make statements in support of our troops. This is, of course, according to the majority leader. At 11 a.m., the Senate will begin consideration of the supplemental appropriations bill. Amendments are anticipated on that measure. The majority leader would encourage Members to notify the managers if they intend to offer any amendments. At 2, the Senate will conduct the fourth cloture vote in relation to the Estrada nomination. Following that cloture vote, the Senate will resume consideration of the supplemental appropriations bill. The Senate will complete action on the supplemental this week so we can get the necessary funds flowing to our brave men and women who are serving in Iraq. Therefore, the leader would inform all Senators to expect a busy day tomorrow with rollcall votes throughout.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. TALENT. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:13 p.m, adjourned until Wednesday, April 2, 2003, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate April 1, 2003:

THE JUDICIARY

TIMOTHY M. TYMKOVICH, OF COLORADO, TO BE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT.