

I send that modification to the desk. The PRESIDING OFFICER. The Senator has the right to make that modification to her amendment. However, she needs to send a modification to the desk.

Without objection, it is so ordered.

The amendment will be so modified.

The amendment (No. 1787), as modified, is as follows:

On page 31, strike line 13 and all that follows through page 32, line 2, and insert the following:

(c) STUDENT ASSESSMENTS.—The Secretary may not approve an application from an eligible entity for a grant under this title unless the eligible entity's application—

(1) ensures that the eligible entity will—

(A) assess the academic achievement of all participating eligible students;

(B) use the same assessments every school year that are used by the District of Columbia Public Schools to assess the achievement of District of Columbia public school students under section 1111(b)(3)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(A)), to assess participating eligible students in the same grades as such public school students;

(C) provide assessment results and other relevant information to the Secretary or to the entity conducting the evaluation under section 9 so that the Secretary or the entity, respectively, can conduct an evaluation that shall include, but not be limited to, a comparison of the academic achievement of participating eligible students in the assessments described in this subsection to the achievement of—

(i) students in the same grades in the District of Columbia public schools; and

(ii) the eligible students in the same grades in District of Columbia public schools who sought to participate in the scholarship program but were not selected; and

(D) disclose any personally identifiable information only to the parents of the student to whom the information relates; and

(2) describes how the eligible entity will ensure that the parents of each student who applies for a scholarship under this title (regardless of whether the student receives the scholarship), and the parents of each student participating in the scholarship program under this title, agree that the student will participate in the assessments used by the District of Columbia Public Schools to assess the achievement of District of Columbia public school students under section 1111(b)(3)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(A)), for the period for which the student applied for or received the scholarship, respectively.

(d) INDEPENDENT EVALUATION.—The Secretary and Mayor of the District of Columbia shall jointly select an independent entity to evaluate annually the performance of students who received scholarships under the 5-year pilot program under this title, and shall make the evaluations public. The first evaluation shall be completed and made available not later than 9 months after the entity is selected pursuant to the preceding sentence.

(e) TEACHER QUALITY.—Each teacher who instructs participating eligible students under the scholarship program shall possess a college degree

Mrs. FEINSTEIN. I yield the floor.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The PRESIDING OFFICER (Mr. SMITH). The Senator from Arizona.

#### DO-NOT-CALL REGISTRY

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 3161, the FTC's ratification of authority for the Do Not Call Registry, under the following conditions: 45 minutes under the control of the chairman of the Commerce Committee or his designee, and 45 minutes under the control of the ranking member or his designee; of the time under the control of the ranking member, the following Senators be recognized to speak for up to 5 minutes each: Senators HOLLINGS, DORGAN, CONRAD, KOHL, PRYOR, SCHUMER, and FEINSTEIN, with the remaining time under the control of the Democratic leader or his designee; further, that no amendments be in order to the bill; and that upon the use or yielding back of time, the bill be read a third time and the Senate proceed to a vote on passage of the bill, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, reserving the right to object, I only ask that the ranking member, Senator HOLLINGS, be given up to 10 minutes out of the 45 minutes under his control.

The PRESIDING OFFICER. Is there objection to the modified request?

Without objection, it is so ordered.

Mr. REID. Mr. President, I think everyone should be advised that if all the time is used, we will vote at about 5:35 on final passage of this most important legislation.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I will be glad for the time to be 10 minutes for Senator HOLLINGS, but I remind my friend from Nevada, Senator HOLLINGS will be controlling the time. So he will be granting himself as much time as he may use because the unanimous consent request is that the time will be under the control of the ranking member or his designee.

Mr. REID. Mr. President, I say to my friend from Arizona, Senator HOLLINGS is the ranking member, and the unanimous consent request does say that. However, he is going to speak and then turn the time over to the ranking member of the subcommittee, Senator DORGAN of North Dakota.

Mr. MCCAIN. Good. But I have always proceeded under the assumption that Senator HOLLINGS can speak whenever he wants to, for however long he wants to. I have found that it has improved our relationship.

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

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3161) to ratify the authority of the Federal Trade Commission to establish a do-not-call registry.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, does the Senator from South Carolina care to speak at this time?

Mr. President, I yield to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, marketers assault Americans' privacy every day. Businesses track everything we buy and everything we do. It seems the marketers know more about our lives than we do ourselves. It is intrusive, and Americans want the tools to fight back.

But those of us who work to protect Americans' privacy are thwarted every step of the way. The marketers oppose antispam legislation. The marketers oppose decency limits on advertising to children. And the marketers oppose legislation that would allow Americans to "opt-out" of the sharing of their personal information, including financial records.

The one success we have had is the Do Not Call list. The public's vociferous reaction to the court decision yesterday shows the country's desire to win refuge from the marketing onslaught. The public wants the Do Not Call registry. And the public wants the registry to become active next week. We will make sure that happens.

But we have several Johnny-Come-Latelys to our cause. When I was chairman of the Commerce Committee last Congress, we worked with the FTC to create the Do Not Call Registry. But we didn't get much help from the other side. Instead we were unfairly criticized by interest groups for jeopardizing their funding.

We fought to win \$18 million for the registry in the omnibus appropriations bill last year. But the House wanted language that would prohibit using that funding absent explicit Congressional authorization. The House language could have stopped the registry. Again, it was an uphill battle, and we had few allies. But we eventually got the bad language removed, giving the FTC the funds to implement the Do Not Call Registry.

Once the FTC opened the list to registration, the response from the American public was overwhelming. By yesterday, Americans had registered more than 50 million phone numbers. South Carolinians have registered 685,393 phone numbers—486,533 through the FTC Web site, 198,855 via phone, and 5 through hearing-impaired devices. The marketers argued that Americans did not want the Do Not Call list, but the American public proved them wrong. Americans want this tool. They want the assault on their privacy to stop. Once news reports showed the Do Not

Call Registry was popular, many converted to the cause. And some of them are leading the charge today. We appreciate their support now as we try to overturn a clearly flawed court decision.

To prepare for compliance on October 1, 2003, nearly 5,000 telemarketers have purchased all or parts of the list. Therefore, telemarketers acting in good faith are ready to comply next week.

A telemarketer that ignores the Do Not Call list is subject to an \$11,000 fine for each call to a phone number on the Do Not Call Registry. The law requires telemarketers to search the registry every 3 months and synchronize their call lists.

Once consumers register a number on the Do Not Call list, telemarketers are prohibited from calling the number for the purpose of selling goods and services. Consumers who receive sales calls after their number has been in the registry for three months can file a complaint on the FTC web site or call 1-888-382-1222.

The Do Not Call list will not hurt charities seeking to raise money for worthy causes. Charities may still hire professional telemarketers to seek donations. But calls during which a charity or telemarketer seeks to sell something are prohibited to phone numbers on the Do Not Call Registry.

This Do Not Call Registry has been a long time in coming. We are going to take the final step today. The court decision yesterday may even have given the Do Not Call Registry more publicity, encouraging even more people to register their phone numbers.

Opponents of Americans' privacy should take notice: Americans want tools and choices, such as the Do Not Call Registry, to protect their precious time with their families. They also want to protect their private medical and financial information and protect their children from indecent advertising. We will keep fighting.

Mr. President, let's thank Chairman Tim Muris of the Federal Trade Commission, who came to the Commerce Committee last year. And we put in S. 2946, the Do Not Call bill, with some \$5 million that was requested. Later on, we found there were well organized holds, whereby we could not even get this bill up for consideration. Yes, we reported it favorably from the Commerce Committee, but we could not get it on the floor to pass it. And it was needed.

Chairman Muris came to me and said he needed \$15 million. I talked with Chairman GREGG earlier this year, and in the omnibus bill, with the Federal Trade Commission appropriations, we increased it to \$18 million. We could see the demand and see the interest and see the need. So we did just that.

It is good that my distinguished chairman, the Senator from Arizona, is on the Senate floor because the opposition was that it was not authorized. I go right to my experience for over 30

some years on the State-Justice-Commerce Committee, where we have had difficulty over the years passing, for example, an FBI authorization bill.

I remember for a period of almost 20 years we had no authorization. We worked with the chairman of the Judiciary Committee to make sure their wants were taken care of. But we provided the bill; the same with respect to State Department authorization.

So I would only admonish the distinguished jurist who made this ruling about authorization that, yes, the Senator from Arizona is jointly correct with respect to the rules of the Senate but not with respect to the Constitution.

Once you receive three readings in the House and three readings in the Senate, and it is signed by the President of the United States, we have no doubt that law would take effect and this order of the court would be set aside.

However, the triggering date is the first of October, next week, and so I commend my House colleagues and those on the Senate side, and my chairman, Senator MCCAIN, in taking this up at this particular time so we can go ahead and take the House bill.

There are many interested in separate bills, and what have you. But right to the point, time is of the essence. Fifty million Americans cannot be wrong, they are all interested in stopping the calls.

With that, let me yield, then, to the distinguished chairman, and then to Senator DORGAN, who will control the time on the floor.

I thank the chairman.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume.

First of all, I thank Senator HOLLINGS for all his efforts on this legislation. I think he was not a Member of the Senate when the Federal Trade Commission was created, but very close to it, and he has been heavily involved with all the issues surrounding the FTC and the good works they do.

I will speak very briefly. I would like to thank Senator ENSIGN and Senator FEINSTEIN, Senator DORGAN, Senator DEWINE, and many other Senators, but particularly those including the distinguished ranking member, Senator HOLLINGS, for all their efforts regarding this legislation and, more importantly, this issue.

Two days ago, a Federal district court in Oklahoma issued an opinion that could stall the FTC's implementation of a National Do Not Call Registry scheduled to go into effect next Wednesday. The court opined that the FTC was not authorized to create a Do Not Call Registry. I must say that opinion came as an amazing surprise to those of us who have been involved in this issue, and served as a rallying cry for tens of millions of Americans households that have signed up for the registry.

I understand the judge received so many calls from irate Americans that the FTC could not get through to the court regarding the Commission's appeal. Clearly, the court's decision was misguided.

The measure before us makes crystal clear that the Commission can and should proceed as planned with the Do Not Call list. Earlier this year, in two separate measures, Congress ratified the FTC's Do Not Call Registry by explicitly providing for the Commission to collect fees to pay for it. Today Congress is once again saying, dispositively and unambiguously, that the FTC has the authority it needs to create a National Do Not Call list.

When the FTC proposed to create this registry, I don't think they or even Members of this body had any idea how strongly it would be embraced by a public tired of having their precious leisure time filled with a seemingly incessant string of telephone solicitations.

I understand the FTC's Web site for registering on the Do Not Call list became the fastest growing Web site in history.

One of my favorite programs is "Seinfeld." In one of the episodes that has become famous in reruns, Jerry Seinfeld answers the phone and it is a telemarketer. He says: I am busy right now. Can I call you back at home?

And of course the telemarketer says: No, you are not allowed to do that. You wouldn't like that. Well, neither do I. And he hung up the phone.

Obviously, the issue of telemarketing involves the free enterprise system. Nothing in this legislation would inhibit their ability from practicing that, but it also balances the right of private citizens not to be disturbed if they choose not to be.

During a peak period, the FTC's Web site received approximately 1,000 hits per second. On the first day alone, 3.4 million consumers visited the Web site. In the first 10 days, 10 million phone numbers had been registered. Within the first month, the number had risen to 28 million—quite a remarkable evolution. To date, over 50 million phone numbers have been registered, including nearly 1.2 million in my State of Arizona.

Congress is often accused of being slow to respond. Thankfully, that charge can't be leveled here. Just a few hours ago the House passed this legislation by a vote of 412 to 8. Whenever you see a number like that, you are always curious who the eight are, but the curious decision of one court should not be allowed to frustrate the clear will of Congress and the even clearer will of tens of millions of Americans.

Obviously, we urge our colleagues to support the measure, give consumers what they want by empowering them to say no to what they clearly do not want.

I thank all of my colleagues who have responded to the predictable but certainly overwhelming response to the

court's decision in the State of Oklahoma. That judge in the district court will become well known to many Americans as well.

I thank all my colleagues for coming and speaking on this issue. I thank them for their support. Although there is not a need for the yeas and nays, some of our colleagues may want to be on record. So we may want to do so depending on the desires of my friend from North Dakota, a man who understands the will of the populace especially where telecommunications issues are concerned.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I compliment my colleagues, Senator MCCAIN and Senator HOLLINGS. This is an important issue, one we believed we had previously resolved only to learn that a court ruled that the Do Not Call list developed by the Federal Trade Commission was "not authorized."

Most of us in Congress and the Senate are surprised by that. Clearly, we authorized that. But if a court needs another authorization, it is something we can certainly do on a Thursday afternoon at 4:15. So this will be done with the support of many colleagues, and I am pleased to say that this is good public policy.

Let me make a couple of comments about the substance. There may be some people who are terribly lonely and whose phone seldom rings except to have an advertiser of a credit card or a long-distance service call during meal time just wanting to visit about their product. There may be some people who welcome those calls, just talk the ear off these telemarketers. I can't say that for sure, but this country is full of very interesting people. As for me and for most of the American people, getting a telephone call in the middle of a meal or getting a telephone call at all hours of the day and night to have someone tell us that we really need a new long-distance service or a preapproved credit card gets a little annoying. Unsolicited phone calls are an intrusion on the phone line that most American people pay every month to have in their home.

I come from a sparsely populated State, a wonderful place. It is 10 times the size of the Massachusetts landmass, with 642,000 people. It is spread out. We understand the importance of communications. We understand the importance of telephones. It took a long while to get telephones to the outer reaches of our country, including rural areas. Now with modern communications, we also understand that we are not alone in our homes.

There are those who are working in large banks of employees who are randomly, with computers, calling telephone numbers from banks of telephone books, getting people on the line. And by the way, because these computers dial multiple numbers at once, when one person answers, per-

haps a second person is answering a nanosecond later, no one will be on the line when they answer. That happens often. People should understand that comes from unsolicited phone calls with computer banks making calls. One person answers; the other doesn't get an answer. That is what is happening. It is enormously annoying.

Do people have an inherent right to make solicitation calls? Yes. But the other question is, Do people who pay for their telephone service each month have a right to put their name on a registry saying: I really don't want these calls; don't have them come into my telephone instrument; I pay for the instrument and I don't want to be annoyed and I don't want to be interrupted by them? Do people have that right? Of course, they do. That is what this issue is about.

As chairman of the Subcommittee on Consumer Affairs in the Commerce Committee last year, I held hearings on this. At one of the reauthorization hearings for the FTC, we had an entire panel devoted to the discussion of a do not call registry. We had a hearing in which the Federal Trade Commission came up, the Commissioners themselves, and talked to us about this issue. I had a member of the Federal Trade Commission come to Fargo, ND. We held a public hearing there on this subject. This is not a foreign or strange subject to me nor to most of my colleagues. As a result of that, we took action in reauthorizing the Federal Trade Commission to include funding to allow them to put together a Do Not Call Registry.

If you wonder whether the American people care about this, just remember these numbers. They put together a Do Not Call Registry and said to the people: If you think these unsolicited telephone calls are bothersome to you, if it is an intrusion on your family and an interruption to your life and annoying to you and you want to stop them, call and put your telephone number and your name on this registry.

Guess what. In virtually a nanosecond, 50 million Americans have said: Count me out. I don't want to be a part of this unsolicited phone call mess going on. Put my name on the list and get rid of these phone calls. In the State of North Dakota, 131,000 people said: We don't want these calls. We don't want the interruptions. We don't want the annoyance. Stop it.

Now one court has said somehow this is not operative, effective, because it is not authorized. So this afternoon the House will authorize it, the Senate will authorize it, and the bill will go to the President and be signed.

I hope this court will understand that not only was it authorized, but we were pleased this afternoon to authorize it a second time just to reinforce our determination with the American people that we believe they have the power and they ought to have the ability to stop these calls.

Let me make just a couple of additional points. Some say this is an im-

portant industry making these telephone calls, doing marketing. The answer is, sure, it is. It employs people. We are not saying with this legislation that you cannot make unsolicited phone calls. We are saying the American people, however, have a right to decide they don't want to be part of it; I don't want to receive them. This is empowering the American people.

If there are people, as I said, who are lonely, have no one to talk to, who sit around all day with a desire to visit with somebody, if they want to get these phone calls, God bless them. Let them get the phone calls, let them get the credit cards and sign up for multiple long-distance services, and let them visit until they are visited out. I assume there are a few of those people. But in most cases the American people are saying: Put my name on the list. I don't want to be interrupted. I don't want unsolicited phone calls, especially during mealtime.

There is this peculiar quality of this industry to call only when dinner or supper is ready. Lord only knows how that occurs, but it does. So today we have said we are going to authorize this explicitly once again, so that this Do Not Call list will not be interrupted. People whose names are on that list will be assured they will not receive unsolicited calls.

I say to my colleague, Senator ENSIGN, I know he is working on this issue and has introduced legislation, and my colleague, Senator FEINSTEIN, and others—again, we have worked hard on this in the Commerce Committee, going back to last July—July 17, at the reauthorization hearing I chaired. I will not go through all the negotiations that went on with appropriations and the reauthorization, but suffice it to say we believed very strongly the FTC should have taken the action they did. We provided the funding. We implicitly provided authorization for it, and today we are once again reauthorizing that which we have previously done just to satisfy some court in some corner of America, and in order to give comfort to those 50 million Americans and the at least 130,000 North Dakotans who have said: Take my name off this list. The American people have that right. This legislation allows them to keep that right. It is very important.

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

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I yield myself such time as I may consume.

Mr. President, I thank the cosponsors of our legislation, especially my chief cosponsors, Senator FEINSTEIN from California, Senator DORGAN, Senator MCCAIN, and Senator DEWINE, as well as the 47 original cosponsors. I thank them all for being original cosponsors.

The legislation, however, we are dealing with now is identical legislation sent over by the House because of a procedural matter. I am very excited that this legislation is going to be

passed in just a little over an hour from now, because I think this is very important legislation just for the peace of mind of a lot of the people at home.

People say, "Have you heard about this from your constituents?" A lot of people who don't follow politics are talking about this issue in the last couple of days. They have talked about it for years, but they have heard about it in the news. They are talking about it around the water cooler and they are talking about it wherever there is a coffee shop, wherever they are, because they want to make sure that on October 1, when the Do Not Call list is supposed to be starting to be enforced, that it actually happens.

There are over 50 million Americans, as was said, who have signed up for this service. I am hazarding a guess, but I would say in the coming months there are going to be tens of millions more who will sign up for this because so many people don't want to be bothered. As Senator DORGAN talked about, the people who don't mind being bothered—for them, they don't have to sign up for the Do Not Call list. If they want to continue to receive all those offers at home from telemarketers who are trying to sell a product—if people want to receive those calls at home—I don't, but a lot of people probably want them—it is their right to have that coming into their household. I know in our household we get bothered by this a lot, and you hate being rude to people when they call up on the telephone. Nobody likes to get a call during dinner. You happen to have the phone all the way across the room. You get up and you walk across the room, and all of a sudden you realize it is a telemarketer. You are a little irritated and you don't want to be mean, but at the same time you don't want to be bothered. This Do Not Call list stops that from happening because the penalties in the Do Not Call list legislation are such that these telemarketers are going to stop.

So it is, to me, very exciting that we are actually going to act very quickly after what I believe the judge did was wrong. But that is fine; the Senate and the House have quickly acted on this bill. We are going to make sure there is no question in the court's mind that this bill is authorized.

I will conclude with this, and I will yield 5 minutes to my friend from Montana. It is really summed up in the Jerry Seinfeld episode where a telemarketer calls him and he asks the telemarketer, "Can I have your phone number?" The telemarketer says, "Why?" Jerry says, "Because I want to call you during dinnertime and bother you." Of course, the telemarketer doesn't want to do that. But that is how people feel. They want to call them and bug them to let them know how they feel. That is the way people feel all across America.

It is important that we pass this legislation, and it is great to see the bipartisan support for it.

I yield 5 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Mr. President, I thank my friend from Nevada. I am wondering if the Senator from California wants to speak, if we are going back and forth here. I don't want to preempt her.

Mrs. FEINSTEIN. There is no problem. I merely wanted to thank everybody. We heard about this through my Judiciary counsel, who follows the courts, and we came to the floor and indicated we were going to put this together and we got a number of cosponsors. It was really Senator DORGAN who worked out all of the protocols involved.

I thank the Commerce Committee, Senator MCCAIN, and Senator HOLLINGS, for their work on this issue. I didn't realize the depth of involvement that had existed. I find the court's decision so out of whack with what has happened. So I am very pleased and I thank the Senator from Montana for his courtesy.

I am glad to see that so many of our fellow colleagues, from both sides of the aisle, have joined us in this important and urgent effort, and that we were able to take up this legislation so quickly, in record time. It was only about 24 hours ago that I first raised this issue on the Senate floor.

Our bill is identical in language to the bill introduced in the House of Representatives, and we expect one or both of the bills to pass today.

The bill simply confirms what we all already thought was true, that the Federal Trade Commission has the authority to implement a "Do-Not-Call" Registry.

We in Congress must act quickly, because this registry is due to go into effect in just 1 week on October 1. Literally tens of millions of Americans have registered their phone numbers not to be called by telemarketers.

I have rarely seen an issue where so many millions of Americans have made their strong preferences known.

Are we going to simply tell them that this was all a myth? Or is Congress going to act to honor our earlier commitments and to protect this important right to privacy? These citizens expect us to act—and I believe that the momentum is clearly on our side.

If allowed to stand, the decision made by an Oklahoma district court judge that the National Do-Not-Call Registry would strike a powerful blow against the basic private interests of millions of Americans.

Right now, these people are subjected to unwanted and annoying marketing calls to their homes at all times of the day, including the dinner hour.

According to industry estimates, about 60 million telemarketing calls are made daily. With advances in technology and declining telephone costs, consumers would face the prospect of

an unprecedented barrage of calls. And this is why the registry is so important.

The FTC's registry will give Americans who want to avoid these unsolicited sales pitches a chance to stop annoying intrusions into their home.

As we know, tens of millions of Americans have registered more than 50 million phone numbers for this program. In the end, the Federal Trade Commission expects 60 percent of the Nation's households with approximately 60 million home phone lines to sign on to the registry.

This registry is crucial because it puts consumers in charge of the number of telemarketing calls they receive. Telemarketers who disregard the registry could be fined up to \$11,000 per call.

The Oklahoma district court yesterday ruled that the Do Not Call Registry is "invalid"—that is the word the judge used in his decision—because it was created without congressional authority.

I find this conclusion surprising since Congress passed H.R. 395, the Do-Not-Call Implementation Act on February 13 of this year. The legislation clearly authorizes the Federal Trade Commission and the Federal Communications Commission to collect fees sufficient to implement the registry. And the Appropriations Committee granted \$18 million for the program.

I also note that the FTC's rule came after an exhaustive comment period. The FTC announced its plan to proceed with the registry on December 18, 2002, after receiving 64,000 comments. The overwhelming majority of these comments favored the creation of the registry.

Millions of Americans were promised protection from annoying, unwanted telemarketing calls starting October 1. They are outraged—and so are we—by this setback.

Congress must move now and unanimously adopt and pass legislation which grants the authority to the FTC, clearly and unequivocally—so that no Federal judge can misunderstand it.

Many of us were taken by surprise yesterday, but by putting this legislation to a vote now, we are doing the right thing. On October 1, let's make sure that the millions of Americans who want their privacy protected from these telemarketers are not disappointed.

I urge my colleagues to vote in favor of this legislation.

Mr. BURNS. Mr. President, I thank the chairman of the Commerce Committee and everybody on the committee. You are probably hearing from the core of that committee today, reacting to the disappointment that we have gotten from the Oklahoma Federal District Court preventing the Federal Trade Commission from going forward and implementing the Do Not Call list.

The Do Not Call legislation turned out to be the most popular and probably the most necessary consumer initiative we have ever passed in the history of this body. From day one, people started to sign up; that was June 26. Up until now—you have heard the figures—over 50 million people have registered, and 138,000 of those are in Montana.

So urgent was the public's need to stop intrusive telemarketers that in the first 14 hours of enrollment on June 16, 650,000 people called up. That gives us some idea of how consumers think of these telemarketers.

The ill-considered decision yesterday by the Federal District Court in Oklahoma would prevent the Do Not Call list from going into effect next Wednesday. The decision is dead wrong and its core assumption is that the FTC acted without statutory authority in creating and administering the Do Not Call list.

Let us make it very clear, Congress clearly granted the FTC the authority to set up the Do Not Call list by passing the Do Not Call Implementation Act in February of this year. The act gave the agency authority to collect fees from telemarketers and to establish and enforce the list. In fact, the Omnibus Appropriations Act in February also authorized the FTC to enforce the Do Not Call list.

Rather than waiting around for an appeals court to overturn this wrong-headed decision, I am certainly glad the Congress has taken action very swiftly. It did not take long. In fact, one of my good friends who does not serve in this body anymore, who served from North Carolina, said this is almost a June bug issue, and it really is. We do not have to put Americans through unwarranted intrusions into their lives by telemarketing, and so we will pass this today.

I tell my good friend from North Dakota, my wife has it all figured out about telemarketers. We both may be home; the call comes in: Is Mr. BURNS there? She says: I will call him—whether I am there or not. She lays the phone down and goes off and leaves it until we hear the little disconnect: "If you are trying to place a call, please hang up and try again." So that is our attitude towards that.

By any estimate, telemarketers attempt almost 105 million calls daily. The implementation of the Do Not Call list would reduce these calls by almost 80 percent, and those are figures that are out now. So if they do not get the message by talking to a telephone that does not have an ear on the other end of it, then we will take care of it this way.

People are rightly sick and tired of this endless interruption into their private lives. So I urge my colleagues to support this bill.

I thank my good friend from Nevada for allowing me this time, and Senator DORGAN and the chairman of the full committee for acting this swiftly, because this takes care of it.

Let's make no bones about it, they clearly had the authority. They clearly had the funds to implement it. We gave it to them in appropriations and we gave them the authority this year. The telemarketers did not choose to abide by that law. So I heartily commend my good friends for offering this legislation.

By the way, if I am not on the list, you may put me on the list.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to add Senator INOUE as a cosponsor.

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

Mr. DORGAN. I was just recollecting, as the Senator from Montana was speaking, telemarketing is, of course, a legitimate business. It is an important business in many respects. But the point that my colleague, Senator ENSIGN, made is the American people also have their right, and their right is to put their name on a list to say, I do not want unsolicited calls.

They call almost everyone. I received a call some long while ago from a telemarketer. I answered the phone, and the telemarketer said: May I speak to Haley Dorgan please? I could tell immediately it was a telemarketer. I said: You could, but I do not think she is going to buy anything. She is 4 years old.

They get lists and they just blizzard the country with telephone calls to young and old. It is indiscriminate, and that is why this fervor has grown in this country to do something about giving the American people the right to say they do not want these unsolicited calls. That is what this legislation will do.

I yield 5 minutes to the Senator from Wisconsin, Mr. KOHL.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Yesterday, a Federal judge in Oklahoma voided the Federal Trade Commission's national Do Not Call list that was set to go into effect next week. This action frustrates the wishes of more than 48 million Americans who have signed up for the list.

I am pleased that we will overturn that judge's questionable decision today. Americans have spoken very clearly on this issue and it is our responsibility to respond. Though a judge ruled that the FTC lacked congressional authority to create this national Do Not Call Registry, I strongly disagree and believe that earlier this year Congress explicitly granted the Commission both the authority and the funding to create the registry.

Indeed, absent congressional action, the FTC's Do Not Call initiative would have failed to become a reality this year. I discussed the matter with FTC Chairman Tim Muris at a hearing before the Antitrust Subcommittee last September. He asked me for help in getting congressional authority in

order to raise fees necessary to implement the Do Not Call list. We were able to grant the Commission this authority in the consolidated appropriations resolution which passed in February of this year. We further authorized the FTC's list in the Do Not Call Implementation Act on March 11, 2003.

These actions more than authorized the FTC's rulemaking in my view. That said, this bill will make it crystal clear that Congress endorses, supports, and authorizes the FTC to create a national Do Not Call Registry.

I commend the FTC's hard work to create a national Do Not Call list. Such action was long overdue. The deluge of telemarketing sales calls is the number one consumer complaint in this country. It is a problem that has gotten out of control. The average American receives two to three telemarketing calls per day. Some estimate that the telemarketing industry is able to make 560 calls per second or roughly 24 million calls per day. No wonder people feel like they are under siege in their own home.

Wisconsin recently implemented a similar, statewide Do Not Call list last year. During the first 3-month registration period, more than 2 million residents placed their phone numbers on the list, which is 40 percent of Wisconsin's population. Such a positive response demands further action at the Federal level. That is why we in Congress acted earlier this year to ensure that the FTC's Do Not Call list became a reality. Should we need to do more to overcome a court's objections, we can and shall do it today. Providing consumers the option to stop telemarketing calls is something on which we can all agree.

Given the enormous response of nearly 50 million Americans who have signed up in less than 3 months, the Do Not Call list is clearly needed. Though I am troubled by the court's decision, we can set the record straight and authorize the FTC's action. I urge quick passage of this legislation so that the Do Not Call list can start up as scheduled on October 1, 2003.

Mr. DORGAN. Mr. President, unless the Senator from Nevada has time he wants to consume, I yield 5 minutes to the Senator from Arkansas, Mr. PRYOR.

Mr. PRYOR. Mr. President, I thank my colleagues for their hard work on this issue. It is a very important issue for people all across the country.

Yesterday, I received the news that the Federal court in Oklahoma had decided that we had no authority over the Federal Do Not Call list.

I must tell you that as a United States Senator and as a former attorney general and as a lawyer and just as a citizen, I have all the respect in the world for our Federal courts and our judges and our legal system. I just happen to think they were wrong in this ruling.

At the same time, I am proud to join with my colleagues, both in the Senate and in the House, in efforts to try to

make sure the courts understand that very clearly there is authority for the Federal Trade Commission to establish a National Do Not Call list.

I think it is very clear that the people have spoken on this issue. Back in February of this year, the Congress passed what we thought was the authorization and the funding for Do Not Call. Then, just a few weeks later, President Bush signed it into law.

I know a lot of people have been sharing their stories about telemarketers. I can tell you from firsthand experience, from back in 1998 when I traveled the State of Arkansas extensively, running for attorney general—that is what I did before I was elected to this august body—everywhere I went, it seemed as though every community I went into, every group I talked to, it didn't matter who they were, what they had on their mind, they wanted to talk about telemarketing. They would say: Please, is there anything you can do to have these telemarketers stop calling us?

I said: Yes. We in Arkansas had one of the first—not the very first but one of the first—State do not call systems that we passed in 1999. It had very few exceptions to it. It was something we were proud of. We had to charge \$5 because, where Congress appropriated some dollars for this Federal system, we did not have a State legislative appropriation for our State system. But regardless of that, even though we charged for it, we had thousands upon thousands of Arkansans sign up for our State do not call system.

I tell you, everywhere I go in Arkansas today, people still thank me for the State's do not call system.

One thing we learned during that process was that for most people, telemarketers' calls are an annoyance. People get tired of being bothered during dinnertime, when they are trying to do the homework with the children, when they are trying to put the kids down—whatever the case may be. But for some Americans, a small percentage, telemarketing also has the element of fraud to it.

Many people in this country—mostly seniors but not all, but many people in this country are taken advantage of via the telephone. If you look at the FBI statistics—I haven't seen the most recent round, but I was familiar with them in my 4 years in the attorney general's office—it is a small percentage of fraud, but let me tell you, it is a lot of dollars every single year. It is millions upon millions of dollars that are swindled away from people by use of the telephone.

I want to touch on something that Senator DORGAN said a few moments ago. The telemarketing industry is not evil. They are just doing their job. We understand that. We appreciate that. It is a legitimate industry. It is an industry that has a lot of hard-working people in it. They do a lot of great things. We are not critical of the industry per se.

We know there are some bad actors out there. I think a National Do Not

Call program will help clear up those bad actors, just like we have been able to do on a State-by-State basis, when the States pass these kinds of provisions.

But telemarketing is, for many Americans, an annoyance that they just do not want to have. After all, we are talking about the privacy of people's homes. They should be able to have some control over the types of calls they get.

If they get solicitations, if they don't want those, there should be some mechanism where they can shut those off on the front end. That is what the Federal Do Not Call program will do. That is why I think you have seen so many people in the House and in the Senate come to the respective floors today and argue that we should take this step that we are about to take today.

One last point. In the last few weeks, ever since it was announced with toll-free numbers and Web sites that there would be a Federal Do Not Call program, and how to sign up, et cetera, there have been about 50 million phone numbers added to this list. That is an amazing number. Fifty million Americans can't be wrong.

I yield the remainder of my time to the Senator from North Dakota.

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

Mr. DORGAN. I ask unanimous consent Senator REID of Nevada be added as an original cosponsor.

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

Mr. DORGAN. Might I just in less than a minute say we have not mentioned on the Senate floor, and we should, that the Federal Communications Commission took action that was complementary and action that coordinates with the Federal Trade Commission because action was needed by the Federal Communications Commission with respect to common carriers in areas under their jurisdiction to also create a do not call list, which is expansive.

So while I, with some of my colleagues, have been critical of the Federal Communications Commission on other issues on the Senate floor in recent weeks, I did want to say that the Federal Communications Commission deserves our plaudits and deserves credit for moving very quickly to fill in a gap with respect to a do not call list. All of our discussion is about the Federal Trade Commission, but, again, I think the Federal Trade Commission has contributed substantially, and I compliment them for that, with the leadership of Michael Powell and all the Commissioners.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. I ask unanimous consent Senator Don Nickles be added as a cosponsor.

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

Mr. ENSIGN. Mr. President, I want to spend a couple of minutes talking a little more about this legislation. First of all, this chart that we have in back of us—this graphs the calls and online registering to the Do Not Call center. This started June 27, 2003, which is the far left side of the graph. In blue or purple there is the amount of e-mails that came in, the way the people registered on line.

In the middle is 1-888-382-1222, the telephone number. About 11 million came in there. In the yellow at the bottom which started in July, about 8.5 million people came in. Those were numbers that came in from the States.

There are over 31 million people just since June 27 who have registered online. So we see, for a total of a little over 50 million people, how rapidly people have signed up to say we do not want to receive telemarketing phone calls.

The key is people are saying we don't want to be bothered. Part of freedom, it seems to me, is the freedom from being bothered by people when you are in your own home. Telemarketers contend that, just as if they are sending mail, somebody who is sending mail to somebody's home, they have the right to call somebody in their home.

The American people are saying no; we don't want to receive those phone calls. Mail they can just glance at and throw away. They don't actually have to get on the telephone and speak to somebody. Telemarketers require somebody to pick up the phone. If it is ringing, you have to go because you don't want to miss an important phone call. Maybe your kids are out or something, you don't want to miss an important phone call, and it turns out to be a telemarketer.

Nowadays, because of answering machines, you have a situation where you come home and it says: Hi, this is Fred—or this is Lisa or whoever it is. Please give me a call my number is, and you don't know who it is.

Then you call the number back and you find out it is a telemarketer. So you have just now wasted the time listening to the message, and you have wasted the time making the telephone call.

So we have people stealing valuable time, and time is our most precious commodity. That is why so many people want to sign up for the Do Not Call list.

We want to remind people—and I think this is going to happen a lot—that the telephone number is 1-888-382-1222. That is the number that people will be able to call, and can call today to sign up for when this goes into effect on October 1. They just call up, very simple, add their name, give them their telephone number, add it to the list.

If they want to register on line, it is on the World Wide Web, donotcall.gov. It is all small letters. They go on there, they sign up, put their telephone numbers in, and they are added to the list.

It is simple for people to do. I think the simplicity is why it has been so wildly successful up to this point.

On October 1, when it goes into effect, that is when people will start having some peace of mind at home. At a time where families need more time together, they need more time to talk, I think it is important, especially around dinnertime when there are so many distractions—that is a prime time for telemarketers to call, at dinner time. Families don't have enough time together as it is now. I think to have those distractions around dinnertime is even more disruptive of that important family time.

We need to encourage families to be together. This certainly will result in fewer interruptions around the dinner table. That is why I so strongly support the legislation and why I sponsored this legislation to repeal what the Federal judge did in Oklahoma.

I don't currently see anyone who wishes to speak. I suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENSIGN. 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. ENSIGN. Mr. President, I yield 5 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, I come to the floor today to address the judicial action that would temporarily prevent the National Do Not Call Registry from going into effect.

This privacy-oriented program was recently implemented by the Federal Trade Commission and was supposed to go into effect by October 1. That is just about a week away.

I am proud to join my colleague from Nevada, the ranking member of the Commerce Committee, Senator ENSIGN, in cosponsoring this bill. This bill ratifies the authority of the FTC to establish the National Do Not Call Registry and allows the program to go into effect as drafted by the FTC.

As you may or may not know, Alaska is about a 4-hour time difference from Washington, DC. It seems like just about my dinner hour in Alaska when telemarketers throughout the country get kicked into full gear. I know when my family and I are interrupted at the dinner table by these calls, we feel invaded. I can only imagine that my other friends and neighbors are equally upset. Sometimes we are outraged that our right to privacy is invaded every night when we are sitting down to have dinner with our families. Our lives are busy enough throughout the day with work, school, homework, and just

catching up with one another and preparing for the next day. The last thing in the world we want when we sit down for the quiet time is to be interrupted by the telemarketing company that believes it is their right to disturb us during our few minutes of family time.

Those who seek to stop the implementation of this program assert that they are protected by the right to free speech. I say it is the people who have the right to decide that they do not want to be hounded by telemarketers and those who would interrupt the sanctity of their homes.

The entire purpose of the FTC's National Do Not Call Registry program is to allow Americans to opt out of receiving these annoying phone calls. In my judgment, the court's decision to stop this program tilts the privacy rights out of balance in favor of those telemarketing companies.

In June, the Anchorage Daily News—which is my hometown newspaper—published an editorial supporting the National Do Not Call Registry. They wrote about an Alaskan by the name of Ron Hammett who says he sometimes gets two or three calls a day. Mr. Hammett is a 76-year-old retiree who spent more than 2 hours waiting to get through the registration process once the FTC rule came out. Now he is going to wake up today—or he woke up this morning—to find out that his time and the time of many other Alaskans was wasted.

In just a few short months since the FTC adopted these rules, nearly 50 million people have registered to stop these phone calls.

My State of Alaska has its own do not call program that was created in 1996—it is called the Black Dot Program—which allows telephone subscribers to elect to have a black dot placed next to their name in the Alaska phone books.

A computerized version of the list is made available to the telemarketers, but the problem is they are not required to use it. If they call any telephone customer with a black dot next to his or her name, they are subject to a fine of up to \$5,000, whether the telemarketer uses the list or not.

The problem with Alaska's statute is that there has been only one complaint filed since it was implemented. Most of the telemarketers are located outside the State of Alaska, and the State law doesn't have the teeth that the FTC rule contains to go after these outside groups. Alaskans, quite honestly, are looking forward to the implementation of this FTC rule to give them the peace and the quiet they have sought for so long. We need this FTC rule to protect our citizens and their privacy.

Americans have spoken. They don't like to be disturbed by unwanted and harassing phone calls from people selling products over the phone. Through this legislation we can have that peace and privacy within our own homes.

I am proud to cosponsor this legislation. I hope the body will act quickly

on this measure. I am very pleased to see us moving so rapidly at this point.

Thank you, Mr. President.

Mr. ENSIGN. Mr. President, I ask unanimous consent that Senator PRYOR be added as a cosponsor to S. 1655.

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

The Senator from New York.

Mr. SCHUMER. Mr. President, I believe I have 5 minutes.

Mr. PRYOR. Yes. I yield 5 minutes of my time to the Senator from New York.

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

Mr. SCHUMER. Thank you, Mr. President.

I rise in strong support of this legislation. In my time in the Senate, I have never seen legislation move so quickly through the House and Senate for any issue.

Why? There are three reasons. The first is, of course, the need for this legislation. Fifty million people have signed up on a registry and are expecting it to work October 1. We should fulfill those expectations. None of us, me included, because this has happened to my family when we sit down to dinner all the time, hopping up and down like jackrabbits to answer the phone and then hear someone on the phone trying to sell you something. It drives you crazy. No. 1 is the need.

No. 2 is the fact the court decision was so goofy. The bottom line is, if you read the legislative language, if you read the statutes, in my judgment, there is no question we granted authority. I think the judge went out of his way to try to throw out this list. This may be an example of judges making law rather than interpreting law that we have talked about for so long. On this, we all agree that we do not want the judge making law, particularly making law that so goes against the will of this Congress and the American people.

The bottom line is, our intent was clear from the language of the February 13, 2003, statute called the Do Not Call Implementation Act. I cannot understand how a court would conclude Congress would have directed the FTC to implement the registry if it had not assumed that it had authorized the FTC to make the registry, either in previous law or through the implementation act itself.

If this were not enough to demonstrate Congress's intent on this issue, on February 20, 2003, the Omnibus Appropriations Act was signed into law which authorized the FTC to "implement and enforce the do not call provisions of the Telemarketing Sales Act."

That is as clear as the nose on your face. The court's decision is based on an overly technical view that ignores the clear intent of Congress. So the second reason we are moving so quickly is this law was so poorly interpreted by the judge.

The third is this has a consensus behind it. It is needed. There are a lot of laws that are needed but do not have a consensus. It was thrown out by a court in a strange decision. There is almost a universal consensus that this is the right thing to do.

The telemarketing industry feels badly about this. I understand there are many people who work in this industry. They are going to have to find a way to telemarket—which is a good thing when people want telemarketing—they will have to refine their processes. I would not mind refining this list and allowing people to file, if we could technically, to say I only want to get calls about mortgages or I only want to get calls about garden tools, but not to subject everyone to answer the phone, particularly at dinner time and evening time when the family is home alone and relaxing. This has happened in my family. It does not make any sense.

It is a good law. I wish there were more days in Congress that we do important things in a bipartisan way without tarrying. Let's savor it while we can.

I make one additional point. This approach can also work for another problem facing American consumers very similar to the annoying telemarketing call: e-mail spam. As in telemarketing calls, spam traffic is also growing at a geometric rate. It has become more than an annoyance. It is now a real danger to the future of the e-mail part of the Internet. Fifty percent of all e-mail is spam. What was a simple annoyance last year has become a major concern this year and could cripple one of the greatest inventions of the 20th century next year if nothing is done. We should be doing the same thing against spam.

Admittedly, it is easier to cut off a telemarketer than a spammer, but the same basic concept applies and the telemarketing provisions worked. The anti-e-mail spam provisions are the best we have to deal with spam right now.

This morning the Judiciary Committee passed the Criminal Spam Act of 2003. I was proud to cosponsor that along with my colleagues, Senator HATCH and Senator LEAHY. For the first time that will criminalize some of the spammer's favorite tricks. Those that repeatedly use predatory practices to evade filtering software will face stiff punishment, including the potential of jail time, but we should add the registry to those provisions. I did not do that in committee today, but I hope we can do it on the floor when it comes forward.

A spam registry such as the Do Not Call Registry has broad consumer support. It has bipartisan support. Senator GRAHAM of South Carolina and I are the lead sponsors. The registry provides parents with the unique opportunity to register their children's e-mail addresses to prevent unwanted advertisements that go to our children

for pornography and lots of things the kids should not see.

I commend my colleagues for moving so quickly to defend consumers against unwanted telemarketing calls. Fifty million people cannot be wrong. I hope we will do the same and move with the same speed and urgency when we deal with e-mail spam and create an anti-e-mail spam registry as well.

I yield the floor.

Mr. PRYOR. Mr. President, we all know that fraud can be very much a problem when it comes to telemarketing, but we also know a Do Not Call registry is a very positive consumer tool against fraud. By that I mean if you signed up for the National Do Not Call plan and you still get a call, you know something is up. That ought to be your first tip that something may be amiss with this call. This is another reason I thank my friend from New York for his very wise comments.

I yield the remainder of my time to the Senator from Nevada.

Mr. REID. Mr. President, I appreciate very much the Senator yielding to me. We are in the position of being able to yield back all of our time except 6 minutes for the Senator from Connecticut, Mr. DODD.

The PRESIDING OFFICER. The Senator from Alaska.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Ms. MURKOWSKI. Mr. President, as in executive session, I ask unanimous consent that following the next vote on passage of the Do Not Call legislation, the Senate immediately proceed to executive session and two consecutive votes on the following nominations on today's Executive Calendar: Calendar Nos. 359 and 360.

I further ask unanimous consent that there be 4 minutes equally divided between the two leaders or their designees prior to the second and third vote; further, that following the votes, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

Ms. MURKOWSKI. I yield back all time on our side.

Mr. REID. As soon as Senator DODD arrives, we will use the remainder of our time. We have been told he is on his way—from where, we do not know. 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. DORGAN. 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. DORGAN. Mr. President, I yield the remaining time on our side to Senator DODD from Connecticut.

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut has 6 minutes.

Mr. DODD. Mr. President, I am confident my colleague from North Dakota will probably want to use 5 minutes of that 6 minutes. He probably has not exhausted every thought on the subject matter. I will be happy to yield back some of my time to him.

I wish to add my voice and thanks to the managers of this proposal and to commend the other body for their efforts in acting as quickly as they have on the subject matter. I am familiar enough with it because I introduced legislation about 2 years ago in this area. Connecticut was one of the early States—I know there have been a number of States that have adopted a do not call list—to adopt a do not call list in the year 2000. In December 2001, I introduced a bill very similar to the one Connecticut has produced. Either since then or before then, other States—including Alabama, Alaska, the home of the distinguished Senator MURKOWSKI, Arkansas, Florida, Georgia, Idaho, Kentucky, and others—have also enacted legislation.

This is a very positive outcome. Clearly, what has happened is, as we are talking about the use of the telephone, the telemarketing idea, America has phoned in and said to please give them some relief. We just would like a few minutes of privacy and quiet. It is hard enough to get a family together with all the pressures on them today. When you might just be able to get them to sit down for a meal, that phone starts ringing. What they are saying is: Give me the choice of saying I don't want to be bothered and buy this. They ought to have that right.

The obvious problem with this bill—I say it is a problem, but I am confident we can correct it; it is the difference between the bill I introduced several years ago and the one before us today—is the loophole that allows any prior business relationship to be an exception to the otherwise clear prohibition supported by this legislation.

As was pointed out in one news account in the last day or so, there has been a tremendous surge of telemarketing in the last number of weeks by businesses trying to establish a "prior business relationship" with a customer base in this country which would then allow them to become part of the exception even under this legislation.

The point I am making is, even though we will pass this bill—and I am very glad we are doing so; again, I commend the authors for moving as rapidly as they are on this legislation—we have not heard the end of this issue. There are going to be people coming back, once they discover that any prior business relationship pretty much will allow the exception to occur, which means you will have that phone continue to ring. And I presume they are going to be asking us to come back and even close the loophole down further.

Much as we have in Connecticut and as other States are doing this. As I've

said, Connecticut has enacted legislation and the bill I introduced mirrors my State's efforts in that regard.

Justice Brandeis said it so eloquently years and years ago, as he always could, this wonderful, brilliant mind of a Supreme Court Justice. He always had the ability of taking a difficult concept and simplifying it in terms that were so understandable by everyone. He said: Privacy is nothing more than the simple right to be left alone. That is what we are really talking about. He couldn't have imagined, when he said that, the technology that would make it possible for telemarketing to occur. But the right to be left alone is really at the heart of what we are talking about—the right to say to someone: You don't have the right to call me anytime you want. I should have some ability to control that intrusive invasion in the privacy of my family's life.

I am glad the Federal Trade Commission acted. It certainly made a difference. But clearly we need to respond to the court's decision in this matter, and we are doing that by adopting this legislation.

I am pleased to add my name as a cosponsor. I implore my colleagues in their respective committees to take a look at the bill I have introduced. I know others have introduced legislation, but take a look at this bill. Let's monitor what happens over the coming months to see if we are achieving the desired results that this legislation is designed to achieve. If not, we may have to go a bit further along the lines I have suggested. I am sure others have as well.

With that, I am pleased to be a part of this effort and congratulate the authors of it.

I yield back the remainder of the time.

Ms. SNOWE. Mr. President, yesterday, the United States District Court for the Western District of Oklahoma declared the Federal Trade Commission's national Do-Not-Call registry invalid after concluding that the Commission lacked the authority to implement the rule. Today, I stand here with my colleagues to set the record straight—H.R. 3161, which the House passed earlier this morning by a vote of 412-8, provides congressional authorization for the creation and implementation of the Do-Not-Call registry.

The Do-Not-Call registry provides a very important service—preventing undue intrusions from marketers. Citizens should have the right not to be disturbed by unsolicited calls in their own homes and the Do-Not-Call registry empowers citizens to stop these calls.

Support for the registry is unprecedented. To date, after only four months, the registry contains over 50 million phone numbers. In Maine alone, over 241,000 phone numbers have been registered and this number is growing everyday. Ultimately, the Federal Trade Commission expects 60 per-

cent of the Nation's households to sign onto the registry potentially blocking eighty percent of telemarketing calls.

Specifically, the Federal registry will supplement State Do-Not-Call lists. It works by requiring telemarketers to search the registry every 3 months and synchronize their call lists with the phone numbers on the registry. If you don't want to be disturbed by marketing calls, you simply register online with the FTC or call a toll free number and request that your telephone number be added to the registry. More importantly, this law has enforcement power—a telemarketer who disregards the national Do-Not-Call registry could potentially be fined up to \$11,000 for each call.

I urge my colleagues to support this measure.

Mr. BURNS. Mr. President, I rise today to express my disappointment at the Oklahoma Federal district court decision preventing the Federal Trade Commission from going forward on implementing the Do Not Call list.

The Do Not Call list has proven to be one of the most popular and necessary consumer initiatives in history. From the day consumers have been able to sign up for the Do Not Call list on June 26, over 50 million Americans have registered, including 138,841 in Montana. So urgent was the public's need to stop intrusive telemarketers that in the first 14 hours of enrollment on June 26, over 650,000 citizens added their numbers to the list.

Yesterday's ill-considered decision by the Federal district court in Oklahoma would prevent the Do Not Call list from going into effect next Wednesday. The decision is dead wrong in its core assumption that the FTC acted without statutory authority in creating and administering the Do Not Call list. In fact, Congress clearly granted the FTC the authority to set up the Do Not Call list by passing the Do Not Call Implementation Act in February of this year. This act gave the agency authority to collect fees from telemarketers to establish and enforce the list. The Omnibus Appropriations Act in February also authorized the FTC to enforce the do not call provisions.

Rather than waiting for an appeals court to overturn this wrongheaded decision, we must act quickly so that Americans do not have to suffer the needless and unwarranted intrusions into their lives by aggressive telemarketing. Unwanted telemarketing calls have reached unacceptable levels in our country. By one estimate, telemarketers attempt almost 105 million calls daily; implementation of the Do Not Call list would reduce these calls by almost 80 percent.

Americans are rightly sick and tired of these endless interruptions in their private lives, which often take place during the dinner hour, or at times when parents wish to spend uninterrupted quality time with their children. By responding rapidly to overturn this reckless and sloppy decision

by the Oklahoma district court, Congress sends a clear message that this destructive hyper-marketing will no longer be tolerated. I urge my colleagues to support this legislation that would leave no doubt in anyone's mind as to the FTC's authority to maintain and implement the Do Not Call Registry.

Mr. LAUTENBERG. Mr. President, I was disappointed to learn that early this week a Federal district judge issued a ruling to delay the October 1 implementation of the national Do Not Call Registry.

Sign-up for the national Do Not Call list began June 27. To date, the registry has grown to 50 million Americans who submitted their telephone numbers and unequivocally said they do not want to receive business solicitation calls.

There has been near unanimity that the Oklahoma Federal judge simply got it wrong when he found that Congress did not give the Federal Trade Commission the requisite statutory authority to create and implement a nationwide Do Not Call Registry.

To clarify the matter once and for all, the pending bill explicitly authorizes the Federal Trade Commission to compile and implement a Do Not Call Registry, pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act.

The bill also ratifies the relevant provisions of the Telemarketing Sales Rules promulgated by the Commission early this year.

A nationwide Do Not Call Registry is particularly important to the citizens of New Jersey. Although 27 States already have local do not call lists, some States, such as my home State of New Jersey, have not yet enacted do not call legislation.

A New Jersey State law is expected to go into effect next spring, but the residents of New Jersey and the other 23 States deserve the protection that the FTC rule provides.

The FTC's rules are reasonable. They require telemarketers to check the Do Not Call list every 3 months to see who does not want to be called. Those who call listed people face fines up to \$11,000 for a violation. Consumers would be allowed to file complaints to an automated phone or online system.

There are about 166 million residential phone numbers in the United States and an additional 150 million cell-phone numbers. The FTC expects 60 percent of the Nation's households to sign onto the registry.

I urge my colleagues to support this bill which ratifies the FTC's Do Not Call Registry, permitting implementation of the registry on October 1.

Mr. FEINGOLD. Mr. President, I am proud to be an original cosponsor of this important measure, which will likely pass the House and Senate by an overwhelming margin and in record speed. This bill makes it perfectly

clear that the Federal Trade Commission, FTC, has the authority to implement and enforce the Do Not Call program that until yesterday's court ruling was scheduled to go into effect on October 1. I am usually not in favor of quick legislative reaction to lower court decisions. We have an appellate process to determine if a lower court is mistaken, as this one surely was, and that process serves us well. However, this case is different, and I am pleased that this Congress is prepared to react so quickly and so decisively.

There is no doubt in my mind that the FTC has the authority to create the Do Not Call program. It is true that the Telephone Consumer Protection Act, TCPA, passed in 1991, allowed the Federal Communications Commission, FCC, not the FTC, to create a national database of telephone numbers from Americans who wanted to avoid telephone solicitation. But in 1995, in the Telemarketing and Consumer Fraud and Abuse Prevention Act, TCFAPA, Congress also directed the FTC to establish rules on telemarketing activities. The FCC and the FTC have jurisdiction over different telemarketers, so it makes sense that there is some overlapping authority.

The FTC initially promulgated the Telemarketing Sales Rule, TSR, which contained a variety of restrictions on telemarketing, such as prohibiting such calls between the hours of 9 pm and 8 am and requiring telemarketers to cease making calls to consumers who specifically request not to be contacted again. Complaints about telemarketing continued and in 2000, the FTC began a proceeding to consider revisions to the TSR. That led to the adoption of the national Do Not Call Registry. The FTC announced the final rule on December 18, 2002.

Just a few months ago, in March 2003, Congress passed and the President signed Do Not Call Implementation Act, DNCA. That statute authorized the FTC to collect fees sufficient to create and administer the database. The Consolidated Appropriations Act passed a month earlier also authorized the FTC to collect fees for the enforcement and implementation of the program, estimated at \$18.1 million for fiscal year 2003. With this history, it is as clear as day that Congress has at least ratified the FTC's view of its statutory authority to create the Do Not Call list. Simply put, the district court decision yesterday was wrong.

Mr. President, the public response and support for the Do Not Call program have been tremendous. Americans have voluntarily registered over 50 million phone numbers on the database. They have waited a long time for this measure to finally be implemented. Months ago, they began adding their phone numbers to the list with the expectation that on October 1, finally, the calls would stop. That is why we must act decisively to reverse the court decision. It adversely affects millions of people. It thwarts a good

program that has received overwhelming public support and participation. And it ignores clear evidence of congressional authorization. Even the few months that it would take to reverse the decision, and I am convinced it ultimately would be reversed, would be too long. The time has come for the national Do Not Call program to go into effect, and for Americans to be able to eat dinner or watch TV with their families free of interruptions by telephone solicitors. I am proud to support this bill.

Mr. LEAHY. Mr. President, I support the FTC's authority to establish a Do Not Call Registry, I find myself in good and widespread company. Many in the Senate, like many of my constituents in Vermont, share the frustration that I have with the recent district court decision striking down the Do Not Call Registry established at the Federal Trade Commission. Apparently we in Congress need to make things a little more clear, and this is what we are doing with this legislation: We authorize the FTC to set up and operate such a registry.

Vermont has been a leader in protecting the privacy and peace of its households from unwanted telemarketing calls. Federal law currently requires individual companies to remove consumers from their calling lists if the consumers ask them to do so. There is also a national "telephone preference service" registry to which consumers can submit their names and which telemarketers can consult to avoid calling those who do not wish to hear from them—but industry compliance is entirely voluntary. Two years ago, Vermont enacted a law which gives consumers a private right of action against companies that continue to call after being requested to cease. Vermonters can also sue if they are called by a telemarketer after they have put their name on the national "telephone preference service" registry. The FTC has expressed no intention of attempting to pre-empt such state systems, and I hope that federal agencies continue to respect the efforts and institutions established at the state level. Federal agencies should not be in the business of undercutting state efforts that are pursuing these same goals.

Those goals are simple and laudable. People should be able to enjoy the peace and quiet of their own homes, undisturbed by unsolicited sales calls. Of course, some consumers welcome such calls, and they certainly should be able to receive them. But for the thousands of Vermonters, and the millions of other Americans, who do not want to receive such calls, the FTC's Do Not Call Registry is a long-awaited relief. I understand that more than 50 million households have signed up, many of them, on-line, to be included in the Do Not Call Registry, which is set to begin its operations next week. This is an astonishing number of people, and this overwhelming response to the FTC's

announcement is the best possible affirmation of the need for and of the good sense of the plan.

The Do Not Call Registry should also appeal to enlightened telemarketers. They do not, of course, want to waste time and effort talking to people who do not wish to hear from them, for whatever reason. Once the registry is operational—and I hope that this bill will meet with speedy approval and make that so—telemarketers will be able to focus their resources, their time and personnel, on the households for which they provide a useful service. Consumers will be better served, the companies seeking to make sales will be better off, and telemarketers will be more effective for both their corporate clients and the potential customers they contact.

So I urge all of my colleagues to vote in favor of this bill, H.R. 3161. The national Do Not Call Registry is a sensible way to protect the privacy of the American people. It deserves our support, and it deserves this effort to allow the registry to begin serving the public.

The PRESIDING OFFICER. All time has expired.

The question is on the third reading of the bill.

The bill (H.R. 3161) was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

Ms. MURKOWSKI. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from New Hampshire (Mr. GREGG), is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "aye".

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

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 365 Leg.]

YEAS—95

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

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

## NOT VOTING—5

Edwards	Gregg	Lieberman
Graham (FL)	Kerry	

The bill (H.R. 3161) was passed.

## EXECUTIVE SESSION

#### NOMINATION OF DANA MAKOTO SABRAW, OF CALIFORNIA, TO BE A UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider calendar No. 359, which the clerk will report.

The assistant legislative clerk read the nomination of Dana Makoto Sabraw, of California, to be a United States District Judge for the Southern District of California.

Under the previous order, there will now be a period of 4 minutes for debate equally divided between the leaders or their designees.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I ask unanimous consent the next two votes be limited to 10 minutes each.

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

The Senator from California.

Mrs. BOXER. Mr. President, I am pleased to offer my support for the nominee for the Southern District Court of California, Dana Makoto Sabraw.

I want to emphasize the excellent process that we have in place to select District Court nominees in California. In a truly bipartisan fashion, the White House Counsel, Senator FEINSTEIN and I worked together to create four judicial advisory committees for the State of California, one in each Federal judicial district in the State.

Each committee has a membership of six individuals: three appointed by the White House, and three appointed jointly by Senator FEINSTEIN and me. Each member's vote counts equally, and a majority is necessary for recommendation of a candidate.

The nominee before the Senate this evening was reviewed by the Southern District Committee and strongly recommended. I continue to support this excellent bipartisan process and the high quality nominees it has produced.

Judge Sabraw has roots in my area of California, Marin County. From there,

he has embarked on a very impressive legal career and served the people of my State with distinction. He currently is a judge on the San Diego Superior Court.

He is a graduate of San Diego State University and the McGeorge School of Law at the University of the Pacific.

Beyond his service on the bench, he is very involved with the community, receiving commendation from the Pan Asian Lawyers of San Diego for his community outreach efforts.

The Southern District will benefit greatly from the exemplary services of Judge Sabraw, and I fully support confirmation of this nominee.

The PRESIDING OFFICER. Who yields time?

Mr. DORGAN. Mr. President, we yield back the remainder of our time.

Mr. SANTORUM. We yield back our time.

Mr. HATCH. Mr. President, I rise today to voice my support for the nomination of Dana Makoto Sabraw for the United States District Court for the Southern District of California.

Judge Sabraw has nearly two decades of experience as a litigator and as a jurist. He began his legal career as an associate with the firm of Postel & Parma in 1985, then joined the nationally recognized firm of Baker & McKenzie in 1989.

In 1995, he was appointed to the North County Municipal Court of San Diego County, where he was named Presiding Judge in 1998. That same year, he was appointed to the San Diego Superior Court, and in 2000 was named Criminal Presiding Judge.

Judge Sabraw is a proven scholar, a disciplined judge, and a noted humanitarian. He will make an outstanding addition to the Federal bench of the Southern District of California. I urge my colleagues to join me in supporting his nomination.

Mr. LEAHY. Mr. President, I am pleased that we are now turning to the nomination of Dana Makoto Sabraw for the Southern District of California. This well-qualified nominee is the product of the exemplary bipartisan commission that Senators FEINSTEIN and BOXER have worked so hard to maintain. It is a testament to their diligence that we have such stellar nominees heading to California's Federal courts.

Judge Sabraw has served for 8 years on the State trial bench. Prior to his appointment to the bench, Judge Sabraw was a partner and associate at Baker & McKenzie in San Diego. In addition to Judge Sabraw's public service as a judge, he has also been active in his community.

As an attorney, he received Certificates of Appreciation from the Pan Asian Lawyers of San Diego for his service to the association and its community outreach programs and recognition New Entra Casa for his pro bono work. Also as a private attorney, Mr. Sabraw provided pro bono services to the Legal Aid Society of Santa Bar-

bara Project Outreach for several years. He also founded Positive Impact Program in 1998, a program in which the court, its staff, the Bar Association of North San Diego County, the local DAs office and others partnered with the local school districts to educate fifth graders about the justice system. The program involved a class curriculum, school assembly, mock trial, tour of the courthouse, and essay contest and reached approximately 6,000 students in lower socioeconomic neighborhoods.

The Southern District of California is the busiest Federal district in the Nation. In light of their demanding caseload, the Judiciary Committee expedited consideration of nominations to the Southern District. The Judiciary Committee held hearings for Dana Makoto Sabraw and Judge Burns, also nominated to this Southern District, just before the August recess and they were unanimously reported by the Judiciary Committee at our first meeting on September 4. That was 3 weeks ago. It is unfortunate that Judge Sabraw has been pending on the floor all month but I am pleased that we are voting on him today. Two more nominees to two additional vacancies recently created for the Southern District of California were voted out of the Judiciary Committee today.

Senator FEINSTEIN also deserves much credit for working so hard to create these additional judgeships in the Department of Justice authorization we passed in 2002. These judgeships are among those we created for border districts that have a massive caseload and that needed more Federal judges. We did what the Republican majority refused to do in the years 1995 through 2000 when there was a Democratic President, namely, create additional needed judgeships for the Southern District of California. We did so under Senate Democratic leadership with a Republican President. They have been available to be filled since July 15. The expedited path of Judge Sabraw's nomination demonstrates the fact that the Senate can act expeditiously when we receive well-qualified, consensus nominations on courts that need additional judges. I regret that the nomination has languished on the Senate calendar for most of the month for no reason. This nomination will undoubtedly be confirmed without a single dissenting vote in the Senate. Democratic Senators have been ready and willing to vote at any time. The Republican leadership will have to explain to the Chief Judge in the Southern District of California and the people of southern California what took so long.

I congratulate the California Senators on their outstanding work and this nominee and his family on this confirmation.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Dana Makoto Sabraw, of California, to be a United States District Judge for the Southern District of California?