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Senate

The Senate met at 9:31 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Sovereign God, You have shown us that Your name and Your commands are supreme. You answer when we call and strengthen us for life's trials. The leaders of our world depend upon Your providence. Our Senators reach for Your wisdom. You sustain us and Your promises are certain.

Lord, complete the work You have started in us. Each day, let more people see a clearer image of You in us. Keep us from deviating from the path of strict integrity, and help us to learn to count our many blessings. Free us from the chains of debilitating habits, as we rejoice in Your unfailing love.

And, Lord, place Your armor upon our military men and women and never leave or forsake them.

We pray this in Your holy name. Amen.

PLEDGE OF ALLEGIANCE

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

SCHEDULE

Mr. FRIST. Mr. President, today the Senate will begin 60 minutes of morning business. Following that 60-minute period, the Senate will proceed to executive session for the consideration of Executive Calendar No. 310, the nomination of William Pryor to be a United States Circuit Judge for the Eleventh Circuit.

At the conclusion of that debate time, the Senate will proceed to a vote on the motion to invoke cloture on that nomination. I do hope cloture will be invoked and that this qualified nomination could then receive an up-or-down vote of the Senate.

If cloture is not invoked, the Senate will resume consideration of the Agriculture appropriations bill. We made good progress on that bill yesterday, and I hope we can complete that appropriations bill at an early hour today. We will have rollcall votes throughout the day.

A number of Members have inquired about scheduling. I made it clear that it will be important, for us to achieve a departure day of November 21, for us to work 5 days a week, and we will be voting on Mondays and Fridays as we go forward.

It is likely that once we complete Agriculture, we will go to the Internet tax bill, and then I hope we can complete that in a reasonable period of time and we will follow that with the appropriations bills and will continue to address the VA–HUD bill at some point and Commerce-Justice-State. I am working very hard to try to get these appropriations brought across the floor, debated, and completed in a reasonable time.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the Senator from Texas or her designee.

Who yields time?

NOTICE

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BRUCE R. JAMES, *Public Printer.*

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

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MEDICARE CONFERENCE

Mr. REED. Mr. President, I would like to take a moment to express concern about the current discussion on Medicare, particularly the prescription drug bill. The first point I would make is that the process has been, I think, subverted because all the conferees are not invited to participate in conference meetings. Many of my colleagues in the Democratic caucus who have voted for the bill and are named as conferees have not been given access to all of the deliberations and discussions.

I know Senator BAUCUS and Senator BREAUX have been there and are doing an admirable job representing the viewpoints of the Democratic caucus, but this is not the way procedurally to conduct deliberations on such important measures as Medicare reform and prescription drug benefit for seniors. But those are procedural issues.

The substance also troubles me, particularly the discussion of cost containment, premium support, income relating—all of these are euphemisms but have extremely important consequences in the lives of seniors and, indeed, in the lives of everybody throughout the country.

The conference is examining these proposals and exploring ideas that are not just about prescription drug benefits for seniors. In fact, the conference discussions have taken on a rather controversial cast because we are talking seriously now about Medicare reform. But we are not just talking about Medicare reform; I would argue we are talking about proposals that would perhaps lead to the end of the Medicare program, eventually, as we know it.

Back in 1995, Newt Gingrich said that his approach to Medicare was to let it ''wither on the vine,'' to undercut it, undermine it, underfund it, so that eventually it would become a remnant, not a vital part of the American fabric. That, I fear, might be taking place right now in its first steps.

Of course, as we deliberate these issues with respect to Medicare drug benefits, one major issue that concerns me is that we have allocated $400 billion. That seems like a great deal of money but, frankly, it is not. When we consider, over the 10-year period we are talking about, that seniors will spend $1.8 trillion on pharmaceuticals, $400 billion is not a lot of money. Indeed, compared to what we are spending on some efforts overseas—Iraq being the most prominent at the moment—that $400 billion over 10 years is not an astounding total.

In fact, I would argue it is insufficient to give the benefits that most seniors expect to receive and believe we are discussing at the moment.

One of the particular issues that I am disturbed about is first this notion of cost containment. My impression of cost containment is that we would somehow be able to contain the cost of prescription drugs we are buying and seniors are buying, but that is not the view of the conferees about cost containment.

Cost containment is really Medicare expenditure containment. I think that is a fallacy. If we can't control the cost of pharmaceuticals through market forces, then we will never catch up with the explosion of costs. But then to arbitrarily say we are going to cap what we will put into Medicare, to me, is a fundamentally erroneous approach to this very difficult problem. In fact, the cost containment issue the conference is discussing is not directed precisely at the pharmaceutical program. It is going to be applied across the board to all Medicare expenditures.

Ostensibly, what the conferees are talking about now is capping the general fund contribution to Medicare. There are two sources of financing for the Medicare program. First is the Medicare trust fund, then second is general revenues. The conference position today, I am told, is if our general expenditures exceed 45 percent in any two consecutive years, we arbitrarily stop funding Medicare—not just the pharmaceutical portion, but the whole program. To me, that is the wrong approach—setting arbitrary limits not based upon the health conditions of our seniors but based upon our fiscal situation here in Washington.

Indeed, we all understand that Medicare is an extremely popular program. A Kaiser Family Foundation/Harvard School of Public Health survey found that 80 percent of seniors have a favorable impression of Medicare, and 62 percent believe the program is well run. Seventy-two percent of people age 65 and over thought seniors should be able to continue to get their health insurance coverage through Medicare over private plans.

It is an extremely popular program. It is efficiently run with very low overhead. And it is in danger of being scuttled because we are attempting to apply arbitrary limits to our contributions to Medicare.

There is another aspect that concerns me very much in this whole debate; that is, this notion of premium support. These euphemisms sound innocuous but the consequences could be quite severe to the long-term health and viability of Medicare.

Premium support is the notion that we are going to entice private health insurers to go in and take the place of the Medicare Program. If the market would allow for that, that is great. We want competition and choice. It provides for more efficient allocation of resources. But what the conferees are proposing is a $12 billion slush fund that will favor private companies over the government-run system. I think the only reason we have to do that is, in reality when you look at the Medicare system today, it is in many cases more efficient than private health insurers.

The way these private health insurers are going to be making their money is not to serve every senior, but to be very careful and very selective—to cherry-pick the senior population—and get the healthiest seniors into their plans; and in addition to that, get subsidies from the Federal Government to their bottom line by simply saying we can't make enough money to participate in this market—not that we can't serve enough seniors.

I think that is wrong. That will severely and significantly undercut the Medicare Program.

It has been estimated that a result of premium support will be that rates for seniors across the country will no longer be uniform. They will be variable based upon the region and based upon how many private plans are participating. They could vary from one area to another. Rhode Island and New England is a small area. We could have one rate in East Providence, RI, and 10 minutes away in Massachusetts the rates could be entirely different.

Today, seniors count on predictability, reliability and the certainty that the rates are stable and uniform. We could lose that. That is a major concern of mine.

There is another concern also; that is, the fact that we are on the verge of accepting this notion of means testing. The euphemism of the moment is income relating Medicare Part B premiums. They have laid out a situation where seniors who are making over $80,000 a year would gradually see their Federal subsidy reduced from a current level of 75 percent. Certainly at that level of income there is an argument to be made that seniors can afford to pay more than the majority of seniors whose incomes are much less than $80,000, and are probably closer to $15,000 to $20,000 a year.

We are fracturing the program by means-testing premiums. We are giving incentives for wealthy seniors to ask, Why should I participate at all? This is not a program that helps me. I can get my health insurance coverage in the private market, and I will do that.

The fragmentation—both in terms of geography because of premium support, and in terms of income because of this notion of means testing—will begin that slow, I am afraid, and irreversible process of withering Medicare. It makes no sense.

One of the reasons we enacted the Medicare Program in 1965 was because private health insurance companies would only insure the wealthiest and healthiest seniors, leaving the vast majority of seniors with nothing. The burden of those seniors was the burden of every family in this country.

As I grew up in the 1950s and the 1960s, it was not uncommon to have a grandmother or a grandfather living in your home because they simply could not support their health care needs. They could not support themselves. Medicare changed that more than any other program in this country.

It is widely popular, and based on the simple notion that, first, we are going to provide the benefit equally to all of our seniors. We are not going to fragment it by region or by income. We

will provide a system of care. We essentially are going to do what insurance should do—take the broadest possible risk pool of all seniors—healthy seniors, unhealthy seniors, the frail and elderly seniors, and the young and vigorous seniors. They are all going to participate. That is the efficient, fair, and sensible way to do it.

We are on the verge, I fear, of ruining that system—not just for the moment but for all time.

I hope in the next several days we can resolve these issues favorably. But I am concerned if we proceed on this course we will not really be doing anything for seniors, the prescription drug benefit might be illusory, and the long-term effect will be severe and perhaps cause fatal damage to Medicare.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Massachusetts.

NOMINATION OF WILLIAM H. PRYOR

Mr. KENNEDY. I urge my colleagues to vote against cloture on the nomination of William Pryor. Since President Bush came into office, the Senate has confirmed 168 of his nominees and has decided so far not to proceed with only 4. That is a 97.7 percent success rate for the President. It is preposterous to say that Senate Democrats are obstructing the nomination process.

The few nominees who have not received our support are too extreme for lifetime judicial appointments, and Mr. Pryor's nomination illustrates the problem. His views are at the extreme of legal thinking, and he does not deserve appointment to an appellate Federal court that decides so many cases involving basic legal rights and constitutional protections. The people of the Eleventh Circuit deserve a nominee who will follow the rule of law and not use the Federal bench to advance his own extreme ideology.

The issue is not that Mr. Pryor is conservative. We expect a conservative President from a conservative party to select conservative nominees. But Mr. Pryor has spent his career using the law to further an ideological agenda that is clearly at odds with much of the Supreme Court's most important rulings over the last four decades, especially in cases that have made our country a fairer and more inclusive nation for all Americans.

Mr. Pryor's agenda is clear. He is an aggressive supporter of rolling back the power of Congress to remedy violations of civil rights and individual rights. He has urged the repeal of Section 5 of the Voting Rights Act which helps to ensure that no one is denied the right to vote because of their race. He vigorously opposes the constitutional right to privacy and a woman's right to choose. He is an aggressive advocate for the death penalty, even for persons with mental retardation. He dismisses—with contempt—claims of racial bias in the application of the death penalty. He is a strong opponent of gay rights.

Somehow, despite the intensity with which Mr. Pryor holds thee views and the many years he has devoted to dismantling these legal rights, we are expected to believe that he will suddenly change course and ''follow the law'' of he is confirmed to the Eleventh Circuit. Repeating that mantra again and again in the face of his extreme record does not make it credible. Actions speak louder than words, and I will cast my vote based on what Mr. Pryor does, not just on what he says.

Mr. Pryor's supporters say that his views have gained acceptance by the courts, and that his views are well within the legal mainstream. But actions paint a different picture. He has consistently tried to narrow individual rights, far beyond what any court in this land has been willing to hold.

Just this past term, the Supreme Court rejected Mr. Pryor's argument that it was constitutional for Alabama prison guards to handcuff prisoners to ''hitching posts'' for hours in the summer heat. The court also rejected his argument that States could not be sued for money damages when they violate the Family and Medical Leave Act.

Mr. Pryor's position would have left workers who are fired in violation of the Family and Medical Leave Act without a remedy.

The court rejected his argument that states should be able to criminalize private sexual conduct between consenting adults.

The court rejected his far-reaching argument that counties should have the same immunity from lawsuits that States have.

The court rejected his argument that the right to counsel does not apply to defendants with suspended sentences of imprisonment.

The court rejected Mr. Pryor's view on what constitutes cruel and unusual punishment in the context of the death penalty. The court held, contrary to Mr. Pryor's argument, that subjecting mentally retarded persons to the death penalty violated the Constitution.

Just this spring, even the Eleventh Circuit, a court already dominated by conservative Republican appointees, rejected Mr. Pryor's attempt to evade the Supreme Court's decision. Mr. Pryor tried to prevent a prisoner with an IQ of 65 from raising a claim that he should not be executed, when even the prosecution agreed he was mentally retarded.

This is not a nominee even close to the legal mainstream. His actions in seeking to evade the Supreme Court's decision speak volumes about whether he will obey its decisions if confirmed to the Eleventh Circuit.

Mr. Pryor and his supporters keep saying that he is ''following the law,'' but repeatedly he attempts to make the law, using the Attorney General's office in his state to advance his own personal ideological platform.

If, as his supporters urge, we look to Mr. Pryor's words in considering his nomination, we must review more than just his words before the committee at his confirmation hearing. We have a duty to consider what Mr. Pryor has said about the Supreme Court and the rule of law in other context as well.

Mr. Pryor ridiculed the Supreme Court of the United States for granting a temporary stay of execution in a capital punishment case. Alabama is one of only two States in the Nation that uses the electric chair as its only method of execution. The Supreme Court had agreed to hear the case to decide whether use of the electric chair was cruel and unusual punishment. Mr. Pryor, however, said the court should have refused to consider this constitutional issue. He said the issue ''should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court.'' Those are his words, and they don't reflect the thoughtfulness that we want and expect in our judges. If Mr. Pryor does not have respect for the Supreme Court, how can we possibly have any confidence that he will respect that court's precedents if he is confirmed to the Court of Appeals?

Finally, Mr. Pryor's nomination does not even belong on the Senate floor at this time. His nomination was rushed through the Judiciary Committee in clear violation of our committee rules on ending debate.

An investigation into Mr. Pryor's controversial role in connection with the Republican Attorney Generals Association was interfered with and cut short by the committee majority and has never been completed. Most of our committee members agreed that the investigation raised serious questions which deserved answers in the committee, and they deserve answers now, before the Senate votes. The Senate is entitled to wonder what the nominee's supporters have to fear from the answers to these questions.

The fundamental question is why—when there are so many qualified attorneys in Alabama—the President chose such a divisive nominee? Why choose a person whose record casts so much doubt as to whether he will follow the rule of law? Why choose a person who can muster only a rating of partially unqualified from the American Bar Association? Why support a nominee who is unwilling to subject key facts in his record to the light of day?

We count on Federal judges to be open-minded and fair and to have the highest integrity. We count on them to follow the law.

Mr. Pryor has a first amendment right to pursue his agenda as a lawyer or an advocate, but he does not have the open-mindedness and fairness essential to be a Federal judge. I urge my colleagues to vote against ending debate on this nomination.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

JUDICIAL NOMINATIONS

Mr. ENSIGN. Madam President, this morning I rise to talk about what has been happening in this Chamber with regard to judicial nominations, and especially those nominations that have been put forward by the President with respect to the circuit courts.

The court of appeals is that branch in our Federal court system which is directly under the Supreme Court, an incredibly important place where a lot of judicial precedent is set.

We have had several judges being filibustered this year by the other side; just recently, Charles Pickering, a wonderful man with incredible qualifications, incredible political courage. With all the debate that happened about him and his qualifications—people can check the CONGRESSIONAL RECORD for it—but the bottom line is this man deserves an up-or-down vote. If he is granted an up-or-down vote, he would be approved because he was able to get 54 votes against 43 negative votes. Unfortunately, there is a minority in the Senate choosing to filibuster. That 54 votes should be enough to put him on the circuit court where he deserves to be.

I have no objection to people voting against judges. That is their right to do under the Constitution. But the Constitution specifically spells out only five instances where a supermajority is required in the Senate for approval, and moving to the consideration or the approval of the President's judicial nominees is not on that list.

Why is this debate so important to have on whether we should allow the Senate to filibuster judges or whether we should just have straight up-or-down votes on judges after a good amount of debate? If one side, meaning one political party, chooses to filibuster judges, the other side is going to be forced to filibuster. In other words, a precedent is set.

Someday the Democrats will get back in power in the White House and will be sending judges up to this body, and if they continue to filibuster the President's nominees, a precedent will be set, and our side will have no choice but to filibuster their judges. The reason is very simple: If they filibuster more conservative type judges, and we do not filibuster theirs, our court system will just go further and further to the left.

Politics and the judiciary—we are supposed to try to separate those as much as possible, even though it is impossible to completely separate them.

So, Madam President, I appeal to our colleagues on the other side that this obstructionism purely for political gain is a dangerous precedent to set in the Senate. We need to become statesmen in this body and do what is right for our Republic. This is really about the future of our Republic. Judges and the third branch of our Government have to have somewhat independence from the legislative branch and from the executive branch. It is critical, I believe, that we have a fair process going forward.

The system really is broken at this point. Another problem we are going to face in the future by staging this political battle on judges is that good people are not going to want to go through the nomination. Miguel Estrada is the perfect example. He was an extraordinary nominee who would have made an extraordinary judge and the ugliness this process has become resulted in him asking the President to withdraw his nomination. The toll of was too great on him and on his family. He could not take it anymore.

If we continue to drag more nominees through this political mess, it is going to be harder to get good people, the kind of people we want serving on the bench.

I make this appeal to my colleagues: This nonsense going on with filibustering circuit court judges needs to stop. I respect the fact that Senators want complete debate. We should have full debate on judges. But once they have their full debate, their complete investigation, questions are asked and answered, then we need an up-or-down vote, straight up-or-down vote. There is no place in the judicial nomination process for filibustering. If we do not correct this problem, and fix this broken process the future our judicial system will be hurt and it will be a great disservice to all Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

HEALTHY FORESTS LEGISLATION

Mr. CRAPO. Madam President, I rise to speak about the Healthy Forests legislation which we recently passed on the Senate floor. Since we passed it—I remind everyone it was a strong bipartisan effort which resulted in 80 votes out of 100 votes in the Senate supporting this effort—we have now run into further procedural snags. As I was sitting here listening to the Senator from Nevada talk about the snag we have run into with regard to trying to get votes on judges, I was reminded of the similarity.

It took us a long time to get this bill to the Senate floor, the Healthy Forests legislation. The process we went through was one in which I believe we showed America how we should be working together in a bipartisan fashion to cross party lines, cross regional lines, and build broad support for meaningful legislation to solve a serious problem.

We did that. We had a bipartisan coalition that came forward with a strong bill. I will talk a little bit about what the bill would mean to America. We passed it in the Senate with 80 votes. Yet today we are stalled in being able to move forward and appoint conferees to get together with the House and work out the differences between the two bills and come forward with strong legislation.

Unfortunately, this procedural maneuver of stopping us from being able to move forward into a conference with the House is simply another mechanism similar to a filibuster. In fact, it might ultimately be backed up by a filibuster to stop us from procedurally being able to move forward on important legislation. In effect, it allows anybody who wants to to vote for the bill, knowing it is going to be stalled and that we will not allow it to then go to conference and keep moving forward.

The Healthy Forests legislation is critically needed. I just received the most recent analysis of the statistics. When we debated the bill, we talked a lot about the damage going on in California with the wildfires then burning there. Just to remind everybody about what those fires meant, a study I have in front of me evaluates just 4 of the 13 fires that were burning in California last week as we considered the legislation.

The estimated cost to date—which is not finished—of fighting just those 4 fires is $65.8 million. That is 4 of the 13 fires in California. When you look at the rest of the country, as I discussed in the debate last week, we have burned 3.8 million acres in America this year. Last year it was nearly 7 million acres. The year before, it was over 3 million, and the year before that, it was over 7 million acres. The running 9-year average for the number of acres we have burned in our forests is 4.9 million acres per year.

The Forest Service estimates over 100 million acres of forest lands are at unnaturally high risk of catastrophic wildfires and large insect-disease outbreaks because of unhealthy forest conditions. Again, just looking at those 4 fires in California, $65.8 million worth of cost to fight them so far, 1,622 structures lost. We all know there were many lives lost in those fires. There were lives lost in Idaho this year fighting fires, my State. I am sure if other Senators from the States in which these fires are burning could be here right now, they would point out the damage in their States, not only from the cost of fighting the fires but in terms of the loss of life and the loss of property.

It is important we move ahead with this legislation. I am here to call on my colleagues from the Democratic side of the aisle to work with us again, as we worked in bringing forward the bill, to go into conference and work to achieve the objectives of this legislation.

Some have said: Let's just send our bill to the House and tell the House it must accept our bill. It is our bill or no bill.

Frankly, our constitutional Framers set up a system of government in which there are two Houses of Congress: the Senate and the House of Representatives. I don't think it is realistic for the Senate to simply say to the House you have to take our bill, and not only do you have to take our bill, but we are not going to conference with you if you won't take our bill as is.

I understand the desire by those who negotiated with us to reach the compromise, to build a bipartisan solution, to try to keep the bill we negotiated here intact to the maximum extent possible. In fact, in our negotiations, I committed to them that is what my objective would be if I am able to be on the conference committee. I believe each one of our Senate conferees will fight to the best of their ability to make sure we keep intact the Senate version of this bill. It was a good bill. It had a strong vote. But we must recognize the reality that in order to achieve legislation in this country, both Houses of Congress are entitled to work on the final product.

The refusal to go into conference until there is an agreement in advance that the House will take the Senate bill is a position which could be taken on every bill. If you think about it, every piece of legislation that goes through the Senate, one would think the Senators would prefer over the House. People in the Senate could simply take the position we will not go into conference with the House unless they will take our version of the bill.

If you think about it a little further, it becomes immediately apparent the House could do the same thing. The House could say to the Senate: We are not going to go into conference with you unless you take our bill.

The reality of the way our constitutional system operates is, we have a conference committee between the House and Senate. We work out our differences. We try to come forward with a bill that brings forward the maximum strengths of both systems. Then we come back to both bodies. The Senators in the Senate, the Congressmen in the House, will each then have another chance to register their opinion. If they believe they didn't get a sufficient amount of what they were hoping to see in the legislation, they, again, in the Senate, have the opportunity for a filibuster or to simply vote no on the legislation if they don't want to support it. But to stop us from even being able to take the next procedural step to go to the House and go into conference and try to see what kind of legislation we can come up with to address these critical issues is, in my opinion, inappropriate.

Again, I call on all my colleagues to step forward and allow us to move to the next procedural step to go into conference with the House and work on this critical legislation.

What does it do? This legislation reflects a comprehensive effort to focus on forest health. As I indicated, we have over 100 million acres in America today that are at an unnaturally high level of risk for fire or insect infestation.

The average loss of acres to fires alone is 5.4 million acres per year. In this bill, we put together a comprehensive effort to improve the health of our forests in terms of both the risk of fire and insect infestation. We will lower the number of catastrophic fires. We will establish new conservation programs to improve water quality and regenerate declining forest ecosystems. We will protect the health of the forests by establishing an accelerated plan to promote information on forest-damaging insects and related diseases. Endangered species, community and homes of Americans will be safeguarded through the stewardship of these forest lands.

We are going to establish a new predecisional administrative review process and allow for additional analysis under NEPA. We are going to improve the management tools available to our forest managers so they can get scientifically supported management practices implemented on our forest lands.

We will direct the Secretary of Agriculture to give priority to communities and watersheds in hazardous fuel reduction projects. We are going to have language in there for the first time ever in this country that specifically protects old-growth forests. We have language to expedite the judicial review process so that we end the litigation paralysis that is probably the most significant thing that is stopping us from effective forest management implementation.

Finally, we are going to significantly increase the resources we are putting into healthy forest management. I just told the number of dollars we are spending on fighting fires—on the fires in California. That was approximately $66 million. We are going to put in $760 million annually to help us manage our forests nationwide and preserve these incredible environmental gems for our future while maintaining our ability to have the kind of natural-resource-based economies that grow up around our forests.

Madam President, this is a critical issue; it is critical whether one is concerned about environmental aspects, health and safety aspects, loss of life, loss of property, or simply the loss of our incredibly wonderful Federal forests.

Again, I call on my colleagues to stop the procedural maneuvers that are prohibiting us from proceeding to a conference with the House. At this point, I will conclude my remarks and yield the remainder of my time to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Madam President, how much time remains?

The PRESIDING OFFICER. There are 13 minutes remaining.

CARE AND TREATMENT OF RETURNING GUARD AND RESERVE FORCES

Mr. BOND. Madam President, a couple of weeks ago we received reports from inquiring UPI reporter Mark Benjamin and a very active veterans advocate Steve Robinson, director of the National Gulf War Resource Center, that there was a significant problem with the care and treatment of returning guardsmen and reserves coming back from Iraq and Afghanistan to Fort Stewart, GA. There were, at the time, indications that some of the Guard and Reserve perceived they were not getting the same priority of care, treatment, and housing as was received by those who had been on active duty before they were sent to the combat theater.

So working with my colleague, Senator LEAHY, with whom I cochair the National Guard caucus, we sent our military LAs to visit Fort Stewart, GA, and on to Fort Knox and Fort Campbell, KY. We wanted to visit other sites and will continue to visit other sites to see if the problems at Fort Stewart were isolated or were they present at other Army mobilization and demobilization sites.

What Senator LEAHY and I found is detailed in the report. I ask unanimous consent that it be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. BOND. Madam President, I don't have time to go over the entire report, but I think many colleagues will find it of interest to know what we experienced.

First, let me say that the Army was very open and responsive to our staff when they came to review the situation. They were most anxious to have us get a complete look at the situation and to offer to help in any way they could. So they recognized there was a problem.

Basically, there are not enough medical personnel—doctors, clinicians, support staff, specialists—available during ''peak'' mobilization and demobilization phases at a number of mobilization sites. Consequently, injured and ill soldiers have a difficult time scheduling appointments with medical care providers and seeing the specialists required to get the best possible care. Some of them had been waiting literally months to get the kind of care they deserve.

Compounding the problem, large numbers of soldiers either mobilizing or demobilizing created shortages of available housing at mobilization sites, which resulted in some of the returning guards and reservists being placed in housing totally inadequate for their medical condition. Some of these Guard and Reserve members who had been activated and were coming back were put in temporary barracks, with outside latrines, where they normally would house Guard or Reserve members called up for summer maneuvers.

We could neither confirm nor deny that there was any difference in medical treatment between the returning formerly Active and Guard and Reserve soldiers coming back, but one of the things that was different when the Active came back to the bases from which they had been mobilized was that they already had their housing, so they could go back to the housing from which they started. The Guard and Reserve coming back from service had to be put in some form of temporary housing, which, in some instances, was clearly inadequate for people with injuries or illnesses.

So what is being done? Senator LEAHY and I issued the report to highlight the problems to senior leaders at the Army, National Guard, and the Army Reserve. I was very encouraged by the response the military gave us. The Acting Secretary of the Army, Les Brownlee, visited Fort Stewart on Saturday, the weekend after we sent our teams there. He met with me last week to lay out his plans for dealing with the situation. He recounted what he discovered at Fort Stewart and promised swift support and changes, where necessary.

Specific issues addressed by Secretary Brownlee included the adequacy of facilities and where they would get treatment. He said, if appropriate, soldiers will be moved to facilities where they can provide more timely care. We suggested that if they don't have the medical personnel available there, why not send them someplace else. He said he would encourage the commands to contract out for special services, such as MRIs, for example. If they don't have the equipment, they can contract out.

I also asked the Secretary to allow soldiers in a medical hold status to be moved to facilities closer to their home, using military, veterans health administration, or civilian providers, as necessary. Secretary Brownlee told me some of the soldiers at Fort Stewart had already been moved to nearby Fort Gordon, where the medical staff was not so badly overworked. Also, at his direction, the Army Medical Command is transferring medical care clinicians to mobilization sites that need them.

The Secretary has also established minimum standards for housing in medical hold status. He said, No. 1, facilities will be climate controlled, meaning air-conditioned and heated. Some of the facilities didn't have that. Second, facilities must have showers and restrooms indoors, and not a path in the back, and facilities must be clean and in good repair. The Secretary also indicated he is considering erecting prefab facilities to alleviate the housing shortages during mobilization and demobilization surges that could be used to house medical hold soldiers.

Secretary Brownlee has issued policy guidance that allows the Army to deactivate Guard and Reserve personnel who do not meet the physical requirements for deployment due to a preexisting condition. One of the problems at Fort Stewart was the fact that some 10 percent of the Guard and Reserve called up had not had adequate precallup medical care, a situation we are addressing with the TRICARE measures, and they could not be deployed. They were then the responsibility of the Army at Fort Stewart, and at the time we were there, a third of the 650 soldiers on medical hold had never even been deployed because they did not meet the standards for deployment. Those people will be sent home rather than kept on medical hold.

Also, after meeting with Secretary Brownlee, I followed up with LTG Steven Blum, Chief of the National Guard Bureau and LTG James Helmly, Chief of the Army Reserve, asking them to work with the Army in resolving these issues. Specifically, we asked their cooperation:

No. 1, by doing a better job medically prescreening Guard and Reserve soldiers so they do not activate soldiers who cannot serve.

No. 2, to coordinate the callup and retention of medical personnel—clinicians, support staff, specialists—to ensure the Army mobilization sites have sufficient medical personnel onsite.

I saw in the news today where the Department of Defense is looking to call up certain support personnel from other Reserve units, other than the Army, to provide perhaps naval medical personnel to assist with caring for the sick and injured soldiers.

No. 3, we asked them to check on Guard and Reserve soldiers who are on medical hold, making sure somebody was looking after them, to let them know they have not been forgotten, or to find out if they have other needs.

Further, Senator LEAHY and I have asked the GAO to conduct a survey into the Army's medical hold process to ascertain the breadth of the problems that we saw at Fort Stewart and Fort Knox, and to determine if there is any disparity in medical treatment of returning guardsmen and reservists who come back in demobilization and have health care problems.

It is our understanding that the Senate Armed Services Committee, as well as its House counterpart, is going to conduct hearings into the conditions uncovered by Mark Benjamin and confirmed by Senator LEAHY's and my investigation, but I regret very much, as all of us do, that this situation has occurred. It is unacceptable to all of us to think that injured, ill soldiers returning from the theater of battle would not get the medical care they need, would not be placed in appropriate housing.

Once it came to our attention and we brought it to the Army's attention, we are very encouraged by the way everybody is handling this, from the garrison commanders and medical directors to mobilization staff to the Acting Secretary of the Army. This is a matter of taking care of our soldiers regardless of whether they are traditional active-duty soldiers or National Guard and Army Reserve soldiers.

Senator LEAHY and I are going to continue to monitor the progress of the Army in addressing these issues. We plan on sending staff to additional mobilization sites in the next few weeks and months to make sure there are no problems. We know that in the next few months the National Guard and Reserve will be mobilizing thousands of additional troops. We want to make sure the Army gets it right and keeps it right. The next mobilization schedule is to begin in the January–April timeframe, which means when they go, we want to make sure soldiers get timely care and housing, suitable to getting well, no exceptions.

We know the Army knows of the problems and is aggressively tackling them. We expect garrison commanders at mobilization sites to continue to do their best, and we will continue to support them, as well as every soldier in the war on terrorism. We owe a great debt of gratitude to our fighting men and women. They have and deserve our highest regard and respect. We will do all we can to ensure they get the kind of care we would expect for them.

I thank the Chair, and I yield the floor.

EXHIBIT 1

U.S. SENATE NATIONAL GUARD CAUCUS REPORT

Senators Kit Bond and Patrick Leahy, co-chairs of the U.S. Senate National Guard Caucus, dispatched their aides to Ft. Stewart to investigate reports that activated Guard and Reserve members were being poorly housed, with inadequate medical attention, while on ''medical hold.''

SUMMARY

Approximately 650 members of the National Guard and the Army Reserve who have answered the call-to-duty and in many cases were wounded, injured or became ill while serving in Iraq, are currently on medical hold at Ft. Stewart, GA. Army base. As a result of an investigation by a reporter and expeditious follow-up by a veteran service organization representative it has come to our attention that these National Guard and Army Reserve soldiers have been receiving inadequate medical attention and counsel while being housed in living accommodations totally inappropriate to their condition. Of the roughly 650 injured soldiers currently awaiting medical care and follow-up evaluations, approximately one-third of these soldiers were found not physically qualified for deployment and therefore never deployed overseas. The remaining two-thirds deployed overseas and were returned to Ft. Stewart as a result of wounds or injuries sustained while serving or as the result of illness encountered either before or after deployment. Regardless of the nature of the medical malady, these soldiers have been enduring unacceptable conditions for as many as 10 months.

The return of the 3rd Infantry Division from the Middle East (18,000-strong which is permanently stationed at the base), has forced commanders to lease barracks from the Georgia National Guard that were designed as temporary quarters for National Guard soldiers undergoing annual training. They are not designed to accommodate wounded, injured or ill soldiers awaiting

medical care and evaluation. The Army has designed a Disability Evaluation System that is purposely slow to ensure that National Guard and Army Reserve citizen-soldiers who are found not physically qualified for duty receive a fair and impartial review when undergoing a medical evaluation board. The process, similar in many respects to the workmen's compensation process, requires that these soldiers be given every opportunity to recover. If full recovery is not possible, the system works to establish a baseline condition before the soldier is evaluated by a medical evaluation board.

The situation at Ft. Stewart unfortunately was, and remains, hampered by an insufficient number of medical clinicians and specialists, which has caused excessive delays in the delivery of care. Exacerbating the situation, was the Army's placement of wounded and injured soldiers in housing totally unsuitable for their medical condition. Additionally, these soldiers were placed under the leadership of soldiers who were also injured, resulting in a situation where the sick and injured were leading the sick and injured. Furthermore, the perception among these soldiers is that the traditional active duty soldier is receiving better care, compounding an already deteriorating situation that had a devastating and negative impact on morale. Most of the soldiers in the medical hold battalion, which was established administratively to provide a military structure for the soldiers, have families living within hundreds of miles; yet they have been unable to join their families while awaiting the final deliberation of their cases.

In the short term, we must alleviate the unacceptable conditions at Ft. Stewart and determine if the problem is isolated to Ft. Stewart alone or part of a larger system wide problem.

Alleviating the problem at Ft. Stewart will require the immediate assignment of additional medical clinicians, specialists and medical support personnel and/or the transfer, where appropriate, of our National Guard and Army Reserve soldiers to facilities close to their families so they can continue to receive quality care and await further medical reviews if necessary in an environment conducive to healing. We must also ensure that the conditions at Ft. Stewart are not replicated elsewhere, while ensuring the fixes we install at Ft. Stewart are applied throughout the Army if necessary. In the long term, the Congress must address the physical readiness of the National Guard and the Reserve by passage of a pending bill, TRICARE for Guard and Reservists, to ensure that every member of the Guard and Reserves has adequate health insurance coverage and is medically ready to deploy.

FUNDAMENTAL PROBLEM

More than 650 members of the National Guard and Army Reserve, who have been activated and put on active duty (some of whom have already served in Iraq or Afghanistan) are currently on medical hold at Ft. Stewart, GA. These numbers change almost daily as some soldiers are returned to duty, others receive medical evaluations for medical conditions that prohibit their continued service on active duty, while more soldiers are brought into the system (the result of sustaining injuries, wounds or falling ill overseas; or failing to qualify for deployment after being mobilized because of injuries or preexisting conditions.)

About one-third of the citizen-soldiers currently in the disability evaluation system at Ft. Stewart could not originally deploy with their units because they were not medically fit, while approximately two-thirds were injured, wounded or fell ill while on deployment overseas and were returned stateside to receive special medical attention. When the 3rd Infantry Division, which is based at Ft. Stewart, returned from its deployment in Iraq, available housing was in short supply which resulted in those on medical hold being moved from one barracks to another in a form of musical housing. The U.S. Army resorted to leasing open-bay barracks with detached restroom facilities and no air-conditioning in most cases, which are normally used to house Georgia National Guard troops during their two weeks of annual training.

These National Guard and Army Reserve soldiers have been kept in place at Ft. Stewart according to standard Army policy while they await medical care and work-ups, which senior officials say is designed to protect their careers and ensure they receive the best medical care. The goal is to put these medically held Reserve soldiers in a holding pattern until they are healthy enough to return to duty and go back to their units or to prevent soldiers from being permanently discharged from service until the nature of their conditions have been fully assessed and optimal treatment regime prescribed. When soldiers cannot return to duty, a final determination about their status is made by a Medical Evaluation Board (MEB). The MEB process can take anywhere from an average of 42 days to 76 days after the soldier's treatment has been ''optimized.'' That is when a sufficient diagnosis and treatment regime has been put in place to establish enough confidence to make a decision. Some troops have been on medical hold for more than 10 months.

The primary task of the Army Medical Department is to return these soldiers to duty. While undergoing medical care and reviews they can be assigned light duty around the post. Adequate convalescence requires a great deal of rest in most cases and cannot be properly pursued if there are unnecessary life stressors, such as placement in housing that is designed to house ''healthy'' National Guard forces on annual training—not injured, wounded or ill soldiers.

The barracks for these medically held National Guard and Army Reservists are totally inappropriate for soldiers injured, wounded or ill who are in need of quality care and are garrisoned in a stateside Army installation. The worst accommodations to which these medically challenged soldiers were subjected are 1950s-style, concrete-foundation barracks with no air-conditioning or insulation and detached toilets and shower facilities, though they do have heat. On a relatively cooler day in the area (October 22nd), the temperature in one of these huts was noticeably warm if not stifling. Bunks sit in open bays, no more three feet apart. In some cases, there are no footlockers for the troops to store their gear. In a few of the better barracks, for soldiers with more severe medical conditions, there is air conditioning, indoor-plumbing, and storage space.

The fundamental problem, as summarized colorfully by one of the base commanders, is that soldiers are going through a ''go slow medical review system while living in 'get them the hell out of here barracks.''' Many of the medically held reservists—mostly from Southern states like Georgia, Alabama, and Florida—expressed frustration and anger over the duration of their medical hold and the quality of their housing while in this seemingly interminable holding pattern.

COMPLICATING FACTORS

Feeding these justifiable frustrations are several real and perceived considerations regarding their medical care and treatment on the base.

There has been a shortage of clinicians and specialists to see the medically held Reservists and to accelerate the review and treatment process. At various points over the past several months there may have been only a handful of doctors to care for these hundreds of troops, as well as to assist with regular forces and their families. Most reserve doctors called to active duty were deployed forward, and those remaining in the states can stay on duty for only 90 days before returning to their civilian practices. One soldier on medical hold said it took him almost three weeks to get a follow-on appointment necessary to optimize his care.

Further feeding the anger and frustration is inadequate leadership. Typically, a soldier will receive advice, counsel, and assistance in accessing the military's health system from the soldiers's unit or from upper echelon chain-of-command. The units of the medically held reservists, however, have deployed abroad in most cases, and their commanders are focused on their operational mission overseas. The Reservists at Ft. Stewart have been grouped together in a ''medical hold'' battalion for administrative purposes but the effectiveness of the unit chain of command is suspect.

Additionally, many of the battalion leaders—at the officer and NCO level—are sick themselves, raising the question of whether these leaders are capable to care for themselves, let alone hundreds of their comrades. Without a familiar advisor and leader, deployed away from home and their parent National Guard or Army Reserve commands, and lacking experience dealing with a huge bureaucracy like the Army, these Reservists were left without the leadership to which they were accustomed.

Moreover, many of the medically held Reservists perceive bias against them on the post. Whenever they go the hospital, PX, or dining hall, they are asked whether they are a Reservist or a traditional active duty service member. This question is made for accounting purposes, but it makes the Reservists—many of whom are likely disappointed about being on sick call in the first place—feel like they are being singled out. Similarly, many of the medically held Reservists, lacking sufficient knowledge of the military's medical bureaucracy, chalk up delays in treatment to preferential treatment for active forces.

AN AVOIDABLE SITUATION

This situation could have been avoided. In early June, medical and garrison staff realized that there would be a surge in housing needs when the 3rd Infantry Division returned from Iraq. The division was manned at over 115 percent authorized strength, which would force commanders to use triple bunks to accommodate 6500 troops in their barracks that usually hold about 4300. These commanders recognized then that these permanently assigned troops would have to take priority over the troops temporarily at the post on medical hold. Six weeks ago, medical staff submitted a request up the chain-of-command for 18 additional care providers who could help manage and accelerate the reviews of the medical holds. No action was taken on the request.

At about the same time, the garrison commander submitted a request to 1st Army Headquarters at Ft. MacPherson, Georgia, for additional funds to renovate the barracks that are leased from the Georgia National Guard. The command provided $4 million, divided into two parts, but the prospective contractors could not begin work until this week. That project, which would have taken 90 days at the very least, was postponed pending the outcome of the investigations the Army has currently undertaken after media reports about the medical hold situation surfaced.

Additionally, it is reported that the Army had the opportunity in the initial stages of

the mobilization process to provide for rear-detachment elements staffed by National Guard personnel. These elements are designed to provide stateside oversight and support to National Guard personnel and units deployed overseas. Had they been present it is possible the conditions described herein might have been identified and rectified before they reached a crisis point.

MEDICAL READINESS OF THE GUARD AND RESERVES

It is clear that part of the situation was created by the fact that some of the mobilized reservists were not as healthy as possible. Almost ten percent of Guard/Reserve personnel mobilized for duty at Ft. Steward could not deploy because of a medical condition and were put on medical hold status for some period of time.

In the barracks visits, there were also troubling indications that a handful of Reservists were knowingly activated and sent to mobilize with medical conditions that would preclude them from actually deploying. Such an unjustified deployment might have been designed to take advantage of the fact that once soldiers are activated (put on active duty orders) they become the full-scale responsibility of the U.S. Army. The service is then charged with their care and feeding to include medical care and medical evaluations.

The hundreds of Reservists who could not deploy because they were medically unready raises a number of larger questions, which the caucus has already begun to address through its effort to ensure every member of the Guard and Reserves has adequate health insurance. The caucus will continue to address the issue in detail during its ongoing investigation of the medical readiness and mobilizations, examining questions like whether the resources and process for screening at the unit level within the National Guard and Army Reserve ranks are sufficient, and how to explain the recall of soldiers to active duty who are not fit for duty.

RECOMMENDATIONS

There are a number of actions that the Army must take to address this situation at Ft. Stewart and the larger issue of ''medical holds,'' which will continue to arise as the country pursues the war against terrorism and sustains operations in Iraq, Afghanistan and other areas where military forces are operating.

In the short term, the Army National Guard and the Army Reserve must jointly provide for the leadership, guidance and medical care our Reservists require to operate at maximum proficiency. These dedicated and loyal soldiers need to know what to expect in the medical review process. They need to understand thoroughly the Army's health care system, warts and all. This strong, steady leadership must have the goal of reaffirming the Army's seamless support for the ''Army of One'' and the country's gratitude for their service and sacrifice, reassuring them that they are not forgotten despite the fact they are separated from their units.

To move the Reservists along to a Medical Evaluation Board if required, many more doctors need to be assigned to Ft. Stewart and, specifically, to these cases. The biggest delay in getting the Reservists off medical hold is the wait to optimize care. Many soldiers are seeing a different doctor every time they enter the hospital, each of whom may prescribe a different remedy. Additional doctors and specialists, who could help coordinate care, would provide greater continuity-of-care, one of the central reasons to keep them at their mobilization station in the first place.

It is unacceptable to have these citizen-soldiers—every one of whom answered the call-to-duty—living in such inadequate housing. However, more adequate barracks cannot be completed quickly because it will take almost three months to complete any upgrades. Other 3rd Infantry Division barracks are unlikely to become available soon.

It would be far better to send these troops back home. They could be assigned to another Military Treatment Facility (MTF), a State Area Command (STARC) or possibly a VHA medical facility closer to their families. Liaisons from the TRICARE management authority could ensure that they are receiving adequate care and that they would be available to return to Ft. Stewart if they get better and can return to duty. The benefit to morale among the medically held Reservists would far outweigh any of the unlikely risks that might go along with moving troops away from their mobilization station. Current Army Regulation 40–501 directs medically held soldiers to remain near their mobilization post, but there is no statutory restriction against assigning them to another facility close to home.

In the longer-term, the Army, working together with the leadership of the National Guard and the Army Reserve, must ensure that our citizen-soldiers who are identified for activation are medically ready to deploy. Enactment of the cost-share TRICARE proposal for Reservists, currently attached to the Senate version of the Fiscal Year 2004 Supplemental Spending Bill for Iraq and Afghanistan, would ensure that every member of the Reserves has access to health insurance and would increase the likelihood that citizen-soldiers are medically and physically ready for duty.

Currently, reservists are required to complete a physical once every five years. The high percentage of reservists found to be physically unable to deploy raises the questions of whether this five-year interval is too long. Another question the Caucus may want to raise, is the Army's mobilization and demobilization policy sufficient in providing a housing standard for soldiers on medical hold? Furthermore, is the working relationship between the Army's medical department and the Veterans Health Administration (VHA) structured to allow for the transfer of soldiers on medical hold from Army military facilities to VHA facilities? Also, new medical case management software included in the second version of the military's Composite Health Care System (CHCS II) will permit continuity-of-care wherever a soldier accesses care. Guard and Reserve units across the country could assign liaisons to help manage a Reservist's care and maintain contact with their mobilization base at any point.

Lastly, it has been reported that architectural hardware and software exist that will allow the Army to equip its hospitals, dining halls, and commissaries with scanners that could read an ID that can show whether a member of the service is from the active component or the Reserves. Perhaps the Caucus should look at such systems as a means of addressing the perceived bias that exists when reservists are queried about their service status.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I thank Senator BOND for his leadership on veterans issues throughout this Congress, as he always does. I have been over to Walter Reed Army Hospital on three different occasions. Families tell me they are being treated extremely well. The soldiers are very complimentary of the health care they have received, but there have been some problems.

It is important we make sure every soldier injured in the service of the United States of America be given the best medical care, wherever he or she is in this country.

I salute Senator BOND for his work in that regard. We want to make sure that happens. I believe it is happening, at least in the areas I have personally examined. We will continue to monitor them.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF WILLIAM H. PRYOR, JR., TO BE UNITED STATES CIRCUIT JUDGE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider Calendar No. 310, which the clerk will report.

The assistant legislative clerk read the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 60 minutes equally divided for debate on the nomination prior to the vote on the motion to invoke cloture.

The Senator from Alabama.

Mr. SESSIONS. Madam President, I am pleased to be here today to seek an up-or-down vote on the attorney general of Alabama, Bill Pryor, who has been nominated to the Eleventh Circuit Court of Appeals of the United States of America. Chairman HATCH is, at this moment, chairing the Senate Judiciary Committee. He is not able to be here at this moment, but he wants to make a statement because he feels very strongly that Bill Pryor is an extraordinarily qualified individual, as I do.

I had the honor of having Bill Pryor work for me. I had not known him until shortly before I was elected attorney general of Alabama in 1994. I talked with him about coming to work with me. He had been with two of the best law firms in Birmingham. He was a partner in a highly successful law firm. He knew financially it would be a cut for him and his family, but he decided to come to Montgomery to be chief of constitutional and special litigation and to help improve the legal system in America.

As I have said before, I have not known a single individual in my history of practicing law who is more committed, more dedicated, has more integrity about the issues that are important to the legal system of America, a man who is more committed to improving the rule of law in America. Bill

Pryor is that kind of person. He is a decent family man. He is a principled church man. He is a person who believes the law is something that ought to be followed.

In fact, right now, he has found himself, as is his duty as attorney general, to bring the case brought by the judicial inquiry commission in Alabama against Judge Moore, the chief justice of the Alabama Supreme Court, whom the judicial inquiry commission charged with not complying with a Federal court order. Here he is doing his duty again, as he has done time and again, even when it was not politically popular to do so. Even when conservative friends and Republican friends very much disapproved, he has tried to identify what the law is. He is committed to doing what the law says, and he has proven it time and again.

Bill Pryor grew up in Mobile, AL. His father was band director at McGill-Toolen High School, a wonderful Catholic high school in Mobile.

He was raised in the church. His mother taught at an African-American school. His family considered themselves Kennedy Democrats in the 1960s. That is the way he was raised. He went to law school at Tulane University, one of America's great law schools. He graduated magna cum laude at that fine law school, at the top of his class, and his fellow members of the Tulane Law Review elected him editor in chief, the finest honor any graduating senior in a law school can obtain, to be named editor in chief of the Law Review. He did an extraordinary job with that.

Upon his graduation, he applied for and was hired to be a law clerk for the Fifth Circuit Court of Appeals, the sister circuit to the Eleventh Circuit Court of Appeals, which he would sit on when he is confirmed. He clerked for one of the legends of the Fifth Circuit, Judge John Minor Wisdom, who was probably, more than any other judge—Judge Rives, Judge Tuttle, and Judge Wisdom are the judges who have been credited with changing and breaking down the rules of segregation in the South during a very difficult period.

Judge Wisdom has always had the most superior law clerks. They come from all over the country, and yet he selected Bill Pryor, and Attorney General Pryor remained a great admirer of Judge Wisdom.

I say that to say the charges that have been brought against him just do not ring true. The things that are said about Bill Pryor do not reflect the man we know in Alabama, do not reflect the qualities of the individual known in this State of Alabama by Democrats, Republicans, African Americans, Whites, everybody in the State. They know him. They know the quality of his integrity. They know his commitment to law. Of that, they have no doubt. There is no doubt about this.

So what do we have? We have a group Senator HATCH often calls the ''usual suspects.'' We have groups that are attack groups. They go into people's records and backgrounds and they seek any way they can to distort a person's record, caricature them as something they are not, and then come up to this Senate and ask us, based on distorted and dishonest information, to vote them down. That is not right.

What has been done to Bill Pryor and several other nominees who have been sent up here is not right. What we have been seeing is once these groups all come together and they make their appeals to the leadership on the other side, they have been given support on these nominations. They have stuck together and blocked them. The minority leader, Senator DASCHLE, has led the Democratic Senators and they have blocked a series of highly qualified, superb nominees. That is very frustrating. I believe it is unfair.

I will share a few things that are relevant to this issue. The People for the American Way is the group that has raised most of the issues. They refer to him as a rightwing zealot, unfit to judge. How about this line: He personally has been involved in key Supreme Court cases that by narrow 5-to-4 majorities have hobbled Congress's ability to protect Americans' rights.

If one reads that carefully, what they will see is that he, as attorney general of the State of Alabama, has been involved in litigation in the United States Supreme Court that he prevailed on, that he won. He has won a number of cases in the Supreme Court defending interests of States, and States do have interests. A lot of time we forget the interests of the States in America. We just willy-nilly pass legislation and then when somebody defends a State, as an attorney general is sworn to do—he is sworn to defend the laws of the State of Alabama, the constitution of the State of Alabama. And when the Congress of the United States passes laws that abrogate those rules, if he has a legitimate case in court, he has not only a choice, he has a duty to defend those laws against erosion by the national Government.

One law they have complained about and complained about incredibly was that under the Americans with Disabilities Act, this Congress allowed people to sue the employer, but the historic document of sovereign immunity says one cannot sue States unless they authorize the suit. The power to sue is the power to destroy a government. Governments, since before our founding, have understood that doctrine. It is a part of the law of every State in America, and Attorney General Pryor said in that small number of cases that amount to 4 percent of the complaints under the Americans with Disabilities Act, one could not sue the State of Alabama for damages. A person could sue to get their job back, they could sue to get promoted, but they just could not get damages because of the doctrine of sovereign immunity. He took it to the Supreme Court and the Supreme Court agreed with him. When Senator MARK PRYOR from Arkansas was attorney general in Arkansas, he joined on the brief. So this was not an extreme view; it was a prevailing view.

They said he was against disability rights. How disturbing that is. To say Bill Pryor, who had a sworn obligation and did it to defend the State of Alabama legal rights, was somehow against the disabled is stunning to hear.

I want to mention a couple of things in regard to the type of bipartisan support he has gotten in Alabama. I mentioned earlier last night the support he has gotten from a number of individuals of real prominence in the State. Dr. Joe Reed, the chairman of the Alabama Democratic Conference, an arm of the Democratic Party of Alabama, has strongly endorsed Mr. Pryor. Dr. Reed is a partisan Democrat. He sits on the Democratic National Committee. I assure my colleagues all Democratic candidates who seek to win a primary in Alabama, including Presidential candidates, call Dr. Reed when they are thinking about coming to Alabama. They seek his support, because when he speaks, a lot of voters follow.

He said this about Mr. Pryor: A first-class public official, will be a credit to the judiciary and a guardian of justice.

Mr. Alvin Holmes, probably the most outspoken African American in the legislature, said this about Mr. Pryor:

> I am a black member of the Alabama House of Representatives having served for 28 years. During my time of service in the Alabama House of Representatives I have led most of the fights for civil rights of blacks, women, lesbians and gays and other minorities. I consider Bill Pryor as a moderate on the race issue.

He concludes:

> Finally, as one of the key civil rights leaders in Alabama who has participated in basically every civil rights demonstration in America, who has been arrested for civil rights causes on many occasions, as one who was a field staff member of Dr. Martin Luther King's SCLC, as one who has been brutally beaten by vicious police officers for participating in civil rights marches and demonstrations, as one who has had crosses burned in his front yard by the KKK and other hate groups, as one who has lived under constant threats day in and day out because of his stand fighting for the rights of blacks and other minorities, I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.

He noted his help with the church bombing case, and he noted Bill Pryor's early commitment that he would eliminate an old provision in the Alabama constitution that prohibited interracial marriage. It had been there, been declared unconstitutional, but it was still in the constitution. Bill Pryor believed it ought not to be in the constitution. According to Mr. Alvin Holmes:

> Every prominent white political leader in Alabama (both Republican and Democrats) opposed my bill or remained silent except Bill Pryor who openly and publicly asked the white and black citizens of Alabama to vote and repeal such racist law. He gives Bill Pryor all the credit for that.

Mr. President, I see the distinguished ranking member of the Judiciary Committee is here. He knows how much I love and respect and admire Bill Pryor. I believe he has broad bipartisan support. He is a brilliant lawyer, committed to the highest principles of justice in America, committed to giving every American an equal right in court, committed to high ideals. He is a man of faith, a man who takes his faith seriously, who is thoughtful but who has demonstrated that he will follow the law even if it conflicts with his deepest and most sincere opinions.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, how much time is available to each side?

The PRESIDING OFFICER. Thirty minutes was available to each side at the beginning of the debate. The majority has 16½ minutes remaining.

Mr. LEAHY. How many?

The PRESIDING OFFICER. Sixteen and a half minutes on the majority side.

Mr. LEAHY. Our side has 30 minutes?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. Madam President, I understand there is a request on the Republican side to accommodate the scheduling, then, to have this vote at noon. One of the things I have learned in 29 years here is to always try to accommodate other Senators on scheduling, for both parties.

I ask unanimous consent that the vote be at 12, with the additional time to be equally divided.

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

Mr. LEAHY. Madam President, only the Republican leadership can answer why it refuses to proceed on what all of us know are the real priorities—not hollow priorities—of the American people in these waning days of the legislative session. We have a number of annual appropriations bills on which the Senate has yet to act. We do know the law requires us to finish those by September 30. We are now well into November and we have yet to act on them.

We should look at the purpose of some of these appropriations bills that are being held up while we are wasting time trying to do things for political points. We are holding up the appropriations for America's veterans. What a bad time to send that signal, when our veterans, and many who are about to become our veterans, are serving so bravely in Iraq and Afghanistan.

We are holding up appropriations for law enforcement. As one who served for 8½ years in law enforcement, I know how much our law enforcement people rely on those funds. We are holding up appropriations for the State Department. We are holding up appropriations for the Federal judiciary. We are holding up appropriations for housing. We are holding up appropriations for many other things. But we will talk and talk and talk about three or four judges.

There is unfinished business of providing a real prescription drug benefit for seniors, but we will instead talk and try to make political points. We have the Nation's unemployment, having seen for 8 years adding a million jobs a year, having seen in the last 2½ years losing more than a million jobs a year. We talk about the economy improving. Tell that to the American families who can't find a job, or find two or three jobs because they are so low paying they are working 80 hours a week and not having time to be with their children or their families.

We see the corporate and Wall Street scandals, the mutual funds, and others. Those concern those of us who have invested and placed our trust and financial security at risk in the securities market. I think of a number of people in Vermont who are approaching retirement time and see these scandals where their money is being taken away and they see a Senate unwilling or unable to move legislation addressing that.

Of course, we are not doing oversight on the war in Iraq. We are signing blank checks, but we are not doing oversight.

Lowest Vacancy Rate in 13 Years: I mention this only because, instead of considering these very important matters—matters that seem to be neglected by both the White House and the Congress—Republican leadership insists on rehashing the debate on one of a tiny handful of judicial nominees in which further Senate action is unlikely. Certainly, when the Republican leadership was considering the judicial nominees of a Democratic President in the years 1995 to the year 2000, they showed no concern about stranding more than 60—let me repeat that, more than 60—of President Clinton's judicial nominees without hearings or votes. They did not demand an up-or-down vote on every nominee. They were content to use anonymous holds to scuttle scores of nominees.

This is not a question of having a filibuster or a cloture vote. If one member, just one member of the Republican caucus objected to one of President Clinton's nominees, they didn't have to stand up here and say so. They could just let their side know and the person was never given a hearing, never given a vote.

There were numerous extraordinarily well-qualified people. In fact, they stood by while vacancies rose from 65 in January 1995 when the Republicans took over the majority, to 110 when Democrats assumed Senate leadership in the summer of 2001. Republicans presided over the doubling of circuit court vacancies from 16 to 33 during that time by simply refusing to allow President Clinton's nominees to have a vote. As I said, over 60 of them were never allowed to have a vote.

McCarthyite Smears: So why do they insist that the Senate now consume this precious floor time to rehash the debate on one of the President's most controversial nominees to the independent Federal judiciary, the nomination of William Pryor? Perhaps it is to give some on the Republican side another chance to continue to make false arguments about judicial nominations. Perhaps it is to give some platform for baseless and McCarthyite accusations that Senators oppose Mr. Pryor because of his religion.

This is the worst of religious McCarthyism I have heard, although there are aspects that are actually amusing. We had one of these Republicans go on a Sunday morning show, I guess, to accuse me of being anti-Catholic. When asked about it, we responded I didn't see it because my wife and I were at Mass, as we are on every Sunday morning, and that was when the program was on. But I suspect it is to distract from the real concerns that affect Americans every day.

The facts show the Senate has made progress on judicial vacancies in those areas where the administration has been willing to work with the Senate. Yesterday, the Senate confirmed the 168th of President Bush's judicial nominees.

Incidentally, I should point out, of that 168, 100 of them were confirmed during the 17 months the Democrats controlled the Senate, and I was chairman; 68 of them during the 17 months the Republicans controlled the Senate.

It is kind of hard to say we are partisan on this when in 17 months we confirmed 100 of the President's nominees and in the 17 months the Republicans confirmed 60. Actually, we could have confirmed several more had the Republican leadership just scheduled votes on these noncontroversial nominations. The truth is, in less than 3 years' time the number of President Bush's judicial nominees the Senate has confirmed has exceeded the number of judicial nominees confirmed for President Reagan, who was the all-time champ to get judges confirmed in the first 4 years in office. Everybody acknowledges that President Reagan had more judges confirmed in his first 4 years than any President ever had in the Republican-controlled Congress and Republican-controlled Senate. He confirmed more judges in 4 years than anybody else until President Bush, who has had 7 more Federal judges confirmed in less than 3 years than President Reagan did in 4.

To give you some idea, here are the Clinton nominees over a period of, actually, 5 years: 248 were confirmed, and 63 of them were blocked by the Republicans—63. Some are ones where we had cloture votes and we won on the cloture votes and got them through. Twenty percent of President Clinton's nominees were blocked by the Republican-controlled Senate.

Between 2001 and 2003, President Bush sent 16 through, and 4 were blocked; or 2 percent were blocked. Actually, 2 percent is pretty darned good.

Look at what has happened on vacancies when the Republicans were in the majority. Look at how vacancies skyrocketed because they were blocking usually by a one-person anonymous filibuster. President Clinton's nominee vacancies skyrocketed. During the 17 months when I was chairman and the Democrats were in the majority, look at how we quickly brought down those vacancies of all of President Bush's nominees. Ironically, President Bush nominated people to fill vacancies created because the Republicans refused to allow President Clinton's nominees to go through. Of course, they continue to go down.

If debates like this are staged to give some a platform for repulsive smears that Democrats are opposing Mr. Pryor because of his religion, they will have to enter a realm of demagoguery, repeating false allegations and innuendo often enough to hope that some of their mud will stick.

Senate Democrats oppose the nomination of William Pryor to the Eleventh Circuit because of his extreme some, with good reason, use the word ''radical''—ideas about what the Constitution says about federalism, criminal justice and the death penalty, violence against women, the Americans with Disabilities Act, and the Government's ability to protect the environment on behalf of the American people. Of course, those substantive concerns will not do much to help raise money for the Republican Party or seem provocative in a flyer placed on windshields late on the day before an election and hardly get a mention on the evening news. So some Republican partisans will be putting the truth to one side. They dismiss the views of Democratic Senators doing their duty under the Constitution to examine the fitness of every nominee to a lifetime position on the Federal bench and choose, instead, to use smears and the ugliest accusations they could dream up.

This started in the aftermath of the first rejection of the Pickering nomination in the Judiciary Committee. After the committee voted not to recommend him to the full Senate, insinuations were made on this Senate floor that Democrats opposed him because he is a Baptist. From that time to now, I have waited patiently for Republican Senators to disavow such charges which they know to be untrue.

Just a few weeks ago, Republican Senators on the Judiciary Committee trotted out an offensive cartoon targeting a nominee, and asked us to denounce it. Even though it was taken off a website run by two private individuals, of whom I had never heard before and who have no connection to Democratic Senators, we appropriately denounced it without hesitation.

Abusing Religion For Wedge Politics: But when slanderous accusations were made by Republican Senators, and ads run by a group headed by the President's father's former White House counsel and a group whose funding includes money raised by Republican Senators and even by the President's family, no apologies or denunciations were heard. Other Republican members of the Judiciary Committee and of the Senate have either stood mute in the face of these McCarthyite charges, or, worse, have fed the flames.

These accusations are harmful to the Senate and to the Nation and have no place in this debate or anywhere else. Just a few weeks ago, President Bush rightly told the Prime Minister of Malaysia that his inflammatory remarks about religion were ''wrong and divisive.'' He should say the same to members of his own party. Today, Republican Senators have another chance to do what they have not yet done and what this Administration has not yet done: Disavow this campaign of division waged by those who would misuse religion by playing wedge politics with it. I hope that the Republican leadership of the Senate will finally disavow the contention that any Senator is being motivated in any way by religious bigotry.

An Extreme and Divisive Nominee: Let us take William Pryor. Many of us opposed his nomination to the Eleventh Circuit because of his extreme—in fact, some would view radical—ideas about what the Constitution says about federalism and what the Constitution says about criminal justice and the death penalty, his views about violence against women, or the Americans With Disabilities Act, or the Government's ability to protect the environment on behalf of all American people—not just the environment to protect just Republicans or just Democrats but all Americans.

I am stunned as I read and reread reports. Just to see how radical his ideas are, just today I learned of the sworn affidavits made under oath by the former Republican Governor of Alabama, Bob James and his son. They explained the circumstances under which Governor James came to appoint Mr. Pryor as attorney general. We keep hearing about how Attorney General Pryor just looks at the law, he will just stand by the law, and he will call them as he sees them. In sworn affidavits, the Governor who appointed him said Mr. Pryor was only hired after making explicit promises—explicit promises—that he would defy court orders up through and including orders of the Supreme Court of the United States.

This is a man we want to give a lifetime tenure on the court of appeals, which is one step below the United States Supreme Court; somebody who would take a job where he has made promises that he would defy court orders, including the Supreme Court of the United States; a person who takes an oath to uphold the Constitution but says give me the job and don't worry about that oath, I promise I will defy them.

These statements were made under the penalty of perjury by a former Republican Governor of Alabama. He recounts how Mr. Pryor persuaded him that he was right for the job by showing them research papers from his time in law school about nonacquiescence in court orders. Indeed, the Governor and his son say that Mr. Pryor's position on defying court orders changed only when he decided he wanted to become a Federal judge.

I have been here 29 years. I don't remember any President, Republican or Democratic, who would think of sending up a nominee who has told people he will get his job with a promise that he will defy courts. This is so violative of even what Mr. Pryor said in sworn statements before the Senate Judiciary Committee.

Assuming that the sworn statement of the former Republican Governor of Alabama and his son are true, this information is consistent with extremism.

Elsewhere, Mr. Pryor's record is shocking. I cannot imagine any President—I have been here with six Presidents, Republican and Democrat—who would send somebody up here with that kind of a record.

I pride myself in voting for nominees of Presidents. President Ford, President Carter, President Reagan, former President Bush, President Clinton, and even the current President Bush, I probably have voted for 98 or 99 percent of all the nominations. But this is one that never should even have come to us. It is not a question of whether to vote it up or down—it shouldn't even be here. In fact, the President ought to withdraw this nomination because, if this affidavit of Governor James is true—and he did make it under pain of penalty of perjury—that means Mr. Pryor sat with Governor James and promised to undermine the very basis of the stability of the United States Government and its legal system.

I don't understand how any Senator, Republican or Democrat, can continue to support this nomination.

There are a whole lot of other reasons.

Again, I cannot believe any President would send a nominee here who has done this.

There are some other reasons he shouldn't be a judge on the Eleventh Circuit. These reasons have prompted a chorus of opposition of individuals and organizations and editorial pages across the Nation, the South, the East, and the West. Organizations and individuals concerned about justice before the Federal courts include Log Cabin Republicans, Leadership Conference on Civil Rights, Alliance for Justice, and many others have provided the committee with their concerns and bases for their opposition. We have received letters of opposition from organizations that rarely take positions on nominations who feel strongly about this one and are compelled to write, including the National Senior Citizens Law Center, Anti-Defamation League, Sierra Club, and others.

I ask unanimous consent that a list of all of the letters that have been sent

in opposition to Mr. Pryor's confirmation be printed in the RECORD.

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

LETTERS OF OPPOSITION TO THE NOMINATION OF BILL PRYOR, TO THE 11TH CIRCUIT COURTS OF APPEAL

ELECTED OFFICIALS

Congressional Black Caucus

CIVIL RIGHTS MOVEMENT VETERANS

Rev. Fred Shuttlesworth, Leader, Birmingham Movement
Rev. C.T. Vivian, Executive Staff for Dr. Martin Luther King, Jr.
Dr. Bernard LaFayette, Executive Staff for Dr. Martin Luther King, Jr.
Rev. Jim Lawson, Jr., Advisor to Dr. Martin Luther King, Jr., President of Southern Christian Leadership Conference (Los Angeles)
Rev. James Bevel, Executive Staff for Dr. Martin Luther King, Jr.
Rev. James Orange, Organizer for National Southern Christian Leadership Conference
Claud Young, M.D., National Chair, Southern Christian Leadership Conference
Rev. E. Randel T. Osbourne, Executive Director, Southern Christian Leadership Foundation
Rev. James Ellwanger, Alabama Movement Activist and Organizer
Dorothy Cotton, Executive Staff for Dr. Martin Luther King, Jr.
Rev. Abraham Woods, Southern Christian Leadership Conference
Thomas Wrenn, Chair, Civil Rights Activist Committee, 40th Year Reunion
Sherrill Marcus, Chair, Student Committee for Human Rights (Birmingham Movement, 1963)
Dick Gregory, Humorist and Civil Rights Activist
Martin Luther King III, National President, Southern Christian Leadership Conference
Mrs. Johnnie Carr, President, Montgomery Improvement Association (1967-Present) (Martin Luther King, Jr. was the Association's first President. The Association was established in December, 1955 in response to Rosa Park's arrest.)

LETTERS FROM THE ELEVENTH CIRCUIT

Alabama Hispanic Democratic Caucus
Hispanic Interest Coalition of Alabama
Jefferson County Progressive Democratic Council, Inc.
Latinos Unidos De Alabama
NAACP, Alabama State Conference
National Council of Jewish Women Chapter in Florida, Alabama and Georgia
The People United, Birmingham, AL
Petitioners' Alliance
Tricia Benefield, Cordova, AL
Patricia Cleveland, Munford, AL
Hobson Cox, Montgomery, AL
Judy Collins Cumbee, Lanett, AL
Larry Darby, Montgomery, AL
B. Ilyana Dees, Birmingham, AL
Morris Dees; Co-Founder and Chief Trial Counsel, Southern Poverty Law Center
Martin E. DeRamus, Pleasant Grove, AL
Bryan K. Fair, Professor of Constitutional Law at University of Alabama
Joseph E. Lowery, Georgia Coalition for the Peoples' Agenda
Michael and Becky Pardue, Mobile, AL
James V. Rasp
Helen Hamilton Rivas
William Alfred Rose, Mountain Brook, AL
Terry A. Smith (USMC Ret.), Decatur, AL
Harold Sorenson, Rutledge, AL
Carolyn Robinson, Semmes, AL
Sisters of Mercy letter signed by Sister Dominica Hyde, Sister Alice Lovette, Sister Suzanne Gwynn, Ms. Cecilia Street and Sister Magdala Thompson, Mobile, AL

GROUPS

The Ability Center of Defiance, Defiance, OH
Ability Center of Greater Toledo
Access for America
Access Now, Inc.
The ADA Committee
ADA Watch
AFL–CIO
AFSCME
Alliance for Justice
Americans for Democratic Action
American Association of University Women
American Jewish Congress
Americans United for Separation of Church and State
Anti-Defamation League
B'nai B'rith International
California Council of the Blind
California Foundation for Independent Living Centers
Center for Independent Living of South Florida
Citizens for Consumer Justice of Pennsylvania letter also signed by: NARAL-Pennsylvania, National Women's Political Caucus, PA, PennFuture, Sierra Club, and United Pennsylvanians
Coalition for Independent Living Options, Inc.
Coalition to Stop Gun Violence
Disabled Action Committee
Disability Resource Agency for Independent Living, Stockton, CA
Disability Resource Center, North Charleston, SC
Earthjustice
Eastern Paralyzed Veterans Association, Jackson Heights, NY
Eastern Shore Center for Independent Living, Cambridge, MD
Environmental Coalition Letter signed by: American Planning Association, Clean Water Action, Coast Alliance, Community Rights Counsel, Defenders of Wildlife, EarthJustice, Endangered Species Coalition, Friends of the Earth, League of Conservation Voters, National Resources Defense Council, The Ocean Conservancy, Oceana, Physicians for Social Responsibility, Sierra Club, U.S. Public Interest Research Group, The Wilderness Society, Alabama Environmental Council, Alliance for Affordable Energy, American Lands Alliance, Buckeye Forest Council, California Native Plant Society, Capitol Area Greens, Center for Biological Diversity, Citizens Coal Council, Citizens of Lee Environmental Action Network, Clean Air Council, The Clinch Coalition, Committee for the Preservation of the Lake Purdy Area, Connecticut Public Interest Research Group, Devil's Fork Trail Club, Dogwood Alliance, Environment Colorado, Environmental Law Foundation, Florida Consumer Action Network, Florida League of Conservation Voters, Florida Public Interest Research Group, Foundation for Global Sustainability, Friends of Hurricane Creek, Friends of Rural Alabama, Kentucky Resources Council, Inc., Landwatch Monterey County, Native Plant Conservation Campaign, North Carolina Public Interest Research Group, Oilfield Waste Policy Institute, Patrick Environmental Awareness Group, Public Interest Research Group in Michigan, Rhode Island Public Interest Research Group, Sand Mountain Concerned Citizens, Save Our Cumberland Mountains, Sitka Conservation Society, Southern Appalachian Biodiversity Project, Taking Responsibility for the Earth and Environment, Tennessee Environmental Enforcement Fund, Texas Public Interest Research Group, Valley Watch, Inc., Virginia Forest Watch, Waterkeepers Northern California, and Wisconsin Forest Conservation Task Force,
Equality Alabama
Feminist Majority
The Freedom Center
Heightened Independence & Progress
Houston Areas Rehabilitation Association
Human Rights Campaign
Illinois-Iowa Center for Independent Living
Independent Living Center of Southern California, Inc.
Independent Living Resource Center, San Francisco, CA
Justice for All Project, letter signed by the following California organizations: Americans United for Separation of Church and State, Los Angeles, California National Organization for Women, Committee for Judicial Independence, Democrats. Com of Orange County, CA, Feminist Majority Foundation, National Center for Lesbian Rights, National Council of Jewish Women/California, National Council of Jewish Women/Los Angeles, National Employment Lawyers' Association, San Diego County National Organization of Women, National Women's Political Caucus, Noe Valley Ministry, Planned Parenthood of San Diego and Riverside Counties, Progressive Jewish Alliance, Rock the Vote, Stonewall Democratic Club of Los Angeles, Unitarian Universalist Project Freedom of Religion, and Women's Leadership Alliance
Lake County Center for Independent Living, IL
Leadership Conference on Civil Rights
Log Cabin Republicans
MALDEF
NAACP
NARAL Pro-Choice America
National Abortion Federation
National Association of Criminal Defense Lawyers
National Association of the Deaf
National Council of Jewish Women letter signed by B'nai B'rith International, Central Conference of American Rabbis, and Union of American Hebrew Congregations
National Disabled Students Union
National Employment Lawyers Association
National Family Planning & Reproductive Health Association
National Organization for Women Legal Defense and Education Fund
National Partnership for Women & Families
National Resources Defense Council
National Senior Citizens Law Center, letter also signed by AFCSME Retirees Program, Center for Medicare Advocacy, Families USA, and Gray Panthers
National Women's Law Center
New Mexico Center on Law and Poverty
Parents, Families, and Friends of Lesbians and Gays
People for the American Way
Pennsylvania Council of the Blind
Placer Independent Resource Services
Planned Parenthood Federation of America
Planned Parenthood of Northern New England
Protect All Children's Environment, Marion, NC
Religious Action Center of Reform Judaism
Religious Coalition for Reproductive Choice
SEIU
Sierra Club
Society of American Law Teachers
Summit Independent Living Center, Inc., Missoula, MT
Tennessee Disability Coalition, Nashville, TN
Vermont Coalition for Disability Rights

CITIZENS

Carol Baizer, Santa Barbara, CA
Daily Dupre, Jr., Lafayette, LA
Don Beryl Fago, Evansville, WI
Barry S. Gridley, Santa Barbara, CA
Greg Jones, Parsons, KS
Catherine Koliha, Boulder, CO
Donald R. Mitchell, Bourbonnais, IL
Patricia Murphy, Juneau, AK
Elizabeth A. Patience, Watertown, NY
Jason Torpy, Marietta, OH
Randy Wagoner, New England
Rabbi Zev-Hayyim Feyer, Murrieta, CA
Joan Claybrook, President, Public Citizen
Nick Nyhart, Executive Director, Public Campaign
John Bonifaz, Executive Director, National Voting Rights Institute

LETTERS OF SERIOUS CONCERN

The Interfaith Alliance

Mr. LEAHY. Madam President, the ABA indicates concern about this nomination. The Standing Committee of the Federal Judiciary gave Mr. Pryor a partial rating of not qualified to sit on the Federal bench. And indications from these peer reviews have been enough to raise red flags in the confirmation process.

Let me talk about some more of the reasons we oppose William Pryor. Like Jeffrey Sutton, Mr. Pryor has been a crusader for the federalist revolution, but Mr. Pryor has taken an even more prominent role. Having hired Mr. Sutton to argue several key federalism cases in the Supreme Court, Mr. Pryor is the principal leader of the federalist movement, promoting state power over the Federal Government. A leading proponent of what he refers to as the ''federalism revolution,'' Mr. Pryor seeks to revitalize state power at the expense of Federal protections, seeking opportunities to attack Federal laws and programs designed to guarantee civil rights protections. He has urged that Federal laws on behalf of the disabled, the aged, women, minorities, and the environment all be limited.

Limiting Worker And Environmental Protections: He has argued that the Federal courts should cut back on the protections of important and well-supported Federal laws including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1964, the Clean Water Act, the Violence Against Women Act, and the Family and Medical Leave Act. He has repudiated decades of legal precedents that permitted individuals to sue states to prevent violations of Federal civil rights regulations. Mr. Pryor's aggressive involvement in this ''federalist revolution'' shows that he is a goal-oriented, activist conservative who has used his official position to advance his ''cause.'' Alabama was the only state to file an amicus brief arguing that Congress lacked authority to enforce the Clean Water Act. He argued that the Constitution's Commerce Clause does not grant the Federal Government authority to prevent destruction of waters and wetlands that serve as a critical habitat for migratory birds. The Supreme Court did not adopt his narrow view of the Commerce Clause powers of Congress. While his advocacy in this case is a sign to most people of the extremism, Mr. Pryor trumpets his involvement in this case. He is unabashedly proud of his repeated work to limit Congressional authority to promote the health, safety and welfare of all Americans.

Mr. Pryor's passion is not some obscure legal theory but a legal crusade that has driven his actions since he was a student and something that guides his actions as a lawyer. Mr. Pryor's speeches and testimony before Congress demonstrate just how rooted his views are, how much he seeks to effect a fundamental change in the country, and how far outside the mainstream his views are.

Mr. Pryor is candid about the fact that his view of federalism is different from the current operation of the Federal Government and that he is on a mission to change the Government to fit his vision. His goal is to continue to limit Congress's authority to enact laws under the Fourteenth Amendment and the Commerce Clause—laws that protect women, ethnic and racial minorities, senior citizens, the disabled, and the environment—in the name of sovereign immunity. Is there any question that he would pursue his agenda as a judge on the Eleventh Circuit Court of Appeals—reversing equal rights progress and affecting the lives of millions of Americans for decades to come?

Mr. Pryor's comments have revealed insensitivity to the barriers that disadvantaged persons and members of minority groups and women continue to face in the criminal justice system.

Attacking the Voting Rights Act: In testimony before Congress, Mr. Pryor has urged repeal of Section 5 of the Voting Rights Act—the centerpiece of that landmark statute—because, he says, it ''is an affront to federalism and an expensive burden that has far outlived its usefulness.'' That testimony demonstrates that Mr. Pryor is more concerned with preventing an ''affront'' to the states' dignity than with guaranteeing all citizens the right to cast an equal vote. It also reflects a long-discredited view of the Voting Rights Act. Since the enactment of the statute in 1965, every Supreme Court case to address the question has rejected the claim that Section 5 is an ''affront'' to our system of federalism. Whether under Earl Warren, Warren Burger, or William Rehnquist, the United States Supreme Court has recognized that guaranteeing all citizens the right to cast an equal vote is essential to our democracy—not a ''burden'' that has ''outlived its usefulness.''

His strong views against providing counsel and fair procedures for death row inmates have led Mr. Pryor to doomsday predictions about the relatively modest reforms in the Innocence Protection Act to create a system to ensure competent counsel in death penalty cases. When the United States Supreme Court questioned the constitutionality of Alabama's method of execution in 2000, Mr. Pryor lashed out at the Supreme Court, saying, ''[T]his issue should not be decided by nine octogenarian lawyers who happen to sit on the U.S. Supreme Court.''

Aside from the obvious disrespect this comment shows for the Nation's highest court, it shows again how results-oriented Mr. Pryor is in his approach to the law and to the Constitution. Of course, an issue about cruel and unusual punishment ought to be decided by the Supreme Court. It is addressed in the Eighth Amendment, and whether or not we agree on the ruling, it is an elementary principle of constitutional law that it be decided by the Supreme Court, no matter how old its members.

Mr. Pryor has also vigorously opposed an exemption for persons with mental retardation from receiving the death penalty, exhibiting more certainty than understanding or sober reflection. He authored an amicus curiae brief to the Supreme Court arguing that the Court should not declare that executing mentally retarded persons violated the Eighth Amendment. After losing on that issue, Mr. Pryor made an unsuccessful argument to the Eleventh Circuit that an Alabama death-row defendant is not mentally retarded.

Mr. Pryor has spoken harshly about the moratorium imposed by former Illinois Governor George Ryan, calling it a ''spectacle.'' Can someone so dismissive of evidence that challenges his views be expected to hear these cases fairly? Over the last few years, many prominent Americans have begun raising concerns about the death penalty, including current and former supporters of capital punishment. For example, Justice O'Connor recently said there were ''serious questions'' about whether the death penalty is fairly administered in the United States, and added: ''[T]he system may well be allowing some innocent defendants to be executed.'' In response to this uncertainty, Mr. Pryor offers us nothing but his obstinate view that there is no problem with the application of the death penalty. This is a position that is not likely to afford a fair hearing to a defendant on death row.

Mr. Pryor's troubling views on the criminal justice system are not limited to capital punishment. He has advocated that counsel need not be provided to indigent defendants charged with an offense that carries a sentence of imprisonment if the offense is classified as a misdemeanor. The Supreme Court nonetheless ruled that it was a violation of the Sixth Amendment to impose a sentence that included a possibility of imprisonment if indigent persons were not afforded counsel.

Like Carolyn Kuhl, Priscilla Owen and Charles Pickering, Mr. Pryor is hostile to a woman's right to choose. There is every indication from his record and statements that he is committed to reversing Roe v. Wade. Mr.

Pryor describes the Supreme Court's decision in Roe v. Wade as the creation ''out of thin air [of] a constitutional right,'' and opposes abortion even in cases of rape or incest.

Mr. Pryor does not believe Roe is sound law, neither does he give credence to Planned Parenthood v. Casey. He has said that ''Roe is not constitutional law,'' and that in Casey, ''the court preserved the worst abomination of constitutional law in our history.'' When Mr. Pryor appeared before the Committee, he repeated the mantra suggested by White House coaches that he would ''follow the law.'' But his willingness to circumvent established Supreme Court precedent that protects fundamental privacy rights seems much more likely.

Mr. PRYOR has expressed his opposition to fair treatment of all people regardless of their sexual orientation. The positions he took in a brief he filed in the recent Supreme Court case of Lawrence v. Texas were entirely repudiated by the Supreme Court majority just a few months ago when it declared that: ''The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private conduct a crime.'' Mr. Pryor's view is the opposite. He would deny certain Americans the equal protection of the laws, and would subject the most private of their behaviors to public regulation.

A record of activism: On all of these issues—the environment, voting rights, women's rights, gay rights, federalism, and more—William Pryor's record of activism and advocacy is clear. That is his right as an American citizen, but it does not make him qualified to be a judge. As a judge it would be his duty to impartially hear and weigh the evidence and to impart just and fair decisions to all who come before the court. In their hands, we entrust to the judges in our independent Federal judiciary the rights that all of us are entitled to enjoy through our birthright as Americans.

The President has said he is against what he calls ''judicial activism.'' How ironic, then, that he has chosen several of the most committed and opinionated judicial activists ever to be nominated to our courts.

The question posed by this controversial nomination is not whether Mr. Pryor is a skilled and capable politician and advocate. He certainly is. The question is whether—not for a 2-year term, or a 6-year term, but for a lifetime—he would be a fair and impartial judge. Could every person whose rights or whose life, liberty or livelihood were at issue before his court, have faith in being fairly heard? Could every person rightly have faith in receiving a just verdict, a verdict not swayed by or yoked to the legal philosophy of a self-described legal crusader? To read Mr. Pryor's record and his extreme views about the law is to answer that question.

The President has chosen to divide the American people, the people of the Eleventh Circuit, and the Senate with this highly controversial nomination. He should clean the slate and choose a nominee who can unite the American people.

I see the distinguished senior Senator from New York on the Senate floor. Would he seek time?

I yield the floor. How much time is remaining?

The PRESIDING OFFICER (Mrs. DOLE). Twenty-three minutes 11 seconds.

Mr. LEAHY. I thank the Chair. I yield 10 minutes to the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you, Madam President. I thank our great leader of the Judiciary Committee, PAT LEAHY, leader on our side, for his stalwart defense of having a mainstream Judiciary and for his leadership on so many other issues.

I will note what we all start by noting: We have now confirmed 168 of the President's nominees and opposed 4. The President is getting his way 98 percent of the time on judicial nominations. To say that is obstructionism is to rewrite Webster's Dictionary. We have bent over backwards to be fair.

In fact, in many of our States, including my own State of New York, when the President and the White House ask for an agreement, we do agree; we are in the process of filling every vacancy in New York. I don't agree with many of the judges we are nominating on particular issues but they meet the fundamental test. The only litmus test I have is not on any one issue but, rather, will the judge interpret the law, not make it. That is what the Founding Fathers wanted judges to do in their infinite wisdom. I say ''infinite'' because my hair stands on edge; the longer I am around, the more I respect the wisdom of our Founding Fathers. In their infinite wisdom, they wanted judges to interpret law, not make it; they wanted the Senate, in its infinite wisdom, to be a check—a real check, not a rubberstamp—on the President's power to nominate. The Senate is a cooling saucer.

The other side says, let the majority rule. We know what will happen. Every single one of the President's nominees, so many chosen through ideological prisms, will be approved. I don't think we have had a situation, since the President has nominated anyone—I may be wrong—where a single Republican opposed any of the President's nominees. Is that the open, grand debate the Founding Fathers envisioned? I may be off by an instance here and an instance there, but I am sure if you tabulate all the votes taken by Republicans on all of the nominees, the number of ''no'' votes, the percentage of ''no'' votes, is infinitesimal.

Yes, we are blocking judges by filibuster. That is part of the hallowed process around here of the Founding Fathers saying the Senate is the cooling saucer. We do not work as quickly as the House. We are not as restricted as the House. That is how it was intended to be. I don't believe in tit for tat. This is not a tit-for-tat comment, but the other side did not even let 50 judges come up for a vote in committee. They blocked a far higher percentage of President Clinton's judges than we have blocked of President Bush's judges.

The means is not the issue here; it is the end. So that is how it is. We have been very careful when we have opposed nominees. We have tried to give the President—it makes sense to do it—the benefit of the doubt. But some nominees are so far out of the mainstream, it is so clear they are going to make law, not interpret law, that we believe it is our constitutional obligation to our country and to the next generation of Americans to oppose them. Mr. Pryor is one of those nominees.

What the other side has tried to do is two types of things. One, they say we are opposing someone because of their race or sex, his or her religion. Those are cheap shots. We are opposing people because they are ideologically out of the mainstream, without any discrimination. If they are Black and out of the mainstream, or a woman and out of the mainstream, or Protestant, Catholic, or Jewish and out of the mainstream, we are going to oppose them.

The second thing they try to do is say it is because of one particular issue. There is a litmus test on Justice Brown; they are saying it is on affirmative action. On Attorney General Pryor, they are saying it is because of the issue of abortion.

Let's look at the record. I, myself, Senator LEAHY, and just about every Democrat have voted for a majority of judges who disagree with our views on affirmative action and abortion. The number of judges I have voted for who are pro-life in the last 2 years far exceeds the number I have voted for who are pro-choice. That demolishes any argument of a litmus test. I have not asked too many judges their views on affirmative action, but my guess is, how ideologically driven the President's nominees are, that I have voted for a large number of nominees who disagree with my view on affirmative action as well. But it is not a litmus test. It is again a question, Will they make law or will they interpret law?

If we look at Attorney General Pryor's record, he is not a mainstream conservative. He is far out of the mainstream. Let me give some examples.

On criminal justice issues, I tend to be conservative. I tend to agree often with my Republican colleagues on criminal justice and other such issues. But, again, there are limits. He defended his State's practice of handcuffing prisoners to hitching posts in the hot Alabama summer for 7 hours

without giving them a drop of water to drink, and when the conservative supreme court said this violated the 8th amendment ban on cruel and unusual punishment, he criticized the court's decision, saying they were applying their ''own subjective views on the appropriate methods of prison discipline.''

How about States rights? Attorney General Pryor has been one of the staunchest advocates of the Reagan court's efforts to roll back the clock not just to the 1930s but to the 1890s. He is an ardent supporter of an activist Supreme Court agenda cutting back Congress's power to protect women, workers, consumers, the environment, and civil rights.

As Alabama attorney general, why was he the only one of 50 attorneys general urging the Supreme Court to undo significant portions of the Violence Against Women Act? The Violence Against Women Act is not out of the mainstream. In fact, it has overwhelming support from both parties. But here is Pryor, way beyond.

How about on the case of child welfare? At the same time he was conceding that Alabama had failed to fulfill the requirements of a Federal consent decree regarding the operation of the State's child welfare system, he was demanding that the State be let out of the deal. It is not so much the position he took but the comments he made afterward. Attorney General Pryor said:

> My job is to make sure the State of Alabama isn't run by federal courts. . . . My job isn't to come here and help children.

I wonder how many Alabamians would agree with that statement.

When it comes to the environment, more of the same concerns. We have had a consensus for 40 years that the Constitution allows the Federal Government to regulate interstate waters. Not Attorney General Pryor—again, the lone attorney general to file an amicus brief arguing the Constitution does not give the Federal Government the power to regulate interstate waters. He took this position despite decades of precedent and the Federal Clean Water Act, standing for the contrary position.

He has been probably the staunchest advocate of States rights of all the attorneys general, of the ability of the States to do what they want and the Federal Government cannot tell them what to do. But then, all of a sudden, when the Supreme Court in Bush v. Gore made a decision that overruled the State of Florida, only one attorney general intervened on behalf of either side; 49 attorneys general, whatever their views, had the good sense not to intervene in that highly charged case. Not Attorney General Pryor. It is so contrary to everything he believed in, everything else, that when he says, I will interpret the law—which he has stated before us; every nominee does, and some do, and some don't, and we have to make a judgment whether, when they say it to us, it will actually happen. As we all know, once we appoint them, the horse is out of the barn—lifetime appointment; they are there forever. But when he goes through a pretzel-like contortion—

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

Mr. SCHUMER. Madam President, I ask my colleague to yield me another 2 minutes.

Mr. LEAHY. I yield the Senator 2 minutes.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. But when he goes through such a contortion to advocate against States rights on Bush v. Gore, you say this is not a man interpreting law; this is a man who is outcome determinative. He comes to the result he wants and then takes the law in that direction.

I do not have an easel here, so I thank my staff aide for helping me hold up this very heavy sign. It is heavy in its words.

Here is what Grant Woods, a former Republican attorney general of Arizona, said:

> I would have great question of whether Mr. Pryor has an ability to be nonpartisan. I would say he was probably the most doctrinaire and most partisan of any attorney general I dealt with in 8 years. So I think people would be wise to question whether or not he's the right person to be nonpartisan on the bench.

That did not come from some wild-eyed, crazy, liberal Democrat. It came from the attorney general—a Republican—of a conservative State, Arizona. He makes the case as good as anybody.

Let me say, in conclusion, Bill Pryor is a proud and distinguished ideological warrior. I respect him for it. But ideological warriors, whether from the left or from the right, are bad news for the bench. They want to make law, not interpret it. That is not what the Founding Fathers wanted and that is not what the American people want from their judges. I oppose the nomination.

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

Who yields time?

Mr. SESSIONS. Madam President, I ask unanimous consent for 3 minutes and then I will yield to the Senator from Texas.

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

The Senator from Alabama.

Mr. SESSIONS. I would like to respond briefly to Senator SCHUMER's comments.

There have been a lot of words used: ''extreme views,'' ''radical views,'' words of that nature, ''way outside the mainstream of legal thought.'' Then you listen. Show me what happened, what positions he has taken that are outside the mainstream.

He cited this hitching post case and said people were held without water, which was very much disputed, and I submit was not the truth. But, at any rate, the State had stopped that procedure. The case the attorney general defended was whether or not guards could be sued personally and made personally liable for carrying out what at one time had been the established policy of the prison system. That is what went before the Supreme Court. He did the right thing.

He was criticized for certain States rights issues on the Violence Against Women Act. He challenged a small part of that act that violated a State's procedures and rights of immunity and won that case in the Supreme Court.

He is recognized for the Children's First Program in Alabama that was to put large amounts of money into improving procedures for children in Alabama. He was one of the leaders in the State in promoting and working for that.

Time and time again, he has proven to be a powerful, effective lawyer. Thurbert Baker—the Senator talked about an attorney general from Arizona, who only knew Mr. Pryor, I am sure, only at attorneys general meetings. But Thurbert Baker, the Democratic attorney general of Georgia, an African American, knows him. This is what Thurbert Baker, an attorney general, an African American, said about Bill Pryor:

> [He] has always done what he thought was best for the people of Alabama.

And Mr. Baker said:

> [He] know[s] that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Former Democratic Alabama Governor Don Seigelman said:

> Bill Pryor is an incredibly talented, intellectually honest attorney general. He calls them like he sees them. He's got a lot of courage, and he will stand up and fight when he believes he's right.

Madam President, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I want to say a few words about the nomination of Bill Pryor to serve on the Eleventh Circuit Court of Appeals. I come to this debate with some personal knowledge of the nominee, having served as attorney general of Texas for 4 years during the time Bill Pryor served as attorney general of Alabama.

Before I get to the specific comments about this outstanding nominee and distinguished law enforcement official, I want to say a little bit about the process.

The process of confirming judicial nominees in the Senate is broken, and it cries out for reform and a fresh start. Since I have been in the Senate, I have heard those who have attempted to justify the poor treatment of President Bush's judicial nominees based upon alleged poor treatment of President Clinton's judicial nominees. We have somehow gotten involved in this game of tit for tat, of recrimination, that does not serve the best interests of the American people. We have gotten into unprecedented obstruction of

judicial nominees by filibuster, which has never in the history of this great Nation happened until recently, and it is a tragedy.

As some of my colleagues on this side of the aisle observed, if a minority of Democrats are successful in blocking a bipartisan majority in the Senate from an up-or-down vote on a judicial nominee, when the roles are reversed, which at some time in the future they may be, and a Democrat is in the White House, Republicans are going to want to use the same tactic on nominees of a Democratic President—something I believe would be wrong, but my views do not necessarily control what happens in this body.

The point is, we are on a downward spiral of destruction not only of this great institution, but damaging in the process the fine reputations of these individuals who have come forward to offer to serve the American people. We are treating them as common criminals. We are mischaracterizing their resumes, their reputations in the process, and I believe doing great harm in the process.

I want to say our colleagues on the other side of the aisle, who claim to be—in the words of Thomas Jefferson, supposedly, when he was asking Washington about the role of the Senate in our form of Government, he called the Senate the cooling saucer. But the truth is, rather than a cooling saucer when it comes to judicial confirmation, the Senate has become a stone wall, not a cooling saucer, particularly as it pertains to these nominees the minority Democrat leadership has decided to obstruct and prevent from an up-or-down vote.

I realize they are grasping at straws, but somehow they have grasped on to this notion that since they have not blocked 168 of President Bush's nominees, they should be congratulated for blocking only 4. Well, we learned this morning in the Judiciary Committee that that four may soon become five, and then possibly six.

My point is they simply cannot be congratulated for an unconstitutional, unprecedented filibuster and preventing up-or-down votes, which is democracy in action.

There is another thing. For example, the Senator from New York, who just spoke a few moments ago, who also serves on the Judiciary Committee, said something which I think bears some scrutiny. This morning he repeated an allegation he and others have made that somehow President Bush has hijacked the judiciary by nominating a narrow band of people who he claims are ideologically driven to overturn the law and run roughshod once they get on the courts.

They really need to make a decision what they believe. They either believe President Bush's nominees are all ideologically driven and determined to reach a particular result regardless of what the Congress says, regardless of their oath of office, where they put their hand on the Bible and agreed to serve as a judge and interpret the law, not make law, or this argument about being congratulated for somehow confirming 168 of these people, which simply does not stand up.

They have to make a choice. The truth is, they want it both ways. They really can't have it both ways.

Bill Pryor is simply an outstanding human being and a great attorney general. I believe he will be an outstanding judge. He is a deeply religious man. Some have criticized him for his deeply held beliefs. Unfortunately, sometimes in this debate, I worry that by criticizing somebody for their deeply held beliefs, which happen to be founded in their religious beliefs, we are setting a bar or perhaps building a wall against the opportunity for these people to participate in our government, particularly on the bench. That should not be the case. Our Constitution bars religious tests from service in public office.

General Pryor has demonstrated his ability to enforce the law as written, which is what he would do on the bench, interpret the law as written and not elevate his personal agenda or his personal beliefs above what the law says. Time and time again, he has done so.

I worry about two things in this process. One is obstruction, preventing a bipartisan majority from voting, and destruction of good human beings and their reputations they have worked a lifetime to achieve. They come here, honored to receive the nomination of our President to serve in these positions of great honor, and then they are placed in the dock where they become an accused and are expected to defend themselves against unwarranted and unjustified charges.

I wish we could see a fresh start to a process that does not serve either the nominees or this body or the American people well. I do not believe anyone should be congratulated for an unconstitutional obstruction of the democratic process going forward, when a bipartisan majority is ready to confirm these outstanding nominees, such as Bill Pryor. But that is what we have seen, obstruction and destruction of these fine individuals.

I see the distinguished chairman of the Judiciary Committee. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I thank my colleagues for their excellent remarks for and on behalf of Attorney General Pryor who is one of the best nominees I have seen in a long time, a person of great character.

Today we will again vote for cloture on the nomination of William Pryor for the Eleventh Circuit Court of Appeals. Denying undisputedly well-qualified nominees the up or down vote they deserve does not fulfill our Senatorial duties—it abdicates them. This filibuster not only damages our accountability to the people who elect us, but it erodes the credibility of the Senate itself.

Today, let me take a few moments to explain why every single Member of this body should vote to invoke cloture, and end debate, on the Pryor nomination so that he is afforded the dignity of an up-or-down vote that is all we are asking for.

Not even those most vigorously opposed to Bill Pryor's nomination contend that his record is insufficient. He has been a bold, vocal, and successful advocate for his state as Attorney General, an elected office in Alabama. Prior to and during his campaigns seeking re-election to the attorney general position in 1998 and 2002, he made his positions on the contentious issues of the day crystal clear—and he won his most recent election with almost 60 percent of the vote. Rarely has the Judiciary Committee reviewed such a full and unmistakably clear record for an appellate nominee; rarely has a nominee at his hearing been so honest, intelligent and forthright in his answers to every Senator's questions, even though he surely knew that his legal and policy positions on many, if not most, issues, clashed head-on with the positions of the liberal Democrats who questioned him.

The problem that those opposed to giving Bill Pryor an up-or-down vote in the Senate have is that they cannot credibly make any substantive arguments against him. So they oppose him based on what he has stated he personally believes. They cannot cast aspersions on his legal ability—the undisputed quality of his legal work as Attorney General of Alabama is reflected in several major cases in which Supreme Court majorities have agreed with his arguments. They cannot say he is only a one-party horse because so many Democrats, and many prominent African-American Democrats, in Alabama support him even though they disagree with him politically. They cannot really find anything substantive that might reflect poorly on his qualifications to sit on the federal bench.

Therefore, their accusations against General Pryor have relied on an all-too familiar script: he is a so-called states' rights fanatic; he is anti-environment; anti-disability rights; anti-women; opposes minority voting rights; and wants to turn America into a Christian theocracy. These sound bites are easy to make, but General Pryor's record speaks with far more authority than the fulminations against him. So his opponents attack his personal beliefs, even though in every instance in which a conflict between those beliefs and the law has arisen in Bill Pryor's career, he has unfailingly put the law first.

The most recent example is his response to Chief Justice Roy Moore's refusal to comply with the Federal injunction ordering removal of the Ten Commandments monument from the rotunda of the Alabama Supreme Court

building. General Pryor said, ''Although I believe the Ten Commandments are the cornerstone of our legal heritage and that they can be displayed constitutionally as they are in the U.S. Supreme Court building, I will not violate nor assist any person in the violation of this injunction. . . . We have a government of laws, not of men. I will exercise any authority provided to me, under Alabama law, to bring the State into compliance with the injunction of the federal court. . . .''

In fact, the committee received a letter from Justice Douglas Johnstone, the only Democrat on the Alabama Supreme Court, praising General Pryor's actions during this high-profile dispute in Alabama. He writes, ''General Pryor immediately offered us all appropriate support of his office and fostered public support by announcing publicly that the injunction was due to be obeyed in the absence of a stay. . . . Before the Monument crises, General Pryor's political prospects, irrespective of any federal appointment, were brighter than most I have observed in my decades in politics. Now he is as full of political bullet holes as Fearless Fosdick. My personal acquaintance with him and observation of him over his years in office satisfy me that he fully expected the damage but did his duty, and is doing his duty and a splendid job of it regardless of the consequences. I am endorsing General Pryor because over the years he has proven his honesty and intelligence. I do not pretend to agree with him on all issues. I would rather have the honesty and intelligence than the agreement.''

On the issue of abortion, General Pryor's record provides another example of his commitment to following the law even when it conflicts with his deeply held personal beliefs. After the Alabama legislature passed a partial-birth abortion ban in 1997, General Pryor issued guidance to State law enforcement officials to ensure that the law was enforced consistent with the Supreme Court's 1992 decision in Planned Parenthood v. Casey. Although there was considerable outcry against his decision from the pro-life community, the ACLU praised General Pryor's decision, emphasizing that his order had ''[s]everely [l]imited'' Alabama's ban. He issued similar guidance after the Supreme Court's 2000 ruling in Stenberg v. Carhart, which struck down another State's ban on partial-birth abortion. Again, the dictates of the law trumped his personal beliefs. He stuck with the law even though he totally disagreed with it.

The President has nominated a good and honest man with a sterling legal career, a bipartisan reputation for enforcing the law impartially as attorney general, and an enviable record of success before the nation's highest Court. At General Pryor's inauguration as Attorney General, he opened with the statement: ''Equal under law today, equal under law tomorrow, equal under law forever.'' Despite the distortions, half-truths, and outright falsehoods we have heard about him, General Pryor is a diligent, honorable man whose loyalty as a public servant has been to the law and its impartial administration. He has told us under oath that he will continue to follow the law, just as he has demonstrated during his distinguished career in Alabama. Quoting again from Justice Johnstone's letter—Justice Johnstone is a Democrat—to our Committee: ''The crucial question in judging a judicial candidate or nominees is not what sides of legal issues he or she has advocated but whether he or she has enough reverence for the rule of law, enough humility, and enough self-control to follow the law whether he or she likes it or not. My observation tells me General Pryor does.''

A minority of the Senate is again attempting to prevent us from voting on Attorney General Pryor despite his outstanding record. Such an attempt is profoundly at odds with what the Constitution demands of us as Senators. The President and the American people have a right to an up or down vote on judicial nominees. Playing politics or political games with judicial nominees must stop and we must do our duty and vote on this excellent nominee, Bill Pryor.

Accordingly, I urge my colleagues not to deny Bill Pryor the courtesy of an up or down vote on the Senate floor. He deserves better, the President deserves better, and the majority of the Senate that stands ready to confirm him deserves better. Most importantly, the American people deserve the opportunity to hold their Senators accountable for the votes they cast on the President's judicial nominees. We must invoke cloture on Bill Pryor's nomination.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Illinois is recognized.

Mr. DURBIN. Madam President, how much time remains on the Democratic side?

The PRESIDING OFFICER. There are 11 minutes 30 seconds remaining.

Mr. DURBIN. In the absence of the chairman, I will say a word or two about the nomination.

At the outset, I will say this may be the toughest part of this job—standing in judgment of other people. It is easy to deal with issues and abstractions and numbers and policy. But when you stand in judgment of another person, I think it is one of our most solemn responsibilities, complicated even more by the fact that many of the people who are in controversy here have very close friends in the Senate among my colleagues. In this case, my friend and colleague, Senator SESSIONS of Alabama, I believe counts William Pryor as one of his close friends. They have worked together for many years.

I can tell you, from his statements in committee and on the floor, he is totally committed to him and believes he would be a fine circuit court judge. That is why opposition to his nomination is all that much more difficult.

I come here today to oppose his nomination because, frankly, as I listened carefully to Attorney General Pryor's positions on the issues in the Judiciary Committee, it struck me that on issue after issue he has not only taken an extreme position but has been unashamed, unabashed, and unembarrassed to express it in some of the clearest language we have had before us. You have to ask yourself, if he is that strident, if he is that committed to these extreme positions, can he possibly perform his responsibilities as a member of the circuit court of appeals—a lifetime appointment—in the way that we expect?

We don't want judges to make laws but, rather, to interpret them. When somebody comes to this position with a long history and pedigree of taking these strongly held, extreme positions on the law, is it reasonable for us to believe they will cast them aside once taking the oath of office and then be dispassionate in the way they rule? I think that really strains credulity.

There are some who believe that if a nominee comes before us and says, ''I will just apply the law,'' that is all we need to hear; that we can ignore what they have done beforehand. You cannot do that. You have to make an honest assessment.

We find time and again that nominees for the Federal circuit court—the second level before the Supreme Court—are those nominees with the strong ideological backgrounds. They are the ones who have run into controversy and trouble on the Senate floor.

I believe that this White House, if it wanted to, could focus more on finding common ground between Republicans and Democrats. We expect to receive conservative Republican nominees for all of these vacancies. That is a reflection of the President's philosophy.

In the case of Attorney General William Pryor, this goes beyond mainstream conservatism. Some of the things he has said relative to issues relating to judicial activism and the like are difficult for us to reconcile with the person who we want to be fair and dispassionate in his rulings.

Mr. Pryor stated:

> Our real last hope for federalism is the election of Governor George W. Bush as President of the United States, who has said his favorite justices are Antonin Scalia and Clarence Thomas.

He went on to say:

> Although the ACLU would argue that it is unconstitutional for me as a public official to do this in a Government building, let alone a football game, I will end my prayer for the next administration, ''Please, God, no more Souters.''

That is a reference to Supreme Court Justice Souter. These remarks don't lend themselves to the argument that Attorney General Pryor is going to be

measured and moderate and fair if he is given this lifetime appointment to the circuit bench.

I have looked at his record on a variety of issues and I can tell you that, time and time again, what I have seen is a position that is hard to reconcile with the standard we should set for all judges to this position.

I yield the floor.

Mr. FEINGOLD. Mr. President, much of the debate on this nomination has focused on the views and qualifications of this nominee. I want to call the attention of the Senate to the violation of the rules of the Judiciary Committee that occurred when Mr. Pryor was considered in the committee. I will vote no on cloture because I believe that the committee rules were violated in reporting the nomination to the floor and that, before the Senate acts on this nomination, more investigation is needed of Mr. Pryor's involvement with the Republican Attorneys General Association and the truthfulness of his testimony on that topic.

We faced a similar procedural problem early this year in the committee. I thought we had reached a resolution of that dispute. A number of us lifted our objection to proceeding with floor votes on John Roberts and Justice Deborah Cook after we received assurances that the committee's rule IV would be reinstated and abided by from that time forward. That agreement was put to the test during consideration of the Pryor nomination, and I'm sorry to say that the Committee failed that test.

Just as we did in connection with the Roberts and Cook nominations in late February, in July, Democrats on the committee invoked rule IV and asked that a vote on the Pryor nomination not be taken. But once again, the rule was violated.

The interpretation of rule IV that the chairman of the Judiciary Committee followed in connection with the Pryor nomination conflicts with the text of the rule, the practice of the committee for 24 years under five separate chairmen, and the history of the adoption of the rule. It was as wrong in July as it was in February when the chairman first expressed it. I won't repeat those arguments today, but I ask unanimous consent that a copy of my statement in the Judiciary Committee from March 27 be printed in the RECORD.

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

SENATOR RUSS FEINGOLD—STATEMENT ON JUDICIARY RULES

Mr. Chairman, last week we readopted the Committee's rules. I had no problem with us taking that action, although as I said at our meeting, I think we need to have an opportunity to discuss that agenda item rather than acting off the floor without anytime for consideration. But with the understanding that we would have the opportunity to have a discussion and debate, I was fine with readopting the rules for this Congress.

As I understand it, the rules have been in effect throughout the year. I have no problem readopting those rules, which as I understand it, have been in effect this year in the debates we have had so far. But having done that, I want to make some comments on what happened in our meeting on February 27. I believe that a clear violation of the committee rules occurred on that day, and we really need to discuss this as a committee before proceeding with further business.

What happened on February 27 was a sad moment for our Committee and does not bode well for the harmonious functioning of the Committee this year. Indeed, since that day we have been in a free fall it seems to me. Communications have broken down among us and among our staffs. On the Democratic side, we feel unfairly taken advantage of, and I know there are bad feelings on your side as well. I am very sorry about this because we have much work to do for the country, and we can do that work much more efficiently and much more successfully if we work together with respect and good will than if we are constantly fighting with each other.

Mr. Chairman, you have the votes in this Committee to do pretty much whatever you want. But that does not mean that you should ignore the rights of those who disagree with you. That is what occurred at the February 27 meeting.

Let me quickly review the background of this dispute. The Chairman sought to have votes on circuit court nominees Justice Deborah Cook and Mr. John Roberts. A number of us on the Democratic side believed that those votes should not occur because those two nominees had not received an adequate hearing in this Committee. I'm not going to take the time to review our position on that score in any detail, but I do want to point out that we have not engaged in a policy of blanket obstruction of nominees in this Committee. We voted on Miguel Estrada. We voted on Jeffrey Sutton. We voted on Jay Bybee. We voted on Timothy Tymkovich. We will soon vote on Priscilla Owen.

Many of us voted against some or all of those nominations, but we agreed to have a vote because we thought that the Committee's consideration of the nominees had been sufficient for us to make up our minds. We have not sought to use Rule IV to obstruct the functioning of the Committee.

In the case of Justice Cook and Mr. Roberts, however, we had asked repeatedly for another hearing. We had asked, as an alternative, for a public meeting with the nominees. Having been rebuffed at every turn, we simply did not feel ready to proceed with votes on their nominations. We did not believe the Committee has been given adequate opportunity to assess the qualifications and examine the record of Justice Cook and Mr. Roberts.

But when we objected to a vote on February 27, the Chairman overruled the objection and forced a vote, in clear violation of Rule IV. This was an astonishing act in a body that functions in large because all members respect the rules and abide by them.

When an objection to proceeding to a vote was made, the proper course under our Committee's longstanding Rule IV was to hold a vote on a motion to end debate on the matter. The Rule provides that debate will be ended if that motion carries by a majority vote, including one member of the minority. In this case, our side was united in opposing ending debate, so the motion would have failed. It is, in effect, as the Chairman himself recognized in 1997 when the Rule was invoked in connection with the Bill Lann Lee nomination, a kind of filibuster rule in the Committee. The vote to end debate is like a cloture vote, and it cannot succeed unless at least one member of the minority assents.

Now Mr. Chairman, I have read your letter to Senator Daschle in which you attempt to justify your actions. With respect, Mr. Chairman, your interpretation of the rule is erroneous. In fact, it is clearly erroneous, and I don't use that term lightly.

Your position is that the Chairman of this Committee has unfettered power to call for a vote on a matter and that Rule IV is only designed to allow a majority of the committee to force what you call an ''obstreperous Chairman'' to hold a vote on a matter on the agenda when he doesn't want to. That interpretation conflicts with the text of the rule, the practice of the Committee for 24 years under five separate Chairmen, including the current Chairman, and with the history of the rule itself.

I want to start with the history because I think it so plainly shows what the rule is designed to do. The rule was adopted in 1979 when Sen. Kennedy chaired the Committee. The Committee at that time had 10 Democrats and 7 Republicans. You were on the Committee at the time, as was Senator Leahy.

At that time, there was no way at all to end debate in Committee if even one member wanted to continue debate. Senator Thurmond, who was the ranking member at the time, stated during the committee meeting: ''The present rule is the Senator can talk as long as he wants to.''

Recent years had seen controversial matters such as the Equal Rights Amendment stalled for long periods of time in Committee. The Civil Rights era had seen the Committee headed by a segregationist Chairman block civil rights legislation. Chairman Kennedy sought a new committee rule to allow him to bring a matter to a vote. His original proposal was simply to let the Chairman call a vote when he believed there had been sufficient debate. This is how the original proposal read, from the transcript of the Committee's meeting on January 24, 1979: ''If the Chairman determines that a motion or amendment has been adequately debated, he may call for a vote on such motion or amendment, and the vote shall then be taken, unless the Committee votes to continue debate on such motion or amendment, as the case may be. The vote on a motion to continue debate on any motion or amendment shall be taken without debate.''

That was the original proposal to change the right of unlimited debate. And if that rule had been adopted, and remained in effect until the present, what happened on February 27 would have been just fine because a majority of the committee would not have supported our request to continue debate.

But Chairman Kennedy's proposed rule was not adopted. Sen. Thurmond noted that the minority on the committee were opposed to the change. He stated: ''We feel it would be a mistake, if there is going to be a change we do think there ought to be some compromise between the unlimited debate maybe and a majority. That is what I was discussing with Senator DeConcini. I felt maybe 12 members could cut off debate. Senator DeConcini suggested 11.''

Mr. Chairman, during this 1979 markup—and I have to say that the transcript makes for fascinating reading—Democratic members like Sen. Howard Metzenbaum, Sen. Kennedy, and even Sen. Biden spoke about the need for the Committee to be able to conduct business and not be thwarted by what Sen. Metzenbaum called a ''talkathon.'' On the other hand, Republican members of the Committee were wary of a rule change. And Mr. Chairman, you spoke against the rule that Sen. Kennedy proposed. You said the following: ''I would be personally upset. There are not a lot of rights that each individual Senator has, but at least two of them

are that he can present any amendments which he wants and receive a vote on it and number two, he can talk as long as he wants to as long as he can stand, as long as he feels strongly about an issue. I think these rights are far superior to the right of this Committee to rubber stamp legislation out on the floor.

Later you continued: I think it is a real mistake, Joe, and Mr. Chairman. I see the advantages of being able to expedite legislation and try to balance that. I think it is a real mistake to take away these rights.

Senator Thad Cochran was then a member of the committee and at the end of the meeting, he, echoing Sen. Thurmond, suggested a compromise. He said: ''Mr. Chairman, I don't have anything to add other than except I do support writing into the rule the requirement that there be an extraordinary majority to shut off debate in our Committee. I think we can arrive at some number agreeable to everyone.

There was quite a lengthy discussion of the proposed rule change. One particularly significant remark was made by Senator Bob Dole, who was then on the Committee said: ''[A]t least you could require the vote of one minority member to terminate debate. I'm sure you could always secure one vote over here.''

The next week, the Committee reached agreement and adopted Rule IV, which has been in effect ever since. The transcript of the Committee's meeting indicates only that the rule change was acceptable to both sides. There is no further discussion or debate.

The text of the rule takes up Sen. Dole's idea, requiring at least one member of the minority to vote to end debate. The compromise ended the ability of one or a few Senators to tie up the Committee indefinitely. But it gave the majority the power to end debate over an objection if it could convince one member of the minority to agree. The Committee didn't adopt Sen. Thurmond's or Sen. Cochran's suggestion precisely, but it specified a super-majority to end debate, 10 out of the 17 member of the committee. Because ten of the 17 members of the Committee at the time were democrats, the new rule made it even more difficult for the majority to end debate by taking up Sen. Dole's suggestion and specifying that at least one member of the minority had to agree. That was the compromise reached, and that is the rule we have had for over two decades.

Mr. Chairman, the argument that the rule places no limit on the Chairman's ability to end debate is clearly answered by this history. It is clearly wrong. The committee rule was violated when Justice Cook and Mr. Roberts were reported over the objection of some members without a vote in the Committee to end the debate. There is simply no question about this.

You have mentioned a number of times that the Parliamentarian agreed with your interpretation of the Committee's rules. I do not believe that is accurate. What the Parliamentarian has told us is that if a point of order is made on the floor he would only look to make sure the Senate rules were followed. Those rules simply require a majority vote of the committee when a quorum is present. No Senate rule was violated on February 27, but a Committee rule, Rule IV, clearly was.

During the February 27 meeting, a new member of our Committee, the Senator from South Carolina, stated that if our intention of Rule IV prevailed, ''you could not ever do any business, have any votes, unless the other side totally agreed.'' I just want to point out that that is not the result we seek at all. There is a big difference between the other side ''totally agreeing'' and having one member of the minority voting to end debate. The Senator from South Carolina actually described the situation in this Committee before Rule IV was adopted, but not after.

I do want to point out to my colleagues once again that it is hardly the case that we on the Democratic side have tried to block all action on judges using Rule IV. We voted on Miguel Estrada. We voted on Jeffrey Sutton. We voted on Jay Bybee. We voted on Timothy Tymkovich. We will vote on Priscilla Owen. In the last Congress we approved 100 of President Bush's nominees. I voted against a few of them, but I never tried to hold up a vote.

We tried to invoke Rule IV on February 27 only because of the special circumstances surrounding the Cook and Roberts nominations. We felt, and we still feel, that the Committee's consideration of these two nominees was inadequate. That's why we objected to the votes.

Now Mr. Chairman, this might seem like a petty matter. But is isn't. Honoring the rules of the Senate and the rules of the committees gives credibility and legitimacy to the work we do here. Rules that survive changing tides of political power are the hallmark of a democracy. In may ways our committee rules are analogous to the rule of law in our society. We have to respect those rules or we have nothing left.

Mr. Chairman, it is clear from the history of Rule IV that it we insisted on in 1979 by Republican Senators then in the minority to preserve their rights in Committee to debate matters fully and not just, in your own words at that time, ''rubber stamp legislation out to the floor.'' The justification for ignoring the rule given in the letter to Sen. Daschle simply doesn't hold water when you look at the history and practice in this Committee. This kind of results-oriented approach to the rules of the Committee does not serve us well. The rules of this body, like the laws of this country, protect all of us. We must stand up to efforts to ignore them.

What happened in the Committee on February 27 with respect to Rule IV did not reflect well on the Committee or the Senate. I sincerely hope that these rulings will be reconsidered. The Committee must enforce its rules, not run roughshod over them. And if that means that we consider and discuss certain nominations a little longer before reporting them to the floor, so be it. That is what happens in a deliberative body governed by rules not fiat.

Thank you Mr. Chairman.

Mr. FEINGOLD. I want to emphasize that we have never sought to use rule IV to indefinitely delay a nomination in committee. With respect to Mr. Roberts and Justice Cook, we only wanted adequate hearings so that we could properly exercise our constitutional responsibility to advise and consent on the nomination. With respect to Mr. Pryor, we only wanted to complete an investigation that was well underway already. We have never tried to kill a nomination in committee by never voting on it, even though that was done dozens of times to President Clinton's nominees. But we should not be forced to vote on a nomination before we have all of the information that we feel is needed to make an informed recommendation to our colleagues in the full Senate.

We needed more time to investigate the issues raised by records from the Republican Attorneys General Association, RAGA, that the committee received. The documents raise what seem to me to be serious questions about the accuracy of Mr. Pryor's testimony before the Judiciary Committee and the answers he provided to written questions. We needed more time to contact the people who know about Mr. Pryor's activities as the Treasurer of RAGA and ask them questions. And we should have called Mr. Pryor back to ask him further questions in person and under oath. I don't know where this investigation might have led, but I do know that it was not nearly completed when the committee voted in July.

It was the committee's duty and responsibility to provide the full Senate with a complete record about a nominee. But, as we expected, once the committee voted, the investigation stopped. So there are still many unanswered questions.

Let me just cite a few examples of the questions that the RAGA documents raise. In answer to one of my written questions about who administered RAGA and who might have records of its activities, Mr. Pryor stated that RAGA was administered by the RNC and that to his knowledge all records were maintained by the RNC. He also stated that all solicitations for membership in RAGA were made by the staff of the RNC or the 5 State attorneys general who served on RAGA's executive committee. He failed to identify a single individual who worked for RAGA or raised money for RAGA.

The documents we received indicate that RAGA was administered for over a year by an individual who had previously been Mr. Pryor's campaign manager. She served as RAGA's finance director. That person did not work for the RNC. They also identify an RNC employee who previously had worked for Mr. Pryor on his campaign. Both of these individuals maintained records of RAGA at some point. But Mr. Pryor did not identify these individuals, even though our questions clearly sought that information.

The documents also show that solicitations were made by a finance committee of lobbyists and political fundraisers, in addition to RNC and RAGA staff and the attorneys general. The documents seem to indicate that Mr. Pryor was familiar with the finance committee and even participated in conference calls with them. Yet he failed to discuss the finance committee in his answers, even though, again, the questions specifically sought that information.

The documents also suggest that Mr. Pryor received reports specifying the companies that had contributed to RAGA. This is inconsistent with Mr. Pryor's testimony that he received only e-mail and oral reports of overall fundraising totals.

These are just a few examples. There may be good explanations for Mr. Pryor's testimony and answers, but we don't have them yet. And we should get

them before we vote on the nomination. I will therefore vote no on cloture.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, how much time remains?

The PRESIDING OFFICER. On the Republican side, 7 minutes 41 seconds remain. Five minutes two seconds remain on the other side.

Mr. HATCH. I yield time to the Senator from Alabama.

Mr. SESSIONS. Madam President, there has been a repeated suggestion that somehow Alabama's brilliant, principled, courageous attorney general, who has stood firm time and again in serious types of disputes within the State legally, is extreme or radical or out of the mainstream. When you ask why and say show me something he has done that indicates that, they say, well, he struck down the Americans with Disabilities Act.

As I explained earlier, he appealed a portion of that act that dealt with 4 percent of the cases, cases against States; and the Supreme Court agreed with him and struck down that small portion of the act.

He was not against the disabled. He has great compassion for the disabled. It was a legal action taken by this Congress that upset and struck down legitimate States rights issues, and the Supreme Court, when reviewing it, agreed with Attorney General Pryor.

This is the kind of argument that has been raised. There is no basis to say this man is extreme. He stood firm on a matter of reapportionment in Alabama, which benefited the Democrats. He took complaints from the Republicans. He declared that the State reapportionment plan dictated by the Democratic majority that favored the Democrats was legally done and he defended it. He lost it in the court of appeals and he won it on behalf of the Democrats in the Supreme Court. At least their provision prevailed.

What Bill Pryor said and what he believed was it was his duty to defend Alabama law if it was constitutional. He found that it was, so he defended it, even though he personally would not have agreed with it.

In one of the affidavits that Senator LEAHY quoted Bob James III is complaining about Attorney General Pryor. In his affidavit, he said:

> The last conversation I recall with Bill Pryor occurred late in Governor James' last term after the Governor signed Alabama's ''partial-birth'' abortion law. When the law passed, Mr. Pryor instructed Alabama district attorneys not to enforce the law as to previable fetuses. In my review, this gutted the law and defeated its very purpose. An equivalent to Pryor's action would be for Attorney General Ashcroft to instruct U.S. attorneys not to enforce an act of Congress.

Everybody knows Bill Pryor is pro-life. Everybody knows Bill Pryor personally abhors partial-birth abortion. Why did he do this?

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

Mr. SESSIONS. Because he was following the law.

I yield the floor and reserve the remainder of the time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The assistant Democratic leader.

Mr. REID. Madam President, I ask permission of the distinguished manager of this matter, Senator LEAHY, if I may direct some questions to him.

Mr. LEAHY. Madam President, I understand I still have almost 5 minutes left. Of course.

Mr. REID. Through the Chair to the distinguished ranking member of the Judiciary Committee, is this the same William Pryor the Senate spent a great deal of time on previously and there was an attempt by the majority to invoke cloture and that failed? Is this the same person?

Mr. LEAHY. Madam President, I answer the distinguished senior Senator from Nevada by saying, yes, it is. I answer further, although he didn't ask this question, I am not aware of any votes that have changed since that time.

Mr. REID. Madam President, I direct a further question to my friend. Is he telling me then, in the waning days of this legislative session of the National Legislature that we are spending time on a vote that has already been taken—there will not be a single vote changed—when we have appropriations bills to complete, we have Internet taxation, and many other items we are trying to complete in a matter of days; that we are, for lack of a better description, wasting the Senate's time on a nomination that has already been rejected by the Senate?

Mr. LEAHY. Madam President, the senior Senator from Nevada is absolutely right. In fact, of those appropriations, we have held up the appropriations for our veterans, and we can't find time to vote on the floor. Appropriations for our law enforcement people are being held up and we can't find time to vote on the floor. Appropriations for the Federal judiciary, for the State Department, for housing, and a number of others are being held up, and we can't seem to find time to vote on the floor. But we are doing this revote when everybody knows the result will be precisely what it was the last time.

Mr. REID. Madam President, I further direct the Senator's attention to an article—I am not confident he has had time to read it because it is from a western newspaper, the L.A. Times. Is it true the vacancy rate on the Federal bench is at a 13-year low, as indicated in the headlines of today's L.A. Times?

Mr. LEAHY. Madam President, the Senator is absolutely right. The vacancy rate in the judiciary is at a 13-year low. It was at a high at the end of President Clinton's term because the Republican majority in the Senate had blocked over 60 of President Clinton's nominees, usually by either threatening filibusters or not even allowing them to have a vote.

In the 17 months that the Democrats were in charge of the Senate, we confirmed 100 of President Bush's nominees, which brought down that rate. In the 17 months the Republicans have been in charge, they have confirmed another 68. So the vacancy rate is at a 13-year low. In fact, I say to my friend from Nevada, President Bush, in less than 3 years, has seen more of his nominees confirmed than President Reagan did in his first 4 years, with a Republican majority in those 4 years, and he was the all-time champ.

Mr. REID. Madam President, I further direct a question to my friend, it is true, then, that this article written by David Savage states that experts who track Federal judgeships say Republican complaints about a Democratic filibuster has skewed the larger picture. The article further goes on to say, and I ask the Senator if he is aware of this, that 168 Federal judges have been approved and 4 turned down—168 to 4; is that the record as the Senator understands it?

Mr. LEAHY. Madam President, it is. As a good friend of mine in the Republican Party said the other day: Pat, I know this whole argument is bogus. I guess we are making it for fundraising letters. But I do know President Bush has had far more of his nominees confirmed with both Democrats and Republicans in the Senate than anybody has in decades.

Yes, it is true, and I do agree with my Republican friend that the argument is bogus. But the only objection I have to the bogus argument being made is that we should be voting on the money for our veterans. We should be voting on the money for our law enforcement. We should be voting on the money for housing. And, we should be passing those bills that, by law, we were supposed to have passed way back in September.

I ask unanimous consent that the entire L.A. Times article that has been referred to by the distinguished Senator from Nevada be printed in the RECORD.

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

[From the Los Angeles Times, Nov. 6, 2003]

VACANCY RATE ON FEDERAL BENCH IS AT A 13-YEAR LOW

(By David G. Savage)

WASHINGTON.—The vacancy rate on the federal bench is at is lowest point in 13 years, because of a recent surge of judges nominated by President Bush and confirmed by the Senate.

The intense partisan battle over a handful of judges aside, Bush has already won approval of 168 judges, more than President Reagan achieved in his first term in the White House. And with 68 of his nominees winning confirmation in 2003 as of Wednesday, President Bush has had a better record this year than President Clinton achieved in seven of his eight year in office.

Experts who track federal judgeships say Republican complaints about Democratic filibuster of four judges have obscured the larger picture.

''The Bush administration has been spectacularly successful in getting the overwhelming proportion of its judicial nominations confirmed,'' said political scientist Sheldon Goldman at the University of Massachusetts, Amherst. ''There are only a relative handful being filibustered and held up. And this contrasts with the dozens of Clinton nominees who were held up by the Republicans in the last six years of the Clinton administration. The truth is the Republicans have had an outstanding record so far.''

The Republican-controlled Senate Judiciary Committee lists 39 vacancies among the 859 seats on the U.S. district courts and the U.S. courts of appeal—a 4.5% vacancy rate.

This is the fewest number of vacancies since 1990. During Clinton's term in office, the number of vacancies on the federal bench was never fewer than 50, according to the Administrative Office of the U.S. Courts.

Today, the Senate committee is set to vote on four more judicial nominees, including California Supreme Court Justice Janice Rogers Brown. She is likely to be opposed by almost all of the panel's Democrats, one of whom called her a ''right-wing judicial activist'' during a hearing two weeks ago.

If confirmed by the full Senate, Brown would fill a seat on the U.S. Court of Appeals in the District of Columbia that is vacant in part because Republicans blocked two candidates that Clinton nominated in 1999.

Washington lawyer Allen Snyder, a former clerk to U.S. Supreme Court Chief Justice William H. Rehnquist, had a hearing in the committee, but despite a lack of opposition, he failed to gain a confirmation vote in the Senate. White House lawyer Elena Kagan was denied even a hearing in the GOP-controlled Judiciary Committee. She has since become a dean of Harvard Law School.

Upon taking office, President Bush named Washington lawyers John Roberts and Miguel A. Estrada to the same appeals court. Roberts, also a former clerk to Rehnquist, won confirmation this year and is now the junior judge on the U.S. Court of Appeals for the District of Columbia. Democrats filibustered and blocked a final vote on Estrada, who subsequently withdrew.

In July, President Bush chose Brown to fill the vacancy.

Even if she wins a narrow approval today, the minority Democrats may block her from a final vote in the Senate. Besides Estrada, they have blocked votes on Mississippi Judge Charles W. Pickering Sr., Texas Supreme Court Justice Priscilla R. Owen and Alabama Atty. Gen. William H. Pryor Jr. Also waiting a final confirmation vote is Los Angeles Superior Court Judge Carolyn B. Kuhl, Bush's nominee to the U.S. 9th Circuit Court of Appeals.

Administration officials concede that most of Bush's judges are being approved, but they point to the blocking of the appeals court nominees as extraordinary.

The vacancy rate ''has been getting lower, but the real problem is the showdown at the circuit courts. We have seen an unprecedented obstruction campaign against the president's nominees for the circuit courts,'' said John Nowacki, a Justice Department spokesman. The department's Web site says there are 41 vacancies on the federal bench, if the U.S. Court of Claims and the International Trade Court are included in the total.

The administration says Bush has made 46 nominations to the appeals court, but only 29 have won confirmation. ''That's a 63% confirmation rate.

Clinton had an 80 percent confirmation rate at the same time,'' Nowacki said. ''There is something different going on here. It's an obstruction at entirely different level.''

Goldman, the University of Massachusetts professor, said both parties have blocked prospective judges they viewed as extreme, but they have done it in different ways.

''The Republicans obstructed quietly in the committee,'' Goldman said. ''If they didn't want to approve you, you just didn't get a hearing. The Democrats have obstructed through the use of the filibuster, which is very open and visible.''

During Clinton's final six years in office, Republicans controlled the Senate, and they refused to confirm more than 60 of his judicial nominees.

BENCH STRENGTH

Here's how President bush's confirmed nominations to Federal judgeships compares with his three predecessors:

President George W. Bush: 2003: 68; 2002: 72; and 2001: 28**.

President Bill Clinton: 2000: 40*; 1999: 33*; 1998: 65*; 1997: 36*; 1996: 20*; 1995; 55*; 1994: 101; 1993: 28; and 1992: 66*.

President George H. W. Bush: 1991: 56*; 1990: 55*; and 1989: 15*.

President Ronald Reagan: 1988: 41*; 1987: 43*; 1986: 44; 1985: 84; 1984: 43; 1983: 32; 1982: 47; and 1981: 41.

* Senate controlled by opposition.

** Senate evenly divided until Sen. James M. Jeffords of Vermont left the Republican Party to become an independent.

Sources: Administrative Office of the U.S. Courts.

Mr. LEAHY. How much time is remaining?

The PRESIDING OFFICER. Ten seconds.

Mr. LEAHY. I will yield back my 10 seconds.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I yield 1 minute to the distinguished Senator from Alabama.

Mr. SESSIONS. Madam President, I wish to respond to some comments that were just made. The distinguished assistant Democratic leader asserts Mr. Pryor has been rejected before. He has not been rejected before. He has not been given an up-or-down vote. He has not been given a vote. We have a majority of Senators who supported him previously. A majority will support him, and it is absolutely wrong to say he has been rejected. He has not been given a vote.

For the first time in the history of this country, we are facing a filibuster of judges, and it is not right. It is time to deal with this situation. I hope our colleagues on the other side will yield. If not, I hope they hear from the American people.

I yield time back to the distinguished chairman of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I couldn't agree more with the distinguished Senator from Alabama. What is happening here is a very fine man, an excellent lawyer, an excellent attorney general in this country, one who has always stood for upholding the law even when he disagreed with it, which is the ultimate in judicial nominees, is being deprived of the dignity of an up-or-down vote, which has never been done before, other than in these four filibusters that the Democrats have waged in this body.

This is dangerous stuff. I admit during the Clinton years there were a few of our Republicans who wanted to filibuster some of their liberal judges, and we stopped it. Senator LOTT and I made it very clear that was not going to happen because not only is that a dangerous situation, politically it is a terrible situation, and it is something that should not happen in this body.

One of the Democrats' favorite tactics, which they used again before last week's failed cloture vote on Judge Pickering's nomination, is to try to excuse their indefensible treatment of the President's nominee by citing the raw number of President Bush's nominees confirmed by the Senate. That number now stands at 168. They trumpet this number, and then note they have blocked only 4. We know it will be a lot more than that. We already know the future nominations they are going to block, but the Democrats believe this sounds reasonable to the American people who hear it.

The more the real story gets out, the less acceptable it is to the American people. First, there are more Federal appellate vacancies today, 18, during President Bush's third year in office than there were at the end of President Clinton's second year in office, 15. Over half of President Bush's appeals court nominees have not been confirmed. There are 41 total vacancies on the Federal district and appellate benches, 22 of which are classified as judicial emergencies by the nonpartisan Administrative Office of the U.S. Courts. A staggering 67 percent of the vacant appeals court slots are judicial emergencies.

Here is the point. No raw number of confirmations means anything in and of itself, while there are not one but three filibusters—exemplary nominees going on now. We just voted out Janice Rogers Brown from the committee on a straight party-line vote, and it is clear they are going to filibuster this fine African-American justice who wrote the most majority decisions issued by the California Supreme Court last year. Their argument is: She is outside the mainstream. That is always the argument they bring up because she does not conform to the liberal ideology they demand.

Just think, one nominee, Miguel Estrada, has withdrawn after more than 2 years of a filibuster against him.

The Democrats are virtually certain to filibuster Justice Janice Rogers Brown, another DC Circuit nominee; and emergency vacancies continue to exist on our Federal courts.

Are we supposed to be grateful that only a small handful of President Bush's nominees are being filibustered? Is there an acceptable filibuster percentage the Democratic leadership has in mind? The mere fact that we have to ask these questions makes it crystal

clear we have a broken process. Even one filibuster of a judicial nominee is one too many, and we are now up to four, and I might add there are others they have made very clear they are going to filibuster. These are appellate nominees. For the first time in history, these filibusters are occurring. I think it is shameful.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 310, the nomination of William H. Pryor, Jr., to be United States Circuit Judge for the Eleventh Circuit.

Bill Frist, Rick Santorum, Ben Nighthorse Campbell, Lindsey Graham, Norm Coleman, John Sununu, Jon Kyl, Mike DeWine, Wayne Allard, Elizabeth Dole, Pete Domenici, Mitch McConnell, Robert F. Bennett, Jeff Sessions, Michael B. Enzi, John Ensign, and John Cornyn.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 310, the nomination of William Pryor, of Alabama, to be United States Circuit Judge for the Eleventh Circuit, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

I further announce that if present and voting the Senator from New Hampshire (Mr. SUNUNU) would vote ''yes.''

Mr. REID. I announce that the Senator from Massachusetts (Mr. DAYTON), the Senator from North Carolina (Mr. EDWARDS), 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 ''nay.''

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 51, nays 43, as follows:

[Rollcall Vote No. 441 Ex.]

YEAS—51

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

NAYS—43

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

NOT VOTING—6

Campbell	Edwards	Lieberman
Dayton	Kerry	Sununu

LEGISLATIVE SESSION

Mr. BENNETT. I ask unanimous consent that the Senate now return to legislative session.

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

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

Mr. BENNETT. I ask unanimous consent that we resume consideration of H.R. 2673.

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

Pending:

Bennett/Kohl amendment No. 2073, of a technical nature.

Specter amendment No. 2080, to limit the use of funds to allocate the rate of price support between the purchase prices for nonfat dry milk and butter in a manner that does not support the price of milk at the rate prescribed by law.

Mr. BENNETT. I understand there are a number of amendments to be offered. Senator DORGAN has approached me about one he would like to offer. I have no particular preference as to the order in which the amendments come. I understand some Senators wish to make comments before we get into the amending process. I do not see the Senators in the Chamber who told me they planned to make some kind of a statement.

Senator KOHL and I are open for business.

Mr. REID. If the Senator has given up the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2115

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

The PRESIDING OFFICER. Without objection, the pending amendments are laid aside.

The clerk will report.

The assistant legislative clerk read as follows:

Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 2115.

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

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

The amendment is as follows:

(Purpose: To provide funds to implement and administer Team Nutrition programs, with an offset)

On page 5, line 1, strike ''$188,022,000'' and insert ''$183,022,000''.

On page 48, line 24, strike ''$11,418,441,000'' and insert ''$11,423,441,000''.

On page 48, line 26, strike ''$6,718,780,000'' and insert ''$6,723,780,000''.

On page 49, line 7, before the period, insert the following: '': *Provided further*, That not less than $15,025,000 shall be available to implement and administer Team Nutrition programs of the Department of Agriculture''.

Mr. BINGAMAN. Mr. President, this amendment is very straightforward. It would provide $5 million in additional funding to the nutrition education and training section of the School Lunch Program. The funds would serve to develop new programs and to implement existing programs in the Department of Agriculture Team Nutrition Program. Nutrition education programs are being chronically underfunded and have been for a great many years.

We have authorized in current law—the law about to expire, as I understand it—50 cents to be spent for every public school student to be served in this country. That is 50 cents per year. This is not 50 cents per day; this is 50 cents per year.

I was speaking to Senator BYRD from West Virginia and he said for nutrition education we ought to at least give them as much money as it costs to buy a candy bar. That is not an unreasonable goal to set for this great country. Last year, we did not begin to reach the 50 cents per student per year. Last year, we provided $10 million.

This chart shows the funding level beginning in 1996. In 1996, we provided $23.5 million. This is for the combined funding of the nutrition education training and the team nutrition. As I understand, this nutrition education training is essentially money that goes as grants to the States to help them provide some kind of nutrition instruction in their schools. We provided $23.5 million in 1996, $14.25 million in 1997, $11.75 million in 1998, and down to $10 million in 1999.

We are again, in the current fiscal year, being presented with an appropriations bill that calls for $10 million.

My amendment would increase that by another $5 million.

This team nutrition component in this Department of Agriculture effort is an integrated behavior-based comprehensive plan for promoting nutritional health among our Nation's schoolchildren. We have over 47 million children in school in this country—that is kindergarten through 12th grade—47 million in the public school system.

There are three behavior-oriented strategies the Department of Agriculture has tried to pursue. One is to provide trading and technical assistance for child nutrition food service professionals; that is, the people who provide lunches and breakfasts and serve meals so that the meals being served meet certain nutritional standards.

The second strategy is to provide multifaceted, integrated nutritional education for children and their parents. This tries to build some kind of motivation on the part of young people to remain healthy, to be healthy, to maintain some type of healthy lifestyle.

The third strategy is to provide support for healthy eating and physical activity by involving school administrators and other school and community partners.

The Agriculture appropriations bill proposes $10 million for this year's funding. In my view, that is woefully inadequate. It is inadequate because without additional funds, many States are not able to provide any nutrition instruction.

Why is it important at this point in our Nation's history to concern ourselves with nutrition instruction? It is important because over the last two decades obesity rates have more than doubled among children and they have more than tripled among adolescent children in our society. Today, heart disease, cancer, stroke, and diabetes are responsible for two-thirds of the deaths in this country. The major risk factors for these diseases and conditions are established in childhood through unhealthy eating habits, physical inactivity, obesity, and tobacco use. Those are the main causes that lead to the problem of obesity that leads to the other problems I have recounted.

Today, one in seven young people are considered obese; one in three are overweight. This is a crisis. It is a crisis for the future and a crisis for our health system.

The Surgeon General estimates that at the minimum we spend each year $100 billion dealing in our health care system—this is taxpayer dollars—$100 billion in our health care system, through Medicare and Medicaid, and other health programs, on diseases that are directly attributable to obesity. That is a rough figure, obviously. But they think that is a modest or conservative figure.

You compare that $100 billion to $10 million and you have a very interesting comparison: $10 million is not 1 percent of $100 billion, it is not one-tenth of 1 percent of $100 billion; it is one one-hundredth of 1 percent of $100 billion. We have all heard, all our lives, the expression an ounce of prevention is worth a pound of cure. We are not asking for anything like that ratio. If we were doing that, we would say we should provide one-sixteenth as much. Instead, we are providing one one-hundredth of 1 percent as much on nutrition education as we are spending to deal with the problems that could be avoided.

Obese children are twice as likely as nonobese children to become obese adults. The overweight problem results in all sorts of physical diseases: heart disease, diabetes, cancer, depression, decreased self-esteem, and discrimination. They face discrimination throughout their lives as a result of this problem.

There are only 2 percent of children who currently consume a diet that meets the five main recommendations for a healthy diet the U.S. Department of Agriculture food guide calls for, so the Department of Agriculture is in the business of trying to give young people and adults throughout our society advice. They do issue a food guide, the food guide pyramid, they call it. But, unfortunately, there is no follow-through instruction in our schools to try to really assist in getting this information to young people at a time when it can dramatically affect their habits for the rest of their lives.

I believe nutrition education is vital to growing a generation of healthy adults in this country. This amendment would be a very modest step toward getting some additional funds for this purpose. It would provide funding at the State level for implementation and administration of nutrition education training.

This is a program that has existed on the statutes for years. Unfortunately, it has not been funded. It is time to begin getting these figures up to a more reasonable level.

As I say, Senator BYRD from West Virginia made a suggestion which I think would be a good goal for us to set. He said we should at least provide as much funding per student per year as it would cost each of them to buy a candy bar. That is not unreasonable. I hope we can take this modest step and move ahead.

Let me cite a little bit more information because there was a good hearing on this subject that occurred earlier this year. I want to cite the testimony of the Department of Agriculture on the very issue I am talking about. This was a hearing on the reauthorization of the authorizing legislation here, and the Department of Agriculture representative at that hearing testified about their position. This is testimony from Eric Bost, who is the Under Secretary for Food, Nutrition, and Consumer Services, testifying before the Agriculture Committee in the Senate. He said in that testimony that the administration supports:

> healthy school environments to address the epidemic of overweight and obesity among our children by providing financial incentives to schools that meet the dietary guidelines. . . .

He said:

> The immediate reasons for overweight among our children are clear and uncomplicated. . . .

Then he goes through a list, of which one of the items in the list is:

> the lack of strong program of nutrition education and physical education in many schools. . . .

That is exactly what I am talking about. We have no strong program. You cannot have a strong program when you are spending $10 million in a nation of 280 million people, with 47 million young people in our elementary schools and our high schools.

He goes on, in that same testimony, to state, unequivocally:

> We support expanded funding to support the delivery of education messages and materials in schools.

When you look at this chart, it is obvious we have not been expanding the funding. Funding has been stagnant for most of a decade. In fact, it has dropped from where it was in 1996, very substantially.

The reasons for my amendment are very clear. The justification for it is overwhelming. In a wealthy nation like this, we can do better. We cannot afford to do as little in this area as we have traditionally done. The new crisis we face with obesity among children is a strong wake-up call to all of us that we need to begin doing something significant in nutrition education.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. Mr. President, I was hoping to get a resolution of my amendment before we switch to another amendment.

The PRESIDING OFFICER. Is the Senator objecting to setting aside his amendment?

Mr. BINGAMAN. I do object at this point.

The PRESIDING OFFICER. Objection is heard.

The Senator from Utah.

Mr. BENNETT. Mr. President, I am thinking we should not plan on any votes until maybe 2 or 2:30. I understand there are some conflicts going on on both sides of the aisle. I would say to the Senator, if he is going to insist on a rollcall vote, we should stack it at that time.

I have a problem with the Senator's amendment in that the offset he cites is from buildings and facilities at the Department of Agriculture. One can say, well, you can always find an extra

$5 million, but that is an account that is committed to lease payments and other contracts that have been established for a while. It is $5 million, which in the scheme of things is not all that much money, but the offset is a bit problematical. We did fund this program at the requested level of $10 million, so it is going above the level.

These are the only comments I have on the amendment. I say to the Senator, if he insists on a rollcall vote, we possibly could set a time some time after 2 or 2:30 where the votes might occur, and I would hope to stack some votes at that time on amendments.

Mr. BINGAMAN. Mr. President, could I just ask the manager a question through the Chair.

I would be interested—obviously, my purpose is to get more resources for this activity. If the manager and the ranking member think they would be able to find a better offset, or find some other way to provide some resources for this or think that is a possibility, then I would be glad to defer to them. I picked this offset because I could not get any suggestion from anyone at the staff level, at least, of a better way to do this. If you think there may be a way to do this, I would be anxious to hear about it.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I would like to make the comment that Senator BINGAMAN has brought a very important and relevant issue to the floor. I agree with him that the funding level is inadequate, but I agree with Senator BENNETT that finding an offset is not yet something we have been able to do.

I personally, if Senator BENNETT feels the same way, would be willing to work with Senator BINGAMAN to see if we can't find some way to provide a satisfactory offset and, at any rate, to do everything we can to improve the funding level for this important service, if not this year, in future years.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I thank my ranking member for his thoughtful analysis of this and concur. We will be happy to look through the bill and see if we can find an offset and, as he said, if not this year, then in future years, because I do think the issue the Senator from New Mexico has raised is a legitimate one.

AMENDMENT NO. 2115 WITHDRAWN

Mr. BINGAMAN. Mr. President, with that assurance, I will not go ahead and push this to a vote at this point. Let me thank my colleagues for their assurance and urge, if it is possible before we complete action on this appropriations bill, before it goes to the President for signature, that we find some additional funds this year. That would be most appreciated.

I will be glad to work with them with regard to next year as well. This obviously needs to be a multiyear effort, if we are going to get funding for nutrition education up to a level that actually has an impact. That would be my hope.

With that understanding, I withdraw the amendment and yield the floor.

The PRESIDING OFFICER. The amendment is withdrawn. No objection being heard to waiving the amendment before the Senate, the Senator from North Dakota is recognized.

AMENDMENT NO. 2116

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 2116.

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

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

The amendment is as follows:

(Purpose: To express the sense of the Senate on the importation of cattle with bovine spongiform encephalopathy)

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. SENSE OF SENATE ON IMPORTATION OF CATTLE WITH BOVINE SPONGIFORM ENCEPHALOPATHY.

(a) FINDINGS.—The Senate finds that—

(1) the United States beef industry is the single largest segment of United States agriculture;

(2) the United States has never allowed the importation of live cattle from a country that has been found to have bovine spongiform encephalopathy (referred to in this section as ''BSE'');

(3) the importation of live cattle known to have BSE could put the entire United States cattle industry at unnecessary risk;

(4) food safety is a top priority for the people of the United States; and

(5) the importation of beef and beef products from a country known to have BSE could undermine consumer confidence in the integrity of the food supply and present a possible danger to human health.

(b) SENSE OF SENATE.—It is the sense of the Senate that the Secretary of Agriculture—

(1) should not allow the importation of live cattle from any country known to have BSE unless the country complies with the animal health guidelines established by the World Organization for Animal Health; and

(2) should abide by international standards for the continued health and safety of the United States livestock industry.

Mr. DORGAN. Mr. President, I have to chair a Democratic Policy luncheon in a few moments. I say to the manager and ranking member, I have two amendments to this bill. This is one. I will come back posthaste following the luncheon and offer the other. I don't want to hold up this bill. I want to have both amendments considered. I know you want to complete work on this important appropriations bill.

Let me describe the amendment that I have now offered dealing with something I think is very important.

We have in this country a livestock industry that is $175 billion. It is a very large industry, an important industry. In North Dakota, it is roughly $500 million, and it is important to our State. Ranching and farming, of course, represent the bread and butter of our economy in North Dakota.

Let me talk about some of the difficulties we face in the beef and livestock industry. We have had in some recent years outbreaks of something called BSE or more commonly referred to as mad cow disease. It is devastating. It is heartbreaking to see the consequences of an outbreak of mad cow disease on producers in a country where it occurs.

I hold up a chart that shows a pretty graphic picture of piles and piles of dead cattle with a fellow up here who is looking at all these cattle that have been slaughtered as a result of mad cow disease. This was in March 1997. The costs to that industry in England were devastating.

Our neighbor to the north, Canada, had one animal diagnosed with mad cow disease, an animal that appeared sick when it was slaughtered in January. They apparently severed the head and put it in a cooler, and some 4 months later they tested it and discovered that the animal, slaughtered in January, had mad cow disease or BSE.

As a result, we closed our border to the live import of cattle from Canada. It has been a devastating time for Canadian producers. Our hearts go out to them. It is a difficult situation for them. But what is important for us is to protect our industry, our beef industry, our livestock industry.

Last week the Secretary of Agriculture indicated that she is moving now toward putting Canada to a ''minimal risk'' status with respect to the import of cattle which would set up the capability of importing live cattle from Canada. We are not now importing them. We import some slaughtered beef products but not live cattle.

The amendment I offer is rather simple. The United States, with most other countries, belongs to the World Organization for Animal Health. That organization has protocols, describing the timeline for when you might allow imports into your country from a country that has mad cow disease or BSE.

Let me read the sense of the Senate: It is the sense of the Senate that the Secretary of Agriculture should not allow the importation of live cattle from any country known to have BSE, better known as mad cow disease, unless the country complies with the animal health guidelines established by the World Organization for Animal Health, and, No. 2, should abide by the international standards for continued health and safety of the U.S. livestock industry.

What are those guidelines? The guidelines may be changed. I am told there are discussions to do so. I am not necessarily opposed to changing them. But whatever the guidelines are, they are. At the moment those guidelines talk about a country or zone with minimal BSE risk:

The cattle population of a country or zone may be considered as presenting a minimal BSE risk should the country or zone comply with the following requirements:

The last indigenous case of BSE was reported more than seven years ago.

There is another category more than 4 years ago.

In this case, the case of mad cow disease occurring in Canada, it was some 10 months ago, and it was disclosed only 6 months ago. We are talking now about opening the border to imports of cattle from Canada.

That could be a devastating risk to our livestock industry. We have a lot of ranchers trying to make a living. We ought to care about the risk posed to them if we import cattle from a country that had a case of BSE within recent months.

We have a lot to lose. Let me describe a circumstance, for example, with Japan. In the year 2000, beef consumption in Japan was at 1.577 million tons carcass weight equivalent. BSE was discovered in Japan in September 2001. That beef consumption dropped by 16 percent in 1 year. Compounding those problems, Japan just announced its second case of BSE in an animal less than 30 months of age. The most recent case is a cow 21 months of age. USDA is proposing a rule that would allow cattle 30 months or younger to be imported to the U.S.

We have organizations that say, well, it is not going to be a big problem. In fact, a Harvard risk assessment on BSE and its effects came to the conclusion: Even if infected animals entered into the U.S. animal agricultural system from Canada, the risk of it spreading extensively within the U.S. herd was low.

I am sorry. If we have a case of BSE, mad cow disease, in this country, the risk is dramatic for our beef industry, just as it was for Japan—a 16-percent reduction in beef consumption. It is a devastating blow to our industry if it occurs.

I believe at this point we ought to proceed with caution. We are not talking about 4 years or 7 years, which represents the guideline of the International Organization for Animal Health. We are talking just a matter of months past the time when a case of BSE was disclosed by our neighbors to the north. I regret that has happened to them. I know it is heartbreaking for them. I know they would like to move cattle into our marketplace as early as possible, but the fact is, our obligation is to try to find every way possible to prevent an outbreak of mad cow disease in this country because it would be devastating to a significant, vibrant industry, devastating to a lot of ranchers out there trying to make a living today.

We ought not have USDA move as quickly as they want to move. First, it is an abrogation of the guidelines we signed up for. The guidelines of the International Code of Animal Health don't describe a circumstance in which you change the rules and allow the importation of live cattle from a country which has had an experience with mad cow disease in just a matter of recent months.

The World Organization for Animal Health is made up of 164 nations, our Nation included, and Canada. One of the missions is to develop guidelines that relate to the rules that member nations use to protect themselves against diseases without setting up unjustifiable sanitary barriers. I agree with all that. But I am saying that the guidelines in this organization of which we are a member and to which we are a party are explicit. They do not include a circumstance in which we decide, some 6 months after the disclosure of mad cow disease, that we will take live cattle imported from that country into our marketplace. That poses significant risks to our producers.

The National Cattleman's Beef Association, NCBA, supports the amendment. The R–CALF organization supports this amendment. These are the two largest beef organizations in the United States. I offer it today hopeful for its consideration. It is a sense-of-the-Senate resolution.

As I indicated when I started, I have to chair a Democratic Policy Committee lunch in about 1 minute.

So what I would like to do is have this amendment be pending, and it would be preferable, if you want, to set it aside and take other amendments while I am at lunch. I will come back to the floor at 2 o'clock and say a few more words and perhaps I can get the ranking member and manager to agree to accept this amendment.

I yield the floor.

Mr. BENNETT. If the Senator will stay on the floor for a moment longer. If he doesn't talk when he comes back at 2 o'clock, we will accept the amendment now, at 1 o'clock; is that acceptable?

Mr. DORGAN. That is an offer I cannot refuse, although the not-talking proviso will not relate to my second amendment. I will come back—actually for the courtesy of the manager and ranking member, as I know they want to move the bill—and offer my second amendment. I am happy to do that if he is willing to take the amendment.

Mr. BENNETT. I am always happy to engage in a little humor with my friend. We served together as chairman and ranking member on another subcommittee. I assure him I am always happy to hear him at any time on any subject.

To move the bill forward, I have checked with Senator KOHL and he is fully in support of the Dorgan amendment. I have no objection to it. I ask unanimous consent that it be agreed to.

The PRESIDING OFFICER (Mr. BUNNING). If there is no further debate, without objection, the amendment is agreed to.

The amendment (No. 2116) was agreed to.

Mr. BENNETT. Mr. President, I see the senior Senator from Delaware here. I don't think he will talk about mad cow disease. I am happy to yield what time he might require for his statement. I ask him in advance if he will tell us how much time he will use.

I send the message out to those enjoying lunch, or those who are at the White House, or wherever, that we intend to finish this bill today. The assistant Democratic leader has told me that it is his desire from the other side that we finish this bill today. So I hope Senators who have amendments will come to the floor in a timely fashion. We will do the best we can to deal with the amendments in a timely fashion so we can finish the bill and get it on its way.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

U.S. POLICY IN IRAQ

Mr. BIDEN. Mr. President, the chairman is correct. I don't plan on speaking on mad cow disease. I will speak for approximately 20 minutes. If anybody comes in with a relevant amendment, I will yield the floor. I am going to talk on the subject of Iraq.

Two days ago, the Congress completed action on the President's request for $87 billion. In fact, I think later today there is going to be a signing down at the White House for military operations reconstruction money for Iraq, as well as Afghanistan, that relates to that $87 billion request.

The debate we had in the Congress over that issue reflected more than our concern about the amount of money. I think it reflected more than the sticker shock that the American people felt when they heard the $87 billion number. I think it reflected the fact that there is a crisis in confidence in the President's leadership in Iraq. To put it more straightforward, there is a grave doubt about the policy we are engaging in now and its prospects for success.

The American people not only have those doubts, but I know, and we all know on the floor, that a number of Members on both sides of this aisle have doubts about the policy. I voted for the $87 billion, and I believe we needed to do that. But we cannot afford to fail in Iraq, and there was no option but the one before us.

It seems to me that we are going to have great difficulty succeeding in Iraq unless we act more wisely, and I want to discuss that very briefly today. I will be coming to the floor next week with a much more expanded speech on this subject. In order for us to succeed, I think we have to simply change our policy. We have to change the policy we are pursuing now in several very important ways.

First, in order to determine whether or not we think this policy is working, it seems we have to understand the situation on the ground in Iraq. There are two realities in Iraq right now. One is that there is some real progress being made: Schools are being opened; hospitals are open; there is a number of reconstruction projects underway; the setting up of local councils is occurring

and other things that are good. But all of that progress is being undermined by the other reality on the ground: our failure so far to get security, especially in the Sunni Triangle in Baghdad.

The failure to secure that area has undermined not only the progress we are making but, in my view, has created a circumstance where it becomes incredibly more difficult each day to get the kind of help we need to ultimately succeed. That is to the degree to which other nations, and to the degree to which Iraq is, and the degree to which the American people believe we are not making significant progress is the degree to which they withdraw their support or fail to offer support.

We need international support, we need the continued support of the Iraqi people, and we need the American people prepared to stay the course by spending billions of more dollars in order to get this done and, even more importantly, risking and losing American lives.

I am worried we are going to soon lose the support of the Iraqi people and the vast majority of the American people. The Iraqi people, to make it clear, are happy Saddam Hussein is no longer around. They very much want to build a better future. But the fact is, there has never been a government in Iraq that has been a democracy. In fact, as we all know, Iraq was a nation built and carved out of a colonial circumstance back at the end of the World War I, and it is very difficult, at best, to figure out how to put it together in any form of representative government. It is going to take some time.

So the job, No. 1, here for us, it seems to me, is getting the security right, controlling the streets, securing the weapons depots, getting much better intelligence. But that has always been the No. 1 job we have had, and all other success depends upon that occurring—better security. It has always been the administration's responsibility, not the Congress's responsibility, to figure out how to get the security on the ground correct.

For some time, I have refrained from any prescriptive outline as to what I think should be done because we cannot dictate that kind of policy in the Senate. That is a matter for Presidents to determine, administrations to lead. But I am very concerned that we are on a downward spiral in terms of the prospects of getting it right in Iraq.

Now, it seems to me, right now, we are not getting the job done. It is not because of the lack of bravery and commitment and steadfastness of American troops or American personnel. These are serious people. These are brave young women and men. It seems to me they have been put in a circumstance that makes it very difficult for them to succeed.

Let me lay out very briefly now, and in greater detail next week, what I believe we need to do to succeed.

The bottom line is pretty simple. Three groups can provide security in Iraq: First, the Iraqis themselves; second, our U.S. troops and the few coalition partners we have with us there; and third, there is the possibility of a real international coalition of military forces.

Over the long term, obviously, the single best way to get security right in Iraq is for the Iraqis to provide that security through indigenous police forces and an indigenous army. That is our goal. Everyone agrees upon that goal. And it is their responsibility, ultimately. They can tell the good guys from the bad guys better than we can. But here is the rub: It takes time to build an effective—an effective—indigenous police force or military force.

When I was in Iraq in June, I was told by our experts there on the ground that it would take 5 years to recruit and train the 75,000 Iraqi police force that was needed. I was told it would take 3 years to recruit and train just 40,000 persons for the Army of Iraq—5 years for the police force and 3 years just to train 40,000 Iraqi soldiers.

We can and we are putting that effort into overdrive. Let's understand the risks that go into putting it into overdrive. The faster we go on our training, the poorer the training and less legitimate the police and army will be. Putting them in charge prematurely is a recipe for failure. They will lose the confidence of the Iraqi people, and we will lose the ability to recruit them to participate in the police force and/or in the military force.

Although it makes sense for us to try to speed up as rapidly as we can the training and the deployment of Iraqis, it is going to take time for it to work. Even on steroids, we are going to need a year at least before we can hand over the keys of security to the Iraqi people, the Iraqi military, and the Iraqi police.

The real question is, What do we do in the meantime? The reason I am so concerned about the meantime is that within a year, before we are even able, under this extended and intensive effort, to speed up the training and turn over the responsibility to the Iraqis, if we continue to have the attitude that pervades in Iraq today, or is beginning to pervade and is beginning to pervade in the United States that this is a difficult, if not hopeless, task, we are unlikely to accomplish the circumstance of being able to put the Iraqis in a position even a year from now. We have to do something now to make things better on the ground.

That brings us to option No. 2, and that is flood the zone with more U.S. troops. Putting in more troops now will allow us to get them out a lot faster. We especially need MPs, special forces, and civil affairs experts.

I listened to my friend JOHN MCCAIN—he and I have been on the same page on this issue for the last 5 months—I listened to him yesterday make a very compelling speech about the need to immediately increase, not decrease, the number of American forces. We understand—JOHN MCCAIN and I and others—that is not a very popular thing to say.

Guys like me who thought the administration went about this war wrongly in the first place are in the dubious position of being in the Chamber suggesting to the Americans who don't like the war that we should put more forces in Iraq immediately in order to take them out totally sooner while the administration announces that in the rotation of American forces through next spring, we are going to rotate troops, but we are also going to draw down the total number of American troops. It is somewhat perverse. Here are BIDEN and MCCAIN talking about putting in more troops, and the administration is talking about taking out more troops.

The irony here is, we do not have control of the security on the ground. To the extent we don't, for every Chinook that is shot down, for every American who is killed, every Iraqi who is blown up, every Iraqi policeman who goes to a barracks now and is blown up, every Red Cross depot that is exploded—every one of those events undermines the willingness of the United States, the Iraqis, and the world to stay the course and do the job in Iraq.

I might note parenthetically, my real problem is the President has yet to tell the American people why this is so important. He keeps talking about and using the phrase, which is very catchy and very compelling—I am paraphrasing—if we don't fight the terrorists in Baghdad, we will fight them in New York, Washington, Seattle, or wherever. There is some truth to that.

The American people are a lot smarter. If you ask the American people if they think if we succeed in Baghdad or if we succeed in Iraq that is going to end terrorism in the United States, or conversely, whether or not that is the source of terrorism and the threat to the United States, about 60 percent of the American people will say no, they don't think that is it. They understand it. They understand the next terrorist attack, God forbid, in the United States is more likely to come from Somalia, Philippines, Iran, or any number of other countries, than it is going to be from something that has been planned in Baghdad.

That is not to suggest there is not terror in Baghdad; there is. But there are the beginnings of a classic counterinsurgency in Baghdad, aided and abetted by international terrorist operations that are beginning to mobilize in that area.

The real reason we have to succeed in Iraq and the real reason we had better get it straight pretty quickly before we lose the support of the American people is that if we fail to secure the peace in Baghdad and in Iraq, we are going to see a significantly emboldened and radicalized Iran with over 70 million people. We are going to see the prospect of—that fancy word we use in foreign policy circles—modernity in the Middle East evaporate. The idea that

there are going to be more modern democratic states is going to diminish, not increase. We are going to see, I predict, a reconsideration of the attitude about whether to look East or West in Turkey from Ankara from an Islamic government. We are going to see the circumstances in Pakistan deteriorate because, sure as the devil, if things deteriorate in Iraq and we lose the peace there, we are going to lose it in Afghanistan as well. We will have two failed states.

It is absolutely essential that we succeed, even though most of us—I shouldn't say most; I speak for myself—even though I did not agree with the way the President went about the conduct of this war. The facts are, we are there and we must succeed.

What do we do? We need more civil affairs officers, we need more special forces, and we need more MPs. But this is hard stuff. Our forces are stretched way thin in Iraq already and in Afghanistan. We would have to bring folks back to Iraq for second or third tours, and that is a decision no one wants to make. We have to at least consider it if it would make our troops safer now, increase the chances of success and security in the triangle now being more likely than not because otherwise we just dribble this away.

Short of bringing in more U.S. troops, there are things we can do with our forces to get a better grip on security in the region. We have to deal with those ammo depots. There are more than 600,000 tons of ordnance in Iraq. That is one-third of all the munitions the United States of America possesses. Of that, less than 100,000 tons have been destroyed. There are also thousands of shoulder-fired missiles on the loose in Iraq, one of which probably brought down the helicopter last week. We are offering to buy those missiles back at 500 bucks a pop.

A recent Newsweek or Time Magazine article this week pointed out a young Iraqi came up to an American military person and said: Do you want to buy one of these missiles?

He said: Can you get more of them?

He said: Yes, I can get more of them.

He got a whole truckload of them and brought them back. I think he got paid $40,000 for them. He said he would have brought back more except the truck was not big enough.

We have tens, hundreds, if not thousands, of these shoulder-held missiles on the loose in Iraq. We are paying $500 for the retrieval of each one, and more than 350 have been turned in. The black market price for purchasing those shoulder-held missile launchers is $5,000 a missile. That is kind of hard to compete with.

If we had more forces in place, we could do a better job of guarding those depots, but even without those forces we should be getting Iraqis to fence off the depots, put sensors on the gates, put more UAVs in the air to patrol them.

We have to destroy the weapons faster. Let me acknowledge this is not a simple task. There are hundreds of depots, many of them used, and we have to be very careful in destroying them. We need to protect civilian populations, and we lack enough demolition experts who know how to destroy this stuff without starting a California-size blaze. The administration has to make securing these weapons a top priority. We need to have better intelligence on the ground. It is really hard for our folks to tell the good guys from the bad guys and that is where intelligence comes in.

The Army itself is finding that our intelligence specialists and the reserves trained in civilian affairs and psychological operations do not get the training they need before they are sent to Iraq, so they are not producing very good intelligence.

We do not have enough competent interpreters. We have to get help to rebuild Iraq from their own intelligence network. Here, too, we need a much greater sense of urgency.

The second way to do this is for the United States to do it itself, but it is going to take more personnel and a different kind of personnel to do that. The President has made clear he is not going to do that.

There is another way to buy time until the Iraqis can fend for themselves, and that is to make Iraq the world's responsibility, not just our own. We had that opportunity before the war, and we blew it. We had that opportunity after the war, and we blew it. At the end of the summer, when it became clear the security situation was not getting better, the administration decided it had to reach out, but it did not do it very well. The President's speech to the United Nations was not very well received, so for a third time the administration squandered the opportunity to get international support in significant ways.

This is not totally our problem, but for the most part only Americans are being killed. I am convinced we have one last shot to bring the world in to Iraq, and we must do everything in our power to seize that opportunity. This is the meat of what I have to say. I would like to see President Bush not figuratively but literally go to Europe, call a summit and ask for help. We will have to give up more authority in order to get that help, but as I keep saying, and I have been saying for the last 6 months, we should stop treating Iraq as if it is some sort of prize we won. It is not authority I am looking to possess. We would be giving up nothing as it relates to our security interests.

There are three things we can and should do to get more countries invested in Iraq with troops, police, and resources. The first is we should make Iraq a NATO mission. The model we should be using is not Afghanistan but Bosnia, Kosovo. There is a NATO general in charge of all the troops there. It happens to be an American most of the time because America runs NATO; America commands NATO. So it should be a NATO operation.

We are not getting other NATO forces in because they do not want to work alongside of and/or under the command of a totally US-led operation that is not a NATO operation. So we should make Iraq a NATO mission.

General Abizaid would be put in charge of the new NATO command because the way it always works with NATO, as it does with the U.N., whoever is putting up most of the responsibility, putting up most of the money, most of the troops, gets to be the one in charge. So this should be a NATO operation.

Secondly, we should create a high commissioner for Iraq who reports not just to President Bush or the Secretary of Defense, but who reports to an international board of directors, reports to the NATO countries, reports to those countries that are participating. That is what we did in Kosovo. We never lost control of Kosovo, but there was a high commissioner. The high commissioner was not an American. The first one happened to be a Frenchman. The second one was a Dutchman. They reported to all of the capitals that were participating in the reconstruction of Kosovo.

We have a long way to go in Kosovo and a long way to go in Bosnia, but thank God, knock on wood, there are no American casualties. There have not been American casualties as a consequence of hostile fire. People are not killing one another in those two countries. A lot more has to be done. There is no pure democracy there, but there are not a million people in the mountains about to freeze, there are not 250,000 dead, and Americans are not being shot. The place is secure, and we are only paying 15 percent of the price in terms of money and troops. If we want to get the rest of the world into this deal, because—and people say, well, Joe, why would they even contemplate coming in? They are kind of happy to see us bog down.

The reason they would be happy to come in if they had the right environment is because they have as much at stake in a failed state of Iraq as we do. For the Europeans, Iraq is their front yard. It is our backyard. We have to create the environment in which they are willing to participate. So instead of having Mr. Bremer running the operation—and maybe Mr. Bremer should be the high commissioner. The phrase for that is ''double hatted.'' There has to be a much larger investment by other countries. In return, they have to have much greater participation.

As much as people will not like hearing me say this, the second thing we have to do is change Bremer's function into that of a high commissioner reporting to Washington, London, Berlin, Paris, et cetera. Otherwise, we will not get the kind of participation we need.

Thirdly, we should transform the Iraqi Governing Council into a provisional government with greater sovereign powers. Putting NATO in charge

of security in Iraq offers the possibility of building a truly multilateral force, with far more participation from Europeans, Asians, and neighboring countries. More countries will take part because they would be reporting to the North Atlantic Council, not to the Pentagon.

We are the North Atlantic Council as well. It is a model, as I said, that worked in the Balkans and now is beginning to work in Afghanistan. In the Balkans, for example, many non-NATO countries, including Russia and some Arab states, joined the effort because they were not joining the U.S. effort; they were joining a NATO effort.

The United States, in all of these models I am suggesting—and they are relatively drastic changes—would retain operational control on the ground with General Abizaid as head of this new NATO command. And we retain effective control in NATO, where the United States is the lead player.

Creating an International High Commissioner for Iraq and putting him or her in charge of reconstruction would also attract far more international participation. The recent donors conference in Madrid was a painful example of the price we pay for doing everything ourselves.

When you go into a country unilaterally, you get to handle the peace unilaterally. One we didn't need, the other we do.

Typically, as in the Balkans, the United States covers reconstruction efforts—pays for about 25 percent of the reconstruction costs after a major conflict. By that ratio, the $20 billion, or $18-point-something billion Congress just approved for Iraq reconstruction should have generated, in Madrid, about $60 billion from the rest of the world. Instead, we got $13 billion, of which $9 billion was loans.

As long as the CPA is the sole deciding authority on how Iraq will be rebuilt, other countries will be reluctant to fork over real money. They want a real say in how the money is spent.

Again, look at the model in the Balkans. Look at the model in gulf war No. 1, George the first, the first gulf war. We paid only about 20 percent of the total cost. The rest of the world came in and made up the remainder of that $60 billion.

What are we doing now? Again, in my view, the model we are operating under is broken. We should fix it. Otherwise, we own it all. This is not something we want to own alone.

If we go the route I am suggesting of a special representative who reports to the U.N. Security Council, of which we are a member—either way, that could be Bremer. Bremer could be double-hatted.

In Bosnia, the High Commissioner reports to a special steering committee led by the United States and the EEU. In Kosovo, the Secretary General of the United Nations designated a Special Representative who reports to the U.N. Security Council.

I ask a rhetorical question to any Americans who may be listening. Would it offend you that a high commissioner reporting to the U.N. Security Council was the model we were using? Would you be angry that we didn't own it all, that we weren't the one having to put up all the money, making all the decisions, and taking all the casualties? What is our reluctance?

I said, either way, in a de facto sense, we remain in charge.

Finally, it seems to me we should turn the Iraqi Governing Council into a true provisional government with more sovereign powers. This transfer of sovereignty should not be held hostage to the very important but very complicated and time-consuming process of writing a new constitution.

I happened to hear General Clark this morning on one of the morning news shows. He pointed this out. I thought it was a great example. He said: It took us 7 years to write our Constitution. Actually, it took a little longer. How would we have felt had the French said: We helped liberate you from the British; we are going to stay here as the regional power while you write your Constitution? I am not so sure we would have greeted that with a warm embrace.

So in order for this Iraqi Governing Council, which has not been all that responsible up to now in my view, to be able to function, it seems to me there has to be a transfer of authority that, in fact, should not be held hostage to the constitution having to be written first. It may require some changes in this provisional government to make it more representative, but that is what we should get on with now. Nothing would send a clearer message to the Iraqi people that the future is theirs to build and to inherit, and nothing would make it clearer to them that the enemies of that future are Saddam loyalists and international terrorists who are killing our troops, other than having sovereignty transferred to the Governing Council.

In conclusion, I am suggesting that the model we are operating under be changed.

No. 1, sovereignty, even requiring, if need be, more representation on the Governing Council, but more sovereignty transferred to the Governing Council.

No. 2, a high commissioner, in place of the system we have now, on the Bosnian model, reporting to more than one world capital—that may be Bremer being double-hatted, but it would be a high commissioner—and that to bring in the rest of the world to participate.

No. 3, that the military operation should be under NATO command and NATO responsibility.

I think by doing those things, we communicate several very important, practical, and substantive messages:

No. 1, we, the United States, have no designs on Iraq. We know we don't, but I am not sure the Iraqi people know we don't.

No. 2, it communicates the notion that we are not the sole determining power in that country, that it is not solely our problem, it is the world's problem.

No. 3, that the military operation is not a U.S. operation, it is a NATO operation.

All of those things, I believe, would significantly improve the prospects of success and significantly diminish the prospect that we will carry the entire load for as long as it takes.

I will elaborate on those points in more detail next week. But it seems to me we have to change the model now and begin the process. I thank the chairman for allowing me to speak and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise to speak on an amendment that I think is coming up this afternoon. The reason I would like to have permission of the Senate to speak about it now is that I will not be able to be in the Chamber because of the Medicare conference.

AMENDMENT NO. 2078

Mr. GRASSLEY. Mr. President, I am speaking on the issue of the sense-of-the-Senate resolution by Senators DASCHLE, ENZI, JOHNSON, and THOMAS on the legislation that is now on the books called country-of-origin labeling.

I believe the American consumer has a right to know the country of origin of the meat they are purchasing, just as consumers know the origin of their clothes, their cars, and their cameras. Even the U.S. Department of Agriculture cites in its rule that recently came out that the survey findings show that country-of-origin labeling is of interest to the majority of consumers.

I said even the U.S. Department of Agriculture has said this because I happen to believe, in observing the U.S. Department of Agriculture over the last 12 months, that it has worked against the country-of-origin labeling legislation ever since it passed into law as part of the 2002 farm bill.

The initial cost estimates of the U.S. Department of Agriculture were outlandish, and thankfully the General Accounting Office called the U.S. Department of Agriculture on the basis of its claims. The U.S. Department of Agriculture then revised its cost estimates by lowering the potential cost of the program. This newly revised figure allowed for an overall cost range of between $582 million and $3.9 billion in the first years.

Upon closer examination, even the revised cost estimates of the Department of Agriculture appear to consistently overestimate the costs involved in implementing the country-of-origin labeling law due to the estimate's reliance upon industry-provided sources of material—not independent but from industry.

Clearly, the industry which is vehemently opposed to this legislation, it

seems to me, would provide information which is self-serving. For that reason, I have a hard time accepting even the newest range of cost estimates even though it is far less than what came out last spring.

I am not here to say that everything the U.S. Department of Agriculture has done on this legislation is bad. The recently published proposed rules allow for the potential use of self-certification through affidavits to transfer original origin information from one level of the supply chain to the next. That leniency on self-certification is a good decision by the U.S. Department of Agriculture. Also, the Department estimates producers will have the least recordkeeping burden, with estimates that range between $180 to $443 per facility.

The reason I am giving U.S. Department of Agriculture credit for in part doing the right thing is that I want this process to continue. Clearly, I don't agree with every aspect of the recently published mandatory country-of-origin labeling law proposed rule, but at least the Department of Agriculture has given us something on which to chew. It is a decent start. We now have a 60-day comment period to improve the proposed rule.

I intend to not only do that myself but I intend to also let the Department know my views on it, and I am inviting Iowans—or let us say citizens from any State—to send in their information to the Department of Agriculture. They ought to even let their Congressmen and Senators know what they have told the Department about their view of this rule. This gives all of us a chance to get it even closer to the intent of the authors of the original legislation and to ensure that these rules and regulations aren't overly burdensome to the family farmer.

I believe we need to let the process go forward. The only way to do it is to protect funding for the mandatory country-of-origin labeling. That funding is in dispute because of action taken by the House of Representatives.

I hope through this sense-of-the-Senate resolution, we send a clear signal to the conferees that we should fund this program; in other words, funds going forward and the enforcement of the law that this Congress adopted in 2002 on the labeling of meat products.

It will be an awfully serious situation if we don't fund these rules and move forward with the enforcement of this law. People who don't want to fund it do not like the law, but it puts our entire food chain into jeopardy, on the one hand having to meet a law that went into effect in September 2002, and then in the next 12 months not having money to provide for the regulations to be carried out and make sure everybody knows exactly how this law is going to be enforced.

People who are opposed to this legislation ought to, if they do not like the law—obviously, I do like the law, and that is why I am for their sense-of-the-Senate resolution—introduce legislation and have it debated to see if they can repeal the old law. But they should not put the farmers, the processors, the wholesalers, the retailers, and eventually our consumers in jeopardy because of not having the money to move forward.

Not funding this is—as the other body has not funded it—subterfuge for the legislation not moving forward. Yet everybody is going to be involved with having a law on the books that is going into effect next year. The law is still the law. It is our job, if we put a law on the books, to make sure that it is enforced. If we don't want to enforce that law, we ought to repeal the law.

This issue of self-certification is very important. Originally, the idea from some people in the Department or the industry was that there ought to be third-party verification of the origin of the meat that the consumer is going to eat. Did it come from another country or did it come from America? Was it raised and processed here?

If you have third-party verification, you can understand why it costs the economy billions and billions of dollars. But that isn't how the Federal Government deals with the family farmers of America.

For all of the decades of farm programs we have had, the Federal Government has always dealt with the individual family farmer as an honest person. They would ask for certification from the farmer's point of view as to the law as he farmed, as he raised his crops, as he qualified for whatever help that might be involved from the Federal Treasury, and that the farmer was abiding by that law. There were always periodic and random audits that a farmer, including this farmer, would have to comply with, just as there might be a random audit of your income tax by the IRS. But the Federal Government has always assumed the farmer was honest when he certified something.

If that principle has been good for farm programs for the last 60 or 70 years, why isn't it good enough for a farmer claiming that livestock was raised in America and processed in America or whether it came across the line from some other country?

The last point I make is for the consumers of America and for the retailers of America.

For all of the years I have been in Congress, I have never heard from Montgomery Ward, Sears & Roebuck, Kohl Department Stores, or from Wal-Mart—I have never heard from anybody in America who processes or sells retail products—saying that products which come into this country from some other country shouldn't be labeled. I have never heard those business people complain about that. But all of a sudden, there is something to protect food for the consumer—just as we do with the consumer and any other retail product, not just to protect the consumer but to inform the consumer. Where does this product come from? T-shirts from Taiwan, South Korea, and China—you know it; it is on the label.

I have never heard any retailer or any wholesaler complain about that. But now that we are going to give the consumer the same knowledge about where their food comes from—from America or from some other country—somehow this is a big problem. You hear it from the packers, you hear it from the processors, and you hear it from the wholesaler and the retailer. For some ungodly reason, I am even hearing it from the national pork producers. I do not hear it from the Iowa pork producers. Are the national pork producers in bed with the big packers, the big processors, and the big retailers of America? Should the consumers of America not know whether that hog came from Canada or from a family farm in America?

The consumers are entitled to the same knowledge about the origin of the products they eat as what they wear on their body or what they use for a tool in their workplace. I think we need to move ahead with this country-of-origin labeling. That is why I hope my colleagues will support this sense-of-the-Senate resolution for a law that is on the books—a law that is going to go into effect in September of next year.

Why don't the people in the Congress of the United States who do not like that law and the interest groups outside that do not like that law have guts enough to come forward and repeal the law and have a clear-cut victory or a clear-cut defeat? Let us move on. Let us not have the subterfuge of not funding it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I extend my appreciation to the Senator from Iowa for his statement. I support the amendment that will be offered by the Democratic leader in a short time. It is important the American public recognizes speaking on behalf of the American consumer is a farmer, a Senator, but his first vocation is that as a farmer. We are so proud. I very much appreciate the strong, articulate statement of the Senator from Iowa on this most important subject. It affects my family, my children, my grandchildren. As the Senator said, if we buy a pair of pajamas, we know where they are made. When we buy a peach or beef steak, we should know where that comes from, also. I appreciate the statement.

I say through the Chair, to the chairman of the subcommittee, on our side, it appears we have about five more amendments. We have the Dorgan amendment, which we have heard about. We heard Senator LEAHY will offer an amendment on conservation technical assistance. Senator DASCHLE will offer a country-of-origin amendment. Senator FEINGOLD will offer a Buy America amendment. Senator JEFFORDS may offer an amendment on historic bonds. We are moving down the road with this legislation.

Mr. President, as I have already indicated, I rise in support of the Daschle amendment, which will be offered in the next little bit, and to express strong support of the Senate for the country-of-origin labeling requirements of the 2002 farm bill. I have a letter from agricultural and consumer groups across the country that support this amendment.

I ask unanimous consent this letter be printed in the RECORD. It is dated October 9 and is signed by 170 different organizations from all over America. These are organizations that cover the width and breadth of this land, including Oregon Cranberry Farmers' Association, Sustainable Earth, Texas Farmers Union, Montana Cattlemen's Association, Illinois Stewardship Alliance, Georgia Peanut Commission, Florida Fruit and Vegetable Association, American Meat Goat Association, Arkansas Farmers Union, American Corn Growers Association. It is important we recognize this is representative of groups all over America that support this amendment. This list could be multiplied by 10 if these organizations were given a little more time to gather signatures.

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

OCTOBER 9, 2003.

U.S. Senate,
Washington, DC.

DEAR SENATOR: We are writing in representation of millions of consumers and producers across America to express our strong support for full funding in the fiscal year 2004 agriculture appropriations bill for implementation of country-of-origin labeling (COOL).

Senator DASCHLE, Senator ENZI and Senator JOHNSON are prepared to offer a Sense of the Senate amendment instructing the agriculture appropriations conferees to remove language inserted into the House of Representatives spending bill, which prohibits the U.S. Department of Agriculture (USDA) from spending funds to implement COOL. We strongly urge you to support the efforts of Senators DASCHLE, ENZI and JOHNSON when the amendment is introduced.

A report recently released by the General Accounting Office (GAO) refutes the number one argument of opponents of COOL by clearly stating the $2 billion price tag attached by USDA was based on arbitrary assumptions and not well supported. Given this recent report and the fact that USDA has yet to release the preliminary rules of implementation, it is simply the right thing to do to maintain implementation funding and keep COOL.

Country-of-origin labeling is designed to provided information to consumers and help U.S. producers promote their own products in the marketplace. It does not need to be burdensome or expensive to producers. We believe that, given a choice, consumers will choose to purchase U.S.-produced products. COOL does not violate any of our trade agreements. In fact, the GAO report cited 48 of our 57 trading partners that require country-of-origin labeling on one or more of the covered commodities included in the U.S. law. Without mandatory COOL, consumers in the United States will be denied the ability to differentiate between U.S. and imported products, while consumers in our trading partners' countries maintain that right.

Please vote in support of the Daschle-Enzi-Johnson Sense of the Senate to maintain funding of COOL.

Sincerely,

National Farmers Union; American Farm Bureau Federation; R–CALF United Stockgrowers of America; Consumer Federation of America; Alabama Farmers Federation; Alabama Farmers Federation; Alabama Peanut Producers; American Agriculture Movement of Arkansas; American Agriculture Movement of Missouri; American Agriculture Movement of Oklahoma; American Agriculture Movement, Inc.; American Corn Growers Assoc. of Nebraska; American Corn Growers Association; American Meat Goat Association.

Arkansas Farmers Union; Beartooth Stockgrowers Association; Burleigh County Farm Bureau (ND); C.A.S.A. del Llano (TX); Calaveras County Cattlemen's Association; California Farmers Union; Cape Code Cranberry Growers' Association; Center for Rural Affairs (NE); Churches' Center for Land and People (WI); Citizens Organized Acting Together; Cochise-Graham Cattle Growers Assoc. (AZ); Community Alliance with Family Farmers (CA); Crazy Mountain Stockgrowers Assoc. (MT).

Creutzfeldt Jakob Disease Foundation; Dakota Resource Council (ND); Dakota Rural Action (SD); Eagle County Cattlemen's Association (CO); Fall River & Big Valley Cattlemen's Assoc. (CA); Florida Farm Bureau Federation; Florida Farmers, Inc.; Florida Fruit and Vegetable Assoc.; Florida Tomato Exchange; Georgia Peanut Commission; Grant County Cattlemen's Assoc. (WA); Holy Cross Cattlemen's Assoc. (CO); Idaho Farmers Union.

Illinois Farmers Union; Illinois National Farmers Organization; Illinois Stewardship Alliance; Independent Cattlemen's Assoc. of Texas; Indiana Farmers Union; Indiana National Farmers Organization; Institute for Agriculture and Trade Policy; Iowa Citizens for Community Improvement; Iowa Farmers Union; Kansas Cattlemen's Association; Kansas Farmers Union; Kansas Hereford Association.

Kansas National Farmers Organization; Kemper County Farm Bureau (MS); Kit Carson County Cattlemen's (CO); Land Stewardship Project (MN); Lincoln County Stockmans Assoc. (CO); Livestock Marketing Association; Madera County Cattlemen's Assoc. (CA); Malheur County Cattlemen's Assoc. (OR); McPherson County Farmers Union (KS); Merced-Mariposa Cattlemen's Assoc. (CA); Michigan Farmers Union; Mid-Nebraska Pride.

Minnesota Farmers Union; Missouri Farmers Union; Missouri National Farmers Organization; Missouri Rural Crisis Center; Missouri Stockgrowers Assocaition; Modoc County Cattlemen's Assoc. (CA); Montana Agri-Women; Montana Cattlemen's Association; Montana Farmers Union; Montana National Farmers Organizaton; Montana Stockgrowers Association; National Association of Counties.

National Assoc. of Farmer Elected Committees; National Campaign for Sustainable Agriculture; National Catholic Rural Life Conference; National Consumers League; National Family Farm Coalition; National Farmers Organization; National Potato Council; Nebraska Farmers Union; Nebraska Grange; Nebraska Livestock Marketing Association; Nebraska Women Involved in Farm Economics; Nevada Live Stock Association.

New Mexico Cattle Growers' Association; New Mexico Farm and Livestock Bureau; New Mexico Public Lands Council; New Mexico Wool Growers, Inc.; New York National Farmers Organization; North Dakota Farmers Union; North Dakota Livestock Marketing Assoc.; North Dakota Stockmen's Association; Northern Plains Resource Council; Ohio Farmers Union; Oklahoma Farmers Union; Oregon Cranberry Farmers' Alliance.

Oregon Farm Bureau Federation; Oregon Farmers Union; Oregon Livestock Producers Association; Organization for Competitive Markets; Park County Stockgrowers Assoc. (MT); Pennsylvania Farmers Union; Platte County Farm Bureau (NE); Powder River Basin Resource Council; Public Citizen; Rocky Mountain Farmers Union; Rural Advancement Foundation International-USA; Rural Roots (ID).

South Dakota Farmers Union; South Dakota Stockgrowers Association; South Eastern Montana Livestock Assoc.; South Texas Hereford Association; Southeast Wyoming Cattlefeeders Association; Southern Peanut Farmers Federation; Southern Research and Development Corp. (LA); Southern Sustainable Agriculture Working Group; Soybean Producers of America; Spokane Cattlemen's Association (WA); Stevens County Cattlemen's Association (WA); Sustainable Earth (IN).

Sustainable Food Center (TX); Texas Farmers Union; Union County Cattlemen's Association (OR); Utah Farmers Union; Virginia Angus Association; Washington Cattlemen's Association; Washington Farmers Union; Way Out West Rural Action Group (ID); Western Organization of Resource Councils; Wisconsin Farmers Union; Wyoming Stockgrowers Association; Yuma County Cattlemen's Association (CO).

Mr. REID. The reason the organizations signed up for this is because they support the right of American consumers to know the origin of the food we eat. In Nevada, the Cattleman's Association and Nevada Livestock Association strongly support this legislation.

We ask, after having heard the strong statement of the chairman of the Finance Committee, Senator GRASSLEY, who opposes this? That is interesting. It is the House of Representatives. It is the law that there be country-of-origin labeling.

The House of Representatives, in their version of this appropriations bill, wants to prevent any moneys going forward from the Federal Government to enforce the country-of-origin labeling. That is unfair.

Who does not support it? The House of Representatives. As I indicated, in their appropriations bill dealing with agriculture, they inserted a little provision that would not allow us to implement country-of-origin labeling. This amendment would silence our effort to inform consumers about the food they eat by telling them where their meat, lamb, fish, and vegetables originate.

I was happy for my wife to buy me a pair of shoes. This pair of shoes, by the

way, is very comfortable. I stand a lot. These shoes are made in America. Allen Emmonds is the brand name. I had a choice. There was a Brazilian brand made for people who stand a lot like I do. There was a French brand. I bought American. I had a choice. The choice was very easy. I was happy to have that choice.

If I can go to a store and find out where the shoe is made, shouldn't I be able to go to a grocery store and find out where the steak I am going to buy comes from or the roast or the potatoes or the cauliflower, whatever the case might be. If you can do it for shoes, certainly it would seem you can do it for food.

This amendment in the House version of the bill would silence our effort to inform consumers about the food they eat. That is wrong. I cannot imagine anyone who would not want consumers to know what they are eating and from where it comes.

Who could be behind the position of the House? Is it just a bunch of very educated, in the way of farm products, Members of the House of Representatives? Is it just a group of enlightened staff people who suddenly said, we do not want them to enforce that law; it is not good politics; it is not good public policy for people to know where their food comes from.

In fact, why don't we just have Americans continue labeling this stuff ''American'' when it is not. That is what is happening now. That is a reason we need to stop this.

Why, then, is the House of Representatives so involved in this issue? It is quite clear. The authors of this House provision are people who have had looking over their shoulder people from the four major meatpackers in this country that oppose this labeling. This legislation comes from those packers. These packers, while they may not have a monopoly, have about as close as you can come to a monopoly. The packers control about 80 percent of the beef in the U.S. market.

If you think they had some hand in the House of Representatives putting this provision in the legislation, of course they did. The packers do not like the country-of-origin labeling because they want to continue to sell imported beef, in effect, made in the USA. They want to trick, to deceive, American consumers into believing they are buying food that is grown and made in America because it gives them an advantage to do so, just like my shoes, just like my American shoes.

Nope, this suit I am wearing is not made in America; most of my suits are. When I have a choice, I want to buy ''Made in America.'' I want to do the same with my food—or at least have the knowledge of where my food comes from. As I said, most of the suits I wear are made in America. Hickey Freeman, made in America.

I am looking forward to an amendment that will be offered, as I indicated, by my friend from Wisconsin about buying American.

That is what is behind the House of Representatives' provision in the bill. They simply have been overwhelmed by the four meatpackers in this country that control 80 percent of the beef in our market. Of course, that is not what the critics of the country of origin say to the public, but the public arguments are not better. Critics of the program claim it is too expensive to put into effect. With a multitrillion-dollar budget, it is not too expensive. The General Accounting Office recently found that the U.S. Department of Agriculture estimate was arbitrary and not well supported. Most cost estimates place the costs much lower than the Department of Agriculture. The Department of Agriculture has made other mistakes.

Some argue that the country-of-origin label violates trade agreements. That is a specious argument because 48 of our 57 trading partners already require country-of-origin labeling for their commodities.

This allows foreign consumers to choose whether they want to support their own farmers and ranchers. American consumers deserve the same choice. The House of Representatives, with its country-of-origin rider, would deny that right for American consumers.

I believe, as some of my colleagues have said and will say, that U.S. farmers and ranchers produce the highest, best quality food in the world. I also believe that if American consumers are given the power of information, and the right to know, they will choose to buy American food products.

As many of my colleagues will recall, we had a full and extensive debate about country-of-origin labeling during the consideration of the farm bill. It was one of the most hotly debated provisions during the House and Senate conference on the bill, again, because of the power of the four meatpackers in this country. The outcome of all that debate—a county-of-origin labeling requirement—was a victory for American consumers and American farmers and ranchers.

The House, with its anticonsumer, antifarmer, antirancher rider, is trying to sneak a provision through the back door that they could not prevail on in open debate. We know what the rules are on appropriations bills. It is very difficult to strike things out of bills.

Americans have a right to know what they are eating. This harmful House rider would deny them that right.

When the opportunity comes, I will support, with a ''yea'' vote, the Daschle amendment.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, I rise also to talk a little bit about country-of-origin labeling. I guess I ought to tell the Senate, first, why I am inflicting my opinions on this subject on the Senate.

I have the honor of chairing the Subcommittee on Marketing, Inspection, and Product Promotion of the Agriculture Committee. I was not told, when I was given that assignment, that it included supervising the implementation of the country-of-origin labeling law, a law the Congress passed before I was here and on which I did not have an opportunity to express my opinion.

I know feelings run high regarding that law. I have had the opportunity to study the issue, and I have tried, from the beginning, to be an honest broker in this whole process, just to try to see that this law—which was passed before I got here and which is part of the law now—is implemented in a way that accomplishes what it was originally intended to accomplish.

In the course of doing that, I have, of course, read that statute. I have had a chance to talk to several of the Senators who were instrumental in writing it. It is pretty clear, from the statute, the gist of what the Congress intended. It is like reading an essay quickly; you sort of get the gist of it.

The problem I will get to in a minute is, when you go into the details of it, a lot of it is rather vague. That is going to raise problems in the implementation unless we do something. But I think the gist of it is pretty clear. I am going to restrict my remarks to beef even though, of course, the bill covers a whole wide range of different products. But for simplicity's sake, I will talk about beef.

From the bill, it is pretty clearly the intention is that all beef be labeled, that there be specific labels for American beef, that we begin to control what people are calling American beef.

The legislation references and, in some respects, in some sense, seems to want to be modeled on some existing labeling programs. But, as I will say in a minute, it does not make clear exactly what the legislation is. It puts the burden of compliance on the retailers, which is very significant in getting us where we are now with the implementation of it.

The legislation seems to contemplate that it be enforceable by the Department with some kind of a grace period. There is a section in the legislation relating to the grace period.

So if you read the legislation, it seems to me the gist of it, of what it intended, is pretty clear. I think what I have said is consistent with the conversations I have had with Senators who were very responsible and have acted in good faith from the beginning in writing this legislation and are now interested in its implementation.

The problem is, the legislation is vague in a lot of respects. It imposes a very serious potential liability on people, but in certain crucial aspects—in fact, in a lot of crucial aspects—it is really not clear exactly what they have to do to avoid that liability.

It is not that anybody intended the vagueness. I know what it is like when you are in the middle of a conference committee and trying to come up with legislation under all the pressures of time and the need to compromise and

to check with a bunch of different people. It is hard to do something that has 100 percent precision under those circumstances.

Let me go through some of the respects in which I think the legislation is a little difficult to understand.

As I said before, the statute lists certain model programs, and references them, such as the Florida labeling statute. It does not make clear, however, whether those programs are safe harbors—in other words, whether the people who are supposed to comply with this and who do it in a way that those programs operate, are safe from liability.

As a matter of fact, the suggestion in the legislation is it is reasonably clear they are probably not safe because the legislation seems to require things that are not in some of these model programs. But if those models are not safe harbors, then what are they? What purpose do they really have? It is just not clear from the statute.

The statute makes clear, it seems to me, that you can only call something American beef if that beef was born, raised, and processed in the United States. I think it is pretty clear that was one of the major purposes of the statute. But it does not say what the label ought to say, and it really addresses in no respect whatsoever what you should put on the label for beef that you do not want to claim was born, raised, and processed in the United States. It requires that foreign beef, within the meaning of the statute, be labeled, but it gives no clue whatsoever as to what that label ought to say—again, even given the fact that the statute does assign substantial liability if you get it wrong.

So the intent is pretty clear, with regard to American beef, that it has to be born, raised, and processed in the United States if you want to call it American beef. It does not say exactly what that label should say and is very unclear and supplies really no guidance as to what the label should say if you do not want to call it American beef.

The statute prohibits a mandatory tracing system in order to determine whether a label is correct. It says you cannot have a mandatory tracing system, but at the same time it requires that there be some kind of verification system. It certainly is not clear, I think, to anybody how we can have a mandatory verification system that does not include a mandatory tracing system. Now, I am not saying it is impossible; I am saying it is not clear.

Again, there are very substantial liabilities for people who make the best guess they can from the statute and then get it wrong. The statute says the Department of Agriculture can enforce it at up to about $10,000, potentially, per violation. It does not say whether that is the exclusive means of enforcement.

The statute is not clear whether there is some private cause of action, whether a class action in State or Federal court could be brought against a retailer that does have the burden of compliance that fails in some respect to comply with the statute.

The statute does not say how this statute, the country-of-origin labeling law, relates to other labeling statutes. So it is not clear whether a violation of the country-of-origin labeling law is also a violation, for example, of the food safety laws or the other labeling laws or consumer protection laws or how that is going to relate to State consumer protection laws.

I do not raise these issues as if this were some kind of a law school exam. I raise them because it is very important to understand this is a statute that people are going to have to follow regardless of what the regulations say, at least within limits.

Let me go on to the next point because I think it is essential we make it in order to focus exactly on where we are now. We can concede, again, the good faith of both sides on this. We certainly can concede the good faith and intentions of the Senators who drafted this bill and the Congress that passed it.

What we know is that the statute unquestionably does this. It imposes a labeling requirement with substantial liability for retailers, the last business organization to handle the food before consumers get it, if they violate that labeling requirement.

What I want to suggest to the Senate is that what the regulations say, while, of course, it is important because it bears on how the statute might be interpreted, is a lot less important in determining how this is practically going to be construed and implemented than what the companies, the chief retailers in the country think, as their lawyers examine this law. How this law is implemented is going to depend on the advice the general counsel for Wal-Mart and Safeway and Giant give their executives as they consider how to implement this law.

I have the documents. I have talked to people in this position. Given the vagueness in the law and the potential liability in the law, they are advising their clients to take the most conservative position possible in order to protect themselves against the worst case scenario for liability. They are not going to take a risk of some big class action lawsuit against them or some huge investigation by the Department of Agriculture with all the attendant negative publicity because they have taken a chance and interpreted this law as requiring less than perhaps it would require.

This is why we are hearing back—all of us who have farm State constituents, and many who don't—from people in the production chain, in the distribution chain of food who are saying: This law is going to require us to do this and this and impose this cost and take that measure, not necessarily because of what was originally intended, but because the confusing aspects of the statute give rise to vagueness that creates the potential for liability that these companies are simply not going to risk. They are going to do what they have to do to protect themselves. Whatever it costs, they are going to do it and pass it down the production chain. That is my concern, that we end up, as a result of unintended vagueness in the law—I will concede to the Senate—passing these costs of production down where eventually they will settle on the weakest competitors in the food chain, which is, of course, the producers.

So my cattlemen and yours may end up having to bear all these extra costs that are generated because of these concerns, and we end up hurting the very people, along with consumers, we are trying to help in passing this law.

What are some of the things the retailers may do? We have been collecting a lot of information. I ask unanimous consent that this letter be printed in the RECORD.

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

IBP, INC.

DEAR PRODUCER: As you know, federal law requires that country of origin labeling appear on all retail meats sold in the U.S. by September 30, 2004. The labels must state where the livestock was born, raised and slaughtered. USDA has stated self-certification will not be allowed, nor will the government step in to certify where livestock were born or raised. Retailers have also stated they will require verifiable records, and they do not plan to accept self-certification. Thus the responsibility for accurate documentation of these required facts rests exclusively on the livestock, meat and retail industries.

IBP, Inc's (part of the Tyson Foods family) major retail customers are already notifying us that we—and our suppliers—must have the recordkeeping systems in place this year to be able to comply with next year's mandate. Here is what our retail customers want us to do:

1. Sticker all covered commodities with country of origin information that complies with the law and USDA regulations. Provide enough signage to ensure one sign for each retail display in every shipment of product that cannot bear a label.

2. Contract to maintain records and a verifiable audit trail to establish the accuracy of the country of origin information that retailers receive from packers for covered commodities.

3. Indemnify retailers for any fines or other costs they incur as a result of the country of origin information that packers provide or fail to provide.

4. Segregate all covered commodities by country of origin throughout the production chain until they are delivered to the retailer, and maintain documentation verifying the efficacy of the packer's segregation plan.

5. Audits. Provide retailers with the results of an audit conducted by USDA or another certified independent third party to establish that packers have the systems in place to ensure the accuracy of the country of origin information that they provide retailers.

In order to meet these customer requirements, it will be necessary for you to provide IBP with verifiable information on the place of birth and every location where livestock was raised for each animal marketed. IBP,

Inc. will require you, as our suppliers, to provide us evidence of your recordkeeping program for gathering and maintaining this information. Only you can document and verify the born-in, raised-in components of the law. The documentation costs—as well as the independent, third-party, verification costs—will also be your responsibility. Specifically, we will require you to:

1. Provide third-party verified documentation of where the livestock we purchase from you were born and raised.

2. Provide a signed legal affidavit with each load of livestock we purchase from you stating that there is a third-party verified audit trail in place that identifies where the livestock in each load were born and raised.

3. Provide IBP, Inc. access to your records so that we can perform random producer audits as necessary to satisfy our customers, verifying that an accurate audit trail is in place and that it is being verified by an acceptable third party.

4. Indemnify us for liability we incur that is a result of producer noncompliance.

For those of you raising market cattle or hogs you intend to sell to a packer after September 30, 2004, you should begin your documentation on all calves immediately and on all hogs no later than November 2003.

Many in the retail, meat and producer communities are concerned about the costs, benefits, legal and logistical challenges posed by this new law. As a result, there is a united industry effort to either repeal mandatory country of origin labeling for meat altogether or to convert it to a permanent, voluntary program. Either way, we need the producer community's help. If you share these concerns, we urge you to contact your Senators or Member of Congress, as well as your trade associations, and express your opinion.

Furthermore, we urge you to share your thoughts with your fellow producers and USDA by attending one of the USDA ''listening sessions'' on this issue, expected to occur this coming spring. USDA is charged with writing the regulations for the final, mandatory country of origin labeling law, and they need to hear from all affected parties. If you share our concerns, we hope you will attend any meeting in your area and speak out.

We will attempt to contact you within the next few months to learn about your proposed recordkeeping plans. In the meantime, if you have questions, please feel free to contact one of us and we will try to help you. If we are not available, you may ask for Bob Hansen in Hog Procurement, John Gerber in Cattle Procurement or John DeWitt in Cattle Procurement.

Sincerely,

BRUCE BASS,
Senior Vice President, Cattle Procurement.
GARY MACHAN,
Vice President, Hog Procurement.

Mr. TALENT. This is from IBP. They are packers. They are reporting what their major retail customers are notifying them that they have to do. Here is what the retail customers want us to do. I quote:

Stick all covered commodities with country of origin information that complies with the law and USDA regulations. Provide enough signage to ensure one sign for each retail display in every shipment of product that cannot bear a label.

Contract to maintain records and a verifiable audit trail to establish the accuracy of the country of origin information that retailers receive from packers for covered commodities.

I will not read the whole letter. But suffice it to say, the major retailers are going to reorganize their inventory and distribution lines so they can keep separate these different kinds of beef. That is going to generate cost. They are going to require that as much beef as possible be prepackaged. This is interesting. It may result, unfortunately, in their laying off some meat cutters and people on the premises of the store who have been cutting meat fresh there. They are going to get it prepackaged because then they have to do as little as possible at the store. That may tend to encourage vertical integration in the production chain, which is the opposite of what we want.

They are going to set up an audit system and require packers to have software and other kinds of records that will network into the retailers systems so they can trace back. And with every piece of meat they have in the counter, they are going to want to be able to trace that back to a particular cow so they can protect themselves in the event they are audited.

Then, of course, this will domino down the line of production. The packers are going to have to have this software. They are going to reorganize some of their warehousing and inventory facilities. The auction barns and feedlots are going to have to have software which is compliant with this whole system. I visited auction barns, and they showed me how they are going to have to change where the cows are. They are going to tell the producers that they are going to have to be able to be compliant and network into their systems of verification and tracing when they bring cows to the auction barns to sell.

I don't think we intended any of this. As I read the statute, I can't even stand here and tell you that the statute suggests that is absolutely the intention. But that is a possible, plausible interpretation of it. Even if the regulation said something entirely different, I don't think it would make any difference.

The statute is what imposes the liability. The statute is supreme over the regulation. And the lawyers for these various retailers who are interpreting this are going to look first and foremost at the statute. They are going to act in a manner that protects their clients from the downside risk of substantial liability that arises because of certain unintended but, I think, nevertheless very real vagaries and vagueness in the law.

What are we left with? We can allow this process to play itself out, basically not do anything as the effective date of the act approaches, which is October of next year. It is already having an impact because people are raising cattle right now that they are going to sell after October of next year and that they are going to have to be able to trace back. That is the reason we are beginning to hear the lead edges of the concerns about this because they don't know what they are supposed to do to comply with the law. They are concerned they may have to do all these things I have talked about.

We can allow it to play itself out, kind of like a tragic play that you watch and just hope for a surprise good ending, and maybe we will get one. Maybe all this will sort itself out.

We can repeal the law and replace it with something that is voluntary. I know that is what a lot of people want to do. That is probably what a lot of people in the House want to do. I am going to say in candor to the Senate that my evaluation of the risk here is such that I would prefer at this stage, if the only two choices are no mandatory law or the law we have now with the downside risks we have now, I would rather have no mandatory law.

But there is a third alternative. We can fix the law. We don't have to end it. We can mend it. We can go in and in the same good faith in which this law was passed and the same good faith in which Senators have spoken on the floor today, and look at the areas that have given rise to uncertainty within the retailing community and the whole rest of the chain of production of this food, all the way down to the producers we are trying to help, and we can say: We can make our intention clear; we can give you the level of certainty you need to be able to implement this law and comply with this law in the manner that we all are saying now we originally intended.

The law we passed in the farm bill doesn't have to be our final statement on the matter. We don't have to be getting into these kinds of arguments. That is a third alternative in which I would be very happy to participate.

I will say, I don't intend to support this sense-of-the-Senate resolution—not because I don't understand the frustration that has led up to it; not because I necessarily disagree with what I have heard on the Senate floor about the motives that may have been working in the House; not because I am against, personally, a mandatory country-of-origin labeling law; not because, as the Senator from Nevada said, I am against what he was saying about consumers knowing where their food comes from. Maybe there is a good niche market available. Maybe if we can do this in a way that works, consumers will look at this and they will want to buy that American beef and it will help our producers. That would be great.

But it does seem to me now that nobody is really satisfied with these regulations. Some people believe the regulations are an accurate reflection of the law, and they are not satisfied with the law. But they don't like the fact that the regulations are the way they are.

Then there are people who think the regulations are not an accurate reflection of the law, and they don't like the regulations the way they are. So it does seem to me that maybe the House

has done the right thing—albeit, perhaps, for the wrong reason—in saying: Let's not implement the regulations.

I will say, if the House feels that not implementing the regulations means the law isn't going to go into effect, they need to consult some different lawyers. That law reads that the effective date is in October of next year. Whether there are regulations or not, that liability is going into effect then. If we have a level of discomfort, as I do at this stage, with how the statute reads, we better do something about it in time so the people we are trying to help will enjoy the benefits of the law we passed 2 years ago.

Mr. President, it has been an experience for me to investigate and oversee this implementation. At this point I will say I stand ready to work with anybody on either side in trying to make certain we get a result that is at least acceptable and, I hope, is good for our producers. In my discussions with Senators, I have come to have a great deal of respect for their sincerity and passion on this issue. I don't see, given that, why we cannot come up with something that will work better for everybody than what we have now.

With that, I will yield.

Mr. DURBIN. Will the Senator yield for a question?

Mr. TALENT. Yes.

Mr. DURBIN. In fairness, I have supported this policy. When I return home and meet with people in grocery store chains that serve his State and mine, they have raised some legitimate questions, as far as I am concerned, about how much is required. It seems to me to be not a great burden to ask them to put some notice, for example, that the bananas are from Costa Rica or from some other country. Most of their concerns seem to be directed toward meat and whether or not they can legitimately trace the meat, and through all the requirements of the legislation and how much time is involved. I come to this issue realizing that whenever regulation is proposed, it is usually the first defense of the opponents to say it is going to cost 10 times as much as you would imagine to implement it.

I ask the Senator from Missouri—and this is an honest question, and I have no predisposition on his position on this issue—can he say, as he is standing there in opposition to this, that the cost estimates coming out are reasonable, in light of what is being asked of these grocery chains?

Mr. TALENT. I appreciate the Senator's question. I am happy to answer him in complete candor. I have not had the capacity in my subcommittee and in my office to be able to quantify what the costs are. I do know that actors in the chain of production, who I don't think have a big ax to grind—I am not talking about the packers here—have told me they are very concerned with what they are going to have to do to comply with this. It is chiefly the retailers, but not just them; also auction barns, and I have had producer organizations come; and I think their sense is that the thing that we are basically intending—as the Senator is saying, let consumers know where the beef comes from—is something we probably could handle at an affordable level.

But there is enough uncertainty in this, which they are not willing to risk, and the Senator can understand that they don't want to face—or be the ones at risk of facing a huge liability if they get it wrong. So it is reasonable to believe that the potential cost of this is very substantial. I can say that to the Senator. I cannot say it is $2 billion or half a billion. I just cannot tell the Senator that.

Mr. DURBIN. I would like to raise another issue. Really, I didn't think about it until August. I heard from two different grocery chains—one based in Chicago and one in St. Louis—about this legislation, and it goes as follows: If you establish a burden on a grocery store or a chain to follow these regulations, it necessarily involves manpower. People will have to keep records and label products, and all of that is part of it.

How much? As the Senator said, and I agree, I cannot quantify it. I don't know how much that is. The point made to me is that the Wal-Marts of the world, which pay rock-bottom wages, with no health benefits, will be able to come up with the manpower at a much lower cost than some of the major grocery store chains, some of which are union-organized, that pay a living wage and health benefits. They say to us, you are once again giving a competitive advantage to the Wal-Marts of the world that pay these low wages, with no benefits, to the disadvantage of grocery store companies who are trying to be good neighbors and good corporate citizens and provide decent wages and benefits.

Has the Senator heard this observation?

Mr. TALENT. I have. I have heard a number of things from retailers. One chain told me they are probably going to have to end up laying off many meatcutters because more of it will be prepackaged. I mentioned that in my remarks. I have retailers telling me they are going to advertise less for beef.

One fellow said: I don't want a lot of beef if I have this potential liability. I will simply advertise more for chicken. It will hurt the smaller stores in the more rural areas, and the bigger unionized stores to some extent. In fairness to the Senators who supported this, and in good faith still support it, I want to say a lot depends on how exactly these companies interpret the law and what risk level they are willing to go to.

My concern as a lawyer—and I think the Senator would probably agree—is that their general counselors are going to say: We are not going to take a chance. Tell everybody all up and down the production chain, this is what we want from them, and they are going to have to bear the cost.

Mr. DURBIN. I thank the Senator.

Mr. TALENT. I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from South Dakota is recognized.

Mr. JOHNSON. Mr. President, I am a bit confounded. I have to admit that some of the great concerns expressed about country-of-origin labeling for meat are being raised at a time when USDA has not yet issued a final statement about what the regulations are even going to be.

The USDA has considerable discretion, based on the legislation that passed this body and is now part of the farm bill. So a lot of this frenzy going on is about final regulations that are not yet in place.

Let me add that we are soon going to see Senator DASCHLE offer an amendment, a sense-of-the-Senate amendment, relative to country-of-origin labeling that the Senate conferees sought to stay with the Senate approach and reject the House approach to delay implementation. That effort on the part of Senator DASCHLE, joined by our Republican colleague, Senator ENZI of Wyoming, and myself, is supported by some 135 agricultural organizations, as Senator REID has noted, including, I say to my friend and colleague from Missouri, Missouri Farmers Union, Missouri National Farmers Organization, Missouri Rural Crisis Center, and the Missouri Stockgrowers Association, not to mention the American Farm Bureau Federation and the National Farmers Union.

So from the left to the right, across the entire spectrum of agricultural and rural organizations, there is overwhelming support transcending party-line differences in support of this amendment that is going to be offered by Senator DASCHLE.

The amendment directs the Senate conferees to insist that the final Agriculture appropriations bill should not restrict or delay the implementation of country-of-origin labeling for meat.

Mr. President, there are interests in this country that have convinced the House to include language in its version of this year's Agriculture appropriations bill to interfere with the USDA rulemaking process by delaying for up to 1 full year implementation of country-of-origin labeling for meat and meat products only. The law in the current farm bill provides for country-of-origin labeling for fruit, vegetables, and for meat. But it is only meat that has been singled out for this delay, keeping in mind, of course, that the farm bill already provided for 2 years of delay in the implementation of a mandatory program as it is.

This interruption is simply not justified, and it serves to placate only those special interests who profit from the status quo by, frankly, camouflaging foreign meat products.

I understand there are certain interests that have foreign meat that comes

into the country, and this is not a trade barrier. We are suggesting there be no trade barrier. If people want to eat Argentine beef or Mexican meat, they are certainly entitled to make that choice, but it ought to be a knowing choice. That is all we are suggesting, that people get to know the origin of their shoes, shirts, and auto parts.

Why should the United States be among the last of the industrialized democracies in the world to allow our consumers to know the origin of the meat products they feed their families? It is a very simple question. It would strike most people as common sense that in this day and age, people ought to have the opportunity to know the origin of the products they are buying, especially products they are feeding their families.

The farm bill already included a very lengthy 2-year implementation process for country-of-origin labeling, and USDA is now just half way through the rulemaking procedure. To prematurely disconnect country-of-origin labeling for meat from this process is unfair and will harm U.S. livestock producers and American consumers alike who stand to benefit from a country-of-origin labeling program.

We need to allow USDA to continue with the process of allowing the public, both those opposed and those supportive of country-of-origin labeling, to interact with USDA in their responsibility to implement this law for the fall of 2004.

There has been submitted for the RECORD a letter signed by 135 farm, ranch, and consumer organizations supportive of our bipartisan sense-of-the-Senate resolution.

Mr. President, these organizations represent more than 50 million Americans. Additionally, the most important and influential farm and consumer groups in the Nation support country-of-origin labeling, including the National Farm Bureau, the National Farmers Union, and the Consumer Federation of America. I think it can be fairly said this is as much, even more so, a consumer issue as it is a livestock producer issue.

It is now the job of the Senate to stand up for the majority of U.S. citizens and fix what special interests have convinced the House to do. A delay in implementation of country-of-origin labeling for meat is a seriously misguided effort because country-of-origin labeling is the only method we have now to differentiate and identify meat that comes from our country as opposed to meat that comes from other countries; for instance, meat that may come from a BSE-infected, mad-cow-infected country. We don't claim country-of-origin labeling is, per se, a food safety issue, but it certainly is a consumer confidence issue at a time when meat may very soon be coming into the United States from Canada, a country where BSE was recently identified. Now USDA is talking about allowing these younger cattle to come into the country from Canada, while at the same time our Japanese friends are telling us that BSE is, indeed, possible in these younger livestock.

If we are going to preserve confidence in the high quality product United States livestock producers have available, have created for the American consumer, then consumers need to be able to make a knowing choice. You can argue for them, these are decisions other people can make for you, that you ought to simply take on blind faith the food inspection and safety of the meat that is served in America, that is sold in America. Why shouldn't the United States be among the few industrialized democracies in the world that says: No, we will not allow you to make that choice; this is information you don't need, and we'll decide for you that you don't need this information?

Last week, USDA announced a plan to open the U.S. border to imports of Canadian live cattle, a plan that could be implemented in the first quarter of the 2004 calendar year. I am disappointed USDA appears more serious to opening our border to Canadian cattle than they are to implementing country-of-origin labeling. If they open floodgates to nearly 1 million head of Canadian cattle early in 2004, and if Congress simultaneously postpones the implementation of country-of-origin labeling for meat, the American consumers will have no way to determine whether they are buying Canadian or U.S. beef.

Again, if their choice is to buy Canadian beef, they certainly have the legal right to do so, but they ought to have an opportunity to know. They ought to have an opportunity to make that choice, and it ought to be a knowing choice. That is what makes the market forces in America work so well; the sales are transparent. People get to know the quality and origins and the value of the products they buy, and they let the best product win.

To camouflage origins of meat is contrary to those free market decision-making processes. It is no secret, country-of-origin delay, matched with the deluge of Canadian cattle imports, recklessly places consumer confidence at risk and could lead to serious economic harm for United States cattle ranchers.

Furthermore, postponing implementation of country-of-origin labeling for meat neglects demands of our most important and valuable export markets. Japan and South Korea have written to the Department of Agriculture seeking our assurances to provide country-of-origin labeling for all U.S. beef exports to those countries because those countries do not want Canadian beef to be commingled with our exports.

The same day USDA announced their plan to allow Canadian cattle into the U.S., it was reiterated by Japan that the U.S. ought to guarantee no beef from Canadian-born cattle is exported to Japan. The only method to certify origin of beef exports to Japan and our other important trade partners is to implement country-of-origin labeling.

A delay of country-of-origin labeling seriously jeopardizes our most important exports of beef, which will certainly lead to economic injury to America's cattle men and women.

We face a simultaneous problem: One, that our own consumers are being denied the information they need to have confidence, to make knowing choices about the meat they serve their families and, at the same time, we are putting in great jeopardy the export market.

Japan is the largest buyer of American beef in the world, and they are saying: Look, we don't want to buy your beef if you can't certify to us this is, in fact, American beef you are selling us, We can't do that right now because we don't have a country-of-origin system in place. So we find ourselves not only doing a disservice to American consumers and American families, but we also are setting ourselves up in a circumstance where we can take a catastrophic hit to our export markets at the same time.

Eighty-four percent of our major trade partners already have country-of-origin labeling for food products, including meat—84 percent. That means 48 of our 57 major trade partners already have country-of-origin labeling. Clearly this is not rocket science. It does not have to be costly. In fact, in the United States, we already have country-of-origin labeling in some niche areas. It is required that meat that goes into the School Lunch Program be American meat. It is self-certified. It seems to work. We have a Black Angus Program, and we have other programs that already work. They are not costly. It is not that expensive.

This notion that somehow country-of-origin labeling has to be some immensely expensive and complicated process is foolishness. If all we did was keep track of the meat that comes into the United States, that alone would be enough to be able to certify everything else is American without requiring anything in particular of American livestock producers.

Well, the packers and retailers would like us to think that country-of-origin labeling is some enormously expensive and burdensome program, and they have been working very hard at trying to frighten both producers and consumers to think just that. There have been letters that have gone out and there has been a lot of scare talk that has been going on, and there is no doubt they enjoy taking the profits of mingling foreign meat with U.S. meat, selling it all off as a premium product, without allowing consumers to make a knowing choice. I appreciate there are those from certain parts of the United States who enjoy the benefit of bringing in Mexican feeder calves, fattening them and then selling them as an American product. They are able to

profit at a higher level than they would otherwise by not allowing American consumers to know what in fact it is they are buying.

We are not suggesting one cannot bring in feeder calves from anywhere one wants, one cannot bring in meat from anywhere one wants. We are suggesting consumers ought to know the difference.

Nearly a year ago, USDA said country-of-origin labeling would cost $2 billion. Then Senator DASCHLE and I asked the Government Accounting Office, the GAO, to assess whether USDA's cost was accurate. GAO said the Department of Agriculture's initial recordkeeping cost was ''questionable and not well supported.''

Now USDA has reduced their recordkeeping cost estimate by $1.5 billion of that $2 billion. Furthermore, country-of-origin labeling is not going to result in a mountain of red tape as some of the critics suggest. In fact, USDA's proposed rule states most livestock producers already maintain the types of records—birth, health, and so on—that would be relied upon to verify the origin of animals under country-of-origin labeling. People simply need to do what they are already doing.

Even if individuals have questions or concerns about country-of-origin labeling, the best way to ensure those questions and concerns are addressed is to allow USDA to continue forward with its very lengthy rulemaking process. It is through this process only that all parties can submit questions and develop alternatives to ensure implementation of country-of-origin labeling does not lead to red tape and overwhelming costs. We can move away from some of the scare talk and from some of the reckless rhetoric and in fact allow USDA to evaluate whatever issues are raised in a thoughtful, deliberative fashion, as they have the opportunity currently to do.

Every stakeholder group has 60 days to submit written comments to USDA with respect to their proposed rule to implement country-of-origin labeling. Then USDA will incorporate those comments into the final rule, which is not even going to be written until well into the year 2004.

USDA's proposed rule is far from perfect—I would be the first to say that—but compared to what it looked like nearly a year ago, USDA has been making improvements and has been making progress. With balanced public input and assurance that the implementation process will not be interrupted, maybe then those with questions and concerns can work with USDA in the coming year to help make the law and address the concerns they raise.

I commend Senator DASCHLE, Senator ENZI, and others in a bipartisan spirit, who have offered support for this amendment. I encourage my colleagues to support it. All this simply does is to say a law which is already law, which has been signed by the President, is part of the farm bill, is in the midst of the rulemaking process now, be allowed to go forward. Allow USDA to take the comments from the public, allow USDA to evaluate all of that, perhaps make still further changes on their way to a final regulation, and then we will see where we are.

To stop the process midway through the regulation listening process cannot possibly serve the American public, the American consumers, the American agricultural economy well.

Again, I thank Senator DASCHLE for his extraordinary leadership on this issue, and what he is trying to do to bring some sense to our deliberations on this Agriculture appropriations bill and to send some direction to the conferees to not prematurely pull the plug on the rulemaking process USDA is in the midst of now.

I urge my colleagues to be supportive of this sense-of-the-Senate amendment Senator DASCHLE is shortly going to formally introduce.

I yield the floor.

AMENDMENT NO. 2078

Mr. DASCHLE. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for himself, Mr. ENZI, Mr. THOMAS, Mr. JOHNSON, Mr. HARKIN, Mr. GRASSLEY, Mr. BURNS, Mr. BINGAMAN, Mr. BAUCUS, Mr. DORGAN, Mr. CONRAD, and Mr. KERRY proposes an amendment numbered 2078.

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

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

The amendment is as follows:

(Purpose: Expressing the sense of the Senate regarding country of origin labeling requirements)

On page 79, between lines 7 and 8, insert:

SEC. ___. SENSE OF SENATE REGARDING COUNTRY OF ORIGIN LABELING REQUIREMENTS.

It is the sense of the Senate that the conferees on the part of the Senate on this bill shall insist that no limits on the use of funds to enforce country of origin labeling requirements for meat or meat products be included in the conference report accompanying the bill.

Mr. DORGAN. Mr. President, will the Senator yield for a unanimous consent request?

Mr. DASCHLE. I would be happy to yield.

Mr. DORGAN. Mr. President, I ask unanimous consent if I might find my way into the order so I might also offer an amendment. I see the Senator from Wyoming, who I expect is wanting to speak, and because we will probably go back and forth, I wonder if I might get unanimous consent to be recognized following the presentation from the Senator from Wyoming. I know the Senator from South Dakota has now offered an amendment. My expectation would be the Senator from Wyoming will speak next, but might I receive consent to be recognized following the presentation from the Senator from Wyoming.

The PRESIDING OFFICER. Is there objection?

Mr. BENNETT. Mr. President, I have no objection.

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

The Democratic leader.

Mr. DASCHLE. Mr. President, I want to begin by complimenting the distinguished Senator from South Dakota for his remarkable statement. I am not sure anything is left to be said. I think he covered it so well and so eloquently.

He, as I think all of our colleagues recall, is the true author, the founder, the initiator of this issue during our deliberation on the farm bill itself. It is with great wisdom he spoke today and I think with great persuasion. We ought to listen to the Senator from South Dakota. Again, I thank him for all he has done to get us to this point and the efforts he has made to ensure we understand the consequences of our actions today.

Let me also thank the distinguished Senator from Wyoming, Mr. ENZI, for all of his work and help in making this amendment a bipartisan effort, to ensure that we, as colleagues interested in agriculture, a strong economy, and rural America, do the right thing with regard to this particular question involving better information and better choice for all consumers and an effort to help producers as well.

There are others also who have played a very significant role; my colleague from North Dakota, Senator DORGAN; Senator GRASSLEY, who gave a passionate speech earlier today on this amendment, Senator BURNS, Senator BINGAMAN, Senator BAUCUS, Senator CONRAD, Senator HARKIN, Senator THOMAS; a number of Senators have expressed themselves and have been the driving force from the very beginning as we have urged careful thought about how the Congress ought to proceed with regard to this question.

The Senator from South Dakota made several important points, but if there is one that is most important it is simply we are now in a very delicate, deliberate rulemaking stage. What our colleagues in the House have chosen to do is to say, we want that stage to end; we want to terminate rulemaking before we even see what the rule is; we want to make a decision about the decision prior to the time the decision has even been made.

For us through legislation to interject our own voice, without allowing the Department of Agriculture to respond, as they are required to do in the farm bill itself, passed last year, I think is terrible policy but also premature.

What we said in the farm bill, and what my colleague from South Dakota

said so well this afternoon, is we ought to bring agriculture, consumer protection, and information into the modern era. As he noted, 48 other countries, 84 percent of our trading partners, already do that. They have already recognized the importance of good consumer information.

I find it ironic we can tell people where bananas come from, where lettuce comes from, where our clothing comes from, where just about everything else comes from, but we have those who say it is impossible for us to tell people from where our meat comes. When it comes to meat, we can tell people whether it is choice or whether it is prime, but we just cannot tell people from where it is imported. I do not think anybody can accept that logic.

If we can decide the difference between choice and prime, we can decide the difference between Mexico and the United States. That is all we are talking about, a recognition that consumers have just as much right to know where their meat comes from as they have a right to know how good the quality. When we passed the legislation, frankly on a overwhelming bipartisan basis, we said yes; we said the consumers ought to have that right.

That is what we are trying to do today: First, to allow the rulemaking process to go forward. But, second, to come down to a pretty fundamental question. It is pretty fundamental. Should consumers have the right to know? I believe the answer to that question is yes. I believe it is in keeping with a long tradition of legislation passed in this body, in both Republican and Democratic majorities.

I recall 13 years ago, so vividly, Congress passing legislation back then that we were told was impossible to enforce, impossible to administer. It was legislation that required nutrition labeling. Howard Metzenbaum, that Senator from Ohio who was a passionate advocate for consumers in so many ways, was the author of that legislation. I can recall at the time opponents of his bill said: We are going to see costs soar just as soon as this legislation is implemented; it is impractical to talk about how many calories, or what the nutrition balance is going to be, with every single product in the market. But Congress passed it anyway and, in fact, now the labeling law has become what is widely described as the most successful consumer information tool in all of history and now we consider it almost daily as a matter of course as we look at the labels when we buy the products, the packages.

There are those, in packing in particular, who have attempted to say for a lot of reasons that this legislation could carry that same ominous effect on the market once more. Four meatpackers control 80 percent of the meat market. They operate multibillion-dollar empires. We know how powerful they are and we know when they speak there are a lot of people who listen. But I believe we ought to go beyond what special interest concerns there are. We ought to have a right to know. When there is mad cow disease, as we have seen in Canada, if we are going to import meat from Canada, we ought to know those circumstances exist. And before we buy, if we have a choice between American beef and imported beef, whether it is Canada or Mexico or anyplace else, consumers ought to know. Consumers ought to have the right to make that choice for themselves.

I believe this may be one of the single most important consumer bills that our Congress is going to take up in this session of this Congress. We are told by the packers especially that this is too expensive, that we simply can't afford to implement the plan. Estimates rose as high as $2 billion. In fact, even USDA expressed real concern about the cost, advocating a review of the costs.

We did just that. We asked the General Accounting Office, as my colleague from South Dakota said, to look at the facts. Forget all the assertions; forget all the hyperbole. Let's really look at what the cost will be. They did that. They reported back not long ago and they said the cost is not $2 billion; it isn't even half of the $2 billion that was originally alleged to be the cost of the implementation of this rule. In fact they said the cost in the first year would be less than $600 million—about $582 million. I believe the USDA cost estimates are still too high because they don't take into account the extraordinary economic benefits that could be derived with this information.

Studies have shown that if we have this kind of information the actual sales of U.S. meat could increase anywhere from 1 percent to 5 percent, and that isn't taking into account bringing down the per-product cost. So, clearly, it is a fraction of the cost that was originally attributed to this rule.

The second problem we have with regard to the rule and the effort to thwart the rule is the packers are simply requiring too much paperwork and recordkeeping from the rule itself. We have to fix that. We have to ensure that we make this a practical application. I believe we can do that as well. I believe we can create the kind of opportunity for practical application of common sense just as we have shown in so many other instances—as we have shown with meat labeling, as we have shown with grading, as we have shown with consumer information provided routinely now throughout the marketplace.

I believe what we ought to do, in short, is give USDA the authority and the opportunity to work their will, to do what we hired them to do, to give us the rule, to allow us to analyze it. If we have problems at some point down the road, we can change it. We can ask the administration to work with us to come up with something better. But at least let's give them that opportunity to produce what they are required to produce under law.

I believe that is the right course of action. That is what this amendment says. It simply says, with a bipartisan voice, that we believe we are on the right track. We believe producers would benefit if consumers knew they could buy products made, produced, and marketed in this country. That is what the amendment says, and I urge its adoption.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise to join the chorus of support for this amendment and to thank Senator DASCHLE for all his efforts on its behalf. Since I got to the Senate, Senator DASCHLE and I have been working on something I call the packer concentration. It is big business in this country that takes on the small producers of this country and beats them to a pulp.

When I first got here, I was a little leery about whether that happened. I am now firmly convinced and know it happens because of the way the lobbyists come in and grind on any of these bills we pass.

We did pass in the Senate country-of-origin labeling. It is part of the law right now. The USDA is supposed to be working toward putting that into place. But the packer concentration has worked on their friends in the USDA and said we have to make this so tough that nobody will want to do it. It will run up the costs so much that nobody will want to pay for it. That is kind of the status we were in for a while.

We have been making a little progress on it as it got closer to having a rule published. Now we have the chance to send the instructions, it is a sense of the Senate, to send the instructions to the conference committee to say that what we did before ought to move on. We are not changing the law. We are suggesting that it ought to continue so we can get a clearer definition of what is really happening so we can make sure that country-of-origin labeling happens for our producers and our consumers and to make sure it does not run up high costs.

At present, the Senate bill on appropriations is silent on country-of-origin labeling, effectively allowing it to be implemented as the law intended by September 2004.

The position of the House on this issue is much different, however. The House has stripped funding for the implementation of country-of-origin labeling for meat and meat products in their version of this legislation. The action of the House cannot go unchallenged by the Senate, which is why Senators DASCHLE and THOMAS and JOHNSON and I are introducing this amendment today.

I have discussed this matter with my colleagues and it has become clear that there is need for education regarding country-of-origin labeling. Many of them were not here for the farm bill debate. For those who were, the issue

of country-of-origin labeling may not be familiar because it was not debated on the Senate floor. Country-of-origin labeling was included in the bill by way of an Agriculture Committee vote, and the final details of the law were worked out during a conference with the House.

Country of origin labeling is relevant for agricultural producers and consumers alike. In fact, the country of origin labeling law is based on the Consumer Right-to-Know Act of 2001, which I cosponsored. The law requires the U.S. Department of Agriculture to put in place a system for U.S. retailers to inform their customers when they buy beef, lamb, pork or other perishable agricultural commodities as to what country that product originated.

Food labeling can help increase consumer confidence by assuring consumers they are making informed and knowledgeable decisions about the products they buy. Consumers should know if the meat they are bringing home to feed their families has been produced here, or if it was imported from a country that may have fewer environmental, health and safety regulations on livestock production. The Consumer Federation of America and the National Consumers League advocate country of origin labeling and demonstrate consumer support for the program.

Producers support country of origin labeling too. On October 9, 132 producer and consumer groups from across the nation sent a letter to Senators indicating their support for country of origin labeling funding and my amendment. The letter was signed by groups such as the National Farmers Union, the American Farm Bureau Federation, the National Association of Counties, and the Wyoming Stockgrowers Association. They know that country of origin labeling will be a shot in the arm for agricultural producers because it will add value to American-grown food.

In the case of meat, the law intends for retailers to designate a product as having a U.S. country of origin only if the meat is from an animal that was born, raised and slaughtered in the United States. For beef alone, a recent study by the University of Florida indicated that a consumer's willingness to pay additional money for labeled beef is estimated to be worth $3.5 billion.

That is $3.5 billion of additional sales. Right now a lot of people think that a USDA stamp means the beef was grown in the United States—not true. Opponents claim that today's beef prices are higher than they have been in recent memory. True. They claim the country-of-origin labeling is unnecessary. Wrong. I hate to break it to them, but prices are high because the Canadian border is closed. Packers have been forced to rely more heavily on U.S. products. Without country-of-origin labeling, the packers will switch to the flood of Canadian beef that will pass through our border as soon as it opens. If country-of-origin labeling is implemented, consumers will know if packers have chosen to pass up U.S. beef for Canadian beef.

Opponents refuse to recognize the benefits country-of-origin labeling has for both producers and consumers. That is how we have reached our current position and seen funding for the implementation of country-of-origin labeling stripped from the House bill.

Those who perpetrated this action in the House claim that they need more time to consider the ramifications of country-of-origin labeling. Time is one thing that the debate surrounding country-of-origin labeling has had. This issue was debated in the years before its inclusion in the farm bill. Since the law was passed, 2 years were granted for rulemaking to ensure its thorough implementation. During that time, opponents of country-of-origin labeling have waged a campaign to frighten and bully those who stand to benefit from its proper implementation. Livestock producers have been told that they will be saddled with tremendous burdens that aren't even mandated by the law.

The move to strip funding in the House bill did not arise as a noble gesture to protect producers by giving more time and thought to implementation, it is a covert attempt to gut and rescind country of origin labeling. Removing funding for implementation did not improve the process, it stopped the process cold. For those who have genuine concerns regarding the implementation of country of origin labeling, the answer is not to put off implementing the law, but to implement it properly.

Our conferees should not accept the House position. Instead, we should continue to fund the program. As we continue to receive genuine concerns, we should fund implementation and allow those concerns to be brought to the USDA where they will be addressed. We have a process for stopping the whole thing if it is not addressed. This is the legitimate way to solve problems, as opposed to avoiding them. In fact, this approach has already been successful.

On Monday, the USDA released their proposed rule for the mandatory country-of-origin label program. The process is working. The rule is not what it should be. It is time for people of this country to comment on that rule. I am sure you will hear comments about how difficult the rule is. But that is why we have a rulemaking process—so people can give their input. Then we can see if the Department of Agriculture follows that input. If they don't, we, in oversight, can stop the process. We shouldn't stop the process before it gets started. The process is working.

Since coming out with the voluntary rule, the USDA has responded to the concerns of industry and produced a better product than they were talking about originally. It is important to keep the regulations simple for producers and retailers. In the case of livestock producers, they do not even produce a product that is covered by the law.

Muscle cuts and ground meat products are covered but live animals are not. In addition, regulations should be simple for the retailer because they are the only recipient of information from the supplier. They don't produce the information.

The proposed rule addresses some of the liability concerns raised by retailers by clarifying that retailers will not be liable for the accuracy of information provided to them by suppliers. That is where they get their meat. In addition, rather than requiring stores to maintain the records they used to establish country of origin for 2 years, local grocery stores only have to maintain those records for 7 days after the product's sale. There are still areas of concern that need to be addressed, but the 60 day comment period before the final rule gives everyone an opportunity to improve it. That is what we ought to be doing.

The USDA included a cost benefit analysis in the proposed rule. Within that analysis is a breakdown their expected impacts to specific portions of the production chain. I was encouraged to see that the relative impact for producers was minimal. Even the USDA acknowledged that the cost for producers will be modest and primarily for recordkeeping. The USDA estimates that the cost per producer will be between $180 and $443. Unfortunately, the information is meaningless because it is based on an average per producer. Producers range largely in the size of their operations. The information that will assist producers understand the potential impact of the rule is the cost per product, or per head in my State. It is clear that the cost would be lower than $180 for someone with only a few head of cattle. The USDA did indicate that the rule should not have a disproportionate or larger impact on smaller producers.

I was pleased to see that the USDA had shifted down from their original $2 billion estimate for record keeping costs to $582 million. Although still high, this shift agrees with what I have been saying all along. The USDA's original cost estimate for record keeping was inflated and unsupported. The outrageous cost was based on an assumption that the an hour of recordkeeping for the producer was worth $25. My producers would love to have that cost for their recordkeeping time. It also assumed that an hour spent by retailers on recordkeeping was worth $50. Again, retailers would like to get $50 on that. I am sure that some ranchers and grocery store owners in Wyoming would love to be paid what the USDA thought 1 hour of recordkeeping was worth. In their proposed rule, the USDA admits that these are unsupported numbers and significantly scaled down the total recordkeeping costs. I think they will be scaled down considerably.

However, the USDA indicates that the total cost for implementation could range from $582 million to $3.9 billion. I am concerned with the $3.3 billion gap in these numbers. I think that takes away from the credibility. This is a proposed rule and the ultimate cost will depend entirely on its implementation. If the USDA takes comments of industry and producer into account, the implementation costs will be on the lower end of the estimate, or lower than the estimate, just like the case of the recordkeeping costs.

Finally, the USDA reports a potential for staggering costs but fails to recognize the benefits and potential for increased sales in their analysis. As I said earlier, a study has indicated that labeling beef as to its country of origin will increase consumer eagerness to pay for a product they prefer by a total of as much as $3.5 billion. The USDA did not accept this and other studies on the benefits of country-of-origin labeling and they did not conduct their own benefit analysis. They were unable to quantify the benefit using their own information so they did not include any benefit in their study. However, failure to study something does not mean it does not exist.

Even allowing for no benefit, the USDA stated a 1 to 5 percent increase in consumer demand would offset the costs to the economy of country-of-origin labeling. That is a powerful statement. Even a minimal increase in market share will cover the cost of the program.

Again, the key to the success of this program is how it is implemented. We are at the stage of the rules being published, the 60 days of comment. We still have a chance to make a difference on the rules and bring the costs down and simplify them for the producer and retailer. It is for this reason my colleagues and I are proposing the amendment today.

The Senate supports country-of-origin labeling. For those Senators who have concern with country-of-origin labeling, defunding the program is not an effective way to deal with those concerns. Our amendment states it is the sense of the Senate that conferees on the part of the Senate on this bill shall insist that no limits on the use of funds to enforce country-of-origin labeling for meat or meat products be included in the conference report. If my colleagues support country-of-origin labeling, they should vote for this amendment. If some of my colleagues have concerns about the implementation of country-of-origin labeling, they should vote for my amendment and ensure that USDA has the funding available to improve the rule. We passed the law and now we must remain vigilant to be sure it is implemented properly.

As I mentioned, even if your State is not a producer of meat and meat products, worry about your consumers so that they know from where their meat product came. I urge my colleagues to help me do that by passing this amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from North Dakota.

Mr. DORGAN. Mr. President, my colleague from South Dakota, Mr. DASCHLE, has proposed his amendment. I would like to speak in support of that amendment. Other colleagues have already spoken. This is an important amendment to consider.

Let me talk about the issue. We call it, this debate in the Congress, country-of-origin labeling: COOL. That does not mean anything to anybody. The question with this amendment and this issue is, Should the American people be able to determine where the meat they are purchasing at the meat counter comes from? Should they be able to know where this product comes from?

We have a roomful of people wearing neckties in this Chamber. If anyone looks at their necktie, they can find from the label where that necktie comes from. The same is true with shirts and shoes and trousers. The same is true with much of what we use in our daily lives. We require labeling. We demand it. Why? Because the consumer is advantaged by having it. Except meat and meat products. Go to the grocery store; take a look at the grocery store shelf and evaluate the meat. Consumers do not have the foggiest idea where the products came from—none.

Why is it important to be able to identify the origin of meat or meat products you purchase in this country? For a number of reasons. We produce the highest quality food in the world by far. Why? Because we have the highest standards, and we demand conformance to those standards. The American people, if they want to choose U.S.-grown beef, U.S.-produced beef or beef products or meat or meat products, at this point they cannot do it because the labeling does not exist.

Now, the labeling of meat and meat products has been done routinely in many other areas of the world. Other countries do it. It is not impossible. It is not even prohibitively expensive. It is just if you have the will to do it, you do it. In our country, at this point, we have not had the will.

Finally, the Congress passed a piece of legislation saying you must. We have a requirement that there be country-of-origin labeling, meat and meat products be labeled as to their origin, where they were produced.

Now the House of Representatives has passed an amendment that says they are going to shut off funding for that at a time when the Department of Agriculture has already dragged its feet in implementing it because they do not want to implement it.

Let me describe where this is important. Let me describe a May 1999 inspection in Hermosillo, Mexico, when inspectors went into a plant in this little town in Mexico. I will tell you what they found. U.S. inspectors paid a rare visit, we are told, to the plant in May 1999 and were greeted by filth and flies. They cut off trade at once—or at least they thought they did.

From the U.S. Department of Agriculture:

> Shanks and briskets [were] contaminated with feces . . . . In the refrigerator . . . . A disease-condemned carcass was observed ready for boning and distribution in commerce.

Even before the inspectors left Mexico, Mexican officials were at work to restore this plant's right to sell meat to Americans. Over the following months, this plant regained its export license, switched owners, changed names, and yet the USDA has never returned.

So an American consumer buying meat from this plant, can they know it? Will they know it? Will they have information that tells them this is where the meat comes from? The answer at this point, regrettably, is, no, they will not know whether that meat comes from the most regulated laboratory or most inspected plant in the United States or from this plant in Mexico where inspectors were greeted by filth and flies and a disease-condemned carcass ready for boning and distribution in commerce.

Is it important for the American people to distinguish between cuts of meat that come from an inspected facility in this country that meets rigorous standards and a facility as described in this article that comes from that community in Mexico?

What about the issue of BSE or mad cow disease? We now hear this week we have another case of mad cow disease in Japan; a 21-month-old bull is the country's ninth known case. It is devastating for the Japanese, I know, to have cases of mad cow disease or BSE. We know our neighbors to the north have had a case of mad cow disease. In January, a sick cow, staggering in a lot, was nonetheless slaughtered with other cows. They severed the head and put the head on a shelf, and that head sat on the shelf for 4 months. Finally, they sent it away for testing, to discover that the cow they slaughtered in January, in May was determined to have had mad cow disease.

As a result, the Secretary of Agriculture cut off shipments of live cattle from Canada into this country. Why is that important? Because our beef herd is free of mad cow disease and has always been free of it. It is devastating to a beef industry, an industry in just North Dakota worth $500 million—half a billion. It is devastating to that industry to have an outbreak of mad cow disease. We want to protect our industry. That is why I offered the amendment earlier this afternoon that has been accepted. But we had USDA moving quickly last week to create what is called minimum risk for classification for Canada so younger animals from Canada can move into this marketplace. Should the American people, can

the American people, determine where their meat comes from—Canada, Mexico, Japan, or the U.S.?

The answer, for those of us who strongly support country-of-origin labeling laws, is the American people deserve that opportunity and need the right to know where their meat and meat products come from; they need to be able to make selections as consumers in a thoughtful, intelligent way.

Regrettably, that is not now the case. That is why the Congress previously passed legislation. Regrettably, the Department of Agriculture is dragging its feet, and the House of Representatives, in my judgment, has caved in to the big economic interests that want to scuttle this all together. They don't want to have anything to do with meat labeling. They say it costs too much.

Only in this town would we not laugh out loud at the cost estimates that come from the USDA. They are a joke. Only in this town would it become part of legitimate debate and thoughtful discussion about how many billions—yes, billions—of dollars this would cost, they claim, to administer. That is complete, sheer, utter nonsense and USDA knows it.

The question for this Congress is, Will it stand behind its previous decision and its previous judgment to require country-of-origin labeling on behalf of the American consumer? Will it stand behind that? I hope the answer is yes. If that answer is yes, then we need to support this bipartisan amendment that is offered by my colleague from South Dakota.

One final point. In the haste to try to discredit the country-of-origin labeling, the Department of Agriculture put out a notice that this would cost billions of dollars and they also indicated that it would have zero benefits. Does anyone really believe an estimate of the cost of the implementation of this law would provide no benefits—no benefits—to this country and the consumers of this country?

That is why this attack on the country-of-origin labeling is a joke. It is why we must adopt this amendment. We must stand for the American consumer. I know big economic interests swing big clubs in this area. I have been in conference committees where we thought we had this done before long ago and we had folks from the meat industry out in the halls buttonholing people. The fact is, we need to get this done, and it needs to be done now. That is why I support the amendment offered by my colleague from South Dakota.

While I have the floor, might I also indicate that the amendment I indicated to the Senator from Utah that I intended to offer is ready. I can offer it at the pleasure of the Senator from Utah and the Senator from Wisconsin. Senator BURNS from Montana and I are both in the Chamber, and both of us would like to speak in support of our amendment. We very much hope the manager and the ranking member will be taking the amendment. But if not, of course, we will want a record vote.

I will certainly offer the amendment on behalf of myself and Senator BURNS at your pleasure. So I would be happy to hear what the Senator from Utah would like to have happen with respect to that amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, in an effort to establish a glidepath for us to bring this particular airplane in for a landing, in consultation with the assistant Democratic leader, I intend to offer a unanimous consent request that would set a time agreement for the debate on the country-of-origin labeling amendment. It would be my intention, once that time has expired, that we would turn to the amendment the Senator from North Dakota and the Senator from Montana wish to offer. At that time, I would be prepared to attach a time agreement to their offering of that amendment, as well as offering a time agreement to attach to the amendment to be offered by the Senator from Vermont, Mr. LEAHY. As far as I know, those are the only three amendments remaining that would require a rollcall vote.

So I say to the Senator from North Dakota, I would ask him to support my unanimous consent request that I will now propound, with the commitment on my part that as soon as the time has expired on the country-of-origin labeling amendment, we would then go to his amendment. I think the appropriate thing would be for him to offer his amendment at that time and then go directly into debate of that amendment.

With that explanation, Mr. President, I ask unanimous consent that the time until 4:30 this afternoon be equally divided for debate on the Daschle amendment No. 2078; provided, that at 4:30 the amendment be temporarily set aside and a vote occur in relation to the amendment at a time to be determined by the majority leader, after consultation with the Democratic leader; provided further, that no amendments be in order to the amendment prior to the vote.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I have spoken to the managers of the bill and indicated to them that Senator HARKIN cannot be here until 4 o'clock, so I would ask unanimous consent that the request be modified to allow Senator HARKIN 15 minutes, beginning at 4 o'clock.

Mr. BENNETT. Mr. President, I have no objection.

The PRESIDING OFFICER. Is there objection?

The Senator from Idaho.

Mr. CRAIG. Mr. President, reserving the right to object, am I to assume by that addition to the unanimous consent request that we are now looking at an hour and 15 minutes of additional debate or just 15 of your 30 minutes locked in for Senator HARKIN?

Mr. REID. Just 15 of the 30 minutes for Senator HARKIN.

Mr. CRAIG. All right. Am I also to assume we would move to other amendments and we would see a series of stacked votes on this amendment and others?

Mr. BENNETT. It is my understanding—if this unanimous consent request is agreed to—that debate on the Daschle amendment will cease at 4:30; we will then address the other amendments—only two of which I know of would require a rollcall vote—and if the majority leader and the Democratic leader so determine, we would then have a series of stacked votes on those three amendments.

Mr. CRAIG. I thank the Senator.

Mr. BENNETT. Now, if other amendments arise, we can deal with them, but at the moment this is what we believe we have before us.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, if I could respond briefly to my friend from Utah and all the Senate—staff and other Senators listening—if there are other amendments in addition to the Dorgan and Leahy amendments, the two managers should be advised forthwith because we would expect this bill to be completed and the voting to start at 5:30 today.

Mr. BENNETT. I thank the assistant Democratic leader and repeat his plea to Senators on our side of the aisle. If there are additional amendments, the time to call them to our attention is rapidly running out.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Idaho?

Mr. BENNETT. Mr. President, I ask how much time would the Senator like?

Mr. CRAIG. Ten minutes.

Mr. BENNETT. Mr. President, I yield 10 minutes to the Senator from Idaho in opposition to the Daschle amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I come to the floor this afternoon to oppose the Daschle amendment but with some degree of reluctance. I say that because in the 106th and the 107th Congresses I have been an outspoken advocate of country-of-origin labeling.

I agree with a fair amount of the argument that has already been made today, that there is a clear consumer right to know, that there ought to be an identification trail or process by which we do, in effect, identify cuts of meat for the consumer.

I am a firm believer that, as a U.S. consumer, I have a right to know what I am eating and from where it comes. I think it is a little foolish to compare it

with a silk tie or a piece of clothing. You do not just run cattle out of a factory. If you know the livestock process, you do not just label them at the time of birth. Maybe we will be. Maybe we will be putting a computer chip in the ear of every calf born and establish an identification trail from birth through to slaughter. I do not know. That may well be in the future of the livestock industry of this country. That might be a part of a process of national identification that the national cattle industry is talking about now as an important part of a trail.

What I spent time doing the last week is reading the new regulations that are being proposed by USDA. While the Senator from North Dakota stood on the floor and said, you just cannot believe those cost estimates, everybody out there in farmland believes them. Every cow and calf producer and every hog producer suggests that $10 a head in real costs to comply is probably fairly realistic and that if you fail to comply or if you break the chain of compliance, you are up for a $10,000 fine. That is something I don't think I want to put my producers into at this moment, especially when they don't understand the regulations and I can't understand the regulations.

There is a joke moving around out in cattle country today. If you go out and buy a truckload of cattle, you better take a trailer along to pull the paperwork with you because this is going to become a very complicated process.

I talked to a sale ring operator about an hour ago. We don't have many livestock auctions left in our country today, but there are a few operating in Idaho. He is trying to figure out, when 75 or 100 small farm, ranch producers come with their cattle to his sale ring—and I am talking about an area where you have a lot of small herds of 100 or less, not large herds, as we think about them today out West or anywhere else in the country—how do you identify all of these cattle and put them together? Are they all going to be ear tagged? Do they have to be? Is that going to be a requirement? We don't know.

More importantly, if you run those animals on public land and they are not in that nice, controlled, fenced, irrigated pasture—and almost all of my livestock run on public land during some time in the year, and I am talking about mountains and canyons and valleys and brush country—the ear tag that gets put in the ear as calves probably isn't there when they come home in the fall because they tore it off going through a brush thicket. That is the character of the industry.

No, it isn't a controlled and simple industry. We have thousands of producers out there today. Most everybody thinks there is the big rancher out there with thousands of head of cows. Not true. Well over 80 percent of the livestock is produced in herds of 50 or less. That is just the reality of the industry. Large feedlot operators put all of those cattle together, bring them to their feedlots. How does that paper trail exist? That is really the issue at hand.

I am a believer in country-of-origin labeling. I do believe the cost we are talking about here, as projected by USDA, has reality to it. Recordkeeping for development and operation, first year: $582 million; $458 million in the outyears to maintain and operate; direct cost, $582 million to $3.9 billion. Well, they back that off a little bit, but in reality we are still looking at direct cost to an industry that is struggling now to get back on its feet of about $1.7 billion.

Is there a cry and a demand to know? I am not sure there is. But I want to know. I do want a reasonable and realistic approach to accomplishing this. Go read the new proposed regulations that are out for comment today. Try to tell me how you create and follow an ID trail through that maze, and the two or three or four times a feeder animal might change ownership from the time they are birthed on the ranch until they are a nice cut of beef on a supermarket shelf. That we are not confident of.

You can darn well bet the processor and the retailer are going to try to pass that cost on, and they can at the consumer shelf. But I know the producer can't. The producer can't say to the feedlot operator or to the slaughterhouse: Well, because of this new regulation, you are going to have to pay me another $1 or $1.50 or $3 or $4, whatever it costs. That simply doesn't happen at that level of production, and it never has.

To liken this to a tie or to liken this to one or two products that may be produced by one or two producers around the country and therefore very easy to label and very easy to know where from whence it comes, when you are talking about thousands of producers, large and small, aggregate numbers being put together for purposes of feeding and finishing—and what about commingling on the slaughterhouse floor? How do you manage that kind of situation?

By the way, I don't think the Senator from Wyoming or the Senator from South Dakota mentioned, if you are selling a hamburger at McDonald's, you don't have to worry about it because you don't qualify. These regulations don't address you. Fifty percent of the industry's meat today is sold through fast foods, and they don't have to play the game. If you are a poultry raiser, do you have to play the game? No; you are exempt.

Why are we looking at this in a rather sporadic pattern? If we are going to develop uniformity, if we are truly going to search for the right to know and a label that deals with country of origin, should not all meat products be labeled in a way that the consumer knows from whence they come? I think that is the right and the appropriate thing to do. We ought not handicap the producer.

My livestock farmers and ranchers are split, to my knowledge, right down the middle. My Idaho cattle association opposes the regulation. I have the farm bureau who supports the regulation. I have the farmers union who I think continues to support it. I have our calf folks who strongly support it. Yet what I feel I am doing, if I vote to advance this rule into a fixed regulation, is putting some of those small producers out of business. I don't want to do that. There ought to be a simple way to do it, and yet what we have seen is a very complicated process. With that process, with those costs, I do believe it is reasonable for the U.S. Department of Agriculture to argue there may not be a benefit to it in relation to the cost.

The national livestock industry is working at this moment to voluntarily put a national identification program together. We ought to be able to track our livestock. We should be able to know. When it comes to mad cow disease, you darn bet we ought to be able to track it and to assure that we keep our livestock herds safe and clean, and we have to date. We are not Johnny-come-latelies to this. We have had strict protocol for a decade or more to make sure we are not a Japan and that we are not a Canada, nor are we a Great Britain. And we are not because our livestock herds are clean, well managed, and USDA has done its homework. They deserve credit for it. You don't need to add a new paper trail to it just to assure there is safety.

But I am still going to say we ought to try. I don't know that this is the way to do it. I don't know that you shove this out over the industry and force it down on them from the top down. There is a voluntary effort today to try to get this in place. If this were a pilot program or if we weren't going to implement it for a year but make sure we vetted it appropriately and established a pilot program in different livestock areas of the country—the western public land grazing industry is a good deal different from that in the South or that in the Midwest where herds are controlled and fenced and somewhat confined in the ability to shape herds and keep them, yet these rules and regulations are not reflective of those differences, and they are differences of real importance.

I don't know how we get there. At least I do believe that what we are proposing—and I should not say ''we,'' USDA, and they have already backed off some of their numbers and come with different ones—is maybe not the way to go. As someone who voted for country-of-origin labeling, I did it with S. 544 in the 106th and S. 617. In 1998, we did it again. Senator BURNS of Montana and I looked at the grading system to try to find a way to get where we all want to get. Now we are saying: OK, we have a freight train on the track. She is building up speed. It is just a regulatory process. We are only into the comment period. Let that train roll

down the track. Let's start implementing it.

By the way, if you get caught up in it and you get fined $10,000 because you couldn't comply, you didn't comply, it was impossible to comply, and you broke the paper trail or the chain of identification, so be it.

I can't do that to my farmers and ranchers. I won't do that if it is my vote that does it. I am still going to insist we ought to try to comply in different ways to maintain a chain of understanding, a chain of information and knowledge and identification as to a point of origin where that meat came from. But remember, half of the meat you will consume after this becomes law will not be regulated by this law. So is there a blanket protection? No. Is there a consumer right to know? Well, 50 percent.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BENNETT. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. BENNETT. Mr. President, I was interested to have one of the Senators point out that most Senators don't know anything about this because it was done in conference committee, and I certainly qualify as one who didn't know anything about it at the time the conference committee came to the floor. I have had a crash course in country of origin labeling since I became chairman.

I have come to several conclusions, which I will share with the Senate. No. 1, the bill was very badly written. I don't think there is any question about that. The idea of having consumer information with respect to food is a perfectly legitimate idea. It does indeed fit the pattern of consumers, and I have no problem with it. But it is clear, as we get into the details of this, that the bill that originally required it is very badly written. It uses the phrase, for example, ''born, raised, and slaughtered in the United States.''

I ask this question: What if you only get two out of three of those? What does that do to you with respect to the piece of beef you are talking about? Suppose it was born in one country, fed in another, and slaughtered in a third? That is not likely, but it is entirely possible. And from which country does it come?

You can say it is clearly not American beef if it was born in Canada, fed at feedlots in the U.S, and for some purpose, shipped to Mexico to be slaughtered, packed, and sent back. But what country is its country of origin? If you say it was born in Canada, it is Canadian.

Why does the law say ''born, raised, and slaughtered''—those three categories—if only one matters?

This is an interesting challenge because we have critters walking around on the range right now that were born somewhere prior to the passage of this law, and on which there are no records, which are going to end up in the food supply as hamburger or pot roast. Who is going to certify where they came from, with no records having been kept? That could be an argument for delaying the implementation of this legislation.

Ultimately, I say with some facetiousness but some seriousness, we are talking about a situation where, in order to comply with the law, every animal has to have a birth certificate and a passport. The passport has to be stamped every time it crosses State lines. Someone called me and said: Bob, we have to pass this because there are all kinds of piglets being born in Canada and then being shipped to the United States. I find that they are shipped to the United States within days after their birth. They are born in Canada, but they are shipped here, truly as piglets, almost within days or weeks after birth, and then the entire processing takes place in the United States. These are American jobs, American facilities that are handling them.

Do we say, because of their birth, they are Canadian, but because they are raised and slaughtered in the United States, does that make them naturalized American citizens or American pork, if you will? The law is badly written, and it clearly needs work or we would not be having this argument. Everyone I hear who opposes the Daschle amendment begins his statement by saying: I am in favor of country-of-origin labeling. But they are opposed to this particular legislation as it stands.

One of the other things that is wrong with it, in my view, is the $10,000-per-violation provision. If I am running a supermarket, and someone says, here is some American beef, and I am potentially liable for a $10,000 violation for every single one of those hamburger patties because each sale is a separate circumstance, I am going to say to the producer: I will not take your beef unless you are prepared to indemnity me against any lawsuits that might come from the Trial Lawyers Association if some consumer activist comes in here and can prove that particular hamburger pattie originated in Canada. I am not going to run that risk.

I think the Senator from Missouri was exactly right when he said the lawyers will be telling their corporate boards: Assume the worst and be as careful as you possibly can. Again, we have critters out there on the range that were born before the law was passed that are going to end up in the meat locker, and how are they going to be labeled? If they are mislabeled, there is a $10,000 fine for every pot roast that comes from those particular cows.

I am not sure the House solution is the right solution. I am not prepared to go to conference saying I will stand with the House language, because I think there is an alternative that might well be worked out, and should be worked out in conference, to say this is how we buy a little more time to deal with the uncertainties we have here, and we hope give the authorizing committee the opportunity to take another bite at the apple and see if they cannot write a country-of-origin labeling law that makes more sense than the present one.

But the Daschle amendment, by its nature, and by the debate and legislative history that is being laid down, is saying you enforce the law exactly as it stands, no changes. For that reason, I intend to vote against the Daschle amendment because I think there needs to be changes, and I think the debate demonstrates there needs to be changes. I hope the Daschle amendment is defeated.

When we get to conference, I hope the House language is modified and we use the vehicle of the conference to try to prod the authorizing committee in the direction of rewriting the basic bill so it can become workable.

One final example of how the statute is written that is unworkable, in my opinion, is that it prohibits the use of an identification mechanism to verify origin of the covered commodity. The Senator talked about putting an ear tag on the cow. That is illegal under this law. He is talking about the expense of it. It is the commonsense way to tag cattle. It is illegal, the way this thing is written.

So, as I say, as I have become acquainted with the whole matter, coming to it completely fresh and completely uneducated as to the issues before I had to look at it, I find myself in favor of the argument that consumers should know from which country the food comes. I have no problem with that at all, but I am convinced the law, as presently written, was so hastily put together that it has serious problems that cannot be fixed by regulations from USDA. I think they are acting in good faith in the regulations they drafted.

The question came up in the hearing when Secretary Veneman was asked: Why are you proposing such a cumbersome regulation?

She said: Because we believe it complies with the law.

She was asked: Whose interpretation tells you this complies with the law?

She said: The United States Department of Justice. The lawyers in the Justice Department looked at the law and said you have to have these burdensome regulations.

So I think there is a solution to this. I think we can work our way through it in time. There is time between now and November for us not to argue about should we implement the law as it stands, or should we prevent the law from going forward as it stands, but do what I think is the commonsense thing, which is simply rewrite the law.

Based on all of the research and evidence that has gone into the drawing of the regulation, we can now do it with a

little more leisure and more intelligence than was done the first time around.

I yield the floor.

The PRESIDING OFFICER. Who yields time? If no one yields time, the time will be taken equally from both sides.

Mr. BAUCUS. Mr. President, I rise today to state my support for country-of-origin labeling. Manufactured goods sold in the United States have carried mandatory country-of-origin labels since the 1930s. Most of our major trading partners, including Europe and Japan, already require American producers to provide this information on our agricultural exports. Today as the landscape of international trade continues to change and expand, our Nation's fruits, vegetables and meats need to carry the same important information.

Country-of-origin labeling will have two primary benefits. First, it will add value to our domestic commodities. American agriculture produces the highest quality products in the world, and they should be rewarded for that. Second, it will enable consumers to be knowledgeable about their purchases at the grocery store.

I am very concerned that the House eliminated funding for the implementation of country-of-origin labeling in their version of the 2004 Agriculture appropriations bill. It is important that the Senate conferees insist that no limits on the use of funds to enforce country-of-origin labeling requirements be included in the conference report. I urge my colleagues to support this sense-of-the-Senate resolution.

I understand that there are concerns about the implementation of country-of-origin labeling. I think country-of-origin labeling can and should be done in a way that does not overburden the retailer, the packer, or the producer.

And although the USDA's proposed rules for the implementation of country-of-origin labeling are an improvement over the previously proposed guidelines, I still believe that the proposed rules make country-of-origin more burdensome than it needs to be.

We need to let this implementation to go through so we can all work together to create a program that is simple, cost-efficient, and does not overburden the parties involved.

Mr. SMITH. Mr. President, I rise today in reference to the Senator's sense-of-the-Senate. Obviously, there are strong emotions on this issue. One of the problems with this program is the ambiguous nature by which Congress authorized it. In particular, I would call my colleagues' attention to the most recent regulation proposed by USDA.

During consideration of the 2002 farm bill, Congress wisely exempted processed foods from country of origin labeling requirements. The complex nature of such labeling would have discouraged the use of U.S. grown products as ingredients and thus would have harmed, not helped, American agriculture. Yet there is tremendous confusion in the food industry and at USDA, I might add, on what constitutes a processed product as it relates to country-of-origin labeling.

I also would like to remind my colleagues that many of these processed products, for example, frozen produce, are already required to be labeled. Frozen processed products of foreign origin are required to be labeled for country-of-origin under section 304 of the Tariff Act and have been so required since the Tariff Act was passed in 1930. I certainly do not believe it was the intention of Congress to create a costly, duplicative program that provides absolutely no benefit to American growers, consumers, or producers.

Some canned products would be covered by the program while others would not be covered. USDA's determination that frozen breaded shrimp is covered by the legislation is another example. As many of my colleagues are aware, USDA is using the Perishable Agricultural Commodities Act, PACA, as a blueprint for implementation of the Country-of-Origin Labeling program. Yet, at time of passage, breading is the type of process that would disqualify produce from getting a designation under PACA. It seems to me we are going to great lengths and undoubtedly expending great resources to mandate marking on processed products that it was no one's intention to cover.

It is just this type of confusion that USDA references in its cost-benefit analysis. We should not be concerned about whether or not we agree with the accuracy of the estimated costs. The fact is that the agricultural economy can not afford any of them. We ought to be clear that to the extent this program has support by producers, no one advocating extending its reach to processed foods. I reiterate my understanding that when the processed food exemption was included, Congress sought to avoid this excessive cost and the resulting confusion.

In fact, after reviewing USDA's proposed rule as mandated by the law, John Graham, administrator of OMB's Office of Information and Regulatory Affairs, OIRA, sent a letter to USDA's undersecretary for Marketing and Regulatory programs, Bill Hawks, which stated ''These figures indicate that this is one of the most burdensome rules to be reviewed by this administration.''

USDA's cost-benefit analysis raised several disturbing points. First, the USDA has said that ''Current evidence on country-of-origin labeling, however, does not suggest that U.S. producers will receive sufficiently higher farm prices for U.S.-labeled products to cover the costs of labeling. Moreover, it is even possible that producers could face lower farm prices as a result of labeling costs being passed back from retailers and processors.''

The USDA has also said that ''Annual costs to the U.S. economy in terms of reduced purchasing power resulting from a loss in productivity after a 10-year period of adjustment are estimated to range from $138 million to $596 million.''

I do not believe that when adopting Country-of-Origin Labeling legislation Congress intended to create such an expensive program that is detrimental to American agriculture, nor do I believe it was the intention to include processed products, including frozen produce. I hope we can work together to clarify the intention and the breadth of impact of this legislation and minimize the costs of its implementation. However, I do not believe that such a sufficient clarification can be achieved by simply defunding one portion of the program.

Mr. BINGAMAN. Mr. President, while I have the floor, I would like also to say a few words about an amendment the Senate will be debating later today. The amendment will be offered by Senator DASCHLE and relates to country-of-origin labeling of meat and produce.

I have long supported mandatory labeling of country of origin and was pleased this provision was included in the farm bill the President signed into law last year. New Mexico Cattle Growers and the New Mexico Farm Bureau strongly endorsed this legislation.

I do believe consumers have a right to know where there food is coming from. I am disappointed that there are some in the meat packing industry and the administration that are trying to block implementation of this important legislation. Grudingly, the administration last month released a proposed rule for mandatory labeling.

I believe the administration's proposed rules are far more complicated than they need to be. However, I hope Congress will allow the comment period and rule making to continue to give both proponents and opponents of labeling a fair opportunity to weigh in on this issue.

I am pleased to cosponsor the Daschle amendment and hope that it passes.

Mrs. HUTCHISON. Mr. President, I rise in opposition to implementing the mandatory country-of-origin labeling, also known as COOL.

This Legisition would devastate the U.S. meat industry, cost thousands of American jobs and raise food prices for the customers the law purports to benefit.

The USDA recently found the U.S. livestock industry would incur significannt costs and virtually no benefits from mandatory COOL. It concluded there was little evidence that mandatory country-of-origin labeling would lead to an increase in demand for commodities bearing the U.S. label, nor would it result in increased food safety. Rather, it found that COOL would impose up to $4 billion on ag industries in the first year and up to $600 million annually after the program had been in place for a decade. Inevitably,

these costs would be passed on to consumers in the form of higher prices at the supermarket.

A recent Texas A&M University study estimated that changes brought about by mandatory country-of-origin labeling would cost nearly 2,000 jobs in south Texas alone. Mandatory COOL would force many small producers with fewer and than 50 head of cattle out of business entirely. This would be a devastating blow just when our economy is beginning to show signs of recovery.

In addition to the impact on consumers and the American meat industry, the imposition of COOL raises serious trade ramifications that could invite retaliation from important trade partners. In the midst of negotiating free and fair trade agreements with nations around the globe, imposing severe restrictions such as COOL hamper our efforts to break down trade barriers and grow the global economy.

No one disputes that food safety is critical. But both supporters and opponents of COOL have stated this is a marketing issue and not one of food safety. When questioned by Congressman CHARLES STENHOLM of Texas in a recent House Agriculture hearing on this issue, every witness, including supporters such as the American Farm Bureau Federation and the National Farmers Union agreed COOL should not be associated with food safety, but with the marketing of agriculture products.

U.S. agricultural industries provide the highest quality products in the world. Congressional actions should help, not hinder, their efforts. Imposing severe, costly restrictions that amount to nothing more than a marketing ploy is not the way to proceed.

I urge my colleagues to vote against the sense-of-the-Senate amendment and commit to a thoughtful and thorough debate on this important issue.

Mr. THOMAS. Mr. President, I rise to speak on country-of-origin myths versus facts.

No. 1, Myth: U.S. consumers do not care about country-of-origin labeling.

Facts: That is not what people in Wyoming and national surveys indicate. Consumers overwhelmingly support labeling because it provides product information, increased consumer choice and the chance to support American agriculture.

Two, of the largest consumer groups in the United States, Consumer Federation of America and the National Consumers League, strongly support mandatory COOL.

No. 2, Myth: Country-of-origin labeling violates our international trade agreement commitments.

Facts: Country-of-origin labeling law does not violate international trading agreements.

Marking products is allowed by international trading rules. Under Article IX of GATT, countries can require marks of origin on imported products. Many nations already require country-of-origin labeling on a variety of food products. A recent GAO study found that 48 of our 57 top trading partners require labeling for at least one of the commodities covered by COOL and 41 require labeling of meat at retail.

No. 3, Myth: The cost of compliance with the country-of-origin labeling law will be extravagant in the first year and will increase consumer food costs.

Facts: The USDA incorrectly assumed that new record keeping system requirements would meet to be established and implemented. The Majority of producers already keep records that can provide the required information.

GAO reports that USDA exaggerated its initial cost project. The $1.9 billion estimate was found to be ''questionable and not well supported.''

USDA current estimates are equally flawed. Consumer organizations estimate the average cost to individual consumers will only be about 13 cents per week.

Also, consumer surveys support COOL.

Fresh Trends, a 2002 survey, found that 86 percent of consumer respondents favor country-of-origin labeling. Of the 86 percent of consumers favoring COOL, 78 percent prefer mandatory labeling over voluntary labeling. And 60 percent of those questioned have been produce items in U.S. supermarkets that were grown in other countries. Also, 48 percent of the people identified South America as a source of produce, 33 percent Mexico, 12 percent Central America.

North Carolina State University, in February 2003, found that 74 percent of consumers believe the U.S. shouldn't buy all its food from other countries even if it is cheaper than food produced and sold here. Four out of 5 U.S. consumers believe that U.S.-grown food is fresher and safer. And 92 percent prefer to eat meat produced in the United States. Those surveyed were undecided about the safety of meat from outside the United States. Only 5 percent questioned are uncertain about U.S. produced meats. And two-thirds of consumers would pay more for food grown in the U.S. rather than abroad.

Florida Department of Agriculture & Consumer Services found that 37 percent of consumers would pay between 10 and 20 percent more for U.S. fruits and vegetables. More than two-thirds of consumers note the country where fresh produce is grown. Also, 56 percent of consumers believe that U.S. produce is safer than imported produce. And 62 percent of consumers would purchase U.S. produce if it had a COOL label. If price and appearance were equal, 61 percent of consumers would select U.S.-grown produce.

Colorado State University, in March 2003, found that 75 percent of consumers prefer to buy beef with country-of-origin labeling. And 73 percent of consumers would be willing to pay more for beef with country-of-origin labeling. Also, 69 percent of consumers are willing to pay more for steaks labeled, ''USA Guaranteed: Born and Raised in the United States'' than for those with no origin label. And 56 percent of that 69 percent were wiling to pay premiums.

Tarrance Group and Northern Illinois University, in June 2001, found that 81 percent of those surveyed want their food to come from the United States.

I urge passage of COOL.

Ms. SNOWE. Mr. President, I rise today to join my colleague, Senator LEAHY, in offering an amendment to the fiscal year 2004 Agriculture appropriations bill that would preserve funding for our Nation's working lands conservation programs. This amendment parallels legislation I have cosponsored along with the Senator from Vermont. It would prohibit the U.S. Department of Agriculture, USDA, from diverting funding from key working lands programs, such as the Environmental Quality Incentives Program, EQIP, and the Farm and Ranchland Protection Program, FRPP, to pay for technical assistance.

The 2002 farm bill made it clear that the USDA should expand the opportunities for farmers across the country to participate in voluntary conservation programs that balance stewardship goals with on-farm production. This has not happened though.

In fiscal year 2003, the USDA transferred over $90 million away from working lands conservation programs to pay for technical assistance of the Conservation Reserve Program, CRP. This diversion of funds prevented countless numbers of farmers from signing up for working lands incentive programs. Unless this problem is corrected, the Department estimates that at least $77 million will be diverted in the coming fiscal year.

For many States, including my own, conservation programs are a critical source of Federal assistance and are a valuable tool for helping small and specialty crop growers enhance their production while caring for the land. Funds from these programs reach an array of producers, including fruit and vegetable farmers, dairy farmers, and ranchers. The amendment being introduced today ensures that conservation payments would reach a broad range of farmers.

Our amendment does not set new policy, rather, it reinforces the mandates Congress made in the 2002 farm bill. Congress recognized the importance of conservation in agriculture by significantly increasing funding for the working lands conservation programs. With the additional resources provided by the farm bill, Congress intended the USDA to expand the opportunity for farmers to practice farm and ranchland stewardship. Congress also anticipated the need to fund technical assistance for CRP and provided specific language in the 2002 farm bill directing the Department to use mandatory funding to pay for CRP technical assistance.

Unfortunately, the USDA has not followed through on congressional intent. Over the past year, the USDA has diverted over $90 million from working

lands incentive programs. Without corrective action, farmers' conservation options will be curtailed even more severely as the USDA transfers funding away from working lands incentive programs to pay for technical assistance for other programs in the Department.

The amendment simply, but explicitly, states that the USDA may not take funding from working lands conservation programs to pay for CRP technical assistance. This clarification will allow our working lands programs to retain the funding that Congress provides. It does not add or subtract funding, rather it makes sure that the funds are used by the program for which Congress intended.

Let me also emphasize that the amendment does not require USDA to shut down CRP in fiscal year 2004. It continues to allow the USDA to exercise its authority to provide CRP technical assistance through mandatory funding, exactly as Congress originally directed in the 2002 farm bill.

In closing, I join my distinguished colleagues today because I believe it is time that Congress step in and protect our working lands programs from being raided by the USDA. Until we can reach a broader agreement on implementation of the 2002 farm bill provision on conservation technical assistance, it is imperative that we hold our working lands conservation programs harmless. I urge my colleagues to support the amendment, and I yield the floor.

Mr. CRAPO. Mr. President, I appreciate what my colleagues are trying to do. Clearly there is a problem.

When we passed the farm bill, we made an unprecedented investment in conservation.

First as chairman of the Agriculture Subcommittee with jurisdiction over conservation, then as the ranking member of the subcommittee, I worked closely with my colleagues on both sides to increase funding for EQIP and WHIP and the Farm and Ranchland Protection Program and to create the Grasslands Reserve Program and increase the acreage for CRP and WRP.

Unfortunately, I am unable to support this amendment, because while it attempts to correct an injustice, it does not fix the problem.

This amendment, if enacted into law, would stop the CRP program in its tracks.

The Conservation Reserve Program is one of the most successful conservation programs in agriculture. It is a win-win for agriculture and the environment. It benefits landowners and wildlife. In fact, it has been proved to be the most effective federal program for production of waterfowl in the United States.

In Idaho, we had more than 55,000 acres recently accepted into the program. If this amendment were enacted, those acres could not be enrolled because of lack of technical assistance funding.

Likewise, I have been a strong proponent for the Continuous CRP program. This important program provides tremendous benefits for the environment and maintains working lands. I have continually encouraged USDA to enroll more CRP acreage in this important part of the CRP program. However, this program would come to a screeching halt without technical assistance funding.

I share my colleagues' concerns and interest in finding a solution, but this is not a full solution. I cannot support an amendment that would have such a disastrous effect on the CRP program.

As chairman of the subcommittee, I am committed to working with Agriculture Committee Chairman COCHRAN and Ranking Member HARKIN and other interested members to find a solution.

I urge my colleagues to seek a workable solution that protects all of our conservation programs.

Ms. COLLINS. Mr. President, I am pleased to cosponsor this amendment, along with my colleagues Senators LEAHY and SNOWE. This amendment will protect the funding for important working lands conservation programs, the Environmental Quality Incentives Program, EQIP, the Farm and Ranchland Protection Program, FRPP, the Wildlife Habitat Improvement Program, WHIP, and the Grassland Reserve Program, GRP. It will do so by prohibiting the U.S. Department of Agriculture from diverting funds from these working lands conservation programs in order to fund the technical assistance costs of another conservation program, the Conservation Reserve Program, CRP.

Working lands conservation programs provide vital assistance to a large number of farmers, but they are especially critical to small and specialty crop growers, such as the potato and blueberry growers in my State of Maine. These programs help farmers manage their land in ways that improve production while, at the same time, protecting the environment, reducing agricultural runoff, and enhancing wildlife habitat.

Unfortunately, despite the large increase in funding for these programs contained in the Farm Bill of 2002, a significant number of family farmers who wish to participate in these programs—who seek assistance in their efforts to change their farming practices in order to improve water quality and availability in their communities, or to restore wetlands—have been turned away.

They have been turned away because the U.S. Department of Agriculture decided to divert funds from these working lands conservation programs in order to pay for technical assistance for the Conservation Reserve Program. Although the Conservation Reserve Program is itself a worthy program, it serves a different purpose than the working land conservation programs. The most significant of the differences between these programs is that the Conservation Reserve Program provides payments to farmers who take farmland out of production, while the working land conservation programs provide assistance to farmers who want to keep farming their land—but to do so in a way that helps the environment.

When we enacted the farm bill of 2002, we recognized the value of both of these types of programs, the Conservation Reserve Program and the working lands conservation programs, and provided significant funding for both types of programs. The Department of Agriculture's decision to divert funds from the working lands conservation programs in order to pay for technical assistance for the Conservation Reserve Program is not consistent with the carefully crafted balance reached in the farm bill. It is also inconsistent with the commitment made by Congress and the administration to America's farmers and ranchers—a commitment to provide assistance to those who wish to participate in voluntary conservation programs while keeping their land in agricultural production.

This amendment closes the loophole that the U.S. Department of Agriculture has used to divert funds from these working lands conservation programs in order to pay for other priorities that the Department deems more important. With this amendment, we keep the commitment made to our farmers and ranchers in the farm bill of 2002—a commitment to support and assist them as they work to enhance their stewardship of the land. For these reasons, I urge my colleagues to support the amendment.

Mr. BENNETT. Mr. President, I suggest the absence of a quorum and request that the time for the quorum call be charged equally to both sides.

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

The bill clerk proceeded to call the roll.

Mr. BENNETT. 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. BENNETT. Further, I ask unanimous consent that the time running on the Daschle amendment be set aside and reserved.

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

Mr. BENNETT. And that we now allow the Senator from North Dakota to proceed with his amendment.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. REID. Mr. President, if the Senator will yield, this would not prohibit Senator HARKIN from coming later and speaking if desires.

Mr. BENNETT. It would be my intention, when Senator HARKIN arrives to speak on the Daschle amendment, to ask that the Senator from North Dakota summarize his remarks to allow the Senator from Iowa to speak. I ask if the Senator from North Dakota would agree to do that.

Mr. DORGAN. Mr. President, I missed the comment by the Senator from Utah.

Mr. BENNETT. When Senator HARKIN arrives—we have been saving time for him—I ask if the Senator from North Dakota would summarize his statement at that point and allow Senator HARKIN to make his comments on the Daschle amendment, after which we could then return to the Dorgan amendment.

Mr. DORGAN. If Senator HARKIN arrives on the floor, I will begin slowing down, if that is the question, and come to a complete stop at an appropriate moment.

I do not intend to speak at great length on this amendment. I know my colleague, Senator BURNS, also wishes to speak, as well as my colleague, Senator CONRAD, wishes to speak. My expectation is that the presentations will all be relatively brief, but I certainly would respect the interests of the Senator from Utah.

Mr. BENNETT. Could we enter into an agreement that the total time consumed on the Dorgan amendment, without allocation to one side or the other, would be 30 minutes under the control of Senator DORGAN?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DORGAN. Mr. President, let me understand, the 30 minutes would be under my control?

Mr. BENNETT. That is correct, so that anyone who wished to speak would have to get the permission of Senator DORGAN, and that 30 minutes might be interrupted by Senator HARKIN's presentation, but the full 30 would be under the control of the Senator from North Dakota.

Mr. DORGAN. I understand.

AMENDMENT NO. 2117

Mr. DORGAN. Mr. President, I can send the amendment to the desk if we wish to consider it now. My thought was it would be accepted and probably be put in a managers' amendment. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. SMITH). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for himself, Mr. BURNS, Mrs. CLINTON, and Mr. LEAHY, proposes an amendment numbered 2117.

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

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

The amendment is as follows:

(Purpose: To increase funding for guaranteed broadband loans, with an offset)

On page 47, line 13, strike ''$335,963,000'' and insert ''$647,000,000''.

On page 48, line 2, strike ''$9,116,000'' and insert ''$15,116,000''.

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. REDUCTION IN TRAVEL AMOUNTS.

Notwithstanding any other provision of this Act, each amount provided by this Act for travel expenses is reduced by the pro rata percentage required to reduce the total amount provided by this Act for such expenses by $6,000,000.

Mr. DORGAN. Mr. President, if I might describe this amendment—and I will do so rather briefly because I spoke about it yesterday—I think we are on the road perhaps to having this amendment accepted, in which case we would not need a recorded vote. As I indicated, I offer this amendment with my colleagues, Senator BURNS of Montana and Senator CONRAD of North Dakota. This amendment deals with a provision we put in the farm bill having the rural utility services create a broadband loan program.

During consideration of the farm bill, which we enacted in the Congress, we provided a very important provision that will provide for loans for the build-out of broadband capability throughout rural areas of our country.

The build-out was part of $100 million in direct spending to subsidize $3.5 billion of loan funds at good interest rates that would entice those who are interested in building out the infrastructure of broadband capability to rural areas to begin doing so.

Now, why is that important? It is important because if someone is on the wrong side of the digital divide and they do not have broadband capability in rural areas, their opportunity for economic development is gone. So we have been trying to find ways to help develop the build-out of the infrastructure for broadband capability in all areas of the country, especially and including rural areas.

The $100 million in that bill was going to provide an opportunity for $3.5 billion in broadband loans over the 6 years, as I indicated.

The Rural Utility Service announced they were going to combine $40 million in the farm bill for the first 2 years and package that up. They said they would make $1.4 billion in loans available for broadband buildout. As a result of that, they would provide not only loans but $80 million in loan guarantees, and so they would have $1.295 billion of loans at the Treasury rate of interest.

This is easily the biggest broadband loan program in the history of this country. Why is it important? Let me give an example, going back to the 1930s. In the 1930s, very few farms and rural areas were wired for electricity, so we created the Rural Electrification Act, the REA Program, and began stringing lines to the rural reaches of America. That program was remarkably successful in providing to small towns and family farms in this country the capability of using electricity to enhance their productivity. When we electrified rural America, we dramatically increased the productivity of America's family farms.

We now are in a circumstance where we talk about the information revolution and the new technology and information and something called broadband. Broadband simply describes the diameter of the pipes through which information flows. If you have dial-up connections, you have a computer, and you know there is a certain timeframe moving around your computer and moving around the Internet. If you have broadband or advanced communications services, it is a bigger pipe and you can move vast amounts of data very quickly.

The opportunity to do that is critically important to small areas, rural areas of the country in order for them to attract economic opportunity and economic development. Without it, they are consigned to a future without that kind of economic opportunity. That is why we are trying to provide it here, just as we did in the underlying 1996 act which I helped write. We talked about advanced services then, comparable services at comparable rates. You have broadband in most big cities now. The question is, will rural areas have the same opportunities?

What happened was RUS put this money together and they were going to put out nearly $1.3 billion of loans at 4.9 percent. Again, easily the most significant program of building out information infrastructure. What happened was they set a July 31 deadline for applications. They received applications for $1 billion in loans. That means there are people out there very anxious to move this capability out to rural areas. That is a big deal. This is not just some theoretical argument. This is talking about whether, in the rural reaches of America, you will have economic opportunity and jobs and growth again.

We have $1 billion in loan applications. Now the language that has been included in the Agriculture appropriations bill essentially eliminates the broadband section of the farm bill. It will put some money into loans, yes, but does so without the mandatory spending for it and would essentially cut in half the loan levels.

That is particularly bothersome because what is going to happen is they are going to have to start over down at USDA with a much smaller amount of money and much less impact on broadband capability.

The proposal I offer with my colleagues would provide an additional $6 million. This does not make us whole, but instead of going from $20 million down to $9 million, roughly we go back up to $15 million. It is not the full money we need, but it would increase the $9.1 million to $15.1 million. This is not a massive amount of money, given the bill we are talking about. It just is not. But it is very important for us to pass this amendment because otherwise we will have had a significant start, with great promise, and will have brought this to a grinding halt, and we will have the promise of broadband buildout all across rural America only to find out Congress put the brakes on it. That is not something we want to do.

I mentioned yesterday, recently when I was in my hometown of 300 people, a small community in northwestern North Dakota, I walked into what used to be my old boyhood home. I asked the folks if I could just stop in and see it. I hadn't been there for many years. The young woman who now lives there with her husband and children said she was happy to show me my old home. I looked around. In her kitchen—I hope she won't mind me saying this—on the shelf she had a piece of equipment. I couldn't recognize it at first, but it had a camera attached to it, and the camera was taking a picture of something on a spool, hanging on a metal spool. It was a bracelet. She said: I am taking a picture of this bracelet. Then I scan it and put it on the Internet, on eBay, because I sell things on eBay.

Here is a woman in a very small community in western North Dakota who is a merchant selling products on eBay. It shows that all over this country people have enterprising hopes about what they want to do, what kind of business they want to be engaged in. But if we do not have the capability to build out broadband services to rural areas, we will forever consign them to a dismal economic future.

Let me make one final point. That little town I grew up in, Regent, ND, a wonderful community, is part of Headinger County. My home county is larger than the State of Rhode Island. When I left it, there were 5,000 people living there. There are now 2,800 citizens living in Headinger County. The State demographer says in the year 2020 they expect it to be 1,800 people; 5,000 to 1,800 in a county the size of Rhode Island, slightly larger.

Those people want opportunity. They want to build and grow. They want some hope for the future. That woman, in that little home selling on eBay, represents that spark of enterprise, that hope that maybe things can be better. Maybe you can build businesses in those rural areas. But you simply cannot do it if you don't move ahead with this program we put in the farm bill.

I introduced legislation about 3 years ago. Much of it was put in the farm bill to create these loan funds. I was astounded to learn this appropriations bill effectively emasculates the funding that would have been automatic for the 6-year period, that would have created this aggressive broadband buildout. That is why we have to restore some of this funding. It is important.

People say it is a little issue. It is not a little issue to people in my hometown or other hometowns all across this country, living in rural areas, who want to make a living and want to have some hope for the future. That is what this is about.

We have already had a pattern and a template for how this works. It is the old REA Program. It worked in a wonderful way to electrify rural America and offer people light and hope. This is the same proposition. Let's not miss this opportunity.

Mr. President, I indicated Senator BURNS, Senator CONRAD, Senator CLINTON, and Senator LEAHY are cosponsors. I ask unanimous consent they be added.

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

Mr. DORGAN. I yield some time to the Senator from Montana, followed by time to my colleague from North Dakota. I yield 5 minutes to the Senator from Montana and if he wishes more, there is certainly more available.

Mr. BURNS. I thank my friend from North Dakota.

Mr. President, if anyone in this body said the Government could invest $40 million and, in less than a year, generate commitments to invest or leverage $1.2 billion in job-creating, productivity-enhancing and life-improving infrastructure in some of America's most rural and remote areas, I would suspect the Members of this body and the public at large would judge that to be a successful and exciting economic development strategy. That is exactly what has happened.

This broadband loan program is administered by the Rural Utility Service of the United States Department of Agriculture. In 10 short months the RUS broadband loan program has generated about $1 billion in applications, primarily in Treasury rate-of-interest loans that contain at least 20 percent equity leverage. That is a pretty good return.

Let me build on what my friend from North Dakota said. I was pretty small when the debate on REA started, the Rural Electrification Administration. There is not one Senator in this body who has not gone to an annual meeting of an REA. My first line is always: If it had not been for REA, in the country areas we would be watching television by candlelight. That is a truism. Now we are in a different era. We are in an era when there is an infrastructure of the deployment of broadband. Broadband expanded services is as important to downtown America as it is to rural areas because of their ability to communicate instantly and to move massive amounts of information instantly.

We have heard of the digital divide. This is a just one small step that closes that gap or that divide. It is working. Figures back it up. I was as surprised as anyone when this funding was taken out of the bill because it was not working. That wasn't the reason at all. Broadband technologies, whether delivered by fiber, licensed or unlicensed spectrum, or satellite, have the power to transform communities.

High-speed access to the Internet is becoming as important to the rural economic development as good roads or good sewers or even electricity itself. It opens worlds of opportunities for rural businesses, farmers, and ranchers and provides up-to-the-minute market information; and rural schools for distance learning.

We still have a boarding school in my State of Montana. You take your high school students to school on Monday morning and you do not see them until Friday night. That is remote. That is frontier.

This technology is also a way to expand curriculum and allow those young people to have the same educational opportunities as young people in the more urban areas.

Think about what it does to the rural areas as far as telemedicine. We know we have an aging population in rural areas. I have 14 counties that have no doctors at all. The delivery of health care is completely different than it was years ago.

We have as much obligation to make sure there is a buildup of broadband as we had with electricity after World War II. I know what was in our house. Our house didn't have electricity until about 1949–1950. I know that it transformed rural America. This provides the same possibility.

With this amendment, we have restored a tool which investors can use to build up this important piece of infrastructure which will become very important to rural America.

If the Federal Government could invest $40 million and in less than a year generate commitments to invest about $1.2 billion in job creating, productivity enhancing, life improving infrastructure in some of America's most rural and emote areas, I suspect most members of the body and the public at large would judge that to be a successful and exciting economic development strategy.

That is exactly what has happened in the broadband loan program administered by the Rural Utilities Service RUS, of the United States Department of Agriculture. In ten short months, the RUS broadband loan program has generated about a billion in applications primarily for treasury rate of interest loans that contain at least 20 percent equity leverage.

Broadband technologies whether delivered by fiber, licensed or unlicensed spectrum or satellite have the power to transform communities. High-speed access to the Internet is becoming as important to rural economic development as good roads and sewers. It opens worlds of opportunity for rural business, offers farmers up to the minute market information, rural schools the chance to offer advanced placement courses and rural health care facilities access to the finest medical advice and services available.

While many areas served by companies and cooperatives in the RUS telecommunications program had modern advanced services, too many rural communities were far outside the service territory of these broadband pioneers. The RUS broadband loan program offered an exciting opportunity to close this digital divide.

As one of the co-authors of the broadband loan provisions contained in the farm bill, I strongly believe that

the Senate must keep faith with the carriers, cooperatives, communities and consumers who have been inspired to launch plans to bring broadband services to hometown America.

The broadband loan program builds on a proven sixty-eight year model which has brought modern telephone, electric and water infrastructure to rural areas. The farm bill added a new broadband title to the Rural Electrification Act. It also created a reliable, predictable multi-year stream of mandatory funding to instill confidence that sufficient funds would be available until expended to encourage investment.

Unfortunately, the funding for this program which is so vital to the economic health of rural America has been severely cut. We should be doing everything possible to incentivize broadband buildout in rural America rather than targeting this creative program which promises to bring huge benefits to vast areas of the country. I call on my colleagues to support the Dorgan-Burns amendment to restore funding to this critical program. It is very important.

I thank the Chair.

Mr. DORGAN. Mr. President, I yield 5 minutes to Senator CONRAD from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank my colleague, Senator DORGAN, for proposing this amendment and our friend and neighbor, Senator BURNS from Montana, for cosponsoring it. This is an important amendment. I was among the handful of negotiators of the farm bill representing the Senate as we negotiated with the House on the final provisions. These provisions were especially important to those of us who represent the most rural areas in the country. If you do not have broadband access in the modern world, you are left out and left behind, and your economic prospects are badly diminished.

On the other hand, if you are part of this extraordinary development, all of a sudden distance and the barriers of distance fall away.

We know the greatest difficulty for our State has been our distance from markets. That is what has disadvantaged the economic opportunity for people from North Dakota, Montana, and South Dakota. I see the Senator from Idaho—his State as well, and Wyoming, and so many other States in the heartland of America.

The provisions that were put into the farm bill were designed to give us a chance to open new opportunities and to reduce the barriers of distance. Twenty million dollars is a modest amount of money. But in the appropriations bill they cut it by more than 50 percent—to $9.1 million. We all know that amount of money in and of itself is not going to make an extraordinary difference. But that is not how it works. That small amount of money leverages much larger amounts of loans. It is more than 30 to 1. On a $6 million amount, you would increase, by at least $180 million, loans that are available across the country. I have been told it may be more than $300 million because what you are doing with a small amount of money is leveraging a large amount of lending to build broadband in the rural parts of this country.

This is a matter of fairness. It is a matter of economic development. It is a matter of keeping the promise that was made in the farm bill. Nothing could be more clear. Nothing could be more important in terms of economic opportunity in the rural parts of the country than to make sure they are part of this developing technology.

In the 1950s, Dwight Eisenhower recognized the importance of having a nation connected by an interstate highway system. He proposed the legislation that provided for Federal funding.

That is precisely what this does with the new technology—to provide broadband that ties America together that provides opportunity.

Every year, I put on an event in North Dakota which we call ''Marketplace for Entrepreneurs.'' Last year, there were 8,000 people in attendance. We have hundreds of classes. Some of them are on how you write a business plan or how to use the Internet or how to use broadband to develop your business, to expand your business, to create a business.

There is nothing more hopeful in terms of opportunity in rural areas than to have this new technology available.

Congress ought not to turn its back on a promise just made and cut the funding.

I am told now this $6 million will provide an additional loan amount of over $275 million—$6 million becomes $275 million in loans all across the rural part of the country. Why? How can that be? How can $6 million turn into $275 million? It is because you need just a little bit of a guarantee to get over the hump to cause lenders to make these loans. It gives some additional assurance that it is going to be repaid. It is very interesting. History shows that in fact the money is repaid. It works.

I urge my colleagues to support this legislation.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Ten minutes 20 seconds.

Mr. DORGAN. Mr. President, I will take one final minute, and I think we are finished speaking on this side. And I will yield back the remainder of my time when we are finished.

Mr. President, I ask unanimous consent that Senator HARKIN be added as a cosponsor.

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

Mr. DORGAN. Let me finish this discussion by adding another point. There is a book titled ''Distance is Dead.'' The book describes the information revolution. From almost anyplace you are a click away from anywhere. In North Dakota, we are a click away from the Hudson River. We are as close to Manhattan as the Hudson River with telecommunication and new technologies. But that is only the case if you have the buildout of broadband, if you have the capability to allow people to use this Internet in the way that most urban areas are able to do it.

We have in rural areas—I have mentioned my hometown—much that others aspire to recreate in our country: strong schools, good neighbors, great places to raise kids. We have a lot of things that make these small towns in rural areas wonderful places to live. But we need jobs there. We need economic opportunity development there.

If distance is dead, then opportunity is born in rural areas with information technology. If we are a click away from anywhere, if we are a nanosecond away by clicking a mouse and providing information anywhere, any time, then we have opportunities to attract businesses and create jobs in these wonderful areas of America's heartland. But if we do not have the buildout of the infrastructure, if you do not have similar opportunities with broadband development in rural areas, then you have what is called a digital divide.

If you are on the wrong side of that digital divide, if you live on the wrong side of that digital divide, you are in big trouble; your community is going nowhere. That is why this is an important issue. It is why we have been working on it for some long while and why this amendment deserves to be approved.

We have no further speakers. I know Senator BENNETT has other things he wishes to do with the bill. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. There has been no objection to this amendment raised on this side. I ask now for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Dakota.

The amendment (No. 2117) was agreed to.

Mr. BENNETT. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BENNETT. Mr. President, I understand now that Senator LEAHY has an amendment that he would like to offer and debate. I ask the Senator if he would agree to a half an hour time limit on his amendment.

Mr. LEAHY. Mr. President, is the Senator from Utah suggesting a half hour evenly divided?

Mr. BENNETT. Yes, half an hour evenly divided.

Mr. LEAHY. I think that would be enough, but just to be on the safe side,

I will check with a couple of Members. Could we say 40 minutes evenly divided? I assume I will be able to yield some of that back.

Mr. BENNETT. Mr. President, I am happy to propound a unanimous consent agreement that there be 40 minutes equally divided devoted to the Leahy amendment with no second-degree amendments allowed.

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

AMENDMENT NO. 2119

Mr. LEAHY. Mr. President, I send to the desk an amendment on behalf of myself, Senator SNOWE, Senator JEFFORDS, Senator COLLINS, Senator REED of Rhode Island, and Senator CLINTON. I ask, first, that the pending amendment be laid aside and that I send the amendment to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The pending amendments are set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Ms. SNOWE, Mr. JEFFORDS, Ms. COLLINS, Mr. REED and Mrs. CLINTON, proposes an amendment numbered 2119.

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

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

The amendment is as follows:

(Purpose: To restrict the use of funds for certain conservation programs)

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. USE OF FUNDING FOR CERTAIN CONSERVATION PROGRAMS.

None of the funds made available by this Act may be used to pay the salaries or expenses of employees of the Department of Agriculture to carry out the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) using funds made available under paragraphs (4) through (7) of section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

Mr. LEAHY. Mr. President, this amendment is quite straightforward. We offered it to restore the conservation funding commitment Congress and the administration made to farmers and ranchers in the 2002 farm bill. I was one of the conferees in that farm bill. I remember we went all night long. We went weekend after weekend. The final bill was a very delicately put together compromise between Republicans and Democrats in both bodies and the administration, between those in the East, those in the West, those in the Midwest. It was a very delicate balance because of the amount of money involved and how it would be allocated.

It was especially important because in this bill there was concern when it was passed whether those in the East would vote for the bill. Our amendment addressed the problem that Senators, if not all Senators, have been hearing about.

Despite the historic conservation funding levels of the 2002 farm bill, the family farmers and ranchers trying to restore wetlands are offering to change the way they farm to improve air and water quality are rejected when they seek USDA help. Producers are turning away because of a Department of Agriculture decision earlier this year to divert $158.7 million from working lands conservation programs, to pay for the conservation reserve and wetlands reserve. It goes directly against the clear directive in the 2002 farm bill. That directed the USDA use mandatory funds for the Commodity Credit Corporation to pay for CRP and WRP technical assistance.

This may sound technical, but the fact is, by not following what the Congress voted for, Republicans and Democrats alike, we end up having the administration raid the farm bill, raid working lands programs.

This chart shows what happens: $57 million diverted from EQIP, the Environmental Quality Incentives Program; $18 million diverted from the Farmland and Rangeland Protection Program; $9.6 million diverted from the Grasslands Reserve Program; and $5.6 million from the WHIP, Wildlife Habitat Incentives Program, to pay for technical assistance.

All these are included for different reasons. The Wildlife Habitat Incentives Program helps those who fish and hunt. They were part of the overall compromise. Their money is gone.

The language of the statute, a relevant colloquy, supports this interpretation, and the General Accounting Office concurred in a recent memo that we settled a very clear intent of the Congress how that money be spent. I ask unanimous consent that memo be printed in the RECORD.

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

UNITED STATES
GENERAL ACCOUNTING OFFICE,
Washington, DC, October 8, 2002.

Hon. HERB KOHL,
Chairman,
Hon. THAD COCHRAN,
Ranking Minority Member, Subcommittee on Agriculture, Rural Development, & Related Agencies, Committee on Appropriations, U.S. Senate.
Hon. HENRY BONILLA,
Chairman, Subcommittee on Agriculture, Rural Development, FDA & Related Agencies, Committee on Appropriations, House of Representatives.

FUNDING FOR TECHNICAL ASSISTANCE FOR CONSERVATION PROGRAMS ENUMERATED IN SECTION 2701 OF THE 2002 FARM BILL

This responds to your letters of August 30, 2002 (from Chairman Bonilla) and September 16, 2002 (from Chairman Kohl and Ranking Minority Member Cochran) requesting our opinion on several issues relating to funding technical assistance for the wetlands reserve program (WRP) and the farmland protection program (FPP). You asked for our views on the following issues:

(1) Does the annual limit on fund transfers imposed by 15 U.S.C. §714i (known as the section 11 cap) apply to Commodity Credit Corporation (CCC) funds used for technical assistance provided the WRP and FPP as authorized by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill).

(2) Is the Department of Agriculture's Conservation Operations appropriation available for technical assistance for the WRP and the FPP? and

(3) Did the Office of Management and Budget's (OMB) July 18, 2002, decision not to apportion funds for technical assistance for the WRP and the FPP violate the Impoundment Control Act.[1]

For the reasons given below, we conclude that:

(1) the section 11 cap does not apply to funds for technical assistance provided for the conservation programs enumerated in section 3841, title 16, U.S.C., as amended by section 2701 of the 2002 Farm Bill;

(2) the Conservation Operations appropriation is not an available funding source for the WRP and the FPP operations and associated technical assistance; and

(3) OMB's failure to initially apportion WRP and FPP funds was a programmatic delay and did not constitute an impoundment under the Impoundment Control Act. Further, since OMB has approved recently submitted apportionments for these two programs, and since budget authority for both the WRP and the FPP was made available for obligation, there was no impoundment of funds in fiscal year 2002.

BACKGROUND

Section 2701 of the 2002 Farm Bill, Pub. L. No. 107–171, 116 Stat. 278, 279 (enacted on May 13, 2002) (codified at 16 U.S.C. §§3841 and 3842) amended section 1241 of the Food Security Act of 1985, 16 U.S.C. §3841, to provide that the Secretary of Agriculture (Secretary) shall use the funds of the CCC to carry out seven conservation programs, including the provision of technical assistance to, or on behalf of, producers. The WRP and the FPP are among the conservation programs named in the 2002 Farm Bill that are to be funded with CCC funds.

In its June 19, 2002, apportionment request, the Department of Agriculture (Agriculture) asked OMB to apportion a total of $587,905,000 in CCC funds to the Natural Resources Conservation Service (NRCS) for both financial and technical assistance related to section 3841 conservation programs. SF 132, Apportionment and Reapportionment Schedule for Farms Security and Rural Investment Programs, Account No. 1221004, July 18, 2002. Of the amount requested, Agriculture designated $68.7 million for technical assistance to be provided under the conservation programs. In its July 18, 2002, apportionment, OMB apportioned all of the funds for financial and technical assistance requested for the conservation programs, except $22.7 million designated for WRP and FPP technical assistance. Id. OMB reports that it did not apportion funds for WRP and FPP technical assistance at that time, because OMB believed that the section 11 cap, 15 U.S.C. §714i, limited the amount of funds that could be transferred from CCC to other government agencies for technical assistance associated with the section 3841 conservation programs, and that CCC funding of WRP and FPP technical assistance would exceed the section 11 cap. Letter from Philip J. Perry, General Counsel, OMB, to Susan A. Poling, Managing Associate General Counsel, GAO, September 16, 2002. In discussions with Agriculture regarding the use of CCC funds in excess of the section 11 cap for section 3841 technical assistance, OMB indicated to Agriculture that either CCC funds subject to the section 11 cap or Agriculture's Conservation Operations appropriation could be used to fund this technical assistance, Id.

OMB reports that Agriculture recently submitted a new apportionment request for $5.95 million for WRP technical assistance (as well as the Conservation Reserve Program) which OMB approved on September 3,

2002. Id. OMB also reports that Agriculture submitted a new apportionment request for an additional $2 million in FPP financial assistance, which OMB approved on September 11, 2002, bringing the total apportionment for the FPP to the $50 million authorized by section 3841. Id.

DISCUSSION

1. Section 11 Cap

The question whether the section 11 cap (15 U.S.C. §714i) applies to technical assistance provided through the conservation programs authorized by 16 U.S.C. §§3481, 3482, is one of statutory construction. It is a well-established rule of statutory construction that statutes should be construed harmoniously so as to give maximum effect to both whenever possible. B–259975, Sept. 18, 1995, 96–1 CPD §124; B–258163, Sept. 29, 1994. Based upon the language of the relevant statutes, we can read the statutes in a harmonious manner, and, in doing so, we conclude that the section 11 cap does not apply to technical assistance provided under the section 3841 conservation programs.

The section 11 cap is set fort in 15 U.S.C. §714i, which states, in pertinent part:

''The Corporation may, with the consent of the agency concerned, accept and utilize, on a compensated or uncompensated basis, the officers, employees, services, facilities, and information of any agency of the Federal Government, including any bureau, office, administration, or other agency of the Department of Agriculture . . . . The Corporation may allot to any bureau, office, administration, or other agency of the Department of Agriculture or transfer to such other agencies as it may request to assist it in the conduct of its business any of the funds available to it for administrative expenses . . . After September 30, 1996, *the total amount of all allotments and fund transfers from the Corporation under this section* (including allotments and transfers for automated data processing or information resource management activities) for a fiscal year may not exceed the total amount of the allotments and transfers made under this section in fiscal year 1995.''

(Emphasis added.) We note that the section 11 funding limitation applies only to funds transferred by the CCC to other agencies under the authority of section 11.

The 2002 Farm Bill, which amended subsection (a) of section 3841, directs the Secretary to use CCC funds to carry out the WRP and the FPP and five other conservation programs, including the provision of technical assistance as part of these programs. As amended, 16 U.S.C. §3841 provides, in pertinent part, as follows:

''For each of fiscal years 2002 through 2007, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out the following programs under subtitle D (*including the provision of technical assistance*):

* * * * *

(2) The wetlands reserve program under subchapter C of chapter 1.

* * * * *

(4) The farmland protection program under subchapter B of chapter 2, using, to the maximum extent practicable—(A) $50,000,000 in fiscal year 2002 * * *''

16 U.S.C. §3841(a) (emphasis added). Section 3841 provides independent authority for the provision of technical services to these programs.

The 2002 Farm Bill also added a new subsection (b) to section 3841. It is this provision that has generated the current dilemma: ''Nothing in this section affects the limit on expenditures for technical assistance imposed by section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i).'' 16 U.S.C. §3841(b). When read in the context of section 11, section 3841(b) makes clear that the section 11 cap applies only to funds transferred under section 11. Section 11 specifically imposes the cap on ''fund transfers . . . under this section.'' Section 11 by its terms clearly does not apply to amounts transferred under other authority, such as section 3841(a). And we read section 3841(b) to make plain that, while the section 11 cap continues to apply to amounts transferred under section 11, it does not apply to amounts transferred by section 3841(a).

Accordingly, reading the above provisions harmoniously, we conclude that: (1) the section 11 cap by its own terms applies only to CCC funds transferred to other agencies under section 11; (2) 16 U.S.C. §3841(a) provides independent authority for the Secretary to fund the seven conservation programs named in that section out of CCC funds; and (3) 16 U.S.C. §3841(b) makes it clear that, while the section 11 cap still applies to funds transferred by the CCC to other government agencies for work performed pursuant to the authority of section 11, the section 11 cap does not apply to the seven conservation programs that are funded with CCC funds under the authority of 16 U.S.C. §3841(a).

Our conclusion that the section 11 cap does not apply to the seven conservation programs of section 3841(a) is confirmed by a review of the legislative history of the 2002 Farm Bill, which shows that the Congress was attempting to make clear that section 3841 technical assistance was not affected by the section 11 cap. The legislative history to the 2002 Farm bill unambiguously supports the view that the Congress did not intend the section 11 cap to limit the funding for technical assistance provided under the section 3841 conservation programs. In discussing the cap, the Conference Committee stated: ''The Managers understand the critical nature of providing adequate funding for technical assistance. For that reason, *technical assistance should come from individual program funds.*'' H.R. Conf. Rep. No. 107–424 at 497 (May 1, 2002) (emphasis added). In discussing administration and funding of these conservation programs, the Conference Committee further explained that:

''The Managers provide that funds for technical assistance shall come directly from the mandatory money provided for conservation programs under Subtitle D, (Section 2701).

In order to ensure implementation, the Managers believe that technical assistance must be an integral part of all conservation programs authorized for mandatory funding. Accordingly, the Managers have provided for the payment of technical assistance from program accounts. The Managers expect technical assistance for all conservation programs to follow the model currently used for the EQIP whereby the Secretary determines, on an annual basis, the amount of funding for technical assistance. Furthermore, the Managers intend that the funding will cover costs associated with technical assistance, such as administrative and overhead costs.''

H.R. Conf. Rep. No. 107–424 at 498–499 (2002) (Emphasis added).

The ''EQIP model'' that the conferees referred to was established in the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104–127, Subtitle E, 341, 110 Stat. 888, 1007 (1996) (1996 Farm Bill). For fiscal years 1996 through 2002, the Secretary was to use CCC funds to carry out the CRP, WRP and the Environmental Quality Incentives programs (EQIP). (Former 16 U.S.C. §3841 (a)). More specifically, the 1996 Farm bill authorized the Secretary to use CCC funds for technical assistance (as well as cost-share payments, incentive payments, and education) under the EQIP program. 16 U.S.C. 3841(b). While the 1996 Farm Bill authorized the use of CCC funds to carry out the CRP and WRP programs, it did not specifically authorize the funding of technical assistance out of program funds as it did for EQIP.

Importantly, five days before enactment of the 2002 Farm Bill when the Senate was considering the Conference Report on the Farm Bill, a colloquy among Senators Harkin, Chairman, Senate Agriculture, Nutrition and Forestry Committee, Lugar, its Ranking Republican Member, and Cochran, an Agriculture Committee member, makes it unmistakably clear that the section 11 cap was not meant to apply to the provision of technical assistance with respect to any of the conservation programs named in 16 U.S.C. §3841(a):

''Mr. LUGAR. Mr. President, I wish to engage in a colloquy with the distinguished Senators from Iowa and Mississippi. Mr. President, the 1996 farm bill contained a provision which led to serious disruption in the delivery of conservation programs. Specifically, the 1996 act placed a cap on the transfers of Commodity Credit Corporation funds to other government entities. Is the distinguished Senator from Iowa aware of the so-called ''section 11 cap?''

Mr. HARKIN. I thank the Senator from Indiana for raising this issue, because it is an important one. The Section 11 cap prohibited expenditures by the Commodity Credit Corporation beyond the Fiscal Year 1995 level to reimburse other government entities for services. Unfortunately, in the 1996 farm bill, many conservation programs were unintentionally caught under the section 11 cap. As a result, during the past 6 years, conservation programs have had serious shortfalls in technical assistance. There was at least one stoppage of work on the Conservation Reserve Program. The Appropriations Committees have had to respond to the problem ad hoc by redirecting resources and providing emergency spending to deal with the problem. This has been a problem not just in my state of Iowa or in your states of Indiana and Mississippi; it has been a nationwide constraint on conservation.

Mr. COCHRAN. I thank the Chairman for the clarification, and I would inquire whether the legislation under consideration here today will fix the problem of the section 11 cap for conservation programs.

Mr. HARKIN. I thank the Senator from Mississippi for his attention to this important issue. *Section 2701 [16 U.S.C. §3841] of the Farm Security and Rural Investment Act of 2002 recognizes that technical assistance is an integral part of each conservation program.* Therefore, technical assistance will be funded through the mandatory funding for each program provided by the bill. As a result, *for directly funded programs,* such as the Conservation Security Program (CSP) and the Environmental Quality Incentives Program (EQIP), *funding for technical assistance will come from the borrowing authority of the Commodity Credit Corporation, and will no longer be affected by section 11 of the CCC Charter Act.*

For those programs such as the CRP, WRP, and the Grasslands Reserve Program (GRP), which involve enrollment based on acreage, the technical assistance funding will come from the annual program outlays apportioned by OMB-again, from the borrowing authority of the CCC. *These programs, to will no longer be affected by section 11 of the CCC Charter Act.* This legislation will provide the level of funding necessary to cover all technical assistance costs, including training; equipment; travel; education, evaluation and assessment, and whatever else is necessary to get the programs implemented.

Mr. LUGAR. I thank the Chairman for that clarification. With the level of new resources and new workload that we are requiring from the Department, and specifically the Natural Resources Conservation Service, I hear concerns back in my state that program delivery should not be disrupted, and the gentleman has reassured me that it will not.''

148 Cong. Rec. S3979, 4020 (daily ed. May 8, 2002) (emphasis added).

In our view, the Congress intended all funding for the seven conservation programs authorized in section 3841 (§2701 of the 2002 Farm Bill), including funding for technical assistance, to be mandatory funding drawn from individual program funds, rather than from CCC's administrative funds that are subject to the section 11 cap. Accordingly, based on the language of 3841, we conclude that the section 11 cap does not apply to funds for technical assistance provided under the conservation programs enumerated in section 3841.

2. Availability of the Conservation Operations Appropriation

The next issue is whether the Department of Agriculture's Conservation Operations appropriation is available for technical assistance for the WRP and the FPP. As noted above, this issue arose when OMB advised Agriculture that its Conservation Operations appropriation could be used to fund this technical assistance. For the reasons that follow, we conclude that Agriculture may not use its Conservation Operations appropriation to fund the WRP and FPP.

The fiscal year 2002 Appropriation for the Conservation Operations account provides in pertinent part:

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''For necessary expenses for carrying out the provisions of the Act of April 27, 1935, (16 U.S.C. 590a–f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agriculture related pollutants); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests therein for use in the plant materials program by donation, exchange, or purchase . . . .''

Pub. L. No. 107–76, 115 Stat. 704 at 717, 718 (2001). In addition to its availability to carry out the provisions of the Act of April 27, 1935 (16 U.S.C. §590a–f), the fiscal year 2002 Conservation Operations appropriation is also available to carry out a variety of other specified programs such as those authorized by 7 U.S.C. §428a, 7 U.S.C. §2209b, 7 U.S.C. §2250a, §202(c) of title II of the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. §1592(c)): section 706(a) of the Organic Act of 1944 (7 U.S.C. §2225), for employment under 5 U.S.C. §3109 and 16 U.S.C. §590e–2. OMB asserts that the language of the Conservation Operations appropriation and the Act of April 27, 1935 cited therein are broad enough to encompass the technical assistance that Agriculture will provide under the WRP, the FPP and the other section 3841 conservation programs. Since the technical services provided by Agriculture under the WRP and the FPP (and other section 3841 conservation programs) fall within the general purposes articulated in the fiscal year 2002 Conservation Operations appropriation, OMB considers the Conservation Operations appropriation as an additional available source of funding for technical assistance provided as part of the section 3841 conservation programs. In other words, the Conservation Operations appropriation is available to continue financing for the FPP and the WRP, when, in OMB's view, the section 11 cap limits the availability of CCC funds for those programs. We do not agree.

First, the Conservation Operations appropriation identifies specific programs that it is available to fund, including the authority to carry out the provisions of the Act of April 27, 1935 (16 U.S.C. §590a–f) cited by OMB above. However, none of the specific statutory programs identified in the Conservation Operations appropriation include the FPP or the WRP found in 16 U.S.C. §§3838h–3838i and 3837–3737f, respectively. The FPP and the WRP were authorized by Title XII of the Food Security Act of 1985, as amended, and the provisions of the Food Security Act of 1985 are not among the statute listed in the Conservation Operations appropriation as an object of that appropriation. Thus, the Conservation Operations appropriation by its own terms does not finance Agriculture programs and activities under the Food Security Act.[67]

Second, even if the language of the Conservation Operations appropriation could reasonably be read to include the WRP and the FPP, section 3841, as amended by the 2002 Farm Bill, very specifically requires that funding for technical assistance will come from the ''funds, facilities, and authorities'' of the CCC. Indeed, the statute is unequivocal—the Secretary ''shall use the funds'' of the CCC to carry out the seven conservation programs, including associated technical assistance. It is well settled that even an expenditure that may be reasonably related to a general appropriation may not be paid out of that appropriation where the expenditure falls specifically within the scope of another appropriation. 63 Comp. Gen. 433, 427–428, 432 (1984); B–290005, July 1, 2002.[8]

Third, this view is supported by the Senate colloquy on the 2002 Farm Bill Conference report:

''Mr. COCHRAN. It is then my understanding that, under the provisions of this bill, the technical assistance necessary to implement the conservation programs will not come at the expense of the good work already going on in the countryside in conservation planning, assistance to grazing lands, and other activities supported within the NRCS conservation operations account. And, further, this action will relieve the appropriators of an often reoccurring problems.

Mr. HARKIN. Both gentlemen are correct. The programs directly funded by the CCC–EQIP, FPP, WHIP, and the CSP—as well as the acreage programs—CRP, WRP, and the GRP—*include funding for technical assistance that comes out of the program funds. And this mandatory funding in no way affects the ongoing work of the NRCS Conservation Operations Program.*''

148 Cong. Rec. S3979, 4020 (daily ed. May 8, 2002) (emphasis added).

This colloquy underscores the understanding that the 2002 Farm Bill specifically requires that funding for technical assistance will come from the borrowing authority of the CCC and will not interfere with other activities supported by the Conservation Operations appropriation.

Furthermore, before passage of the 1996 Farm Bill, which made a number of conservation programs, including the WRP, mandatory spending programs, the WRP received a separate appropriation for that purpose. In other words, before the 1996 farm bill provided CCC funding to run the program, the WRP was not funded out of the Conservation Operations appropriation. Pub. L. No. 103–330, 108 Stat. 2453 (1994); Pub. L. No. 102–142, 105 Stat. 897 (1991). Moreover, Agriculture has previously concluded that the Conservation Operations appropriation is not available to fund technical assistance with respect to programs authorized under provisions of the Food Security Act. Their reasoning tracks ours—the provisions of the Food Security Act are not among the statutes cited in the Conservation Operations appropriation. Memorandum from Stuart Shelton, Natural Resources Division to Larry E. Clark, Deputy Chief for Programs, Natural Resources Conservation Service and P. Dwight Holman, Deputy Chief for Management, Natural Resources Conservation Service, October 7, 1998 (Conservation Operations appropriation is not available to fund technical assistance for the Conservation Research Program); GAO/RCED–99–247R, Conservation Reserve Program Technical Assistance, at 9 (Aug. 5, 1999).

Thus, the Conservation Operations appropriation is not an available funding source for WRP and FPP operations and associated technical assistance. To the extent that Agriculture might have used the Conservation Operations appropriation for WRP, Agriculture would need to adjust its accounts accordingly, deobligating amounts it had charged to the Conservation Operations appropriation and charging those amounts to the CCC funds. We note that in this event OMB would need to apportion additional amounts from CCC funds to cover such obligations.

3. Impoundment Control Act

The last question is whether OMB's July 18, 2002, decision not to apportion funds for technical assistance for the WRP and the FPP constitutes an impoundment under the Impoundment Control Act of 1974. Based upon the most recent information provided by OMB, to the extent OMB did not initially apportion funds for the FPP or the WRP, the deal was programmatic and did not constitute an impoundment of funds. Also, based on information recently provided by OMB, no impoundment of funds is occurring with respect to the FPP or the WRP.

We generally define an impoundment as any action or inaction by the President, the Director of OMB or any federal agency that delays the obligation or expenditure of budget authority provided in law. Glossary of Terms Used in the Federal Budget Process, Exposure Draft, GAO/AFMD–2.1.1, Page 52 (1993). However, our decisions distinguish between programmatic withholdings outside the reach of the Impoundment Control Act and withholdings of budget authority that qualify as impoundments subject to the Act's requirements. B–290659, July 24, 2002. Sometimes delays are due to legitimate program reasons. Programmatic delays typically occur when an agency is taking necessary steps to implement a program even if funds temporarily go unobligated. Id. Such delays do not constitute impoundments, and do not require the sending of a special message to the House of Representatives and the Senate under 2 U.S.C. §684(a). Id.

Here, OMB initially did not apportion funds for WRP and FPP technical assistance because it believed the section 11 cap was applicable and would be exceeded. OMB's General Counsel states that OMB reserved apportioning budget authority to discuss its funding concerns with Agriculture. These funding concerns generated a ''vigorous and healthy internal legal discussion'' between the Department of Agriculture and OMB. Letter from Nancy Bryson, General Counsel, Department of Agriculture to the Honorable Tom Harkin, Chairman, Senate Committee on Agriculture, Nutrition and Forestry, September 24, 2002. Since OMB delayed apportionment of technical assistance funds because of uncertainty concerning the applicability of statutory restrictions and since

OMB approved Agriculture's subsequent apportionment requests, we conclude that OMB did not impound funds under the Impoundment Control Act. *See* B–290659, July 24, 2002 (delay in obligating funds because of uncertainty whether statutory conditions were met did not constitute an impoundment).

As noted above, according to OMB, Agriculture recently submitted revised apportionment requests for technical assistance for both the FPP and the WRP, and OMB has approved the revised apportionments. For the FPP, Agriculture requested an additional apportionment for financial assistance of $2 million, bringing the total amount available for obligation to $50 million. Thus, the entire $50 million in FPP funds authorized by section 3841 have been apportioned. Since OMB advises that it has apportioned the full funding amount and that is available for obligation, these funds were not impounded for the FPP.

As for the WRP funding, as noted above, on June 19, 2002, Agriculture asked OMB to apportion a total of $20,655,000 for WRP technical assistance. OMB did not apportion this amount. SF 132, Apportionment and Reapportionment Schedule for Farms Security and Rural Investment Programs, Account No. 1221004, July 18, 2002. On August 30, 2002, Agriculture requested an apportionment of WRP (and CRP) technical assistance for totaling $5,950,000. SF 132, Apportionment and Reapportionment Schedule for Commodity Credit Corporation Reimbursable Agreements and Transfers to State and Federal Agencies, Account No. 12X4336. On September 3, 2002, OMB approved this request and apportioned $5,950,00. Id. Since OMB apportioned the budget authority for the WRP and it was made available for obligation, there was no impoundment of funds in fiscal year 2002.

While the present record does not establish an impoundment of the fiscal year 2002 funds appropriated for the WRP and the FPP, we will continue to monitor this situation to ensure that any impoundment that might occur in fiscal year 2003 for conservation programs is timely reported.

We hope you find this information useful. If you have any questions, please contact Susan Poling, Managing Associate General Counsel, or Thomas Armstrong, Assistant General Counsel, at 202–512–5644. We are sending copies of this letter to the Secretary of Agriculture, Director of the Office of Management and Budget, the Chairmen and Ranking Minority Members of the House and Senate Agriculture Committees and other interested Congressional committees. This letter will also be available on GAO's home page at *http//www.gao.gov*.

ANTHONY H. GAMBOA,
General Counsel.

Mr. LEAHY. This bipartisan amendment simply overrides the USDA decision and prevents funds from the Working Lands Incentive Programs such as EQIP, FRPP, GRP, and WHIP from being diverted. We are simply saying USDA should follow the law as any other Department has to follow the law.

I have been in the Senate a long time. I have been a member of the Senate Agriculture Committee for nearly 30 years. I am a former chairman of that committee. I have long been an advocate for the CRP program. Some of my colleagues may be concerned how this impacts CRP.

I assure everyone the amendment is a first step toward solving the dilemma the administration put us in by ignoring the 2002 farm bill. We need to solve the problem this year. Supporting the amendment assures it will be raised during conference.

We cannot allow this or any other administration, but especially one that has demonstrated total disregard for the environment, to pick winners and losers among the conservation programs. If we do not address this, we will continue to rob Peter to pay Paul and it defies the direct will of the Congress—again, the direct will in an agreement that was negotiated between Republicans, Democrats, House, Senate, and the administration. We have tried to hold our end of the deal. The administration has not.

We provided $6.5 billion for working lands programs in the 2002 farm bill. We want farmers to manage working lands to produce our food and fiber but also to enhance water quality and to enhance wildlife habitat. We are trying to put together a win-win situation: We enhance our water, improve wildlife habitat, and we still raise our food and fiber.

For example, EQIP helps share the cost of a whole lot of land management practices that help the environment, including more efficient use of fertilizers and pesticides, and greater use of innovative technologies to handle animal waste. It gives farmers the tools they need.

Every farmer and rancher I have heard from wants the money there. Every farmer and rancher I have heard from says: How come we are not following what the law requires?

If we continue to divert money, we are going to see programs such as EQIP, WHIP, and FRPP continue to face significant backlogs.

Let me show you this chart. This gives you an example of the unfunded applications.

In fiscal year 2002, USDA reported a $500 million backlog in the State of Texas, as I look at this chart. The national total is almost $1.5 billion—$1,486,000,944. There is a $17 million backlog in Arkansas, a $20 million backlog in California, a $36 million backlog in Florida, a $66 million backlog in Kansas, a $200 million backlog in Missouri, a $106 million backlog in Nebraska and, as I said, a $500 million backlog in Texas.

My little State of Vermont has a $7 million backlog. But look how much bigger it is in the rest of these States. So we have to go back. We know 70 percent of the American landscape is private land. We know farming dramatically affects the health of America's rivers, lakes, and bays. We have to go back to what we agreed when we passed the farm bill.

When farmers and ranchers take steps to improve air and water quality or assist rare species, they face new costs, new risks, or a loss of income. These conservation programs help share these costs, underwrite these risks, or offset these losses of income.

It helps our farmers and ranchers. They want it. They thought we agreed on it. We thought we had agreed on it. We should go back to what we agreed to.

My amendment, a bipartisan amendment, does that. It tells the administration to honor the 2002 farm bill by fully funding working lands conservation programs. The failure to adequately fund these working lands conservation programs is having a dramatic impact on both farmers and the farm economy.

Mr. President, how much time is remaining to the senior Senator from Vermont?

The PRESIDING OFFICER. Ten minutes 30 seconds.

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

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. KERRY. Mr. President, today I submit into the RECORD a statement regarding my position on an amendment offered by Senators LEAHY and SNOWE to the agriculture appropriations bill. Their bipartisan amendment was aimed at preventing the USDA from using funds from working lands incentive programs to pay for the technical assistance costs of the Conservation Reserve Program. Although I supported the amendment from Senators LEAHY and SNOWE, I believe it underscores the urgent need to prioritize conservation funding and ensure that all conservation programs authorized in the 2002 farm bill, from the Grassland Reserve Program to the Conservation Reserve Program, receive full funding. Robbing one important program to pay for another does not help us achieve our collective goal of improving conservation on farmlands and in rural communities.●

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I appreciate the intent of the amendment my colleague from Vermont is offering. It is an attempt to ensure USDA will carry out mandatory conservation programs as Congress intended in the farm bill, as he has explained.

However, the effect of the Leahy amendment would be to freeze the largest conservation program, the Conservation Reserve Program, until a permanent fix for the problem the Senator has outlined has been found.

I am not a member of the authorizing committee, but I am told by many who are this was not the intent of Congress, that they are not anxious to have the Conservation Reserve Program frozen for any reason, for any purpose, so the Leahy amendment is opposed by many members of the authorizing committee, including its chairman, Senator COCHRAN.

I asked Senator COCHRAN if he would be interested in speaking on this amendment, and he smiled and very graciously delegated that responsibility to me. I am grateful for the confidence, but I feel less equipped perhaps than the chairman himself might be.

Nonetheless, the effect of the Leahy amendment would mean money would flow out of EQIP, WHIP, FRPP, and other programs to pay for the technical assistance for the Wetlands Reserve Program. Many members of the authorizing committee, along with conservation groups and farm groups, agree there is a problem, but not that there is a consensus as to how to solve the problem.

The Senator from Vermont has offered one proposal. But as yet, within the authorizing committee, there is not a great deal of support for that proposal that I am aware of.

Mr. LEAHY. Will the Senator yield?

Mr. BENNETT. I am happy to yield.

Mr. LEAHY. During the debate on the farm bill, there was a colloquy. The distinguished senior Senator from Mississippi, Mr. COCHRAN, asked the then-chairman of the Senate Agriculture Committee ''whether the legislation under consideration here today will fix the problem of the section 11 cap for conservation programs.''

The Senator from Iowa responded it would, and he said:

> As a result, for directly funded programs, such as the Conservation Security Program and the Environmental Quality Incentives Program, funding for technical assistance will come from the borrowing authority of the Commodity Credit Corporation. . . .
>
> For programs such as the CRP, WRP, and the Grasslands Reserve Program . . . funding will come from the annual program outlays . . . from the borrowing authority of the CCC.

This was all carefully worked out. This GAO report shows it was the intent of Congress to do it the way we are funding. Unfortunately, there are those at the Department of Agriculture who will admit that privately but will not admit it publicly.

We are just trying to put the money back where it was. We are not trying to rob any of the others. I am saying they should get the money it was said they would get.

As we showed, in Texas alone, we have a $500 million deficit they assumed had been promised to them. But now, because the reallocation is not going there, hunters, those who fish, farmers, ranchers—they all agree they ought to get the money they asked for. They are good stewards of their land, but a lot of the applications to make sure they are good stewards of the land came about because we promised them the money, and now we are pulling it back. That is my concern. The GAO study makes it very clear it was intended this way.

I thank the Senator for yielding to me to point that out.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I am not arguing, and I do not know anyone who is arguing, that we do not have a problem, nor am I arguing the Congress ought to ignore it or put it off. However, I do believe it is a fix that ought to be crafted in the Senate authorizing committee, the committee which the Senator from Vermont chaired at one point, the Committee on Agriculture, Nutrition, and Forestry. The chairman of that committee has also expressed his opposition to this amendment.

Because I am not a member of the committee, I am not equipped to get into all of the details pro and con, other than to stand here as a surrogate for the chairman and say I believe this belongs in the authorizing committee and not on this appropriations bill. For that reason, I intend to vote against it. I understand a large number of members of the Agriculture Committee also intend to vote against it.

I do not have an argument, as I say, with the substance of the problem. The Senator from Vermont is correct when he talks about the fact that we have a problem or the problem needs to be addressed. I am simply opposing the amendment on the grounds this is not the vehicle with which to do it, and the particular approach he has adopted does not enjoy a consensus that would justify us going forward at this particular time.

I would hope he would be able to craft a solution that would enjoy that kind of consensus, and that we could return to this issue as a Senate and get it resolved at some point in the future.

Mr. LEAHY. Mr. President, I appreciate what the Senator from Utah has said. He is a dear friend of mine. I try to emulate him so much, I even go to the same barber as he does. But in his State, Utah, they are $4.753 million behind what they thought they had been promised.

I couldn't agree more. I have been on the Appropriations Committee for more than a quarter of a century. I don't like to see problems fixed in the Appropriations Committee that could have been fixed in the authorizing committee. But we did fix it in the authorizing committee. We did put in a GAO study. A colloquy between Senator COCHRAN and Senator HARKIN and others makes it very clear we fixed it there. It is USDA that is not following the law.

That is why Texas is behind $500 million in this area, Nebraska is behind $106 million, and Missouri is behind $200 million. I will just read some of these figures. I hope people understand this is not an attack on the CRP program. I support CRP. I voted many times for the CRP in 29 years. What this amendment does is prevent the administration from raiding other conservation programs. Unfortunately, the administration pits conservation programs against one another. What they should do is take it out of the CCC account, as we said in the law.

But I hope when Senators vote, they realize, if they are from Arizona, they have $30 million in their State's EQIP unfunded application. If you are from Arizona, you have $30 million that your farmers are looking for. If you are from Alabama, you have $10 million they are looking for. If you are from Colorado, you have $36 million you are looking for; Florida, $36 million; if you are from Iowa, you have $30 million you are looking for but have not received. If you are from Kansas, you have backlogs of $66 million; Louisiana, $11 million; Missouri, $200 million; Nebraska, $106 million; Montana, $52 million; Oklahoma, nearly $25 million; Tennessee, $21 million; West Virginia, $15 million.

Obviously, every Senator can vote any way he or she wants, but I don't know, if I were from a State that had a backlog of $10 million, as Alabama does, or $30 million, as Arizona does, or $17 million, as Arkansas does, or $35 million, as Colorado does, or $36 million, as Florida does, or $30 million, as Iowa does, or $66 million, as Kansas does, or $12 million, as Louisiana does, or $200 million, as Missouri does, or $51 million, as Montana does, $106 million, as Nebraska does, $500 million, as Texas does, or $25 million, as Oklahoma does, or $8 million, as Pennsylvania does, I think I might want to vote for this and not go back and tell my State, ''Sorry.''

I ask unanimous consent to print in the RECORD the fiscal year 2002 EQIP unfunded applications that we now face.

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

FY–2002 EQIP UNFUNDED APPLICATIONS

State	FY–2002 Backlog
Alabama	$10,244,510
Alaska	4,164,056
Arizona	30,581,190
Arkansas	17,689,860
California	19,911,881
Colorado	35,966,766
Connecticut	7,135,488
Delaware	2,618,440
Florida	36,467,046
Georgia	14,021,176
Hawaii	2,327,794
Idaho	9,064,742
Illinois	16,836,480
Indiana	4,733,120
Iowa	29,066,020
Kansas	66,157,013
Kentucky	4,080,336
Louisiana	11,786,034
Maine	6,167,328
Maryland	2,524,905
Massachusetts	2,008,260
Michigan	6,839,033
Minnesota	13,581,380
Mississippi	10,331,727
Missouri	200,343,682
Montana	51,678,240
Nebraska	106,772,528
Nevada	1,366,340
New Hampshire	2,363,200
New Jersey	15,879,913
New Mexico	30,194,736
New York	13,321,362
North Carolina	8,192,823
North Dakota	10,774,308
Ohio	14,921,919
Oklahoma	24,688,762
Oregon	15,827,422
Pacific Basin	34,185
Pennsylvania	8,316,990
Puerto Rico	740,709
Rhode Island	551,043
South Carolina	15,288,390
South Dakota	14,666,850
Tennessee	21,413,600
Texas	502,051,618
Utah	4,753,280
Vermont	7,960,070
Virginia	6,236,576
Washington	6,365,088
West Virginia	14,915,086
Wisconsin	8,334,480
Wyoming	14,686,650
Total	1,486,944,435.

Mr. LEAHY. Mr. President, the Senator from Utah is back. If he would

like, I would be prepared to yield back all time. I do ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be and there is.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. One thing I want to bring to the attention of the Senate now: In today's Congress Daily PM—meaning the afternoon edition—the second paragraph communicates:

> Democrats block consideration late Wednesday of fiscal year 2004 military construction conference report.

I want the record to be spread that that simply is not true. Whoever gave this reporter this information was either trying to mislead the reporter or simply didn't know what they were talking about. There was never any effort made last night to move the military construction bill in any way. We are ready to move this at any time. We believe the conference reports which have been completed—Military Construction, Energy and Water; those are the two I know of—should be completed immediately.

I want everyone to understand, not last night nor any other time have we ever blocked consideration of the fiscal year 2004 Military Construction appropriations conference report. In fact, not only did we not block it, no one asked us to participate in anything dealing with that conference report. I wish they had. I hope maybe tonight we can do something about this.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, we are currently drawing up a unanimous consent request that would lock down the time. Does the Senator from Vermont yield back the remainder of his time?

Mr. LEAHY. If the Senator from Utah intends to, yes, I will.

Mr. BENNETT. The Senator from Utah is willing to yield back the remainder of the time in opposition to the Senator's amendment. We have an amendment that will be offered by the Senator from Pennsylvania on which it is my intention to have a voice vote and accept. We are getting the exact language, but it is my intention that the Senator from Pennsylvania be given 15 minutes.

I would ask if Senator HARKIN is still planning to come over to take his 15 minutes of debate on the Daschle amendment. If he is, that would mean we could vote on the Leahy amendment and the Daschle amendment and then on final passage around 5:30.

Mr. REID. If I could say to my friend, Senator HARKIN originally wanted to take 15 minutes on the Daschle amendment. But now what he would like to do is take 5 minutes on the Leahy amendment and 5 minutes on the Daschle amendment. So we actually save 5 minutes in the process. I hope that we can agree at this stage that Senator HARKIN be recognized to speak for 5 minutes on the Leahy amendment and 5 minutes on the Daschle amendment. It is my understanding Senator DASCHLE wishes to speak prior to the vote on his amendment.

Mr. BENNETT. It is my understanding that he does as well. We are working all of that out.

Mr. REID. He wanted 10 minutes on that.

Mr. BENNETT. We will work that out in a way that will protect every Senator's rights. But to move us along now, time having been yielded back on the Leahy amendment, I would ask that the Chair recognize the Senator from Pennsylvania for 15 minutes to lay down his amendment. During that 15-minute period, we will codify all of these various agreements and bring that unanimous consent request forward.

Mr. REID. It seems we should get this tied down very quickly. I don't see why we can't do that.

Mr. BENNETT. It is my intention.

Mr. REID. Why don't we do it right now. It is my understanding we are going to vote on Daschle, Leahy, and final passage; is that correct?

Mr. BENNETT. It was my intention to vote on Leahy first.

Mr. REID. Leahy, Daschle, and then you have some amendments you need to clear.

Mr. BENNETT. Then I have some perfecting amendments and then final passage.

Mr. REID. I would ask unanimous consent that Senator SPECTER be recognized to speak for 15 minutes on his amendment and that that be determined by a voice vote, as approved by the two managers; that following that, Senator HARKIN be recognized to speak for 5 minutes for the Leahy amendment and 5 minutes for Senator DASCHLE's amendment, and Senator DASCHLE be recognized for 10 minutes; and following that, there be votes on or in relation to both amendments, Leahy being first; and that there be no second-degree amendments in order to either amendment.

Mr. BENNETT. The Senator has summarized the situation very well, as he always does. I hope the Senate will agree to that unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Mr. President, reserving the right to object, I was trying to hear that. I ask for at least 10 minutes on the Leahy amendment and 10 minutes on the Daschle amendment. I may not take it all.

Mr. REID. Mr. President, I so modify my request to the Senate.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. BENNETT. Mr. President, I ask a further modification: That I be given an additional 5 minutes, if necessary, for a response.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, further, following the cleared amendments, all Members can be ready for a vote on final passage because I also ask unanimous consent that there be no further amendments in order other than those mentioned, including the amendments cleared by the two managers.

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

The Senator from Pennsylvania is recognized.

AMENDMENT NO. 2080

Mr. SPECTER. Madam President, I ask unanimous consent that we now consider my amendment No. 2080, which is pending.

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. SPECTER. Madam President, this amendment provides that none of the funds made available by this act may be used to pay the salaries or expenses of employees of the Department of Agriculture to allocate the rate of price support in a manner that does not support the price of milk in accordance with section 1501(b) of the Farm Security and Rural Investment Act of 2002.

That bill provides, in unequivocal terms, that the price of milk shall be supported at the rate equal to $9.90 per hundredweight for milk containing 3.67 percent butterfat.

On July 8, 20 Senators wrote to the Secretary of Agriculture calling on the Secretary to observe the law with respect to that pricing. I ask unanimous consent that the text of this letter be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, July 8, 2003.

Hon. ANN VENEMAN,
Secretary of Agriculture, Department of Agriculture, Washington, DC.

DEAR SECRETARY VENEMAN: We are writing in support of the National Milk Producer Federation's request for immediate action concerning the Commodity Credit Corporation, CCC, purchase prices for dairy products. Since the current prices reflect only those costs incurred for commercial sales, the market price for individual products has fallen below support levels, thus allowing the price of milk used to produce them to fall below the statutory support level for milk of $9.90 per hundredweight. Accordingly, it is imperative that action be taken to adjust the support program purchase price levels for cheese, butter and nonfat dry milk to reflect the significant additional costs manufacturers face when selling products to CCC.

Class III milk prices have fallen below the milk price support level, and cheese prices have fallen below their respective CCC purchase price levels, because the CCC dairy commodity purchase prices do not compensate for the significant additional costs manufacturers face when they sell products to the CCC. As a result, manufacturers often sell dairy commodities to commercial customers at prices well below the CCC support purchase prices. During the months for which the Class III prices have fallen below support, market prices for cheddar block and barrel cheese have been several cents below their respective support purchase prices.

Without question, our dairy farmers are suffering and need our help. Congress has done its part through enactment of the Farm Bill. It is now time for your Department to follow through and ensure that the price support program operates as we intended. The adjustments outlined above can move us a long way toward accomplishing this vital goal.

Thank you for your time and attention to this matter. We look forward to a timely response.

Sincerely,

Arlen Spector; Jack Reed; Barbara A. Mikulski; Max Baucus; Russel D. Feingold; Paul Sarbanes; Frank Lautenberg; Jim Jeffords; Patty Murray; Ted Kennedy; Patrick Leahy;

Charles Schumer; Mark Dayton; Tim Johnson; Susan Collins; Olympia Snowe; Joe Biden; John F. Kerry; Hillary Rodman Clinton; Herb Kohl; Norman Coleman.

Mr. SPECTER. Madam President, I was lead signatory of the letter. No Senator had received a reply, until today, when we were given a copy of a letter dated August 13, 2003—that is a date stamp, not the date of the letter, which purports to respond to that letter.

In effect, the letter from J.B. Penn, Under Secretary, Farm and Foreign Agriculture Services, concedes that the law was not being followed. The relevant portion reads, in part:

[W]e appreciate your concern that many dairy sector representatives believe that cheese manufacturers are reluctant to sell to CCC, which, in turn, causes monthly Class III milk prices (milk use for cheese) to fall below the $9.90 per hundredweight price support level.

Omitting some language not directly relevant, the concluding sentence of the paragraph is:

The perception is that these additional requirements and the requisite costs lead to the reluctance.

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

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

UNITED STATES
DEPARTMENT OF AGRICULTURE,
Washington, DC, August 13, 2003.

Hon. ARLEN SPECTER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SPECTER: On behalf of Secretary Veneman, thank you for your letter of July 8, 2003, jointly signed by your colleagues, regarding the Commodity Credit Corporation (CCC) dairy product purchase prices.

We appreciate your concern that many dairy sector representatives believe that cheese manufacturers are reluctant to sell to CCC, which, in turn, causes monthly Class III milk prices (milk used for cheese) to fall below the $9.90 per hundredweight price support level. As you know, CCC has requirements in addition to those of commercial sales, primarily for packaging materials, additional storage, additional financing, and Department of Agriculture (USDA) grading. The perception is that these additional requirements and requisite costs lead to the reluctance.

Cheese prices have increased in recent weeks to $1.59 per pound. This is 46 cents per pound above the CCC purchase price and will result in a July Class III milk price above $9.90. Cheese prices have increased because May and June milk production was below a year ago, and there is concern in the market that cheese stocks are inadequate.

We concur that there are extra costs to sell cheese to CCC when compared to the commercial market. However, the fact is, even under current conditions and prices, CCC purchased an average of 1.4 million pounds of cheese per week in January through June. To address industry's concerns, USDA officials have met with representatives of the National Milk Producers Federation and the International Dairy Food Association to discuss the issue. USDA continues to evaluate the situation to determine if any action is required under USDA's milk price support program. Your comments will be taken into consideration as we consider these choices.

Again, thank you for your letter. A similar letter is being sent to your colleagues.

Sincerely,

J.B. PENN,
Under Secretary, Farm and Foreign Agricultural Services.

Mr. SPECTER. Madam President, the consequence has been that the class III price of milk used to make cheese has been below the $9.90 support price 17 times since January 2000 and has been as low as $8.57 in November 2000 and $9.11 in February 2003.

The Secretary might make an argument that the average price isn't at $9.90, but factually that argument could not be made. What we are doing essentially is asking the Secretary of Agriculture to observe the law. It doesn't seem to me that that is too much to ask. We are not trying to rewrite the substantive law on milk pricing because it was enacted in 2002. But we are utilizing this appropriations bill to require that the Secretary observe the law, with the interdiction that she cannot spend any money under this bill unless she does observe the law with respect to this milk price.

We have had a considerable discussion back and forth as to whether the amendment would be accepted. I am prepared to vote on it, but I don't want to burden the record with a vote. I say to the distinguished chairman of the subcommittee of the distinguished Appropriations Committee, where I have served with the Senator from Utah for the past 13 years, in the absence of a recorded vote, which I think would be overwhelming, I am prepared to accept a voice vote. But I would like assurances that the manager will fight to keep this in conference.

Mr. BENNETT. Madam President, I will respond to the Senator by telling him I am in favor of his amendment and will carry that attitude into conference and do the best I can to see to it that it survives.

Mr. SPECTER. This may be risky, but I direct the same question to the distinguished ranking member, the Senator from Wisconsin, my longstanding friend, Mr. KOHL.

Mr. KOHL. I feel as does Senator BENNETT. I will do my best to see that it stays in conference.

Mr. SPECTER. That is very assuring. I am delighted to proceed, as I have discussed with the managers, to have a voice vote and have the amendment in effect accepted, if that is still agreeable to the distinguished Senator from Utah.

Mr. BENNETT. I thank the Senator from Pennsylvania. I believe that, in the interest of time, a voice vote would be sufficient. I think we should have a voice vote rather than just accept the amendment by unanimous consent, so that the record does show that a formal vote took place.

Mr. SPECTER. I ask for the voice vote on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2080) was agreed to.

Mr. SPECTER. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. SPECTER. Madam President, I thank the Chair and the Senator from Utah and the Senator from Wisconsin.

The PRESIDING OFFICER. Who yields time?

The Senator from Iowa is recognized.

Mr. HARKIN. I understand I am allowed 10 minutes to speak on the Leahy amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. Madam President, first, I commend the Senator from Vermont for raising the issue of funding for technical assistance for farm bill conservation programs. The technical assistance, as provided by the staff of the Natural Resource Conservation Service and other qualified providers such as engineers or agronomists, includes planning, designing, construction and implementation of conservation practices on agricultural land—this assistance is essential to allow farmers, ranchers, and landowners to carry out conservation practices.

This amendment, as I understand it, would cut off funding for technical assistance for the Conservation Reserve Program. For that reason, I cannot support the amendment.

Cutting off technical assistance would effectively preclude new enrollments in the CRP program, including the continuous CRP and the Conservation Reserve Enhancement Program, otherwise known as CREP, thus hurting the environment, wildlife, and land owners.

Mr. LEAHY. Madam President, will the Senator yield on that point just for 20 seconds?

Mr. HARKIN. I only have 10 minutes. I will have to ask for more time if I can.

Mr. LEAHY. I wanted to point out this amendment doesn't take it out of the CRP. As the Senator knows—he serves on the Agriculture Committee—I have been a strong supporter of CRP straight through. It is just that the original farm bill took it out of CCC.

What is happening now is the administration is playing one off against the

other with these various conservation programs instead of going to CCC like they are supposed to. All my amendment says is not to take it out of CRP—I am a strong supporter of CRP—but allow the Farm Bill to stand and take it out of CCC as they were supposed to in the first place.

Mr. HARKIN. I appreciate the explanation of the Senator from Vermont. As I understand it, I ask the Senator from Vermont, does this not prevent the transfer of money from donor programs?

Mr. LEAHY. This amendment simply follows the farm bill, and the distinguished Senator from Iowa was the chairman of that conference for the Senate. It was the farm bill on which we agreed.

Mr. HARKIN. I could be wrong. I want to understand, if I can make a few more comments, and let the Senator from Vermont see if this is a correct interpretation. Prior to the passage of the farm bill in 2002, there was a shortage of technical assistance funding because the 1996 farm bill limited technical assistance funding to that amount available under section 11 of the CCC. That was $56 million a year. This became known as the section 11 cap.

The 2002 farm bill corrected this problem by providing an alternative source for technical assistance funds. What we did was we included a provision in the conservation title of the farm bill that technical assistance funding would come directly from the funds provided for each conservation program.

This approach was not novel or untested. Congress relied on similar language in the 1996 farm bill providing funding for technical assistance for the EQIP program, the Environmental Quality Incentives Program, directly from EQIP funds and outside the section 11 cap. We adopted this approach for all environmental programs to ensure there would be adequate funding for technical assistance. We all agreed on that approach. That is in the 2002 farm bill.

Soon after the passage of the farm bill, we got a big shock from the Bush administration because they announced that the section 11 cap still applied, despite the language we had put in the farm bill.

Despite the opinion of Nancy Bryson, General Counsel at USDA, and despite the opinion of the GAO, the General Accounting Office, that the 2002 farm bill provided new authority for funding technical assistance, not subject to the section 11 cap, the White House, through OMB and then the Department of Justice, decided that the farm bill's conservation program funds could not be used for technical assistance because they were limited to the section 11 cap, thereby, largely blocking implementation of the conservation programs.

We attempted to fix this in the fiscal year 2003 omnibus appropriations bill. As a result, funds from the dollar-limited conservation programs are now used to pay for technical assistance for all the conservation programs, including the Conservation Reserve Program and the Wetlands Reserve Program, which are acreage limited programs.

Senator LEAHY, I believe, is correct that we now have a situation in which money that the farm bill provided for some conservation programs is being diverted to pay for technical assistance for others. Because of this problem, there is less conservation money going to producers and landowners than was intended or provided in the farm bill.

In fiscal year 2003, almost $91 million in conservation funds were lost because that amount of money was taken from some programs and used to provide technical assistance for other programs. If the White House had implemented the farm bill as intended and as we got the opinion from the general counsel at USDA, this would not have happened.

However, two wrongs don't make a right, and my problem, as I understand it, with the Leahy amendment—and I stand to be corrected by the author of the amendment—is that what would happen under this amendment is it would effectively mean that under the Conservation Reserve Program, we would not be able to enroll any new land. We would not be able to continue the continuous sign-up in the CRP program. We would not be able to continue the agreements we have in the CREP, the Conservation Reserve Enhancement Program.

That is why, as I understand the Senator's amendment, it says that the donor programs are not available for technical assistance funds for CRP, but doesn't provide an alternative source.

I ask the Senator from Vermont, does his amendment take away the section 11 cap? If we do away with the section 11 cap unequivocally and we go back to what we provided in the 2002 farm bill, then maybe the Senator's amendment is fine. That is not the way I read it.

I yield to the Senator to correct me if I am wrong.

Mr. LEAHY. Madam President, the Senator who helped put together that farm bill knows the farm bill itself took away the section 11 caps. My amendment in no way takes money from CRP or anything else. It simply builds a firewall around EQIP, FRPP, GRP and WHIP, which is what we all agreed to at the time when the chairmen of the House and Senate Agriculture Committees and others were trying to make sure they had votes to pass the farm bill. These programs were essential to get the support from the East where most of the tax dollars come to pay for this farm bill.

This amendment does not take from CRP. We are simply telling USDA to take it from the CCC. It tells the USDA to go back to the farm bill, which spoke of taking this money from the CCC. It just builds a firewall. That is all; nothing more, nothing less. The reason I care this much about it is that it was pointed out during the farm bill debate that the bulk of the money was going to the Midwest, yet the tax dollars were coming from much more populous States, mostly through the Northeast, to pay for it. Almost all the money was going to the Midwest and other farm areas, but this is the one area that we got anything.

EQIP is the only area where the Northeast States get some assistance—so it doesn't sound parochial, the backlog in my State is less than $8 million. The backlog in Iowa is about $29 million. We just want to build the firewall. That is all.

When the Congress, in a bill that had been debated for weeks and negotiated for weeks, tells the Department of Agriculture to do something, I like to think they are going to do something. GAO says they are not following our clear intent.

Mr. HARKIN. I agree with the Senator that USDA should have followed the farm bill and the White House simply choose not to do so.

Mr. LEAHY. What we are saying is just build the firewall, not rob Peter to pay Paul from these conservation programs, especially CRP, which I support. CRP is used in the Senator's State of Iowa a great deal. I have always supported the other Senators.

All I am saying is go back to CCC where this is supposed to be. That is all.

Mr. HARKIN. Madam President, I say to the Senator from Vermont that we go back to CCC, but the section 11 cap still applies and there would be no funding technical assistance for CRP. The Senator has to know that under the Senator's amendment, new enrollments for CRP will effectively come to an end.

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

Mr. HARKIN. Madam President, I ask for at least 5 more minutes, after yielding time.

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

Mr. HARKIN. Madam President, I understand what the Senator is doing, but two wrongs do not make a right. Now, if the Senator wants to have an amendment that would lift the section 11 cap, or that would clearly spell out that the farm bill once again in 2002—what we did—bypassed the section 11 cap, that is fine.

As I understand it, as I read his amendment, as my staff has informed me, as I have looked at it, that is not what the amendment does. The amendment simply, as the Senator said, builds firewalls. By building firewalls, that goes against what we did in the 2003 omnibus bill, because in the omnibus bill we provided for a mechanism that said we could then use these funds for technical assistance, and that is exactly what we are doing.

Again, I say that the Senator from Vermont is correct in that we have a

situation in which money that the farm bill provided for some conservation programs is being diverted to pay for technical assistance for others. I am all for changing that but not in the way the Senator wants, because the way the Senator wants effectively cuts off signing up for the CRP program.

I am a big supporter of the EQIP program, and FPP and WHIP and GRP. That is fine, and they should be fully funded, as they were in our farm bill, but we cannot abandon the CRP program. That is exactly what the effect of this amendment would do.

Those of us from those States in which we have the CRP program or the CRP program in which we have continuous signup, this would take money away from this very effective program. Almost all states have land enrolled in CRP and there are 23 states that have CREPs—new enrollments in those and continuous CRP would come to a halt.

We could solve this problem of TA funding for CRP and WRP for, according to estimates from USDA, $100 million a year or for $300 million from fiscal year 2004 to fiscal year 2006. Three hundred million dollars would take care of the whole thing. Yet the administration will not provide this money at all.

The President requested nearly $900 million this year for Iraq to have funds for irrigation equipment and the protection of marshlands in the Supplemental. So we have $900 million to go to Iraq for irrigation equipment and protection of marshlands, and $300 million would take care of our entire country in terms of the Conservation Reserve Program and the Wetlands Reserve Program for three years.

There are ways of fixing this, I say to my friend from Vermont, and ways that we agreed upon in the farm bill. The Senator from Vermont and I were together on the farm bill. We agreed on how to do this, but this is not the way to do it now.

Mr. LEAHY. If the Senator will yield, I thought in the unanimous consent request we divided the 5 minutes. I am told we did not so it is still the time of the Senator, but I would say all I want to do is what we did in the bill. I want the USDA to follow the bill, and I would read a colloquy. It says:

> . . . funding for technical assistance will come from the borrowing authority of the Commodity Credit Corporation, and will no longer be affected by section 11 of the CCC Charter Act. For those programs such as the CRP, WRP, and the Grasslands Reserves Program, which involve enrollment based on acreage, the technical assistance funding will come from the annual program outlays apportioned by OMB—again, from the borrowing authority of the CCC. These programs, too, will no longer be affected by section 11 of the CCC Charter Act.

That was on the floor from the statement of the distinguished Senator from Iowa as the manager of that bill.

I do not know how much clearer I can say it. We are trying to get the Department of Agriculture to follow the law.

I know the Senator from Iowa has been a supporter of all of these programs, as I have of the programs that affect his State, not those of us in the East. I am just saying I want the Department of Agriculture to stick to the agreement they made with the conferees at the time we passed the bill, and the only way it seems we can get them to do that is to restate it in this amendment.

Mr. HARKIN. I would join with the Senator in any kind of an amendment to get rid of the section 11 cap. That is the answer right there, get rid of the section 11 cap.

We effectively did that in the farm bill. The administration says no. Well, an amendment to that line would do that.

In closing, the major wildlife groups in this country, from Ducks Unlimited, Izaak Walton League of America, National Audubon Society, Pheasants Forever, the Wildlife Society, and Wildlife Management Institute do not support this amendment. They sent a letter to both Chairman BENNETT and Ranking Member KOHL that said they can't support this amendment if it would have a chilling effect on CRP.

Again, I find myself in a strange position because in many ways I agree with the Senator from Vermont. He is right in what he is trying to do in terms of saying that we have to have more funding for technical assistance, but not in this manner because it would effectively stop the CRP program.

The PRESIDING OFFICER. The Senator's time on the Leahy amendment has expired.

The Senator from Utah.

Mr. BENNETT. As I understand it, Senator HARKIN still has 10 minutes to speak on the Daschle amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. I am sorry. I did not realize the parliamentary situation. Are these two votes going to be lumped together?

Mr. BENNETT. Yes, the two votes will be stacked. We have reserved 10 minutes for the Senator from Iowa to speak on the Leahy amendment and 10 minutes for him to speak on the Daschle amendment. If he wishes to yield back his 10 minutes on the Daschle amendment, there will be no objection.

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

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

AMENDMENT NO. 2078

Mr. HARKIN. Madam President, the 2002 farm bill included an important program, known as country-of-origin labeling, that adds value to farm products and gives consumers more information about the origin of foods they buy for their families. Opponents of the law have used scare tactics and false information in an attempt to water down or overturn this important program.

Unfortunately, the opponents of the law persuaded the House Appropriations agricultural subcommittee to cancel funding to carry out this program as it applies to labeling for meat. This is the wrong course. USDA needs the funding to continue the rule making process so the program is workable as it was intended by the farm bill.

A large number of other countries have country-of-origin labeling. The General Accounting Office has found that of the 57 U.S. trading partners, 48 require country-of-origin labeling for one or more of the commodities covered by our country-of-origin labeling law.

In this country, over 135 organizations, from the American Farm Bureau Federation, the National Farmers Union, and the Consumer Federation of America—broad support—support country-of-origin labeling for meat. These organizations represent the will of producers and consumers across our country.

Several academic studies in the last year have examined the benefits of country-of-origin labeling for meat. For example, the International Agricultural Trade and Policy Center at the University of Florida found that the benefits of labeling beef clearly outweighed the costs. Research by Colorado State University found that consumers were willing to pay an 11-percent premium on steak and a 24-percent premium for country-of-origin labeling on hamburger.

This research reflects the desire for country-of-origin labeling of meat. Country-of-origin labeling for meat is law. It is law right now. It became law when President Bush signed the 2002 farm bill. Whether or not the Agriculture appropriations bill funds the program, the law still requires meat to be labeled. Removing funding essentially creates a situation where retailers will still be legally required to label meat but USDA will have no funding to provide oversight and work out in a meaningful manner any problems that exist within the meat-labeling regulations.

Then again next year the same debate will come before Congress, asking us to remove funding, asking us to delay country-of-origin labeling for meat for another year. This is just a 1-year bill. The law is already there on the books. Removing funding as the House Appropriations Committee did does not solve any problems. It only creates more problems down the road for the program that is already in the law and that would provide consumers the information they want.

Madam President, it was interesting that in the House appropriations bill, they cut out funding for country-of-origin labeling for meat but, guess what, they left the money in there for country-of-origin labeling for peanuts. They

left the money in there for country-of-origin labeling for fish. They left the money for country-of-origin labeling in there for vegetables. They left the money for country-of-origin labeling in there for fruit. But not meat.

Right away you have to ask yourself a question: What is this all about? Why would they say consumers ought to have the right to know where their fish comes from, but not their meat? Why would they say consumers ought to have the right to know where their peanuts come from, but not their meat?

The fact is, a few in this country—a few, and I mean a few—are trying to overcome in the appropriations process what they could not succeed in doing when we passed the farm bill. They were there. They testified. They had their proposals. They didn't want country-of-origin labeling. We voted on it and it was passed in the House, it was passed in the Senate, it was kept in conference, and the President signed it. Now they are attempting to undo that through the appropriations process. That is why we have to speak loudly and clearly that we want to make sure the law is carried forward.

As I pointed out, even if you don't fund it, retailers will still have to abide by the law. They will still have to give us country-of-origin labeling on meat. It just means the Department of Agriculture will not be able to help them clear up any confusion that may arise. That is the worst possible position in which we could put our retailers. We ought to give them the assistance, the help, the support, the advice, the consultation the Department of Agriculture should do to implement this law.

Before I close, I want to take a moment to say I am pleased the Senate supported the amendment by Senators DORGAN and BURNS, which I cosponsored, to increase the funding level of the Rural Broadband Loan Program. I worked to include the loan program in the 2002 farm bill to help bring high-speed Internet to rural farm communities across the country.

Since its launch, there have been more than $1 billion in loan applications to build the broadband infrastructure. This extra funding will go a long way to ensure this program remains strong and can provide the resources needed to ensure rural America keeps faith with its urban neighbors in the 21st century.

In closing, I don't know if I will have time to speak again on the bill. I think we are coming close to voting. First, let me commend the chairman and ranking member for putting together a great Agriculture appropriations bill. I thank them for accepting the rural broadband provisions, as well as many other very good provisions. If we can past the amendment that was just offered here, I think we will have a tremendous Agriculture appropriations bill.

I commend the chairman and commend the ranking member for the excellent job they have done on this bill.

I yield the floor.

Mr. BENNETT. I thank the Senator for his courtesy and kind words. I must now confess error. When we entered into the unanimous consent agreement, we inadvertently left off an opportunity for the chairman of the Agriculture Committee to offer an amendment. I apologize to Senator COCHRAN for that oversight.

I ask unanimous consent that an additional 10 minutes be set aside, equally divided, between Senator COCHRAN and any opponents to his amendment, to be taken care of before we proceed to the vote.

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

Mr. BENNETT. Madam President, I suggest the absence of a quorum to allow Senator COCHRAN to come to the floor.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BENNETT. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. BENNETT. Senator COCHRAN is in the cloakroom and will be coming on to the floor momentarily. I simply want to once again apologize to him for our inadvertence in leaving his amendment off the list. I appreciate the indulgence of Senators to have this additional 5 to 10 minutes for the opportunity to dispose of this particular amendment.

The PRESIDING OFFICER. The Senator from Mississippi.

AMENDMENT NO. 2120

Mr. COCHRAN. Madam President, I send an amendment to the desk under the unanimous consent request and ask it be stated.

The PRESIDING OFFICER. Without objection, the pending amendments will be laid aside and the clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] proposes an amendment numbered 2120.

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

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

The amendment is as follows:

(Purpose: To provide plant variety protection)

On page 19, line 26, before the period, insert the following: ": *Provided further*, That, in the case of the term of protection for the variety for which certificate number 8200179 was issued, on the date of enactment of this Act, the Secretary of Agriculture shall issue a new certificate for a term of protection of 10 years for the variety, except that the Secretary may terminate the certificate (at the end of any calendar year that is more than 5 years after the date of issuance of the certificate) if the Secretary determines that a new variety of seed (that is substantially based on the genetics of the variety for which the certificate was issued) is commercially viable and available in sufficient quantities to meet market demands".

Mr. COCHRAN. Madam President, the Plant Variety Protection Act codifies our international commitments under treaties for protection of plant varieties. The law gives plant varieties 20 years of protection, similar to a patent, in order to preserve the quality of the variety. The law currently does not provide any mechanism to provide for periods of additional protection for varieties that are still commercially valuable.

The original PVPA certificate for Marshall ryegrass was issued prior to the adoption of the latest changes pursuant to international negotiations and, as a result, were protected for less than the current 20-year period. My amendment would provide an additional period of PVPA protection of up to 10 years for one of the most if not the most heavily used varieties of ryegrass used by livestock producers around the country.

The Secretary would be authorized to cancel this protection as soon as a new variety of this valuable feed grass is developed.

There are letters which I will send to the desk for inclusion in the RECORD in support of this amendment. One is from OreGro Seeds Incorporated in Oregon; another is from a second company, Smith Seed Services in Oregon; another from Plantbreeding Seed Production, Seed Trade, member of an organization called the Barenbrug Group.

I ask unanimous consent all of these letters be printed in the RECORD.

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

OREGRO SEED, INC.,
Shedd, OR, July 11, 2003.

Re plant variety protection for Marshall Ryegrass.

Hon. GORDON SMITH,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SMITH, We understand that Senator Cochran is introducing legislation that will extend the PVP for Marshall Ryegrass. This legislation is of critical importance to the Oregon grass seed industry, and we urge you to give this measure your strongest support.

Your strong support for the Oregon seed industry is greatly appreciated, and we also urge you to contact Senator Cochran's office to express your support for this important issue.

Sincerely,

DON HERB.

SMITH SEED SERVICES,
Halsay, OR, July 11, 2003.

Re legislation from Senator Cochran.

Hon. GORDON SMITH,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SMITH, Senator Cochran is introducing legislation to extend the PVP production for Marshall annual ryegrass. This legislation is critically important to the Oregon grass seed industry. I strongly urge your support for this legislation.

Smith Seed is one of the largest producer and shipper of forage and turf grass seed in

Oregon. We have about 100 to 120 employees and represent a grower base of over 300 independent grass seed farmer producers. We ship in excess of 160 million pounds of seed annually to domestic and international accounts.

Your strong support for this important legislation for the Oregon seed industry is greatly appreciated, and I also ask that you contact Senator Cochran's office to express your support.

Thank you for your service and support of the Oregon seed industry.

Sincerely,

PAUL ZEHR.

BARENBRUG USA,
Tangent, OR, July 11, 2003.

Re legislation from Senator Cochran.

Hon. GORDON SMITH,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SMITH: We are aware that Senator Cochran, (Miss R) is introducing legislation in the upcoming Senate Agricultural Committee in DC next week, to extend the Plant Variety Protection (PVP) for Marshall annual ryegrass. This legislation is of vital importance to the long term viability of the US and Oregon grass seed industry, and in the strongest possible way, we ask for your support of this important measure.

Barenbrug USA is an Oregon based grass seed breeding, production and wholesale marketing company. We employ more than 150 workers, and buy seed from family farmers on over 40,000 acres in Oregon and the Northwest. We consider ourselves to be one of the leaders in this industry, and one of the largest grass seed companies in the world.

By extending the PVP on this variety, the value level of grass seed sales in the US South and South East will be maintained. By not extending the PVP, there is a significant chance that named ryegrass varieties will again be seen as commodities and no longer be sold at price levels which assure returns for the entire seed value chain, including the seed growers. All seed of ryegrass varieties is produced in Oregon, hence our interest in this discussion and our request to you.

We sincerely appreciate your support during session for this legislation that is critical to the US and Oregon grass seed industry, and also ask that you contact Senator Cochran's office to voice your strong support.

Thank you for your record of dedicated service and support of our industry. Please advise if you have any questions or comments.

Sincerely,

MARC W. COOL, M.SC.
Vice President/COO.

Mr. COCHRAN. Madam President, I also have a letter from the Livestock Producers Association and a letter from the State of Mississippi's Department of Agriculture and Commerce.

I ask unanimous consent that the letters be printed in the RECORD.

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

LIVESTOCK PRODUCERS ASSOCIATION,
Tylertown, MS, April 4, 2003.

Hon. THAD COCHRAN,
U.S. Senate,
Washington, DC.

DEAR SIR: I am writing to ask for your help in getting the Plant Variety Protection (PVP) certification extended for Marshall Ryegrass.

Marshall Ryegrass has been an integral part of many Mississippi cattle operations for many years and without the assurance of PVP, there is great concern that the integrity of the variety would be compromised.

Grass varieties often lose their identity quickly after PVP expires and in light of the fact that there is not a clearly superior product for winter forage production, I feel that maintaining the genuine Marshall strain is very important to the cattle producers of our state.

We need Marshall, not an inferior substitute.

Sincerely,

MIKE PIGOTT,
Manager.

STATE OF MISSISSIPPI, DEPARTMENT OF AGRICULTURE AND COMMERCE,
Jackson, MS, February 11, 2003.

Hon. THAD COCHRAN,
U.S. Senator, Mississippi,
Washington, DC.

DEAR SENATOR COCHRAN: This letter is written in concern for the protection of Marshall Ryegrass under the Plant Variety Protection Act (PVPA). The patent on this grass has expired, and I—as well as others—would like to have the patent extended on this variety of grass.

Marshall Ryegrass is extremely popular among Mississippi farmers who plant winter grazing crops. The loss of the patent protection can and will lead to widespread deception and mislabeling of poor quality grazing grasses. Due to this concern, it is my request that Congress enact legislation that will restore the PVPA protection for the Marshall Ryegrass variety.

Any assistance you can provide will be appreciated.

Sincerely,

LESTER SPELL, Jr.,
Commissioner.

The PRESIDING OFFICER. Who yields time?

Mr. COCHRAN. Madam President, I am prepared to yield back the time on the amendment. I yield the time on the amendment.

The PRESIDING OFFICER. Time is yielded.

Mr. KOHL. I yield our time.

Mr. BENNETT. Madam President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2120) was agreed to.

Mr. BENNETT. Madam President, I understand that I had 5 minutes allocated to me under the unanimous consent agreement. I am prepared to yield that back and proceed to a vote.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BENNETT. Madam President, it is my understanding that all time has been yielded. We are, therefore, ready to vote.

VOTE ON AMENDMENT NO. 2119

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Vermont.

Mr. BENNETT. Madam President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

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

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

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

The result was announced—yeas 38, nays 56, as follows:

[Rollcall Vote No. 442 Leg.]

YEAS—38

Akaka	Dole	Murray
Biden	Enzi	Nelson (FL)
Bingaman	Fitzgerald	Reed
Breaux	Graham (FL)	Reid
Byrd	Gregg	Rockefeller
Cantwell	Hollings	Sarbanes
Carper	Jeffords	Schumer
Chafee	Kennedy	Snowe
Clinton	Landrieu	Specter
Collins	Lautenberg	Stabenow
Corzine	Leahy	Voinovich
DeWine	Levin	Wyden
Dodd	Mikulski	

NAYS—56

Alexander	Dayton	Lincoln
Allard	Domenici	Lott
Allen	Dorgan	Lugar
Baucus	Durbin	McCain
Bayh	Ensign	McConnell
Bennett	Feingold	Murkowski
Bond	Feinstein	Nelson (NE)
Boxer	Frist	Nickles
Brownback	Graham (SC)	Pryor
Bunning	Grassley	Roberts
Burns	Hagel	Santorum
Chambliss	Harkin	Sessions
Cochran	Hatch	Shelby
Coleman	Hutchison	Smith
Conrad	Inhofe	Stevens
Cornyn	Inouye	Talent
Craig	Johnson	Thomas
Crapo	Kohl	Warner
Daschle	Kyl	

NOT VOTING—6

Campbell	Kerry	Miller
Edwards	Lieberman	Sununu

The amendment (No. 2119) was rejected.

AMENDMENT NO. 2078

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I ask unanimous consent that there now be 2 minutes of debate equally divided prior to a vote in relation to the Daschle amendment. I further ask unanimous consent that the remaining two votes in this series, this one and the vote on final passage, be limited to 10 minutes each.

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

Mr. BENNETT. Mr. President, I yield back all of the remaining time.

The PRESIDING OFFICER. All time is yielded back.

Mr. BENNETT. Mr. President, I move to table the Daschle amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

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

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

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

The result was announced—yeas 36, nays 58, as follows:

[Rollcall Vote No. 443 Leg.]

YEAS—36

Allard	Corzine	Lincoln
Allen	Craig	Lugar
Bayh	Crapo	McCain
Bennett	Dole	McConnell
Bond	Durbin	Nelson (FL)
Brownback	Fitzgerald	Nickles
Bunning	Frist	Pryor
Chafee	Hatch	Roberts
Chambliss	Hutchison	Santorum
Cochran	Inhofe	Stevens
Coleman	Kyl	Talent
Cornyn	Lautenberg	Voinovich

NAYS—58

Akaka	Ensign	Mikulski
Alexander	Enzi	Murkowski
Baucus	Feingold	Murray
Biden	Feinstein	Nelson (NE)
Bingaman	Graham (FL)	Reed
Boxer	Graham (SC)	Reid
Breaux	Grassley	Rockefeller
Burns	Gregg	Sarbanes
Byrd	Hagel	Schumer
Cantwell	Harkin	Sessions
Carper	Hollings	Shelby
Clinton	Inouye	Smith
Collins	Jeffords	Snowe
Conrad	Johnson	Specter
Daschle	Kennedy	Stabenow
Dayton	Kohl	Thomas
DeWine	Landrieu	Warner
Dodd	Leahy	Wyden
Domenici	Levin	
Dorgan	Lott	

NOT VOTING—6

Campbell	Kerry	Miller
Edwards	Lieberman	Sununu

The motion was rejected.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, with the motion to table having failed, I ask for a voice vote on the underlying amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2078.

The amendment (No. 2078) was agreed to.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, we are ready to move to final passage. I have some housekeeping details before we do that.

AMENDMENTS NOS. 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2085, 2130, 2131, 2132, 2133, AND 2134, EN BLOC

Mr. BENNETT. Mr. President, I send to the desk a group of amendments, all of which have been cleared on both sides, and I ask unanimous consent that they be considered en bloc and that they be approved en bloc by voice vote.

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

The question is on agreeing to the amendments.

The amendments were agreed to en bloc, as follows:

AMENDMENT NO. 2121

(Purpose: To increase funding for the removal of trees that have been adversely affected by the emerald ash borer, with offsets)

On page 3, line 12, strike ''$119,289,000'' and insert ''$118,789,000''.

On page 5, line 1, strike ''$188,022,000'' and insert ''$187,022,000''.

On page 17, line 16, after ''eradication zones'' insert ''; and of which not less than $1,500,000 (in addition to any other funds made available for eradication or containment) shall be used by the Emerald Ash Borer Task Force for the removal of trees that have been adversely affected by the emerald ash borer, with a priority for the removal of trees on public property or that threaten public safety''.

AMENDMENT NO. 2122

(Purpose: To require the Secretary of Agriculture to report to Congress on acquisitions made by the Department of Agriculture of articles, materials, or supplies manufactured outside the United States)

On page 6, line 12, strike the period at the end and insert '': *Provided further,* That of such amount, sufficient funds shall be available for the Secretary of Agriculture, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of Agriculture during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of Agriculture that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of Agriculture shall make the report publicly available by posting the report on an Internet website.''.

AMENDMENT NO. 2123

(Purpose: To permit the use of remaining fiscal year 2003 funds to carry out the program of loans and loan guarantees to provide access to broadband telecommunications services in rural areas)

On page 76, strike lines 1 through 5 and insert the following:

SEC. 749. ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS.

None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the $20,000,000 made available by section 601(j)(1)(A) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(j)(1)(A)) for fiscal year 2004.

AMENDMENT NO. 2124

(Purpose: To control and alleviate the cormorant problem in the State of Michigan)

On page 17, line 16, before the colon, insert the following: ''; and of which up to $275,000 may be used to control or alleviate the cormorant problem in the State of Michigan''.

AMENDMENT NO. 2125

(Purpose: To provide minimum funding for certain types of agricultural management assistance)

On page 78, strike lines 8 through 16, and insert the following:

SEC. 759. AGRICULTURAL MANAGEMENT ASSISTANCE.

Section 524(b)(4)(B) of the Federal Crop Insurance Act (7 U.S.C. 1542(b)(4)(B)) is amended—

(1) in clause (i), by striking ''clause (ii)'' and inserting ''clauses (ii) and (iii)''; and

(2) by adding at the end the following:

''(iii) CERTAIN USES.—Of the amounts made available to carry out this subsection for each fiscal year, the Commodity Credit Corporation shall use not less than—

''(I) $15,000,000 to carry out subparagraphs (A), (B), and (C) of paragraph (2) through the Natural Resources Conservation Service; and

''(II) $2,000,000 to provide organic certification cost share assistance through the Agricultural Marketing Service.''.

AMENDMENT NO. 2126

(Purpose: To authorize the Secretary of Agriculture to make funding and other assistance available through the emergency watershed protection program to repair and prevent damage to non-Federal land in watersheds that have been impaired by fires initiated by the Federal Government and to waive cost sharing requirements for the funding and assistance)

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. EMERGENCY WATERSHED PROTECTION PROGRAM.

Notwithstanding any other provision of law, the Secretary of Agriculture is authorized hereafter to make funding and other assistance available through the emergency watershed protection program under section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) to repair and prevent damage to non-Federal land in watersheds that have been impaired by fires initiated by the Federal Government and to waive cost sharing requirements for the funding and assistance.

AMENDMENT NO. 2127

(Purpose: To expand the business size restrictions of the Rural Business Enterprise Grant Program for Oakridge, OR)

At the appropriate place, insert the following:

''The Secretary may waive the requirements regarding small and emerging rural business as authorized under the Rural Business Enterprise Grant program for the purpose of a lease for the Oakridge Oregon Industrial Park.''

AMENDMENT NO. 2128

(Purpose: To provide funds to carry out the historic barn preservation program, with an offset)

On page 42, between lines 13 and 14, insert the following:

HISTORIC BARN PRESERVATION PROGRAM

For the historic barn preservation program established under section 379A of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008*o*), $2,000,000.

On page 58, line 19, strike ''$90,435,000'' and insert ''$88,435,000''.

AMENDMENT NO. 2129

(Purpose: To modify the requirements for a water and waste disposal grant to the Alaska Department of Community and Economic Development)

At the appropriate place, insert the following:

SEC. ___. WATER AND WASTE DISPOSAL GRANT TO THE ALASKA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT.

Notwithstanding any other provision of law—

(1) the Alaska Department of Community and Economic Development may be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is up to 75 percent of the total cost of providing water and sewer service to the proposed hospital in the Matanuska-Susitna Borough, Alaska;

(2) the Alaska Department of Community and Economic Development may be allowed to pass the grant funds through to the local government entity that will provide water and sewer service to the hospital; and

AMENDMENT NO. 2085

(Purpose: To permit the enrollment in the conservation reserve program of certain land on which trees have been planted)

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. CONSERVATION RESERVE PROGRAM.

Land shall be considered eligible land under section 1231(b) of the Food Security Act of 1985 (16 U.S.C. 3831(b)) for purposes of enrollment into the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) if the land—

(1) is planted to hardwood trees as of the date of enactment of this Act; and

(2) was enrolled in the conservation reserve program under a contract that expired before the date of enactment of this Act.

AMENDMENT NO. 2130

(Purpose: To prohibit the use of funds to purchase chickens treated with fluoroquinolone)

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. PROHIBITION OF USE OF FUNDS TO PURCHASE CHICKEN TREATED WITH FLUOROQUINOLONE.

After December 31, 2003, none of the funds made available by this Act may be used to purchase chickens or the products of chickens for use in any program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), unless the supplier provides certification that the supplier does not feed or administer fluoroquinolone to chickens produced by the supplier.

AMENDMENT NO. 2131

(Purpose: To provide loan guarantees for major projects for certain renewable energy systems)

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. RENEWABLE ENERGY SYSTEM LOAN GUARANTEES.

Title IX of The Farm Security and Rural Investment Act of 2002 is amended by adding the following new section:

Sec. : Renewable Energy System Loan Guarantees.

''LOAN GUARANTEES FOR CERTAIN PROJECTS.—

''(1) DEFINITION OF SUBSIDY COSTS.—In this subsection, the term 'subsidy costs' has the meaning given the term 'cost' in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

''(2) PROJECTS.—Subsection (c)(1) shall not apply to a loan guarantee made under this subsection to carry out a project if—

''(A) the loan will be used—

''(i) to purchase a renewable energy system that has, as 1 of its principal purposes, the commercial production of an agricultural commodity; and

''(ii) to promote a solution to an environmental problem in a rural area of the State in which the project will be carried out;

''(B) the lender of the loan exercises due diligence with respect to theborrower of the loan;

''(C) the borrower of the loan pays in full, before the guarantee is issued, a guarantee fee in the amount of the estimated subsidy cost of the guarantee, as determined by the Director of the Office of Management and Budget;

''(D) except as provided in subparagraph (E), the principal amount of the loan is not more than $25,000,000;

''(E) the principal amount of the loan is more than $25,000,000, but is not more than $75,000,000, if the Secretary—

''(i) approves the loan application; and

''(ii) does not delegate the authority described in clause (i);

''(F) the project requires no Federal or State financial assistance, other than the loan guarantee provided under this subsection; and

''(G) the project complies with all necessary permits, licenses, and approvals required under the laws of the State.

''(3) COST SHARING.—

''(A) IN GENERAL.—The amount of a loan guarantee under this subsection for a project described in paragraph (2) shall not exceed 80 percent of the total project cost.

''(B) SUBORDINATION.—Any financing for the non-Federal share of the total project cost shall be subordinated to the federally guaranteed portion of the total project cost.

''(4) LOAN GUARANTEE LIMITS.—The loan guarantee limitations applicable to the business and industry guarantee loan program authorized under section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) shall apply to loan guarantees made under this subsection.

''(5) MAXIMUM AMOUNT.—

''(A) INDIVIDUAL LOANS.—The amount of principal for a loan under this subsection for a project described in paragraph (2) shall not exceed $75,000,000.

''(B) ALL LOANS.—The total outstanding amount of principal for loans under this subsection for all projects described in paragraph (2) shall not exceed $500,000,000.

''(C) The Secretary shall publish a proposed rule to carry out this section within 120 days of enactment of this Act.''

AMENDMENT NO. 2132

(Purpose: To clarify the Secretary may use competitive research grant funds for certain requests for proposals)

On page 71, line 2, before the period, insert the following: '', including requests for proposals for grants for critical emerging issues described in section 401(c)(1) of that Act for which the Secretary has not issued requests for proposals for grants in fiscal 2002 or 2003''.

AMENDMENT NO. 2133

(Purpose: To increase funding for guaranteed broadband loans, with an offset)

On page 47, line 13, strike ''$335,963,000'' and insert ''$647,000,000''.

On page 48, line 2, strike ''$9,116,000'' and insert ''$15,116,000''.

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. REDUCTION IN TRAVEL AMOUNTS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, each amount provided by this Act for travel expenses is reduced by the pro rata percentage required to reduce the total amount provided by this Act for such expenses by $6,000,000.

(b) REPORT.—Not later than 30 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to subsection (a).

AMENDMENT NO. 2134

(Purpose: To modify the requirements for a water and waste disposal grant to the city of Postville, Iowa)

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. WATER AND WASTE DISPOSAL GRANT TO THE CITY OF POSTVILLE, IOWA.

Notwithstanding any other provision of law, the city of Postville, Iowa, shall be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is equal to not more than 75 percent of the total cost of providing water and sewer service in the city.

AMENDMENT NO. 2128

Mr. JEFFORDS. Mr. President, I thank Chairman BENNETT and Ranking Member KOHL for their leadership in crafting the Senate's version of the 2004 Agriculture appropriations bill. I appreciate their willingness to work with me to include $2 million in funding for the Historic Barn Preservation Program. This program was authorized in the 2002 farm bill, but until now has not received any funding.

Our Nation's aging barns are important symbols of our agricultural heritage, and we must see that they remain a part of our landscapes. This program was established to preserve barns that are in danger of falling beyond repair due to decades of deferred maintenance. To qualify, a barn must be at least 50 years old. Preservationists are especially concerned with the oldest barns, many are more than 200 years old and some date back as far as 1790.

Before this program can be successfully implemented. Congress must give it adequate funding. My amendment, which would provide $2 million in funding for the barn preservation program, will address the growing demand for historic preservation in our rural communities by documenting and researching appropriate techniques and best practices for protecting these treasures.

I am not alone in urging funding for the barn preservation program. Last June, I led a bipartisan group of 24 Senators who sent a letter to the Appropriations Subcommittee on Agriculture, Rural Development and Related Agencies urging that $10 million be included for this program.

The Historic Barn Preservation Program also enjoys support from the preservation community. The National Trust for Historic Preservation has endorsed this program as well as numerous State preservation groups from

across the country. We all recognize that preservation of these barns will not only ensure their survival for generations to come, it will provide practical benefits to the farmers that own them and the communities and economies that surround them.

Clearly, working structures such as these barns have as much to offer to our understanding of U.S. history as the birthplaces of our leaders or battlefields where our soldiers fought and died. These barns have served various functions, whether as military hospitals, refuges for slaves making their way along the Underground Railroad, local school buildings or temporary shelters for families moving west as our country's border expanded to the Pacific Coast.

In my home State of Vermont, the State Historic Preservation Office currently administers a small grant program for barn preservation that has been funded by the Vermont Legislature since 1993. While this program has been very successful, applications continue to significantly outnumber the grants made through this program. For example, out of 60 annual requests, the program only has the resources to fund 15 to 20 of those requests.

Federal funding through the new national Historic Barn Preservation Program will help address the growing backlog of requests for barn preservation grants in Vermont and across the country.

Mr. President, I again thank the two managers of this bill and urge my colleagues to support this amendment.

AMENDMENT NO. 2130

Mrs. CLINTON. Mr. President, I am pleased to offer an amendment to the Agriculture appropriations bill that will mean healthier food for school kids in New York and across the country.

The amendment prohibits the use of funds from this bill for the purchase of chickens or products of chickens, unless the supplier provides certification that the supplier does not feed or administer fluoroquinolone to chickens produced by that supplier.

This is a modest step forward in dealing with the growing problem of antibiotic resistance.

The antibiotics we are dealing with in this amendment are called fluoroquinolones. Fluoroquinolones, a class of antibiotics that include Cipro, are the first choice in treating severe food poisoning and other diseases in humans.

The Food and Drug Administration has determined that the use of fluoroquinolones in poultry contributes to increasing numbers of people becoming infected with antibiotic resistant Campylobacter, which causes severe abdominal pains, fever, and diarrhea. In essence, by using fluoroquinolones in our food, we are ensuring that more and more people will become resistant to certain infections, meaning more and more sick people.

Corporate America is already responding to this pressing issue. The fast food chains McDonald's, Wendy's, and others have pledged not to use chicken that has been treated with fluoroquinolones in an effort to protect their customers.

But the USDA continues to purchase chicken for the National School Lunch Program that has been treated with fluoroquinolones despite warnings about health risks and the availability of chickens that have not been treated with fluoroquinolones, and so do the schools that receive USDA money through the lunch program. The New York City Board of Education, for example, does not have a policy in place to ensure that chickens that New York City school kids eat have not been fed fluoroquinolones. And there are approximately 820,000 New York City school students and 1.4 million students across New York State that are in the School Lunch Program.

Tyson, Gold Kist, and Purdue are all leading chicken producers that have committed to stop using fluoroquinolones in their chickens. The USDA and schools across the country could purchase chicken from these producers and others that do not use fluoroquinolones, without experiencing a negative economic impact.

So this amendment says that no School Lunch Program funds can be used by the USDA or the schools to purchase chickens from suppliers that have not provided certification to the Secretary that they do not feed or administer fluoroquinolone to the chickens they produce.

It is so important that we take this step. Children are at a greater risk to suffer from food borne illness and infections from antibiotic-resistant bacteria. Data from the Centers for Disease Control show that between 1990 and 1999 the number of food-borne illness outbreaks in schools rose 10 percent per year. Over this time period, 16,000 children have gotten sick from school outbreaks.

All this amendment says is that children eating chicken provided by the School Lunch Program should be protected as much as customers at McDonald's and Wendy's.

I am pleased that the Senate is taking a first step today to protect our school children from possible resistant infections by approving this amendment. I thank Senators BENNETT and KOHL for their support, and I look forward to working with my colleagues to ensure that this provision is retained in conference.

Mr. BENNETT. Mr. President, at the request of the majority leader, I would like to have Senator DOMENICI recognized for a short colloquy and Senator WARNER recognized for a short announcement.

The PRESIDING OFFICER. The Senator from New Mexico.

MENTAL HEALTH PARITY

Mr. DOMENICI. Mr. President, there have been a lot of questions as to the status of the mental parity bill and where we are going and what our plans are from those who have been working on it for a long time. I remind everyone that this bill has been supported by large numbers of Senators.

We have had our difficulties the last year. Without going into detail, we have had difficulties trying to get this worked out for hearings in the House. We are in a position where we cannot get that done.

Now we are in a position where we can tell the Senators that the committee of jurisdiction, under the leadership of JUDD GREGG, is looking at a substitute which seems acceptable to the community that helped us on the bill and that the chairman indicates will have a high priority in his committee the early part of next year. That means we should be passing mental parity in the first couple of months of the next session.

I note the presence on the floor of my principal cosponsor, since the demise of Senator Wellstone, Senator KENNEDY. We have discussed this at length. I believe he concurs that this is the best approach. Our majority leader agrees. The minority leader agrees, as does the chairman of the committee of jurisdiction.

I would be pleased if Senator KENNEDY will comment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we are talking about the Wellstone Mental Health Act. Senator DOMENICI and Paul Wellstone worked in this area and were leaders in mental health parity. There are now 67 cosponsors of this legislation. For a number of reasons, we have not been able to get this matter either scheduled or considered.

As I understand what Senator DOMENICI is now saying, from his conversations with the Republican leader, we will have some assurance that we will have this matter before the Senate.

I just talked with the chairman of the HELP Committee, Senator GREGG, who said he would make this a first order, a priority in the next session.

I think what the community is looking for is assurance there would be Senate action. I understand from Senator DOMENICI he is fully committed to work and make sure the Senate is going to have an opportunity to address this issue in the early weeks of this next session. Am I correct?

Mr. DOMENICI. Absolutely. There is no diminution of interest on my part. I started this many years ago. We did pass it. Now we have to pass it on a full scale, and we will. We have to wait now for reasons out of our control, but it will get done early next year.

Mr. KENNEDY. Mr. President, with the assurances of the Senator from New Mexico as a senior member of this body and one all of us know, I have great confidence in him and know of his strong passion in this area. I think it is enormously important for our communities across this country, and I certainly welcome those assurances.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I want to acknowledge as well the efforts the Senator from New Mexico has made to get us to this point. Many of us had hoped we could complete our work on the bill in the Senate this year. I know it is a disappointment to him we have not been able to do that, but with the assurances he has given us tonight, working with the chairman, the ranking member, and certainly the majority leader, it would be my hope the very first legislation we take up in the second session will be this legislation. We will work with him, and I hope we could have that commitment from people on both sides of the aisle. I appreciate his efforts tonight to bring us to this point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wish to address the members of the Senate Armed Services Committee on both sides of the aisle. The House of Representatives is remaining in session until the wee hours of the night in the hopes they can receive from the Senate a conference report with sufficient signatures on it by which we can get the bill passed early next week. I am working with my distinguished ranking member, Senator LEVIN, and others. To those who can sign it at this point in time, I would greatly appreciate it.

I ask Senator LEVIN be given a chance to reply.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I did not hear the beginning of that statement, but we are awaiting the document so we can read it. We would be happy to give an answer as promptly as we can, after the document is completed, but I understand there is some unfinished business and uncertainty that needs to be looked at.

Mr. WARNER. The Senator is correct. Given that this could well mean many Senators will leave, I just wish to put them on notice we have this one shot to get it done so we can have it on the calendar next week.

Mr. LEVIN. I think we all hope it gets finished, but it is not finished yet.

Mr. WARNER. I thank the Chair.

AMENDMENT NO. 2135

Mr. BENNETT. Mr. President, I send an amendment to the desk on behalf of the Senator from Texas, Mrs. HUTCHISON, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mrs. HUTCHISON, proposes an amendment numbered 2135.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. . TEXAS RICE SAFEGUARD INITIATIVE.

(a) IN GENERAL.—In order to provide a safeguard against the further decline of the rice industry and wildlife habitat in Texas, and to provide information to the congress in anticipation of and preparation for the 2007 bill, the Secretary of Agriculture shall conduct the initiative required under this section.

(b) ADMINISTRATIVE IMPROVEMENTS.—As an integral part of the safeguard initiative—the Secretary of Agriculture shall review the administration and enhance the enforcement of section 1105(a)(1)(E) of Public Law 107–171 as it relates to and is applied to the control of noxious weeds and the proper application and implementation of the conserving use requirements on rice base acreage in Texas.

(c) REPORTS TO CONGRESS.—The Secretary shall review and evaluate the costs, benefits and effects of the safeguard initiative on rice producers, including tenant rice producers, the rice milling and processing industry, wildlife habitat, and the economies of rice farming areas in Texas, detailed by each of these affected interests and by the program variables involved in the safeguard initiative under subsections (b) and (c), including whether or not producers on a farm have qualified plantings. The Secretary shall provide to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives an annual report detailing the progress and findings of the initiative not later than February 1 of each of the years 2005 through 2007.

Mr. BENNETT. The amendment has been cleared on both sides. It was inadvertently left out of the other stack of amendments that were submitted. I ask that the amendment pass on a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2135) was agreed to.

Mr. BENNETT. Mr. President, we have come to final passage. May I take the opportunity once again to thank Senator KOHL and his staff for the cooperative way in which they have worked to get us to this point. I appreciate very much the support of all Senators.

I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Utah.

AMENDMENT NO. 2084, VITIATED

Mr. BENNETT. Mr. President, I ask unanimous consent to vitiate the adoption of amendment No. 2084.

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

AMENDMENT NO. 2073

Mr. BENNETT. Mr. President, I ask unanimous consent to adopt the pending Kohl amendment, No. 2073.

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

The amendment (No. 2073) was agreed to.

Mr. BENNETT. Mr. President, I ask unanimous consent that following the vote on final passage, the Senate insist on its amendments, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate——

Mr. BYRD. Mr. President, may we have order in the Senate so we can understand what the Senator is saying.

The PRESIDING OFFICER. The Senator is correct. The Senate will come to order.

Mr. BENNETT. I ask unanimous consent that following the vote on final passage, the Senate insist on its amendments, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate to consist of the members of the subcommittee and Senators STEVENS and BYRD.

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

Mr. BENNETT. I ask unanimous consent to reconsider the votes of all the amendments that have been sent forward and for that motion to be laid on the table.

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

The motion to lay on the table was agreed to.

Mr. BENNETT. I have nothing further to say.

INITIATIVE FOR FUTURE AGRICULTURE AND FOOD SYSTEMS

Mr. HARKIN. The 2002 farm bill reauthorized and increased funding for the Initiative for Future Agriculture and Food Systems, IFAFS, competitive grants program, a program originally authorized as section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998. The Initiative supports outcome-oriented, integrated research, extension, and education competitive grants to address critical emerging agricultural and rural issues related to four key areas: future food production, environmental quality and natural resource management, farm income, and rural economic and business and community development.

The farm bill provides $140 million in mandatory funds from the Commodity Credit Corporation for IFAFS in fiscal year 2004. The appropriations bill before us contains a provision which prohibits the Department from implementing IFAFS in fiscal year 2004. However, the bill also allows the Department to use 20 percent of funding appropriated for the National Research Initiative, NRI, to carry out a competitive grants program under the same terms and conditions as those provided in the farm bill for IFAFS. The bill as amended also requires the Department,

in implementing this provision, to request grant proposals, among the four critical emerging issues required by law, for which the Department has not issued requests for proposals for grants in fiscal year 2002 or 2003.

I ask the distinguished chairman and ranking member if it is their understanding that in requiring this funding set-aside to be carried out under the same ''terms and conditions'' as the IFAFS program that the Senate bill intends for the Department to ensure that over time, all four statutorily-designated purposes for IFAFS spending are subjects for requests for proposals and reflected in the overall research portfolio of this portion of the NRI?

Mr. BENNETT. The Senator is correct.

Mr. KOHL. I agree that the Department should fulfill their responsibility to give effect to all the provisions of the IFAFS program.

Mr. HARKIN. Is it further the understanding of the Senator that the language added by amendment today requires the Department to request proposals that specifically enhance farm income and rural economic, business, and community development?

Mr. BENNETT. Yes. It is my understanding that these two critical emerging issues have not been funded in the previous two fiscal years.

Mr. KOHL. I would also concur, and would add that it would be my hope the Department would give particular consideration to farm income-enhancing projects that advance the statutory priority mission area related to small and medium-size farm viability and competitiveness.

Mr. HARKIN. I thank the distinguished chairman and ranking member. I would also point out to my colleagues that the 2002 farm bill provided specific direction for the Department to pursue grant making for integrated research, education, and extension in key areas related to rural and agriculturally-based development and farm profitability and rural entrepreneurship. I would inform my colleagues that it is my intent to ensure the Department solicits proposals in at least some of these critical areas during fiscal year 2004.

CONSERVATION TECHNICAL ASSISTANCE PROGRAM

Mr. ENZI. Mr. President, I wish to thank my colleague from Utah, the distinguished chairman of the Senate Agriculture Appropriations Subcommittee, for his leadership in bringing this important spending bill to the floor. Wyoming is greatly impacted by this bill, and Senator BENNETT's leadership is very much appreciated. Because of this tremendous impact on Wyoming, I would like to ask my colleague if he would join me in a colloquy to discuss one of the programs that is funded in his bill. Specifically, I would like to discuss the Department of Agriculture's Conservation Technical Assistance Program that is administered through the Natural Resources Conservation Service and its potential impact on land management planning on private lands within the U.S. Forest Service's Thunder Basin National Grasslands.

Mr. BENNETT. I would be glad to join my colleague from Wyoming in a discussion and I agree with him that this is an important program for the West, and, if it is implemented properly, it should help States such as Wyoming and Utah, maximize local conservation efforts by allowing them to target dollars where they are needed most.

Mr. ENZI. I would like to share one example of an effort in Wyoming that has already benefited from this program and which I feel could greatly benefit in the future from its continued participation. Three years ago I met with officials from the Thunder Basin Prairie Ecosystem Association, the Department of Interior and the U.S. Department of Agriculture to discuss the role that private landowners could play in developing land management plans on Western National Grasslands. The Landowners Association presented a revolutionary proposal to combine the talent and resources of all local landowners to develop an Ecosystem Assessment and to enter into a series of Ecosystem Management Strategy and Conservation Agreements with the Forest Service and the U.S. Fish and Wildlife Service that would integrate a comprehensive, multispecies land management proposal for more than 260,000 acres of Federal and private lands within the U.S. Forest Service's Thunder Basin National Grasslands.

Their proposal was to first establish a scientific baseline where they cataloged what was on the land and what species existed. Then they proposed to use that baseline to make ecosystem-wide management decisions that would make the land as a whole more vibrant and more sustainable for a number of species, including the black-tailed prairie dog, the black footed ferret and the sage grouse. What they would not do was make management plans based on the presence or absence of any one specific species or to pit different species' habitat requirements against each other. Their goal was to make the land healthier as a whole so that all species would be better off.

As a result of their efforts the Department of Interior was able to provide an initial grant to the Association through the Landowner's Incentive Program of $150,000 that allowed them to assemble an advisory committee made up of national grasslands experts that has helped them develop scientific research and monitoring protocols that are now being used to establish baseline information on area wildlife and ecosystem concerns. In fiscal year 2003, we funded this program at $175,000 which allowed the association to continue its monitoring efforts and to host a symposium in Wyoming on cooperative land use efforts. These funds, however, fell short of what the association was hoping to accomplish and their 5-year goals have been pushed back due to this lack of funding.

I would like to see this group funded again in fiscal year 2004 to ensure that their efforts have not been wasted. It would be most effective, however, if the association was funded at $582,000 out of the Conservation Technical Assistance at NRCS so the group could get back on track and complete its planning process on schedule.

I ask my colleague if he has any thoughts on whether or not we could recommend funding this program through the NRCS?

Mr. BENNETT. I agree with my colleague that this appears to be a worthy project whose goals of habitat protection and species restoration are consistent with the expressed goals of the Conservation Technical Assistance Program. I believe this innovative effort should be considered for funding by the Department of Agriculture, and I encourage them to work with the association to make these funds available.

Mr. ENZI. I thank my colleague for his thoughts and once again express my appreciation for his leadership in these important issues. I thank the chair for the opportunity to discuss this program.

CONTROL OF GEESE IN THE STATE OF NEW YORK

Mr. SCHUMER. Mr. President, I would like to take a moment to thank Senator KOHL for his generosity in including the increase of $200,000 for the control of the numerous species of birds that cause hardship throughout New York. When making the request, I meant for the money to be increased specifically to address needs of the Hudson Valley and parts on Long Island to control their populations of geese and ask that the report specifically refer to ''an increase of $200,000 for the control of geese in the State of New York.''

Mr. KOHL. I thank the Senator for bringing this to our attention. We will do what we can.

PROJECTS OF INTEREST IN LOUISIANA

Ms. LANDRIEU. Mr. President, I thank the chairman and ranking member of the Senate Agriculture Appropriations Subcommittee for the opportunity to address several issues as the Agricultural Appropriations Bill for fiscal year 2004 is considered on the floor of the Senate as well as in a conference with House Agricultural Appropriations Bill for fiscal year 2004. It is my intention in this statement to express positions with respect to several areas of particular importance to me and my State of Louisiana that the chairman and ranking member will take during conference with the House. I would also like to thank both the chairman and ranking member for the number of my requests that were addressed in S. Rept. 108–107.

There are several instances in the report where the committee expresses its

desire that the agency give consideration to projects of interest and concern to entities in Louisiana. This reflects the committee's finding that these projects are worthy and deserve consideration by the agency. Therefore, I urge you and the chairman of the Appropriations Subcommittee on Agriculture, Senator BENNETT, to join me in further announcing our desire that the Secretary of Agriculture give consideration to the following projects when granting any available funds through programs for which these projects may be eligible.

First, the Union-Lincoln Parish Water Supply Initiative is a crucial project which has focused on the depletion of the Sparta Aquifer, a natural aquifer which is the primary source of drinking water for North Louisiana and Southern Arkansas. The Sparta Groundwater Conservation District recently released initial information from its analysis of the Sparta formation indicating that demand must be cut from a projected 72 million gallons per day to 54 million gallons per day over the next 10 years. To offset this gap between demand and available supply, alternative sources including river water, reservoir water, as well as possible other aquifers must be examined. The committee recognized this need on page 112 of S. Rept. 108–107.

Second, the Bawcomville Flood Control Pumps, originally constructed in 1955, protect two residential communities against flooding from the Ouachita River. Additional pumping capacity is required to reduce interior flooding and accommodate urbanization. The committee recognized this need on p. 110 of S. Rept. 108–107.

Third, the Southern Training and Social Service Complex is of vital importance to the communities and economy of central Louisiana. This facility will provide a sports program and after-school juvenile program for at-risk youths in the central Louisiana area. The committee recognized this need on p. 111 of S. Rept. 108–107.

Fourth, the Town of Golden Meadow, LA, requires improvements to the drainage infrastructure on one of its main thoroughfares, Jefferson Street. The committee recognized this need on p. 110 of S. 108–107.

Fifth, the Town of Golden Meadow, LA, requires a multi-purpose building that would serve as the center for emergency response during hurricanes and other catastrophic times. The committee recognized this need on p. 110 of S. 108–107.

Sixth, Continental Structural Plastics in Spring Hill, LA, requires plastic extruding equipment to manufacture plastic railroad ties for the proposed new railroad line that would bring needed economic development in the area. The committee recognized this need on p. 111 of S. 108–107.

Lastly, the Greater Ouachita Port Commission seeks to establish a facility that will provide for the operation of a river port and commercial park, comprehensively connecting Ouachita Parish and the surrounding area to international trade and commerce. The committee recognized this need on p. 111 of S. Rept. 108–107.

Mr. KOHL. I would be pleased to assist you in any way with these worthy projects. Additionally, I will entertain the possibility of joining you in addressing the Secretary of Agriculture by way of a letter regarding these specific projects and, if appropriate, will encourage our colleague, Chairman BENNET, to participate as well.

AGRO-TERRORISM

Mr. HARKIN. Mr. President, it is widely felt that we need to do more to protect field crops, farm animals and food processing and distribution of food from terrorist acts. I understand that is the view of the Departments of Agriculture and Homeland Security. State and local governments and the private sector all play an integral role in detecting, deterring, and responding to acts of agro-terrorism.

We need coordination among the States in regard to subjects like laboratory capacity and testing protocols; training and education protocols; the tracking of animal and food product movements; and post-incident actions such as rapid response teams, common incident command structures, quarantine procedures, public information management strategies, and coordination with the Centers for Disease Control and Prevention and State and local public health authorities.

I believe that the Department of Agriculture needs to be as supportive as possible of such efforts.

Mr. KOHL. Mr. President, the Senator from Iowa raises a good point. Although funds are tight, we should work to determine how we can improve our Federal agro-terrorism defenses and work to help the States improve their efforts as well. The potential economic loss from such an event is huge. The danger to human lives could be dramatic. I would like to work with the Senator from Iowa to see what we can do to improve our efforts in this area in conference.

Mr. BENNETT. Mr. President, the Senators from Iowa and Wisconsin raise a very important issue. We all hope that we will never have to find out how good the systems designed to block or mitigate against agro-terrorism are because of an actual attack. But, unfortunately we live in a world where we must prepare for such threats to the maximum extent feasible within our available resources. This is an area where the conference committee should explore the options that are before us to improve our Nation's defensive systems against threats to our agriculture and food systems.

GINSENG

Mr. FEINGOLD. I have long advocated for the honest and accurate labeling of ginseng products. Some products previously claimed to include a product known as 'Siberian Ginseng,' a bush that is distinctly different from ginseng root. I was pleased when portions of the Ginseng Truth in Labeling Act, a bill I introduced in the 107th Congress, were included in the Farm Security and Rural Investment Act of 2002. These provisions promote fair trade practices and accurate labeling of ginseng products sold in the United States.

The Food and Drug Administration (FDA) has issued a direct final rule regarding the labeling of dietary supplements containing ginseng (68 Fed. Reg. 167, August 28, 2003), and indicated that the industry must currently be in compliance with this labeling law. However, FDA has noted in correspondence that it had a number of other priorities that:

> . . . required the use of many of the Agency's limited resources, including enforcement resources, which would otherwise have been available for other important FDA programs and activities.

I want to thank the chairman and the ranking member of the Agriculture Appropriations Subcommittee for their work on determining funding priorities for FDA. I ask if the ranking member would participate with me in a brief colloquy on this subject.

Mr. KOHL. On behalf of our home State of Wisconsin, where 97 percent of the U.S. ginseng crop is produced, 85 percent of the country's ginseng being grown in Marathon County alone, I will happily engage in a colloquy.

Mr. FEINGOLD. Now that we have this ginseng labeling law on the books, enforcement action is needed. Many of my constituents are concerned that some domestic and foreign companies continue to label and market certain products as ginseng when they are in fact a distinctly different product. We must give ginseng growers the support they deserve by enforcing this law that also helps consumers make informed choices about the ginseng that they consume.

The FDA Foods program has the primary responsibility for assuring that dietary supplements in this country are safe, sanitary, nutritious, wholesome, and honestly labeled. Is it your understanding that this bill contains the resources for FDA to carry out such enforcement action?

Mr. KOHL. That is my understanding.

Mr. FEINGOLD. I thank my friend, Mr. KOHL, the Senior Senator from Wisconsin.

USDA EFFORTS TO ERADICATE THE EMERALD ASH BORER

Mr. LEVIN. Mr. President, I am pleased that S. 1427 acknowledges the problem posed by the emerald ash borer. To date, tens of thousands of Ash trees in my home State of Michigan have died due ''to infestations of the emerald ash borer,'' and I am glad that this bill provides $1 million for efforts to remove Ash trees that have been claimed by this invasive species.

I appreciate the efforts made by the Agricultural Appropriations Subcommittee to acknowledge and address

the devastation caused by the emerald ash borer in Michigan, Ohio and Ontario, Canada, and which is threatening to spread.

The provision of funds contained in this legislation will assist local communities in removing trees that have been killed by this invasive species. It is also my understanding that USDA's Animal Plant Health Inspection Service—APHIS—provided $14.8 million in fiscal year 2003 funds to assist with efforts to contain and eradicate the emerald ash borer.

Michigan's Governor, Jennifer Granholm, has requested that USDA provide $33 million in fiscal year 2004 funds for further efforts to combat this pest. These funds are vitally needed; however, efforts to combat the emerald ash borer should not be dependent upon the provision of emergency funds each new fiscal year. USDA must develop a multi-year plan for eradicating the ash borer.

Mr. KOHL. I agree. The continued presence of the emerald ash borer threatens the ash tree population not only in Michigan, but across our nation. USDA should develop a clear plan for eradicating the ash borer. The committee shares your concerns about the presence of the emerald ash borer in Michigan and other states and asks that APHIS provide Congress with a report on the plan and estimated cost of eradicating the pest.

WINE GRAPE FOUNDATION BLOCK FUNDING

Mrs. MURRAY. Senator KOHL, in fiscal year 2003, Congress provided $150,000 to the Agriculture Research Service in Prosser, WA, to help with the development of a foundation block of certified ''clean'' rootstock.

The rapid expansion of the Washington wine industry has raised concerns that new vineyards will use noncertified, diseased rootstock that could economically devastate the Washington wine industry.

I recently learned that ARS did not dedicate all of the fiscal year 2003 funding to this project, but other research projects as well.

The fiscal year 2004 Agriculture Appropriations bill provides $150,000 to ARS to continue this project. The intent of this project is clear and not subject to interpretation by ARS. I ask that the record reflect that this funding is to develop a wine grape foundation block. In addition, I ask that the conference report accompanying the agriculture bill include language directing ARS to allocate this funding in a manner consistent with congressional intent.

Senator KOHL, do you agree with the intent of this project?

Mr. KOHL. Yes, Senator MURRAY, I agree. Thank you for bringing this issue to my attention. I will work in conference to do what I can to support your request and to include language in the final statement of managers.

Mrs. MURRAY. Thank you Senator KOHL for your support on this issue. This project is critical to the long-term health and viability of my State's wine grape growers and vintners.

Mr. NELSON of Nebraska. Resource conservation is an essential element of our nation's agriculture programs that has proven to be very popular with farmers and ranchers. The incentives incorporated in programs such as the Farmland Protection Program, the Conservation Reserve Program, and the Environmental Quality Incentives Program, have not only heightened the awareness and value of good conservation practices, but they have made it possible for families to constitute limited production and be compensated for protecting fragile resources. The success of these programs is that family farms can retain their economic viability and continue to contribute to the stability of communities throughout the nation.

Conservation programs have touched on many fragile resources, but have not sufficiently encouraged the protection of the historic heritage that is embodied in historic buildings, structures, objects, and archaeological sites on farmland. Congress has declared that the spirit and direction of the nation is reflected in its historic heritage, and that the preservation of this heritage is in the public interest. Therefore, I believe we must work together to protect our common heritage embedded on these private lands.

Senator KOHL, today I am requesting a report to the U.S. Congress from the United States Department of Agriculture evaluating their conservation programs under the Natural Resources Conservation Service and all other USDA county-based farm agencies with the objective of determining what affirmative and programmatic actions are being taken to conserve and protect archaeological and historical resources on agricultural lands. Furthermore, this report should also provide or suggest new methods or program modifications to the conservation programs which will increase the protection of historical and archaeological resources on agricultural lands and help determine the manner in which these type of lands can be included within the overall goal of natural resources protection.

Finally, I am requesting that this report be completed within 120 days of enactment of the Fiscal Year 2004 Agriculture appropriations bill.

Senator KOHL, will you support this request and work towards its inclusion in the final conference report of the fiscal year 2004 Agriculture appropriations bill?

Mr. KOHL. Senator NELSON, I appreciate you bringing this matter to my attention. I will work to include this provision during conference negotiations of this bill.

CHINO BASIN MANURE MANAGEMENT PROJECT

Mrs. FEINSTEIN. Will the Senator yield for a colloquy?

Mr. BENNETT. I am pleased to do so.

Mrs. FEINSTEIN. I thank my distinguished colleague and the chairman of the Agricultural Appropriations Subcommittee. As the committee completes its work on the floor and heads to conference to finalize this important bill, I want to call the committee's attention to a unique project in California that has national implications.

I want to call the committee's attention to the Chino Basin Manure Management Project in Southern California. This project is funded through the National Resources Conservation Service of the U.S. Department of Agriculture.

In fiscal year 2002, this committee provided $10 million for the Chino Basin project. Half of the money was spent for regional flood control, and the other half went to the development and construction of an anaerobic digester facility.

The Manure Management Project is cosponsored by the Inland Empire Utilities Agency and the Milk Producers Council, both in San Bernardino County. The purpose of this project was to explore an innovative and effective solution to the problems associated with vast quantities of animal pollution which naturally results from large-scale dairy operations.

This project collects manure from several thousand local dairy cows, transporting it to a local facility equipped with an industrial size anaerobic digester. The animal waste is placed in a closed, sealed vat, where it is then simultaneously starved of oxygen and heated for several days.

Under normal circumstances, we would typically think of manure as both a cost and a pollutant. However, the end result of this project is the development of two marketable products: methane gas and organic fertilizer. The methane is used in the production of electricity, and the project's proponents are currently in the process of developing a market for the resulting fertilizer.

In addition to creating marketable methane and fertilizer, this project also produces an impressively long list of additional benefits, including improved air quality, reduced groundwater contamination, and even improved health of the cows at the dairy.

A recent estimate indicates that if all the manure in the Chino area was processed in anaerobic digesters this would eventually produce approximately 50 megawatts of renewable electric power per year. Even more significantly, it will also remove significant amounts of air pollutants. For example, the current operational digester removes 15,000 tons of carbon dioxide or its equivalent from the atmosphere per year. The next anaerobic digester built because of its larger capacity will likely triple that amount to about 45,000 tons of CO_2 or its equivalent per year.

The Inland Empire Utility Agency and the Milk Producers Council are seeking funding to expand and refine the application of this and similar technologies. The cost of a second digester is approximately $9 million dollars, and they have already received a

commitment from the California Energy Commission for the balance of the necessary funds.

The Inland Empire Utility Agency and the Milk Producers Council are requesting that a $5 million grant be inserted into this appropriations bill.

The first plant—a demonstration of this technology—was built on time and on budget, and is successfully operating today. Although the next phase of this project was contemplated as part of their original program, the National Resources Conservation Service has informed Inland Empire and the Milk Producers Council that funds are unavailable at this time.

The National Resources Conservation Service highlights and salutes this project nationally, as this project has become a de facto ''national demonstration project.'' Communities, water districts, dairymen, and even Indian tribes from across the Nation have gone to Chino to examine this unique partnership between the Chino Basin dairy industry and the local water agency.

The Inland Empire Utilities Agency and Milk Producers Council's request deserves consideration by this committee in the pending appropriations bill. I ask the subcommittee chairman to consider this project as the appropriations bill is finalized.

Mr. BENNETT. I thank the Senator for calling this to the committee's attention.

Mrs. FEINSTEIN. I thank the Senator. I hasten to point out another attribute of this project. As the water quality problems on the Santa Ana River are gradually resolved—and this project certainly contributes to resolving some of those problems—the supply of clean, usable water in Southern California is expanded. It is yet another way to ensure that the Quantification Settlement Agreement on the Colorado River is implemented in a timely and meaningful manner. Utah and the rest of the Colorado Basin States should welcome these types of investment in Southern California.

Mr. BENNETT. Again, I thank the Senator for bringing this issue to my attention. I look forward to working with my colleague on this issue in conference.

MINORITY FARMERS AND CIVIL RIGHTS AT USDA

Mrs. LINCOLN. Mr. President, I rise today to express my concern about the status of minority farmers in the United States and to indicate my hope to the chairman and the ranking member that the final Agriculture appropriations bill for fiscal year 2004 will include meaningful increases in programs that are priorities to the minority farm community.

It is no secret that minority farmers in the United States are an endangered species. In the early 1920s, African Americans owned between 16 million and 19 million acres of land, most of it in the rural South, which includes my home State of Arkansas. At that time, there were over 920,000 farms operated by African Americans in the United States.

However, by the end of the 20th century, African Americans owned only a quarter of the land that they had held a century prior, and the number of African American farmers in the United States had fallen from a peak of almost 1 million to only about 20,000. Scholars estimate that, between 1920 and 1940, African Americans were losing land at a rate of 350,000 acres annually.

Sadly, USDA has done little to address this issue. In fact, many people believe, and I am inclined to agree with them that, if anything, USDA has contributed to the problem. Black farmers have long alleged discrimination at the hands of the Department of Agriculture. Because of this discrimination, thousands of farmers were denied access to USDA loans and other programs and many lost their farms because of the competitive disadvantage at which this placed them.

In the 1990s, these farmers filed a class action suit against USDA seeking redress for this discrimination. As a result of this suit, USDA and the claimants entered into a consent decree. Under that agreement, hundreds of millions of dollars have been paid to African American farmers who were discriminated against by the Department of Agriculture.

While this case was a start, it can never fully compensate black farmers for their losses. In addition, it did little to address the needs of minority farmers—African Americans, Hispanics, and others, who continue to seek to farm today. We can't just look back. We must look forward to keep minorities in farming and to encourage others to begin farming. We can start with the appropriations bill for fiscal year 2004. Comparing the bill before us today with the bill passed by the House of Representatives, I must say that the House-passed bill is better for minority farmers. Recognizing that money is tight and that the chair and ranking member have worked arduously to craft a bipartisan bill, I have decided not to offer an amendment to this bill to increase funding for programs that affect minority farmers, such as the Office of Civil Rights and the 2501 Outreach Program for Socially Disadvantaged Farmers. However, it is my sincere hope that as this bill goes to conference committee, the chair and the ranking member will work with their counterparts in the House of Representatives to craft a final bill that closely resembles the House bill with regards to minority farmers and civil rights at the Department of Agriculture.

Mr. HARKIN. Mr. President, I concur with the remarks made by the Senator from Arkansas and also express my support for increased funding for civil rights and for minority farmers at the Department of Agriculture.

In the most recent farm bill, the Committee on Agriculture once again took up the issue of civil rights at USDA. Dismayed by continued complaints from both clients and employees about the inhospitable atmosphere towards minorities at USDA, the farm bill created, for the first time, the position of Assistant Secretary for Civil Rights. That position has been filled for several months now, and I am hopeful that the Assistant Secretary for Civil Rights will be able to create positive movement in this regard. It is past time for USDA to shed the shameful nickname, ''The Last Plantation,'' that many have given it due to its civil rights atmosphere.

The House recognized the necessity of doing more for socially disadvantaged farmers and USDA employees earlier this year when it passed by voice vote an amendment to the Agriculture appropriations bill that increased funding for several important civil rights functions. First, it increased funding for the Office of Civil Rights by several million dollars. These additional funds will enable the Department to clear out its backlog of hundreds of civil rights complaints, many of which stagnate for months and months. We need to wipe the slate clean. As long as USDA is unable to deal with this backlog it will be difficult for it to concentrate on its primary task; preventing such complaints from arising in the first place and making the Department of Agriculture hospitable to all farmers regardless of race, sex, or creed.

The House-passed amendment also increased funding for the section 2501 Program for Socially Disadvantaged Farmers. Despite being the primary program by which to make USDA programs available to minority farmers, the section 2501 program has been flat-funded for several years. The Senate bill before us today provides a little over $3 million for the section 2501 program. This modest increase over last year's funding is a commendable start, but it is not nearly enough. The House bill, on the other hand, increased funding by $5 million to a total of over $8 million. The level provided in the House bill is clearly more consistent with the need to reach out to minority and socially-disadvantaged farmers. I hope that the chairman and ranking member of the committee will agree to the House funding levels for this program in the conference committee.

Mr. BENNETT. The concerns that my colleagues have raised in this regard are important ones and ones that I share. I will do all that I can to address their concerns about minority farmers and civil rights at USDA as we reconcile the Senate and House bills in conference.

Mr. KOHL. I concur with the comments of my colleagues and pledge to work in conference to address their concerns relating to increased funding for the Office of Civil Rights and for the section 2501 Program for Socially Disadvantaged Farmers to the levels agreed to in the House-passed bill.

MCGOVERN-DOLE FOOD AID

Mr. BROWNBACK. Mr. President, the Senate Agriculture appropriations bill only includes $25 million for the McGovern-Dole International Food for Education and Child Nutrition Program. The Bush administration has said that $25 million is not a level adequate to achieve the objectives of this important program. I agree with the administration that $25 million is woefully inadequate and would like to see the Senate fund this program at the $300 million level for which it was originally authorized. However, at a minimum, I contend that the Senate should accept the $56.8 million currently in the House bill.

McGovern-Dole food aid is vitally important because it: one, provides humanitarian assistance by reducing incidence of hunger among the nearly 300 million chronically hungry school-age children and also promotes maternal, infant, and child nutrition programs for pregnant women, nursing mothers, infants and children five years old and under, two, enhances literacy and primary education by increasing school attendance of those 120 million school-age children who currently do not attend school—sixty percent of which are girls, and three, reduces terrorism by fostering goodwill toward the United States.

I would like to know the chairman's position on funding for McGovern-Dole food aid.

Mr. BENNETT. I appreciate my colleague bringing this matter to my attention. I agree with my colleague that this is a vital international food aid program that provides much needed humanitarian assistance and increases school enrollment. Thus, I pledge to the Senator from Kansas that I will work in conference to secure the House level of $56.8 million.

Mr. BROWNBACK. I thank the distinguished chairman and look forward to working with him on this matter.

CONSERVATION CROPPING SYSTEMS PROJECT

Mr. CONRAD. Mr. President, I commend the leadership of the Appropriations Committee, and particularly Subcommittee Chairman BENNETT and Senator KOHL for their work on this bill. I wanted to bring to the subcommittee's attention the lack of information on conservation cropping techniques in transitional climate areas.

Conservation cropping systems have proven very effective in reducing soil erosion, saving moisture and increasing yields in arid regions of the country. Unfortunately, the adoption of this type of system has been difficult in climate transition areas where precipitation is more abundant and predictable because there was little or no immediate economic advantage to doing so. Efforts are getting underway to study the use of conservation cropping techniques in southeastern North Dakota, northeastern South Dakota and western Minnesota, a transition area between subhumid and semiarid climates. The goal of the study would be to identify conservation rotations, cover crops, seeding techniques, and residue management practices that would make conservation tillage acceptable and profitable in these climate transition areas. It is my hope that in conference a small Federal investment could be directed to this important study.

Mr. DORGAN. The southeast region of North Dakota is very unique. It has one of the largest concentrations of wetlands. As a result, most of the research that has been conducted on conservation cropping systems does not adapt well to this region. Crops in this region can range from flax to alfalfa to edible peas to corn to wheat. Further, previous studies have not included many of the crops that can be grown in this region or shown how different cropping systems can be made profitable. With the high cost of crop inputs and low commodity prices, producers are looking for ways to make a profit. This study will provide producers with a very good tool to measure one crop rotation against another, thereby increasing their profitability.

Mr. KOHL. I thank my colleagues from North Dakota for bringing this issue to our attention. I agree that such a study on conservation cropping systems in transitional climate areas would be very beneficial, particularly for farmers, and I would be happy to try to assist you in conference.

AMENDMENT NO. 2088

Mr. HARKIN. Mr. President, I say to Senators AKAKA and KOHL, I would like to clarify a specific matter related to amendment no. 2088 to S. 1427 concerning the protection of downed animals. First of all, I applaud their efforts to protect this Nation's food supply and minimize the suffering of nonambulatory animals. The clarification I have concerns animals raised by farmers and then custom processed so that all of the meat and meat products from that animal will be for the farmer's personal use. I understand that this amendment does not affect a Federally inspected facility's ability to engage in this type of processing. Am I correct that consistent with 21 U.S.C. 623(a), this section does not affect the ability of establishments at which inspection occurs under the Federal Meat Inspection Act, 21 U.S.C. 601, to slaughter animals or prepare meat or meat food products on a custom basis where the animal is raised by the person and the meat and meat products are for the exclusive use of the person and the person's household, nonpaying guests, and employees?

Mr. AKAKA. That my understanding.

Mr. KOHL. That is my understanding.

Mr. HARKIN. Thank you for that clarification.

ASIAN LONG-HORNED BEETLE

Ms. STABENOW. Mr. President, I rise to engage in a colloquy with the distinguished senior Senator from Michigan and the distinguished ranking member of the Agriculture Appropriations Subcommittee. As the ranking member knows, on September 4, 2003, the Asian long-horned beetle was discovered in Woodbridge, Ontario, and the area is under quarantine as the Canadians try to eradicate the infestations. Despite the quarantine in Ontario, the Asian long-horned beetle presents a real threat to Michigan. Currently, there are 180 trash trucks from Ontario that are sent to Michigan's landfills every day. Despite the fact that it is illegal to dump yard waste in Michigan's landfills, these trash trucks have been found to contain this illegal waste. According to a September 22, 2003 report by the Michigan Department of Environmental Quality, MDEQ, entitled, ''Report on Waste Inspections at Michigan Landfills,'' more than 25 percent of the Ontario waste inspected contained yard waste. Waste originating in Ontario had the highest percentage of loads containing yard waste of all out-of-state waste that comes into Michigan, despite Michigan's prohibition. Our Michigan communities are extremely concerned that APHIS has not thoroughly examined the potential threat of infestation that these Canadian trash trucks present.

Mr. LEVIN. Mr. President, I join the junior Senator from Michigan in her concern for this potentially devastating problem. The Canadian yard waste, which includes tree branches and trimmings, poses a serious threat of spreading the Asian long-horned beetle to Michigan. According to the USDA, these beetles lay their eggs in grooves that they chew into the tree's branches and trunk. The beetle requires 1 to 2 years to completely develop from an egg to an adult and feeds on the host tree during that time. Branches and tree scraps brought into Michigan as yard waste could contain beetle eggs and larvae that are embedded in the bark. The Asian long-horned beetle is extremely destructive to hardwood trees, particularly maple, poplar and willow trees. Michigan's tree population has already been severely damaged by the spread of the emerald ash borer beetle, which has killed over 6 million trees in Southeast Michigan and caused over $162 million in damage. The USDA must act immediately to prevent another devastating infestation, the Asian long-horned beetle, from spreading into Michigan.

Mr. KOHL. Mr. President, I thank the distinguished Senators from Michigan and concur with them that this is a problem that must be immediately addressed. I will work in conference to include in the statement of managers language requiring APHIS to do a comprehensive review of their procedures and regulations, and report to Congress by January 1, 2004, on whether or not these regulations and procedures are adequate to prevent the Asian long-horned beetle from entering into Michigan in Canadian trash trucks.

Mr. LEVIN. I thank the distinguished ranking member of the subcommittee.

Ms. STABENOW. I thank the distinguished ranking member of the subcommittee.

PHYTOPHTHORA ROOT ROT

Ms. STABENOW. Mr. President, I rise to engage in a colloquy with the distinguished senior Senator from Michigan and the ranking member of the Agriculture Appropriations Subcommittee. As the ranking member knows, phytophthora root rot is destroying crops and ravaging soil throughout the State of Michigan. Many growers are reporting major losses, despite following recommended control strategies, and it is devastating our cucumber, pole bean and soybean crops. Michigan State University is examining ways to contain and eradicate root rot and they need $184,000 to conduct this critical research. Would the distinguished ranking member work with us in conference to obtain this critical funding?

Mr. LEVIN. Mr. President, I join the Senator from Michigan in asking the distinguished ranking member to give this important project consideration in conference. Phytophthora root rot is a fungus that is destroying crops and once the soil is infested, it must be taken out of production for 10 years. Currently, methyl bromide, which has been used by fresh market growers to control the disease, is scheduled to be phased out in 2005. New research is needed to develop tools that can effectively contain and eradicate this devastating disease.

Mr. KOHL. Mr. President, I thank the distinguished Senators from Michigan, and I will be happy to work with them in conference to obtain funding for this critical phytophthora root rot research at Michigan State University.

Mr. LEVIN. I thank the distinguished ranking member of the subcommittee.

Ms. STABENOW. I thank the distinguished ranking member of the subcommittee.

Mr. LEVIN. Mr. President, I wish to ask my colleagues from Utah and Wisconsin if they are aware of the great need to control erosion and sediment in the Great Lakes region.

Mr. BENNETT. I am told that approximately 63 million tons of topsoil erodes from cropland in the Great Lakes basin each year, reducing agricultural productivity. I am willing to address this problem.

Mr. DEWINE. In the past, this subcommittee has been very supportive of the Great Lakes Basin Soil Erosion and Sediment Control Program. The Great Lakes Basin program is a federal—state partnership, and its goal is to protect and improve Great Lakes water quality by controlling erosion and sedimentation; limiting the input of associated nutrients and toxic contaminants; and minimizing off-site sources of damages to harbors, streams, fish and wildlife habitat, recreational facilities and the basin's system of public works.

Mr. KOHL. The chairman and I understand the importance of this program to the Great Lakes region, and we will do what we can to support the House funding allocation for this program in conference.

GRAPE GENOMICS RESEARCH CENTER AND VITICULTURE CONSORTIUM

Mrs. FEINSTEIN. Mr. President, I wish to express my support for the Fiscal Year 2004 Agriculture appropriations bill and to commend the leadership of the subcommittee for crafting this bill under very difficult financial constraints.

I wish to thank the subcommittee for recognizing the importance of the winegrape and wine industry for the U.S. economy and the economy of California. Winegrapes account for two-thirds of the total U.S. grape crop. Furthermore, grapes are the highest value fruit crop in the U.S. and are the seventh largest agricultural crop in our nation. For my home State of California, the winegrape industry produces $33 billion for the economy, making winegrapes the State's largest agricultural crop. Yet, unlike most of our Nation's largest crops, winegrapes receive no direct farm subsidies.

I would like to ask Ranking Member KOHL about two items in this legislation that involve cooperative research efforts that are essential to the future of the winegrape and wine industry. First, the House legislation includes $3 million in ARS funding for a Grape Genomics Research Center at the University of California at Davis. It is important that this funding level be maintained in the final version of this bill. Funding for such projects is crucial since cooperative research has been behind the success of the winegrape industry. Investment in research must continue if we are to withstand the rigid competition from our world neighbors who would love to replace our industry with their own products. This can only be done with the cooperation of the U.S. Congress to ensure the American wine industry has the necessary resources to continue the cutting edge research and development that has kept this industry competitive.

In California, winegrapes are grown in areas being rapidly developed into urban uses. If our winegrape and wine industry is to continue to thrive, we must be more efficient with our land; we must produce grapes more resistant to diseases; and we must be good neighbors to the surrounding environment. This proposed $3 million investment in viticulture research will ensure that already successful collaborative efforts among the grape and wine industry, universities, and USDA is continued in the years to come. It is a wonderful investment into our industry's future. I ask Senator KOHL that in conference with our House colleagues, we make every effort to ensure this important funding in the House bill is kept in the final version of the fiscal year 2004 Agricultural appropriations bill.

Mr. KOHL. Mr. President, I would like to take a moment to respond to the Senator from California by saying that I appreciate the value of sound research programs that use a combination of the expertise of the industry involved, the best scientists in our universities, and the outstanding scientific resources within the Department of Agriculture. As Senator FEINSTEIN noted, we have fiscal restraints with which we must abide. I assure the Senator that I will bring an open mind to the conference and will try to craft the best possible legislation.

I certainly will do what I can in conference to see that this research continues, and I will carefully consider the $3 million proposed for the Grape Genomics Center at UC Davis.

Mrs. FEINSTEIN. Mr. President, once again, I thank the subcommittee, and I wish to raise one more issue that relates to getting the best possible use of the research dollars. Both the Senate and House bills include funding for the Viticulture Consortium at last year's level of $1.8 million from CSREES. I remain hopeful that this funding level can be increased to $2.5 million. The Viticulture Consortium is a truly unique and effective research program that addresses unmet national research needs important to the winegrape growing industry. The consortium is an active partnership of Federal, State, and industry resources which enhances research coordination, improves research efficiency, and eliminates duplication of effort. This is a collaborative program administered by Cornell University, Penn State University, and the University of California. Research proposals have been received from 20 States and research priorities are developed by a national network of key industry research and extension representatives known as the American Viticulture and Enology Research Network, AVERN. This type of collaborative program can serve as a model for research involving other commodities.

Again, recognizing the limits facing us, I ask the leaders of the subcommittee to work with me to provide a modest increase in the funding level for the Viticulture Consortium in this bill.

Mr. KOHL. I appreciate this unique effort to use a cooperative approach to get the most output out of each scarce research dollar appropriated to the winegrape and wine industry. I also look forward to working with the Senator on this issue, not only in the upcoming conference, but also in the future to see how the Viticulture Consortium can continue to expand on its excellent work.

AMENDMENT NO. 2090

Mr. HARKIN. Mr. President, I comment on the Hatch-Harkin-Durbin amendment No. 2090 adopted by the Senate yesterday. This action taken by the Senate is an important step in our continuing efforts to assure that Americans have access to high quality dietary supplements to maintain and improve their health.

Over 158 million Americans take dietary supplements to maintain and improve their health. From vitamin C to calcium to glucosamine to beta carotene, there is a full range of healthful supplements that are part of the daily lives of people all over this country.

Consumer expenditures on these products reached a reported $17.1 billion in 2000, double the amount spent just 6 years earlier. And, according to a recent report by the Food and Drug Administration, the use of dietary supplements is likely to grow due to factors such as the aging of the baby-boom generation, increased interest in self-sufficiency, and advances in science that are uncovering new relationships between diet and disease.

In response to efforts by the Food and Drug Administration to inappropriately cut off consumers' access to some supplements, in 1994, the House and Senate unanimously approved the Dietary Supplement Health and Education Act, DSHEA. I was pleased to have played a role in crafting this important legislation. This law balanced continued consumer access to vitamins, minerals and other dietary supplements, increased scientific research on the benefits and risks of supplements and needed consumer protections.

DSHEA provides a number of important consumer protections. It requires that claims made on supplement labels, packaging and accompanying material be ''truthful, non-misleading and substantiated.'' In addition, the act prohibits manufacturers from making claims that products are intended to diagnose, treat, cure or prevent a disease.

DSHEA also provides for good manufacturing practice standards setting requirements for potency, cleanliness and stability of products. It requires that manufacturers submit adequate information as to the safety of any new ingredients contained in dietary supplements before those products can be sold.

DSHEA also provided the Federal Government a number of avenues for the removal of unsafe dietary supplements from the marketplace. If the FDA determines that a product poses an unreasonable risk when taken as directed, the product can be removed from the market. If the Secretary determines that a product poses an imminent hazard to the public health, he can remove the product from sale.

Finally, in order to promote expanded scientific research on the benefits and health effects of dietary supplements, DSHEA mandated the establishment of the Office of Dietary Supplements within the National Institutes of Health. This research is crucial to expanding reliable information to the American people.

Unfortunately, despite some recent improvement, the history of implementation of DSHEA by the FDA has been poor. The Food and Drug Administration has failed to use the many tools provided by DSHEA. It has failed to carefully review claims for truthfulness. It has failed to put in place new good manufacturing practice standards. It has failed to aggressively remove from the market illegal street drug knock-offs and other products which are in clear violation of DSHEA requirements.

Part of the problem has been resources. The FDA needs adequate resources to appropriately implement and enforce DSHEA. Congress has responded by regularly providing funds over the last several years beyond those requested in the President's budget, reaching $9.7 million in fiscal year 2003.

The amendment we approved yesterday would increase funding for implementation and enforcement of DSHEA by at least 17.5 percent. It requires FDA to spend no less than $11.4 million for this purpose, $1 million more than requested by the administration. This is a substantial and necessary increase. I would like to see even more devoted to this purpose. In fact, S. 1538, legislation Senator HATCH and I introduced earlier this year would increase FDA funding to $20 million next year, rising to $65 million per year within 5 years. We will continue to work to gain adoption of this more aggressive approach.

I thank the chair and ranking member of the Agriculture Appropriations subcommittee for their willingness to work with us and gain approval of this important consumer protection amendment. I also want to express my support for an amendment Senator DURBIN offered to expedite the FDA's action on dietary supplements containing ephedra. The FDA should make a decision promptly on this matter and it should be based on sound science.

Mr. GRASSLEY. Mr. President, prior to the 1996 farm bill, the annual cost-share assistance payment limitation for the Agricultural Conservation Program, ACP, was $3,500. With the advent of the Environmental Quality Incentive Program, EQIP, in 1996, the annual cost-share assistance payment limit was increased to $10,000 per year.

EQIP also instituted another change, rather than single year agreements, conservation agreements under EQIP were set at a minimum of 5 years to improve conservation benefits and increase farm payments. Hence, the 1996 law set a 5-year payment limitation of $50,000 for those rare instances in which a participant received the maximum $10,000 annual payment each of 5 years.

Between 1996 and 2002, the national average EQIP cost share amount per farm per 5-year contract was less than $10,000, or less than 20 percent of the $50,000 payment limitation.

Between 1996 and 2002, for animal waste storage structures, one of the most expensive practices eligible for EQIP assistance, the national average per farm per 5-year contract amount has been $13,573, also considerably below the $50,000 payment limitation at that time.

The 2002 farm bill increased the payment limitation nine-fold to $450,000 over the 6-year life of the farm bill.

The $450,000 limit was arrived at in the House-Senate conference committee. The Senate version of the farm bill had a 5-year $150,000 limitation. The House bill had a $200,000 limitation.

Amazingly, on the very last day of the farm bill conference the payment limit was increased to $450,000, three times greater than what the Senate had approved. This new number showed up out of nowhere, with virtually no discussion or debate in public.

The Senate bill contained an important provision related to the payment limit. All payments were made directly attributable to real persons by Social Security number. This direct attribution provision was intended to prevent participants from forming dummy corporations and partnerships for the purpose of getting around the payment limit and collecting multiple payments.

This provision was retained in the conference committee, so that at least the $450,000 limit was to apply to an individual or an entity regardless of the number of farming sites in an operation or the number or type of business arrangements the EQIP operator was engaged in.

In promulgating rules and guidance for the implementation of EQIP, however, USDA has decided to allow the $450,000 to be multiplied by the number of partners in a single farming operation. This essentially makes the limitation meaningless, since it allows business structures to be arranged to collect multiple payments.

While no single person could collect more than $450,000, relatives, employees, farmhands and others could be made partners that each could collect up to the maximum amount.

Farmer demand for EQIP remained very high throughout the 1996 farm bill period and its $50,000 multi-year limitation. Demand outstripped funding.

Congress responded in 2002 by increasing total funding for EQIP five fold, and I was heavily involved with that effort.

However, by simultaneously increasing the payment limit nine fold, the new $1 billion per year funding level may not result in more farmers being served, which was Congress' intention.

The ranking systems in many States being put in place to determine who wins EQIP contracts and who goes on the waiting list appears to be favoring the large farm/large contract applicants.

My amendment would scale the payment limit back to $300,000. This is still double the amount passed by the Senate in 2002, and more than adequate for 97.8 percent of EQIP participants.

My amendment does not scale back funding for EQIP. Rather, it provides that dollars appropriated by this bill cannot be used to pay USDA salaries and expenses to operate the EQIP program with payments greater than $300,000 per agricultural operation.

Adoption of this amendment will allow more farmers to participate in the program in the coming year. Adoption of the amendment will result in a fairer distribution of dollars within the program. Adoption of this amendment will prevent EQIP resources from being gobbled up by a few large contracts to mega farms.

This is a fair compromise, a good compromise. It provides access to the program by all types of farms and all sizes of farms, but it puts a limit on the amount of taxpayer support any one operation can receive.

If we do not pass this amendment, I think by the time of the next farm bill there will be lots of media attention focused on how this environmental quality cost share program has become a new subsidy program, paying out six and seven figure checks, for the Nation's biggest operations. And there will be questions about why an environmental program is leading to concentration and consolidation.

A $450,000 payment limit has no effect on 98.9 percent of all livestock operations. A $300,000 payment limit has no effect on 97.8 percent of all livestock operations. That means my amendment only affects 1.1 percent of livestock operations.

The 1.1 percent of mega-operations will still be eligible for $300,000. They just will not be able to take such a big piece of such a small pie. I do not think it is unreasonable to reduce full funding for the largest 1.1 percent of livestock operations so that more family farmers can participate.

So what I am saying is let's be careful. Let's be balanced. Let's increase the payment limitation, and avoid a ''sky's the limit'' approach.

Mr. ROBERTS. Mr. President, I rise today to provide a few brief comments on the Agriculture appropriations bill and to also make a few comments regarding my friend and colleague, the distinguished new chairman of the subcommittee, the Senator from Utah.

The chairman has done an outstanding job putting this bill together under a difficult budget allocation, and I congratulate him for his work.

I also want to make a few comments regarding several programs in this bill that are of particular interest to me in my role as the chairman of the Intelligence Committee.

I urge the chairman and the members of the subcommittee who will sit on the conference to support as much funding as possible for USDA's homeland security funding request and the Dole-McGovern International School Lunch Program.

Both of these programs are vital to our ongoing war against terrorism.

The USDA homeland security funds will support the rapid response animal and plant health diagnostics networks established last year by USDA.

These networks will allow us to respond quickly to an animal or disease outbreak that occurs, whether naturally occurring or intentionally introduced.

While this may not seem like a serious risk, I can tell you that the threat is real. We know some of the 9/11 hijackers had agriculture training, and the former Soviet Union had weaponized many of these diseases. The intentional introduction of any of these diseases would have a devastating impact on both the agriculture and national economies.

Regarding the Dole-McGovern program, it often provides the only meal that many students—particularly those in the Middle East—receive each day.

Young girls go to school so they can receive these meals. They gain an education, they broaden their horizons, and it will eventually help to bring greater stability to that part of the world.

Young boys go to schools where they can receive a meal and instruction in math and science instead of radicalism and extremism. Many terrorist recruiters get their youngest members through the offer of a warm, nutritious meal each day.

We must give these students the opportunity to be fed and get a basic education, rather than spending their days learning how to fire an AK–47. Thus, I urge support for these programs as this bill moves to conference.

Before yielding the floor, I also wish to make a few comments regarding our new subcommittee chairman.

When I first heard he would become chairman of the subcommittee, I didn't know whether to congratulate him or send him a sympathy card.

I have spent the better part of the years I have had the privilege to serve Kansas in the House and Senate wandering around in what you might call the agriculture policy pasture. For a short time, I even served as the head of the sometimes powerful House Agriculture Committee.

What my ears in that pasture have taught me is that if you spend much time dealing with agriculture policy, you often end up feeling like your are straddling the barbed wire fence. The issues are never easy.

There are often strong and very real policy differences among the farm groups and varying regions of the country. They are some of the most difficult issues I have ever faced, and they have certainly been known to tie this bill up in past years.

Earlier, it appeared that many of those issues would bog the bill down again this year.

However, as we would say in Dodge City, he took the bull by the horns and charged ahead. I know that it has not been easy, but I also want the chairman to know that I think he has done a remarkable job.

He managed to balance a severely reduced budget allocation in a manner that was fair to all members and regions of the country, and he has worked to find the middle ground on many issues. As a result of his efforts, we will spend only 1 or 2 days on the bill this year, instead of the week or more we spent in recent years.

He has taken what is often a thankless job and has performed admirably. He deserves both the thanks and praise of the Senate.

I say to the chairman, job well done.

Mr. MCCAIN. Mr. President, the agriculture appropriations bill funds several important programs at the Department of Agriculture, the Food and Drug Administration, and other domestic food services provided through the Department of Health and Human Services. These funding programs are critically important to our Nation's farmers, families, and children.

Considering the importance of this bill, and at this critical time, I am once again greatly disappointed to report the amount of flagrant porkbarrel spending in this bill. This year's agriculture spending bill includes nearly $300 million in questionable earmarks. Despite the obvious need to eliminate the excessive special interest earmarks in the agriculture appropriations bill, the appropriators tacked on 395 of the usual garden-variety, special interest earmarks. Sadly, it appears that the porkbarrel ''business as usual'' attitude reigns once again.

Let's take a look at some of the porkbarrel projects in this year's agriculture appropriations bill:

An increase of $300,000 over the fiscal year 2003 level for research on alternative swine research;

An increase of $1.4 million over the fiscal year 03 level for dairy forage research in Madison, WI;

An increase of $1 million for research on taramix control using China beetles in Reno, NV;

A $100,000 increase for the development of commercially approved vaccines for catfish in Auburn, IL;

An increase of $450,000 over the fiscal year 03 level for a laboratory in Parlier, CA, to study the Glassy-winged sharpshooter and Pierce's disease;

A $150,000 increase to study grape genetics in Geneva, NY;

An additional $300,000 for potato storage research in Madison, WI;

An additional $200,000 for research on seafood waste at the University of Alaska;

An additional $300,000 for the U.S. Vegetable Laboratory in Charleston, SC;

An unrequested earmark of $631,000 for alternative salmon products in Alaska;

An earmark of $358,000 for alternative tobacco uses in Maryland;

An earmark of $442,000 for apple fire blight in Michigan and New York;

An earmark of $278,000 for asparagus technology and production in the State of Washington;

An earmark of $200,000 for berry research in Alaska;

$600,000 for cool season legume research in Idaho, Washington and North Dakota;

$234,000 for cranberry and blueberry disease and breeding studies in New Jersey;

A whopping $2 million for exotic pet diseases in California;

$844,000 for soybean research in Illinois;

$596,000 for peanut research in Alabama;

$502,000 for wheat sawfly research in Montana;

$450,000 for agricultural-based industrial lubricants in Iowa;

$690,000 for agriculture waste utilization in WV—pretty fancy term for fertilizer;

$150,000 for salmon quality standards in Alaska;

$250,000 for the National Wild Turkey Federation, located in South Carolina;

$300,000 for potato pest management in Wisconsin;

$2 million to address chronic wasting disease in Wisconsin;

$250,000 to address chronic wasting disease in Utah—maybe we should study chronic wasting disease right here in Washington, because the amount of waste that goes on in this city has reached chronic levels, and that is stating it mildly;

$1 million for grasshopper and Mormon cricket activities in Utah;

$300,000 for grasshopper and Mormon cricket activities in Nevada;

$150,000 for beaver control in Kentucky;

$225,000 for blackbird control in Kansas;

$350,000 for evaluating native plant materials in Alaska;

$600,000 for cranberry production in Massachusetts and Wisconsin.

Here is the clincher: the report accompanying this bill directs the Secretary of Agriculture to take all necessary measures to maximize and to provide a fair allocation of resources under the farm bill to the State of Alaska. This directive is seen as necessary because the committee is deeply disturbed that Alaska has largely been ignored thus far in the implementation of the farm bill passed in 2002. We certainly would not want Alaska to suffer from a lack of Federal dollars now would we?

Even the reliable earmarks like shrimp aquaculture and peanut research are included. Shrimp aquaculture in Arizona and other states has been a consistent beneficiary of taxpayer dollars for 11 years, with this year's earmark being $4.2 million. Unfortunately, there is little explanation included to justify why targeted Federal dollars for earmarked projects are more important than other programs to protect food safety or more directly support farm programs in this bill.

I am confident that many of my colleagues will maintain the importance of the need to fully fund these and many of the other projects in their respective States. That is fine. I do not fault them for it. In fact, let me state clearly, that I do not question the merits of these projects. Most of them, I am sure, are very important and worthy for Federal funds.

It is the process with which I have a serious problem. The Appropriations Committee has effectively usurped the power of the authorizing committees and acts as one, all-powerful funding machine. Projects are often funded with little or no background study, and are approved after simply being requested by a fellow Senator. These same projects are directed to certain States and localities, completely circumventing the proper, competitive-based awards process. Additionally, the Appropriations Committee routinely uses directive language to force cabinet secretaries and agency heads to use scarce taxpayer dollars to fund members' pet projects, while not alloting them a single dime with which to fulfill the requirements imposed upon them by the appropriators.

This spending spree is an outrage. As all of my colleagues know, CBO recently projected a potentially debilitating $480 billion deficit for 2004. More importantly, we are at war. President Bush is poised to sign a supplemental appropriation of $87 billion for the ongoing military operations in Iraq and Afghanistan. Every one of us has asked ourselves the same question: ''where is that money going to come from?'' I have an idea Mr. President. Let's start with this bill. Let's eliminate all of the unrequested earmarks, all of the special deals, all of the pork and all of the waste. Let's prove to the American taxpayer that we in Washington do not see them as simply a cash cow for our every financial whim.

I urge my colleagues to work harder to curb our habit of funneling resources to parochial interests. Serving the public good must continue to be our mandate, and we can only live up to that charge by keeping the process free of unfair and unnecessary spending that unduly burdens the American taxpayer.

Ms. MURKOWSKI. Mr. President, I would like to speak on amendment 2094, which was successfully added to the fiscal year 2004 Agriculture appropriations bill yesterday. This amendment restores decreased funding for food stamp recipients in Alaska and Hawaii. Senators STEVENS, INOUYE, and AKAKA have joined me in cosponsoring this amendment.

The U.S. Department of Agriculture estimates the cost of food items in Alaska and Hawaii, rather than researching the actual cost for these items. This method of estimating prices rather than researching prices led to a negative update that slashed benefits for the most vulnerable Alaskans and Hawaiians. The cuts in benefits, which took effect on October 1 of this year, essentially locks low income residents of Alaska and Hawaii into trying to buy this year's food at last year's prices. This just does not work.

Please allow me to give a few examples about the actual cost of food around my State. In the general store in Port Graham, a remote village in the southcentral part of Alaska that is only accessible by boat or aircraft, one gallon of milk costs $11.59. In the village of Hoonah, which is a remote village located on an island west of our State capitol of Juneau, oranges cost nearly $5 a pound.

Cutting the benefits for folks who are already paying far above the national average for food is unconscionable. This amendment, which is fully offset, says that the most vulnerable Alaskans and Hawaiians should not be stripped of their ability to put food on the table for their families.

This amendment will make a real difference for those in Alaska and Hawaii who are working to become self-sufficient.

Mr. BENNETT. Mr. President, last year Congress created the Public Television Station Digital Transition Grant Program within the U.S. Department of Agriculture to help public television continue broadcasting to rural America in the digital age.

As with any first year program there are some fine points that need to be ironed out. I am concerned about potential inequities in the distribution of funds that may result from the grant competition.

I support awarding grants to public television stations that provide a broadcast service to rural populations, regardless of the location of their main transmitter. If a public television station's digital transmitter serves less than 500,000 people it should be considered rural and automatically given the highest score for rurality.

The Department's use of Per capital Income, PCI, as a factor in determining an applicant's score is appropriate. However, I encourage the Department to weight PCI by population. Unless a score is weighted by population, it may result in an inequitable score if a small portion of the coverage area reaches an enclave of higher income viewers. Highest priority should be given to rurality and critical need in scoring applications. The weighted PCI score should not exceed 15 percent of the total score.

Furthermore, I believe that it would be beneficial for the Department to consult with public televisions stations through their national trade organization to assess the critical needs of the stations.

Finally, I support the sue of funds for purchasing equipment necessary to allow local control over digital content and programming through the use of multicasting and datacasting technologies.

I urge the Department to take the necessary steps to address these concerns.

Mr. President, I would like to note in the RECORD some Utah projects that are important to reference as a Senate priority as we conference this bill with the House. It is important that report language be included noting an application that will be submitted to USDA for Rural Community Advancement Program funding and placing a priority upon its consideration. This RCAP application will be for potable water, fire

protections, and waste water extensions in Wellsville, Utah.

I also note the importance of providing Natural Resource Conservation Service dollars for ditch, canal, and irrigation improvements in Wellsville, UT, as well as watershed protection funding under Public Law 566 for piping and lining the Washington Fields Canal in the vicinity of St. George and Washington County, UT. The WFC provides water to 4800 acres of farmland and is currently in very poor condition. Given the significant growth in this area and the listing of two endangered species in the river system, this funding is important to save water that is currently wasted and that could augment stream flows not only for the community, but as needed for environmental and conservation purposes.

Finally, I am supportive of several projects to bring drinking water to Kane County residents through the Kane County Water Conservancy District in southern Utah. These projects, including the Strawberry/Movie Ranch, Meadow View Heights, and Johnson Canyon projects, are necessary because of the ongoing drought in Utah, the degraded existing water systems, and increased demand caused by development. These projects are of great value, and I hope that the USDA would seriously consider applications for loans and grants under the authorized program for water and waste disposal. The Johnson Canyon project, in particular, is of great importance to Kane County residents. Due to the severe drought and other factors, the well that supplies water to Johnson Canyon residents has shown a dramatic decrease in the drinking water quality, and individuals are now faced with installing reverse osmosis systems for their drinking water. In fact, because of the high level of total dissolved solids in the water, the well has become an inferior source, and the State of Utah recommends that an inferior source should not be allowed if a better source of water is available. The district has found higher quality water, and this project will allow development of this important resource.

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

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

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

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

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

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

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

The result was announced—yeas 93, nays 1, as follows:

[Rollcall Vote No. 444 Leg.]

YEAS—93

Akaka	DeWine	Lincoln
Alexander	Dodd	Lott
Allard	Dole	Lugar
Allen	Domenici	McCain
Baucus	Dorgan	McConnell
Bayh	Durbin	Mikulski
Bennett	Enzi	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham (FL)	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Cantwell	Harkin	Santorum
Carper	Hatch	Sarbanes
Chafee	Hollings	Schumer
Chambliss	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Inouye	Smith
Coleman	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Cornyn	Kohl	Stevens
Corzine	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Lautenberg	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wyden

NAYS—1

Ensign

NOT VOTING—6

Campbell	Kerry	Miller
Edwards	Lieberman	Sununu

The bill (H.R. 2673), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment and requests a conference with the House.

The Presiding Officer (Mrs. DOLE) appointed Mr. BENNETT, Mr. COCHRAN, Mr. SPECTER, Mr. BOND, Mr. MCCONNELL, Mr. BURNS, Mr. CRAIG, Mr. BROWNBACK, Mr. STEVENS, Mr. KOHL, Mr. HARKIN, Mr. DORGAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. JOHNSON, Ms. LANDRIEU, and Mr. BYRD conferees on the part of the Senate.

Ms. SNOWE. 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. MCCONNELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS CONSENT REQUEST—S. 1806

Mr. MCCONNELL. Madam President, there is an issue that has been rule 14'd and is on the calendar, the Protection of Lawful Commerce in Arms Act, which has 54 cosponsors. It overwhelmingly passed the House back in April 285 to 140. This legislation is important to millions of Americans who want to be able to exercise their second amendment rights. There is simply no reason we should not be able to complete action on this bill expeditiously—there are not many measures around here that have that many cosponsors—that is, unless people want to delay its consideration with unrelated amendments.

In an effort to address this matter fairly and efficiently, I have indicated to my good friend and colleague, the assistant Democratic leader, that I will propound the following consent request as a way to possibly expedite consideration of this measure which is supported by a substantial majority of our colleagues on a bipartisan basis.

Therefore, Madam President, I ask unanimous consent that at a time to be determined by the majority leader in consultation with the Democratic leader, the Senate proceed to consideration of S. 1806; that there be 6 hours of general debate on the bill equally divided; that the only amendments in order be two relevant amendments offered by each side, with each first-degree amendment subject to a second-degree amendment which shall be relevant to the first degree amendment; provided further that each first-degree amendment be limited to 1 hour of debate evenly divided, and each second-degree amendment be limited to 30 minutes of debate equally divided; provided further that upon expiration of all time, the Senate immediately proceed to a vote on all pending amendments; after disposition of the pending amendments, the bill be read a third time, and the Senate immediately proceed to a vote on final passage, without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Madam President, I share the distinguished Senator's desire to pass this most important legislation. In fact, I am a cosponsor of this bill, which has been introduced on a bipartisan basis by Senators CRAIG and BAUCUS. This legislation would protect firearm and ammunition manufacturers from lawsuits related to deliberate and illegal misuse of their products. It will protect the rights of Americans who choose to legally purchase and use their products. So the legislation makes sense.

As a gun owner since I was a young boy, I believe law-abiding citizens have a constitutional right to keep and bear arms. I also believe the rights of the responsible gun owner should not be compromised or jeopardized by individuals who use firearms to commit crimes. The vast majority of Nevada gun owners use their guns safely, and I will

work in a bipartisan fashion to safeguard their rights. I will work to pass this bill, and I think we have the votes to pass it.

However, in a short time I will object to this consent request by my friend because it does not advance our shared goal of enacting this bill into law. In fact, this request, in my opinion, would set us back in our efforts to pass the legislation. We need to take the time necessary to debate and vote on the amendments that Senators want to offer to this bill, and then we need to pass it.

I think this late in the session, with the constraints that are obviously present with everybody, it just would not help us. I will work with my friend and anyone else to get a unanimous consent agreement both sides can agree to.

For now, on behalf of Senator JACK REED of Rhode Island and others, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Kentucky.

Mr. MCCONNELL. My friend from Nevada is certainly correct. At this late stage in the session, the only way we could advance this proposal to completion would be with a consent agreement that allowed us to deal only with relevant amendments. One of the concerns is that we could end up having amendments on minimum wage or hate crimes or other issues that are completely unrelated to the underlying subject matter. So it was my belief that the consent agreement I just offered was reasonable in the sense that it did allow relevant amendments to the underlying bill, but it also gives us an opportunity to reach completion.

I want to modify my request a couple of more times and see if it might be more enticing to my good friend from Nevada. I modify my prior unanimous consent request as follows: That there be 8 hours instead of 6, 8 hours of general debate on the bill equally divided, and that the only amendments in order be three relevant amendments offered by each side instead of two, with each first-degree amendment subject to a second-degree amendment which shall be relevant to the first-degree amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Madam President, reserving the right to object, I really do believe we can work with Senators on our side and a few on the other side to come up with a reasonable approach to this legislation that I think has an outstanding chance of passing. We can't do it now. We are wrapping up this session of the legislature. Even though my friend has suggested relevant amendments, we need to take a little bit of time to work this through. The time that has been suggested by my friend is something that may or may not work.

I just say to everyone within the sound of my voice, we need some time to work this out. We will be happy to cooperate in any way we can, but there are too many objections on this side to move forward at this time.

On behalf of Senator REED of Rhode Island and others, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Kentucky.

Mr. MCCONNELL. Madam President, let me propound one last unanimous consent request, again bearing in mind that the only chance of moving this legislation forward this late in the session would be with a time agreement with relevant amendments. The underlying bill being supported by 54 cosponsors, we suspect well more than 60 are advocating this legislation. Let me try to entice my good friend one more time by further modifying my second request in the following way: I ask unanimous consent that there be 10 hours of general debate on the bill equally divided, and that the only amendments in order be 4 relevant amendments offered by each side, with each first-degree amendment subject to a second-degree amendment, which shall be relevant to the first-degree amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Madam President, reserving the right to object, on certain issues, I am fairly easy to entice, but the fact is, on this, I have a significant number of Senators on this side who are not able to be enticed at this stage. On their behalf, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Madam President, this is a very important piece of legislation that should be enacted in this Congress. It is apparent it will not be done in the first session of the 108th Congress. There are not many measures around here that have 54 cosponsors and probably with support well in excess of 60. I hope we can work together in the early part of the next session and advance this legislation to final passage, with relevant amendments, so it does not become a measure that attracts every single good cause some Senator may want to propose totally unrelated to the underlying question of whether gun manufacturers should be held responsible for acts perpetrated by individuals using their product—a fundamentally unfair trend developing in the country that should be stopped before it goes any further.

I yield the floor.

Mr. REID. Madam President, if I may respond, I think the approach that we get into the legislation early next year is the way it will be passed. There will be a decision made early on by the leadership on both sides, I am sure, as to if it is necessary to attempt to invoke cloture on this matter. We will have lots of time early next year to do this.

I look forward to working with my friend from Kentucky to move forward on this most important legislation.

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

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

INTERNET TAX NONDISCRIMINATION ACT

Mr. MCCAIN. Madam President, pursuant to the order of October 30, 2003, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 150, the Internet Tax Moratorium bill.

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

The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 150) to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act, which had been reported from the Committee on Commerce, Science and Transportation and referred to the Committee on Finance and discharged, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 150

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

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Internet Tax Non-discrimination Act of 2003''.

[SEC. 2. AMENDMENT OF INTERNET TAX FREEDOM ACT.

[Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 nt.) is amended—

[(1) by striking ''taxes during the period beginning on October 1, 1998, and ending on November 1, 2003—'' and inserting ''taxes:'';

[(2) by striking paragraph (1) and inserting the following:

[''(1) Taxes on Internet access.''; and

[(3) by striking ''multiple'' in paragraph (2) and inserting ''Multiple''.

[SEC. 2. REPEAL OF EXCEPTION.

[Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 nt.) is amended by striking paragraph (10).

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Nondiscrimination Act''.

SEC. 2. PERMANENT EXTENSION OF INTERNET TAX FREEDOM ACT MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes:

''(1) Taxes on Internet access.

''(2) Multiple or discriminatory taxes on electronic commerce.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''unless'' and all that follows through ''1998''.

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(c) CLARIFICATION.—The second sentence of section 1104(5), and the second sentence of section 1101(e)(3)(D) (as redesignated by subsection (b)(1) of this Act), of the Internet Tax Freedom Act (47 U.S.C. 151 note) are each amended by inserting '', except to the extent such services are used to provide Internet access'' before the period.

SEC. 3. 3-YEAR SUNSET FOR PRE-OCTOBER, 1998, TAX EXCEPTION.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. PRESERVATION OF PRE-OCTOBER, 1998, STATE AND LOCAL TAX AUTHORITY UNTIL 2006.

''(a) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(b) TERMINATION.—This section shall not apply after October 1, 2006.

''(c) TAX ON INTERNET ACCESS.—Notwithstanding section 1105(10), in this section the term 'tax on Internet access' includes the enforcement or application of any preexisting tax on the sale or use of Internet services if that tax was generally imposed and actually enforced prior to October 1, 1998.''.

SEC. 4. UNIVERSAL SERVICE.

Nothing in the Internet Tax Freedom Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs authorized by section 254 of the Communications Act of 1934.

Mr. MCCAIN. Madam President, I ask unanimous consent that the bill as thus amended be treated as original text for the purpose of amendment; provided there be no point of order waived by virtue of this agreement.

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

The reported amendment is agreed to. The bill will be considered as original text. No point of order will be waived.

AMENDMENT NO. 2136

Mr. MCCAIN. Madam President, I send a substitute to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. ALLEN, for himself, Mr. WYDEN, Mr. BURNS, Mr. ENSIGN, Mr. SUNUNU, Mr. WARNER, Mr. SMITH, Mr. LEAHY, Mr. GRASSLEY, Mr. HATCH, Mr. MCCAIN, Mr. BAUCUS, Mrs. BOXER, Mr. CHAMBLISS, and Mrs. LINCOLN, proposes an amendment numbered 2136.

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

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

The amendment is as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Nondiscrimination Act''.

SEC. 2. PERMANENT EXTENSION OF INTERNET TAX FREEDOM ACT MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes:

''(1) Taxes on Internet access.

''(2) Multiple or discriminatory taxes on electronic commerce.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows: .

''(10) TAX ON INTERNET ACCESS.

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (4.7 U.S.C. 151 note) is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(c) INTERNET ACCESS SERVICE; INTERNET ACCESS.—

(1) INTERNET ACCESS SERVICE.—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting ''The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

SEC. 3. 3-YEAR SUNSET FOR PRE-OCTOBER, 1998, TAX EXCEPTION.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. PRESERVATION OF PRE-OCTOBER, 1998, STATE AND LOCAL TAX AUTHORITY UNTIL 2006.

''(a) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(b) TERMINATION.—This section shall not apply after October 1, 2006.

''(c) TAX ON INTERNET ACCESS.—Notwithstanding section 1105(10), in this section the term 'tax on Internet access' includes the enforcement or application of any preexisting tax on the sale or use of Internet services if that tax was generally imposed and actually enforced prior to October 1, 1998.''.

SEC. 4. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

SEC. 5. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

Mr. MCCAIN. I say to my friends on both sides of the issue, I think we now have the proper legislative agenda in preparation for amendments. Before I make an opening statement, I thank Senators ALLEN and WYDEN for their hard work on this issue. I also pay my respects to the Senator from Ohio, Senator VOINOVICH, and the Senator from Tennessee, Senator ALEXANDER, who have taken a deep and abiding interest in this issue and have a very real understanding of it. This is a complex and difficult set of issues associated with the Internet.

I apologize for leaving out my dear friend from Delaware, Senator CARPER,

who probably knows more than the other two put together; at least, he believes so.

Again, these are difficult and complex issues. They have been affected significantly by changes in technology over the years. When we first did this moratorium issue, it was much simpler than it is today. As the Internet has obtained dramatically new capabilities with dramatic changes in its nature, the issue has changed. The Senators from Ohio, Tennessee, and Delaware have raised significant and valid concerns. We believe we have tried to address those concerns.

Definitions certainly are critical in addressing this issue. Words have meaning and importance when we are talking about this issue before us. I hope we can give fair consideration to the concerns and the proposals made by the opposition to this bill or those who would like to see it significantly modified.

Again, I thank my friends from Virginia and Oregon who have worked tremendously for years in the committee on this issue. I think the Senator from Oregon can remind me how many hearings we have had on this particular issue, but it must be in double digits—more than 10—over the past 6 or 7 years. Those hearings have been certainly appropriate, because each time we have had them the technology changed and the issues changed.

Madam President, this bill would ensure that consumers would never have to pay a toll when they access the Information Highway. Whether consumers log onto the Internet via cable modem, DSL, dial-up, or another technology that has yet to be invented, under S. 150 they will not see any State and local taxes on their monthly Internet bill. Now would their monthly Internet bills increase because of State and local taxes on Internet access that are passed down to consumers. Plainly and simply, this is a pro-consumer, pro-innovation, and pro-technology bill.

S. 150, which was introduced in January by Senator ALLEN, would make permanent the current Federal prohibition on State and local taxes on Internet access contained in the Internet Tax Freedom Act of 1998 (ITFA). It also would extend permanently the current moratorium in ITFA on multiple or discriminatory state and local taxes on e-commerce transactions.

In addition, this bill would extend by 3 years the current grandfather clause contained in ITFA. This clause permits States that imposed or enforced a tax on Internet access prior to the passage of ITFA in 1998 to continue taxing Internet access. After 2006, this grandfathering protection would lapse.

Five years ago, Congress took appropriate action when it passed the IFTA, legislation that encouraged the growth and the adoption of the Internet by exempting Internet access from State and local taxation, and by protecting e-commerce transactions from multiple or discriminatory taxation.

As my colleagues know, over the past decade, the Internet has grown from a tool used primarily by academics and scientists for research purposes to a broadly utilized communications, information, entertainment, and commercial medium, as well as an important vehicle for political participation. Indeed, the Internet has started to become a fixture and core component of modern American life that has created and continues to generate social and economic opportunities throughout the United States. This was our goal then and it continues to be our goal today.

There is little doubt that the development and growth of the Internet was aided by the moratorium. For example, in the past 5 years and with the help of ITFA, household use of the Internet has doubled. At the time of the legislation's enactment in 1998, 26 percent of United States households had Internet access. By 2001—the year that the moratorium was extended for a 2 year period—just over 50 percent of U.S. households had Internet access. By the end of 2002, approximately 64 percent of American households had Internet access. However, despite these significant growth rates, Internet access adoption rates remain low relative to other basic technologies. Broadband access in particular remain low. Indeed, in 2002, only 15 percent of American households had broadband Internet access. This means that a significant number of American consumers still have not gained the full benefits that Internet technologies promise.

Today, we have the opportunity to extend permanently the Internet tax moratorium and thus fulfill our promise to consumers that Government taxes will not inhibit the offering of affordable Internet access. By supporting S. 150, we can continue to promote the adoption of the Internet by our citizens as well as encourage innovation relating to this technology. Just as Internet access evolved from basic dial-up service to broadband services since the enactment of ITFA, a permanent extension of the Internet tax moratorium is expected to encourage businesses to further evolve Internet technologies and consumers to continue adopting such technologies.

I am fully aware that State and local government groups are concerned about certain aspects of this bill and, in particular, worry that this legislation will result in significant revenue losses to the States and localities. As many of you know, I have worked closely with the co-sponsors of the legislation in an attempt to accommodate many of the concerns of the States and local governments. In fact, I am a co-sponsor of the substitute amendment to S. 150 only because I was satisfied that the amendment's co-sponsors had compromised as much as they reasonably could with the States and localities. What we present today is a good-faith effort to address State and local worries while still keeping intact one of the key goals of S. 150: to keep Internet access tax free from taxation.

I point in particular to our efforts to clarify that traditional telephone services would not become tax-exempt as a result of this legislation. Nor will this legislation prevent the States from imposing property, income, and other non-transactional taxes on Internet access providers. Nor would this bill make tax-free any service packaged with Internet access solely by virtue of such bundling. In addition, in order to give currently grandfathered States a reasonable amount of time to adjust their budgets, the bill extends the existing grandfathering provision by 3 years instead of terminating it immediately.

I also am aware that some of my colleagues object to the Internet tax moratorium because they believe that Congress has no role in how States and localities tax Internet access. I respect the views of those Members, but I also respectfully disagree with them on this matter. Interstate communications—including the Internet—are part and parcel of interstate commerce, which Congress has the constitutional right to regulate. This means that Congress does indeed have the right to determine how the Federal Government, the States, and localities tax the Internet.

There is also the argument that this extension is an unfunded mandate. On this point, it is important to note that this bill would not impose any additional responsibilities on State or local governments. Rather, S. 150 only says that States and localities may not impose taxes on Internet access. That's it. Furthermore, Congress made sure that ITFA held the Federal Government to the same standards as those imposed on the States. The act expresses the sense of Congress that no new Federal taxes on Internet access should be enacted. The Federal Government is in this with the States and localities because keeping Internet access tax-free is a core goal of our national economic policy.

With respect to the question of whether it's wise to make Internet access tax free, this body has a long history of giving tax incentives to commercial activities that we believe help our society. The Internet is a technology that is a source of and vehicle for significant economic benefits. The proponents of this legislation strongly believe the Internet clearly merits the tax incentives provided by S. 150. But this debate is not just about economic benefits.

During my presidential candidacy, one of the many rewarding experiences I had was seeing how the Internet served as a medium for political participation. Hundreds of thousands of people logged on to may campaign website where they were able to access information and organize. For me, keeping Internet access tax-free is about protecting consumers' wallets, but it also is about improving our political process and the right and ability of those citizens to participate fully in that process.

I recognize that there are others who wish to continue to make the Internet tax moratorium temporary. Their premise is that Internet technologies continue to evolve and thus Internet access may develop into a service the States and localities would wish to tax. I would respond that this moratorium should be permanent to continue encouraging those very Internet-related innovations. By making this moratorium permanent, the businesses that invest in and provide Internet access technologies will be able to operate in a predictable tax environment. This will result in continued investment in this very important medium.

I will be very candid on this point, though: If a permanent moratorium passes and 3, 4, 5 years down the road we find that the effects of this moratorium were other than what we intend today, I will join my colleagues in reviewing this issue and work to amend the legislation to correct any unforeseen problems with it. But that should only happen if and when there is a legitimate problem. That doesn't need to happen, and it shouldn't have to happen, on a predetermined schedule.

Today, however, we are here to vote on a bill that enjoys strong bi-partisan support—further evidence of the fact that this Senate believes in a permanent extension of the moratorium and the consumer and business benefits such an extension will bring. Likewise, H.r. 49, the Internet Tax Nondiscrimination Act, which is similar to S. 150, also enjoyed significant support in the House of Representatives. Indeed, the House passed H.R. 49 in September with strong bipartisan support, including support from the House leadership of both parties.

S. 150 has been thoroughly vetted and considerably negotiated. It was approved by the Senate Committee on Commerce, Science, and Transportation in July after the committee held hearings on the bill. In October, the Senate Committee on Finance discharged S. 150 after that committee examined the bill. Throughout this legislative process, the various stakeholders have met several times to try to come as close to a middle ground as possible without sacrificing the basic goals of this legislation. I believe that this bill is a strong attempt to address the concerns and needs of all the relevant stakeholders.

For all of the reasons stated, I urge my colleagues to support this bill and add it to the long line of pro-consumer legislation we have passed this year—including the Do Not Call Registry and spam legislation. Let us again join together to give American consumers affordable access to the Internet, a crucial medium of communications, information, commerce, and political participation.

I look forward to hearing the debate and discussion by my colleagues on both sides of the issue. We hope to have an amendment proposed by the Senators from Delaware, Ohio, and Tennessee, and we would like to debate that. Others would like to speak on that amendment, so we will not have a time certain set for that amendment. But we hope we can have it at a fairly early time in the morning. My understanding is we will be back in at 9:30.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Madam President, I thank the chairman of the Commerce Committee, Senator MCCAIN, for beginning the discussion in the kind of tone I think we want to have for this debate. We have on the floor a number of Senators who have been the most interested in this issue. I tell them I think they represent the most thoughtful people not just in the Senate but in public life. We obviously have differences of opinion, but I think we are going to have an important debate, in a thoughtful fashion. The decibel level has certainly gotten pretty high in recent days on this issue.

I am very appreciative to the Senate Democrats who are supportive of the position Senator ALLEN and I have put together, particularly Senators LEAHY, BOXER, LINCOLN, and BAUCUS, all of whom joined as original sponsors of the managers' effort.

I wish to spend a few minutes tonight—I know other colleagues are anxious to talk—to describe how we got to this point and why I believe the approach Senator ALLEN and I are taking is a wise one.

About 7 years ago, after I came to the Senate, I began to think about how the Senate could write the rules of electronic commerce so as to be fair to all sides while at the same time allowing this tremendously exciting medium, the Internet, to flourish.

We were seeing early on problems with respect to how the Internet was regulated around the country. We saw discrimination. We saw in some jurisdictions, for example, if you bought the newspaper the traditional way, the snail-mail route, you would end up not paying a tax, but if you bought the online edition of that paper, you would pay a tax. That, it seemed to us, was a discrimination against technology. So about 7 years ago, I said the bedrock of our effort ought to be technological neutrality. The Internet should not get a preference, nor should the Internet be discriminated against.

I went to Senator MCCAIN and Senator LEAHY of Vermont, really known as the Senate's Mr. Internet. He was up on these issues when I think a lot of people thought a monitor was a television set. The two of them joined me in a bipartisan effort to pass this law that has now been on the books for more than 5 years.

When Senator ALLEN came to the Senate, he and I teamed up for a number of years on this issue, and, of course, other Senators who have come to this body.

I say in beginning the debate, many of those who now oppose the extension of the law we are proposing are using the very same arguments they made 5 years ago that have not been borne out. For example, we were told years ago that the States would not be able to collect various taxes—property taxes, corporate taxes, and other kinds of taxes. We were told that all across America, Main Streets would shrivel up and die because of Internet sales. We were told that States would lose an enormous amount of revenue. I want to respond to each one of those arguments tonight.

First, with respect to loss of revenue, not one jurisdiction has come forward and given an example of how they are hurt by their inability to discriminate against electronic commerce. All the bill says is you cannot discriminate against electronic commerce, and not one State has come forward and given an example of how they have been hurt by their inability to discriminate against electronic commerce.

Not one independent study has been done in the last 5 years indicating that the States would lose revenue as a result of this bill.

Finally, with respect to this question of Main Street and the retail stores, what we have seen is during the period this law has been in effect, Internet sales have gone from 1 percent to 2 percent. I think it is fair to say our legislation has not exactly emptied the malls of America. In fact, in most of our malls, it is still pretty hard to find a parking spot.

As we go at this issue, it is important to look at the record, and particularly it is interesting to note it in the context of what was discussed tonight.

I have noted that a number of our colleagues, particularly from the rural areas—the Dakotas and other areas—have talked about the importance—and I share their view—of building the network out; of using funds, whether it be tax credits or Government moneys, to facilitate broadband to rural areas. Their effort is one that I support. But think about the consequences of our saying tonight on the floor of the Senate: Let's use Government dollars to help companies build out the network, promote broadband in rural areas. We will say that tonight, but tomorrow we will end up sticking it to consumers with new taxes with respect to Internet access.

In effect, the policies we are talking about promoting tonight with Government dollars—and many Senators are on legislation to offer tax credits to promote broadband to rural areas which would, in effect, be negated by the effort some are offering to allow for these taxes on Internet access.

Senator ALLEN and I have spent many months trying to work with the State and local governments to address their concerns. We have had months of negotiations, and those negotiations all went on before our distinguished colleagues—the Senators from Tennessee, Ohio, and Delaware—came into the debate.

I note that in the effort to try to find common ground, Senator ALLEN and I agreed to a number of requests that were made by State and local officials. We agreed, for example, to the request from State and local officials for new statutory language further tightening the definition of ''Internet access.''

We agreed to the request for new statutory language on what is called bundling, which is, in effect, where you have Internet access bundled with information technology services other than Internet access, and it is important to separate the two for taxable purposes.

In addition, we agreed to the requests from State and local officials for new statutory language protecting a variety of other taxes, such as property and income taxes, that were never affected by the original legislation we authored, but we thought in the name of trying to find common ground, we would add that as well.

We have agreed to a request for a savings clause on universal service and a variety of regulatory proceedings.

Finally, we have agreed to allow States grandfathered so as to protect existing treatment under their State laws of these services 3 more years of Internet access taxes.

I say as we begin tonight, Senator ALLEN and I in 2 months of negotiations agreed to five requests from State and local officials to try to find common ground on this matter, and I ask tonight, what has been offered in return? What have been offered in return are essentially these projections that say vast sums are going to be lost to the States if this legislation that Senator ALLEN and I have proposed is extended.

I just ask Senators to note the language associated with these projections. The language is always, this bill could cost such-and-such; and the sum is, of course, a very large number. Never is it presented in terms of any kind of independent study that this law has, in fact, cost revenue or would cause revenue to be lost in the future.

After Senator ALLEN and I made these five separate concessions in an effort to find common ground, we now have these various projections that, for all practical purposes, we are trying to convince the Senate that Western civilization is going to end if we urge that this law be updated.

I know colleagues are anxious to talk, and I certainly want to give them that opportunity. I close with one last point as we begin this discussion.

I think colleagues know the technology sector has taken a real pounding in the last couple of years, but what we have seen in the last few months is that the technology sector is beginning to have a resurgence. We have begun to see, both with respect to the stock market and capital investment in the sector, the technology area is really beginning to come back.

I say to my colleagues in the Senate, I think that if, in fact, the Senate unravels the law of the last 5 years, fails to allow us to update this law, the progress that has been seen in the technology sector in the last few months could well unravel.

If, in fact, the more than 7,000 taxing jurisdictions in this country are allowed to take a bite out of the Internet, and we have the Internet access area broken down into its subparts and all of them are taxed, I think that could derail the very impressive progress we have seen in the technology sector in the last few months.

Let us not put in place a regime of multiple and discriminatory taxes on electronic commerce, if for no other reason than it would send a horrendous message to this sector where finally in the last few months we are beginning to see some resurgence.

I see my good friend from Virginia on his feet. I want to tell him how much I appreciate his cooperation. When I began this effort, he was a Governor and was supportive of our efforts then. I am pleased to have had a chance to team up with him as a member of the Commerce Committee.

I also say, because we have Senators who do not share the view of Senator ALLEN and myself—Senator VOINOVICH, Senator ALEXANDER, and Senator CARPER—that my door continues to be open to all Senators, including Senators who do not share our view, in an effort to try to find common ground.

Senator ALLEN and I thought the five concessions we made during 8 weeks of negotiations were part of an effort to be sensitive to the concerns of State and local bodies. Obviously, we have not done that to the satisfaction of all and our door remains open to all Senators.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Virginia.

Mr. REID. Will the Senator from Virginia yield for a unanimous consent request? In fact, I have two of them.

Mr. ALLEN. I yield.

UNANIMOUS CONSENT REQUEST—H.R. 2559

Mr. REID. I appreciate it very much. It will just take a few minutes. I have two unanimous consent requests. I ask unanimous consent that the Senate proceed to the conference report to accompany H.R. 2559, the Military Construction appropriations bill; that the conference report be agreed to and the motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. VOINOVICH. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. I would simply say that is unfortunate. This is a military construction conference report. I cannot believe there is any controversy on that. I appreciate my friend yielding to me.

UNANIMOUS CONSENT REQUEST—H.R. 1828

I ask unanimous consent that the order entered with respect to H.R. 1828, the Syria Accountability Act, be changed to reflect that the time for consideration of the measure be reduced to 60 minutes—the original time was 90 minutes—that the time be divided as follows: 30 minutes for Senator SPECTER and 15 minutes each under the control of Senators LUGAR or BOXER or their designees; that at 9 a.m., Friday, November 7, the Senate then proceed to consider the measure under the limitations as provided under the previous order as modified above, with the remaining provisions remaining in effect.

The PRESIDING OFFICER. Is there objection?

Mr. VOINOVICH. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. I, again, extend my appreciation to the Senator from Virginia for yielding. I will speak at more length at a later time on why I think it was important that these unanimous consents be approved tonight.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I rise this evening to ask my colleagues to support S. 150, the Internet Tax Nondiscrimination Act, and the substitute or managers' amendment that has recently been adopted.

I thank our chairman of the Commerce Committee, JOHN MCCAIN, our commodore, on his great navigational skills as we worked through this measure. I also thank my colleague from Oregon, Senator WYDEN, for his great leadership, assistance, and true partnership in trying to get this measure through for greater opportunity for Americans.

I also thank others who are on this amendment, Senators GRASSLEY, HATCH, SUNUNU, LEAHY, BAUCUS, BOXER, LINCOLN, SMITH, the high-tech task force chairman, Senator JOHN ENSIGN, Senator WARNER of Virginia, Senator BURNS, who is chairman of the Internet Caucus, and the Senator who is in the chair right now, Mr. CHAMBLISS. All have helped work on this reasonable compromise.

There have been a number of concerns to this measure raised by our opponents. We have had several months of negotiations. I am confident the bill as it is presented to us on the Senate floor strikes an appropriate balance between protecting every American from harmful regressive taxes on Internet access while ensuring that necessary protections are in place for State and local governments to maintain their existing revenue base.

The fundamental principle driving this legislation is very simple and clear, and that is the Internet must remain as accessible as possible to all people in all parts of America forever. This was a principle established in the 1998 legislation when Congress passed the Internet Tax Freedom Act and it is the principle I ask all Senators to keep

in mind as we consider this legislation this evening and tomorrow.

My colleagues have heard me say on many occasions that I believe we ought to be promoting freedom and opportunities for all Americans. We need to be advancing ideas, concepts, and policies that help create more jobs and prosperity rather than more taxes and burdens.

The Internet itself is one of our country's greatest tools and symbols of innovation and individual empowerment. In my view, the Internet is the greatest invention for the dissemination of ideas and thoughts since the Gutenberg press. When Martin Luther nailed his 95 theses to the church at Wittenberg, if it were not for the Gutenberg press no one would have read those documents and those thoughts.

So today, we have the Internet for the dissemination of ideas. It is an individualized empowerment zone where individuals are able to access information, communicate, get knowledge, information, as well as engage in commerce. It is a tool for education. It is a tool for information and commerce. And when we are looking at that, I ask, why would there be some who would want to burden that? I think we ought to be trusting free people and free enterprise. We ought to be on the side of freedom, because that is what has allowed the Internet to flourish, rather than the side of those who would want to make this advancement in technology easier to tax for tax collectors.

Some people ask, why is the Federal Government involved in this? Well, heck, if there is anything that is in interstate commerce by its architecture, by its design, by its structure, it is the Internet. One of the great things about the Internet is that it is not confined to boundaries of States or even countries for that matter. For those of us who thought opening up to China was a question that we needed to broach, I thought the fact that the Internet was available and to the extent that the Chinese people could get more ideas from outside of China and not filtered through their government, that was a reason to hopefully open up China for greater prosperity and freedom.

This legislation provides and promotes equal access to the Internet for all Americans. It obviously is designed to protect Americans from harmful and regressive taxes on Internet access services, as well as preventing duplicative and predatory taxes on Internet transactions. Specifically, as this measure is before us now, it does several things.

First, it extends permanently the current Federal prohibition of State and local taxation of Internet access service.

Second, it makes permanent the ban on all multiple and discriminatory taxes relating to electronic commerce. It ensures that several jurisdictions, for example, cannot tax the same transaction simply because the transaction happens to occur over the Internet.

Third, our legislation repeals the so-called grandfathering provision over a 3-year period.

Fourth, we make clear the original intent of the Internet Tax Freedom Act by updating the definition of Internet access to ensure that the moratorium applies consistently to all consumers.

If we are going to exempt Internet access services from taxation permanently, then I believe it makes sense to do so in a manner that applies to all methods of Internet access, regardless of how a consumer chooses to access the Internet, whether by digital subscriber line, otherwise known as DSL connections, by wireless connection, cable modem service, satellite, or dial-up service.

Fifth, and lastly, this legislation makes very clear that nothing in this measure prevents the collection or remittance of State and Federal universal service fees. The Internet tax moratorium that has been in place for 5 years has contributed to the extending of Internet access to over 127 million citizens, about 45 percent of the population of America. Unfortunately, that did expire Friday. Every day that it lapses, there is the opportunity for consumers to be susceptible to pestering new taxes on Internet access services as well as taxes on e-mail, instant messages, spam filters, and even Web searches. For every dollar in taxation added to the cost of Internet access, we can expect to see the loss of utilization of the Internet by thousands of American families, especially lower income families.

According to the Pew Internet and American Life Project, 30 percent of non-internet users say cost is a major reason they remain offline. Additionally, another 43 percent of non-internet users agreed with the statement that the Internet is too expensive.

So, for about half the country who are still not on line, keeping access affordable is vital, and that means keeping access free from State, local, and Federal taxation. The guiding principle is clear, of course: To keep it accessible to all people in all parts of the country forever. This is the position I have held since 1997, since my days as Governor in Virginia when I was one of only four Governors with this position.

I cannot ever envision a time where we believe it desirable for any government, State, local, or Federal, to tax access to the Internet. I cannot envision any time in our future where it will make sense to have multiple taxes on the Internet. Nor can I imagine any time in the future where there ought to be discriminatory taxes or predatory taxes on the Internet.

Yet if the Senate fails to take action or vote for this legislation, such Members of this body will be permitting and in effect advocating taxing the Internet.

There are more people empowered by the Internet today because the Federal policy of the United States has consciously allowed Internet innovators, investors, entrepreneurs, and consumers to remain free from onerous taxation of access to the Internet.

As many of you know, when this was first enacted there were dozens of States and local taxing commissars who were, back then, right in the beginning, imposing disparate taxes on a consumer's ability to surf the Internet. Since the last expiration of the Internet Tax Freedom Act in 2001, some States have begun taxing the high-speed component of broadband Internet access services. They are asserting that certain portions of high-speed broadband Internet access are telecommunications services rather than Internet access and the States are thereby circumventing the original intentions of the law.

Working with Chairman MCCAIN and Senator WYDEN and Senator SUNUNU in the Commerce Committee, we updated the definition of Internet access to assure that all access services, regardless of the technology used to deliver the service, are covered by the moratorium and therefore exempt from State and local taxation.

There have been some misleading statements, some clever hyperbole, and some statements that are just flat-out wrong. I want to set the record straight.

They have raised a number of concerns, the proponents of higher taxes, with this legislation, indicating that we have expanded the moratorium on Internet access to include all telecommunications services making tax free even traditional services like local and long distance telephone communications.

They have also raised a question of whether or not this bill would prohibit States from imposing property taxes, income taxes, or corporate taxes on telecommunications carriers and Internet service providers.

I want Members of this body to understand and be clear on the facts and the truth about this legislation. This bill does not affect traditional voice or long distance telephone services or any other communications service that is not directly used to provide Internet access. This bill, S. 150, does not affect a State's ability to collect income taxes, property taxes, or other corporate taxes, such as franchising fees, that are unrelated to Internet access.

The facts are, S. 150 does not unnecessarily expand the moratorium on Internet access; rather, the legislation clarifies and updates the original intentions of the Internet Tax Freedom Act to include high-speed Internet access services. Only because some States and localities have attempted, and in fact are circumventing the original law by taxing portions of high-speed Internet access, did the definition of Internet access need to be updated.

The impact of broadband and efforts to stop broadband from being deployed by this taxing approach that is going

on, that we are trying to cure, will have a very significant impact on small towns and rural areas. Our colleague, CONRAD BURNS of Montana, likes to talk about how you have to get broadband out in the country, and he would say there is a lot of dirt you have to dig through just to get from one light bulb to another. The same applies to getting broadband out into the communities and out into the country. If you have higher costs imposed on Internet access and then on top of it all you are putting higher costs on the investment for the transport, that means fewer people in a less populated area will be able to afford broadband, thereby denying them opportunities that one would have, whether it is for information, for education, for knowledge, or for commerce, for small businesses and people who live in rural areas.

Another fact: In this bill it only makes permanent the tax moratorium on Internet access services, which is simply the ability to get access to the Internet. Once a consumer has accessed the Internet, the moratorium does not affect the services that are purchased, used, or sold over the Internet that would otherwise be taxable, even if such services are bundled together with Internet access services.

So, in summary, the fact is, by allowing this moratorium to expire, the Senate has opened the door for States and localities to begin imposing regressive taxes on Internet access services. By taxing Internet access, States and localities are actually contributing, and would be contributing, to the economic digital divide. The more expensive we allow the State and local tax commissars to make Internet access, the less likely people are going to be able to buy these advanced services, such as high-speed broadband connections, Internet protocol software, wireless or WiFi devices, and many other multimedia applications.

At a time when technology, as my friend Senator WYDEN has said, and the Internet are growing and improving almost every aspect of our daily lives, where access to the Internet is not a nicety but a necessity for Americans, imposing new taxes on access or levying taxes that discriminate against the Internet as a form of commerce will never be sound policy for America. As a tool, the Internet breaks down economic and educational barriers, leveling the playing field for millions of Americans.

There are those who say it shouldn't be permanent; let's make it shorter. When you talk to business investors—and let's go back to rural and small town areas. When someone is making a business investment they want to have some credibility and stability and predictability as to making these millions of dollars of investment to get into a smaller market. What is going to be our rate of return? When are we going to recoup the tens of millions of dollars it takes to get into these areas?

We just heard an argument on the Agriculture bill about loans to get broadband. It is a lifeline for folks out in the country, in rural areas. There are all sorts of incentives that people are for.

Businesses making those investments have to figure out when are they going to get a return on the investment. If you tax a transport or make it for a short duration of time, they are going to say: Gosh, there are going to be taxes on it in a few years so there will be fewer customers. We just can't risk that investment to get out into those areas.

So, more than ever, I really do believe we ought to listen to good, sound business reasoning, common sense and logic. In fact, most economists and technology experts agree that we need to be encouraging the deployment of the next generation broadband Internet connections and bring our communications infrastructure into the 21st century.

Economists at the Brookings Institution estimate that widespread high-speed broadband access would increase our national gross domestic product by $500 billion annually by 2006.

Failure to pass this legislation with a permanent moratorium and with an updated and clear definition of Internet access like the one this amendment provides, will leave broadband Internet access susceptible and open to harmful taxation. In many States and localities, those taxes could go up as high as 25 percent.

Any additional tax burdens on the Internet will mean additional costs many Americans cannot afford, forcing the poor in our society to reduce or even forego their use of the Internet as a tool for exploration, information, education, and individual opportunity.

More than ever before, when our economy is finally moving forward in the right direction, the people of this country need security with regard to their financial future. Businesses need certainty that prices for Internet access will remain affordable to consumers if they are expected to build out high-speed networks to rural and small-town communities. In a society, indeed a world, where the quality of life and economic power is directly proportionate to one's access to knowledge, we must close the economic digital divide rather than exacerbate it with State and local taxes.

I call on my colleagues to join with the chairman, our commodore, Senator MCCAIN, Senator WYDEN, and all of us in supporting the Internet Tax Nondiscrimination Act and permanently extending the Internet moratorium on tax access and multiple and discriminatory taxes. As we vote on amendments to what would be this Internet access tax issue—and there will be amendments—I respectfully ask my colleagues as we look at these amendments to be leaders who stand strong for freedom and opportunity for all Americans.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, like my friend from Virginia, I am a former Governor, as were Senator ALEXANDER, Senator GRAHAM, and Senator VOINOVICH. We served as chief executives of our States. I loved being Governor. I have never talked to anybody who didn't like the job. As a matter of fact, I enjoy being here and working with my friends JOHN MCCAIN, RON WYDEN, and others.

When I was privileged to be Governor of Delaware, we actually cut taxes 7 out of 8 years. We also balanced our budget 8 years in a row. Among the things I didn't like as Governor was when the Federal Government came in and tried to tell us in Delaware we had to spend money for some purpose but never provided the revenues to pay for that expenditure. Similarly, I never liked it when the Federal Government came in and unilaterally reduced our revenue base for programs we needed in our State to educate our kids, to provide health care, child care, environmental protection, and transportation. I never liked it when the Federal Government came in and tried to undercut our ability to raise revenues for those purposes and never provided an offset to make up the difference in the revenue that was taken away by the Federal action.

I remember as Governor coming here and testifying in the early to mid 1990s. I believe Governor Voinovich did as well. We called on the Federal Government to stop placing unfunded mandates on State and local governments. The message is pretty simple. Don't tell us to spend money for things and expect us to use our revenues. Don't come in and restrict our ability to collect revenues without providing something to make up for it. Our voices were heard. In 1995, legislation was adopted to stop unfunded mandates and dictates by the Federal Government which had an adverse effect on my State and other States.

I believe—correct me if I am wrong—that 91 Senators voted in 1995 for the unfunded mandates bill. Sixty-three of the 91 Senators who voted for that bill in 1995 are still here in the Senate.

In 1998, when Congress adopted an Internet tax moratorium, it was in essence on an unfunded mandate. The Congress agreed to restrict the ability of State and local governments to raise revenues in three areas. The moratorium which was adopted in 1998 said State and local governments could not tax access to the Internet. For the monthly bills we receive from AOL and other Internet providers, State and local governments cannot add a tax to that Internet access bill.

Similarly, if there was an Internet transaction multiple States would like to tax or multiple counties within a State would like to tax, those multiple taxes were essentially stopped by the 1998 moratorium.

Thirdly, discriminatory taxes against transactions over the Internet were banned as well. For example, we don't

have a sales tax in our State, but in my State you could, of course, buy from a local merchant a good or a product and not pay a sales tax or tax of any kind. If any State were to pass a law that said if we were to make the purchase of the same good over the Internet we would have to pay a tax, that would be a discriminatory tax. That is not permitted under the 1998 Internet tax moratorium.

The Internet tax moratorium which was adopted 5 years ago was adopted in order to give Internet commerce a chance to grow and to mature. States didn't like having their ability to raise revenues as they saw fit restricted by the Federal Government. But they excepted 11 States that were actually doing that kind of thing, and their ability to raise revenues was grandfathered in.

For the last 5 years—initially the Internet tax moratorium was for, I think, 2 or maybe 3 years—when it was about to expire, the question was, should we renew it? I believe it was in 2001 when it was about to expire that Congress renewed it for an additional 2 years. It did not broaden the kind of three principal activities that were covered in the initial moratorium that said the same three applied. State and local governments, unless they are grandfathered in, can't begin taxing access to the Internet. State and local governments could not have multiple taxes on the same transactions over the Internet. Further, this ban on discriminatory taxes was upheld for another 2 years. Last Friday that 5-year ban expired, as I think most of us know. Certainly Senators VOINOVICH and ALEXANDER and I would like to see the moratorium, the ban, on the Internet tax access, multiple taxes, and the ban on discriminatory taxes extended.

This is not an argument about taxes on access to the Internet. I think we actually agree on that. There should not be taxes imposed by State and local governments unless they are already grandfathered in on access to the Internet. That is not what this is all about. This is not about whether or not we are going to tax anybody's e-mail. We are not going to do that. We are not interested in that. One of our colleagues, Senator VOINOVICH, will have more to say about that later. He may offer a sense of the Senate to make it absolutely clear that nobody around here is interested in taxing access to the Internet.

But as we look to nurture our economy and economic activity that is driven in part by commerce over the Internet, let us remember there is another set of voices that need to be heard. They are the voices of the people who are running our State governments, the folks who are running our cities and our counties and trying to do so in an environment where their revenue base continues to diminish. Their responsibilities to educate our kids don't diminish. In fact, those responsibilities are getting tougher as we impose academic standards and raise our expectations in our schools. We need to provide some kind of health care for people, young and old. Those needs are not diminishing. In fact, the burden through Medicaid on State and local governments, if anything, is increasing, not diminishing.

I was Governor during good times. I don't know if it was easy to be Governor from 1992 to 2000, but it was a heck of a lot easier than today. Today, instead of dealing with budget surpluses and figuring out how to invest or use the budget surpluses or how to cut taxes in order to return a portion of the surpluses, State and local governments are scraping for every dime to try to meet the needs of their States.

The question to consider today and tomorrow and perhaps next week is, What right do we have as a Federal legislature, as a Congress, to step in and mandate the reduction in the tax base, the revenue base, of State and local governments? What right do we have to do that? What right do we have to do that in the face of the Constitution? What right do we have to do that in light of the legislation adopted in 1995 banning unfunded mandates? We have heard from Governors and mayors from every corner, county council men and women, commissioners, we heard from folks from every corner of this country saying, Abide by the law you voted for in 1995 banning unfunded mandates.

I close with where I started. I have not talked to one Senator who says he or she is for taxing access to the Internet. We are not. I have not heard from any Senator, Democrat or Republican, from any part of this country, who says they are for taxing any person's e-mails. We are not. By the same token, my friends, I don't believe we should be for stepping in, beyond a very narrow moratorium on which we already spoke in those three areas, to broaden that moratorium to further undermine the revenue base of our State and local governments, during very difficult times for all of them, without giving that action in this proposal a whole lot more thought and debate and discussion. We will have that opportunity today and tomorrow.

I say to Senator VOINOVICH, Senator GRAHAM, Senator ALEXANDER, and others who have joined and will join in offering an amendment tomorrow, including Senator HOLLINGS, Senator STEVENS, Senator DORGAN, Senator FEINSTEIN, Senator LAUTENBERG, and others, I am proud to join in this initiative. It is possible in the end, I believe, to come up with a policy that is fair to State and local governments and is fair to those who would seek to expand our economy and to do so through Internet commerce.

Tomorrow we will have the opportunity to vote on an amendment offered by Senator ALEXANDER, Senator GRAHAM, Senator VOINOVICH, and myself to do just that. I look forward to further debate on that amendment and the opportunity for an up-or-down vote on that amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I thank my colleague from Delaware, my colleague from the State of Tennessee, and my colleague from the State of Florida for standing up—all of us former Governors—to deal with a matter that will have great impact on our respective citizens for many years ahead. We want to make sure that whatever we do makes sense.

Before I begin, I would like to set the record straight that this debate is about federalism, unfunded mandates, and protecting States' ability to collect taxes. It has nothing to do with taxing e-mail.

I have made the issue of unfunded Federal mandates a top priority during my 36 years of public service. At every level of government—as a State representative, county auditor, county commissioner, lieutenant governor, mayor of the City of Cleveland, Governor of Ohio for 8 years—I have seen firsthand how the relationship of the Federal Government with its State and local counterparts affects our citizens and the communities in which they live. My background has fueled my passion for the issue of federalism and the need to balance the Federal Government's power with powers that our Founding Fathers envisioned to the States.

This very body was created, in part, to guarantee that States had adequate, equal means to assert their interest before the Federal Government. Our forefathers provided that each State has two Senators to protect States rights and federalism, and prior to 1913 those Senators were elected by their legislatures to guarantee that they would protect federalism. I believe strongly that the relationship between the Federal Government and State and local governments should be one of partnership. That is why I vowed when I was elected to the Senate, I would work to find ways in which the Federal Government can improve the way it works with these levels of government to serve the American people.

I have also been concerned about the tendency of the Federal Government to preempt the functions of State and local governments and force on them new responsibilities, particularly without also providing the funding to pay for these new responsibilities.

Seventeen years ago, in 1986, I spoke to the Volunteers of the National Archives regarding the relationship of the Constitution to America's cities and the revolution of federalism. I brought to the attention of the audience my observation, since my early days in government, regarding the course American government has been taking:

> We have seen the expansion of the federal government into new, non-traditional domestic policy areas. We have experienced a

tremendous increase in the proclivity of Washington both to preempt state and local authority and to mandate actions on state and local governments. The cumulative effect of a series of actions by the Congress, the Executive Branch and the U.S. Supreme Court have caused some legal scholars to observe that while constitutional federalism is alive in scholarly treatises, it has expired as a practical political reality.

In 1991, I started a long crusade when I became a member of the National Governors Association, working with the State and Local Government Coalition to do something about unfunded mandates. In fact, as Governor of Ohio, I requested that a study be done to examine unfunded mandates. It was the first of its kind in any State. It captured just how bad the mandate problem was in real dollars. Between 1992 and 1995, Ohio had unfunded mandates of almost $2 billion. These efforts were strongly supported by Senator Kempthorne, Senator Roth, Senator Glenn, Congressmen Robert Portman, Tom Davis, and Bill Clinger and culminated with the passage of the unfunded mandates legislation in the Senate on March 15, 1995.

As a matter of fact, for the first time in my life I set foot in the Senate when the Senate passed that Unfunded Mandate Relief Act. I was in the Rose Garden representing State and local government when President Clinton signed the legislation on March 22, 1995. In fact, I have that pen proudly displayed in my Senate office.

This milestone concluded a lengthy and coordinated effort by State and local government officials and their congressional allies to reduce the economic burden of Federal unfunded mandates and the adverse impact they have on State and local services.

By the way, this was the second plank in the Contract With America that was developed in 1994. I will never forget when we were in Williamsburg and committed ourselves to the Contract With America. The Senator from Virginia was present at that time in the capacity of Governor of Virginia.

I believed then and I believe today that mandates forced us to cut vital services and cut taxes. Mandates also rob our citizens and elected officials of perhaps the most fundamental responsibility of government, prioritizing government services. The Unfunded Mandates Reform Act does not prohibit unfunded mandates, but it does slow down the process of enacting a mandate and forces each Senator and House Member to go on record that we want to mandate or prevent action by State or local governments without providing the resources with which to pay for it. It ensures that Congress is informed and accountable when considering an unfunded mandate for pending legislation. The law was designed specifically to ensure an up-or-down vote on whether to impose a mandate.

The mandate we are debating is exactly what the Unfunded Mandates Reform Act was designed to address. This is the first time this Act has been used on the Senate floor since it was enacted in 1995. When this legislation passed the Senate in March of 1995, the vote was an overwhelming 91-to-9 vote. Of the 91 Senators supporting the bill, 50 are still here today, and of the 9 nays, 7 Senators are still in office. In addition, 14 Members of the House—voting in favor of unfunded mandates reform—have moved over to the Senate. So we have 64 Senators today who voted for this bill in 1995 in their respective Chambers.

The bill currently under consideration, the Internet Tax Nondiscrimination Act of 2003, sponsored by my good friend from Virginia, Senator ALLEN, and Senator WYDEN and Senator MCCAIN, has included unfunded mandates by the Congressional Budget Office.

In fact, I want to quote from the Commerce Committee's report dated September 29, 2003, in which CBO said:

> By extending and expanding the moratorium on certain types of state and local taxes, S. 150 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act. CBO estimates that the mandate would cause state and local governments to lose revenue beginning in October 2006; those losses would exceed the threshold established in [the unfunded mandates relief legislation]. While there is some uncertainty about the number of states affected, CBO estimates that the direct costs to states and local governments would probably total between $80 and $120 million annually. . . .

Furthermore, they went on to say:

> Depending on how the language altering the definition of what telecommunications services are taxable is interpreted, that language also could result in substantial revenue losses for states and local governments. It is possible that states could lose revenue if services that are currently taxed are redefined as Internet access under the definition of S. 150.

Finally, the report states that CBO cannot estimate the magnitude of these losses.

Mr. President, let me reiterate, CBO said: Depending on how the definition is interpreted, the loss of revenue to the States and local governments could be substantial.

If CBO cannot calculate the potential loss of revenue to the States, why in the world would we change the definition of Internet access? And why in the world would we make the new definition permanent?

Even FCC Commissioner Michael Powell said the telecommunications industry is in flux and that few industry experts could agree on a definition in view of the rapid changes in technology.

Senator WYDEN, in his presentation earlier this evening, made the allegation that no State will lose money under this proposal. We asked the National Governors Association to contact the tax commissioners from various States and here are some of the findings: Kentucky will lose $265 million; Iowa, $45 to $50 million; Maine, $35 million; Michigan, $360 million; New Jersey, $600 million; Ohio, $55 million; Oklahoma, $159 million; Tennessee, $358 million; Utah, $92 million; Washington, $33 million.

That is a lot of money—a lot of money—and States will lose tax revenue under this proposal.

In my own State, I spent a lot of time with our Ohio Tax Commissioners Office and the Office of Budget and Management. According to the Department of Taxation in Ohio, we will be losing about $700 million over our 2-year biannual budget period.

Last week, my staff was on a conference call with SBC Communications, Bell South, Sprint, the Tennessee Revenue Director, and the Ohio Tax Commissioner's Office. The telecommunications companies did not dispute the Ohio Tax Department's estimates.

So let's be honest about it. If this permanent moratorium goes through with the current definition, there is no question in the world that States are going to lose money.

At the end of that conversation, by the way, the only thing we got out of it was that there was uncertainty, confusion, and speculation regarding what this all meant.

In addition, we are going to be losing $350 million, at least, as a result of this proposal today.

If we pass S. 150, Congress will, in effect, force States to raise taxes or cut services in order to make up the difference. In other words, all 50 States will be forced to debate whether to raise taxes, cut services, or come to Congress for more money. Mr. President, unlike Congress, by law all states must balance their budgets. They don't have the option of printing more money like the federal government.

States have to balance their budgets and if they don't spend within their means, they are forced to make a choice to either cut services or raise taxes. Of course, that is something we have not done. And I mention, that some of my colleagues say States are not fiscally responsible. I would like to say that most of the States in the United States of America are much more fiscally responsible than this body, in which we have increased spending and added to our burgeoning deficit.

Mr. President, the newspapers in Ohio get it. The Cincinnati Enquirer, one of the most conservative papers in Ohio, understands:

> One reason governors, mayors and county officials oppose expanding the Internet tax ban is that telecom companies are racing as fast as they can to convert most services to the Internet. If just about everything gets tax-exempt under a broader ''Internet access'' definition, states and localities would take a huge tax revenue hit.
>
> The development of DSL, broadband and cable Internet service were just the sort of new access technology that Voinovich and others hoped would result from the tax moratorium, but they don't want it expanded to kill existing tax revenues.

The Akron Beacon-Journal also understands:

In short, critical programs would be put in jeopardy, from mental health care to public schools.

Even the Washington Post understands:

What's driving this legislation is that telecommunications companies and Internet service providers see an opportunity not only to make the tax moratorium permanent—in itself a bad idea—but to save what could amount to billions in additional taxes. The law frees service providers from having to pay taxes on telephone service they use to provide Internet access. And as the Internet becomes a more effective medium for providing phone service and delivering products such as downloaded movies, software and music, the legislation could sweep such offerings within the ambit of services that states are prohibited from taxing.

The Internet shouldn't be subject to conflicting taxes, but that's no reason to argue that it shouldn't be taxed at all. There should be a level playing field for taxing Internet access, whether it comes through ordinary dial-up, cable modems or high-speed telephone lines.

The last thing Congress should do now to cash-strapped states is pass a law that would not only permanently put Internet access off limits for taxation but also deprive them of revenue that they now collect.

And they go on—I will finish the quote—

Proponents of the law are busy demagoguing the issue, suggesting, as Senate sponsor Ron Wyden (D-OR) put it the other day, that users ''could be taxed every time they read their local newspaper online or check the score of a football game.'' Congress should step back from the brink, temporarily extend the moratorium and sort this all out in a way that doesn't intrude on state prerogatives.

Mr. President, I ask unanimous consent that these articles be printed in the RECORD.

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

[From the Cincinnati Enquirer, Oct. 31, 2003]

HALLOWEEN SCARE: INTERNET TAXES

(By Tony Lang)

Sen. George Voinovich of Ohio has been boiled in a witches' cauldron this week by critics angered that he helped block an expanded ban of taxes on Internet services. The current Internet Tax Moratorium, which he supports, expires Saturday.

Anti-tax groups making Voinovich out to be the devil incarnate are roasting the wrong guy. Voinovich favors keeping the tax moratorium on Internet access. He helped negotiate the Internet Tax Freedom Act of 1997, supported its renewal in 2001 and opposes new taxes on telecommunication services. And yes, he strongly opposes a tax on e-mail.

But he and other senators do object to new legislation which would expand the definition of ''Internet access'' and not only exempt some telecom services now taxed but also some income, property and other business taxes. That legislative change could cost state and local governments between $4 billion and $8.75 billion a year by 2006, the Multistate Tax Commission estimates. The Congressional Budget Office agrees losses would be substantial.

Voinovich, a states-rights federalist, argues it would be unconstitutional for the Federal government to abolish existing State and local tax revenue streams. It also would violate the 1995 Unfunded Mandates Relief Act, which then-Gov. Voinovich lobbied for and U.S. Rep. Rob Portman of Terrace Park sponsored. That law attempts to bar Congress from imposing a mandate on states without paying for it.

One reason governors, mayors and county officials oppose expanding the Internet tax ban is that telecom companies are racing as fast as they can to convert most services to the Internet. If just about everything gets tax-exempted under a broader ''Internet access'' definition, States and localities would take a huge tax revenue hit. The development of DSL broadband and coaxial cable Internet service were just the sort of new access technology that Voinovich and others hoped would result from the tax moratorium, but they don't want it expanded to kill existing tax revenues. The loss in Ohio services is calculated at $450 million.

The world won't end tomorrow if the tax moratorium expires. It lapsed for a month in 2001 before Congress extended it. The House already passed a bill (H.R. 49) on Sept. 17 making the Internet tax ban permanent. This week, Sens. Voinovich, Lamar Alexander of Tennessee, Ernest Hollings of South Carolina, Frank Lautenberg of New Jersey and Maria Cantwell of Washington State put a legislative ''hold'' on S. 150, and according to Senate rules of ''unanimous consent,'' it will take some cutting and pasting before all agree to bring it to a floor vote.

Ohio Gov. Bob Taft wrote to urge the Senate Finance Committee to limit the tax ban to Internet access only. Internet sales are a different matter. The Capitol Hill in-fighting over taxing e-commerce is even more bloodcurdling, and as rife with falsehoods. The tax ban doesn't mean the Internet is a tax-free zone. But Internet sales, according to the Department of Commerce, accounted for only 1.3 percent of all retail sales in 2002. Still it's no wonder Lamar Alexander is leery of sales tax bans. Tennessee has no State income tax. Someday, States may settle on some simple point-of-origin sales tax system for mail order, catalog and Internet sales, but meantime Congress should keep its hands off and limit itself to protecting interstate commerce and lively tax competition between states.

[From the Beacan Journal, Oct. 30, 2003]

RESPONSIBLE GEORGE

Sen. George Voinovich finds himself in a familiar position. The Ohio Republican has angered many in his party. His offense? He wants Congress to act responsibly. He has correctly questioned aspects of legislation that would extend the Internet Tax Freedom Act, the five-year-old moratorium on State and local taxation of Internet services set to expire on Saturday.

Voinovich isn't alone. Sen. Lamar Alexander, a Tennessee Republican, has echoed his concerns. So have many Republican governors, including Bob Taft of Ohio. They do not oppose the ban. (Voinovich helped to negotiate the original moratorium.) They recognize the need to encourage Web businesses. What they find troubling is the breadth of the extension.

In September, the House approved legislation that would make the ban permanent. The Senate is considering a similar bill. Both would expand the definition of Internet services to such an extent that State and local governments would risk a substantial erosion of their tax base. Not surprisingly, the revised definition was inserted in haste, more ideologically driven that practical.

No surprise, either, that Voinovich, a former governor, would spot the difficulty ahead. States collect taxes on local and long-distance telephone services. Telecommunications companies are increasingly looking to ''bundle'' products, offering a collection of services, including Internet access. The proposed extension would permit the bundled items to be viewed as one product. Thus, products that currently are taxed, such as a local phone service, would be exempt.

The amount of revenue lost? Ohio would surrender an estimated $350 million a year. The potential bleeding explains why Bob Taft fired a letter to Charles Grassley of Iowa, the chairman of the Senate Finance Committee. The governor stressed the ''devastating'' impact on States.

The Multistate Tax Commission (an association of State tax directors) estimates the proposed extension would drain at least $4 billion a year from all State treasuries and as much as $8.75 billion by 2006. Again, these are funds States already collect, and many States face a fiscal crunch as severe as any in the past 50 years.

In short, critical programs would be put in jeopardy, from mental health care to public schools.

George Voinovich certainly knows unfunded mandates. He has long railed against the feds making demands and leaving States to pick up the tab. In this instance, Congress would tamper with established ways of States raising essential revenue, leaving governors and State lawmakers to cover the difference.

Better, the responsible argument goes, to extend the current ban on taxing Internet services for a period of time, allowing lawmakers to think harder about their next step.

[From the Washington Post, Nov. 4, 2003]

TAX AND CLICK

State and local governments have broad power to tax as they see fit—everything from clothes and food to electricity and telephone service. Nearly everything, that is, except the Internet. Under a supposedly temporary law passed in 1998 and already extended once, Congress prohibited States from taxing Internet access fees, the monthly charges imposed by Internet service providers. Proponents argued that the nascent engine of the Internet shouldn't be slowed by taxing it and that it would take time to devise a system to prevent duplicative or discriminatory taxes. Now, with the tax moratorium having expired on Saturday, Congress is poised to make the ban permanent, broaden its reach and wipe out existing taxes that had been grandfathered in under the previous law. With State budgets under stress and the Internet thriving, this is an unnecessary—and costly—incursion on States' rights.

The argument for permanently barring taxes on Internet services centers on two issues. One is the argument that taxing Internet access, whether through phone lines or cable modems, would amount to double taxation, because the phone lines and cable service are already taxed. That's true, but purchasing Internet access provides a separate—and separately taxable—bundle of services. Terming this double taxation is like saying that a shopper who pays tax on a pair of slacks should then be exempt from being taxed on a shirt bought with it.

The other argument is that taxing Internet access would worsen and prolong the digital divide, the computer gap between rich and poor. This may be a problem, but prohibiting taxation is not the answer. It's not the extra few cents on a monthly bill that's stopping the less well-off from Googling their way to the middle class. A policy to erase the digital divide, however laudable, doesn't justify the no-tax solution. The federal government wants to spur home ownership for low-income families—surely a bigger problem than lack of Internet access—but that doesn't lead it to tell local governments that they can't impose property taxes.

What's driving this legislation is that telecommunications companies and Internet service providers see an opportunity not only to make the tax moratorium permanent—in itself a bad idea—but to save what could amount to billions in additional taxes. The law frees service providers from having to pay taxes on telephone service they use to provide Internet access. And as the Internet becomes a more effective medium for providing phone service and delivering products such as downloaded movies, software and music, the legislation could sweep such offerings within the ambit of services that states are prohibited from taxing.

The Internet shouldn't be subject to conflicting taxes, but that's no reason to argue that it shouldn't be taxed at all. There should be a level playing field for taxing Internet access, whether it comes through ordinary dial-up, cable modems or high-speed telephone lines. The last thing Congress should do now to cash-strapped States is pass a law that would not only permanently put Internet access off limits for taxation but also deprive them of revenue that they now collect. Proponents of the law are busy demagoguing the issue, suggesting, as Senate sponsor RON WYDEN (D-Ore.) put it the other day, that users ''could be taxed every time they send an e-mail, every time they read their local newspaper online or check the score of a football game.'' Congress should step back from the brink, temporarily extend the moratorium and sort this all out in a way that doesn't intrude on State prerogatives.

Mr. VOINOVICH. Mr. President, I have made the point that I have strong concerns with the pending legislation because it is an unfunded mandate. At the same time, I think it would be wrong for Congress to do nothing and allow taxes on Internet access.

As I have said emphatically, I am against taxes on e-mail and the Internet. It is no secret that my interest in the current moratorium dates back to my time as Governor. During my tenure as Governor, I was also chairman of the National Governors Association. As chairman, I asked Governor Mike Leavitt to be the lead Governor on the Internet economy and its effects on State government and federalism. The NGA efforts on this important topic led to the current moratorium on Internet taxes which was signed into law in 1998, and then again in 2001.

Our goal then is the same as my goal today: to encourage the growth of the Internet as a driving force in our economy.

Let's look at the facts.

Under the original 3-year moratorium from 1998 to 2001, the Internet rapidly expanded to all corners of our country. The point I am trying to make is that with the current moratorium that we have, we have seen unbelievable expansion in the Internet. That is what we wanted to have. That is why we put the moratorium in effect.

In February 2002, the National Telecommunications and Information Administration at the Department of Commerce issued a report entitled ''a Nation Online: How Americans Are Expanding Their Use of the Internet.'' It is just unbelievable what has happened during that period of time. My point is, the Internet flourished in all segments of society during the original moratorium, and I think it is safe to assume that Internet usage continues to increase every day.

The question is, how do we continue to support the growth of the Internet and bring parity for all Internet service providers without causing undue harm to our State and local governments that have been experiencing serious budget shortfalls?

S. 150 would, for the first time since 1998, change the definition of Internet access and, without a clear understanding of the definition's impact, rush to make it permanent.

The fact is, Internet technologies are changing more rapidly than ever. Companies are moving quickly to provide multiple services over a single line, including Internet access, voice communication, data service, and entertainment service. It does not make sense to change and make permanent the definition of Internet access when the technologies and the different ways Internet services are being offered is changing so rapidly.

My colleagues, Senators ALEXANDER, GRAHAM, and CARPER, and I will introduce an amendment that simply keeps current law in place and offers language to level the playing field for DSL, wireless, cable, and satellite Internet services. Basically, what we are offering will be a 2-year moratorium. We will amend the current definition of the Internet tax moratorium to preclude the taxing of DSL.

Many States today, under the grandfather clause of the tax moratorium, have been collecting taxes on DSL. Several other States, because of a loophole in the definition, have started collecting taxes on DSL connections. What we are proposing—and it is very fair—is that in consideration of this body extending this moratorium for only 2 years, States such as Ohio and others that are now collecting Internet taxes will give them up at the end of a 2-year period. This gives them adequate time to prepare, in terms of their budget, for the loss of the revenues.

Clearly, the States are willing to give up taxes that they are now collecting on the Internet in consideration of not going forward with a permanent moratorium with the definition that is now contained in the bill before us. In other words, the fear of what could happen under the definition of the bill that is before us today in the managers' amendment is so large that they are saying: We will give up that money just so it lasts for 2 years. During this time, we can work on a definition that will make sense.

I believe that is a very fair proposal. It means we will be reducing taxes on the Internet in many of our States that are now collecting taxes.

Last but not least, on October 29, the Wall Street Journal wrote an editorial entitled ''Taxing Your E-Mail.'' The Journal claimed that a few Republicans have decided to dress up as tax-and-spend Democrats for Halloween. The fact is, the Wall Street Journal article completely misstated what we are trying to do here tonight. The reference to taxing e-mail is nonsense.

In fact the Cincinnati Enquirer followed up the Wall Street Journal by saying on October 31, quote:

> Anti-tax groups making VOINOVICH out to be the devil incarnate are roasting the wrong guy. VOINOVICH favors keeping the tax moratorium on Internet access. He helped negotiate the Internet Tax Freedom Act of 1998, supported its renewal in 2001 and opposes new taxes on telecommunication services. And yes, he strongly opposes a tax on e-mail.

In fact, I am going to be introducing an amendment tomorrow that is a Sense of the Senate to make it very clear that this is not about taxing e-mail. I think it is important my colleagues understand that. This is not what this legislation is about.

I am hoping tomorrow we will have an opportunity to vote on this bill and this amendment. I hope my colleagues will be fair enough to understand how serious this matter is to the future of our States and to federalism. I hope we are successful tomorrow with our amendment.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, there have been some comments by my colleagues that the people who are concerned about this issue and who are at risk are Governors, State legislators, mayors, county commissioners, and other officials at the State and local level. I beg to disagree. The people who are at risk include that child who is in an overcrowded classroom. The people who are at risk are those persons who have suffered a heart attack and are waiting for the emergency medical service to arrive. The people who are at risk include that woman whose car is broken down on a dark highway and who is waiting for the State trooper to come give assistance.

Under this concept of federalism that our Government has followed since its beginning, those responsibilities—education, emergency response, law enforcement—have been placed in the hands of the States. It is their responsibility to provide for a governmental structure of State and local response that will fulfill those and literally thousands of other responsibilities.

It has been said that federalism is the most significant governmental concept which has been developed by the United States. It is a philosophy which has always been in flux. We are looked down upon in this Chamber by two of the figures who represent the divisions within federalism: Our first Vice President, John Adams, who was a strong advocate of a central government; Thomas Jefferson, our second Vice President, who was an equally strong advocate of responsibility being placed as close as possible to where the people affected by that action of government live.

Federalism depends upon certain fundamental principles. One, it depends

upon the principle of a respectful relationship between the central government and the States. It depends upon the ability to accept diversity.

Most countries have a ministry of education which is responsible for education on a nationwide basis. We have gone a different course. We have 50 States which have the primary responsibility for education from prekindergarten to graduate school. We have the concept that the States should be given significant latitude so they can be the laboratories for experimentation in our Nation.

We also believe under federalism that there should be, to the greatest degree possible, a matching of power and responsibility. If the States, for instance, have a certain set of responsibilities, they should have the commensurate power to organize to meet those responsibilities and to determine what level of revenues are going to be necessary to meet those responsibilities and from what source or sources those revenues should come.

We recognize that under our Constitution, the Federal Government has ultimate authority. If there is a conflict between the States and the national government, the national government prevails. That concept was engrained in our Nation through the Civil War which settled the question of which level of government was supreme.

The Federal Government should not use this power that it has in an arrogant manner but, rather, with discretion and respect. State governments have all power that is not delegated to the Federal Government. But they, too, should not use that residual power in an arrogant way but recognize that, while they are serving specifically the constituents of their State, they also are serving ends that benefit the Nation. Education is the most obvious example of a responsibility which has national service but which is directed at the State and local school district level.

Mr. President, the term ''situational Federalist'' has come into vogue to describe people who will be Federalist, particularly in representing the role of State and local government when the ends to be met will be achieved through decentralization, and they are not Federalist when the ends they seek to achieve will be better accomplished through centralizing power.

I reject the concept of ''situational Federalism.'' I believe, for this great, large, diverse, dynamic country to best function, we in Washington should be very respectful of the role of the States, even when the end result of that may be a policy position with which we do not necessarily agree.

I think we have arrived at one of those moments tonight. In this case, almost everyone in this Chamber supports the principle that is in the national interest to have an expansion of access to this wonderful new world made possible by the Internet. But we believe we should carry out that objective with discretion. That is what we have done to date. We have incrementally, 2 years at a time, extended the moratorium on the ability of State and local governments to have taxation of access to the Internet; and we have been carefully defining just what the range of that moratorium on taxation would be. And outside of that definition, we have given the States and local governments significant authority. That authority has resulted in a not insignificant totality of the revenue of State governments.

As an example, last year, on a nationwide basis, State governments collected between $4 billion and $9 billion of revenue from sources which this legislation would render immediately and permanently nontaxable. I believe that is not an example of the respectful way in which the Federal Government should deal with our Federal partners at the State level.

As Senator VOINOVICH has said, and as Senator CARPER and as Senator ALEXANDER will say, we will make a proposal tomorrow that I think represents that appropriate respectful relationship. It does what we have done now twice before—provide for a 2-year moratorium on Internet access. It keeps, with one exception, the same definition of interstate access that we have had from the beginning of this series of moratoriums. It does not preemptorily eliminate the ability of those States that were grandfathered in to continue to collect those taxes. It will anticipate a gradual phaseout of that grandfather status, but not one that could have a shock effect on the ability of those 11 States, which does not include my State, and which does not include the State of the Presiding Officer. We should not look at this parochially from our own interests but, rather, what best serves our responsibilities as Federalists.

Mr. President, I intend to speak at somewhat greater length tomorrow as we get into the details of why we believe S. 150, as submitted, is not in our tradition of federalism, and to suggest an alternative, which will be offered by four of us who are now colleagues, but previously in our life did have the responsibility of the chief executive of one of our 50 States, and therefore know from personal experience the challenges that States have in educating its young people, providing critical law enforcement and emergency services to our people, and the necessity of having the capacity to fund those services, which is the equivalent of the responsibility itself. I believe the proposal that will be offered tomorrow is a reasoned proposal that assures that there will be no further encroachment on access to the Internet through increased taxation, while at the same time respecting the fact that taxation on telecommunications revenues represents a significant capability of the States to meet their obligations.

Mr. President, with that somewhat philosophical introduction, I look forward to a debate on the specifics of this issue when we meet again tomorrow.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I thank the Senator from Florida for his remarks and say to him and the Presiding Officer and Senator CARPER how much I appreciate the opportunity to work with them on this issue. They have been leaders in our country, in our States, among the best Governors we have had over the last number of years, and I welcome the chance to work with them. I thank Senators ALLEN and WYDEN for their hard work on this issue. They have been working at it for a long time. I respect that and appreciate it. I thank Senator MCCAIN for his congeniality and his efforts to move things along. He and the majority leader, last week, agreed to give us an opportunity, as they have done tonight, and for tomorrow, to make our case, state our issues, have votes that we want to have, and I am grateful for that during a busy season. It would have been easier to just let this go by. There are a lot of issues before the Senate, but there are a bipartisan group of us who think this is very important as well. Each of you have stated tonight—and I don't need to restate it—why that is so.

I think it is a part of the tradition of the Senate that it be the saucer in which the coffee cools. What we have found over the last several days is, as our colleagues on both sides of the aisle have looked at this unfunded Federal mandate that affects internet access, they have more questions about it. There are more people who are deeply concerned about the proposal of the distinguished Senators from Virginia and Oregon.

So I am appealing tonight, and will be doing so tomorrow, especially to those Members of the Senate who have been mayors and Governors, who have been legislators, city council men and women, to look at this and the issues of Federalism. In sort of a reverse partisanship, I want to appeal to my colleagues on this side of the aisle, for whom the idea of unfunded Federal mandates has been a central part of our beliefs. It was the center of our Republican resurgence in 1994, the heart of the Contract With America. S. 1, the No. 1 Senate bill that the new Republican majority leader, Bob Dole, introduced in 1995, was the Unfunded Mandates Reform Act. So this is important stuff for the Republican Party.

In listening, though, to the issues that are being discussed tonight, let me see if I can summarize some of what I believe I have heard and discuss for a moment the amendment that I will be sending to the desk, or have already forwarded to the desk, on behalf of several of us.

The question tonight is whether and to what extent we will allow State and local governments to tax Internet access. That is the issue. There are really

two arguments among those of us who are arguing. The first one is—and I may be alone in this, but I don't think so—I don't like any unfunded Federal mandate. I supported the idea of a moratorium on State and local taxation of access to the Internet when it all began. Most of us did. That was in the mid-nineties. It is hard to think back that far. The Internet was an infant in a crib then and none of us wanted it to be squashed in its infancy.

Then after 3 years, along came various advocates who said: Let's give it another 2 years. That very narrow ban on Internet access, which didn't cost very much money—probably so little money during that time it didn't qualify under the Unfunded Mandates Reform Act as an unfunded Federal mandate—so it was extended 2 years.

Now the advocates of the other position are coming along and saying: We want to make this ban permanent, and we want to broaden the definition of what we mean by ''Internet access,'' so what we have here is not such a complex issue. We have really two questions: Do we want a permanent ban, or do we want a 2-year ban? The second is, Do we want to extend the same definition of ''Internet access'' we now have with a minor change, or do we want a broad definition of ''Internet access'' that might cost State and local governments billions of dollars? That is really the issue that will be presented when we vote most likely tomorrow.

I send to the desk, but do not call up, an amendment on behalf of myself, Mr. CARPER, Mr. HOLLINGS, Mr. STEVENS, Mr. VOINOVICH, Mr. GRAHAM, Mr. DORGAN, Mrs. FEINSTEIN, Mr. LAUTENBERG, and ask that it be filed.

I wish to discuss three issues. One is the strange case of amnesia that seems to have set in, especially on my side of the aisle, about unfunded Federal mandates. The Presiding Officer made an eloquent discussion of that issue. So did other speakers.

The second is, I would like to discuss specifically why this is an unfunded Federal mandate under the specific terms of the budget law which was amended in 1995.

Finally, I want to say a word about the amendment which we will offer, which we believe is a better extension of the ban on Internet access than that proposed by Senator ALLEN and Senator WYDEN.

I very well remember 1994 and 1995. Senator VOINOVICH remembered he was in Williamsburg, VA, when the Governors met. I remember that Senator VOINOVICH, then a Governor, was the acknowledged leader of State and local forces who were deeply concerned about the practice of Washington politicians passing laws claiming credit and then sending the bills to mayors and Governors. Nothing really made us Governors much madder than that, people getting elected to Congress and presuming they had suddenly arrived here in Washington, that they had a great idea about children with disabilities, and they would order us to do it and then order us to pay for it, or at least pay for half of it.

We cared about children with disabilities, too, and we felt as if we were elected to make those decisions. We found nothing in our laws and constitutions about how the Federal Government ought to define for us what our tax base ought to be or ought to be telling us all of these things.

I vividly remember the new Republican majority leader of the Senate, Bob Dole, coming to Williamsburg that very meeting Senator VOINOVICH mentioned. Governor Allen, now Senator, was presiding. Thirty Republican Governors were there. Speaker Gingrich and Majority Leader Bob Dole came. Speaker Gingrich talked about the Contract With America. We Republicans can remember that—300 Republican candidates standing on the steps of this U.S. Capitol saying: Here is our 10-point plan; elect us, and if we break our promise, throw us out. That is what we said. That is what we Republicans said. What was our promise? The heart of that promise was no unfunded Federal mandates.

Senator Dole knew that. It wasn't just a matter of the House of Representatives. He came to Williamsburg, VA. He pulled out a copy of the Constitution. He must have done it 100 times in the next year because I was with him 100 times in the next year when he did it. We were both campaigning in Presidential primaries, and he would read the tenth amendment. He would read:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

That was Bob Dole in 1994 and 1995. He was good to his word.

We have a practice of the Senate. The majority leader will pick the most important bill and make it his bill and call it S. 1. S. 1 that year for Senator Dole, the new Republican majority leader, was the Unfunded Mandates Reform Act of 1995. As Senator VOINOVICH said earlier, it passed 91 to 9. Sixty-three of the Senators who voted for it then are serving in this body today. Twelve of them were House Members then.

There was a lot of steam in that argument then. I would like to read just a paragraph from a backgrounder put out by the Heritage Foundation in December of 1994. This is just a little while after the Governors met. This paragraph says:

> Throughout much of American history, especially since the New Deal—

This is how they were looking at it—

> the Federal Government increasingly has encroached upon the fiscal and constitutional prerogatives of State and local government. Today this imbalance has reached a crisis point, and the States are fighting back. Through a variety of initiatives, they are demanding that Federal mandates be funded and, in many cases, even are challenging the authority of the Federal Government to impose these mandates, whether funded or not. With the new more State friendly Congress—

That is us, the Republican Congress—

> States and localities have a historic opportunity not only to effect mandate relief, but also to restore balance in State-Federal relations.

Then they begin to list in this Heritage Foundation document some of the ways States and localities that seemed to have reached their limit are fighting back. They are publicizing the costs of unfunded mandates. They are holding their Congressmen accountable. They are challenging Congress's authority to impose the mandates. They are suing the Government for the violation of the tenth amendment. They are lobbying Congress to pass mandate relief legislation—no-money, no-mandate constitutional amendments.

They are considering a collective action to challenge the Federal Government's right to pass laws that impose duties on States without paying the bill.

This was the mood in 1994 and 1995, and this was a major reason why the Republican majority was elected. I hope we don't forget that. I know at the time a great many of our colleagues remember it because they talked about it eloquently in their speeches when the Unfunded Mandates Reform Act was enacted in 1995.

Senator LOTT said:

> It is things like unfunded mandates that drive good people out of office.

Senator THOMAS said: I served in the Wyoming Legislature and a good deal of our budget was committed, before we ever got to Cheyenne, to unfunded mandates.

Senator FEINSTEIN, a cosponsor of our amendment, said: I was president of the board of supervisors. I was mayor. I saw the development of these unfunded mandates firsthand and in doing so I probably speak for the mayors and local officials all across the Nation.

Senator NICKLES, chairman of the Budget Committee, said: I used to serve in the State legislature and we really resented the idea that the Federal Government would come in and mandate how we would spend our resources.

I am reading speeches from the CONGRESSIONAL RECORD of Members of this body in 1995, who voted to ban unfunded Federal mandates.

Senator HUTCHISON of Texas said: Almost one-third of the increase in the Texas State budget over the past 3 years has been the result of unfunded Federal mandates—one-third, she underlined.

Senator BURNS talked about the impact of unfunded mandates.

Senator BENNETT told a beautiful story about encountering a mayor during a campaign in his State in Utah, and he ended up with the mayor saying, well, if I had a U.S. Senator in front of me with his undivided attention, the one thing I would say to him is stop the unfunded mandates.

That is just a few of the things that were said. So the question now then is,

is this really an unfunded Federal mandate? Well, that is not too hard to figure out. Some of my colleagues seemed surprised when I suggested this might be, so I have put a letter on every Senator's desk.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 5, 2003.

Hon. LAMAR ALEXANDER,
U.S. Senate, Washington, DC.

DEAR SENATOR: This letter responds to the three questions you posed in your letter of November 4, 2003, regarding S. 150, the Internet Tax Nondiscrimination Act.

1. How much revenue is being collected by state and local governments from taxes on DSL?

CBO estimates that state and local governments currently collect at least $40 million per year in taxes on DSL service (Digital Subscriber Line—a high-speed data transmission over regular telephone wires). They are likely to collect revenues totaling more than $80 million per year by 2008 due to growth in the use of high-speed Internet access. These collections are primarily sales and use taxes on DSL service.

2. What would be the revenue loss to state and local governments under the managers' amendment to S. 150?

Based on the version of the proposed amendment CBO received late this afternoon (S150MGR.6), CBO has determined that the bill would create intergovernmental mandates as defined in the Unfunded Mandates Reform Act. We estimate that those mandates would impose costs on state and local governments in at least one of the next five years that would exceed the threshold established in that act ($60 million in 2004, increasing to $66 million in 2008). We have identified three major impacts, each of which would, by itself, exceed the threshold:

Revenue losses of $80 million to $120 million per year, starting in 2007, to state and local governments that are already taxing Internet access and were covered by the ''grandfather clause'' contained in the Internet Tax Freedom Act. Some of these are taxes on DSL services. We have no information to suggest that other states will impose taxes on Internet access in the near term.

Other states are currently imposing taxes on charges for the portions of DSL services they do not consider Internet access. Those states would lose at least $40 million in sales and use taxes on DSL services in 2004, and at least $75 million by 2008. The preemption of DSL taxes would stem from section 2(c) of the amendment, which defines ''Internet access.''

Substantial revenue losses that could result from:

(a) The inability of state and local governments to collect transactions taxes (including sales and use taxes and gross receipts taxes) on certain types of telecommunications services. For example, if technological change shifts traditional telecommunications services to the Internet, those services—for example local and long distance phone calls—could be included, for free, when a customer purchases Internet access;

(b) The free inclusion of content (movies, music, and written works) with Internet access in response to the tax exemption provided by this bill. Such content is subject to sales and use taxes under current law but might increasingly be available at no charge as part of an Internet access package.

CBO does not have sufficient information to estimate these revenue losses, but we believe they could grow to be large. There is some question, however, as to what types of transactions could not be taxed under the bill; under some interpretations, these revenue losses could remain quite small. The issue might ultimately have to be resolved in the courts.

3. How much tax revenues do state and local governments collect on telecommunication services?

Based on information from industry representatives, state and local governments, and federal statistical sources, CBO estimates that state and local governments currently collect more than $20 billion annually from taxes on telecommunications services. Such taxes generally fall into two categories: transactions taxes and business taxes. Transactions taxes (for example, gross receipts taxes, sales taxes on consumers, and taxes on 911 service) account for about two-thirds of the total.

In arriving at this estimate, CBO took into account the fact that some companies are challenging the applicability of taxes to their services, and thus may not be collecting such taxes, even though states and local governments feel they are obligated to do so. Such potential liabilities are not included in the estimate.

If you would like further details on the information provided in this letter, we would be pleased to provide it. The staff contacts for this legislation are Sarah Puro and Theresa Gullo.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas-Holtz-Eakin, Director).

Mr. ALEXANDER. There is a letter that I received yesterday from the Congressional Budget Office on every Senator's desk. It describes the three ways in which the proposed ban on State and local Internet access taxes by Senator ALLEN and Senator WYDEN violate the Federal Budget Act—specifically, the amendments of the Unfunded Mandates Reform Act of 1995.

These are the three ways: One, there is a revenue loss of $80 million to $120 million per year to State and local governments already taxing Internet access. There are 11 such States.

Second, there are losses of $40 million to $75 million of taxes on DSL services that States now collect. That is the second violation of an unfunded mandate.

Third, and this makes the point it is not only an unfunded mandate, it is potentially a great big unfunded mandate. The Congressional Budget Office says in its letter that the third way this proposal violates the Budget Act is ''substantial revenue losses that could occur'' when technological change shifts traditional communication services to the Internet—for example, local and long distance phone calls—or when content, music, movies, written works is provided free with Internet access.

This may sound complicated but it is not so complicated. Basically, what this says is it already is happening, that your telephone company or your cable TV company will provide your Internet access. CBO says that State and local governments today now collect more than $20 billion annually from transaction sales and use taxes on telecommunications services.

What this letter further says is that the Allen-Wyden proposal will take an undetermined amount of this $20 billion and ban the ability of State and local governments to include that as part of their tax base. It is enough, according to the CBO letter, to define it as an unfunded Federal mandate. But they say they cannot tell the exact amount of the $20 billion that might be exempt from State and local taxation.

The Multistate Tax Commission said it could tell. It estimated $4 billion to $5 billion. That is an awful lot of money. The Senator from Ohio, the Presiding Officer, in his argument read a list of what State revenue officers have told him, and what they estimate it might take.

The problem is the broader definition of Internet access, which is contained in the bill of the distinguished Senators from Virginia and Oregon, raises the likelihood that some—maybe a lot—of the $20 billion that is now used by State and local governments to pay for schools, State parks and to keep other taxes down, would be taken away from their tax base.

What do we then do about it? Well, we think we have a suggestion which we hope tomorrow our colleagues in the Senate, if we are able to vote on it, then will agree with us. Our suggestion is an extension of the current ban on Internet access for 2 years, with the same narrow definition that we now have, with the exception that we would make sure that in 23 States which do not now tax DSL, that is telephone service that delivers broadband, they would not be allowed to do that.

So in taking the issues that I heard from the distinguished Senators from Virginia and Oregon, I would summarize them this way: They argue that the Internet is so valuable that we need to override this law we have against unfunded Federal mandates. I agree it is valuable but it is not an infant. It is a pretty big boy. It is out there in the world. We know what it is and it should stand on its own now.

The telephone is also a magnificent invention. We do not exempt it from taxation. The television is a magnificent invention. We do not exempt it from taxation.

If we really think in the Congress that the Internet deserves to be completely exempt from State and local taxation, then why do we not pay for it? Why do we not pass a law that we might call the Unfunded Federal Mandate Reimbursement Act and just let every mayor and every Governor send us a bill every year and we will send them a check. If it turns out to be $20 billion, we will send them $20 billion. If it turns out to be $4 billion, we will send them $4 billion because we will have said the Internet is so important that we in Congress think it ought to be subsidized, that there should be relief from taxation, and so we are going to pay for it. That would be the honest thing to do, rather than just to say we think it is important but you pay for it.

That is what we said with how we helped disabled children. That is what

we said with stormwater runoff. That is what we said with clean water. We think it is a great idea, you pay for it. That is why we are in Washington. We print money. You balance budgets. We think it is a good idea, you pay for it. That is what the fuss is about.

The second thing I have heard is it is in interstate commerce and we could not touch it. Telephones are in interstate commerce. We do not keep States and local governments from taxing telephones. Televisions are in interstate commerce. Buses are in interstate commerce. Planes are in interstate commerce. Catalog sales are in interstate commerce. Severance taxes are in interstate commerce. A great big part of every State and local government's budget is made up of a tax base that included items that are in interstate commerce. So that argument does not wash at all.

Taxing broadband, that is a good point. Broadband is coming fast. We do not want to interfere with that so our conclusion is, let us stop it in the 23 States that do not now tax broadband. Let us put DSL and cable—that is the broadband is delivered—on an equal playing field. In the States that do tax DSL, they can continue that for the 2 years of the ban.

Multiple taxation, that was raised by the Senator from Virginia. Well, we are extending the current language and it bans multiple taxation. Discriminatory taxation, we propose to extend the current language, and that bans discriminatory taxation.

State and local taxation on Internet access, we would propose to extend the ban on Internet access taxation for 2 years so we can think this through. So we have taken care of that as well. Tomorrow, when hopefully we will be voting on this, we will have this choice: Do you want a permanent ban on Internet access taxation, or do you want a 2-year ban? Do you want a broad definition of what we mean by Internet access, a definition that could cost States a significant share of their State or local tax base, or do you want a narrow definition, virtually the same one we have today?

I believe the prudent thing for us to do is to take the law that we have today, slightly modify it to put DSL and cable on an equal playing field, extend it for 2 years, and let us continue the debate we are having about how to define the two words ''Internet access.'' That is really the problem. I agree with the Senator from Oregon. He has worked long and hard on this. There have been many meetings. We just don't agree on what the definition of Internet access is.

But until we can agree, we should not put this potentially huge unfunded Federal mandate into the law. So tomorrow I hope to bring up this amendment I have filed tonight. I hope our colleagues will compare it with the proposal of the Senator from Virginia and Oregon, and I hope they will adopt ours.

I also have a point of order I could raise, which would cause the Senate to consider whether the Allen-Wyden amendment is an unfunded Federal mandate. If there is a motion to waive the point of order, which I believe would be sustained by the Chair, then Senators would have an opportunity to cast a vote for or against an unfunded Federal mandate. But I am going to reserve that option and hope that sometime tomorrow we can have a clear up-or-down vote on the amendment which I offer with a number of other Senators.

I look forward to the debate tomorrow.

Mr. WYDEN. Mr. President, very briefly, because Senator LAUTENBERG has not had a chance to speak and he has been gracious enough to just give me a couple of minutes to respond to our friend from Tennessee, I think he knows we have a difference of opinion on this issue, but I want him to know how much I appreciate the way he has worked with this Senator. I think he is going to be a great addition to the Senate. I look forward to the many issues where we are going to find common ground, even though this is not one of them.

Just briefly on this unfunded mandate question, I think it is clear that, with the more than 7,000 taxing jurisdictions in our country, if ever there was something that was inherently interstate in nature, it is the Internet. I think we can just imagine the kind of chaos if even a small fraction of these 7,600 taxing jurisdictions took a bite out of the Internet. We would have a crazy quilt of laws with respect to the Internet.

There are a whole host of activities where the Federal Government has essentially made it clear they were inherently interstate in nature and you do not hear the States expressing any grievances. You don't hear States complaining that they can't tax airline tickets or mail or a variety of other things because we are talking about something that is so crystal clear in terms of its very nature—in effect, the essence of article I, section 8, of the Constitution—that this has been an area where the Federal Government has said it is not appropriate to let thousands of local and State jurisdictions simply make a mishmash out of a regulatory regime that needs to be uniform in nature.

I know we are going to talk more about that tomorrow. I am going to go through, tomorrow, the history of the Unfunded Mandates Act that supports the position Senator ALLEN and I have taken.

Two other points very quickly and then I do want to let our friend from New Jersey have some time for which he has been patiently waiting. With respect to the telecommunications services issue which the Senator from Tennessee has discussed, I want to make it clear that Senator ALLEN and I have done everything but hire a sky writer to fly over the Capitol, to make it clear that telecommunications services, which can be taxed today, would and should be taxed in the future. It is absolutely clear with respect to all the work we have tried to do, both in the committee and working with various State and local officials, we feel very strongly about it. It is what the bundling issue has been all about in terms of separating out Internet access, which should not be taxed, and telecommunications services, which ought to be taxed.

Senator ALLEN and I continue to be interested in working with colleagues to try to find common ground in this area, but the two of us have done everything except march down the street with a sandwich board, trying to argue that telecommunications services must be taxed and that it is Internet access about which we are concerned.

Finally, the last point I would make is we need to have a discussion in the Senate with respect to what the competitive playing field will look like under the amendment at least as outlined tonight by the Senator from Tennessee. We have already seen a competitive disadvantage established, given the developments in the last few years between cable and telecommunications. It is the view of the Senator from Virginia and I, as two Members of the Commerce Committee who have focused on this issue for many months, that we think the competitive disadvantage, which has been established in the last few years between cable and telecommunications, will widen under the proposal the Senate is going to be asked to look at tomorrow as an alternative. We are going to have a chance to discuss it.

Again, I express my appreciation to the Senator from Tennessee with respect to how he has handled this issue. We have a difference of opinion on it, but I admire the Senator from Tennessee very much and I look forward to working closely with him.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

UNANIMOUS CONSENT REQUEST—H.R. 2559

Mr. REID. Mr. President, I direct the attention of my friend from Tennessee to Homeland Security and to Leave No Child Behind. If he wants to find some unfunded mandates, have him come to Nevada and find out what those two pieces of legislation have done—I should say that piece of legislation, Leave No Child Behind, and what we have done to the State of Nevada and every other State by not properly funding the Leave No Child Behind Act and what we have done with all of our demands on State and local government with our unfunded mandates relating to homeland security. That is the subject of another speech.

Mr. President, I ask unanimous consent that the Senate proceed to the conference report to accompany H.R. 2559, the Military Construction appropriations bill.

I do this because, in the State of Nevada, Nellis Air Force Base and the Fallon Naval Air Training Center are desperately in need of construction starts and completion of jobs that are already underway.

So I hope my friends on the other side will allow this very important conference report to be agreed to and the motion to reconsider be laid upon the table, and that be done with no intervening action or debate.

I so move.

The PRESIDING OFFICER. Is there objection?

Mr. ALEXANDER. I object.

The PRESIDING OFFICER. Objection is heard.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, first I thank my colleague from Oregon and my colleague from Virginia for the hard work they did to get us to this point where we have an opportunity to review some of the problems we have seen in the Internet tax area. I had an early opportunity to review and carefully consider S. 150, and I support the stated purpose of this legislation. I agree that the American consumer should be encouraged and not taxed to access the Internet.

I also agree with the stated purpose of this legislation, that the Federal Government should ensure tax-free access to the Internet, irrespective of the technology the consumer uses, whether it is the regular dial-up modem, cable modem, DSL, wireless, or satellite.

My concerns with this legislation don't stem from its stated purposes. My concerns are with the legislation's unstated purposes and unintended consequences which most State, county, and local tax experts believe would jeopardize important revenue streams, such as the gross receipts tax, that were permitted under the first two iterations of the Internet tax moratorium.

The Internet tax moratorium bill was conceived in 1998 as a proconsumer legislative attempt aimed at increasing American access to the Internet. Now that the bill has been rewritten and greatly expanded, it has as a result become another corporate giveaway of potentially enormous and devastating proportions.

According to the Commerce Committee report accompanying S. 150, the original enactment of this legislation in 1998 imposed a temporary moratorium on ''certain taxes that could have a detrimental effect on the continued expansion of Internet use in the United States.''

In 1999, only 26 percent of United States households had Internet access, according to the Department of Commerce. In September 2001, 51 percent of United States households had Internet access. In 2002, according to the Forrester Research firm, 64 percent—quite a jump in a year—of U.S. households had Internet.

The number of households with Internet access has more than doubled in 4 years, from 26 percent in 1998 to 64 percent in 2002. I am sure the rate of Internet access today is even higher.

Many households, however, only have basic dial-up access to the Internet and haven't moved to the faster broadband access services.

Clearly, the supporters of this bill can't blame an access tax that isn't being imposed for the digital divide that exists between people who have Internet access and those who do not, or between households which can afford broadband or wireless Internet access service and those households which still use the narrowband dial-up.

Nevertheless, I would support an extension of the moratorium on Internet access taxes. By temporary, I am talking about a couple of years. But to make the moratorium permanent, as this bill would do, in my view is an abdication of responsibility on our part.

I cannot and will not support a permanent moratorium that is so poorly defined that it won't just apply to access taxes. I cannot and will not support a moratorium that will deprive the States of $4 billion to $9 billion in revenues by the year 2006, according to the Multi-State Tax Commission and the National Governors Association. Based on the language in the bill reported out of the Commerce Committee, my home State of New Jersey by itself stands to lose $833 million in annual revenues. Other States also stand to lose hundreds of millions of dollars as well. Maybe some Senators are willing to look the other way and not address the problems with this bill. So be it. But I cannot do that. Even under the managers' amendment, which is a modest improvement, the annual revenue loss for New Jersey is believed to be somewhere around $600 million. My question is: Why are we doing this to States when they are facing the biggest fiscal crisis they have seen since World War II or even the Depression years?

A permanent, poorly crafted moratorium? No way. I cannot in good conscience support something so far reaching.

That is why I support an amendment I believe will be offered by some of my colleagues, Senators ALEXANDER, CARPER, and VOINOVICH, to extend the existing moratorium for only 2 years, and to fix the discrepancy in the way DSL and cable modem are treated for tax purposes.

I realize even if this amendment is offered and agreed to, States such as New Jersey will still lose much-needed revenue, but at least we can and must minimize the impact.

I yield the floor.

Mr. WYDEN. 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. MCCAIN. 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. MCCAIN. Mr. President, prior to wrap-up, this completes the debate and discussion for this evening. It is my understanding that Senators from Tennessee, Ohio, and Delaware have an amendment that has been filed and they will call it up when we begin our continued debate on this legislation tomorrow morning at 9:30. I hope we can limit our debate on that amendment and have a vote on it and then take up other amendments. It is still the intention of the majority leader to finish this legislation tomorrow. I hope we can achieve that goal.

I know everybody would like to go home on Friday afternoon, but I have been assured by the majority leader we will remain until completion of the legislation.

I think it has been a good debate tonight. I thank all of my colleagues. I look forward to disposing of the amendments tomorrow when we reconvene at 9:30.

I yield the floor to the distinguished Senator from Nevada.

UNANIMOUS CONSENT REQUEST—H.R. 1828

Mr. REID. Mr. President, I will propound a unanimous consent request regarding the Syria Accountability Act in just a minute.

This is an important piece of legislation that requires our immediate attention.

This bill would establish economic sanctions against Syria, unless the President certifies that Syria has ceased all support for international terrorism and has gotten out of the weapons of mass destruction business.

As we have known for some time, Syria supports and sponsors Hizballah and other terrorist groups. Hizballah, of course, was responsible for the deadly attack against 298 of our marines in Lebanon 20 years ago, and they have also been behind repeated attacks against Israeli civilians over the years.

It is also no secret that the Baathists of Syria and Iraq shared a common view of the world. They are anti-western, corrupt, and dangerous. Our intelligence experts have noted a significant amount of weapons and terror traffic between Iraq and Syria leading up to the war. This would be consistent with reports that Syria offered sanctuary to senior figures from the Iraqi regime.

And now, as our brave men and women fight a low-intensity conflict in Iraq, it is becoming clear that many of the threats that they face result from the porous border with Syria, and the failure of Syria to crack down on cross-border terrorism.

Make no mistake: This bill is critical to our troops, and to restoring peace in the Middle East. It is also critical to holding Syria accountable for their shabby record on terrorism and human rights.

I am hopeful my colleagues on the other side will pass it without further delay.

To my knowledge, no amendment has been filed tonight. I hope tomorrow morning we can pass the Syria Accountability Act. We can shorten the time to 1 hour. Under the present consent agreement which has been approved before this body, we will move to it for an hour and half at any time the majority leader wishes. We have waited a long time to get to this. I hope we can do it tomorrow.

I hope that also tomorrow—and I was willing to do it tonight, but it has been rejected on two separate occasions—we can pass the Military Construction appropriations bill. I don't understand why we can't do that. We could have this matter on the President's desk in a matter of hours. After it is signed, places such as Nellis Air Force Base and Fallon Naval Air Training Center would be able to start construction projects that are badly needed. Both of those bases are terribly busy because of what is going on in the Middle East and because of the training for our naval airmen and Air Force airmen. I know the people at Nellis badly need this money.

I ask consent that the order entered with respect to H.R. 1828, the Syria Accountability Act, be changed to reflect the time for consideration be reduced to 60 minutes; that there be 30 minutes under the control of Senator SPECTER, 15 minutes each for Senators LUGAR and BOXER, or their designees; and at 9 a.m. tomorrow morning the Senate proceed to the measure under limitations provided under the previous order as modified above with the remaining provisions of the order now in order to remain in effect.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. I would hope that the majority would allow the Senate, before we take our weekend break, to do these two pieces of legislation—the Syria Accountability Act and the military construction conference report. I hope we can do that. These are non-partisan measures. I don't know what advantage any of us have by taking a few minutes and passing them. I hoped we could do military construction in tonight's wrap-up. It is something that needs to be done that no one disputes. No one needs it more than the military of our country.

I yield the floor.

MORNING BUSINESS

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

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

THE ARMED FORCES RELIEF TRUST

Mr. GRAHAM of South Carolina. I rise today to commend an initiative recently launched by the National Association of Broadcasters and its local radio and television station members.

With more than 140,000 military personnel stationed in Afghanistan, Iraq and around the world, the resources needed to take care of our troops and their families are strained. As an Air Force reservist, I have seen firsthand the financial and emotional difficulties that many families face when a family member is on an extended deployment.

Of course, the military takes care of its own. But, as the war on terror continues and needs escalate, the military cannot do it alone. To respond to this growing need, the four military aid societies have joined together to create a single umbrella organization: the Armed Forces Relief Trust.

In support of this new relief organization, local commercial radio and television stations are airing radio and television public service announcements, asking viewers and listeners to contribute to the Trust. The over-the-air broadcast medium continues to be the most effective way to rapidly disseminate information to the public. Last year, the four military emergency assistance programs disbursed more than $109 million in interest-free loans and grants to more than 145,000 individuals and families in need. With the help of America's local radio and television stations, I am convinced that the Trust will be able to assist even more military families.

I applaud the efforts of local broadcasters to support the families of those who defend us every day.

THE CRIMINAL SPAM ACT OF 2003

Mr. LEAHY. Mr. President, in June of this Year, I introduced S. 1293, the Criminal Spam Act, together with my friend Senator HATCH and several of our colleagues on the Judiciary Committee. In September, the committee unanimously voted to report the bill to the floor. Two weeks ago, the Senate adopted portions of the bill as an amendment to S. 877, the CAN SPAM Act. The bill has been cleared from the Democratic cloakroom for weeks.

Unfortunately, this important measure is hung up on the Republican side because of an anonymous ''hold'' by some Republican Senator.

The Criminal Spam Act targets the most pernicious and unscrupulous spammers—those who use trickery and deception to induce others to relay and view their messages. Ridding America's inboxes of deceptively delivered spam will significantly advance our fight against junk e-mail.

Why would anyone want to prevent passage of this important legislation? It is bipartisan. It is non-controversial. It enjoys broad support from businesses, consumer groups, and civil liberties groups alike. The administration has only good things to say about it, and I know of no individual or organization that opposes it.

The answer must be that someone on the other side of the aisle is playing politics with this bill, holding it up for some reason that has nothing to do with it—or for no reason at all.

We could pass the Criminal Spam Act today, the House could act quickly and we could start prosecuting the worst of the worst spammers without delay. Instead, a single Republican Senator is allowing these individuals to continue to flood the Internet with their unwanted ads.

The Internet is a valuable asset to our Nation, to our economy, and to the lives of Americans. We should act now to secure its continued viability and vitality.

NATIONAL CONSUMER CREDIT REPORTING SYSTEM IMPROVEMENT ACT OF 2003

Mr. BUNNING. Mr. President, I rise today in support of S. 1753, the National Consumer Credit Reporting System Improvement Act of 2003. As we all know, reauthorization of the Fair Credit Reporting Act is a very important issue for the financial services industry and for consumers. When I talk to my friends in this sector, it is always the first thing they ask about. It touches everyone and their money and our national economy. It is critical that we act on it before adjournment. I believe that the Banking Committee under the leadership of Chairman SHELBY has created a fair, bipartisan bill and I urge my colleagues to support it.

We have been talking about this issue for several years. We have held a number of hearings on it. We looked it over pretty thoroughly, and I think we have come up with a reasonable approach. Most importantly, we have to act now because this bill is also important to our overall economy.

Last week we had great economic news. Our economy is roaring back and that is good news for everyone. But if we fail to pass this bill, it could end up being a serious speed bump on the road to a better economy. If there is one thing that markets hate, it is uncertainty. They want to know where we are and where we are going. For better or worse, the markets think we are going to pass this bill. They think we are going to outline a stable path for financial institutions when it comes to the sharing of information. Any talk or any sign from Congress that makes the markets think that we aren't going to pass this bill would create a great deal of uncertainty in the financial markets. Now that our economy is really coming to life, that is the last thing we need. If the markets think we are going to let the FCRA lapse, they are going to get very jittery very quickly. I can understand that. This is a sensitive, complicated area. I don't think any of us wants the FCRA to lapse.

We need Federal preemption in this area. I think it would be a mistake to let States and localities all try to impose their own privacy rules. There are trillions of dollars at stake. We have to be very careful. But if we fail to pass this bill, we open a Pandora's box of States and localities writing their own rules, and the markets and financial institutions just are not prepared for that. We can't let that happen. We don't need that uncertainty now. Who knows what would happen.

On a personal note, I am very pleased that the bill contains strong identity theft and privacy protections, including my amendment on Social Security number truncation that will help prevent thieves who go ''dumpster diving'' or try to steal credit reports from mail boxes. Identity theft is a growing problem in America. The Internet is making it easier for thieves to obtain consumer information. My amendment will help fight this growing menace. Under this bill, consumers can block out their Social Security number on their credit reports. It is just the sort of simple, commonsense approach that will help consumers without burdening business.

I would also like to talk about the amendments that are going to be offered by my colleagues from California. They are based, in large part, on a California bill, SB1. I am sure California has a fine legislature. And I am sure their representatives try their best to represent their California constituents. But I do not think the California legislature represents the people of Kentucky or the other States very well. That is not their job. If we adopt the amendments to be offered by my friends, it would have the effect of imposing California's rules on the rest of the Nation. That is a bad idea that will only lead to the economic uncertainty we have to avoid.

If California wants to try to craft their own rules and work with Federal regulators, I say more power to them—but not if it puts a crimp on the national economy or starts rewriting the rules for the other 49 States. Our credit system is a national system and it needs a national standard. Standards that may work in California or Kentucky may not work for the country as a whole. Usually I am all for taking power away from Washington and sending it back to the States and local government. But on this bill we cannot ignore the fact that credit rules and markets and money are all part of a broader, national economy that requires a unified, Federal approach. To let States undermine that would be a recipe for disaster.

S. 1753 is a fair and balanced bill that sets a fair and balanced standard for our entire Nation. It is bipartisan, it is common sense, and it is a prudent solution to a pressing problem for our financial institutions.

ADDITIONAL STATEMENTS

HONORING BENJAMIN AND ALEC WILLIAMS

● Mr. CRAPO. Mr. President, today I honor Benjamin Richard Williams and Alec David Williams for receiving the Eagle Scout Award. As an Eagle Scout myself, I know first hand the dedication and hard work involved in attaining this prestigious award. These two brothers, from my home State of Idaho, are exceptional individuals who have accomplished much in their young lives. Allow me a moment to tell you about them.

In addition to his rank of Eagle Scout, Ben has served diligently in the Boy Scout organization, most recently as Senior Patrol Leader. He has also been heavily involved in extra-curricular activities at Boise High School. Ben is a cross-country runner and is involved in his school's jazz and marching bands. All of this while keeping a very impressive 3.95 GPA.

Alec is here with us in the Senate today, serving our country as a congressional page. We appreciate his valuable service in this capacity. Alec has served in several capacities in the Boy Scouts, most recently as the assistant senior patrol leader. Alec is also an exceptional student with a 4.0 GPA. Attaining the rank of Eagle Scout is one more accomplishment to add to his already impressive list.

I commend Benjamin and Alec on receiving their Eagle Scout Awards. Through the leadership and service opportunities provided in the Scouting program, Ben and Alec are better prepared to serve their families and America's communities. I wish them continued success in all of their endeavors.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE APPROVAL OF THE USE OF $10,623,873 PROVIDED BY THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, PUBLIC LAW 108–7, THE CONSOLIDATED APPROPRIATIONS RESOLUTION, 2003—PM 55

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Appropriations:

To the Congress of the United States:

Consistent with Division C, District of Columbia Appropriations Act of Public Law 108–7, the Consolidated Appropriations Resolution, 2003, I am notifying the Congress of the proposed use of $10,623,873 provided in Division C under the heading ''Federal Payment for Emergency Planning and Security Costs in the District of Columbia.'' This will reimburse the District for the costs of public safety expenses related to security events and responses to terrorist threats.

The details of this action are set forth in the enclosed letter from the Director of the Office of Management and Budget.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 6, 2003.*

MESSAGE FROM THE HOUSE—November 5, 2003

The House passed the following bill, in which it requests the concurrence of the Senate.

H.R. 2898. An act to improve homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 wireless services, and for other purposes.

MESSAGES FROM THE HOUSE

At 11:54 a.m., a message from the House of Representatives, delivered by Mr. Hays, 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. 2443. An act to authorize appropriations for the Coast Guard for fiscal year 2004, to amend various laws administered by the Coast Guard, and for other purposes;

H.R. 2620. An act to authorize appropriations for fiscal years 2004 and 2005 for the Trafficking Victims Protection Act of 2000, and for other purposes;

H.R. 3214. An act to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes;

H.R. 3348. An act to reauthorize the ban on undetectable firearms;

H.R. 3349. An act to authorize salary adjustments for Justices and judges of the United States for fiscal year 2004; and

H.R. 3379. An act to designate the facility of the United States Postal Service located at 3210 East 10th Street in Bloomington, Indiana, as the ''Francis X. McCloskey Post Office Building''.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3365) to amend title 10, United States Code, and the Internal Revenue Code of 1986 to increase the death gratuity payable with respect to deceased members of the

Armed Forces and to exclude such gratuity from gross income.

ENROLLED BILLS SIGNED

At 12:11 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker of the House of Representatives has signed the following enrolled bills:

S. 677. An act to revise the boundary of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area in the State of Colorado, and for other purposes; and

S. 924. An act to authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes.

The enrolled bills, previously signed by the Speaker of the House, were signed on today, November 6, 2003, by the President pro tempore (Mr. STEVENS).

At 6:03 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 1442), to authorize the design and construction of a visitor center for the Vietnam Veterans Memorial.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 1904) to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes, and asks for a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints the following members as the managers of the conference on the part of the House:

From the Committee on Agriculture for consideration of the House bill and the Senate amendments, and modifications committed to conference: Mr. GOODLATTE, Mr. BOEHNER, Mr. JENKINS, Mr. GUTKNECHT, Mr. HAYES, Mr. STENHOLM, Mr. PETERSON of Minnesota, and Mr. DOOLEY of California.

From the Committee on Resources, for consideration of the House bill and the Senate amendments, and modifications committed to conference: Mr. POMBO, Mr. MCINNIS, Mr. WALDEN of Oregon, Mr. RENZI, Mr. GEORGE MILLER of California, and Mr. INSLEE.

From the Committee on the Judiciary, for consideration of sections 106 and 107 of the House bill, and sections 105, 106, 1115, and 1116 of the Senate amendment and modifications committed to conference: Mr. SENSENBRENNER, Mr. SMITH of Texas, and Mr. CONYERS.

At 6:31 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2622) to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following members as managers of the conference on the part of the House:

For consideration of the House bill and the Senate amendment, and modifications committed to conference: Mr. OXLEY, Mr. BEREUTER, Mr. BACHUS, Mr. CASTLE, Mr. ROYCE, Mr. NEY, Mrs. KELLY, Mr. GILLMOR, Mr. LATOURETTE, Mrs. BIGGERT, Mr. SESSIONS, Mr. FRANK, Mr. KANJORSKI, Mr. SANDERS, Ms. WATERS, Mr. WATT of North Carolina, Mr. GUTIERREZ, Ms. HOOLEY of Oregon, and Mr. MOORE.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 2443. An act to authorize appropriations for the Coast Guard for fiscal year 2004, to amend various laws administered by the Coast Guard, and for other purposes; to the Committee on Commerce, Science, and Transportation; and

H.R. 3379. An act to designate the facility of the United States Postal Service located at 3210 East 10th Street in Bloomington, Indiana, as the ''Francis X. McCloskey Post Office Building''; to the Committee on Governmental Affairs.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3349. An act to authorize salary adjustments for Justices and judges of the United States for fiscal year 2004.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on November 6, 2003, she had presented to the President of the United States the following enrolled bills:

S. 677. An act to revise the boundary of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area in the State of Colorado, and for other purposes.

S. 924. an act to authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5124. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Division of Migratory Bird Management, Fish and Wildlife Service, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Permits; Regulations Governing Rehabilitation Activities and Permit Exceptions'' (RIN1018–AH87) received on October 30, 2003; to the Committee on Environment and Public Works.

EC–5125. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, two reports required by the Travel and Transportation Reform Act of 1998; to the Committee on Environment and Public Works.

EC–5126. A communication from the Inspector General, Nuclear Regulatory Commission, transmitting, a copy of the Fiscal Year 2003 Commercial and Inherently Governmental Activities Inventories for the Commission, Office of the Inspector General; to the Committee on Environment and Public Works.

EC–5127. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans States of Montana and Wyoming; Revisions to the Administrative Rules of Montana; New Source Performance Standards for Wyoming and Montana'' (FRL#7573–2) received on October 28, 2003; to the Committee on Environment and Public Works.

EC–5128. A communication from the 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 for Air Quality Planning Purposes; Arizona'' (FRL#7573–9) received on October 28, 2003; to the Committee on Environment and Public Works.

EC–5129. A communication from the 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'' (FRL#7580–5) received on October 28, 2003; to the Committee on Environment and Public Works.

EC–5130. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico'' (FRL#7581–1) received on October 28, 2003; to the Committee on Environment and Public Works.

EC–5131. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Bay Area Air Quality Management District'' (FRL#7577–1) received on October 28, 2003; to the Committee on Environment and Public Works.

EC–5132. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans for Kentucky: Permit Provisions for Jefferson County, Kentucky'' (FRL#7582–6) received on October 28, 2003; to the Committee on Environment and Public Works.

EC–5133. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Disapproval of State Implementation Plan Revisions, Antelope Valley, Butte County, Mojave Desert, and Shasta County Air Quality Management Districts and Kern County Air

Pollution Control District'' (FRL#7583–5) received on October 28, 2003; to the Committee on Environment and Public Works.

EC–5134. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Common Rule on Governmentwide Debasement and Suspension (Non-Procurement) and Government Requirements for Drug-Free Workplace'' received on October 28, 2003; to the Committee on Environment and Public Works.

EC–5135. A communication from the Chairman, Medicare Payment Advisory Commission, transmitting, pursuant to law, a report relative to updating Medicare's payment rates for physician services; to the Committee on Finance.

EC–5136. A communication from the Regulations Officer, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Availability of Information and Records to the Public'' (RIN0690–AF91) received on October 30, 2003; to the Committee on Finance.

EC–5137. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Losses Claimed and Income to be Reported from Lease In/Lease Out Transactions'' received on October 28, 2003; to the Committee on Finance.

EC–5138. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Universal Service Fund Reimbursements (Uniform Issue List Number: 61.40–01)'' received on October 28, 2003; to the Committee on Finance.

EC–5139. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''No Portion of Bonds May be Used for Skyboxes, Airplanes, Gambling Establishments, Etc.'' (Rev. Rule 2003–116) received on October 28, 2003; to the Committee on Finance.

EC–5140. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''September 11th Victim Compensation Fund'' (Rev. Rule 2003–115) received on October 28, 2003; to the Committee on Finance.

EC–5141. A communication from the Assistant Secretary, Border and Transportation Security, Department of Homeland Security, transmitting, the Department's Annual Report of the Task Force on the Prohibition of Importation of Products of Forced or Prison Labor from the People's Republic of China; to the Committee on Finance.

EC–5142. A communication from the Regulations Coordinator, Centers for Medicare Management, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Payment; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004'' (RIN0938–AL96) received on October 31, 2003; to the Committee on Finance.

EC–5143. A communication from the Regulations Coordinator, Centers for Medicare Management, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program, Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2004 Payment Rates'' (RIN0938–AL19) received on October 31, 2003; to the Committee on Finance.

EC–5144. A communication from the Regulations Coordinator, Centers for Medicare Management, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Review of National Determinations and Local Coverage Determinations'' (RIN0938–AK60) received on October 31, 2003; to the Committee on Finance.

EC–5145. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, relative to nuclear nonproliferation in South Asia; to the Committee on Foreign Relations.

EC–5146. A communication from the Chairman, National Capital Planning Commission, transmitting, the Commission's 2004–2009 Strategic Plan; to the Committee on Governmental Affairs.

EC–5147. A communication from the Auditor of the District of Columbia, transmitting, a report relative to the Advisory Neighborhood Commission; to the Committee on Governmental Affairs .

EC–5148. A communication from the Auditor of the District of Columbia, transmitting, a report relative to the People's Counsel Agency Fund for Fiscal Year 2002; to the Committee on Governmental Affairs.

EC–5149. A communication from the Auditor of the District of Columbia, transmitting, a report relative to the People's Counsel Agency Fund for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC–5150. A communication from the Auditor of the District of Columbia, transmitting, a report entitled ''Comparative Analysis of Actual Cash Collections to Revised Revenue Estimates Through the 3rd Quarter of Fiscal Year 2003''; to the Committee on Governmental Affairs.

EC–5151. A communication from the Auditor of the District of Columbia, transmitting, a report relative to the Public Safety Call Center's response to reports of a fire at 1617 21st Street, NW.; to the Committee on Governmental Affairs.

EC–5152. A communication from the Auditor of the District of Columbia, transmitting, a report relative to the District of Columbia Public School System's Fiscal Years 2001 and 2002 Cellular Telephone Service Expenditures; to the Committee on Governmental Affairs.

EC–5153. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Federal Employees Group Life Insurance Program: Removal of Premiums and Age Bands from Regulation'' (RIN3206–AJ46) received on October 30, 2003; to the Committee on Governmental Affairs.

EC–5154. A communication from the Director, Center for Employee and Family Support Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Health Insurance Premium Conversion'' (RIN3206–AJ34) received on October 30, 2003; to the Committee on Governmental Affairs.

EC–5155. A communication from the Director, Center for Employee and Family Support Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Federal Employees Health Benefits Children's Equity'' received on October 30, 2003; to the Committee on Governmental Affairs.

EC–5156. A communication from the Director, Office of General Counsel and Legal Policy, Office of Government Ethics, transmitting, pursuant to law, the report of a rule entitled ''Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture; Financial Disclosure Requirements for Interests in Revocable Inter Vivos Trusts'' (RIN3209–AA00) received on October 28, 2003; to the Committee on Governmental Affairs.

EC–5157. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–209, ''Debarnment Procedures Temporary Amendment Act of 2003''; to the Committee on Governmental Affairs.

EC–5158. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–200, ''Kivie Kaplan Way Designation Act of 2003''; to the Committee on Governmental Affairs.

EC–5159. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–198, ''Draft Master Plan for Public Reservation 13 Amendment Act of 2003''; to the Committee on Governmental Affairs.

EC–5160. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–197, ''Voluntary Transfer of Leave Amendment Act of 2003''; to the Committee on Governmental Affairs.

EC–5161. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–196, ''Identity Theft Amendment Act of 2003''; to the Committee on Governmental Affairs.

EC–5162. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–185, ''Public School Enrollment Integrity Clarification Temporary Amendment Act of 2003''; to the Committee on Governmental Affairs.

EC–5163. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–182, ''Self Storage Act of 2003''; to the Committee on Governmental Affairs.

EC–5164. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–183, ''Sexual Minority Youth Assistance League Equitable Real Property Tax Relief Temporary Act of 2003''; to the Committee on Governmental Affairs.

EC–5165. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–184, ''Expansion of the Golden Triangle Business Improvement District Temporary Amendment Act of 2003''; to the Committee on Governmental Affairs.

EC–5166. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report relative to D.C. Act 15–181, ''Standard Valuation and Nonforfeiture Amendment Act of 2003''; to the Committee on Governmental Affairs.

EC–5167. A communication from the Chair, Equal Opportunity Employment Commission, transmitting, pursuant to law, the Commission's Strategic Plan for Fiscal Years 2004–2009; to the Committee on Health, Education, Labor, and Pensions.

EC–5168. A communication from the Director, National Science Foundation, transmitting, pursuant to law, the Foundation's Strategic Plan for Fiscal Years 2003–2008; to the Committee on Health, Education, Labor, and Pensions.

EC–5169. A communication from the Counsel for Legislation and Regulations, Office of Community Planning and Development, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Environmental Review Procedures for Entities Assuming HUD's Environmental Responsibilities'' (RIN2501–AC83) received on

EC–5170. A communication from the Assistant Secretary of Labor, Employment and

Training Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Unemployment Compensation—Trust Find Integrity Rule: Birth and Adoption Unemployment Compensation; Removal of Restrictions'' (RIN1205–AB33) received on October 30, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5171. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to victims of sexual assault; to the Committee on Health, Education, Labor, and Pensions.

EC–5172. A communication from the Regulations Coordinator, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Control of Communicable Diseases; Restrictions on African Rodents, Prairie Dogs, and Certain Other Animals'' (RIN9010–ZA21) received on November 3, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5173. A communication from the Regulations Coordinator, Centers for Disease Control and Prevention, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Possession, Use, and Transfer of Select Agents and Toxins'' (RIN0920–AA09) received on November 3, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5174. A communication from the Associate General Counsel for General Law, Patent and Trademark Office, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''January 2004 Revision of Patent Cooperation Treaty Application Procedure'' (RIN–651–AB61) received on November 4, 2003; to the Committee on the Judiciary.

EC–5175. A communication from the Director, Regulations and Forms Services, Citizenship and Immigration Services, transmitting, pursuant to law, the report of a rule entitled ''Adding and Removing Institutions to and From the List of Recognized American Institutions of Research'' (RIN1615–AA72) received on October 29, 2003; to the Committee on the Judiciary.

EC–5176. A communication from the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, transmitting, pursuant to law, the report of a rule entitled ''Controlled Substances Registration and Reregistration Application Fees'' (RIN1117–AA70) received on October 30, 2003; to the Committee on the Judiciary.

EC–5177. A communication from the National Service Officer, American Gold Star Mothers, Inc., transmitting, pursuant to law, the annual CPA Audit Report of the American Gold Star Mothers, Inc.; to the Committee on the Judiciary.

EC–5178. A communication from the Associate Librarian of Congress and Register of Copyrights and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, transmitting, pursuant to law, a report relative to the Vessel Hull Design Protection Act; to the Committee on the Judiciary.

EC–5179. A communication from the Chief Justice, Supreme Court of the United States, transmitting, a report relative to the proceedings of the Judicial Conference of the United States; to the Committee on the Judiciary.

EC–5180. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report relative to the Department's activities in relation to the Equal Credit Opportunity Act; to the Committee on the Judiciary.

EC–5181. A communication from the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Methamphetamine Anti Proliferation Act'' (RIN1117–AA69) received on October 30, 2003; to the Committee on the Judiciary.

EC–5182. A communication from the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Exemption Two Privacy Act Systems of Records of the Civil Rights Division from Certain Subsections of the Privacy Act: Central Civil Rights Division Index File and Associated Records, CRT–001; and Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission, CRT–007'' received on October 29, 2003; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 286. A bill to revise and extend the Birth Defects Prevention Act of 1998 (Rept. No. 108–188).

S. 648. A bill to amend the Public Health Service Act with respect to health professions programs regarding the practice of pharmacy (Rept. No. 108–189).

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1043. A bill to provide for the security of commercial nuclear power plants and facilities designated by the Nuclear Regulatory Commission (Rept. No. 108–190).

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

H.R. 1086. A bill to encourage the development and promulgation of voluntary consensus standards by providing relief under the antitrust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes.

S. 710. A bill to amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad.

S. 1685. A bill to extend and expand the basic pilot program for employment eligiblity verification, and for other purposes.

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble:

S. Con. Res. 77. A concurrent resolution expressing the sense of Congress supporting vigorous enforcement of the Federal obscenity laws.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH for the Committee on the Judiciary.

Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

D. Michael Fisher, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

Mark R. Filip, of Illinois, to be United States District Judge for the Northern District of Illinois.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BINGAMAN:

S. 1829. A bill to amend the Child Nutrition Act of 1966 and the Richard B. Russell National School Lunch Act to improve the nutrition and health of children in the United States; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BROWNBACK:

S. 1830. A bill to authorize appropriations for fiscal years 2004 and 2005 for the Trafficking Victims Protection Act of 2000, and for other purposes; to the Committee on Foreign Relations.

By Mr. SMITH (for himself and Mr. LAUTENBERG):

S. 1831. A bill to amend the Internal Revenue Code of 1986 to expand income averaging to include the trade or business of fishing; to the Committee on Finance.

By Mr. DASCHLE:

S. 1832. A bill to entitle the Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003; read the first time.

By Mr. DASCHLE (for himself, Mr. KENNEDY, Mr. BINGAMAN, Mr. AKAKA, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. DURBIN, Mr. EDWARDS, Mr. INOUYE, Mr. KERRY, Mr. LAUTENBERG, Mr. LIEBERMAN, Ms. MIKULSKI, Mrs. MURRAY, and Mr. SCHUMER):

S. 1833. A bill to improve the health of minority individuals; to the Committee on Health, Education, Labor, and Pensions.

By Ms. STABENOW:

S. 1834. A bill to waive time limitations in order to allow the Medal of Honor to be awarded to Gary Lee McKiddy, of Miamisburg, Ohio, for acts of valor while a helicopter crew chief and door gunner with the 1st Cavalry Division during the Vietnam War; to the Committee on Armed Services.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 1835. A bill to extend the effective period of the Undetectable Firearms Act of 1988 (18 U.S.C. 922 note) for 10 years; to the Committee on the Judiciary.

By Mr. GRAHAM of South Carolina (for himself, Mr. CORNYN, and Mr. GRASSLEY):

S. 1836. A bill to amend chapter 85 of title 28, United States Code, to provide for greater fairness in legal fees payable in civil diversity litigation after an offer of settlement; to the Committee on the Judiciary.

By Mr. GRASSLEY:

S. 1837. A bill to combat money laundering and terrorist financing and for other purposes; to the Committee on the Judiciary.

By Mr. DASCHLE (for Mr. KERRY):

S. 1838. A bill to require payments to State and local governments for infrastructure and social services needs in the same amount as the amount of relief and reconstruction funds provided to Iraq; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DURBIN (for himself and Mr. MCCAIN):

S. Res. 260. A resolution expressing the sense of the Senate that the Secretary of Health and Human Services should take action to remove dietary supplements containing ephedrine alkaloids from the market; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 261. A resolution to authorize testimony, document production, and legal representation in the State of Colorado v. Daniel Raphael Egger, Sarah Jane Geraldi, Jennifer Melissa Greenberg, Lisa Gale Kunkel, Bonnie Catherine McCormick; considered and agreed to.

By Ms. SNOWE (for herself, Mrs. DOLE, Mr. BAUCUS, Mr. GRAHAM of South Carolina, and Mr. BAYH):

S. Res. 262. A resolution to encourage the Secretary of the Treasury to initiate expedited negotiations with the People's Republic of China on establishing a market-based currency valuation and to fulfill its commitments under international trade agreements; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 473

At the request of Mr. FEINGOLD, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 473, a bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

S. 491

At the request of Mr. REID, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 491, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

S. 585

At the request of Mr. NELSON of Florida, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 585, a bill to amend title 10, United States Code, to repeal the requirement for reduction of SBP survivor annuities by dependency and indemnity compensation.

S. 698

At the request of Mr. BUNNING, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 698, a bill to clarify the status of the Young Men's Christian Association Retirement Fund for purposes of the Internal Revenue Code of 1986.

S. 875

At the request of Mr. KERRY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 875, a bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes.

S. 1513

At the request of Mr. SCHUMER, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Massachusetts (Mr. KERRY), the Senator from New York (Mrs. CLINTON), the Senator from New Jersey (Mr. CORZINE) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 1513, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form or become members of labor organizations, and for other purposes.

S. 1531

At the request of Mr. HATCH, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1531, a bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

S. 1645

At the request of Mr. CRAIG, the names of the Senator from Mississippi (Mr. LOTT) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1679

At the request of Mr. BUNNING, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1679, a bill to amend the Internal Revenue Code of 1986 to reduce the depreciation recovery period for roof systems.

S. 1685

At the request of Mr. GRASSLEY, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1685, a bill to extend and expand the basic pilot program for employment eligiblity verification, and for other purposes.

S. 1707

At the request of Ms. STABENOW, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1707, a bill to amend title 39, United States Code, to provide for free mailing privileges for personal correspondence and certain parcels sent from within the United States to members of the Armed Forces serving on active duty abroad who are engaged in military operations involving armed conflict against a hostile foreign force, and for other purposes.

S. 1818

At the request of Mr. GRAHAM of South Carolina, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1818, a bill to provide grants to law enforcement agencies that ensure that law enforcement officers employed by such agency are afforded due process when involved in a case that may lead to dismissal, demotion, suspension, or transfer.

AMENDMENT NO. 2080

At the request of Ms. COLLINS, her name was added as a cosponsor of amendment No. 2080 proposed to H.R. 2673, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

AMENDMENT NO. 2110

At the request of Mr. SCHUMER, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 2110 proposed to H.R. 2673, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE (for himself, Mr. KENNEDY, Mr. BINGAMAN, Mr. AKAKA, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. DURBIN, Mr. EDWARDS, Mr. INOUYE, Mr. KERRY, Mr. LAUTENBERG, Mr. LIEBERMAN, Ms. MIKULSKI, Mrs. MURRAY, and Mr. SCHUMER):

S. 1833. A bill to improve the health of minority individuals; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, 40 years ago, the famous and inspirational civil rights activist Fannie Lou Hamer rallied the Nation with her statement ''I am sick and tired of being sick and tired.'' Her words still resonate with millions of Americans today. Whether we are talking about African Americans, Latinos, Asian Americans or American Indians, the fact is that minorities continue to live sicker and die younger in America. We know that African Americans are one-third more likely than all other Americans to die from cancer. They have the highest rate of hypertension in the world. Latinos have the least insurance, with one in three having no coverage at all. American Indian tribes struggle with what can only be called epidemics of diabetes, with rates near 50 percent in certain tribes. The tremendous gains that we have witnessed in science and medicine have benefited millions of our citizens, but too often they are out of reach for minorities.

It is a privilege to join my colleagues to introduce the Healthcare Equality and Accountability Act. Our goal is to produce major improvements in all aspects of minority health care. It expands health insurance coverage. It supports better access to services that are culturally and linguistically appropriate. It strengthens the safety-net. It promotes the development of new and better ways to treat diseases that disproportionately affect minorities.

It also increases the diversity of the health care workforce. Many studies show that minority health professionals dramatically increase access to care and the delivery of good care to

minority patients. Despite their importance, however, the percentage of minority health professionals is shockingly low. African Americans, Latinos and American Indians account for almost 25 percent of the Nation's population—but they account for less than 10 percent of the Nation's doctors, less than 5 percent of dentists, and only 12 percent of nurses.

Our bill will increase the number of minority health professionals by expanding existing pipeline programs and developing new ones. It also provides additional scholarship support to enable more minority and low-income students to make their careers in health care.

Another critical need addressed by this bill is accountability. It holds health care agencies and institutions, public and private, accountable for the care delivered to their minority populations as well as their health outcomes. It reauthorizes the Office of Minority Health, increases the effectiveness of the Office for Civil Rights and establishes a new Office for Health Disparities within the Office for Civil Rights. It also establishes compliance offices in each of the Federal agencies, to ensure that the policies, programs and practices of each agency are in compliance with title VI of the Civil Rights Act, which prohibits discrimination based on race, ethnicity or national origin.

We can't just talk about racial and ethnic health disparities. We have to do more to eliminate them. All Americans deserve fair and equitable treatment in health care. The administration has said time and time again that it is committed to improving minority health. But, the President's own budget eliminated all funds for workforce diversity training programs, and all funds for the Community Access Program, despite the overwhelming evidence that minority health providers and community health centers dramatically improve access to care and quality of care for minority populations. The President's budget also reduced funds for the Office of Minority Health, and it has made the Office for Civil Rights virtually powerless to carry out its mission.

Vast numbers of minority Americans are needlessly suffering because of administration's neglect. We cannot turn our back on the needs of nearly one-third of the Nation's population. Whether we are talking about health insurance, language access, disease prevention, or public hospitals and community health centers, the need is great and the time is now. I urge my colleagues to support this bill, so that we do what is so clearly needed to improve the health and health care for millions of minority Americans.

By Ms. STABENOW:

S. 1834. A bill to waive time limitations in order to allow the Medal of Honor to be awarded to Gary Lee McKiddy, of Miamisburg, Ohio, for acts of valor while a helicopter crew chief and door gunner with the 1st Cavalry Division during the Vietnam War; to the Committee on Armed Services.

Ms. STABENOW. Mr. President, today I rise to introduce a bill that would waive rigid time limitations in order to allow the Medal of Honor to be awarded to Gary Lee McKiddy, of Miamisburg, OH, for acts of valor while a helicopter crew chief and door gunner with the 1st Cavalry Division during the Vietnam War. There is a companion bill in the House of Representatives, H.R. 369, which was introduced by Representative SANDER LEVIN and is cosponsored by a bipartisan group of forty-three Members of Congress.

I think it is important that my colleagues hear the heroic story of Sergeant Gary Lee McKiddy. Sergeant McKiddy served with the 1st Cavalry Division in Vietnam. He was a helicopter crew chief and a door gunner. On May 6, 1970, Sergeant McKiddy's helicopter came under enemy fire and received several damaging blows, causing the helicopter to crash and start burning. Through investigations, the Army arrived at the conclusion that Sergeant McKiddy was thrown free of the helicopter and was out of harm's way, but bravely returned to the burning helicopter and found Specialist Four James Skaggs, who was unconscious, and carried him to safety. Sergeant McKiddy then returned to the wreckage to help rescue the pilot, Warrant Officer Tommy Whiddon, when the aircraft's fuel cells exploded, killing Warrant Officer Whiddon and Sergeant McKiddy.

I think we all can agree that this is an incredible story of bravery, honor, and selflessness. Specialist Four Skaggs wrote in a letter, ''Gary McKiddy was awarded the Silver Star for these acts of heroism but not the Medal of Honor because there were no witnesses. I don't understand how he could be awarded the Silver Star based on this information but no the Medal of Honor. There has never been any doubt in my mind about what happened that day. I am totally convinced Gary McKiddy earned and deserves the Medal of Honor.''

Sergeant McKiddy's brother, Rick, lives in Warren, MI. Rick McKiddy, other family members, and Specialist Four Skaggs have been fighting for Sergeant McKiddy's Medal of Honor for 20 years to no avail. They've contacted countless persons at the Pentagon and have taken their case to anyone who will listen. They've exhausted their resources. I think that Sergeant McKiddy deserves a second chance. It is time for Congress to act.

As we all know, the Medal of Honor is defined as ''the highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States.'' Unfortunately, the time limit for the application for the Medal of Honor ran out before an application was submitted on Sergeant McKiddy's behalf. The bill that I am introducing today waives the time limit on the application and requests that the President award Sergeant McKiddy the Medal of Honor.

With Veteran's Day quickly approaching, I think this is a very fitting way to honor not only Sergeant McKiddy, but all of those men and women who have given their lives for our country.

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. 1834

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

SECTION 1. AUTHORITY TO AWARD MEDAL OF HONOR TO GARY LEE MCKIDDY FOR VALOR DURING THE VIETNAM WAR.

(a) WAIVER OF TIME LIMITATIONS.—Notwithstanding the time limitations in section 3744(b) of title 10, United States Code, or any other time limitation, the President is authorized and requested to award the Medal of Honor under section 3741 of such title to Gary Lee McKiddy, of Miamisburg, Ohio, for the acts of valor referred to in subsection (b).

(b) ACTION DESCRIBED.—The acts of valor referred to in subsection (a) are the conspicuous acts of gallantry and intrepidity at the risk of his life and beyond the call of duty of Gary Lee McKiddy, between October 25, 1969, and May 6, 1970, and particularly on May 6, 1970, the day he died during a combat operation in Cambodia while serving as a Specialist Four in the 1st Cavalry Division of the United States Army.

(c) POSTHUMOUS AWARD.—The Medal of Honor may be awarded under this section posthumously as provided in section 3752 of title 10, United States Code.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 1835. A bill to extend the effective period of the Undetectable Firearms Act of 1988 (18 U.S.C. 922 note) for 10 years; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce, along with my colleague Senator PATRICK LEAHY, and Ranking Democrat Member of the Judiciary Committee, legislation to reauthorize the Undetectable Firearms Act. I want to thank Senator LEAHY for joining with me in introducing this bill and for his cooperation in working together on this important issue.

This reauthorization will extend the existing ban on the manufacture, sale, importation, shipping, possession, transfer, or receipt of firearms that could not be detected by a metal detector or x-ray machine. Everyone in this Chamber knows how deeply I care for the Second Amendment and the individual's right to own and bear arms. I want everyone to understand that this ban does not ban a single firearm in production today. It prevents any individual or company from creating an undetectable firearm.

I urge my colleagues to support the measure.

Mr. LEAHY. Mr. President, I am pleased to join with Senator HATCH to

introduce legislation to extend the Undetectable Firearms Act for ten years. I appreciate working with the Chairman of the Judiciary Committee and thank him for his leadership on this legislation.

The Undetectable Firearms Act became law in 1988, long before the tragic attacks on our country on September 11, 2001. The Undetectable Firearms Act also known as the ''plastic gun law'' made it illegal to manufacture, import, possess, or transfer a firearm that is not detectable by walk-through metal detectors or airport x-ray machines. This law has been extended once, and is due to expire on December 10, 2003.

It is critical that this bill does not expire at the end of this year. Over the past two years, Congress has done tremendous work to make America a safer place and prevent any more terrorist attacks. We need to act today to ensure that Americans are not needlessly vulnerable to attacks at airports, schools, and other public buildings.

I urge all my colleagues to support this legislation to extend the Undetectable Firearms Act for the next ten years.

By Mr. GRASSLEY:

S. 1837. A bill to combat money laundering and terrorist financing and for other purposes; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, I rise to speak in support of a bill that I am introducing today, the Combating Money Laundering and Terrorist Financing Act of 2003.

Money laundering is a significant threat to our country because it undermines our national security, promotes corruption and funds terrorism. Money laundering operations as a whole include such mechanisms as structured transactions, wire fraud, over- and under-invoicing, and other activities designed to defraud and hide profits from illegal activities. All of these transactions undermine legitimate financial institutions by promoting corruption, funding criminal and terrorist operations, and by providing a method of profiting from illegal transactions such as drug trafficking and weapons sales.

We know that money laundering is the functional equivalent of a war industry for terrorist groups. Terrorist groups do not function in a bubble but will use whatever means available to obtain funding for their cause. Our attention and rhetoric are focused on identifying and halting those mechanisms used specifically by terrorist organizations such as charitable organizations, money service businesses and alternative remittance systems which are often referred to as hawalas. Frankly, the tools used to launder and disguise funds for terrorist organizations are similar, and quite often identical to, those used by many drug traffickers and criminal organizations to clean their own dirty money.

No matter how the funds are obtained and ultimately used, they are still dirty, and if we are ever going to get ahead of the curve, we must design a better way to identify and halt this flow of illegal funds. The bill I am introducing today includes several provisions that will strengthen our current money laundering and terrorist financing laws to enhance our ability to identify and eliminate various avenues used to launder money, whether it be for drug traffickers, criminal organizations or terrorists.

This bill adds several provisions to the list of specified unlawful activities within the RICO statute that serve as predicates for the money laundering statute including: burglary and embezzlement, illegal money transmitting businesses, alien smuggling, child exploitation and obscenity. It would close a loophole on securities fraud by including the purchase of securities with the sale of securities as a money laundering offense, and adds the unlawful use of Social Security numbers to the list of money laundering offenses.

It adds a provision to the civil forfeiture statute to include the forfeiture of property outside the U.S. territorial boundaries if it was used in the planning of the terrorist act that occurred within the jurisdiction of the United States and includes a parallel transaction provision which provides that all parts of a parallel or dependent financial transaction are considered a money laundering offense if one part of that transaction involves the proceeds of an unlawful activity.

Our best response to money laundering and terrorist financing threats is a comprehensive and coordinated response which must be laid out in an effective strategy. This bill also reauthorizes the National Money Laundering and Financial Crimes Strategy Act through 2006. This yearly strategy must identify the risks and threats we face. Without a comprehensive strategy, we cannot begin to implement laws and regulations that will effectively combat money laundering sources and shut down the system as a whole. Only when we have a systematic approach to money laundering will we be able to avoid the duplication and inconsistencies that currently plague our efforts.

This legislation is important to identifying particular money laundering operations and putting them out of business. I encourage you to pass this legislation to ensure our national security against the continued threat posed by terrorist financing and financial crimes.

By Mr. DASCHLE (for Mr. KERRY):

S. 1838. A bill to require payments to State and local governments for infrastructure and social services needs in the same amount as the amount of relief and reconstruction funds provided to Iraq; to the Committee on Finance.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KERRY. Mr. President, rebuilding Iraq is critical to peace and stability in the Mideast and to help win the war on terrorism. Today, American families and American cities are also hurting and I believe they deserve the same assistance we are providing for families and cities in Iraq. While keeping our commitments abroad, we must not neglect our homeland.

Today, President Bush signed into law an $87 billion supplemental appropriations bill that includes $20.3 billion for reconstructing Iraq and to assist Iraqi families. I opposed this legislation because I do not believe this plan is the most effective way to protect American soldiers and to advance our interests. Providing assistance to help rebuild Iraq is the right thing to do; however, we must also provide equal consideration and equal funding to resolve America's domestic problems. That is why I am introducing the American Parity Act to ensure that any additional spending for Iraq's post-war reconstruction plan is balanced dollar-for-dollar with new investments in education, health care, transportation, housing, social services and public safety needs across the United States.

President Bush's economic approach has left State and city governments facing billions in budget deficits forced lay offs, education cuts, Medicaid cuts, reductions in critical social service programs and tax increases.

State and city governments need our help to protect their public services, rebuild America's roads and bridges, and ensure resources are available to help unemployed and impoverished Americans. My legislation will authorize payments to States and cities to assist them with their social service and infrastructure needs in the same amount as provided for relief and reconstruction in Iraq. Local governments will receive at least one-third of the total funds authorized.

These funds will be used to help America's children, seniors, and struggling families who depend upon affordable health care, quality education and public transportation programs that are facing massive cuts in order to balance state and local budgets across the Nation. These funds will assist in the development of our economy and create jobs.

Health insurance has become too expensive. Double-digit increases in health care premiums make it hard for Americans and businesses alike to afford health care. Today, more than 44 million Americans have no health insurance. More than ever, these Americans need access to Medicaid and other health care programs that help with the high cost of prescription drugs. However, many of these programs are endangered by state and local budget cuts. The American Parity Act will help State and local governments continue to provide health care assistance.

In our changing global economy, every American needs access to quality schools and advanced skills to succeed in our rapidly changing economy. In order for our American business to grow, we need workers to be more innovative and more productive than those of our competitors. My legislation will help cities provide additional resources to improve educational programs, modernize and rebuild crumbling schools, reduce class size, improve special education and help pay teachers.

Our Nation is facing an affordable housing crisis. Recent changes in the housing market have limited the availability of affordable rental housing across the country and have dramatically increased the cost of those that remain. In 2001, more than 14 million families spent over half of their income on housing. This bill will provide funding so that states and cities produce housing for working families.

We must show the same commitment to rebuilding Main Street as we have shown in rebuilding Iraq. American citizens deserve access to the same benefits and services we are so nobly providing to the people of Iraq. The American Parity Act will help States and cities cope with their current fiscal crisis and help ease potential cuts in programs critical to the most vulnerable in our Nation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was order to be printed in the RECORD, as follows:

S. 1838

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

SECTION 1. FINDINGS.

The Congress finds the following:

(1) The President has proposed a multibillion dollar reconstruction project for Iraq.

(2) The President's plan includes resources to rebuild potable water and wastewater treatment facilities; schools and health facilities; ports and airports; the electric power system, roads, and bridges; railroad infrastructure; solid waste management services; irrigation systems; and selected local government buildings.

(3) State and local governments in the United States have their own unmet infrastructure and social services needs.

(4) State and local governments represent a significant segment of the national economy whose economic health is essential to national economic prosperity.

(5) Present national economic problems have imposed considerable hardships on State and local government budgets.

(6) Those governments, because of their own fiscal difficulties, are being forced to take budget-related actions which tend to undermine Federal Government efforts to stimulate the economy.

(7) Efforts to stimulate the economy through reductions in Federal Government tax obligations or increased spending on Federal programs are weakened when State and local governments are forced to increase taxes or cut spending.

(8) Efforts by the Federal Government to stimulate the economic recovery will be substantially enhanced by a program of emergency Federal Government assistance to State and local governments to help prevent those governments from taking budget-related actions which undermine the Federal Government efforts to stimulate economic recovery.

(9) State and local governments deserve, at a minimum, the same level of Federal investment to address infrastructure and social services shortfalls as the amount of relief and reconstruction funds provided to Iraq.

SEC. 2. FINANCIAL ASSISTANCE AUTHORIZED.

(a) PAYMENTS TO STATE AND LOCAL GOVERNMENTS.—The Secretary of the Treasury shall, in accordance with the provisions of this Act, make payments to States and local governments to coordinate budget-related actions by such governments with Federal Government efforts to stimulate economic recovery.

(b) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to the Secretary of the Treasury for fiscal year 2003 for payments under this Act an amount equal to at least the total amount appropriated for fiscal year 2003 under the heading ''Iraq Relief and Reconstruction Fund'' in the Emergency Wartime Supplemental Appropriations Act, 2003, and any amounts appropriated for such Fund in any subsequent appropriation Act. Such amounts shall be in addition to, and not in lieu of, other amounts appropriated for payments to States and local governments.

(c) AVAILABILITY TO LOCAL GOVERNMENTS.—Not less than one-third of the amount appropriated pursuant to the authorization in subsection (b) shall be made available to local governments under the applicable laws of a given State.

SEC. 3. ALLOCATION.

The Secretary of the Treasury shall establish a formula, within 30 days after the date of the enactment of this Act, for determining the allocation of payments under this Act. The formula shall give priority weight to the following factors:

(1) The unemployment rate in relation to the national average unemployment rate.

(2) The duration of the unemployment rate above such average.

(3) Median income.

(4) Population.

(5) The poverty rate.

SEC. 4. USE OF FUNDS BY STATE AND LOCAL GOVERNMENTS.

(a) IN GENERAL.—Funds received under this Act may be used only for priority expenditures. For purposes of this Act, the term ''priority expenditures'' means only—

(1) ordinary and necessary maintenance and operating expenses for—

(A) primary, secondary, or higher education, including school building renovation;

(B) public safety;

(C) public health, including hospitals and public health laboratories;

(D) social services for the disadvantaged or aged;

(E) roads, transportation, and water infrastructure; and

(F) housing; and

(2) ordinary and necessary capital expenditures authorized by law.

(b) CERTIFICATIONS BY STATE AND LOCAL GOVERNMENTS.—The Secretary of the Treasury may accept a certification by the chief executive officer of a State or local government that the State or local government has used the funds received by it under this Act only for priority expenditures, unless the Secretary determines that such certification is not sufficiently reliable to enable the Secretary to carry out this Act. The Secretary shall prescribe by rule the time and manner in which the certification must be filed.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 260—EXPRESSING THE SENSE OF THE SENATE THAT THE SECRETARY OF HEALTH AND HUMAN SERVICES SHOULD TAKE ACTION TO REMOVE DIETARY SUPPLEMENTS CONTAINING EPHEDRINE ALKALOIDS FROM THE MARKET

Mr. DURBIN (for himself and Mr. MCCAIN) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 260

Whereas, a RAND Corporation study commissioned by the Department of Health and Human Services found no evidence for long-term efficacy of ephedrine alkaloids for weight loss and that there is no credible science showing that ephedrine or dietary supplements containing ephedrine alkaloids, as those products are used by the general population, improve athletic performance;

Whereas ephedrine alkaloids can—

(1) increase heart rate and blood pressure;

(2) stimulate the central nervous system; and

(3) lead to strokes, seizures, psychosis, cardiac arrhythmia, heart attacks, and deaths;

Whereas the Food and Drug Administration has received approximately 16,500 adverse events reports for consumers who have used dietary supplements containing ephedrine alkaloids, including approximately 155 reports of death;

Whereas the Inspector General of the Department of Health and Human Services has noted with concern that about 60 percent of persons suffering adverse events related to the use of dietary supplements containing ephedrine alkaloids are under the age of 40;

Whereas a study published in the Journal of Neurology found that there may be an association between the use of more than 32 milligrams per day of ephedra and an increased risk of hemorragic stroke, but the daily dose recommended by the dietary supplement industry is about 3 times that much;

Whereas a study published in Mayo Clinical Proceedings found that in 36 out of 37 serious cardiovascular events associated with ephedrine alkaloids examined, the patient had consumed doses of a dietary supplement containing ephedrine alkaloids at or below the dose recommended by the manufacturer;

Whereas a study commissioned by the Food and Drug Administration to review reports of ephedrine alkaloid-related adverse events (including serious adverse events such as seizures, strokes, and death), which resulted in publication in the New England Journal of Medicine of an article in 2000, found that 31 percent of the reports were definitely or probably related to ephedrine alkaloid use and an additional 31 percent were possibly related to ephedrine alkaloid use;

Whereas a study published in the Annals of Internal Medicine concluded that—

(1) the risk for an adverse reaction after the use of ephedra is substantially greater than with other herbal products; and

(2) the sale of ephedra as a dietary supplement should be restricted or banned to prevent serious adverse reactions in the general population;

Whereas approximately 30 members of the United States Army have died after taking a dietary supplement containing ephedrine alkaloids, and the Department of Defense has banned the sale of dietary supplements

containing ephedrine alkaloids from military commissaries worldwide because of safety concerns;

Whereas the American Medical Association has called on the Secretary of Health and Human Services to ban the sale of dietary supplements containing ephedrine alkaloids;

Whereas the National Football League, the International Federation of Football Associations, the National Collegiate Athletics Association, the Commissioner of the National Association of Baseball with regard to the Minor Leagues, Major League Soccer, the National Basketball Association, and the International Olympics Committee have banned the use of ephedrine alkaloids by their athletes;

Whereas 3 States, representing 65,000,000 Americans, have banned dietary supplements containing ephedrine alkaloids;

Whereas major drug store chains representing 17,300 stores nationwide have pulled ephedrine alkaloid-containing dietary supplements from their shelves; and

Whereas the largest specialty retailer of dietary supplements in the country, which has 5,300 stores nationwide, has pulled ephedrine alkaloids from its shelves: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the Secretary of Health and Human Services has authority under subsections (a) and (f) of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) to determine that dietary supplements containing ephedrine alkaloids—

(A) present a significant or unreasonable risk of illness or injury;

(B) pose an imminent hazard to public health or safety; or

(C) contain poisonous or deleterious substances that may render dietary supplements injurious to health;

(2) there is sufficient evidence to make such a determination; and

(3) the Secretary should take immediate action to remove dietary supplements containing ephedrine alkaloids from the marketplace.

SENATE RESOLUTION 261—TO AUTHORIZE TESTIMONY, DOCUMENT PRODUCTION, AND LEGAL REPRESENTATION IN THE STATE OF COLORADO V. DANIEL RAPHAEL EGGER, SARAH JANE GERALDI, JENNIFER MELISSA GREENBERG, LISA GALE KUNKEL, BONNIE CATHERINE MCCORMICK

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 261

Whereas, in the cases of State of Colorado v. Daniel Raphael Egger, Sarah Jane Geraldi, Jennifer Melissa Greenberg, Lisa Gale Kunkel, Bonnie Catherine McCormack, pending in the Arapahoe County Court, Colorado, testimony and documents have been requested from an employee in the office of Senator Wayne Allard;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members of the Senate and their employees with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That employees of Senator Allard's office from whom testimony or the production of documents may be required are authorized to testify and produce documents in the cases of State of Colorado v. Daniel Raphael Egger, Sarah Jane Geraldi, Jennifer Melissa Greenberg, Lisa Gale Kunkel, Bonnie Catherine McCormick, except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Senator Allard and his staff in the actions referenced in section one of this resolution.

SENATE RESOLUTION 262—TO ENCOURAGE THE SECRETARY OF THE TREASURY TO INITIATE EXPEDITED NEGOTIATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA ON ESTABLISHING A MARKET-BASED CURRENCY VALUATION AND TO FULFILL ITS COMMITMENTS UNDER INTERNATIONAL TRADE AGREEMENTS

Ms. SNOWE (for herself, Mrs. DOLE, Mr. BAUCUS, Mr. GRAHAM of South Carolina, and Mr. BAYH) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 262

Whereas the currency of the People's Republic of China has been tightly pegged to the United States dollar at the same fixed level of 8.28 yuan to the dollar since 1994;

Whereas the Government of the People's Republic of China has significantly intervened in foreign exchange markets in order to hold the value of their currency within its tight and artificial trading band, resulting in enormous growth in China's dollar reserves, estimated to be over $346,000,000,000 as of June 2003, an increase by 43 percent from June 2002;

Whereas the People's Republic of China has seen significant increases in production capability, productivity, and foreign direct investment since initially pegging the yuan to the dollar, which would generally lead toward upward pressure on the currency value;

Whereas this peg, in the face of growing pressure, clearly represents a manipulation of China's currency;

Whereas the undervaluation of China's currency distorts the value of exports from China and the price of foreign products for Chinese consumers;

Whereas the value of China's currency has had and continues to have a negative impact on the United States manufacturing sector, contributing to significant job losses and business closures;

Whereas the G–7 Finance Ministers and Central Bank Governors in September of this year stated that "more flexibility in exchange rates is desirable for major countries or economic areas to promote smooth and widespread adjustments in the international financial system, based on market mechanisms."; and

Whereas the market-based valuation of currencies is a key component to the health of global trade and the stability of the world economy: Now, therefore, be it

Resolved, That the Senate—

(1) urges the Secretary of the Treasury to initiate expedited negotiations with the Government of the People's Republic of China, bilaterally or through the International Monetary Fund, for the purpose of ensuring a market-based exchange rate valuation to permit effective balance of payments adjustments and to eliminate the unfair advantage; and

(2) encourages the People's Republic of China to continue to act on its commitments to the trade rules and principles of the international community of which it is now a member.

Ms. SNOWE. Mr. President, I rise today to submit a Sense of the Senate resolution to encourage the Department of the Treasury to initiate expedited negotiations with the People's Republic of China on establishing a market-based currency valuation and to fulfill its commitments under international trade agreements.

The resolution explains why China's currency policy is an unfair manipulation which violates international trading rules and puts American manufacturers at a disadvantage. We cannot continue to allow this exploitation to continue to the detriment of our workers. Therefore, this resolution sends a strong message to the administration that we must increase our efforts to bring about a market-based valuation of China's currency.

In an open trading system, manipulation of currency—either by frequent intervention or by a calculated undervaluation of one's currency through a fixed exchange rate—undermines the concept of comparative advantage by creating market distortions. These disruptions not only affect trade but also result in the loss of real jobs for U.S. manufacturers. This is particularly devastating in my State, which has lost over 17,300 manufacturing jobs since July 2000.

Congress granted Permanent Normal Trade Relations (PNTR) for China because we knew that China would become a major player in international markets whether we wanted them to or not. After all, China already enjoyed total access to our market while we did not have the same benefit. Perhaps most importantly, we supported PNTR because a China in the World Trade Organization is bound by the same international trade rules as the United States or any of our other trading partners. While many were optimistic about the increased market access to the world's largest population, few dared to expect this to be an easy path.

I have heard from company after company who have had to face the reality that they can no longer compete with unfairly priced Chinese products. Some argue they were forced to close their doors because of China's low labor costs, and others argue it is the lack of labor and environmental regulations in China that makes us uncompetitive. However, the full extent of China's advantage is the combination of an artifically undervalued currency,

unfair non-tariff barriers, and low cost of production.

While we all want wages, labor rights, and environmental protection to improve in China, the biggest concern that every manufacturer brings to my attention is that they can't compete with a currency undervaluation that economists estimate could be as high as 40 percent. This serves as a de facto subsidy that no competitor can surmount.

The damage manufacturing has sustained is nothing short of alarming. From July 2000 through July 2003, almost 2.7 million U.S. manufacturing jobs have been eliminated. New England alone lost more than 214,000 manufacturing jobs between June 1993 through June 2003, with fully 78 percent of those losses, 166,000 jobs, occurring since January of 2001. The job losses have been so focused on the manufacturing sector that a manufacturing worker had a 50 times greater chance of losing his or her job than did other workers.

For these reasons, I have been among a core group in Congress that has called on the administration to take strong action with regards to the foreign manipulation of currencies. I was pleased to work with my colleagues to ask the Treasury Secretary to make China's currency the top priority of his recent trip to Asia.

Secretary Snow took the message to China that the manipulation of its currency must end and that China should take steps to freely float its currency. I was pleased with his action and I was further encouraged by the fact that President Bush raised the same concern with his counterpart at the APEC Summit.

The administration has placed a high priority on this issue, but I am concerned about the findings of Treasury's recent report on currency manipulation. The Secretary of the Treasury is required to determine yearly if foreign countries ''manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade.'' The law then requires that Treasury initiate expedited negotiations with these countries.

However, in the face of compelling evidence of the deliberate currency manipulation by the Chinese government to gain an unfair trade advantage, that report downplayed the nature of China's exchange rate policy, stating that ''no major trading partner of the United States meets the technical requirements for designation.'' I believe that the facts clearly illustrate that the definition has been met.

China has seen significant increases in production capability, productivity, and foreign direct investment since the initial peg, which would generally lead towards upward pressure on the currency value. In response, the government of the People's Republic of China has had to significantly intervene in its foreign exchange markets in order to hold the value of their currency within its tight and artificial trading band. This manipulation has resulted in enormous growth in China's dollar reserves, estimated to be over $346 billion as of June 2003, an increase of 43 percent from June 2002.

In addition, China's policy is clearly in violation of article IV of the WTO which says members ''shall not by exchange rate action frustrate the intent'' of the WTO, which is to create fair and open markets for global commerce. China has joined the world trading system—it must now play by its rules and adhere to these principles.

This resolution is about restoring some sense of order to the global trading community which has been distorted by the policy of the Chinese government to unfairly subsidize every single export through the manipulation of its currency. It is my hope that the strong message sent by this Sense of the Senate will result in a renewed vigor and resolve to bring China's currency into the free market.

AMENDMENTS SUBMITTED & PROPOSED

SA 2115. Mr. BINGAMAN proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

SA 2116. Mr. DORGAN proposed an amendment to the bill H.R. 2673, supra.

SA 2117. Mr. DORGAN (for himself, Mr. BURNS, Mr. CONRAD, Mrs. CLINTON, Mr. LEAHY, Mr. HARKIN, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra.

SA 2118. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2119. Mr. LEAHY (for himself, Ms. SNOWE, Mr. JEFFORDS, Ms. COLLINS, Mr. REED, and Mrs. CLINTON) proposed an amendment to the bill H.R. 2673, supra.

SA 2120. Mr. COCHRAN proposed an amendment to the bill H.R. 2673, supra.

SA 2121. Mr. LEVIN (for himself and Ms. STABENOW) proposed an amendment to the bill H.R. 2673, supra.

SA 2122. Mr. KOHL (for Mr. FEINGOLD) proposed an amendment to the bill H.R. 2673, supra.

SA 2123. Mr. KOHL (for Mr. DORGAN) proposed an amendment to the bill H.R. 2673, supra.

SA 2124. Mr. KOHL (for Ms. STABENOW (for herself and Mr. LEVIN)) proposed an amendment to the bill H.R. 2673, supra.

SA 2125. Mr. KOHL (for Mr. LEAHY) proposed an amendment to the bill H.R. 2673, supra.

SA 2126. Mr. BENNETT proposed an amendment to the bill H.R. 2673, supra.

SA 2127. Mr. KOHL (for Mr. WYDEN) proposed an amendment to the bill H.R. 2673, supra.

SA 2128. Mr. KOHL (for Mr. JEFFORDS) proposed an amendment to the bill H.R. 2673, supra.

SA 2129. Mr. BENNETT (for Ms. MURKOWSKI) proposed an amendment to the bill H.R. 2673, supra.

SA 2130. Mr. KOHL (for Mrs. CLINTON) proposed an amendment to the bill H.R. 2673, supra.

SA 2131. Mr. BENNETT (for Mr. CRAIG) proposed an amendment to the bill H.R. 2673, supra.

SA 2132. Mr. KOHL (for Mr. HARKIN) proposed an amendment to the bill H.R. 2673, supra.

SA 2133. Mr. KOHL (for Mr. DORGAN (for himself, Mr. BURNS, Mrs. CLINTON, Mr. HARKIN, and Mr. LEAHY)) proposed an amendment to the bill H.R. 2673, supra.

SA 2134. Mr. KOHL (for Mr. HARKIN) proposed an amendment to the bill H.R. 2673, supra.

SA 2135. Mr. BENNETT (for Mrs. HUTCHISON) proposed an amendment to the bill H.R. 2673, supra.

SA 2136. Mr. MCCAIN (for himself, Mr. ALLEN, Mr. WYDEN, Mr. BURNS, Mr. ENSIGN, Mr. SUNUNU, Mr. WARNER, Mr. SMITH, Mr. LEAHY, Mr. GRASSLEY, Mr. HATCH, Mr. BAUCUS, Mrs. BOXER, Mr. CHAMBLISS, and Mrs. LINCOLN) proposed an amendment to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

SA 2137. Mr. MCCAIN (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) submitted an amendment intended to be proposed by Mr. MCCAIN to the joint resolution H.J. Res. 63, to approve the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to appropriate funds to carry out the amended Compacts.''.

SA 2138. Mr. MCCAIN (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the joint resolution H.J. Res. 63, supra.

SA 2139. Mr. MCCAIN (for Mr. DOMENICI) proposed an amendment to the joint resolution H.J. Res. 63, supra.

SA 2140. Mr. ALEXANDER (for himself, Mr. CARPER, Mr. HOLLINGS, Mr. STEVENS, Mr. VOINOVICH, Mr. GRAHAM, of Florida, Mr. DORGAN, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 2136 proposed by Mr. MCCAIN (for himself, Mr. ALLEN, Mr. WYDEN, Mr. BURNS, MR. ENSIGN, Mr. SUNUNU, Mr. WARNER, Mr. SMITH, Mr. LEAHY, Mr. GRASSLEY, Mr. HATCH, Mr. BAUCUS, Mrs. BOXER, Mr. CHAMBLISS, and Mrs. LINCOLN) to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2115. Mr. BINGAMAN proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 5, line 1, strike ''$188,022,000'' and insert ''$183,022,000''.

On page 48, line 24, strike ''$11,418,441,000'' and insert ''$11,423,441,000''.

On page 48, line 26, strike ''$6,718,780,000'' and insert ''$6,723,780,000''.

On page 49, line 7, before the period, insert the following: ''*: Provided further,* That not less than $15,025,000 shall be available to implement and administer Team Nutrition programs of the Department of Agriculture''.

SA 2116. Mr. DORGAN proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. SENSE OF SENATE ON IMPORTATION OF CATTLE WITH BOVINE SPONGIFORM ENCEPHALOPATHY.

(a) FINDINGS.—The Senate finds that—

(1) the United States beef industry is the single largest segment of United States agriculture;

(2) the United States has never allowed the importation of live cattle from a country that has been found to have bovine spongiform encephalopathy (referred to in this section as ''BSE'');

(3) the importation of live cattle known to have BSE could put the entire United States cattle industry at unnecessary risk;

(4) food safety is a top priority for the people of the United States; and

(5) the importation of beef and beef products from a country known to have BSE could undermine consumer confidence in the integrity of the food supply and present a possible danger to human health.

(b) SENSE OF SENATE.—It is the sense of the Senate that the Secretary of Agriculture—

(1) should not allow the importation of live cattle from any country known to have BSE unless the country complies with the animal health guidelines established by the World Organization for Animal Health; and

(2) should abide by international standards for the continued health and safety of the United States livestock industry.

SA 2117. Mr. DORGAN (for himself, Mr. BURNS, Mr. CONRAD, Mrs. CLINTON, Mr. LEAHY, Mr. HARKIN, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 47, line 13, strike ''$335,963,000'' and insert ''$647,000,000''.

On page 48, line 2, strike ''$9,116,000'' and insert ''$15,116,000''.

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. REDUCTION IN TRAVEL AMOUNTS.

Notwithstanding any other provision of this Act, each amount provided by this Act for travel expenses is reduced by the pro rata percentage required to reduce the total amount provided by this Act for such expenses by $6,000,000.

SA 2118. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 76, strike lines 1 through 5 and insert the following:

SEC. 749. ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS.

None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the $20,000,000 made available by section 601(j)(1)(A) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(j)(1)(A)) for fiscal year 2004.

SA 2119. Mr. LEAHY (for himself, Ms. SNOWE, Mr. JEFFORDS, Ms. COLLINS, Mr. REED, and Mrs. CLINTON) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. USE OF FUNDING FOR CERTAIN CONSERVATION PROGRAMS.

None of the funds made available by this Act may be used to pay the salaries or expenses of employees of the Department of Agriculture to carry out the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) using funds made available under paragraphs (4) through (7) of section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

SA 2120. Mr. COCHRAN proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 19, line 26, before the period, insert the following: '': *Provided further*, That, in the case of the term of protection for the variety for which certificate number 8200179 was issued, on the date of enactment of this Act, the Secretary of Agriculture shall issue a new certificate for a term of protection of 10 years for the variety, except that the Secretary may terminate the certificate (at the end of any calendar year that is more than 5 years after the date of issuance of the certificate) if the Secretary determines that a new variety of seed (that is substantially based on the genetics of the variety for which the certificate was issued) is commercially viable and available in sufficient quantities to meet market demands''.

SA 2121. Mr. LEVIN (for himself and Ms. STABENOW) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 3, line 12, strike ''$119,289,000'' and insert ''$118,789,000''.

On page 5, line 1, strike ''$188,022,000'' and insert ''$187,022,000''.

On page 17, line 16, after ''eradication zones'' insert ''; and of which not less than $1,500,000 (in addition to any other funds made available for eradication or containment) shall be used by the Emerald Ash Borer Task Force for the removal of trees that have been adversely affected by the emerald ash borer, with a priority for the removal of trees on public property or that threaten public safety''.

SA 2122. Mr. KOHL (for Mr. FEINGOLD) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 6, line 12, strike the period at the end and insert '': *Provided further*, That of such amount, sufficient funds shall be available for the Secretary of Agriculture, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of Agriculture during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of Agriculture that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of Agriculture shall make the report publicly available by posting the report on an Internet website.''.

SA 2123. Mr. KOHL (for Mr. DORGAN) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 76, strike lines 1 through 5 and insert the following:

SEC. 749. ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS.

None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the $20,000,000 made available by section 601(j)(1)(A) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(j)(1)(A)) for fiscal year 2004.

SA 2124. Mr. KOHL (for Ms. STABENOW (for herself and Mr. LEVIN) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 17, line 16, before the colon, insert the following: ''; and of which up to $275,000 may be used to control or alleviate the cormorant problem in the State of Michigan''.

SA 2125. Mr. KOHL (for Mr. LEAHY) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 78, strike lines 8 through 16, and insert the following:

SEC. 759. AGRICULTURAL MANAGEMENT ASSISTANCE.

Section 524(b)(4)(B) of the Federal Crop Insurance Act (7 U.S.C. 1542(b)(4)(B)) is amended—

(1) in clause (i), by striking ''clause (ii)'' and inserting ''clauses (ii) and (iii)''; and

(2) by adding at the end the following:

''(iii) CERTAIN USES.—Of the amounts made available to carry out this subsection for each fiscal year, the Commodity Credit Corporation shall use not less than—

''(I) $15,000,000 to carry out subparagraphs (A), (B), and (C) of paragraph (2) through the Natural Resources Conservation Service; and

''(II) $2,000,000 to provide organic certification cost share assistance through the Agricultural Marketing Service.''.

SA 2126. Mr. BENNETT proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. EMERGENCY WATERSHED PROTECTION PROGRAM.

Notwithstanding any other provision of law, the Secretary of Agriculture is authorized hereafter to make funding and other assistance available through the emergency watershed protection program under section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) to repair and prevent damage to non-Federal land in watersheds that have been impaired by fires initiated by the Federal Government and to waive cost sharing requirements for the funding and assistance.

SA 2127. Mr. KOHL (for Mr. WYDEN) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

''The Secretary may waive the requirements regarding small and emerging rural business as authorized under the Rural Business Enterprise Grant program for the purpose of a lease for the Oakridge Oregon Industrial Park.''

SA 2128. Mr. KOHL (for Mr. JEFFORDS) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 42, between lines 13 and 14, insert the following:

HISTORIC BARN PRESERVATION PROGRAM

For the historic barn preservation program established under section 379A of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008*o*), $2,000,000.

On page 58, line 19, strike ''$90,435,000'' and insert ''$88,435,000''.

SA 2129. Mr. BENNETT (for Ms. MURKOWSKI) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. WATER AND WASTE DISPOSAL GRANT TO THE ALASKA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT.

Notwithstanding any other provision of law—

(1) the Alaska Department of Community and Economic Development may be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is up to 75 percent of the total cost of providing water and sewer service to the proposed hospital in the Matanuska-Susitna Borough, Alaska;

(2) the Alaska Department of Community and Economic Development may be allowed to pass the grant funds through to the local government entity that will provide water and sewer service to the hospital; and

SA 2130. Mr. KOHL (for Mrs. CLINTON) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. PROHIBITION OF USE OF FUNDS TO PURCHASE CHICKEN TREATED WITH FLUOROQUINOLONE.

After December 31, 2003, none of the funds made available by this Act may be used to purchase chickens or the products of chickens for use in any program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), unless the supplier provides certification that the supplier does not feed or administer fluoroquinolone to chickens produced by the supplier.

SA 2131. Mr. BENNETT (for Mr. CRAIG) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. RENEWABLE ENERGY SYSTEM LOAN GUARANTEES.

Title IX of The Farm Security and Rural Investment Act of 2002 is amended by adding the following new section—

''SEC. ___. RENEWABLE ENERGY SYSTEM LOAN GUARANTEES.

''LOAN GUARANTEES FOR CERTAIN PROJECTS.—

''(1) DEFINITION OF SUBSIDY COSTS.—In this subsection, the term 'subsidy costs' has the meaning given the term 'cost' in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

''(2) PROJECTS.—Subsection (c)(1) shall not apply to a loan guarantee made under this subsection to carry out a project if—

''(A) the loan will be used—

''(i) to purchase a renewable energy system that has, as 1 of its principal purposes, the commercial production of an agricultural commodity; and

''(ii) to promote a solution to an environmental problem in a rural area of the State in which the project will be carried out;

''(B) the lender of the loan exercises due diligence with respect to theborrower of the loan;

''(C) the borrower of the loan pays in full, before the guarantee is issued, a guarantee fee in the amount of the estimated subsidy cost of the guarantee, as determined by the Director of the Office of Management and Budget;

''(D) except as provided in subparagraph (E), the principal amount of the loan is not more than $25,000,000;

''(E) the principal amount of the loan is more than $25,000,000, but is not more than $75,000,000, if the Secretary—

''(i) approves the loan application; and

''(ii) does not delegate the authority described in clause (i);

''(F) the project requires no Federal or State financial assistance, other than the loan guarantee provided under this subsection; and

''(G) the project complies with all necessary permits, licenses, and approvals required under the laws of the State.

''(3) COST SHARING.—

''(A) IN GENERAL.—The amount of a loan guarantee under this subsection for a project described in paragraph (2) shall not exceed 80 percent of the total project cost.

''(B) SUBORDINATION.—Any financing for the non-Federal share of the total project cost shall be subordinated to the federally guaranteed portion of the total project cost.

''(4) LOAN GUARANTEE LIMITS.—The loan guarantee limitations applicable to the business and industry guarantee loan program authorized under section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) shall apply to loan guarantees made under this subsection.

''(5) MAXIMUM AMOUNT.—

''(A) INDIVIDUAL LOANS.—The amount of principal for a loan under this subsection for a project described in paragraph (2) shall not exceed $75,000,000.

''(B) ALL LOANS.—The total outstanding amount of principal for loans under this subsection for all projects described in paragraph (2) shall not exceed $500,000,000.

''(C) The Secretary shall publish a proposed rule to carry out this section within 120 days of enactment of this Act''.

SA 2132. Mr. KOHL (for Mr. HARKIN) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 71, line 2, before the period, insert the following: '', including requests for proposals for grants for critical emerging issues described in section 401(c)(1) of that Act for which the Secretary has not issued requests for proposals for grants in fiscal 2002 or 2003''.

SA 2133. Mr. KOHL (for Mr. DORGAN (for himself, Mr. BURNS, Mrs. CLINTON, Mr. HARKIN, and Mr. LEAHY)) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 47, line 13, strike ''$335,963,000'' and insert ''$647,000,000''.

On page 48, line 2, strike ''$9,116,000'' and insert ''$15,116,000''.

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. REDUCTION IN TRAVEL AMOUNTS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, each amount provided by this Act for travel expenses is reduced by the pro rata percentage required to reduce the total amount provided by this Act for such expenses by $6,000,000.

(b) REPORT.—Not later than 30 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to subsection (a).

SA 2134. Mr. KOHL (for Mr. HARKIN) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

SEC. 7___. WATER AND WASTE DISPOSAL GRANT TO THE CITY OF POSTVILLE, IOWA.

Notwithstanding any other provision of law, the city of Postville, Iowa, shall be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is equal to not more than 75 percent of the total cost of providing water and sewer service in the city.

SA 2135. Mr. BENNETT (for Mrs. HUTCHISON) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

SEC. . TEXAS RICE SAFEGUARD INITIATIVE.

(a) IN GENERAL.—In order to provide a safeguard against the further decline of the rice industry and wildlife habitat in Texas, and to provide information to the Congress in anticipation of and preparation for the 2007 farm bill, the Secretary of Agriculture shall conduct the initiative required under this section.

(b) ADMINISTRATIVE IMPROVEMENTS.—As an integral part of the safeguard initiative, the Secretary of Agriculture shall review the administration and enhance the enforcement of section 1105(a)(1)(E) of Public Law 107–171 as it related to and is applied to the control of noxious weeds and the proper application and implementation of the conserving use requirements on rice base acreage in Texas.

(c) REPORTS TO CONGRESS.—The Secretary shall review and evaluate the costs, benefits and effects of the safeguard initiative on rice producers, including tenant rice producers, the rice milling and processing industry, wildlife habitat, and the economies of rice farming areas in Texas, detailed by each of these affected interests and by the program variables involved in the safeguard initiative under subsections (b) and (c), including whether or not producers on a farm have qualified plantings. The Secretary shall provide to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives an annual report detailing the progress and findings of the initiative not later than February 1 of each of the years 2005 through 2007.

SA 2136. Mr. MCCAIN (for himself, Mr. ALLEN, Mr. WYDEN, Mr. BURNS, Mr. ENSIGN, Mr. SUNUNU, Mr. WARNER, Mr. SMITH, Mr. LEAHY, Mr. GRASSLEY, Mr. HATCH, Mr. BAUCUS, Mrs. BOXER, Mr. CHAMBLISS, and Mrs. LINCOLN) proposed an amendment to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Nondiscrimination Act''.

SEC. 2. PERMANENT EXTENSION OF INTERNET TAX FREEDOM ACT MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes:

''(1) Taxes on Internet access.

''(2) Multiple or discriminatory taxes on electronic commerce.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(10) TAX ON INTERNET ACCESS.—

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(c) INTERNET ACCESS SERVICE; INTERNET ACCESS.—

(1) INTERNET ACCESS SERVICE.—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting ''The term 'Internet access'' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

SEC. 3. 3–YEAR SUNSET FOR PRE-OCTOBER, 1998, TAX EXCEPTION.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. PRESERVATION OF PRE-OCTOBER, 1998, STATE AND LOCAL TAX AUTHORITY UNTIL 2006.

''(a) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(b) TERMINATION.—This section shall not apply after October 1, 2006.

''(c) TAX ON INTERNET ACCESS.—Notwithstanding section 1105(10), in this section the term 'tax on Internet access' includes the enforcement or application of any preexisting tax on the sale or use of Internet services if that tax was generally imposed and actually enforced prior to October 1, 1998.''.

SEC. 4. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

SEC. 5. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

SA 2137. Mr. MCCAIN (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) submitted an amendment intended to be proposed by Mr. MCCAIN to the joint resolution H.J. Res. 63, to approve the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to appropriate funds to carry out the amended Compacts.''; as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This joint resolution, together with the table of contents in subsection (b) of this section, may be cited as the ''Compact of Free Association Amendments Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this joint resolution is as follows:

TITLE I—APPROVAL OF U.S.-FSM COMPACT AND U.S.-RMI COMPACT; INTERPRETATION OF, AND U.S. POLICIES REGARDING, U.S.-FSM COMPACT AND U.S.-RMI COMPACT; SUPPLEMENTAL PROVISIONS

Sec. 101. Approval of U.S.-FSM Compact of Free Association and U.S.-RMI Compact of Free Association.
(a) Federated States of Micronesia.
(b) Republic of the Marshall Islands.
(c) References to the Compact, the U.S.-FSM Compact and the U.S.-RMI Compact; References to Subsidiary Agreements or Separate Agreements.
(d) Amendment, Change, or Termination in the U.S.-FSM Compact, the U.S.-RMI Compact and Certain Agreements.
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(a) Law Enforcement Assistance.
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TITLE II—COMPACTS OF FREE ASSOCIATION WITH THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF THE MARSHALL ISLANDS

Sec. 201. Compacts of Free Association, as Amended Between the Government of the United States of America and the Government of the Federated States of Micronesia and Between the Government of the United States of America and the Government of the Republic of the Marshall Islands.
(a) Compact of Free Association as amended between the Government of the United States of America and the Government of the Federated States of Micronesia.
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Article I—Self-Government.
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(b) Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands.
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TITLE TWO—ECONOMIC RELATIONS
Article I—Grant Assistance.
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TITLE THREE—SECURITY AND DEFENSE RELATIONS
Article I—Authority and Responsibility.
Article II—Defense Facilities and Operating Rights.
Article III—Defense Treaties and International Security Agreements.
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TITLE FOUR—GENERAL PROVISIONS
Article I—Approval and Effective Date.
Article II—Conference and Dispute Resolution.
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TITLE I—APPROVAL OF U.S.-FSM COMPACT AND U.S.-RMI COMPACT; INTERPRETATION OF, AND U.S. POLICIES REGARDING, U.S.-FSM COMPACT AND U.S.-RMI COMPACT; SUPPLEMENTAL PROVISIONS

SEC. 101. APPROVAL OF U.S.-FSM COMPACT OF FREE ASSOCIATION AND THE U.S.-RMI COMPACT OF FREE ASSOCIATION; REFERENCES TO SUBSIDIARY AGREEMENTS OR SEPARATE AGREEMENTS.

(a) FEDERATED STATES OF MICRONESIA.—The Compact of Free Association, as amended with respect to the Federated States of Micronesia and signed by the United States and the Government of the Federated States of Micronesia and set forth in Title II (section 201(a)) of this joint resolution, is hereby approved, and Congress hereby consents to the subsidiary agreements and amended subsidiary agreements listed in section 462 of the U.S.-FSM Compact. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the U.S.-FSM Compact, to an effective date for and thereafter to implement such U.S.-FSM Compact.

(b) REPUBLIC OF THE MARSHALL ISLANDS.—The Compact of Free Association, as amended with respect to the Republic of the Marshall Islands and signed by the United States and the Government of the Republic of the Marshall Islands and set forth in Title II (section 201(b)) of this joint resolution, is hereby approved, and Congress hereby consents to the subsidiary agreements and amended subsidiary agreements listed in section 462 of the U.S.-RMI Compact. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the U.S.-RMI Compact, to an effective date for and thereafter to implement such U.S.-RMI Compact.

(c) REFERENCES TO THE COMPACT, THE U.S.-FSM COMPACT, AND THE U.S.-RMI COMPACT; REFERENCES TO SUBSIDIARY AGREEMENTS OR SEPARATE AGREEMENTS.—

(1) Any reference in this joint resolution (except references in Title II) to ''the Compact'' shall be treated as a reference to the

Compact of Free Association set forth in title II of Public Law 99–239, January 14, 1986, 99 Stat. 1770. Any reference in this joint resolution to the ''U.S.-FSM Compact'' shall be treated as a reference to the Compact of Free Association, as amended between the Government of the United States of America and the Government of the Federated States of Micronesia and set forth in Title II (section 201(a)) of this joint resolution. Any reference in this joint resolution to the ''U.S.-RMI Compact'' shall be treated as a reference to the Compact of Free Association, as amended between the Government of the United States of America and the Government of the Republic of the Marshall Islands and set forth in Title II (section 201(b)) of this joint resolution.

(2) Any reference to the term ''subsidiary agreements'' or ''separate agreements'' in this joint resolution shall be treated as a reference to agreements listed in section 462 of the U.S.-FSM Compact and the U.S.-RMI Compact, and any other agreements that the United States may from time to time enter into with either the Government of the Federated States of Micronesia or the Government of the Republic of the Marshall Islands, or with both such governments in accordance with the provisions of the U.S.-FSM Compact and the U.S.-RMI Compact.

(d) AMENDMENT, CHANGE, OR TERMINATION IN THE U.S.-FSM COMPACT AND U.S.-RMI COMPACT AND CERTAIN AGREEMENTS.—

(1) Any amendment, change, or termination by mutual agreement or by unilateral action of the Government of the United States of all or any part of the U.S.-FSM Compact or U.S.-RMI Compact shall not enter into force until after Congress has incorporated it in an Act of Congress.

(2) The provisions of paragraph (1) shall apply—

(A) to all actions of the Government of the United States under the U.S.-FSM Compact or U.S.-RMI Compact including, but not limited to, actions taken pursuant to sections 431, 441, or 442;

(B) to any amendment, change, or termination in the Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association referred to in section 462(a)(2) of the U.S.-FSM Compact and the Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association referred to in section 462(a)(5) of the U.S.-RMI Compact;

(C) to any amendment, change, or termination of the agreements concluded pursuant to Compact section 177, and section 215(a) of the U.S.-FSM Compact and section 216(a) of the U.S.-RMI Compact, the terms of which are incorporated by reference into the U.S.-FSM Compact and the U.S.-RMI Compact; and

(D) to the following subsidiary agreements, or portions thereof:

(i) Articles III, IV, and X of the agreement referred to in section 462(b)(6) of the U.S.-RMI Compact:

(ii) Article III and IV of the agreement referred to in section 462(b)(6) of the U.S.-FSM Compact.

(iii) Articles VI, XV, and XVII of the agreement referred to in section 462(b)(7) of the U.S.-FSM Compact and U.S.-RMI Compact.

(e) SUBSIDIARY AGREEMENTS DEEMED BILATERAL.—For purposes of implementation of the U.S.-FSM Compact and the U.S.-RMI Compact and this joint resolution, the Agreement Concluded Pursuant to Section 234 of the Compact of Free Association and referred to in section 462(a)(1) of the U.S.-FSM Compact and section 462(a)(4) of the U.S.-RMI Compact shall be deemed to be a bilateral agreement between the United States and each other party to such subsidiary agreement. The consent or concurrence of any other party shall not be required for the effectiveness of any actions taken by the United States in conjunction with either the Federated States of Micronesia or the Republic of the Marshall Islands which are intended to affect the implementation, modification, suspension, or termination of such subsidiary agreement (or any provision thereof) as regards the mutual responsibilities of the United States and the party in conjunction with whom the actions are taken.

(f) ENTRY INTO FORCE OF FUTURE AMENDMENTS TO SUBSIDIARY AGREEMENTS.—No agreement between the United States and the government of either the Federated States of Micronesia or the Republic of the Marshall Islands which would amend, change, or terminate any subsidiary agreement or portion thereof, other than those set forth in subsection (d) of this section shall enter into force until 90 days after the President has transmitted such agreement to the President of the Senate and the Speaker of the House of Representatives together with an explanation of the agreement and the reasons therefor. In the case of the agreement referred to in section 462(b)(3) of the U.S.-FSM Compact and the U.S.-RMI Compact, such transmittal shall include a specific statement by the Secretary of Labor as to the necessity of such amendment, change, or termination, and the impact thereof.

SEC. 102. AGREEMENTS WITH FEDERATED STATES OF MICRONESIA.

(a) LAW ENFORCEMENT ASSISTANCE.—Pursuant to sections 222 and 224 of the U.S.-FSM Compact, the United States shall provide non-reimbursable technical and training assistance as appropriate, including training and equipment for postal inspection of illicit drugs and other contraband, to enable the Government of the Federated States of Micronesia to develop and adequately enforce laws of the Federated States of Micronesia and to cooperate with the United States in the enforcement of criminal laws of the United States. Funds appropriated pursuant to section 105(j) of this title may be used to reimburse State or local agencies providing such assistance.

(b) AGREEMENT ON AUDITS.—The Comptroller General (and his duly authorized representatives) shall have the authorities necessary to carry out his responsibilities under section 232 of the U.S.-FSM Compact and the agreement referred to in section 462(b)(4) of the U.S.-FSM Compact, including the following authorities:

(1) GENERAL AUTHORITY OF THE COMPTROLLER GENERAL TO AUDIT.—

(A) The Comptroller General of the United States (and his duly authorized representatives) shall have the authority to audit—

(i) all grants, program assistance, and other assistance provided to the Government of the Federated States of Micronesia under Articles I and II of Title Two of the U.S.-FSM Compact; and

(ii) any other assistance provided by the Government of the United States to the Government of the Federated States of Micronesia.

Such authority shall include authority for the Comptroller General to conduct or cause to be conducted any of the audits provided for in section 232 of the U.S.-FSM Compact. The authority provided in this paragraph shall continue for at least three years after the last such grant has been made or assistance has been provided.

(B) The Comptroller General (and his duly authorized representatives) shall also have authority to review any audit conducted by or on behalf of the Government of the United States. In this connection, the Comptroller General shall have access to such personnel and to such records, documents, working papers, automated data and files, and other information relevant to such review.

(2) COMPTROLLER GENERAL ACCESS TO RECORDS.—

(A) In carrying out paragraph (1), the Comptroller General (and his duly authorized representatives) shall have such access to the personnel and (without cost) to records, documents, working papers, automated data and files, and other information relevant to such audits. The Comptroller General may duplicate any such records, documents, working papers, automated data and files, or other information relevant to such audits.

(B) Such records, documents, working papers, automated data and files, and other information regarding each such grant or other assistance shall be maintained for at least five years after the date such grant or assistance was provided and in a manner that permits such grants, assistance, and payments to be accounted for distinct from any other funds of the Government of the Federated States of Micronesia.

(3) STATUS OF COMPTROLLER GENERAL REPRESENTATIVES.—The Comptroller General and his duly authorized representatives shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may be expressly waived by the Government of the United States. The Comptroller General and his duly authorized representatives shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents. Such persons shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations. The privileges, exemptions and immunities accorded under this paragraph are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government of the Federated States of Micronesia.

(4) AUDITS DEFINED.—As used in this subsection, the term ''audits'' includes financial, program, and management audits, including determining—

(A) whether the Government of the Federated States of Micronesia has met the requirements set forth in the U.S.-FSM Compact, or any related agreement entered into under the U.S.-FSM Compact, regarding the purposes for which such grants and other assistance are to be used; and

(B) the propriety of the financial transactions of the Government of the Federated States of Micronesia pursuant to such grants or assistance.

(5) COOPERATION BY FEDERATED STATES OF MICRONESIA.—The Government of the Federated States of Micronesia will cooperate fully with the Comptroller General of the United States in the conduct of such audits as the Comptroller General determines necessary to enable the Comptroller General to fully discharge his responsibilities under this joint resolution.

SEC. 103. AGREEMENTS WITH AND OTHER PROVISIONS RELATED TO THE REPUBLIC OF THE MARSHALL ISLANDS.

(a) LAW ENFORCEMENT ASSISTANCE.—Pursuant to sections 222 and 224 of the U.S.-RMI Compact, the United States shall provide non-reimbursable technical and training assistance as appropriate, including training and equipment for postal inspection of illicit drugs and other contraband, to enable the Government of the Marshall Islands to develop and adequately enforce laws of the Marshall Islands and to cooperate with the United States in the enforcement of criminal laws of the United States. Funds appropriated pursuant to section 105(j) of this title may be used to reimburse State or local agencies providing such assistance.

(b) EJIT.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that the President of the United States shall negotiate with the Government of the Marshall Islands an agreement whereby, without prejudice as to any claims which have been or may be asserted by any party as to rightful title and ownership of any lands on Ejit, the Government of the Marshall Islands shall assure that lands on Ejit used as of January 1, 1985, by the people of Bikini, will continue to be available without charge for their use, until such time as Bikini is restored and inhabitable and the continued use of Ejit is no longer necessary, unless a Marshall Islands court of competent jurisdiction finally determines that there are legal impediments to continued use of Ejit by the people of Bikini.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that if the impediments described in paragraph (1) do arise, the United States will cooperate with the Government of the Marshall Islands in assisting any person adversely affected by such judicial determination to remain on Ejit, or in locating suitable and acceptable alternative lands for such person's use.

(3) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that paragraph (1) shall not be applied in a manner which would prevent the Government of the Marshall Islands from acting in accordance with its constitutional processes to resolve title and ownership claims with respect to such lands or from taking substitute or additional measures to meet the needs of the people of Bikini with their democratically expressed consent and approval.

(c) SECTION 177 AGREEMENT.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in furtherance of the purposes of Article I of the Subsidiary Agreement for Implementation of Section 177 of the Compact, the payment of the amount specified therein shall be made by the United States under Article I of the Agreement between the Government of the United States and the Government of the Marshall Islands for the Implementation of section 177 of the Compact (hereafter in this subsection referred to as the ''Section 177 Agreement'') only after the Government of the Marshall Islands has notified the President of the United States as to which investment management firm has been selected by such Government to act as Fund Manager under Article I of the Section 177 Agreement.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in the event that the President determines that an investment management firm selected by the Government of the Marshall Islands does not meet the requirements specified in Article I of the Section 177 Agreement, the United States shall invoke the conference and dispute resolution procedures of Article II of Title Four of the Compact. Pending the resolution of such a dispute and until a qualified Fund Manager has been designated, the Government of the Marshall Islands shall place the funds paid by the United States pursuant to Article I of the Section 177 Agreement into an interest-bearing escrow account. Upon designation of a qualified Fund Manager, all funds in the escrow account shall be transferred to the control of such Fund Manager for management pursuant to the Section 177 Agreement.

(3) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that if the Government of the Marshall Islands determines that some other investment firm should act as Fund Manager in place of the firm first (or subsequently) selected by such Government, the Government of the Marshall Islands shall so notify the President of the United States, identifying the firm selected by such Government to become Fund Manager, and the President shall proceed to evaluate the qualifications of such identified firm.

(4) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that at the end of 15 years after the effective date of the Compact, the firm then acting as Fund Manager shall transfer to the Government of the Marshall Islands, or to such account as such Government shall so notify the Fund Manager, all remaining funds and assets being managed by the Fund Manager under the Section 177 Agreement.

(d) NUCLEAR TEST EFFECTS.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in approving the Compact, the Congress understands and intends that the peoples of Bikini, Enewetak, Rongelap, and Utrik, who were affected by the United States nuclear weapons testing program in the Marshall Islands, will receive the amounts of $75,000,000 (Bikini); $48,750,000 (Enewetak); $37,500,000 (Rongelap); and $22,500,000 (Utrik), respectively, which amounts shall be paid out of proceeds from the fund established under Article I, section 1 of the subsidiary agreement for the implementation of section 177 of the Compact. The amounts specified in this subsection shall be in addition to any amounts which may be awarded to claimants pursuant to Article IV of the subsidiary agreement for the implementation of Section 177 of the Compact.

(e) ESPOUSAL PROVISIONS.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that it is the intention of the Congress of the United States that the provisions of section 177 of the Compact of Free Association and the Agreement between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact (hereafter in this subsection referred to as the ''Section 177 Agreement'') constitute a full and final settlement of all claims described in Articles X and XI of the Section 177 Agreement, and that any such claims be terminated and barred except insofar as provided for in the Section 177 Agreement.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in furtherance of the intention of Congress as stated in paragraph (1) of this subsection, the Section 177 Agreement is hereby ratified and approved. It is the explicit understanding and intent of Congress that the jurisdictional limitations set forth in Article XII of such Agreement are enacted solely and exclusively to accomplish the objective of Article X of such Agreement and only as a clarification of the effect of Article X, and are not to be construed or implemented separately from Article X.

(f) DOE RADIOLOGICAL HEALTH CARE PROGRAM; USDA AGRICULTURAL AND FOOD PROGRAMS.—

(1) MARSHALL ISLANDS PROGRAM.—Notwithstanding any other provision of law, upon the request of the Government of the Republic of the Marshall Islands, the President (either through an appropriate department or agency of the United States or by contract with a United States firm) shall continue to provide special medical care and logistical support thereto for the remaining members of the population of Rongelap and Utrik who were exposed to radiation resulting from the 1954 United States thermo-nuclear ''Bravo'' test, pursuant to Public Laws 95–134 and 96–205.

(2) AGRICULTURAL AND FOOD PROGRAMS.—

(A) IN GENERAL.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that notwithstanding any other provision of law, upon the request of the Government of the Marshall Islands, for the first fifteen years after the effective date of the Compact, the President (either through an appropriate department or agency of the United States or by contract with a United States firm or by a grant to the Government of the Republic of the Marshall Islands which may further contract only with a United States firm or a Republic of the Marshall Islands firm, the owners, officers and majority of the employees of which are citizens of the United States or the Republic of the Marshall Islands) shall provide technical and other assistance—

(i) without reimbursement, to continue the planting and agricultural maintenance program on Enewetak, as provided in subparagraph (C); and

(ii) without reimbursement, to continue the food programs of the Bikini and Enewetak people described in section 1(d) of Article II of the Subsidiary Agreement for the Implementation of Section 177 of the Compact and for continued waterborne transportation of agricultural products to Enewetak including operations and maintenance of the vessel used for such purposes.

(B) POPULATION CHANGES.—The President shall ensure the assistance provided under these programs reflects the changes in the population since the inception of such programs.

(C) PLANTING AND AGRICULTURAL MAINTENANCE PROGRAM.—

(i) IN GENERAL.—The planting and agricultural maintenance program on Enewetak shall be funded at a level of not less than $1,300,000 per year, as adjusted for inflation under section 218 of the U.S.-RMI Compact.

(ii) AUTHORIZATION AND CONTINUING APPROPRIATION.—There is hereby authorized and appropriated to the Secretary of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, for each fiscal year from 2004 through 2023, $1,300,000, as adjusted for inflation under section 218 of the U.S.-RMI Compact, for grants to carry out the planting and agricultural maintenance program.

(3) PAYMENTS.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that payments under this subsection shall be provided to such extent or in such amounts as are necessary for services and other assistance provided pursuant to this subsection. It is the sense of Congress that after the periods of time specified in paragraphs (1) and (2) of this subsection, consideration will be given to such additional funding for these programs as may be necessary.

(g) RONGELAP.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that because Rongelap was directly affected

by fallout from a 1954 United States thermonuclear test and because the Rongelap people remain unconvinced that it is safe to continue to live on Rongelap Island, it is the intent of Congress to take such steps (if any) as may be necessary to overcome the effects of such fallout on the habitability of Rongelap Island, and to restore Rongelap Island, if necessary, so that it can be safely inhabited. Accordingly, it is the expectation of the Congress that the Government of the Marshall Islands shall use such portion of the funds specified in Article II, section 1(e) of the subsidiary agreement for the implementation of section 177 of the Compact as are necessary for the purpose of contracting with a qualified scientist or group of scientists to review the data collected by the Department of Energy relating to radiation levels and other conditions on Rongelap Island resulting from the thermonuclear test. It is the expectation of the Congress that the Government of the Marshall Islands, after consultation with the people of Rongelap, shall select the party to review such data, and shall contract for such review and for submission of a report to the President of the United States and the Congress as to the results thereof.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that the purpose of the review referred to in paragraph (1) of this subsection shall be to establish whether the data cited in support of the conclusions as to the habitability of Rongelap Island, as set forth in the Department of Energy report entitled: ''The Meaning of Radiation for Those Atolls in the Northern Part of the Marshall Islands That Were Surveyed in 1978'', dated November 1982, are adequate and whether such conclusions are fully supported by the data. If the party reviewing the data concludes that such conclusions as to habitability are fully supported by adequate data, the report to the President of the United States and the Congress shall so state. If the party reviewing the data concludes that the data are inadequate to support such conclusions as to habitability or that such conclusions as to habitability are not fully supported by the data, the Government of the Marshall Islands shall contract with an appropriate scientist or group of scientists to undertake a complete survey of radiation and other effects of the nuclear testing program relating to the habitability of Rongelap Island. Such sums as are necessary for such survey and report concerning the results thereof and as to steps needed to restore the habitability of Rongelap Island are authorized to be made available to the Government of the Marshall Islands.

(3) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that it is the intent of Congress that such steps (if any) as are necessary to restore the habitability of Rongelap Island and return the Rongelap people to their homeland will be taken by the United States in consultation with the Government of the Marshall Islands and, in accordance with its authority under the Constitution of the Marshall Islands, the Rongelap local government council.

(4) There are hereby authorized and appropriated to the Secretary of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, for fiscal year 2005, $1,780,000; for fiscal year 2006, $1,760,000; and for fiscal year 2007, $1,760,000, as the final contributions of the United States to the Rongelap Resettlement Trust Fund as established pursuant to Public Law 102–154 (105 Stat. 1009), for the purposes of establishing a food importation program as a part of the overall resettlement program of Rongelap Island.

(h) FOUR ATOLL HEALTH CARE PROGRAM.—

(1) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that services provided by the United States Public Health Service or any other United States agency pursuant to section 1(a) of Article II of the Agreement for the Implementation of Section 177 of the Compact (hereafter in this subsection referred to as the ''Section 177 Agreement'') shall be only for services to the people of the Atolls of Bikini, Enewetak, Rongelap, and Utrik who were affected by the consequences of the United States nuclear testing program, pursuant to the program described in Public Law 95–134 (91 Stat. 1159) and Public Law 96–205 (94 Stat. 84) and their descendants (and any other persons identified as having been so affected if such identification occurs in the manner described in such public laws). Nothing in this subsection shall be construed as prejudicial to the views or policies of the Government of the Marshall Islands as to the persons affected by the consequences of the United States nuclear testing program.

(2) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that at the end of the first year after the effective date of the Compact and at the end of each year thereafter, the providing agency or agencies shall return to the Government of the Marshall Islands any unexpended funds to be returned to the Fund Manager (as described in Article I of the Section 177 Agreement) to be covered into the Fund to be available for future use.

(3) In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that the Fund Manager shall retain the funds returned by the Government of the Marshall Islands pursuant to paragraph (2) of this subsection, shall invest and manage such funds, and at the end of 15 years after the effective date of the Compact, shall make from the total amount so retained and the proceeds thereof annual disbursements sufficient to continue to make payments for the provision of health services as specified in paragraph (1) of this subsection to such extent as may be provided in contracts between the Government of the Marshall Islands and appropriate United States providers of such health services.

(i) ENJEBI COMMUNITY TRUST FUND.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that notwithstanding any other provision of law, the Secretary of the Treasury shall establish on the books of the Treasury of the United States a fund having the status specified in Article V of the subsidiary agreement for the implementation of Section 177 of the Compact, to be known as the ''Enjebi Community Trust Fund'' (hereafter in this subsection referred to as the ''Fund''), and shall credit to the Fund the amount of $7,500,000. Such amount, which shall be ex gratia, shall be in addition to and not charged against any other funds provided for in the Compact and its subsidiary agreements, this joint resolution, or any other Act. Upon receipt by the President of the United States of the agreement described in this subsection, the Secretary of the Treasury, upon request of the Government of the Marshall Islands, shall transfer the Fund to the Government of the Marshall Islands, provided that the Government of the Marshall Islands agrees as follows:

(1) ENJEBI TRUST AGREEMENT.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that the Government of the Marshall Islands and the Enewetak Local Government Council, in consultation with the people of Enjebi, shall provide for the creation of the Enjebi Community Trust Fund and the employment of the manager of the Enewetak Fund established pursuant to the Section 177 Agreement as trustee and manager of the Enjebi Community Trust Fund, or, should the manager of the Enewetak Fund not be acceptable to the people of Enjebi, another United States investment manager with substantial experience in the administration of trusts and with funds under management in excess of $250,000,000.

(2) MONITOR CONDITIONS.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that upon the request of the Government of the Marshall Islands, the United States shall monitor the radiation and other conditions on Enjebi and within one year of receiving such a request shall report to the Government of the Marshall Islands when the people of Enjebi may resettle Enjebi under circumstances where the radioactive contamination at Enjebi, including contamination derived from consumption of locally grown food products, can be reduced or otherwise controlled to meet whole body Federal radiation protection standards for the general population, including mean annual dose and mean 30-year cumulative dose standards.

(3) RESETTLEMENT OF ENJEBI.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in the event that the United States determines that the people of Enjebi can within 25 years of January 14, 1986, resettle Enjebi under the conditions set forth in paragraph (2) of this subsection, then upon such determination there shall be available to the people of Enjebi from the Fund such amounts as are necessary for the people of Enjebi to do the following, in accordance with a plan developed by the Enewetak Local Government Council and the people of Enjebi, and concurred with by the Government of the Marshall Islands to assure consistency with the government's overall economic development plan:

(A) Establish a community on Enjebi Island for the use of the people of Enjebi.

(B) Replant Enjebi with appropriate food-bearing and other vegetation.

(4) RESETTLEMENT OF OTHER LOCATION.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that in the event that the United States determines that within 25 years of January 14, 1986, the people of Enjebi cannot resettle Enjebi without exceeding the radiation standards set forth in paragraph (2) of this subsection, then the fund manager shall be directed by the trust instrument to distribute the Fund to the people of Enjebi for their resettlement at some other location in accordance with a plan, developed by the Enewetak Local Government Council and the people of Enjebi and concurred with by the Government of the Marshall Islands, to assure consistency with the government's overall economic development plan.

(5) INTEREST FROM FUND.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that prior to and during the distribution of the corpus of the Fund pursuant to paragraphs (3) and (4) of this subsection, the people of Enjebi may, if they so request, receive the interest earned by the Fund on no less frequent a basis than quarterly.

(6) DISCLAIMER OF LIABILITY.—In the joint resolution of January 14, 1986 (Public Law 99–239) Congress provided that neither under the laws of the Marshall Islands nor under the laws of the United States, shall the Government of the United States be liable for any loss or damage to person or property in respect to the resettlement of Enjebi by the people of Enjebi, pursuant to the provision of this subsection or otherwise.

(j) BIKINI ATOLL CLEANUP.—

(1) DECLARATION OF POLICY.—In the joint resolution of January 14, 1986 (Public Law 99–239), the Congress determined and declared that it is the policy of the United States, to

be supported by the full faith and credit of the United States, that because the United States, through its nuclear testing and other activities, rendered Bikini Atoll unsafe for habitation by the people of Bikini, the United States will fulfill its responsibility for restoring Bikini Atoll to habitability, as set forth in paragraph (2) and (3) of this subsection.

(2) CLEANUP FUNDS.—The joint resolution of January 14, 1986 (Public Law 99–239) authorized to be appropriated such sums as necessary to implement the settlement agreement of March 15, 1985, in The People of Bikini, et al. against United States of America, et al., Civ. No. 84–0425 (D. Ha.).

(3) CONDITIONS OF FUNDING.—In the joint resolution of January 14, 1986 (Public Law 99–239) the Congress provided that the funds referred to in paragraph (2) were to be made available pursuant to Article VI, Section 1 of the Compact Section 177 Agreement upon completion of the events set forth in the settlement agreement referred to in paragraph (2) of this subsection.

(k) AGREEMENT ON AUDITS.—The Comptroller General (and his duly authorized representatives) shall have the authorities necessary to carry out his responsibilities under section 232 of the U.S.-RMI Compact and the agreement referred to in section 462(b)(4) of the U.S.-RMI Compact, including the following authorities:

(1) GENERAL AUTHORITY OF THE COMPTROLLER GENERAL TO AUDIT.—

(A) The Comptroller General of the United States (and his duly authorized representatives) shall have the authority to audit—

(i) all grants, program assistance, and other assistance provided to the Government of the Republic of the Marshall Islands under Articles I and II of Title Two of the U.S.-RMI Compact; and

(ii) any other assistance provided by the Government of the United States to the Government of the Republic of the Marshall Islands.

Such authority shall include authority for the Comptroller General to conduct or cause to be conducted any of the audits provided for in section 232 of the U.S.-RMI Compact. The authority provided in this paragraph shall continue for at least three years after the last such grant has been made or assistance has been provided.

(B) The Comptroller General (and his duly authorized representatives) shall also have authority to review any audit conducted by or on behalf of the Government of the United States. In this connection, the Comptroller General shall have access to such personnel and to such records, documents, working papers, automated data and files, and other information relevant to such review.

(2) COMPTROLLER GENERAL ACCESS TO RECORDS.—

(A) In carrying out paragraph (1), the Comptroller General (and his duly authorized representatives) shall have such access to the personnel and (without cost) to records, documents, working papers, automated data and files, and other information relevant to such audits. The Comptroller General may duplicate any such records, documents, working papers, automated data and files, or other information relevant to such audits.

(B) Such records, documents, working papers, automated data and files, and other information regarding each such grant or other assistance shall be maintained for at least five years after the date such grant or assistance was provided and in a manner that permits such grants, assistance and payments to be accounted for distinct from any other funds of the Government of the Republic of the Marshall Islands.

(3) STATUS OF COMPTROLLER GENERAL REPRESENTATIVES.—The Comptroller General and his duly authorized representatives shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may be expressly waived by the Government of the United States. The Comptroller General and his duly authorized representatives shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents. Such persons shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations. The privileges, exemptions and immunities accorded under this paragraph are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government of the Republic of the Marshall Islands.

(4) AUDITS DEFINED.—As used in this subsection, the term ''audits'' includes financial, program, and management audits, including determining—

(A) whether the Government of the Republic of the Marshall Islands has met the requirements set forth in the U.S.-RMI Compact, or any related agreement entered into under the U.S.-RMI Compact, regarding the purposes for which such grants and other assistance are to be used; and

(B) the propriety of the financial transactions of the Government of the Republic of the Marshall Islands pursuant to such grants or assistance.

(5) COOPERATION BY THE REPUBLIC OF THE MARSHALL ISLANDS.—The Government of the Republic of the Marshall Islands will cooperate fully with the Comptroller General of the United States in the conduct of such audits as the Comptroller General determines necessary to enable the Comptroller General to fully discharge his responsibilities under this joint resolution.

(l) KWAJALEIN.—

(1) STATEMENT OF POLICY.—It is the policy of the United States that payment of funds by the Government of the Marshall Islands to the landowners of Kwajalein Atoll in accordance with the land use agreement dated October 19, 1982, or as amended or superseded, and any related allocation agreements, is required in order to ensure that the Government of the United States will be able to fulfill its obligation and responsibilities under Title Three of the U.S.-RMI Compact and the subsidiary agreements concluded pursuant to the U.S.-RMI Compact.

(2) FAILURE TO PAY.—

(A) IN GENERAL.—If the Government of the Marshall Islands fails to make payments in accordance with paragraph (1), the Government of the United States shall initiate procedures under section 313 of the U.S.-RMI Compact and consult with the Government of the Marshall Islands with respect to the basis for the nonpayment of funds.

(B) RESOLUTION.—The United States shall expeditiously resolve the matter of any nonpayment of funds required under paragraph (1) pursuant to section 313 of the U.S.-RMI Compact and the authority and responsibility of the Government of the United States for security and defense matters in or relating to the Marshall Islands. This paragraph shall be enforced, as may be necessary, in accordance with section 105(e).

(3) DISPOSITION OF INCREASED PAYMENTS PENDING NEW LAND USE AGREEMENT.—Until such time as the Government of the Marshall Islands and the landowners of Kwajalein Atoll have concluded an agreement amending or superseding the land use agreement reflecting the terms of and consistent with the Military Use Operating Rights Agreement dated October 19, 1982, any amounts paid by the United States to the Government of the Marshall Islands in excess of the amounts required to be paid pursuant to the land use agreement dated October 19, 1982, shall be paid into, and held in, an interest bearing escrow account in a United States financial institution by the Government of the Republic of the Marshall Islands. At such time, the funds and interest held in escrow shall be paid to the landowners of Kwajalein in accordance with the new land use agreement. If no such agreement is concluded by the date which is five years after the date of enactment of this resolution, then such funds and interest shall, unless otherwise mutually agreed between the Government of the United States of America and the Government of the Republic of the Marshall Islands, be returned to the U.S. Treasury.

(4) NOTIFICATIONS AND REPORT.—

(A) The Government of the Republic of the Marshall Islands shall notify the Government of the United States of America when an agreement amending or superseding the land use agreement dated October 19, 1982, is concluded.

(B) If no agreement amending or superseding the land use agreement dated October 19, 1982 is concluded by the date five years after the date of enactment of this resolution, then the President shall report to Congress on the intentions of the United States with respect to the use of Kwajalein Atoll after 2016, on any plans to relocate activities carried out on Kwajalein Atoll, and on the disposition of the funds and interest held in escrow under paragraph (3).

(5) ASSISTANCE.—The President is authorized to make loans and grants to the Government of the Marshall Islands to address the special needs of the community at Ebeye, Kwajalein Atoll, and other Marshallese communities within the Kwajalein Atoll, pursuant to development plans adopted in accordance with applicable laws of the Marshall Islands. The loans and grants shall be subject to such other terms and conditions as the President, in the discretion of the President, may determine are appropriate.

SEC. 104. INTERPRETATION OF AND UNITED STATES POLICY REGARDING U.S.-FSM COMPACT AND U.S.-RMI COMPACT.

(a) HUMAN RIGHTS.—In approving the U.S.-FSM Compact and the U.S.-RMI Compact, Congress notes the conclusion in the Statement of Intent of the Report of The Future Political Status Commission of the Congress of Micronesia in July, 1969, that ''our recommendation of a free associated state is indissolubly linked to our desire for such a democratic, representative, constitutional government'' and notes that such desire and intention are reaffirmed and embodied in the Constitutions of the Federated States of Micronesia and the Republic of the Marshall Islands. Congress also notes and specifically endorses the preamble to the U.S.-FSM Compact and the U.S.-RMI Compact, which affirms that the governments of the parties to the U.S.-FSM Compact and the U.S.-RMI Compact are founded upon respect for human rights and fundamental freedoms for all. The Secretary of State shall include in the annual reports on the status of internationally recognized human rights in foreign countries, which are submitted to Congress pursuant to sections 116 and 502B of the Foreign Assistance Act of 1961, ''22 U.S.C. 2151n, 2304''

a full and complete report regarding the status of internationally recognized human rights in the Federated States of Micronesia and the Republic of the Marshall Islands.

(b) IMMIGRATION AND PASSPORT SECURITY.—

(1) NATURALIZED CITIZENS.—The rights of a bona fide naturalized citizen of the Federated States of Micronesia or the Republic of the Marshall Islands to enter the United States, to lawfully engage therein in occupations, and to establish residence therein as a nonimmigrant, to the extent such rights are provided under section 141 of the U.S.-FSM Compact and U.S.-RMI Compact, shall not be deemed to extend to any such naturalized citizen with respect to whom circumstances associated with the acquisition of the status of a naturalized citizen are such as to allow a reasonable inference, on the part of appropriate officials of the United States and subject to United States procedural requirements, that such naturalized status was acquired primarily in order to obtain such rights.

(2) PASSPORTS.—It is the sense of Congress that up to $250,000 of the grant assistance provided to the Federated States of Micronesia pursuant to section 211(a)(4) of the U.S.-FSM Compact, and up to $250,000 of the grant assistance provided to the Republic of the Marshall Islands pursuant to section 211(a)(4) of the U.S.-RMI Compact (or a greater amount of the section 211(a)(4) grant, if mutually agreed between the Government of the United States and the government of the Federated States of Micronesia or the government of the Republic of the Marshall Islands), be used for the purpose of increasing the machine-readability and security of passports issued by such jurisdictions. It is further the sense of Congress that such funds be obligated by September 30, 2004 and in the amount and manner specified by the Secretary of State in consultation with the Secretary of Homeland Security and, respectively, with the government of the Federated States of Micronesia and the government of the Republic of the Marshall Islands. The United States Government is authorized to require that passports used for the purpose of seeking admission under section 141 of the U.S.-FSM Compact and the U.S.-RMI Compact contain the security enhancements funded by such assistance.

(3) INFORMATION-SHARING.—It is the sense of Congress that the governments of the Federated States of Micronesia and the Republic of the Marshall Islands develop, prior to October 1, 2004, the capability to provide reliable and timely information as may reasonably be required by the Government of the United States in enforcing criminal and security-related grounds of inadmissibility and deportability under the Immigration and Nationality Act, as amended, and shall provide such information to the Government of the United States.

(4) TRANSITION; CONSTRUCTION OF SECTIONS 141(a)(3) AND 141(a)(4) OF THE U.S.-FSM COMPACT AND U.S.-RMI COMPACT.—The words ''the effective date of this Compact, as amended'' in sections 141(a)(3) and 141(a)(4) of the U.S.-FSM Compact and the U.S.-RMI Compact shall be construed to read, ''on the day prior to the enactment by the United States Congress of the Compact of Free Association Amendments Act of 2003.''.

(c) NONALIENATION OF LANDS.—Congress endorses and encourages the maintenance of the policies of the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands to regulate, in accordance with their Constitutions and laws, the alienation of permanent interests in real property so as to restrict the acquisition of such interests to persons of Federated States of Micronesia citizenship and the Republic of the Marshall Islands citizenship, respectively.

(d) NUCLEAR WASTE DISPOSAL.—In approving the U.S.-FSM Compact and the U.S.-RMI Compact, Congress understands that the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands will not permit any other government or any nongovernmental party to conduct, in the Republic of the Marshall Islands or in the Federated States of Micronesia, any of the activities specified in subsection (a) of section 314 of the U.S.-FSM Compact and the U.S.-RMI Compact.

(e) IMPACT OF THE U.S.-FSM COMPACT AND THE U.S.-RMI COMPACT ON THE STATE OF HAWAII, GUAM, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AND AMERICAN SAMOA; RELATED AUTHORIZATION AND CONTINUING APPROPRIATION.—

(1) STATEMENT OF CONGRESSIONAL INTENT.—In reauthorizing the U.S.-FSM Compact and the U.S.-RMI Compact, it is not the intent of Congress to cause any adverse consequences for an affected jurisdiction.

(2) DEFINITIONS.—For the purposes of this title—

(A) the term ''affected jurisdiction'' means American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the State of Hawaii; and

(B) the term ''qualified nonimmigrant'' means a person, or their children under the age of 18, admitted or resident pursuant to section 141 of the U.S.-RMI or U.S.-FSM Compact, or section 141 of the Palau Compact who, as of a date referenced in the most recently published enumeration is a resident of an affected jurisdiction. As used in this subsection, the term ''resident'' shall be a person who has a ''residence,'' as that term is defined in section 101(a)(33) of the Immigration and Nationality Act, as amended.

(3) AUTHORIZATION AND CONTINUING APPROPRIATION.—There is hereby authorized and appropriated to the Secretary of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, for each fiscal year from 2004 through 2023, $30,000,000 for grants to affected jurisdictions to aid in defraying costs incurred by affected jurisdictions as a result of increased demands placed on health, educational, social, or public safety services or infrastructure related to such services due to the residence in affected jurisdictions of qualified nonimmigrants from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau. The grants shall be—

(A) awarded and administered by the Department of the Interior, Office of Insular Affairs, or any successor thereto, in accordance with regulations, policies and procedures applicable to grants so awarded and administered, and

(B) used only for health, educational, social, or public safety services, or infrastructure related to such services, specifically affected by qualified nonimmigrants.

(4) ENUMERATION.—The Secretary of the Interior shall conduct periodic enumerations of qualified nonimmigrants in each affected jurisdiction. The enumerations—

(A) shall be conducted at such intervals as the Secretary of the Interior shall determine, but no less frequently than every five years, beginning in fiscal year 2003;

(B) shall be supervised by the United States Bureau of the Census or such other organization as the Secretary of the Interior may select; and

(C) after fiscal year 2003, shall be funded by the Secretary of the Interior by deducting such sums as are necessary, but not to exceed $300,000 as adjusted for inflation pursuant to section 217 of the U.S. FSM Compact with fiscal year 2003 as the base year, per enumeration, from funds appropriated pursuant to the authorization contained in paragraph (3) of this subsection.

(5) ALLOCATION.—The Secretary of the Interior shall allocate to the government of each affected jurisdiction, on the basis of the results of the most recent enumeration, grants in an aggregate amount equal to the total amount of funds appropriated under paragraph (3) of this subsection, as reduced by any deductions authorized by subparagraph (C) of paragraph (4) of this subsection, multiplied by a ratio derived by dividing the number of qualified nonimmigrants in such affected jurisdiction by the total number of qualified nonimmigrants in all affected jurisdictions.

(6) AUTHORIZATION FOR HEALTH CARE REIMBURSEMENT.—There are hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to reimburse health care institutions in the affected jurisdictions for costs resulting from the migration of citizens of the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau to the affected jurisdictions as a result of the implementation of the Compact of Free Association, approved by Public Law 99–239, or the approval of the U.S.-FSM Compact and the U.S.-RMI Compact by this resolution.

(7) USE OF DOD MEDICAL FACILITIES AND NATIONAL HEALTH SERVICE CORPS.—

(A) DOD MEDICAL FACILITIES.—The Secretary of Defense shall make available, on a space available and reimbursable basis, the medical facilities of the Department of Defense for use by citizens of the Federated States of Micronesia and the Republic of the Marshall Islands who are properly referred to the facilities by government authorities responsible for provision of medical services in the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau and the affected jurisdictions.

(B) NATIONAL HEALTH SERVICE CORPS.—The Secretary of Health and Human Services shall continue to make the services of the National Health Service Corps available to the residents of the Federated States of Micronesia and the Republic of the Marshall Islands to the same extent and for so long as such services are authorized to be provided to persons residing in any other areas within or outside the United States.

(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph such sums as are necessary for each fiscal year.

(8) REPORTING REQUIREMENT.—Not later than one year after the date of enactment of this joint resolution, and at one year intervals thereafter, the Governors of Guam, the State of Hawaii, the Commonwealth of the Northern Mariana Islands, and American Samoa may provide to the Secretary of the Interior by February 1 of each year their comments with respect to the impacts of the Compacts on their respective jurisdiction. The Secretary of the Interior, upon receipt of any such comments, shall report to the Congress not later than May 1 of each year to include the following:

(A) The Governor's comments on the impacts of the Compacts as well as the Administration's analysis of such impact.

(B) Any adverse consequences resulting from the Compacts and recommendations for corrective action to eliminate those consequences.

(C) With regard to immigration, statistics concerning the number of persons availing themselves of the rights described in section 141(a) of the Compact during the year covered by each report.

(D) With regard to trade, an analysis of the impact on the economy of American Samoa resulting from imports of canned tuna into

the United States from the Federated States of Micronesia, and the Republic of the Marshall Islands.

(9) RECONCILIATION OF UNREIMBURSED IMPACT EXPENSES.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the President, to address previously accrued and unreimbursed impact expenses, may at the request of the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands, reduce, release, or waive all or part of any amounts owed by the Government of Guam or the Government of the Commonwealth of the Northern Mariana Islands (or either government's autonomous agencies or instrumentalities), respectively, to any department, agency, independent agency, office, or instrumentality of the United States.

(B) TERMS AND CONDITIONS.—

(i) SUBSTANTIATION OF IMPACT COSTS.—Not later than 120 days after the date of the enactment of this resolution, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands shall each submit to the Secretary of the Interior a report, prepared in consultation with an independent accounting firm, substantiating unreimbursed impact expenses claimed for the period from January 14, 1986, through September 30, 2003. Upon request of the Secretary of the Interior, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands shall submit to the Secretary of the Interior copies of all documents upon which the report submitted by that Governor under this clause was based.

(ii) CONGRESSIONAL NOTIFICATION.—The President shall notify Congress of his intent to exercise the authority granted in subparagraph (A).

(iii) CONGRESSIONAL REVIEW AND COMMENT.—Any reduction, release, or waiver under this Act shall not take effect until 60 days after the President notifies Congress of his intent to approve a request of the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands. In exercising his authority under this section and in determining whether to give final approval to a request, the President shall take into consideration comments he may receive after Congressional review.

(iv) EXPIRATION.—The authority granted in subparagraph (A) shall expire on February 28, 2005.

(10) AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.—There are hereby authorized to the Secretary of the Interior for each of fiscal years 2004 through 2023 such sums as may be necessary for grants to the governments of Guam, the State of Hawaii, the Commonwealth of the Northern Mariana Islands, and American Samoa, as a result of increased demands placed on educational, social, or public safety services or infrastructure related to service due to the presence in Guam, Hawaii, the Commonwealth of the Northern Mariana Islands, and American Samoa of qualified nonimmigrants from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(f) FOREIGN LOANS.—Congress hereby reaffirms the United States position that the United States Government is not responsible for foreign loans or debt obtained by the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands.

(g) SENSE OF CONGRESS CONCERNING FUNDING OF PUBLIC INFRASTRUCTURE.—It is the sense of Congress that not less than 30 percent of the United States annual grant assistance provided under section 211 of the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and not less than 30 percent of the total amount of section 211 funds allocated to each of the States of the Federated States of Micronesia, shall be invested in infrastructure improvements and maintenance in accordance with section 211(a)(6). It is further the sense of Congress that not less than 30 percent of the United States annual grant assistance provided under section 211 of the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, shall be invested in infrastructure improvements and maintenance in accordance with section 211(d).

(h) REPORTS AND REVIEWS.—

(1) REPORT BY THE PRESIDENT.—Not later than the end of the first full calendar year following enactment of this resolution, and not later than December 31 of each year thereafter, the President shall report to Congress regarding the Federated States of Micronesia and the Republic of the Marshall Islands, including but not limited to—

(A) general social, political, and economic conditions, including estimates of economic growth, per capita income, and migration rates;

(B) the use and effectiveness of United States financial, program, and technical assistance;

(C) the status of economic policy reforms including but not limited to progress toward establishing self-sufficient tax rates;

(D) the status of the efforts to increase investment including: the rate of infrastructure investment of U.S. financial assistance under the U.S.-FSM Compact and the U.S.-RMI Compact; non-U.S. contributions to the trust funds, and the level of private investment; and

(E) recommendations on ways to increase the effectiveness of United States assistance and to meet overall economic performance objectives, including, if appropriate, recommendations to Congress to adjust the inflation rate or to adjust the contributions to the Trust Funds based on non-U.S. contributions.

(2) REVIEW.—During the year of the fifth, tenth, and fifteenth anniversaries of the date of enactment of this resolution, the Government of the United States shall review the terms of the respective Compacts and consider the overall nature and development of the U.S.-FSM and U.S.-RMI relationships including the topics set forth in subparagraphs (A) through (E) of paragraph (1). In conducting the reviews, the Government of the United States shall consider the operating requirements of the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands and their progress in meeting the development objectives set forth in their respective development plans. The President shall include in the annual reports to Congress for the years following the reviews the comments of the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands on the topics described in this paragraph, the President's response to the comments, the findings resulting from the reviews, and any recommendations for actions to respond to such findings.

(3) BY THE COMPTROLLER GENERAL.—Not later than the date that is three years after the date of enactment of this joint resolution, and every 5 years thereafter, the Comptroller General of the United States shall submit to Congress a report on the Federated States of Micronesia and the Republic of the Marshall Islands including the topics set forth in paragraphs (1) (A) through (E) above, and on the effectiveness of administrative oversight by the United States.

(i) CONSTRUCTION OF SECTION 141(f).—Section 141(f)(2) of the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia and of the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, shall be construed as though, after ''may by regulations prescribe'', there were included the following: '', except that any such regulations that would have a significant effect on the admission, stay and employment privileges provided under this section shall not become effective until 90 days after the date of transmission of the regulations to the Committee on Energy and Natural Resources and the Committee on the Judiciary of the Senate and the Committee on Resources, the Committee on International Relations, and the Committee on the Judiciary of the House of Representatives''.

(j) INFLATION ADJUSTMENT.—As of Fiscal Year 2015, if the United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2009 through 2013 is greater than United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2004 through 2008 (as reported in the Survey of Current Business or subsequent publication and compiled by the Department of Interior), then section 217 of the U.S.-FSM Compact, paragraph 5 of Article II of the U.S.-FSM Fiscal Procedures Agreement, section 218 of the U.S.-RMI Compact, and paragraph 5 of Article II of the U.S.-RMI Fiscal Procedures Agreement shall be construed as if ''the full'' appeared in place of ''two-thirds of the'' each place those words appear. If an inflation adjustment is made under this subsection, the base year for calculating the inflation adjustment shall be fiscal year 2014.

(k) PARTICIPATION BY SECONDARY SCHOOLS IN THE ARMED SERVICES VOCATIONAL APTITUDE BATTERY (ASVAB) STUDENT TESTING PROGRAM.—In furtherance of the provisions of Title Three, Article IV, Section 341 of the U.S.-FSM and the U.S.-RMI Compacts, the purpose of which is to establish the privilege to volunteer for service in the U.S. Armed Forces, it is the sense of Congress that, to facilitate eligibility of FSM and RMI secondary school students to qualify for such service, the Department of Defense may extend the Armed Services Vocational Aptitude Battery (ASVAB) Student Testing Program (STP) and the ASVAB Career Exploration Program to selected secondary Schools in the FSM and the RMI to the extent such programs are available to Department of Defense Dependent Schools located in foreign jurisdictions.

SEC. 105. SUPPLEMENTAL PROVISIONS.

(a) DOMESTIC PROGRAM REQUIREMENTS.—Except as may otherwise be provided in this joint resolution, all United States Federal programs and services extended to or operated in the Federated States of Micronesia or the Republic of the Marshall Islands are and shall remain subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs when operating in the United States (including its territories and commonwealths).

(b) RELATIONS WITH THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF THE MARSHALL ISLANDS.—

(1) Appropriations made pursuant to Article I of Title Two and subsection (a)(2) of section 221 of article II of Title Two of the U.S.-FSM Compact and the U.S.-RMI Compact shall be made to the Secretary of the Interior, who shall have the authority necessary to fulfill his responsibilities for monitoring

and managing the funds so appropriated consistent with the U.S.-FSM Compact and the U.S.-RMI Compact, including the agreements referred to in section 462(b)(4) of the U.S.-FSM Compact and U.S.-RMI Compact (relating to Fiscal Procedures) and the agreements referred to in section 462(b)(5) of the U.S.-FSM Compact and the U.S.-RMI Compact (regarding the Trust Fund).

(2) Appropriations made pursuant to subsections (a)(1) and (a)(3) through (6) of section 221 of Article II of Title Two of the U.S.-FSM Compact and subsection (a)(1) and (a)(3) through (5) of the U.S.-RMI Compact shall be made directly to the agencies named in those subsections.

(3) Appropriations for services and programs referred to in subsection (b) of section 221 of Article II of Title Two of the U.S.-FSM Compact or U.S.-RMI Compact and appropriations for services and programs referred to in sections 105(f) and 108(a) of this joint resolution shall be made to the relevant agencies in accordance with the terms of the appropriations for such services and programs.

(4) Federal agencies providing programs and services to the Federated States of Micronesia and the Republic of the Marshall Islands shall coordinate with the Secretaries of the Interior and State regarding provision of such programs and services. The Secretaries of the Interior and State shall consult with appropriate officials of the Asian Development Bank and with the Secretary of the Treasury regarding overall economic conditions in the Federated States of Micronesia and the Republic of the Marshall Islands and regarding the activities of other donors of assistance to the Federated States of Micronesia and the Republic of the Marshall Islands.

(5) United States Government employees in either the Federated States of Micronesia or the Republic of the Marshall Islands are subject to the authority of the United States Chief of Mission, including as elaborated in section 207 of the Foreign Service Act and the President's Letter of Instruction to the United States Chief of Mission and any order or directive of the President in effect from time to time.

(6) INTERAGENCY GROUP ON FREELY ASSOCIATED STATES' AFFAIRS.—

(A) IN GENERAL.—The President is hereby authorized to appoint an Interagency Group on Freely Associated States' Affairs to provide policy guidance and recommendations on implementation of the U.S.-FSM Compact and the U.S.-RMI Compact to Federal departments and agencies.

(B) SECRETARIES.—It is the sense of Congress that the Secretary of State and the Secretary of the Interior shall be represented on the Interagency Group.

(7) UNITED STATES APPOINTEES TO JOINT COMMITTEES.—

(A) JOINT ECONOMIC MANAGEMENT COMMITTEE.—

(i) IN GENERAL.—The three United States appointees (United States chair plus two members) to the Joint Economic Management Committee provided for in section 213 of the U.S.-FSM Compact and Article III of the U.S.-FSM Fiscal Procedures Agreement referred to in section 462(b)(4) of the U.S.-FSM Compact shall be United States Government officers or employees.

(ii) DEPARTMENTS.—It is the sense of Congress that 2 of the 3 appointees should be designated from the Department of State and the Department of the Interior, and that U.S. officials of the Asian Development Bank shall be consulted in order to properly coordinate U.S. and Asian Development Bank financial, program, and technical assistance.

(iii) ADDITIONAL SCOPE.—Section 213 of the U.S.-FSM Compact shall be construed to read as though the phrase, ''the implementation of economic policy reforms to encourage investment and to achieve self-sufficient tax rates,'' were inserted after ''with particular focus on those parts of the plan dealing with the sectors identified in subsection (a) of section 211''.

(B) JOINT ECONOMIC MANAGEMENT AND FINANCIAL ACCOUNTABILITY COMMITTEE.—

(i) IN GENERAL.—The three United States appointees (United States chair plus two members) to the Joint Economic Management and Financial Accountability Committee provided for in section 214 of the U.S.-RMI Compact and Article III of the U.S.-RMI Fiscal Procedures Agreement referred to in section 462(b)(4) of the U.S.-RMI Compact shall be United States Government officers or employees.

(ii) DEPARTMENTS.—It is the sense of Congress that 2 of the 3 appointees should be designated from the Department of State and the Department of the Interior, and that U.S. officials of the Asian Development Bank shall be consulted in order to properly coordinate U.S. and Asian Development Bank financial, program, and technical assistance.

(iii) ADDITIONAL SCOPE.—Section 214 of the U.S.-RMI Compact shall be construed to read as though the phrase, ''the implementation of economic policy reforms to encourage investment and to achieve self-sufficient tax rates,'' were inserted after ''with particular focus on those parts of the framework dealing with the sectors and areas identified in subsection (a) of section 211''.

(8) OVERSIGHT AND COORDINATION.—It is the sense of Congress that the Secretary of State and the Secretary of the Interior shall ensure that there are personnel resources committed in the appropriate numbers and locations to ensure effective oversight of United States assistance, and effective coordination of assistance among United States agencies and with other international donors such as the Asian Development Bank.

(9) The United States voting members (United States chair plus two or more members) of the Trust Fund Committee appointed by the Government of the United States pursuant to Article 7 of the Trust Fund Agreement implementing section 215 of the U.S.-FSM Compact and referred to in section 462(b)(5) of the U.S.-FSM Compact and any alternates designated by the Government of the United States shall be United States Government officers or employees. The United States voting members (United States chair plus two or more members) of the Trust Fund Committee appointed by the Government of the United States pursuant to Article 7 of the Trust Fund Agreement implementing section 216 of the U.S.-RMI Compact and referred to in section 462(b)(5) of the U.S.-RMI Compact and any alternates designated by the Government of the United States shall be United States Government officers or employees. It is the sense of Congress that the appointees should be designated from the Department of State, the Department of the Interior, and the Department of the Treasury.

(10) The Trust Fund Committee provided for in Article 7 of the U.S.-FSM Trust Fund Agreement implementing section 215 of the U.S.-FSM Compact shall be a nonprofit corporation incorporated under the laws of the District of Columbia. To the extent that any law, rule, regulation or ordinance of the District of Columbia, or of any State or political subdivision thereof in which the Trust Fund Committee is incorporated or doing business, impedes or otherwise interferes with the performance of the functions of the Trust Fund Committee pursuant to this joint resolution, such law, rule, regulation, or ordinance shall be deemed to be preempted by this joint resolution. The Trust Fund Committee provided for in Article 7 of the U.S.-RMI Trust Fund Agreement implementing section 216 of the U.S.-RMI Compact shall be a non-profit corporation incorporated under the laws of the District of Columbia. To the extent that any law, rule, regulation or ordinance of the District of Columbia, or of any State or political subdivision thereof in which the Trust Fund Committee is incorporated or doing business, impedes or otherwise interferes with the performance of the functions of the Trust Fund Committee pursuant to this joint resolution, such law, rule, regulation, or ordinance shall be deemed to be preempted by this joint resolution.

(c) CONTINUING TRUST TERRITORY AUTHORIZATION.—The authorization provided by the Act of June 30, 1954, as amended (68 Stat. 330) shall remain available after the effective date of the Compact with respect to the Federated States of Micronesia and the Republic of the Marshall Islands for the following purposes:

(1) Prior to October 1, 1986, for any purpose authorized by the Compact or the joint resolution of January 14, 1986 (Public Law 99–239).

(2) Transition purposes, including but not limited to, completion of projects and fulfillment of commitments or obligations; termination of the Trust Territory Government and termination of the High Court; health and education as a result of exceptional circumstances; ex gratia contributions for the populations of Bikini, Enewetak, Rongelap, and Utrik; and technical assistance and training in financial management, program administration, and maintenance of infrastructure.

(d) SURVIVABILITY.—In furtherance of the provisions of Title Four, Article V, sections 452 and 453 of the U.S.-FSM Compact and the U.S.-RMI Compact, any provisions of the U.S.-FSM Compact or the U.S.-RMI Compact which remain effective after the termination of the U.S.-FSM Compact or U.S.-RMI Compact by the act of any party thereto and which are affected in any manner by provisions of this title shall remain subject to such provisions.

(e) NONCOMPLIANCE SANCTIONS; ACTIONS INCOMPATIBLE WITH UNITED STATES AUTHORITY.—Congress expresses its understanding that the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands will not act in a manner incompatible with the authority and responsibility of the United States for security and defense matters in or related to the Federated States of Micronesia or the Republic of the Marshall Islands pursuant to the U.S.-FSM Compact or the U.S.-RMI Compact, including the agreements referred to in sections 462(a)(2) of the U.S.-FSM Compact and 462(a)(5) of the U.S.-RMI Compact. Congress further expresses its intention that any such act on the part of either such Government will be viewed by the United States as a material breach of the U.S.-FSM Compact or U.S.-RMI Compact. The Government of the United States reserves the right in the event of such a material breach of the U.S.-FSM Compact by the Government of the Federated States of Micronesia or the U.S.-RMI Compact by the Government of the Republic of the Marshall Islands to take action, including (but not limited to) the suspension in whole or in part of the obligations of the Government of the United States to that Government.

(f) CONTINUING PROGRAMS AND LAWS.—

(1) FEDERATED STATES OF MICRONESIA AND REPUBLIC OF THE MARSHALL ISLANDS.—In addition to the programs and services set forth in section 221 of the Compact, and pursuant to section 222 of the Compact, the programs and services of the following agencies shall

be made available to the Federated States of Micronesia and to the Republic of the Marshall Islands:

(A) CONTINUATION OF THE PROGRAMS AND SERVICES OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.—Except as provided in clauses (ii) and (iii), the programs and services of the Department of Homeland Security, Federal Emergency Management Agency shall continue to be available to the Federated States of Micronesia and the Republic of the Marshall Islands to the same extent as such programs and services were available in fiscal year 2003.

(i) Paragraph (a)(6) of section 221 of the U.S.-FSM Compact and paragraph (a)(5) of the U.S-RMI Compact shall each be construed as though the paragraph reads as follows: ''the Department of Homeland Security, United States Federal Emergency Management Agency.''

(ii) Subsection (d) of section 211 of the U.S-FSM Compact and subsection (e) of section 211 of the U.S-RMI Compact shall each be construed as though the subsection reads as follows: ''Not more than $200,000 (as adjusted for inflation pursuant to section 217 of the U.S.-FSM Compact and section 218 of the U.S.-RMI Compact) shall be made available by the Secretary of the Interior to the Department of Homeland Security, Federal Emergency Management Agency to facilitate the activities of the Federal Emergency Management Agency in accordance with and to the extent provided in the Federal Programs and Services Agreement.''

(iii) The Secretary of State, in consultation with the Department of Homeland Security and the Federal Emergency Management Agency, shall immediately undertake negotiations with the Government of the Federated States of Micronesia and the Government of the Republic of the Marshall Islands regarding disaster assistance and shall report to the appropriate committees of Congress no later than June 30, 2004, on the outcome of such negotiations, including recommendations for changes to law regarding disaster assistance under the U.S.-FSM Compact and the U.S.-RMI Compact, and including subsidiary agreements as needed to implement such changes to law. If an agreement is not concluded, and legislation enacted which reflects such agreement, before the date which is five years after the date of enactment of this Joint Resolution, the following provisions shall apply:

''Paragraph (a)(6) of section 221 of the U.S.-FSM Compact and paragraph (a)(5) of section 221 of the U.S.-RMI Compact shall each be construed and applied as if each provision reads as follows:

''The U.S. Agency for International Development shall be responsible for the provision of emergency and disaster relief assistance in accordance with its statutory authorities, regulations and policies. The Republic of the Marshall Islands and the Federated States of Micronesia may additionally request that the President make an emergency or major disaster declaration. If the President declares an emergency or major disaster, the Department of Homeland Security (DHS), the Federal Emergency Management Agency (FEMA) and the U.S. Agency for International Development shall jointly (a) assess the damage caused by the emergency or disaster and (b) prepare a reconstruction plan including an estimate of the total amount of Federal resources that are needed for reconstruction. Pursuant to an interagency agreement, FEMA shall transfer funds from the Disaster Relief Fund in the amount of the estimate, together with an amount to be determined for administrative expenses, to the U.S. Agency for International Development, which shall carry out reconstruction activities in the Republic of the Marshall Islands and the Federated States of Micronesia in accordance with the reconstruction plan. For purposes of Disaster Relief Fund appropriations, the funding of the activities to be carried out pursuant to this paragraph shall be deemed to be necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq).

''DHS may provide to the Republic of the Marshall Islands and the Federated States of Micronesia preparedness grants to the extent that such assistance is available to the States of the United States. Funding for this assistance may be made available from appropriations made to DHS for preparedness activities.''.

(B) TREATMENT OF ADDITIONAL PROGRAMS.—

(i) CONSULTATION.—The United States appointees to the committees established pursuant to section 213 of the U.S.-FSM Compact and section 214 of the U.S.-RMI Compact shall consult with the Secretary of Education regarding the objectives, use, and monitoring of United States financial, program, and technical assistance made available for educational purposes.

(ii) CONTINUING PROGRAMS.—The Government of the United States—

(I) shall continue to make available to the Federated States of Micronesia and the Republic of the Marshall Islands for fiscal years 2004 through 2023, the services to individuals eligible for such services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) to the extent that such services continue to be available to individuals in the United States; and

(II) shall continue to make available to eligible institutions in the Federated States of Micronesia and the Republic of the Marshall Islands, and to students enrolled in such institutions, and in institutions in the United States and its territories, for fiscal years 2004 through 2023, grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.) to the extent that such grants continue to be available to institutions and students in the United States.

(iii) SUPPLEMENTAL EDUCATION GRANTS.—In lieu of eligibility for appropriations under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), other than subtitle C of that Act (29 U.S.C. 2881 et seq.) (Job Corps), title II of the Workforce Investment Act of 1998 (20 U.S.C. 9201 et seq.; commonly known as the Adult Education and Family Literacy Act), title I of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2321 et seq.), the Head Start Act (42 U.S.C. 9831 et seq.), and subpart 3 of part A, and part C, of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070b et seq., 42 U.S.C. 2751 et seq.), there are authorized to be appropriated to the Secretary of Education to supplement the education grants under section 211(a)(1) of the U.S.-FSM Compact and section 211(a)(1) of the U.S.-RMI Compact, respectively, the following amounts:

(I) $12,230,000 for the Federated States of Micronesia for fiscal year 2005 and an equivalent amount, as adjusted for inflation under section 217 of the U.S.-FSM Compact, for each of fiscal years 2005 through 2023; and

(II) $6,100,000 for the Republic of the Marshall Islands for fiscal year 2005 and an equivalent amount, as adjusted for inflation under section 218 of the U.S.-RMI Compact, for each of fiscal years 2005 through 2023,

except that citizens of the Federated States of Micronesia and the Republic of the Marshall Islands who attend an institution of higher education in the United States or its territories, the Federated States of Micronesia, or the Republic of the Marshall Islands on the date of enactment of this joint resolution may continue to receive assistance under such subpart 3 of part A or part C, for not more than 4 academic years after such date to enable such citizens to complete their program of study.

(iv) FISCAL PROCEDURES.—Appropriations made pursuant to clause (iii) shall be used and monitored in accordance with an agreement between the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Interior, and in accordance with the respective Fiscal Procedures Agreements referred to in section 462(b)(4) of the U.S.-FSM Compact and section 462(b)(4) of the U.S.-RMI Compact. The agreement between the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Interior shall provide for the transfer, not later than 60 days after the appropriations made pursuant to clause (iii) become available to the Secretary of Education, the Secretary of Labor, and the Secretary of Health and Human Services, from the Secretary of Education, the Secretary of Labor, and the Secretary of Health and Human Services, to the Secretary of the Interior for disbursement.

(v) FORMULA EDUCATION GRANTS.—For fiscal years 2005 through 2023, except as provided in clause (ii) and the exception provided under clause (iii), the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands shall not receive any grant under any formula-grant program administered by the Secretary of Education or the Secretary of Labor, nor any grant provided through the Head Start Act (42 U.S.C. 9831 et seq.) administered by the Secretary of Health and Human Services.

(vi) TRANSITION.—For fiscal year 2004, the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands shall continue to be eligible for appropriations and to receive grants under the provisions of law specified in clauses (ii) and (iii).

(vii) TECHNICAL ASSISTANCE.—The Federated States of Micronesia and the Republic of the Marshall Islands may request technical assistance from the Secretary of Education, the Secretary of Health and Human Services, or the Secretary of Labor the terms of which, including reimbursement, shall be negotiated with the participation of the appropriate cabinet officer for inclusion in the Federal Programs and Services Agreement.

(viii) CONTINUED ELIGIBILITY FOR COMPETITIVE GRANTS.—The Governments of the Federated States of Micronesia and the Republic of the Marshall Islands shall continue to be eligible for competitive grants administered by the Secretary of Education, the Secretary of Health and Human Services, and the Secretary of Labor to the extent that such grants continue to be available to State and local governments in the United States.

(ix) APPLICABILITY.—The Republic of Palau shall remain eligible for appropriations and to receive grants under the provisions of law specified in clauses (ii) and (iii) until the end of fiscal year 2007, to the extent the Republic of Palau was so eligible under such provisions in fiscal year 2003.

(C) The Legal Services Corporation.

(D) The Public Health Service.

(E) The Rural Housing Service (formerly, the Farmers Home Administration) in the Marshall Islands and each of the four States of the Federated States of Micronesia: *Provided*, That in lieu of continuation of the program in the Federated States of Micronesia, the President may agree to transfer to the

Government of the Federated States of Micronesia without cost, the portfolio of the Rural Housing Service applicable to the Federated States of Micronesia and provide such technical assistance in management of the portfolio as may be requested by the Federated States of Micronesia).

(2) TORT CLAIMS.—The provisions of section 178 of the U.S.-FSM Compact and the U.S.-RMI Compact regarding settlement and payment of tort claims shall apply to employees of any Federal agency of the Government of the United States (and to any other person employed on behalf of any Federal agency of the Government of the United States on the basis of a contractual, cooperative, or similar agreement) which provides any service or carries out any other function pursuant to or in furtherance of any provisions of the U.S.-FSM Compact or the U.S.-RMI Compact or this joint resolution, except for provisions of Title Three of the Compact and of the subsidiary agreements related to such Title, in such area to which such Agreement formerly applied.

(3) PCB CLEANUP.—The programs and services of the Environmental Protection Agency regarding PCBs shall, to the extent applicable, as appropriate, and in accordance with applicable law, be construed to be made available to such islands for the cleanup of PCBs imported prior to 1987. The Secretary of the Interior and the Secretary of Defense shall cooperate and assist in any such cleanup activities.

(g) COLLEGE OF MICRONESIA.—Until otherwise provided by Act of Congress, or until termination of the U.S.-FSM Compact and the U.S.-RMI Compact, the College of Micronesia shall retain its status as a land-grant institution and its eligibility for all benefits and programs available to such land-grant institutions.

(h) TRUST TERRITORY DEBTS TO U.S. FEDERAL AGENCIES.—Neither the Government of the Federated States of Micronesia nor the Government of the Marshall Islands shall be required to pay to any department, agency, independent agency, office, or instrumentality of the United States any amounts owed to such department, agency, independent agency, office, or instrumentality by the Government of the Trust Territory of the Pacific Islands as of the effective date of the Compact. There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.

(i) JUDICIAL TRAINING.—

(1) IN GENERAL.—In addition to amounts provided under section 211(a)(4) of the U.S.-FSM Compact and the U.S.-RMI Compact, the Secretary of the Interior shall annually provide $300,000 for the training of judges and officials of the judiciary in the Federated States of Micronesia and the Republic of the Marshall Islands in cooperation with the Pacific Islands Committee of the Ninth Circuit Judicial Council and in accordance with and to the extent provided in the Federal Programs and Services Agreement and the Fiscal Procedure Agreement, as appropriate.

(2) AUTHORIZATION AND CONTINUING APPROPRIATION.—There is hereby authorized and appropriated to the Secretary of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, for each fiscal year from 2004 through 2023, $300,000, as adjusted for inflation under section 218 of the U.S.-FSM Compact and the U.S.-RMI Compact, to carry out the purposes of this section.

(j) TECHNICAL ASSISTANCE.—Technical assistance may be provided pursuant to section 224 of the U.S.-FSM Compact or the U.S.-RMI Compact by Federal agencies and institutions of the Government of the United States to the extent such assistance may be provided to States, territories, or units of local government. Such assistance by the Forest Service, the Natural Resources Conservation Service, the Fish and Wildlife Service, the National Marine Fisheries Service, the United States Coast Guard, and the Advisory Council on Historic Preservation, the Department of the Interior, and other agencies providing assistance under the National Historic Preservation Act (80 Stat. 915; 16 U.S.C. 470–470t), shall be on a nonreimbursable basis. During the period the U.S.-FSM Compact and the U.S.-RMI Compact are in effect, the grant programs under the National Historic Preservation Act shall continue to apply to the Federated States of Micronesia and the Republic of the Marshall Islands in the same manner and to the same extent as prior to the approval of the Compact. Any funds provided pursuant to sections 102(a), 103(a), 103(b), 103(f), 103(g), 103(h), 103(j), 105(c), 105(g), 105(h), 105(i), 105(j), 105(k), 105(l), and 105(m) of this joint resolution shall be in addition to and not charged against any amounts to be paid to either the Federated States of Micronesia or the Republic of the Marshall Islands pursuant to the U.S.-FSM Compact, the U.S.-RMI Compact, or their related subsidiary agreements.

(k) PRIOR SERVICE BENEFITS PROGRAM.—Notwithstanding any other provision of law, persons who on January 1, 1985, were eligible to receive payment under the Prior Service Benefits Program established within the Social Security System of the Trust Territory of the Pacific Islands because of their services performed for the United States Navy or the Government of the Trust Territory of the Pacific Islands prior to July 1, 1968, shall continue to receive such payments on and after the effective date of the Compact.

(l) INDEFINITE LAND USE PAYMENTS.—There are authorized to be appropriated such sums as may be necessary to complete repayment by the United States of any debts owed for the use of various lands in the Federated States of Micronesia and the Marshall Islands prior to January 1, 1985.

(m) COMMUNICABLE DISEASE CONTROL PROGRAM.—There are authorized to be appropriated for grants to the Government of the Federated States of Micronesia, the Government of the Republic of the Marshall Islands, and the governments of the affected jurisdictions, such sums as may be necessary for purposes of establishing or continuing programs for the control and prevention of communicable diseases, including (but not limited to) cholera, tuberculosis, and Hansen's Disease. The Secretary of the Interior shall assist the Government of the Federated States of Micronesia, the Government of the Republic of the Marshall Islands and the governments of the affected jurisdictions in designing and implementing such a program.

(n) USER FEES.—Any person in the Federated States of Micronesia or the Republic of the Marshall Islands shall be liable for user fees, if any, for services provided in the Federated States of Micronesia or the Republic of the Marshall Islands by the Government of the United States to the same extent as any person in the United States would be liable for fees, if any, for such services in the United States.

(o) TREATMENT OF JUDGMENTS OF COURTS OF THE FEDERATED STATES OF MICRONESIA, THE REPUBLIC OF THE MARSHALL ISLANDS, AND THE REPUBLIC OF PALAU.—No judgment, whenever issued, of a court of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau, against the United States, its departments and agencies, or officials of the United States or any other individuals acting on behalf of the United States within the scope of their official duty, shall be honored by the United States, or be subject to recognition or enforcement in a court in the United States, unless the judgment is consistent with the interpretation by the United States of international agreements relevant to the judgment. In determining the consistency of a judgment with an international agreement, due regard shall be given to assurances made by the Executive Branch to Congress of the United States regarding the proper interpretation of the international agreement.

(p) ESTABLISHMENT OF TRUST FUNDS; EXPEDITION OF PROCESS.—

(1) IN GENERAL.—The Trust Fund Agreement executed pursuant to the U.S.-FSM Compact and the Trust Fund Agreement executed pursuant to the U.S.-RMI Compact each provides for the establishment of a trust fund.

(2) METHOD OF ESTABLISHMENT.—The trust fund may be established by—

(A) creating a new legal entity to constitute the trust fund; or

(B) assuming control of an existing legal entity including, without limitation, a trust fund or other legal entity that was established by or at the direction of the Government of the United States, the Government of the Federated States of Micronesia, the Government of the Republic of the Marshall Islands, or otherwise for the purpose of facilitating or expediting the establishment of the trust fund pursuant to the applicable Trust Fund Agreement.

(3) OBLIGATIONS.—For the purpose of expediting the commencement of operations of a trust fund under either Trust Fund Agreement, the trust fund may, but shall not be obligated to, assume any obligations of an existing legal entity and take assignment of any contract or other agreement to which the existing legal entity is party.

(4) ASSISTANCE.—Without limiting the authority that the United States Government may otherwise have under applicable law, the United States Government may, but shall not be obligated to, provide financial, technical, or other assistance directly or indirectly to the Government of the Federated States of Micronesia or the Government of the Republic of the Marshall Islands for the purpose of establishing and operating a trust fund or other legal entity that will solicit bids from, and enter into contracts with, parties willing to serve in such capacities as trustee, depositary, money manager, or investment advisor, with the intention that the contracts will ultimately be assumed by and assigned to a trust fund established pursuant to a Trust Fund Agreement.

SEC. 106. CONSTRUCTION CONTRACT ASSISTANCE.

(a) ASSISTANCE TO U.S. FIRMS.—In order to assist the Governments of the Federated States of Micronesia and of the Republic of the Marshall Islands through private sector firms which may be awarded contracts for construction or major repair of capital infrastructure within the Federated States of Micronesia or the Republic of the Marshall Islands, the United States shall consult with the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands with respect to any such contracts, and the United States shall enter into agreements with such firms whereby such firms will, consistent with applicable requirements of such Governments—

(1) to the maximum extent possible, employ citizens of the Federated States of Micronesia and the Republic of the Marshall Islands;

(2) to the extent that necessary skills are not possessed by citizens of the Federated States of Micronesia and the Republic of the Marshall Islands, provide on the job training, with particular emphasis on the development of skills relating to operation of machinery and routine and preventative maintenance of machinery and other facilities; and

(3) provide specific training or other assistance in order to enable the Government to engage in long-term maintenance of infrastructure.

Assistance by such firms pursuant to this section may not exceed 20 percent of the amount of the contract and shall be made available only to such firms which meet the definition of United States firm under the nationality rule for suppliers of services of the Agency for International Development (hereafter in this section referred to as ''United States firms''). There are authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to cover any additional costs incurred by the Government of the Federated States of Micronesia or the Republic of the Marshall Islands if such Governments, pursuant to an agreement entered into with the United States, apply a preference on the award of contracts to United States firms, provided that the amount of such preference does not exceed 10 percent of the amount of the lowest qualified bid from a non-United States firm for such contract.

SEC. 107. PROHIBITION.

All laws governing conflicts of interest and post-employment of Federal employees shall apply to the implementation of this Act.

SEC. 108. COMPENSATORY ADJUSTMENTS.

(a) ADDITIONAL PROGRAMS AND SERVICES.—In addition to the programs and services set forth in section 221 of the U.S.-FSM Compact and the U.S.-RMI Compact, and pursuant to section 222 of the U.S.-FSM Compact and the U.S.-RMI Compact, the services and programs of the following United States agencies shall be made available to the Federated States of Micronesia and the Republic of the Marshall Islands: the Small Business Administration, Economic Development Administration, the Rural Utilities Services (formerly Rural Electrification Administration); the programs and services of the Department of Labor under subtitle C of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2881 et seq.; relating to Job Corps); and the programs and services of the Department of Commerce relating to tourism and to marine resource development.

(b) FURTHER AMOUNTS.—

(1) The joint resolution of January 14, 1986 (Public Law 99–239) provided that the governments of the Federated States of Micronesia and the Marshall Islands may submit to Congress reports concerning the overall financial and economic impacts on such areas resulting from the effect of title IV of that joint resolution upon Title Two of the Compact. There were authorized to be appropriated for fiscal years beginning after September 30, 1990, such amounts as necessary, but not to exceed $40,000,000 for the Federated States of Micronesia and $20,000,000 for the Marshall Islands, as provided in appropriation acts, to further compensate the governments of such islands (in addition to the compensation provided in subsections (a) and (b) of section 111 of the joint resolution of January 14, 1986 (Public Law 99–239) for adverse impacts, if any, on the finances and economies of such areas resulting from the effect of title IV of that joint resolution upon Title Two of the Compact. The joint resolution of January 14, 1986 (Public Law 99–239) further provided that at the end of the initial fifteen-year term of the Compact, should any portion of the total amount of funds authorized in section 111 of that resolution not have been appropriated, such amount not yet appropriated may be appropriated, without regard to divisions between amounts authorized in section 111 for the Federated States of Micronesia and for the Marshall Islands, based on either or both such government's showing of such adverse impact, if any, as provided in that subsection.

(2) The governments of the Federated States of Micronesia and the Republic of the Marshall Islands may each submit no more than one report or request for further compensation under section 111 of the joint resolution of January 14, 1986 (Public Law 99–239) and any such report or request must be submitted by September 30, 2009. Only adverse economic effects occurring during the initial 15-year term of the Compact may be considered for compensation under section 111 of the joint resolution of January 14, 1986 (Public Law 99–239).

SEC. 109. AUTHORIZATION AND CONTINUING APPROPRIATION.

(a) There are authorized and appropriated to the Department of the Interior, out of any funds in the Treasury not otherwise appropriated, to remain available until expended, such sums as are necessary to carry out the purposes of sections 105(f)(1) and 105(i) of this Act, sections 211, 212(b), 215, and 217 of the U.S.-FSM Compact, and sections 211, 212, 213(b), 216, and 218 of the U.S.-RMI Compact, in this and subsequent years.

(b) There are authorized to be appropriated to the Departments, agencies, and instrumentalities named in paragraphs (1) and (3) through (6) of section 221(a) of the U.S.-FSM Compact and paragraphs (1) and (3) through (5) of section 221(a) of the U.S.-RMI Compact, such sums as are necessary to carry out the purposes of sections 221(a) of the U.S.-FSM Compact and the U.S.-RMI Compact, to remain available until expended.

SEC. 110. PAYMENT OF CITIZENS OF THE FEDERATED STATES OF MICRONESIA, THE REPUBLIC OF THE MARSHALL ISLANDS, AND THE REPUBLIC OF PALAU EMPLOYED BY THE GOVERNMENT OF THE UNITED STATES IN THE CONTINENTAL UNITED STATES.

Section 605 of Public Law 107–67 (the Treasury and General Government Appropriations Act, 2002) is amended by striking ''or the Republic of the Philippines,'' in the last sentence and inserting the following: ''the Republic of the Philippines, the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau,''.

TITLE II—COMPACTS OF FREE ASSOCIATION WITH THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF THE MARSHALL ISLANDS

SEC. 201. COMPACTS OF FREE ASSOCIATION, AS AMENDED BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA AND BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS.

(a) COMPACT OF FREE ASSOCIATION, AS AMENDED, BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA.—The Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia is as follows:

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA

Affirming that their Governments and their relationship as Governments are founded upon respect for human rights and fundamental freedoms for all, and that the people of the Federated States of Micronesia have the right to enjoy self-government; and

Affirming the common interests of the United States of America and the Federated States of Micronesia in creating and maintaining their close and mutually beneficial relationship through the free and voluntary association of their respective Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and budgetary self-reliance of the Federated States of Micronesia; and

Recognizing that their relationship until the entry into force on November 3, 1986 of the Compact was based upon the International Trusteeship System of the United Nations Charter, and in particular Article 76 of the Charter; and that pursuant to Article 76 of the Charter, the people of the Federated States of Micronesia have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they, through their freely-expressed wishes, have adopted a Constitution appropriate to their particular circumstances; and

Recognizing that the Compact reflected their common desire to terminate the Trusteeship and establish a government-to-government relationship which was in accordance with the new political status based on the freely expressed wishes of the people of the Federated States of Micronesia and appropriate to their particular circumstances; and

Recognizing that the people of the Federated States of Micronesia have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of the Government of the Federated States of Micronesia into the Compact by the people of the Federated States of Micronesia constituted an exercise of their sovereign right to self-determination; and

Recognizing the common desire of the people of the United States and the people of the Federated States of Micronesia to maintain their close government-to-government relationship, the United States and the Federated States of Micronesia:

NOW, THEREFORE, MUTUALLY AGREE to continue and strengthen their relationship of free association by amending the Compact, which continues to provide a full measure of self-government for the people of the Federated States of Micronesia; and

FURTHER AGREE that the relationship of free association derives from and is as set forth in this Compact, as amended, by the Governments of the United States and the Federated States of Micronesia; and that, during such relationship of free association, the respective rights and responsibilities of the Government of the United States and the Government of the Federated States of Micronesia in regard to this relationship of free association derive from and are as set forth in this Compact, as amended.

TITLE ONE

GOVERNMENTAL RELATIONS

Article I

Self-Government

Section 111

The people of the Federated States of Micronesia, acting through the Government established under their Constitution, are self-governing.

Article II

Foreign Affairs

Section 121

(a) The Government of the Federated States of Micronesia has the capacity to conduct foreign affairs and shall do so in its own

name and right, except as otherwise provided in this Compact, as amended.

(b) The foreign affairs capacity of the Government of the Federated States of Micronesia includes:

(1) the conduct of foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and nonliving resources from the sea, seabed or subsoil to the full extent recognized under international law;

(2) the conduct of its commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other governments and international and intergovernmental organizations, including any matters specially benefiting its individual citizens.

(c) The Government of the United States recognizes that the Government of the Federated States of Micronesia has the capacity to enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(d) In the conduct of its foreign affairs, the Government of the Federated States of Micronesia confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

Section 122

The Government of the United States shall support applications by the Government of the Federated States of Micronesia for membership or other participation in regional or international organizations as may be mutually agreed.

Section 123

(a) In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of the Federated States of Micronesia shall consult, in the conduct of its foreign affairs, with the Government of the United States.

(b) In recognition of the foreign affairs capacity of the Government of the Federated States of Micronesia, the Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of the Federated States of Micronesia on matters that the Government of the United States regards as relating to or affecting the Government of the Federated States of Micronesia.

Section 124

The Government of the United States may assist or act on behalf of the Government of the Federated States of Micronesia in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of the Federated States of Micronesia undertaken with the assistance or through the agency of the Government of the United States pursuant to this section unless expressly agreed.

Section 125

The Government of the United States shall not be responsible for nor obligated by any actions taken by the Government of the Federated States of Micronesia in the area of foreign affairs, except as may from time to time be expressly agreed.

Section 126

At the request of the Government of the Federated States of Micronesia and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of the Federated States of Micronesia for travel outside the Federated States of Micronesia, the United States and its territories and possessions.

Section 127

Except as otherwise provided in this Compact, as amended, or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as Administering Authority which resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on November 2, 1986, are, as of that date, no longer assumed and enjoyed by the Government of the United States.

Article III

Communications

Section 131

(a) The Government of the Federated States of Micronesia has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communications assistance as mutually agreed.

(b) On May 24, 1993, the Government of the Federated States of Micronesia elected to undertake all functions previously performed by the Government of the United States with respect to domestic and foreign communications, except for those functions set forth in a separate agreement entered into pursuant to this section of the Compact, as amended.

Section 132

The Government of the Federated States of Micronesia shall permit the Government of the United States to operate telecommunications services in the Federated States of Micronesia to the extent necessary to fulfill the obligations of the Government of the United States under this Compact, as amended, in accordance with the terms of separate agreements entered into pursuant to this section of the Compact, as amended.

Article IV

Immigration

Section 141

(a) In furtherance of the special and unique relationship that exists between the United States and the Federated States of Micronesia, under the Compact, as amended, any person in the following categories may be admitted to, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions (the ''United States'') without regard to paragraph (5) or (7)(B)(i)(II) of section 212(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5) or (7)(B)(i)(II):

(1) a person who, on November 2, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the Federated States of Micronesia;

(2) a person who acquires the citizenship of the Federated States of Micronesia at birth, on or after the effective date of the Constitution of the Federated States of Micronesia;

(3) an immediate relative of a person referred to in paragraphs (1) or (2) of this section, provided that such immediate relative is a naturalized citizen of the Federated States of Micronesia who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence, and further provided, that, in the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) of this section for at least five years, and further provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99–239 as it was in effect on the day prior to the effective date of this Compact, as amended;

(4) a naturalized citizen of the Federated States of Micronesia who was an actual resident there for not less than five years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence, and whose name is included in a list furnished by the Government of the Federated States of Micronesia to the Government of the United States no later than the effective date of the Compact, as amended, in form and content acceptable to the Government of the United States, provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99–239 as it was in effect on the day prior to the effective date of this Compact, as amended; or

(5) an immediate relative of a citizen of the Federated States of Micronesia, regardless of the immediate relative's country of citizenship or period of residence in the Federated States of Micronesia, if the citizen of the Federated States of Micronesia is serving on active duty in any branch of the United States Armed Forces, or in the active reserves.

(b) Notwithstanding subsection (a) of this section, a person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact and the Compact, as amended. This subsection shall apply to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This subsection shall have no effect on the ability of the Government of the United States or any United States State or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

(c) Notwithstanding subsection (a) of this section, no person who has been or is granted citizenship in the Federated States of Micronesia, or has been or is issued a Federated States of Micronesia passport pursuant to any investment, passport sale, or similar program has been or shall be eligible for admission to the United States under the Compact or the Compact, as amended.

(d) A person admitted to the United States under the Compact, or the Compact, as amended, shall be considered to have the permission of the Government of the United States to accept employment in the United States. An unexpired Federated States of Micronesia passport with unexpired documentation issued by the Government of the United States evidencing admission under the Compact or the Compact, as amended, shall be considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1324a(b)(1)(B). The Government of the United States will take reasonable and appropriate steps to implement and publicize this provision, and the Government of the Federated States of Micronesia will also take reasonable and appropriate steps to publicize this provision.

(e) For purposes of the Compact and the Compact, as amended:

(1) the term ''residence'' with respect to a person means the person's principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(33), and variations of the

term ''residence,'' including ''resident'' and ''reside,'' shall be similarly construed;

(2) the term ''actual residence'' means physical presence in the Federated States of Micronesia during eighty-five percent of the five-year period of residency required by section 141(a)(3) and (4);

(3) the term ''certificate of actual residence'' means a certificate issued to a naturalized citizen by the Government of the Federated States of Micronesia stating that the citizen has complied with the actual residence requirement of section 141(a)(3) or (4);

(4) the term ''nonimmigrant'' means an alien who is not an ''immigrant'' as defined in section 101(a)(15) of such Act, 8 U.S.C. 1101(a)(15); and

(5) the term ''immediate relative'' means a spouse, or unmarried son or unmarried daughter less than 21 years of age.

(f) The Immigration and Nationality Act, as amended, shall apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where such Act does not apply) under the Compact or the Compact, as amended, and nothing in the Compact or the Compact, as amended, shall be construed to limit, preclude, or modify the applicability of, with respect to such person:

(1) any ground of inadmissibility or deportability under such Act (except sections 212(a)(5) and 212(a)(7)(B)(i)(II) of such Act, as provided in subsection (a) of this section), and any defense thereto, provided that, section 237(a)(5) of such Act shall be construed and applied as if it reads as follows: ''any alien who has been admitted under the Compact, or the Compact, as amended, who cannot show that he or she has sufficient means of support in the United States, is deportable'';

(2) the authority of the Government of the United States under section 214(a)(1) of such Act to provide that admission as a nonimmigrant shall be for such time and under such conditions as the Government of the United States may by regulations prescribe;

(3) Except for the treatment of certain documentation for purposes of section 274A(b)(1)(B) of such Act as provided by subsection (d) of this section of the Compact, as amended, any requirement under section 274A, including but not limited to section 274A(b)(1)(E);

(4) Section 643 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, and actions taken pursuant to section 643; and

(5) the authority of the Government of the United States otherwise to administer and enforce the Immigration and Nationality Act, as amended, or other United States law.

(g) Any authority possessed by the Government of the United States under this section of the Compact or the Compact, as amended, may also be exercised by the Government of a territory or possession of the United States where the Immigration and Nationality Act, as amended, does not apply, to the extent such exercise of authority is lawful under a statute or regulation of such territory or possession that is authorized by the laws of the United States.

(h) Subsection (a) of this section does not confer on a citizen of the Federated States of Micronesia the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, as amended, or to petition for benefits for alien relatives under that Act. Subsection (a) of this section, however, shall not prevent a citizen of the Federated States of Micronesia from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may be admitted, to lawfully engage in occupations, and reside in the Federated States of Micronesia, subject to the rights of the Government of the Federated States of Micronesia to deny entry to or deport any such citizen or national as an undesirable alien. Any determination of inadmissibility or deportability shall be based on reasonable statutory grounds and shall be subject to appropriate administrative and judicial review within the Federated States of Micronesia. If a citizen or national of the United States is a spouse of a citizen of the Federated States of Micronesia, the Government of the Federated States of Micronesia shall allow the United States citizen spouse to establish residence. Should the Federated States of Micronesia citizen spouse predecease the United States citizen spouse during the marriage, the Government of the Federated States of Micronesia shall allow the United States citizen spouse to continue to reside in the Federated States of Micronesia.

(b) In enacting any laws or imposing any requirements with respect to citizens and nationals of the United States entering the Federated States of Micronesia under subsection (a) of this section, including any grounds of inadmissibility or deportability, the Government of the Federated States of Micronesia shall accord to such citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries.

(c) Consistent with subsection (a) of this section, with respect to citizens and nationals of the United States seeking to engage in employment or invest in the Federated States of Micronesia, the Government of the Federated States of Micronesia shall adopt immigration-related procedures no less favorable than those adopted by the Government of the United States with respect to citizens of the Federated States of Micronesia seeking employment in the United States.

Section 143

Any person who relinquishes, or otherwise loses, his United States nationality or citizenship, or his Federated States of Micronesia citizenship, shall be ineligible to receive the privileges set forth in sections 141 and 142. Any such person may apply for admission to the United States or the Federated States of Micronesia, as the case may be, in accordance with any other applicable laws of the United States or the Federated States of Micronesia relating to immigration of aliens from other countries. The laws of the Federated States of Micronesia or the United States, as the case may be, shall dictate the terms and conditions of any such person's stay.

Article V

Representation

Section 151

Relations between the Government of the United States and the Government of the Federated States of Micronesia shall be conducted in accordance with the Vienna Convention on Diplomatic Relations. In addition to diplomatic missions and representation, the Governments may establish and maintain other offices and designate other representatives on terms and in locations as may be mutually agreed.

Section 152

(a) Any citizen or national of the United States who, without authority of the United States, acts as the agent of the Government of the Federated States of Micronesia with regard to matters specified in the provisions of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), that apply with respect to an agent of a foreign principal shall be subject to the requirements of such Act. Failure to comply with such requirements shall subject such citizen or national to the same penalties and provisions of law as apply in the case of the failure of such an agent of a foreign principal to comply with such requirements. For purposes of the Foreign Agents Registration Act of 1938, the Federated States of Micronesia shall be considered to be a foreign country.

(b) Subsection (a) of this section shall not apply to a citizen or national of the United States employed by the Government of the Federated States of Micronesia with respect to whom the Government of the Federated States of Micronesia from time to time certifies to the Government of the United States that such citizen or national is an employee of the Federated States of Micronesia whose principal duties are other than those matters specified in the Foreign Agents Registration Act of 1938, as amended, that apply with respect to an agent of a foreign principal. The agency or officer of the United States receiving such certifications shall cause them to be filed with the Attorney General, who shall maintain a publicly available list of the persons so certified.

Article VI

Environmental Protection

Section 161

The Governments of the United States and the Federated States of Micronesia declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Federated States of Micronesia. In order to carry out this policy, the Government of the United States and the Government of the Federated States of Micronesia agree to the following mutual and reciprocal undertakings.

(a) The Government of the United States:

(1) shall continue to apply the environmental controls in effect on November 2, 1986 to those of its continuing activities subject to section 161(a)(2), unless and until those controls are modified under sections 161(a)(3) and 161(a)(4);

(2) shall apply the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 et seq., to its activities under the Compact, as amended, and its related agreements as if the Federated States of Micronesia were the United States;

(3) shall comply also, in the conduct of any activity requiring the preparation of an Environmental Impact Statement under section 161(a)(2), with standards substantively similar to those required by the following laws of the United States, taking into account the particular environment of the Federated States of Micronesia: the Endangered Species Act of 1973, as amended, 87 Stat. 884, 16 U.S.C. 1531 et seq.; the Clean Air Act, as amended, 77 Stat. 392, 42 U.S.C. Supp. 7401 et seq.; the Clean Water Act (Federal Water Pollution Control Act), as amended, 86 Stat. 896, 33 U.S.C. 1251 et seq.; Title I of the Marine Protection, Research and Sanctuaries Act of 1972 (the Ocean Dumping Act), 33 U.S.C. 1411 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq.; the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 et seq.; and such other environmental protection laws of the United States and of the Federated States of Micronesia, as may be mutually agreed from time to time with the Government of the Federated States of Micronesia; and

(4) shall develop, prior to conducting any activity requiring the preparation of an Environmental Impact Statement under section 161(a)(2), written standards and procedures, as agreed with the Government of the Federated States of Micronesia, to implement the substantive provisions of the laws made applicable to U.S. Government activities in the Federated States of Micronesia, pursuant to section 161(a)(3).

(b) The Government of the Federated States of Micronesia shall continue to develop and implement standards and procedures to protect its environment. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Federated States of Micronesia, taking into account its particular environment, shall continue to develop and implement standards for environmental protection substantively similar to those required of the Government of the United States by section 161(a)(3) prior to its conducting activities in the Federated States of Micronesia, substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 161(a), including any standard or procedure applicable thereunder, and section 161(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of the Federated States of Micronesia.

(d) In the event that an Environmental Impact Statement is no longer required under the laws of the United States for major Federal actions significantly affecting the quality of the human environment, the regulatory regime established under sections 161(a)(3) and 161(a)(4) shall continue to apply to such activities of the Government of the United States until amended by mutual agreement.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact, as amended, and its related agreements from any environmental standard or procedure which may be applicable under sections 161(a)(3) and 161(a)(4) if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact, as amended, and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the Government of the Federated States of Micronesia shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the Government of the Federated States of Micronesia.

(f) The laws of the United States referred to in section 161(a)(3) shall apply to the activities of the Government of the United States under this Compact, as amended, and its related agreements only to the extent provided for in this section.

Section 162

The Government of the Federated States of Micronesia may bring an action for judicial review of any administrative agency action or any activity of the Government of the United States pursuant to section 161(a) for enforcement of the obligations of the Government of the United States arising thereunder. The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction over such action or activity, and over actions brought under section 172(b) which relate to the activities of the Government of the United States and its officers and employees, governed by section 161, provided that:

(a) Such actions may only be civil actions for any appropriate civil relief other than punitive damages against the Government of the United States or, where required by law, its officers in their official capacity; no criminal actions may arise under this section.

(b) Actions brought pursuant to this section may be initiated only by the Government of the Federated States of Micronesia.

(c) Administrative agency actions arising under section 161 shall be reviewed pursuant to the standard of judicial review set forth in 5 U.S.C. 706.

(d) The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction to issue all necessary processes, and the Government of the United States agrees to submit itself to the jurisdiction of the court; decisions of the United States District Court shall be reviewable in the United States Court of Appeals for the Ninth Circuit or the United States Court of Appeals for the District of Columbia, respectively, or in the United States Supreme Court as provided by the laws of the United States.

(e) The judicial remedy provided for in this section shall be the exclusive remedy for the judicial review or enforcement of the obligations of the Government of the United States under this Article and actions brought under section 172(b) which relate to the activities of the Government of the United States and its officers and employees governed by section 161.

(f) In actions pursuant to this section, the Government of the Federated States of Micronesia shall be treated as if it were a United States citizen.

Section 163

(a) For the purpose of gathering data necessary to study the environmental effects of activities of the Government of the United States subject to the requirements of this Article, the Government of the Federated States of Micronesia shall be granted access to facilities operated by the Government of the United States in the Federated States of Micronesia, to the extent necessary for this purpose, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the United States under Title Three.

(b) The Government of the United States, in turn, shall be granted access to the Federated States of Micronesia for the purpose of gathering data necessary to discharge its obligations under this Article, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the Federated States of Micronesia under Title One, and to the extent necessary for this purpose shall be granted access to documents and other information to the same extent similar access is provided the Government of the Federated States of Micronesia under the Freedom of Information Act, 5 U.S.C. 552.

(c) The Government of the Federated States of Micronesia shall not impede efforts by the Government of the United States to comply with applicable standards and procedures.

Article VII

General Legal Provisions

Section 171

Except as provided in this Compact, as amended, or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceased with respect to the Federated States of Micronesia on November 3, 1986, the date the Compact went into effect.

Section 172

(a) Every citizen of the Federated States of Micronesia who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any non-resident alien.

(b) The Government of the Federated States of Micronesia and every citizen of the Federated States of Micronesia shall be considered to be a ''person'' within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701–706, except that only the Government of the Federated States of Micronesia may seek judicial review under the Administrative Procedure Act or judicial enforcement under the Freedom of Information Act when such judicial review or enforcement relates to the activities of the Government of the United States governed by sections 161 and 162.

Section 173

The Governments of the United States and the Federated States of Micronesia agree to adopt and enforce such measures, consistent with this Compact, as amended, and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in the Federated States of Micronesia pursuant to this Compact, as amended, and its related agreements and by the Government of the Federated States of Micronesia in the United States pursuant to this Compact, as amended, and its related agreements.

Section 174

Except as otherwise provided in this Compact, as amended, and its related agreements:

(a) The Government of the Federated States of Micronesia, and its agencies and officials, shall be immune from the jurisdiction of the court of the United States, and the Government of the United States, and its agencies and officials, shall be immune from the jurisdiction of the courts of the Federated States of Micronesia.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to November 3, 1986;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the November 3, 1986; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of the Compact shall be adjudicated in the same manner as a claim adjudicated according to section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor courts, which shall have jurisdiction therefore, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such

judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of the Federated States of Micronesia shall not be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of the Federated States of Micronesia in any civil case in which an exception to foreign state immunity is set forth in the Foreign Sovereign Immunities Act (28 U.S.C. 1602 et seq.) or its successor statutes.

Section 175

(a) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern mutual assistance and cooperation in law enforcement matters, including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners, as well as other law enforcement matters. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188–95, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100–15, shall be applicable to the transfer of prisoners under the separate agreement; and

(b) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern requirements relating to labor recruitment practices, including registration, reporting, suspension or revocation of authorization to recruit persons for employment in the United States, and enforcement for violations of such requirements.

Section 176

The Government of the Federated States of Micronesia confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of the Federated States of Micronesia to grant relief from judgments in appropriate cases.

Section 177

Section 177 of the Compact entered into force with respect to the Federated States of Micronesia on November 3, 1986 as follows:

''(a) The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, or the Federated States of Micronesia, or Palau for loss or damage to property and person of the citizens of the Marshall Islands, or the Federated States of Micronesia, resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958.

''(b) The Government of the United States and the Government of the Marshall Islands shall set forth in a separate agreement provisions for the just and adequate settlement of all such claims which have arisen in regard to the Marshall Islands and its citizens and which have not as yet been compensated or which in the future may arise, for the continued administration by the Government of the United States of direct radiation related medical surveillance and treatment programs and radiological monitoring activities and for such additional programs and activities as may be mutually agreed, and for the assumption by the Government of the Marshall Islands of responsibility for enforcement of limitations on the utilization of affected areas developed in cooperation with the Government of the United States and for the assistance by the Government of the United States in the exercise of such responsibility as may be mutually agreed. This separate agreement shall come into effect simultaneously with this Compact and shall remain in effect in accordance with its own terms.

''(c) The Government of the United States shall provide to the Government of the Marshall Islands, on a grant basis, the amount of $150 million to be paid and distributed in accordance with the separate agreement referred to in this Section, and shall provide the services and programs set forth in this separate agreement, the language of which is incorporated into this Compact.''

The Compact, as amended, makes no changes to, and has no effect upon, Section 177 of the Compact, nor does the Compact, as amended, change or affect the separate agreement referred to in Section 177 of the Compact including Articles IX and X of that separate agreement, and measures taken by the parties thereunder.

Section 178

(a) The Federal agencies of the Government of the United States that provide the services and related programs in the Federated States of Micronesia pursuant to Title Two are authorized to settle and pay tort claims arising in the Federated States of Micronesia from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in section 178(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under section 178(a) that cannot be settled under section 178(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of the Federated States of Micronesia shall, in the separate agreement referred to in section 231, provide for:

(1) the administrative settlement of claims referred to in section 178(a), including designation of local agents in each State of the Federated States of Micronesia; such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such separate agreements; and

(2) arbitration, referred to in section 178(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to section 178(a).

(d) The provisions of section 174(d) shall not apply to claims covered by this section.

(e) Except as otherwise explicitly provided by law of the United States, neither the Government of the United States, its instrumentalities, nor any person acting on behalf of the Government of the United States, shall be named a party in any action based on, or arising out of, the activity or activities of a recipient of any grant or other assistance provided by the Government of the United States (or the activity or activities of the recipient's agency or any other person or entity acting on behalf of the recipient).

Section 179

(a) The courts of the Federated States of Micronesia shall not exercise criminal jurisdiction over the Government of the United States, or its instrumentalities.

(b) The courts of the Federated States of Micronesia shall not exercise criminal jurisdiction over any person if the Government of the United States provides notification to the Government of the Federated States of Micronesia that such person was acting on behalf of the Government of the United States, for actions taken in furtherance of section 221 or 224 of this amended Compact, or any other provision of law authorizing financial, program, or service assistance to the Federated States of Micronesia.

TITLE TWO

ECONOMIC RELATIONS

Article I

Grant Assistance

Section 211—Sector Grants

(a) In order to assist the Government of the Federated States of Micronesia in its efforts to promote the economic advancement, budgetary self-reliance, and economic self-sufficiency of its people, and in recognition of the special relationship that exists between the Federated States of Micronesia and the United States, the Government of the United States shall provide assistance on a sector grant basis for a period of twenty years in the amounts set forth in section 216, commencing on the effective date of this Compact, as amended. Such grants shall be used for assistance in the sectors of education, health care, private sector development, the environment, public sector capacity building, and public infrastructure, or for other sectors as mutually agreed, with priorities in the education and health care sectors. For each year such sector grant assistance is made available, the proposed division of this amount among these sectors shall be certified to the Government of the United States by the Government of the Federated States of Micronesia and shall be subject to the concurrence of the Government of the United States. In such case, the Government of the United States shall disburse the agreed upon amounts and monitor the use of such sector grants in accordance with the provisions of this Article and the Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as Amended, of Free Association Between the Government of the United States of America and the Government of the Federated States of Micronesia (''Fiscal Procedures Agreement'') which shall come into effect simultaneously with this Compact, as amended. The provision of any United States assistance under the Compact, as amended, the Fiscal Procedures Agreement, the Trust Fund Agreement, or any other subsidiary agreement to the Compact, as amended, shall constitute ''a particular distribution . . . required by the terms or special nature of the assistance'' for purposes of Article XII, section 1(b) of the Constitution of the Federated States of Micronesia.

(1) EDUCATION.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support and improve the educational system of the Federated States of Micronesia and develop the human, financial, and material resources necessary for the Government of the Federated States of Micronesia to perform these services. Emphasis should be placed on advancing a quality basic education system.

(2) HEALTH.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support and improve the delivery of preventive, curative and environmental care and develop the human, financial, and material resources necessary for the Government of the Federated States of Micronesia to perform these services.

(3) PRIVATE SECTOR DEVELOPMENT.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support the efforts of the Government of the Federated States of Micronesia to attract foreign investment and increase indigenous business activity by vitalizing the commercial environment, ensuring fair and equitable application of the law, promoting adherence to

core labor standards, and maintaining progress toward privatization of state-owned and partially state-owned enterprises, and engaging in other reforms.

(4) CAPACITY BUILDING IN THE PUBLIC SECTOR.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to support the efforts of the Government of the Federated States of Micronesia to build effective, accountable and transparent national, state, and local government and other public sector institutions and systems.

(5) ENVIRONMENT.—United States grant assistance shall be made available in accordance with the plan described in subsection (c) of this section to increase environmental protection; conserve and achieve sustainable use of natural resources; and engage in environmental infrastructure planning, design construction and operation.

(6) PUBLIC INFRASTRUCTURE.—

(i) U.S. annual grant assistance shall be made available in accordance with a list of specific projects included in the plan described in subsection (c) of this section to assist the Government of the Federated States of Micronesia in its efforts to provide adequate public infrastructure.

(ii) INFRASTRUCTURE AND MAINTENANCE FUND.—Five percent of the annual public infrastructure grant made available under paragraph (i) of this subsection shall be set aside, with an equal contribution from the Government of the Federated States of Micronesia, as a contribution to an Infrastructure Maintenance Fund (IMF). Administration of the Infrastructure Maintenance Fund shall be governed by the Fiscal Procedures Agreement.

(b) HUMANITARIAN ASSISTANCE.—Federated States of Micronesia Program. In recognition of the special development needs of the Federated States of Micronesia, the Government of the United States shall make available to the Government of the Federated States of Micronesia, on its request and to be deducted from the grant amount made available under subsection (a) of this section, a Humanitarian Assistance - Federated States of Micronesia (''HAFSM'') Program with emphasis on health, education, and infrastructure (including transportation), projects. The terms and conditions of the HAFSM shall be set forth in the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Government of the Federated States of Micronesia Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended which shall come into effect simultaneously with the amendments to this Compact.

(c) DEVELOPMENT PLAN.—The Government of the Federated States of Micronesia shall prepare and maintain an official overall development plan. The plan shall be strategic in nature, shall be continuously reviewed and updated through the annual budget process, and shall make projections on a multi-year rolling basis. Each of the sectors named in subsection (a) of this section, or other sectors as mutually agreed, shall be accorded specific treatment in the plan. Insofar as grants funds are involved, the plan shall be subject to the concurrence of the Government of the United States.

(d) DISASTER ASSISTANCE EMERGENCY FUND.—An amount of two hundred thousand dollars ($200,000) shall be provided annually, with an equal contribution from the Government of the Federated States of Micronesia, as a contribution to a ''Disaster Assistance Emergency Fund (DAEF).'' Any funds from the DAEF may be used only for assistance and rehabilitation resulting from disasters and emergencies. The funds will be accessed upon declaration by the Government of the Federated States of Micronesia, with the concurrence of the United States Chief of Mission to the Federated States of Micronesia. The Administration of the DAEF shall be governed by the Fiscal Procedures Agreement.

Section 212—Accountability.

(a) Regulations and policies normally applicable to United States financial assistance to its state and local governments, as reflected in the Fiscal Procedures Agreement, shall apply to each sector grant described in section 211, and to grants administered under section 221 below, except as modified in the separate agreements referred to in section 231 of this Compact, as amended, or by United States law. The Government of the United States, after annual consultations with the Federated States of Micronesia, may attach reasonable terms and conditions, including annual performance indicators that are necessary to ensure effective use of United States assistance and reasonable progress toward achieving program objectives. The Government of the United States may seek appropriate remedies for noncompliance with the terms and conditions attached to the assistance, or for failure to comply with section 234, including withholding assistance.

(b) The Government of the United States shall, for each fiscal year of the twenty years during which assistance is to be provided on a sector grant basis under section 211, grant the Government of the Federated States of Micronesia an amount equal to the lesser of (i) one half of the reasonable, properly documented cost incurred during each fiscal year to conduct the annual audit required under Article VIII (2) of the Fiscal Procedures Agreement or (ii) $500,000. Such amount will not be adjusted for inflation under section 217 or otherwise.

Section 213—Joint Economic Management Committee

The Governments of the United States and the Federated States of Micronesia shall establish a Joint Economic Management Committee, composed of a U.S. chair, two other members from the Government of the United States and two members from the Government of the Federated States of Micronesia. The Joint Economic Management Committee shall meet at least once each year to review the audits and reports required under this Title, evaluate the progress made by the Federated States of Micronesia in meeting the objectives identified in its plan described in subsection (c) of section 211, with particular focus on those parts of the plan dealing with the sectors identified in subsection (a) of section 211, identify problems encountered, and recommend ways to increase the effectiveness of U.S. assistance made available under this Title. The establishment and operations of the Joint Economic Management Committee shall be governed by the Fiscal Procedures Agreement.

Section 214—Annual Report

The Government of the Federated States of Micronesia shall report annually to the President of the United States on the use of United States sector grant assistance and other assistance and progress in meeting mutually agreed program and economic goals. The Joint Economic Management Committee shall review and comment on the report and make appropriate recommendations based thereon.

Section 215—Trust Fund

(a) The United States shall contribute annually for twenty years from the effective date of this Compact, as amended, in the amounts set forth in section 216 into a Trust Fund established in accordance with the Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund (''Trust Fund Agreement''). Upon termination of the annual financial assistance under section 211, the proceeds of the fund shall thereafter be used for the purposes described in section 211 or as otherwise mutually agreed.

(b) The United States contribution into the Trust Fund described in subsection(a) of this section is conditioned on the Government of the Federated States of Micronesia contributing to the Trust Fund at least $30 million, prior to September 30, 2004. Any funds received by the Federated States of Micronesia under section 111 (d) of Public Law 99–239 (January 14, 1986), or successor provisions, would be contributed to the Trust Fund as a Federated States of Micronesia contribution.

(c) The terms regarding the investment and management of funds and use of the income of the Trust Fund shall be set forth in the separate Trust Fund Agreement described in subsection (a) of this section. Funds derived from United States investment shall not be subject to Federal or state taxes in the United States or the Federated States of Micronesia. The Trust Fund Agreement shall also provide for annual reports to the Government of the United States and to the Government of the Federated States of Micronesia. The Trust Fund Agreement shall provide for appropriate distributions of trust fund proceeds to the Federated States of Micronesia and for appropriate remedies for the failure of the Federated States of Micronesia to use income of the Trust Fund for the annual grant purposes set forth in section 211. These remedies may include the return to the United States of the present market value of its contributions to the Trust Fund and the present market value of any undistributed income on the contributions of the United States. If this Compact, as amended, is terminated, the provisions of sections 451 through 453 of this Compact, as amended, shall govern treatment of any U.S. contributions to the Trust Fund or accrued interest thereon.

Section 216—Sector Grant Funding and Trust Fund Contributions

The funds described in sections 211, 212(b) and 215 shall be made available as follows:

[In millions of dollars]

Fiscal year	Annual Grants Section 211	Audit Grant Section 212(b) (amount up to)	Trust Fund Section 215	Total
2004	76.2	.5	16	92.7
2005	76.2	.5	16	92.7
2006	76.2	.5	16	92.7

[In millions of dollars]

Fiscal year	Annual Grants Section 211	Audit Grant Section 212(b) (amount up to)	Trust Fund Section 215	Total
2007	75.4	.5	16.8	92.7
2008	74.6	.5	17.6	92.7
2009	73.8	.5	18.4	92.7
2010	73	.5	19.2	92.7
2011	72.2	.5	20	92.7
2012	71.4	.5	20.8	92.7
2013	70.6	.5	21.6	92.7
2014	69.8	.5	22.4	92.7
2015	69	.5	23.2	92.7
2016	68.2	.5	24	92.7
2017	67.4	.5	24.8	92.7
2018	66.6	.5	25.6	92.7
2019	65.8	.5	26.4	92.7
2020	65	.5	27.2	92.7
2021	64.2	.5	28	92.7
2022	63.4	.5	28.8	92.7
2023	62.6	.5	29.6	92.7

Section 217—Inflation Adjustment

Except for the amounts provided for audits under section 212(b), the amounts stated in this Title shall be adjusted for each United States Fiscal Year by the percent that equals two-thirds of the percent change in the United States Gross Domestic Product Implicit Price Deflator, or 5 percent, whichever is less in any one year, using the beginning of Fiscal Year 2004 as a base.

Section 218—Carry-Over of Unused Funds

If in any year the funds made available by the Government of the United States for that year pursuant to this Article are not completely obligated by the Government of the Federated States of Micronesia, the unobligated balances shall remain available in addition to the funds to be provided in subsequent years.

Article II

Services and Program Assistance

Section 221

(a) SERVICES.—The Government of the United States shall make available to the Federated States of Micronesia, in accordance with and to the extent provided in the Federal Programs and Services Agreement referred to in section 231, the services and related programs of:

(1) the United States Weather Service;

(2) the United States Postal Service;

(3) the United States Federal Aviation Administration;

(4) the United States Department of Transportation;

(5) the Federal Deposit Insurance Corporation (for the benefit only of the Bank of the Federated States of Micronesia), and

(6) the Department of Homeland Security, and the United States Agency for International Development, Office of Foreign Disaster Assistance.

Upon the effective date of this Compact, as amended, the United States Departments and Agencies named or having responsibility to provide these services and related programs shall have the authority to implement the relevant provisions of the Federal Programs and Services Agreement referred to in section 231.

(b) PROGRAMS.—

(1) With the exception of the services and programs covered by subsection (a) of this section, and unless the Congress of the United States provides otherwise, the Government of the United States shall make available to the Federated States of Micronesia the services and programs that were available to the Federated States of Micronesia on the effective date of this Compact, as amended, to the extent that such services and programs continue to be available to State and local governments of the United States. As set forth in the Fiscal Procedures Agreement, funds provided under subsection (a) of section 211 will be considered to be local revenues of the Government of the Federated States of Micronesia when used as the local share required to obtain Federal programs and services.

(2) Unless provided otherwise by U.S. law, the services and programs described in paragraph (1) of this subsection shall be extended in accordance with the terms of the Federal Programs and Services Agreement referred to in section 231.

(c) The Government of the United States shall have and exercise such authority as is necessary to carry out its responsibilities under this Title and the separate agreements referred to in amended section 231, including the authority to monitor and administer all service and program assistance provided by the United States to the Federated States of Micronesia. The Federal Programs and Services Agreement referred to in amended section 231 shall also set forth the extent to which services and programs shall be provided to the Federated States of Micronesia.

(d) Except as provided elsewhere in this Compact, as amended, under any separate agreement entered into under this Compact, as amended, or otherwise under U.S. law, all Federal domestic programs extended to or operating in the Federated States of Micronesia shall be subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs and services when operating in the United States.

(e) The Government of the United States shall make available to the Federated States of Micronesia alternate energy development projects, studies, and conservation measures to the extent provided for the Freely Associated States in the laws of the United States.

Section 222

The Government of the United States and the Government of the Federated States of Micronesia may agree from time to time to extend to the Federated States of Micronesia additional United States grant assistance, services and programs, as provided under the laws of the United States. Unless inconsistent with such laws, or otherwise specifically precluded by the Government of the United States at the time such additional grant assistance, services, or programs are extended, the Federal Programs and Services Agreement referred to section 231 shall apply to any such assistance, services or programs.

Section 223

The Government of the Federated States of Micronesia shall make available to the Government of the United States at no cost such land as may be necessary for the operations of the services and programs provided pursuant to this Article, and such facilities as are provided by the Government of the Federated States of Micronesia at no cost to the Government of the United States as of the effective date of this Compact, as amended, or as may be mutually agreed thereafter.

Section 224

The Government of the Federated States of Micronesia may request, from time to time, technical assistance from the Federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its laws. If technical assistance is granted pursuant to such a request, the Government of the United States shall provide the technical assistance in a manner which gives priority consideration to the Federated States of Micronesia over other recipients not a part of the United States, its territories or possessions, and equivalent consideration to the Federated States of Micronesia with respect to other states in Free Association with the United States. Such assistance shall be made available on a reimbursable or non-reimbursable basis to the extent provided by United States law.

Article III

Administrative Provisions

Section 231

The specific nature, extent and contractual arrangements of the services and programs provided for in section 221 of this Compact, as amended, as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in the Federated States of Micronesia, and other arrangements in connection with the assistance, services, or programs furnished by the Government of the United States, are set forth in a Federal Programs and Services Agreement which shall come into effect simultaneously with this Compact, as amended.

Section 232

The Government of the United States, in consultation with the Government of the Federated States of Micronesia, shall determine and implement procedures for the periodic audit of all grants and other assistance

made under Article I of this Title and of all funds expended for the services and programs provided under Article II of this Title. Further, in accordance with the Fiscal Procedures Agreement described in subsection (a) of section 211, the Comptroller General of the United States shall have such powers and authorities as described in sections 102 (c) and 110 (c) of Public Law 99–239, 99 Stat. 1777–78, and 99 Stat. 1799 (January 14, 1986).

Section 233

Approval of this Compact, as amended, by the Government of the United States, in accordance with its constitutional processes, shall constitute a pledge by the United States that the sums and amounts specified as sector grants in section 211 of this Compact, as amended, shall be appropriated and paid to the Federated States of Micronesia for such period as those provisions of this Compact, as amended, remain in force, subject to the terms and conditions of this Title and related subsidiary agreements.

Section 234

The Government of the Federated States of Micronesia pledges to cooperate with, permit, and assist if reasonably requested, designated and authorized representatives of the Government of the United States charged with investigating whether Compact funds, or any other assistance authorized under this Compact, as amended, have, or are being, used for purposes other than those set forth in this Compact, as amended, or its subsidiary agreements. In carrying out this investigative authority, such United States Government representatives may request that the Government of the Federated States of Micronesia subpoena documents and records and compel testimony in accordance with the laws and Constitution of the Federated States of Micronesia. Such assistance by the Government of the Federated States of Micronesia to the Government of the United States shall not be unreasonably withheld. The obligation of the Government of the Federated States of Micronesia to fulfill its pledge herein is a condition to its receiving payment of such funds or other assistance authorized under this Compact, as amended. The Government of the United States shall pay any reasonable costs for extraordinary services executed by the Government of the Federated States of Micronesia in carrying out the provisions of this section.

Article IV

Trade

Section 241

The Federated States of Micronesia is not included in the customs territory of the United States.

Section 242

The President shall proclaim the following tariff treatment for articles imported from the Federated States of Micronesia which shall apply during the period of effectiveness of this title:

(a) Unless otherwise excluded, articles imported from the Federated States of Micronesia, subject to the limitations imposed under section 503(b) of title V of the Trade Act of 1974 (19 U.S.C. 2463(b)), shall be exempt from duty.

(b) Only tuna in airtight containers provided for in heading 1604.14.22 of the Harmonized Tariff Schedule of the United States that is imported from the Federated States of Micronesia and the Republic of the Marshall Islands during any calendar year not to exceed 10 percent of apparent United States consumption of tuna in airtight containers during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty-free treatment under this paragraph for any calendar year shall be counted against the aggregated quantity of tuna in airtight containers that is dutiable under rate column numbered 1 of such heading 1604.14.22 for that calendar year.

(c) The duty-free treatment provided under subsection (a) shall not apply to—

(1) watches, clocks, and timing apparatus provided for in Chapter 91, excluding heading 9113, of the Harmonized Tariff Schedule of the United States;

(2) buttons (whether finished or not finished) provided for in items 9606.21.40 and 9606.29.20 of such Schedule;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of the Federated States of Micronesia, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(a)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from the Federated States of Micronesia which are not exempt from duty under subsections (a), (b), (c), and (d) of section 242 shall be subject to the rates of duty set forth in column numbered 1-general of the Harmonized Tariff Schedule of the United States (HTSUS).

Section 244

(a) All products of the United States imported into the Federated States of Micronesia shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage or use.

(b) The provisions of subsection (a) shall not apply to advantages accorded by the Federated States of Micronesia by virtue of their full membership in the Pacific Island Countries Trade Agreement (PICTA), done on August 18, 2001, to those governments listed in Article 26 of PICTA, as of the date the Compact, as amended, is signed.

(c) Prior to entering into consultations on, or concluding, a free trade agreement with governments not listed in Article 26 of PICTA, the Federated States of Micronesia shall consult with the United States regarding whether or how subsection (a) of section 244 shall be applied.

Article V

Finance and Taxation

Section 251

The currency of the United States is the official circulating legal tender of the Federated States of Micronesia. Should the Government of the Federated States of Micronesia act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of the Federated States of Micronesia may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as the Government of the Federated States of Micronesia deems appropriate. The determination of the source of any income, or the situs of any property, shall for purposes of this Compact be made according to the United States Internal Revenue Code.

Section 253

A citizen of the Federated States of Micronesia, domiciled therein, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States, provided that such citizen of the Federated States of Micronesia is neither a citizen nor a resident of the United States.

Section 254

(a) In determining any income tax imposed by the Government of the Federated States of Micronesia, the Government of the Federated States of Micronesia shall have authority to impose tax upon income derived by a resident of the Federated States of Micronesia from sources without the Federated States of Micronesia, in the same manner and to the same extent as the Government of the Federated States of Micronesia imposes tax upon income derived from within its own jurisdiction. If the Government of the Federated States of Micronesia exercises such authority as provided in this subsection, any individual resident of the Federated States of Micronesia who is subject to tax by the Government of the United States on income which is also taxed by the Government of the Federated States of Micronesia shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. However, the relief from liability to the United States Government referred to in the preceding sentence means only relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and relief in the form of the exclusion under section 911 of the Internal Revenue Code of 1986. For purposes of this section, the term ''resident of the Federated States of Micronesia'' shall be deemed to include any person who was physically present in the Federated States of Micronesia for a period of 183 or more days during any taxable year.

(b) If the Government of the Federated States of Micronesia subjects income to taxation substantially similar to that imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in section 254(a).

Section 255

For purposes of section 274(h)(3)(A) of the United States Internal Revenue Code of 1986, the term ''North American Area'' shall include the Federated States of Micronesia.

TITLE THREE

SECURITY AND DEFENSE RELATIONS

Article I

Authority and Responsibility

Section 311

(a) The Government of the United States has full authority and responsibility for security and defense matters in or relating to the Federated States of Micronesia.

(b) This authority and responsibility includes:

(1) the obligation to defend the Federated States of Micronesia and its people from attack or threats thereof as the United States and its citizens are defended;

(2) the option to foreclose access to or use of the Federated States of Micronesia by military personnel or for the military purposes of any third country; and

(3) the option to establish and use military areas and facilities in the Federated States of Micronesia, subject to the terms of the

separate agreements referred to in sections 321 and 323.

(c) The Government of the United States confirms that it shall act in accordance with the principles of international law and the Charter of the United Nations in the exercise of this authority and responsibility.

Section 312

Subject to the terms of any agreements negotiated in accordance with sections 321 and 323, the Government of the United States may conduct within the lands, waters and airspace of the Federated States of Micronesia the activities and operations necessary for the exercise of its authority and responsibility under this Title.

Section 313

(a) The Government of the Federated States of Micronesia shall refrain from actions that the Government of the United States determines, after appropriate consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Federated States of Micronesia.

(b) The consultations referred to in this section shall be conducted expeditiously at senior levels of the two Governments, and the subsequent determination by the Government of the United States referred to in this section shall be made only at senior interagency levels of the Government of the United States.

(c) The Government of the Federated States of Micronesia shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of State personally and the United States Secretary of Defense personally regarding any determination made in accordance with this section.

Section 314

(a) Unless otherwise agreed, the Government of the United States shall not, in the Federated States of Micronesia:

(1) test by detonation or dispose of any nuclear weapon, nor test, dispose of, or discharge any toxic chemical or biological weapon; or

(2) test, dispose of, or discharge any other radioactive, toxic chemical or biological materials in an amount or manner which would be hazardous to public health or safety.

(b) Unless otherwise agreed, other than for transit or overflight purposes or during time of a national emergency declared by the President of the United States, a state of war declared by the Congress of the United States or as necessary to defend against an actual or impending armed attack on the United States, the Federated States of Micronesia or the Republic of the Marshall Islands, the Government of the United States shall not store in the Federated States of Micronesia or the Republic of the Marshall Islands any toxic chemical weapon, nor any radioactive materials nor any toxic chemical materials intended for weapons use.

(c) Radioactive, toxic chemical, or biological materials not intended for weapons use shall not be affected by section 314(b).

(d) No material or substance referred to in this section shall be stored in the Federated States of Micronesia except in an amount and manner which would not be hazardous to public health or safety. In determining what shall be an amount or manner which would be hazardous to public health or safety under this section, the Government of the United States shall comply with any applicable mutual agreement, international guidelines accepted by the Government of the United States, and the laws of the United States and their implementing regulations.

(e) Any exercise of the exemption authority set forth in section 161(e) shall have no effect on the obligations of the Government of the United States under this section or on the application of this subsection.

(f) The provisions of this section shall apply in the areas in which the Government of the Federated States of Micronesia exercises jurisdiction over the living resources of the seabed, subsoil or water column adjacent to its coasts.

Section 315

The Government of the United States may invite members of the armed forces of other countries to use military areas and facilities in the Federated States of Micronesia, in conjunction with and under the control of United States Armed Forces. Use by units of the armed forces of other countries of such military areas and facilities, other than for transit and overflight purposes, shall be subject to consultation with and, in the case of major units, approval of the Government of the Federated States of Micronesia.

Section 316

The authority and responsibility of the Government of the United States under this Title may not be transferred or otherwise assigned.

Article II

Defense Facilities and Operating Rights

Section 321

(a) Specific arrangements for the establishment and use by the Government of the United States of military areas and facilities in the Federated States of Micronesia are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

(b) If, in the exercise of its authority and responsibility under this Title, the Government of the United States requires the use of areas within the Federated States of Micronesia in addition to those for which specific arrangements are concluded pursuant to section 321(a), it may request the Government of the Federated States of Micronesia to satisfy those requirements through leases or other arrangements. The Government of the Federated States of Micronesia shall sympathetically consider any such request and shall establish suitable procedures to discuss it with and provide a prompt response to the Government of the United States.

(c) The Government of the United States recognizes and respects the scarcity and special importance of land in the Federated States of Micronesia. In making any requests pursuant to section 321(b), the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy its requirement through public real property, where available, rather than through private real property.

Section 322

The Government of the United States shall provide and maintain fixed and floating aids to navigation in the Federated States of Micronesia at least to the extent necessary for the exercise of its authority and responsibility under this Title.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in the Federated States of Micronesia are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

Article III

Defense Treaties and International Security Agreements

Section 331

Subject to the terms of this Compact, as amended, and its related agreements, the Government of the United States, exclusively, has assumed and enjoys, as to the Federated States of Micronesia, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as Administering Authority of the Trust Territory of the Pacific Islands as of November 2, 1986.

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in the Federated States of Micronesia. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of the Federated States of Micronesia.

Article IV

Service in Armed Forces of the United States

Section 341

Any person entitled to the privileges set forth in Section 141 (with the exception of any person described in section 141(a)(5) who is not a citizen of the Federated States of Micronesia) shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States as long as such person has resided in the United States for a period of less than one year, provided that no time shall count towards this one year while a person admitted to the United States under the Compact, or the Compact, as amended, is engaged in full-time study in the United States. Any person described in section 141(a)(5) who is not a citizen of the Federated States of Micronesia shall be subject to United States laws relating to selective service.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from the Federated States of Micronesia, as may be nominated by the Government of the Federated States of Micronesia, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195.

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to section 342(b) of this Compact, as amended.

Article V

General Provisions

Section 351

(a) The Government of the United States and the Government of the Federated States of Micronesia shall continue to maintain a Joint Committee empowered to consider disputes arising under the implementation of this Title and its related agreements.

(b) The membership of the Joint Committee shall comprise selected senior officials of the two Governments. The senior United States military commander in the Pacific area shall be the senior United States member of the Joint Committee. For the meetings of the Joint Committee, each of the two Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the Joint Committee shall meet annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The Joint Committee also shall meet promptly upon request of either

of its members. The Joint Committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree. Upon notification by the Government of the United States, the Joint Committee of the United States and the Federated States of Micronesia shall meet promptly in a combined session with the Joint Committee established and maintained by the Government of the United States and the Republic of the Marshall Islands to consider matters within the jurisdiction of the two Joint Committees.

(d) Unresolved issues in the Joint Committee shall be referred to the Governments for resolution, and the Government of the Federated States of Micronesia shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under Title Three, the Government of the United States shall accord due respect to the authority and responsibility of the Government of the Federated States of Micronesia under Titles One, Two and Four and to the responsibility of the Government of the Federated States of Micronesia to assure the well-being of its people.

Section 353

(a) The Government of the United States shall not include the Government of the Federated States of Micronesia as a named party to a formal declaration of war, without that Government's consent.

(b) Absent such consent, this Compact, as amended, is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or Government of the Federated States of Micronesia, which arise out of armed conflict subsequent to November 3, 1986, and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under section 353(b)(1) shall be treated as if they were made by citizens of the United States.

Section 354

(a) The Government of the United States and the Government of the Federated States of Micronesia are jointly committed to continue their security and defense relations, as set forth in this Title. Accordingly, it is the intention of the two countries that the provisions of this Title shall remain binding as long as this Compact, as amended, remains in effect, and thereafter as mutually agreed, unless earlier terminated by mutual agreement pursuant to section 441, or amended pursuant to Article III of Title Four. If at any time the Government of the United States, or the Government of the Federated States of Micronesia, acting unilaterally, terminates this Title, such unilateral termination shall be considered to be termination of the entire Compact, in which case the provisions of section 442 and 452 (in the case of termination by the Government of the United States) or sections 443 and 453 (in the case of termination by the Government of the Federated States of Micronesia), with the exception of paragraph (3) of subsection (a) of section 452 or paragraph (3) of subsection (a) of section 453, as the case may be, shall apply.

(b) The Government of the United States recognizes, in view of the special relationship between the Government of the United States and the Government of the Federated States of Micronesia, and in view of the existence of the separate agreement regarding mutual security concluded with the Government of the Federated States of Micronesia pursuant to sections 321 and 323, that, even if this Title should terminate, any attack on the Federated States of Micronesia during the period in which such separate agreement is in effect, would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, the Government of the United States would take action to meet the danger to the United States and to the Federated States of Micronesia in accordance with its constitutional processes.

(c) As reflected in Article 21(1)(b) of the Trust Fund Agreement, the Government of the United States and the Government of the Federated States of Micronesia further recognize, in view of the special relationship between their countries, that even if this Title should terminate, the Government of the Federated States of Micronesia shall refrain from actions which the Government of the United States determines, after appropriate consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Federated States of Micronesia or the Republic of the Marshall Islands.

TITLE FOUR

GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

Pursuant to section 432 of the Compact and subject to subsection (e) of section 461 of the Compact, as amended, the Compact, as amended, shall come into effect upon mutual agreement between the Government of the United States and the Government of the Federated States of Micronesia subsequent to completion of the following:

(a) Approval by the Government of the Federated States of Micronesia in accordance with its constitutional processes.

(b) Approval by the Government of the United States in accordance with its constitutional processes.

Article II

Conference and Dispute Resolution

Section 421

The Government of the United States shall confer promptly at the request of the Government of the Federated States of Micronesia and that Government shall confer promptly at the request of the Government of the United States on matters relating to the provisions of this Compact, as amended, or of its related agreements.

Section 422

In the event the Government of the United States or the Government of the Federated States of Micronesia, after conferring pursuant to section 421, determines that there is a dispute and gives written notice thereof, the two Governments shall make a good faith effort to resolve the dispute between themselves.

Section 423

If a dispute between the Government of the United States and the Government of the Federated States of Micronesia cannot be resolved within 90 days of written notification in the manner provided in section 422, either party to the dispute may refer it to arbitration in accordance with section 424.

Section 424

Should a dispute be referred to arbitration as provided for in section 423, an Arbitration Board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An Arbitration Board shall consist of a Chairman and two other members, each of whom shall be a citizen of a party to the dispute. Each of the two Governments which is a party to the dispute shall appoint one member to the Arbitration Board. If either party to the dispute does not fulfill the appointment requirements of this section within 30 days of referral of the dispute to arbitration pursuant to section 423, its member on the Arbitration Board shall be selected from its own standing list by the other party to the dispute. Each Government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a Chairman within 15 days after selection of the other members of the Arbitration Board. Failing agreement on a Chairman, the Chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) Unless otherwise provided in this Compact, as amended, or its related agreements, the Arbitration Board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles I, II, III, IV and V of Title One, Title Two, Title Four, and their related agreements.

(c) Each member of the Arbitration Board shall have one vote. Each decision of the Arbitration Board shall be reached by majority vote.

(d) In determining any legal issue, the Arbitration Board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The Arbitration Board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact, as amended. Unless the parties provide otherwise by mutual agreement, the Arbitration Board shall endeavor to render its decision within 30 days after the conclusion of arguments. The Arbitration Board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the Arbitration Board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of the Federated States of Micronesia.

Article III

Amendment

Section 431

The provisions of this Compact, as amended, may be further amended by mutual agreement of the Government of the United States and the Government of the Federated States of Micronesia, in accordance with their respective constitutional processes.

Article IV

Termination

Section 441

This Compact, as amended, may be terminated by mutual agreement of the Government of the Federated States of Micronesia and the Government of the United States, in accordance with their respective constitutional processes. Such mutual termination of this Compact, as amended, shall be without prejudice to the continued application of section 451 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 442

Subject to section 452, this Compact, as amended, may be terminated by the Government of the United States in accordance

with its constitutional processes. Such termination shall be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended. Such termination of this Compact, as amended, shall be without prejudice to the continued application of section 452 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 443

This Compact, as amended, shall be terminated by the Government of the Federated States of Micronesia, pursuant to its constitutional processes, subject to section 453 if the people represented by that Government vote in a plebiscite to terminate the Compact, as amended, or by another process permitted by the FSM constitution and mutually agreed between the Governments of the United States and the Federated States of Micronesia. The Government of the Federated States of Micronesia shall notify the Government of the United States of its intention to call such a plebiscite, or to pursue another mutually agreed and constitutional process, which plebiscite or process shall take place not earlier than three months after delivery of such notice. The plebiscite or other process shall be administered by the Government of the Federated States of Micronesia in accordance with its constitutional and legislative processes. If a majority of the valid ballots cast in the plebiscite or other process favors termination, the Government of the Federated States of Micronesia shall, upon certification of the results of the plebiscite or other process, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V

Survivability

Section 451

(a) Should termination occur pursuant to section 441, economic and other assistance by the Government of the United States shall continue only if and as mutually agreed by the Governments of the United States and the Federated States of Micronesia, and in accordance with the parties' respective constitutional processes.

(b) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections (b) and (c) of section 354 of this Compact, as amended, and the separate agreement entered into consistent with those subsections, if termination occurs pursuant to section 441 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 215 of this Compact, as amended.

(c) In view of the special relationship of the United States and the Federated States of Micronesia described in subsection (b) of this section, if termination occurs pursuant to section 441 following the twentieth anniversary of the effective date of this Compact, as amended, the Federated States of Micronesia shall be entitled to receive proceeds from the Trust Fund described in section 215 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement governing the distribution of such proceeds.

Section 452

(a) Should termination occur pursuant to section 442 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

(1) Article VI and sections 172, 173, 176 and 177 of Title One;

(2) Sections 232 and 234 of Title Two;

(3) Title Three; and

(4) Articles II, III, V and VI of Title Four.

(b) Should termination occur pursuant to section 442 before the twentieth anniversary of the effective date of the Compact, as amended:

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, economic and other assistance by the United States shall continue only if and as mutually agreed by the Governments of the United States and the Federated States of Micronesia.

(2) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections (b) and (c) of section 354 of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, the United States shall continue to make contributions to the Trust Fund described in section 215 of this Compact, as amended, in the manner described in the Trust Fund Agreement.

(c) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 442 following the twentieth anniversary of the effective date of this Compact, as amended, the Federated States of Micronesia shall continue to be eligible to receive proceeds from the Trust Fund described in section 215 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 453

(a) Should termination occur pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

(1) Article VI and sections 172, 173, 176 and 177 of Title One;

(2) Sections 232 and 234 of Title Two;

(3) Title Three; and

(4) Articles II, III, V and VI of Title Four.

(b) Upon receipt of notice of termination pursuant to section 443, the Government of the United States and the Government of the Federated States of Micronesia shall promptly consult with regard to their future relationship. Except as provided in subsection (c) and (d) of this section, these consultations shall determine the level of economic and other assistance, if any, which the Government of the United States shall provide to the Government of the Federated States of Micronesia for the period ending on the twentieth anniversary of the effective date of this Compact, as amended, and for any period thereafter, if mutually agreed.

(c) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 215 of this Compact, as amended, in the manner described in the Trust Fund Agreement.

(d) In view of the special relationship of the United States and the Federated States of Micronesia, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 following the twentieth anniversary of the effective date of this Compact, as amended, the Federated States of Micronesia shall continue to be eligible to receive proceeds from the Trust Fund described in section 215 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 454

Notwithstanding any other provision of this Compact, as amended:

(a) The Government of the United States reaffirms its continuing interest in promoting the economic advancement and budgetary self-reliance of the people of the Federated States of Micronesia.

(b) The separate agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms.

Article VI

Definition of Terms

Section 461

For the purpose of this Compact, as amended, only, and without prejudice to the views of the Government of the United States or the Government of the Federated States of Micronesia as to the nature and extent of the jurisdiction of either of them under international law, the following terms shall have the following meanings:

(a) ''Trust Territory of the Pacific Islands'' means the area established in the Trusteeship Agreement consisting of the former administrative districts of Kosrae, Yap, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, section 1, in force on January 1, 1979. This term does not include the area of Palau or the Northern Mariana Islands.

(b) ''Trusteeship Agreement'' means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) ''The Federated States of Micronesia'' and ''the Republic of the Marshall Islands'' are used in a geographic sense and include the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States.

(d) ''Compact'' means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99–239 (Jan. 14, 1986) and went into effect with respect to the Federated States of Micronesia on November 3, 1986.

(e) ''Compact, as amended'' means the Compact of Free Association Between the United States and the Federated States of Micronesia, as amended. The effective date of the Compact, as amended, shall be on a date to be determined by the President of the United States, and agreed to by the Government of the Federated States of Micronesia, following formal approval of the Compact, as amended, in accordance with section 411 of this Compact, as amended.

(f) ''Government of the Federated States of Micronesia'' means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

(g) ''Government of the Republic of the Marshall Islands'' means the Government established and organized by the Constitution of the Republic of the Marshall Islands including all the political subdivisions and entities comprising that Government.

(h) The following terms shall be defined consistent with the 1998 Edition of the Radio Regulations of the International Telecommunications Union as follows:

(1) ''Radiocommunication'' means telecommunication by means of radio waves.

(2) ''Station'' means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service, or the radio astronomy service.

(3) ''Broadcasting Service'' means a radiocommunication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other types of transmission.

(4) ''Broadcasting Station'' means a station in the broadcasting service.

(5) ''Assignment (of a radio frequency or radio frequency channel)'' means an authorization given by an administration for a radio station to use a radio frequency or radio frequency channel under specified conditions.

(6) ''Telecommunication'' means any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems.

(i) ''Military Areas and Facilities'' means those areas and facilities in the Federated States of Micronesia reserved or acquired by the Government of the Federated States of Micronesia for use by the Government of the United States, as set forth in the separate agreements referred to in section 321.

(j) ''Tariff Schedules of the United States'' means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(k) ''Vienna Convention on Diplomatic Relations'' means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

(a) The Government of the United States and the Government of the Federated States of Micronesia previously have concluded agreements pursuant to the Compact, which shall remain in effect and shall survive in accordance with their terms, as follows:

(1) Agreement Concluded Pursuant to Section 234 of the Compact;

(2) Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association; and

(3) Agreement between the Government of the United States of America and the Federated States of Micronesia Regarding Aspects of the Marine Sovereignty and Jurisdiction of the Federated States of Micronesia.

(b) The Government of the United States and the Government of the Federated States of Micronesia shall conclude prior to the date of submission of this Compact, as amended, to the legislatures of the two countries, the following related agreements which shall come into effect on the effective date of this Compact, as amended, and shall survive in accordance with their terms, as follows:

(1) Federal Programs and Services Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Concluded Pursuant to Article III of Title One, Article II of Title Two (including Section 222), and Section 231 of the Compact of Free Association, as amended which includes:

(i) Postal Services and Related Programs;

(ii) Weather Services and Related Programs;

(iii) Civil Aviation Safety Service and Related Programs;

(iv) Civil Aviation Economic Services and Related Programs;

(v) United States Disaster Preparedness and Response Services and Related Programs;

(vi) Federal Deposit Insurance Corporation Services and Related Programs; and

(vii) Telecommunications Services and Related Programs.

(2) Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175(a) of the Compact of Free Association, as amended;

(3) Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia on Labor Recruitment Concluded Pursuant to Section 175(b) of the Compact of Free Association, as amended;

(4) Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact of Free Association, as Amended, of Free Association Between the Government of the United States of America and Government of the Federated States of Micronesia;

(5) Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund;

(6) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia Concluded Pursuant to Sections 211(b), 321 and 323 of the Compact of Free Association, as Amended; and the

(7) Status of Forces Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Concluded Pursuant to Section 323 of the Compact of Free Association, as Amended.

Section 463

(a) Except as set forth in subsection (b) of this section, any reference in this Compact, as amended, to a provision of the United States Code or the Statutes at Large of the United States constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended.

(b) Any reference in Articles IV and Article VI of Title One and Sections 174, 175, 178 and 342 to a provision of the United States Code or the Statutes at Large of the United States or to the Privacy Act, the Freedom of Information Act, the Administrative Procedure Act or the Immigration and Nationality Act constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended, or as it may be amended thereafter on a non-discriminatory basis according to the constitutional processes of the United States.

Article VII

Concluding Provisions

Section 471

Both the Government of the United States and the Government of the Federated States of Micronesia shall take all necessary steps, of a general or particular character, to ensure, no later than the entry into force date of this Compact, as amended, the conformity of its laws, regulations and administrative procedures with the provisions of this Compact, as amended, or in the case of subsection (d) of section 141, as soon as reasonably possible thereafter.

Section 472

This Compact, as amended, may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Federated States of Micronesia.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Compact of Free Association, as amended, which shall enter into force upon the exchange of diplomatic notes by which the Government of the United States of America and the Government of the Federated States of Micronesia inform each other about the fulfillment of their respective requirements for entry into force.

DONE at Pohnpei, Federated States of Micronesia, in duplicate, this fourteenth (14) day of May, 2003, each text being equally authentic.

Signed (May 14, 2003) For the Government of the United States of America:	**Signed (May 14, 2003) For the Government of the Federated States of Micronesia:**

(b) COMPACT OF FREE ASSOCIATION, AS AMENDED, BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS.—The Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands is as follows:

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS

Affirming that their Governments and their relationship as Governments are founded upon respect for human rights and fundamental freedoms for all, and that the people of the Republic of the Marshall Islands have the right to enjoy self-government; and

Affirming the common interests of the United States of America and the Republic of the Marshall Islands in creating and maintaining their close and mutually beneficial relationship through the free and voluntary association of their respective Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and budgetary self-reliance of the Republic of the Marshall Islands; and

Recognizing that their relationship until the entry into force on October 21, 1986 of the Compact was based upon the International Trusteeship System of the United Nations Charter, and in particular Article 76 of the Charter; and that pursuant to Article 76 of the Charter, the people of the Republic of the Marshall Islands have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they, through their freely-expressed wishes, have adopted a Constitution appropriate to their particular circumstances; and

Recognizing that the Compact reflected their common desire to terminate the Trusteeship and establish a government-to-government relationship which was in accordance with the new political status based on the freely expressed wishes of the people of the Republic of the Marshall Islands and appropriate to their particular circumstances; and

Recognizing that the people of the Republic of the Marshall Islands have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of the Government of the Republic of the Marshall Islands into the Compact by the people of the Republic of the Marshall Islands constituted an exercise of their sovereign right to self-determination; and

Recognizing the common desire of the people of the United States and the people of the Republic of the Marshall Islands to maintain their close government-to-government relationship, the United States and the Republic of the Marshall Islands:

NOW, THEREFORE, MUTUALLY AGREE to continue and strengthen their relationship of free association by amending the Compact, which continues to provide a full measure of self-government for the people of the Republic of the Marshall Islands; and

FURTHER AGREE that the relationship of free association derives from and is as set forth in this Compact, as amended, by the Governments of the United States and the Republic of the Marshall Islands; and that, during such relationship of free association, the respective rights and responsibilities of the Government of the United States and the Government of the Republic of the Marshall Islands in regard to this relationship of free association derive from and are as set forth in this Compact, as amended.

TITLE ONE

GOVERNMENTAL RELATIONS

Article I

Self-Government

Section 111

The people of the Republic of the Marshall Islands, acting through the Government established under their Constitution, are self-governing.

Article II

Foreign Affairs

Section 121

(a) The Government of the Republic of the Marshall Islands has the capacity to conduct foreign affairs and shall do so in its own name and right, except as otherwise provided in this Compact, as amended.

(b) The foreign affairs capacity of the Government of the Republic of the Marshall Islands includes:

(1) the conduct of foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and nonliving resources from the sea, seabed or subsoil to the full extent recognized under international law;

(2) the conduct of its commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other governments and international and intergovernmental organizations, including any matters specially benefiting its individual citizens.

(c) The Government of the United States recognizes that the Government of the Republic of the Marshall Islands has the capacity to enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(d) In the conduct of its foreign affairs, the Government of the Republic of the Marshall Islands confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

Section 122

The Government of the United States shall support applications by the Government of the Republic of the Marshall Islands for membership or other participation in regional or international organizations as may be mutually agreed.

Section 123

(a) In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of the Republic of the Marshall Islands shall consult, in the conduct of its foreign affairs, with the Government of the United States.

(b) In recognition of the foreign affairs capacity of the Government of the Republic of the Marshall Islands, the Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of the Republic of the Marshall Islands on matters that the Government of the United States regards as relating to or affecting the Government of the Republic of the Marshall Islands.

Section 124

The Government of the United States may assist or act on behalf of the Government of the Republic of the Marshall Islands in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of the Republic of the Marshall Islands undertaken with the assistance or through the agency of the Government of the United States pursuant to this section unless expressly agreed.

Section 125

The Government of the United States shall not be responsible for nor obligated by any actions taken by the Government of the Republic of the Marshall Islands in the area of foreign affairs, except as may from time to time be expressly agreed.

Section 126

At the request of the Government of the Republic of the Marshall Islands and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of the Republic of the Marshall Islands for travel outside the Republic of the Marshall Islands, the United States and its territories and possessions.

Section 127

Except as otherwise provided in this Compact, as amended, or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as Administering Authority which resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on October 20, 1986, are, as of that date, no longer assumed and enjoyed by the Government of the United States.

Article III

Communications

Section 131

(a) The Government of the Republic of the Marshall Islands has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communications assistance as mutually agreed.

(b) The Government of the Republic of the Marshall Islands has elected to undertake all functions previously performed by the Government of the United States with respect to domestic and foreign communications, except for those functions set forth in a separate agreement entered into pursuant to this section of the Compact, as amended.

Section 132

The Government of the Republic of the Marshall Islands shall permit the Government of the United States to operate telecommunications services in the Republic of the Marshall Islands to the extent necessary to fulfill the obligations of the Government of the United States under this Compact, as amended, in accordance with the terms of separate agreements entered into pursuant to this section of the Compact, as amended.

Article IV

Immigration

Section 141

(a) In furtherance of the special and unique relationship that exists between the United States and the Republic of the Marshall Islands, under the Compact, as amended, any person in the following categories may be admitted to lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions (the ''United States'') without regard to paragraphs (5) or (7)(B)(i)(II) of section 212(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5) or (7)(B)(i)(II):

(1) a person who, on October 21, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the Republic of the Marshall Islands;

(2) a person who acquires the citizenship of the Republic of the Marshall Islands at birth, on or after the effective date of the Constitution of the Republic of the Marshall Islands;

(3) an immediate relative of a person referred to in paragraphs (1) or (2) of this section, provided that such immediate relative is a naturalized citizen of the Republic of the Marshall Islands who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence, and further provided, that, in the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) of this section for at least five years, and further provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99–239 as it was in effect on the day prior to the effective date of this Compact, as amended;

(4) a naturalized citizen of the Republic of the Marshall Islands who was an actual resident there for not less than five years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence, and whose name is included in a list furnished by the Government of the Republic of the Marshall Islands to the Government of the United States no later than the effective date of the Compact, as amended, in form and content acceptable to the Government of the United States, provided, that the Government of the United States is satisfied that such naturalized citizen meets the requirement of subsection (b) of section 104 of Public Law 99–239 as it was in effect on the day prior to the effective date of this Compact, as amended; or

(5) an immediate relative of a citizen of the Republic of the Marshall Islands, regardless of the immediate relative's country of citizenship or period of residence in the Republic of the Marshall Islands, if the citizen of the Republic of the Marshall Islands is serving

on active duty in any branch of the United States Armed Forces, or in the active reserves.

(b) Notwithstanding subsection (a) of this section, a person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact and the Compact, as amended. This subsection shall apply to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This subsection shall have no effect on the ability of the Government of the United States or any United States State or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

(c) Notwithstanding subsection (a) of this section, no person who has been or is granted citizenship in the Republic of the Marshall Islands, or has been or is issued a Republic of the Marshall Islands passport pursuant to any investment, passport sale, or similar program has been or shall be eligible for admission to the United States under the Compact or the Compact, as amended.

(d) A person admitted to the United States under the Compact, or the Compact, as amended, shall be considered to have the permission of the Government of the United States to accept employment in the United States. An unexpired Republic of the Marshall Islands passport with unexpired documentation issued by the Government of the United States evidencing admission under the Compact or the Compact, as amended, shall be considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1324a(b)(1)(B). The Government of the United States will take reasonable and appropriate steps to implement and publicize this provision, and the Government of the Republic of the Marshall Islands will also take reasonable and appropriate steps to publicize this provision.

(e) For purposes of the Compact and the Compact, as amended:

(1) the term ''residence'' with respect to a person means the person's principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(33), and variations of the term ''residence,'' including ''resident'' and ''reside,'' shall be similarly construed;

(2) the term ''actual residence'' means physical presence in the Republic of the Marshall Islands during eighty-five percent of the five-year period of residency required by section 141(a)(3) and (4);

(3) the term ''certificate of actual residence'' means a certificate issued to a naturalized citizen by the Government of the Republic of the Marshall Islands stating that the citizen has complied with the actual residence requirement of section 141(a)(3) or (4);

(4) the term ''nonimmigrant'' means an alien who is not an ''immigrant'' as defined in section 101(a)(15) of such Act, 8 U.S.C. 1101(a)(15); and

(5) the term ''immediate relative'' means a spouse, or unmarried son or unmarried daughter less than 21 years of age.

(f) The Immigration and Nationality Act, as amended, shall apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where such Act does not apply) under the Compact or the Compact, as amended, and nothing in the Compact or the Compact, as amended, shall be construed to limit, preclude, or modify the applicability of, with respect to such person:

(1) any ground of inadmissibility or deportability under such Act (except sections 212(a)(5) and 212(a)(7)(B)(i)(II) of such Act, as provided in subsection (a) of this section), and any defense thereto, provided that, section 237(a)(5) of such Act shall be construed and applied as if it reads as follows: ''any alien who has been admitted under the Compact, or the Compact, as amended, who cannot show that he or she has sufficient means of support in the United States, is deportable;''

(2) the authority of the Government of the United States under section 214(a)(1) of such Act to provide that admission as a nonimmigrant shall be for such time and under such conditions as the Government of the United States may by regulations prescribe;

(3) except for the treatment of certain documentation for purposes of section 274A(b)(1)(B) of such Act as provided by subsection (d) of this section of the Compact, as amended, any requirement under section 274A, including but not limited to section 274A(b)(1)(E);

(4) section 643 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, and actions taken pursuant to section 643; and

(5) the authority of the Government of the United States otherwise to administer and enforce the Immigration and Nationality Act, as amended, or other United States law.

(g) Any authority possessed by the Government of the United States under this section of the Compact or the Compact, as amended, may also be exercised by the Government of a territory or possession of the United States where the Immigration and Nationality Act, as amended, does not apply, to the extent such exercise of authority is lawful under a statute or regulation of such territory or possession that is authorized by the laws of the United States.

(h) Subsection (a) of this section does not confer on a citizen of the Republic of the Marshall Islands the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, as amended, or to petition for benefits for alien relatives under that Act. Subsection (a) of this section, however, shall not prevent a citizen of the Republic of the Marshall Islands from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may be admitted to lawfully engage in occupations, and reside in the Republic of the Marshall Islands, subject to the rights of the Government of the Republic of the Marshall Islands to deny entry to or deport any such citizen or national as an undesirable alien. Any determination of inadmissibility or deportability shall be based on reasonable statutory grounds and shall be subject to appropriate administrative and judicial review within the Republic of the Marshall Islands. If a citizen or national of the United States is a spouse of a citizen of the Republic of the Marshall Islands, the Government of the Republic of the Marshall Islands shall allow the United States citizen spouse to establish residence. Should the Republic of the Marshall Islands citizen spouse predecease the United States citizen spouse during the marriage, the Government of the Republic of the Marshall Islands shall allow the United States citizen spouse to continue to reside in the Republic of the Marshall Islands.

(b) In enacting any laws or imposing any requirements with respect to citizens and nationals of the United States entering the Republic of the Marshall Islands under subsection (a) of this section, including any grounds of inadmissibility or deportability, the Government of the Republic of the Marshall Islands shall accord to such citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries.

(c) Consistent with subsection (a) of this section, with respect to citizens and nationals of the United States seeking to engage in employment or invest in the Republic of the Marshall Islands, the Government of the Republic of the Marshall Islands shall adopt immigration-related procedures no less favorable than those adopted by the Government of the United States with respect to citizens of the Republic of the Marshall Islands seeking employment in the United States.

Section 143

Any person who relinquishes, or otherwise loses, his United States nationality or citizenship, or his Republic of the Marshall Islands citizenship, shall be ineligible to receive the privileges set forth in sections 141 and 142. Any such person may apply for admission to the United States or the Republic of the Marshall Islands, as the case may be, in accordance with any other applicable laws of the United States or the Republic of the Marshall Islands relating to immigration of aliens from other countries. The laws of the Republic of the Marshall Islands or the United States, as the case may be, shall dictate the terms and conditions of any such person's stay.

Article V

Representation

Section 151

Relations between the Government of the United States and the Government of the Republic of the Marshall Islands shall be conducted in accordance with the Vienna Convention on Diplomatic Relations. In addition to diplomatic missions and representation, the Governments may establish and maintain other offices and designate other representatives on terms and in locations as may be mutually agreed.

Section 152

(a) Any citizen or national of the United States who, without authority of the United States, acts as the agent of the Government of the Republic of the Marshall Islands with regard to matters specified in the provisions of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), that apply with respect to an agent of a foreign principal shall be subject to the requirements of such Act. Failure to comply with such requirements shall subject such citizen or national to the same penalties and provisions of law as apply in the case of the failure of such an agent of a foreign principal to comply with such requirements. For purposes of the Foreign Agents Registration Act of 1938, the Republic of the Marshall Islands shall be considered to be a foreign country.

(b) Subsection (a) of this section shall not apply to a citizen or national of the United States employed by the Government of the Republic of the Marshall Islands with respect to whom the Government of the Republic of the Marshall Islands from time to time certifies to the Government of the United States that such citizen or national is an employee of the Republic of the Marshall Islands whose principal duties are other than those matters specified in the Foreign Agents Registration Act of 1938, as amended, that apply with respect to an agent of a foreign principal. The agency or officer of the United States receiving such certifications shall cause them to be filed with the Attorney General, who shall maintain a publicly available list of the persons so certified.

Article VI

Environmental Protection

Section 161

The Governments of the United States and the Republic of the Marshall Islands declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Republic of the Marshall Islands. In order to carry out this policy, the Government of the United States and the Government of the Republic of the Marshall Islands agree to the following mutual and reciprocal undertakings:

(a) The Government of the United States:

(1) shall, for its activities controlled by the U.S. Army at Kwajalein Atoll and in the Mid-Atoll Corridor and for U.S. Army Kwajalein Atoll activities in the Republic of the Marshall Islands, continue to apply the Environmental Standards and Procedures for United States Army Kwajalein Atoll Activities in the Republic of the Marshall Islands, unless and until those Standards or Procedures are modified by mutual agreement of the Governments of the United States and the Republic of the Marshall Islands;

(2) shall apply the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 et seq., to its activities under the Compact, as amended, and its related agreements as if the Republic of the Marshall Islands were the United States;

(3) in the conduct of any activity not described in section 161(a)(1) requiring the preparation of an Environmental Impact Statement under section 161(a)(2), shall comply with standards substantively similar to those required by the following laws of the United States, taking into account the particular environment of the Republic of the Marshall Islands; the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.; the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.; the Clean Water Act (Federal Water Pollution Control Act), as amended, 33 U.S.C. 1251 et seq.; Title I of the Marine Protection, Research and Sanctuaries Act of 1972 (the Ocean Dumping Act), 33 U.S.C. 1411 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq.; the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 et seq.; and such other environmental protection laws of the United States and the Republic of the Marshall Islands as may be agreed from time to time with the Government of the Republic of the Marshall Islands;

(4) shall, prior to conducting any activity not described in section 161(a)(1) requiring the preparation of an Environmental Impact Statement under section 161(a)(2), develop, as agreed with the Government of the Republic of the Marshall Islands, written environmental standards and procedures to implement the substantive provisions of the laws made applicable to U.S. Government activities in the Republic of the Marshall Islands, pursuant to section 161(a)(3).

(b) The Government of the Republic of the Marshall Islands shall continue to develop and implement standards and procedures to protect its environment. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Republic of the Marshall Islands, taking into account its particular environment, shall continue to develop and implement standards for environmental protection substantively similar to those required of the Government of the United States by section 161(a)(3) prior to its conducting activities in the Republic of the Marshall Islands, substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 161(a), including any standard or procedure applicable thereunder, and section 161(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of the Republic of the Marshall Islands.

(d) In the event that an Environmental Impact Statement is no longer required under the laws of the United States for major Federal actions significantly affecting the quality of the human environment, the regulatory regime established under sections 161(a)(3) and 161(a)(4) shall continue to apply to such activities of the Government of the United States until amended by mutual agreement.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact, as amended, and its related agreements from any environmental standard or procedure which may be applicable under sections 161(a)(3) and 161(a)(4) if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact, as amended, and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the Government of the Republic of the Marshall Islands shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the Government of the Republic of the Marshall Islands.

(f) The laws of the United States referred to in section 161(a)(3) shall apply to the activities of the Government of the United States under this Compact, as amended, and its related agreements only to the extent provided for in this section.

Section 162

The Government of the Republic of the Marshall Islands may bring an action for judicial review of any administrative agency action or any activity of the Government of the United States pursuant to section 161(a) for enforcement of the obligations of the Government of the United States arising thereunder. The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction over such action or activity, and over actions brought under section 172(b) which relate to the activities of the Government of the United States and its officers and employees, governed by section 161, provided that:

(a) Such actions may only be civil actions for any appropriate civil relief other than punitive damages against the Government of the United States or, where required by law, its officers in their official capacity; no criminal actions may arise under this section.

(b) Actions brought pursuant to this section may be initiated only by the Government of the Republic of the Marshall Islands.

(c) Administrative agency actions arising under section 161 shall be reviewed pursuant to the standard of judicial review set forth in 5 U.S.C. 706.

(d) The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction to issue all necessary processes, and the Government of the United States agrees to submit itself to the jurisdiction of the court; decisions of the United States District Court shall be reviewable in the United States Court of Appeals for the Ninth Circuit or the United States Court of Appeals for the District of Columbia, respectively, or in the United States Supreme Court as provided by the laws of the United States.

(e) The judicial remedy provided for in this section shall be the exclusive remedy for the judicial review or enforcement of the obligations of the Government of the United States under this Article and actions brought under section 172(b), which relate to the activities of the Government of the United States and its officers and employees governed by section 161.

(f) In actions pursuant to this section, the Government of the Republic of the Marshall Islands shall be treated as if it were a United States citizen.

Section 163

(a) For the purpose of gathering data necessary to study the environmental effects of activities of the Government of the United States subject to the requirements of this Article, the Government of the Republic of the Marshall Islands shall be granted access to facilities operated by the Government of the United States in the Republic of the Marshall Islands, to the extent necessary for this purpose, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the United States under Title Three.

(b) The Government of the United States, in turn, shall be granted access to the Republic of the Marshall Islands for the purpose of gathering data necessary to discharge its obligations under this Article, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the Republic of the Marshall Islands under Title One, and to the extent necessary for this purpose shall be granted access to documents and other information to the same extent similar access is provided the Government of the Republic of the Marshall Islands under the Freedom of Information Act, 5 U.S.C. 552.

(c) The Government of the Republic of the Marshall Islands shall not impede efforts by the Government of the United States to comply with applicable standards and procedures.

Article VII

General Legal Provisions

Section 171

Except as provided in this Compact, as amended, or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceased with respect to the Marshall Islands on October 21, 1986, the date the Compact went into effect.

Section 172

(a) Every citizen of the Republic of the Marshall Islands who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any non-resident alien.

(b) The Government of the Republic of the Marshall Islands and every citizen of the Republic of the Marshall Islands shall be considered to be a ''person'' within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701–706, except that only the Government of the Republic of the Marshall Islands may seek judicial review under the Administrative Procedure Act or judicial enforcement under the Freedom of Information Act when such judicial review or enforcement relates to the activities of the Government of the United States governed by sections 161 and 162.

Section 173

The Governments of the United States and the Republic of the Marshall Islands agree to

adopt and enforce such measures, consistent with this Compact, as amended, and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in the Republic of the Marshall Islands pursuant to this Compact, as amended, and its related agreements and by the Government of the Republic of the Marshall Islands in the United States pursuant to this Compact, Compact, as amended, and its related agreements.

Section 174

Except as otherwise provided in this Compact, as amended, and its related agreements:

(a) The Government of the Republic of the Marshall Islands, and its agencies and officials, shall be immune from the jurisdiction of the court of the United States, and the Government of the United States, and its agencies and officials, shall be immune from the jurisdiction of the courts of the Republic of the Marshall Islands.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to October 21, 1986;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of October 21, 1986; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of the Compact shall be adjudicated in the same manner as a claim adjudicated according to section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor courts, which shall have jurisdiction therefore, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of the Republic of the Marshall Islands shall not be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of the Republic of the Marshall Islands in any civil case in which an exception to foreign state immunity is set forth in the Foreign Sovereign Immunities Act (28 U.S.C. 1602 et seq.) or its successor statutes.

Section 175

(a) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern mutual assistance and cooperation in law enforcement matters, including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners, as well as other law enforcement matters. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186, and 3188–95, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100–15, shall be applicable to the transfer of prisoners under the separate agreement; and

(b) A separate agreement, which shall come into effect simultaneously with this Compact, as amended, and shall have the force of law, shall govern requirements relating to labor recruitment practices, including registration, reporting, suspension or revocation of authorization to recruit persons for employment in the United States, and enforcement for violations of such requirements.

Section 176

The Government of the Republic of the Marshall Islands confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of the Republic of the Marshall Islands to grant relief from judgments in appropriate cases.

Section 177

Section 177 of the Compact entered into force with respect to the Marshall Islands on October 21, 1986 as follows:

''(a) The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, or the Federated States of Micronesia, (or Palau) for loss or damage to property and person of the citizens of the Marshall Islands, or the Federated States of Micronesia, resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958.

''(b) The Government of the United States and the Government of the Marshall Islands shall set forth in a separate agreement provisions for the just and adequate settlement of all such claims which have arisen in regard to the Marshall Islands and its citizens and which have not as yet been compensated or which in the future may arise, for the continued administration by the Government of the United States of direct radiation related medical surveillance and treatment programs and radiological monitoring activities and for such additional programs and activities as may be mutually agreed, and for the assumption by the Government of the Marshall Islands of responsibility for enforcement of limitations on the utilization of affected areas developed in cooperation with the Government of the United States and for the assistance by the Government of the United States in the exercise of such responsibility as may be mutually agreed. This separate agreement shall come into effect simultaneously with this Compact and shall remain in effect in accordance with its own terms.

''(c) The Government of the United States shall provide to the Government of the Marshall Islands, on a grant basis, the amount of $150 million to be paid and distributed in accordance with the separate agreement referred to in this Section, and shall provide the services and programs set forth in this separate agreement, the language of which is incorporated into this Compact.''

The Compact, as amended, makes no changes to, and has no effect upon, Section 177 of the Compact, nor does the Compact, as amended, change or affect the separate agreement referred to in Section 177 of the Compact including Articles IX and X of that separate agreement, and measures taken by the parties thereunder.

Section 178

(a) The Federal agencies of the Government of the United States that provide services and related programs in the Republic of the Marshall Islands pursuant to Title Two are authorized to settle and pay tort claims arising in the Republic of the Marshall Islands from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in section 178(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under section 178(a) that cannot be settled under section 178(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of the Republic of the Marshall Islands shall, in the separate agreement referred to in section 231, provide for:

(1) the administrative settlement of claims referred to in section 178(a), including designation of local agents in each State of the Republic of the Marshall Islands; such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such separate agreements; and

(2) arbitration, referred to in section 178(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to section 178(a).

(d) The provisions of section 174(d) shall not apply to claims covered by this section.

(e) Except as otherwise explicitly provided by law of the United States, this Compact, as amended, or its related agreements, neither the Government of the United States, its instrumentalities, nor any person acting on behalf of the Government of the United States, shall be named a party in any action based on, or arising out of, the activity or activities of a recipient of any grant or other assistance provided by the Government of the United States (or the activity or activities of the recipient's agency or any other person or entity acting on behalf of the recipient).

Section 179

(a) The courts of the Republic of the Marshall Islands shall not exercise criminal jurisdiction over the Government of the United States, or its instrumentalities.

(b) The courts of the Republic of the Marshall Islands shall not exercise criminal jurisdiction over any person if the Government of the United States provides notification to the Government of the Republic of the Marshall Islands that such person was acting on behalf of the Government of the United States, for actions taken in furtherance of section 221 or 224 of this amended Compact, or any other provision of law authorizing financial, program, or service assistance to the Republic of the Marshall Islands.

TITLE TWO

ECONOMIC RELATIONS

Article I

Grant Assistance

Section 211 - Annual Grant Assistance

(a) In order to assist the Government of the Republic of the Marshall Islands in its efforts to promote the economic advancement

and budgetary self-reliance of its people, and in recognition of the special relationship that exists between the Republic of the Marshall Islands and the United States, the Government of the United States shall provide assistance on a grant basis for a period of twenty years in the amounts set forth in section 217, commencing on the effective date of this Compact, as amended. Such grants shall be used for assistance in education, health care, the environment, public sector capacity building, and private sector development, or for other areas as mutually agreed, with priorities in the education and health care sectors. Consistent with the medium-term budget and investment framework described in subsection (f) of this section, the proposed division of this amount among the identified areas shall require the concurrence of both the Government of the United States and the Government of the Republic of the Marshall Islands, through the Joint Economic Management and Financial Accountability Committee described in section 214. The Government of the United States shall disburse the grant assistance and monitor the use of such grant assistance in accordance with the provisions of this Article and an Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as Amended, of Free Association Between the Government of the United States of America and the Government of the Republic of the Marshall Islands (''Fiscal Procedures Agreement'') which shall come into effect simultaneously with this Compact, as amended.

(1) EDUCATION.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to support and improve the educational system of the Republic of the Marshall Islands and develop the human, financial, and material resources necessary for the Republic of the Marshall Islands to perform these services. Emphasis should be placed on advancing a quality basic education system.

(2) HEALTH.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to support and improve the delivery of preventive, curative and environmental care and develop the human, financial, and material resources necessary for the Republic of the Marshall Islands to perform these services.

(3) PRIVATE SECTOR DEVELOPMENT.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to support the efforts of the Republic of the Marshall Islands to attract foreign investment and increase indigenous business activity by vitalizing the commercial environment, ensuring fair and equitable application of the law, promoting adherence to core labor standards, maintaining progress toward privatization of state-owned and partially state-owned enterprises, and engaging in other reforms.

(4) CAPACITY BUILDING IN THE PUBLIC SECTOR.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to support the efforts of the Republic of the Marshall Islands to build effective, accountable and transparent national and local government and other public sector institutions and systems.

(5) ENVIRONMENT.—United States grant assistance shall be made available in accordance with the strategic framework described in subsection (f) of this section to increase environmental protection; establish and manage conservation areas; engage in environmental infrastructure planning, design construction and operation; and to involve the citizens of the Republic of the Marshall Islands in the process of conserving their country's natural resources.

(b) KWAJALEIN ATOLL.—

(1) Of the total grant assistance made available under subsection (a) of this section, the amount specified herein shall be allocated annually from fiscal year 2004 through fiscal year 2023 (and thereafter in accordance with the Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights) to advance the objectives and specific priorities set forth in subsections (a) and (d) of this section and the Fiscal Procedures Agreement, to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll. This United States grant assistance shall be made available, in accordance with the medium-term budget and investment framework described in subsection (f) of this section, to support and improve the infrastructure and delivery of services and develop the human and material resources necessary for the Republic of the Marshall Islands to carry out its responsibility to maintain such infrastructure and deliver such services. The amount of this assistance shall be $3,100,000, with an inflation adjustment as provided in section 218, from fiscal year 2004 through fiscal year 2013 and the fiscal year 2013 level of funding, with an inflation adjustment as provided in section 218, will be increased by $2 million for fiscal year 2014. The fiscal year 2014 level of funding, with an inflation adjustment as provided in section 218, will be made available from fiscal year 2015 through fiscal year 2023 (and thereafter as noted above).

(2) The Government of the United States shall also provide to the Government of the Republic of the Marshall Islands, in conjunction with section 321(a) of this Compact, as amended, an annual payment from fiscal year 2004 through fiscal year 2023 (and thereafter in accordance with the Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights) of $1.9 million. This grant assistance will be subject to the Fiscal Procedures Agreement and will be adjusted for inflation under section 218 and used to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll with emphasis on the Kwajalein landowners, as described in the Fiscal Procedures Agreement.

(3) Of the total grant assistance made available under subsection (a) of this section, and in conjunction with section 321(a) of the Compact, as amended, $200,000, with an inflation adjustment as provided in section 218, shall be allocated annually from fiscal year 2004 through fiscal year 2023 (and thereafter as provided in the Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights) for a grant to support increased participation of the Government of the Republic of the Marshall Islands Environmental Protection Authority in the annual U.S. Army Kwajalein Atoll Environmental Standards Survey and to promote a greater Government of the Republic of the Marshall Islands capacity for independent analysis of the Survey's findings and conclusions.

(c) HUMANITARIAN ASSISTANCE—REPUBLIC OF THE MARSHALL ISLANDS PROGRAM.—In recognition of the special development needs of the Republic of the Marshall Islands, the Government of the United States shall make available to the Government of the Republic of the Marshall Islands, on its request and to be deducted from the grant amount made available under subsection (a) of this section, a Humanitarian Assistance—Republic of the Marshall Islands (''HARMI'') Program with emphasis on health, education, and infrastructure (including transportation), projects and such other projects as mutually agreed. The terms and conditions of the HARMI shall be set forth in the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended, which shall come into effect simultaneously with the amendments to this Compact.

(d) PUBLIC INFRASTRUCTURE.—

(1) Unless otherwise agreed, not less than 30 percent and not more than 50 percent of U.S. annual grant assistance provided under this section shall be made available in accordance with a list of specific projects included in the infrastructure improvement and maintenance plan prepared by the Government of the Republic of the Marshall Islands as part of the strategic framework described in subsection (f) of this section.

(2) INFRASTRUCTURE MAINTENANCE FUND.—Five percent of the annual public infrastructure grant made available under paragraph (1) of this subsection shall be set aside, with an equal contribution from the Government of the Republic of the Marshall Islands, as a contribution to an Infrastructure Maintenance Fund. Administration of the Infrastructure Maintenance Fund shall be governed by the Fiscal Procedures Agreement.

(e) DISASTER ASSISTANCE EMERGENCY FUND.—Of the total grant assistance made available under subsection (a) of this section, an amount of two hundred thousand dollars ($200,000) shall be provided annually, with an equal contribution from the Government of the Republic of the Marshall Islands, as a contribution to a Disaster Assistance Emergency Fund (''DAEF''). Any funds from the DAEF may be used only for assistance and rehabilitation resulting from disasters and emergencies. The funds will be accessed upon declaration of a State of Emergency by the Government of the Republic of the Marshall Islands, with the concurrence of the United States Chief of Mission to the Republic of the Marshall Islands. Administration of the DAEF shall be governed by the Fiscal Procedures Agreement.

(f) BUDGET AND INVESTMENT FRAMEWORK.—The Government of the Republic of the Marshall Islands shall prepare and maintain an official medium-term budget and investment framework. The framework shall be strategic in nature, shall be continuously reviewed and updated through the annual budget process, and shall make projections on a multi-year rolling basis. Each of the sectors and areas named in subsections (a), (b), and (d) of this section, or other sectors and areas as mutually agreed, shall be accorded specific treatment in the framework. Those portions of the framework that contemplate the use of United States grant funds shall require the concurrence of both the Government of the United States and the Government of the Republic of the Marshall Islands.

Section 212 - Kwajalein Impact and Use

The Government of the United States shall provide to the Government of the Republic of the Marshall Islands in conjunction with section 321(a) of the Compact, as amended, and the agreement between the Government of the United States and the Government of the Republic of the Marshall Islands regarding military use and operating rights, a payment in fiscal year 2004 of $15,000,000, with no adjustment for inflation. In fiscal year 2005 and

through fiscal year 2013, the annual payment will be the fiscal year 2004 amount ($15,000,000) with an inflation adjustment as provided under section 218. In fiscal year 2014, the annual payment will be $18,000,000 (with no adjustment for inflation) or the fiscal year 2013 amount with an inflation adjustment under section 218, whichever is greater. For fiscal year 2015 through fiscal year 2023 (and thereafter in accordance with the Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands Regarding Military Use and Operating Rights) the annual payment will be the fiscal year 2014 amount, with an inflation adjustment as provided under section 218.

Section 213 - Accountability

(a) Regulations and policies normally applicable to United States financial assistance to its state and local governments, as set forth in the Fiscal Procedures Agreement, shall apply to each grant described in section 211, and to grants administered under section 221 below, except as modified in the separate agreements referred to in section 231 of this Compact, as amended, or by U.S. law. As set forth in the Fiscal Procedures Agreement, reasonable terms and conditions, including annual performance indicators that are necessary to ensure effective use of United States assistance and reasonable progress toward achieving program objectives may be attached. In addition, the United States may seek appropriate remedies for noncompliance with the terms and conditions attached to the assistance, or for failure to comply with section 234, including withholding assistance.

(b) The Government of the United States shall, for each fiscal year of the twenty years during which assistance is to be provided on a sector grant basis under section 211 (a), grant the Government of the Republic of the Marshall Islands an amount equal to the lesser of (i) one half of the reasonable, properly documented cost incurred during such fiscal year to conduct the annual audit required under Article VIII (2) of the Fiscal Procedures Agreement or (ii) $500,000. Such amount will not be adjusted for inflation under section 218 or otherwise.

Section 214 - Joint Economic Management and Financial Accountability Committee

The Governments of the United States and the Republic of the Marshall Islands shall establish a Joint Economic Management and Financial Accountability Committee, composed of a U.S. chair, two other members from the Government of the United States and two members from the Government of the Republic of the Marshall Islands. The Joint Economic Management and Financial Accountability Committee shall meet at least once each year to review the audits and reports required under this Title and the Fiscal Procedures Agreement, evaluate the progress made by the Republic of the Marshall Islands in meeting the objectives identified in its framework described in subsection (f) of section 211, with particular focus on those parts of the framework dealing with the sectors and areas identified in subsection (a) of section 211, identify problems encountered, and recommend ways to increase the effectiveness of U.S. assistance made available under this Title. The establishment and operations of the Joint Economic Management and Financial Accountability Committee shall be governed by the Fiscal Procedures Agreement.

Section 215 - Annual Report

The Government of the Republic of the Marshall Islands shall report annually to the President of the United States on the use of United States sector grant assistance and other assistance and progress in meeting mutually agreed program and economic goals. The Joint Economic Management and Financial Accountability Committee shall review and comment on the report and make appropriate recommendations based thereon.

Section 216 - Trust Fund

(a) The United States shall contribute annually for twenty years from the effective date of the Compact, as amended, in the amounts set forth in section 217 into a trust fund established in accordance with the Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Implementing Section 216 and Section 217 of the Compact, as Amended, Regarding a Trust Fund (''Trust Fund Agreement''), which shall come into effect simultaneously with this Compact, as amended. Upon termination of the annual grant assistance under section 211 (a), (d) and (e), the earnings of the fund shall thereafter be used for the purposes described in section 211 or as otherwise mutually agreed.

(b) The United States contribution into the Trust Fund described in subsection (a) of this section is conditioned on the Government of the Republic of the Marshall Islands contributing to the Trust Fund at least $25,000,000, on the effective date of the Trust Fund Agreement or on October 1, 2003, whichever is later, $2,500,000 prior to October 1, 2004, and $2,500,000 prior to October 1, 2005. Any funds received by the Republic of the Marshall Islands under section 111(d) of Public Law 99–239 (January 14, 1986), or successor provisions, would be contributed to the Trust Fund as a Republic of the Marshall Islands' contribution.

(c) The terms regarding the investment and management of funds and use of the income of the Trust Fund shall be governed by the Trust Fund Agreement. Funds derived from United States investment shall not be subject to Federal or state taxes in the United States or any taxes in the Republic of the Marshall Islands. The Trust Fund Agreement shall also provide for annual reports to the Government of the United States and to the Government of the Republic of the Marshall Islands. The Trust Fund Agreement shall provide for appropriate distributions of trust fund proceeds to the Republic of the Marshall Islands and for appropriate remedies for the failure of the Republic of the Marshall Islands to use income of the Trust Fund for the annual grant purposes set forth in section 211. These remedies may include the return to the United States of the present market value of its contributions to the Trust Fund and the present market value of any undistributed income on the contributions of the United States. If this Compact, as amended, is terminated, the provisions of sections 451–453 of the Compact, as amended, and the Trust Fund Agreement shall govern treatment of any U.S. contributions to the Trust Fund or accrued income thereon.

Section 217 - Annual Grant Funding and Trust Fund Contributions

The funds described in sections 211, 212, 213(b), and 216 shall be made available as follows:

[In millions of dollars]

Fiscal year	Annual Grants Section 211	Audit Grant Section 213(b)	Trust Fund Section 216 (a&c)	Kwajalein Impact Section 212	Total
2004	35.2	.5	7	15.0	57.7
2005	34.7	.5	7.5	15.0	57.7
2006	34.2	.5	8	15.0	57.7
2007	33.7	.5	8.5	15.0	57.7
2008	33.2	.5	9	15.0	57.7
2009	32.7	.5	9.5	15.0	57.7
2010	32.2	.5	10	15.0	57.7
2011	31.7	.5	10.5	15.0	57.7
2012	31.2	.5	11	15.0	57.7
2013	30.7	.5	11.5	15.0	57.7
2014	32.2	.5	12	18.0	62.7
2015	31.7	.5	12.5	18.0	62.7
2016	31.2	.5	13	18.0	62.7
2017	30.7	.5	13.5	18.0	62.7
2018	30.2	.5	14	18.0	62.7
2019	29.7	.5	14.5	18.0	62.7
2020	29.2	.5	15	18.0	62.7
2021	28.7	.5	15.5	18.0	62.7
2022	28.2	.5	16	18.0	62.7
2023	27.7	.5	16.5	18.0	62.7

Section 218 - Inflation Adjustment

Except as otherwise provided, the amounts stated in this Title shall be adjusted for each United States Fiscal Year by the percent that equals two-thirds of the percent change in the United States Gross Domestic Product Implicit Price Deflator, or 5 percent, whichever is less in any one year, using the beginning of Fiscal Year 2004 as a base.

Section 219 - Carry-Over of Unused Funds

If in any year the funds made available by the Government of the United States for that year pursuant to this Article are not completely obligated by the Government of the Republic of the Marshall Islands, the unobligated balances shall remain available in

addition to the funds to be provided in subsequent years.

Article II

Services and Program Assistance

Section 221

(a) SERVICES.—The Government of the United States shall make available to the Republic of the Marshall Islands, in accordance with and to the extent provided in the Federal Programs and Services Agreement referred to in Section 231, the services and related programs of:

(1) the United States Weather Service;

(2) the United States Postal Service;

(3) the United States Federal Aviation Administration;

(4) the United States Department of Transportation; and

(5) the Department of Homeland Security, and the United States Agency for International Development, Office of Foreign Disaster Assistance.

Upon the effective date of this Compact, as amended, the United States Departments and Agencies named or having responsibility to provide these services and related programs shall have the authority to implement the relevant provisions of the Federal Programs and Services Agreement referred to in section 231.

(b) PROGRAMS.—

(1) Other than the services and programs covered by subsection (a) of this section, and to the extent authorized by the Congress of the United States, the Government of the United States shall make available to the Republic of the Marshall Islands the services and programs that were available to the Republic of the Marshall Islands on the effective date of this Compact, as amended, to the extent that such services and programs continue to be available to State and local governments of the United States. As set forth in the Fiscal Procedures Agreement, funds provided under subsection (a) of section 211 shall be considered to be local revenues of the Government of the Republic of the Marshall Islands when used as the local share required to obtain Federal programs and services.

(2) Unless provided otherwise by U.S. law, the services and programs described in paragraph (1) of this subsection shall be extended in accordance with the terms of the Federal Programs and Services Agreement.

(c) The Government of the United States shall have and exercise such authority as is necessary to carry out its responsibilities under this Title and the Federal Programs and Services Agreement, including the authority to monitor and administer all service and program assistance provided by the United States to the Republic of the Marshall Islands. The Federal Programs and Services Agreement shall also set forth the extent to which services and programs shall be provided to the Republic of the Marshall Islands.

(d) Except as provided elsewhere in this Compact, as amended, under any separate agreement entered into under this Compact, as amended, or otherwise under U.S. law, all Federal domestic programs extended to or operating in the Republic of the Marshall Islands shall be subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs and services when operating in the United States.

(e) The Government of the United States shall make available to the Republic of the Marshall Islands alternate energy development projects, studies, and conservation measures to the extent provided for the Freely Associated States in the laws of the United States.

Section 222

The Government of the United States and the Government of the Republic of the Marshall Islands may agree from time to time to extend to the Republic of the Marshall Islands additional United States grant assistance, services and programs, as provided under the laws of the United States. Unless inconsistent with such laws, or otherwise specifically precluded by the Government of the United States at the time such additional grant assistance, services, or programs are extended, the Federal Programs and Services Agreement shall apply to any such assistance, services or programs.

Section 223

The Government of the Republic of the Marshall Islands shall make available to the Government of the United States at no cost such land as may be necessary for the operations of the services and programs provided pursuant to this Article, and such facilities as are provided by the Government of the Republic of the Marshall Islands at no cost to the Government of the United States as of the effective date of this Compact, as amended, or as may be mutually agreed thereafter.

Section 224

The Government of the Republic of the Marshall Islands may request, from the time to time, technical assistance from the Federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its laws. If technical assistance is granted pursuant to such a request, the Government of the United States shall provide the technical assistance in a manner which gives priority consideration to the Republic of the Marshall Islands over other recipients not a part of the United States, its territories or possessions, and equivalent consideration to the Republic of the Marshall Islands with respect to other states in Free Association with the United States. Such assistance shall be made available on a reimbursable or non-reimbursable basis to the extent provided by United States law.

Article III

Administrative Provisions

Section 231

The specific nature, extent and contractual arrangements of the services and programs provided for in section 221 of this Compact, as amended, as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in the Republic of the Marshall Islands, and other arrangements in connection with the assistance, services, or programs furnished by the Government of the United States, are set forth in a Federal Programs and Services Agreement which shall come into effect simultaneously with this Compact, as amended.

Section 232

The Government of the United States, in consultation with the Government of the Republic of the Marshall Islands, shall determine and implement procedures for the periodic audit of all grants and other assistance made under Article I of this Title and of all funds expended for the services and programs provided under Article II of this Title. Further, in accordance with the Fiscal Procedures Agreement described in subsection (a) of section 211, the Comptroller General of the United States shall have such powers and authorities as described in sections 103(m) and 110(c) of Public Law 99–239, 99 Stat. 1777–78, and 99 Stat. 1799 (January 14, 1986).

Section 233

Approval of this Compact, as amended, by the Government of the United States, in accordance with its constitutional processes, shall constitute a pledge by the United States that the sums and amounts specified as grants in section 211 of this Compact, as amended, shall be appropriated and paid to the Republic of the Marshall Islands for such period as those provisions of this Compact, as amended, remain in force, provided that the Republic of the Marshall Islands complies with the terms and conditions of this Title and related subsidiary agreements.

Section 234

The Government of the Republic of the Marshall Islands pledges to cooperate with, permit, and assist if reasonably requested, designated and authorized representatives of the Government of the United States charged with investigating whether Compact funds, or any other assistance authorized under this Compact, as amended, have, or are being, used for purposes other than those set forth in this Compact, as amended, or its subsidiary agreements. In carrying out this investigative authority, such United States Government representatives may request that the Government of the Republic of the Marshall Islands subpoena documents and records and compel testimony in accordance with the laws and Constitution of the Republic of the Marshall Islands. Such assistance by the Government of the Republic of the Marshall Islands to the Government of the United States shall not be unreasonably withheld. The obligation of the Government of the Marshall Islands to fulfill its pledge herein is a condition to its receiving payment of such funds or other assistance authorized under this Compact, as amended. The Government of the United States shall pay any reasonable costs for extraordinary services executed by the Government of the Marshall Islands in carrying out the provisions of this section.

Article IV

Trade

Section 241

The Republic of the Marshall Islands is not included in the customs territory of the United States.

Section 242

The President shall proclaim the following tariff treatment for articles imported from the Republic of the Marshall Islands which shall apply during the period of effectiveness of this title:

(a) Unless otherwise excluded, articles imported from the Republic of the Marshall Islands, subject to the limitations imposed under section 503(b) of title V of the Trade Act of 1974 (19 U.S.C. 2463(b)), shall be exempt from duty.

(b) Only tuna in airtight containers provided for in heading 1604.14.22 of the Harmonized Tariff Schedule of the United States that is imported from the Republic of the Marshall Islands and the Federated States of Micronesia during any calendar year not to exceed 10 percent of apparent United States consumption of tuna in airtight containers during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty-free treatment under this paragraph for any calendar year shall be counted against the aggregated quantity of tuna in airtight containers that is dutiable under rate column numbered 1 of such heading 1604.14.22 for that calendar year.

(c) The duty-free treatment provided under subsection (a) shall not apply to:

(1) watches, clocks, and timing apparatus provided for in Chapter 91, excluding heading 9113, of the Harmonized Tariff Schedule of the United States;

(2) buttons (whether finished or not finished) provided for in items 9606.21.40 and 9606.29.20 of such Schedule;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of the Republic of the Marshall Islands, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(a)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from the Republic of the Marshall Islands which are not exempt from duty under subsections (a), (b), (c), and (d) of section 242 shall be subject to the rates of duty set forth in column numbered 1-general of the Harmonized Tariff Schedule of the United States (HTSUS).

Section 244

(a) All products of the United States imported into the Republic of the Marshall Islands shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage or use.

(b) The provisions of subsection (a) shall not apply to advantages accorded by the Republic of the Marshall Islands by virtue of their full membership in the Pacific Island Countries Trade Agreement (PICTA), done on August 18, 2001, to those governments listed in Article 26 of PICTA, as of the date the Compact, as amended, is signed.

(c) Prior to entering into consultations on, or concluding, a free trade agreement with governments not listed in Article 26 of PICTA, the Republic of the Marshall Islands shall consult with the United States regarding whether or how subsection (a) of section 244 shall be applied.

Article V

Finance and Taxation

Section 251

The currency of the United States is the official circulating legal tender of the Republic of the Marshall Islands. Should the Government of the Republic of the Marshall Islands act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of the Republic of the Marshall Islands may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as the Government of the Republic of the Marshall Islands deems appropriate. The determination of the source of any income, or the situs of any property, shall for purposes of this Compact, as amended, be made according to the United States Internal Revenue Code.

Section 253

A citizen of the Republic of the Marshall Islands, domiciled therein, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States, provided that such citizen of the Republic of the Marshall Islands is neither a citizen nor a resident of the United States.

Section 254

(a) In determining any income tax imposed by the Government of the Republic of the Marshall Islands, the Government of the Republic of the Marshall Islands shall have authority to impose tax upon income derived by a resident of the Republic of the Marshall Islands from sources without the Republic of the Marshall Islands, in the same manner and to the same extent as the Government of the Republic of the Marshall Islands imposes tax upon income derived from within its own jurisdiction. If the Government of the Republic of the Marshall Islands exercises such authority as provided in this subsection, any individual resident of the Republic of the Marshall Islands who is subject to tax by the Government of the United States on income which is also taxed by the Government of the Republic of the Marshall Islands shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. However, the relief from liability to the United States Government referred to in the preceding sentence means only relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and relief in the form of the exclusion under section 911 of the Internal Revenue Code of 1986. For purposes of this section, the term ''resident of the Republic of the Marshall Islands'' shall be deemed to include any person who was physically present in the Republic of the Marshall Islands for a period of 183 or more days during any taxable year.

(b) If the Government of the Republic of the Marshall Islands subjects income to taxation substantially similar to that which was imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in section 254(a).

Section 255

For purposes of section 274(h)(3)(A) of the U.S. Internal Revenue Code of 1986, the term ''North American Area'' shall include the Republic of the Marshall Islands.

TITLE THREE

SECURITY AND DEFENSE RELATIONS

Article I

Authority and Responsibility

Section 311

(a) The Government of the United States has full authority and responsibility for security and defense matters in or relating to the Republic of the Marshall Islands.

(b) This authority and responsibility includes:

(1) the obligation to defend the Republic of the Marshall Islands and its people from attack or threats thereof as the United States and its citizens are defended;

(2) the option to foreclose access to or use of the Republic of the Marshall Islands by military personnel or for the military purposes of any third country; and

(3) the option to establish and use military areas and facilities in the Republic of the Marshall Islands, subject to the terms of the separate agreements referred to in sections 321 and 323.

(c) The Government of the United States confirms that it shall act in accordance with the principles of international law and the Charter of the United Nations in the exercise of this authority and responsibility.

Section 312

Subject to the terms of any agreements negotiated in accordance with sections 321 and 323, the Government of the United States may conduct within the lands, waters and airspace of the Republic of the Marshall Islands the activities and operations necessary for the exercise of its authority and responsibility under this Title.

Section 313

(a) The Government of the Republic of the Marshall Islands shall refrain from actions that the Government of the United States determines, after appropriate consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Republic of the Marshall Islands.

(b) The consultations referred to in this section shall be conducted expeditiously at senior levels of the two Governments, and the subsequent determination by the Government of the United States referred to in this section shall be made only at senior interagency levels of the Government of the United States.

(c) The Government of the Republic of the Marshall Islands shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of State personally and the United States Secretary of Defense personally regarding any determination made in accordance with this section.

Section 314

(a) Unless otherwise agreed, the Government of the United States shall not, in the Republic of the Marshall Islands:

(1) test by detonation or dispose of any nuclear weapon, nor test, dispose of, or discharge any toxic chemical or biological weapon; or

(2) test, dispose of, or discharge any other radioactive, toxic chemical or biological materials in an amount or manner that would be hazardous to public health or safety.

(b) Unless otherwise agreed, other than for transit or overflight purposes or during time of a national emergency declared by the President of the United States, a state of war declared by the Congress of the United States or as necessary to defend against an actual or impending armed attack on the United States, the Republic of the Marshall Islands or the Federated States of Micronesia, the Government of the United States shall not store in the Republic of the Marshall Islands or the Federated States of Micronesia any toxic chemical weapon, nor any radioactive materials nor any toxic chemical materials intended for weapons use.

(c) Radioactive, toxic chemical, or biological materials not intended for weapons use shall not be affected by section 314(b).

(d) No material or substance referred to in this section shall be stored in the Republic of the Marshall Islands except in an amount and manner which would not be hazardous to public health or safety. In determining what shall be an amount or manner which would be hazardous to public health or safety under this section, the Government of the United States shall comply with any applicable mutual agreement, international guidelines accepted by the Government of the United States, and the laws of the United States and their implementing regulations.

(e) Any exercise of the exemption authority set forth in section 161(e) shall have no effect on the obligations of the Government of the United States under this section or on the application of this subsection.

(f) The provisions of this section shall apply in the areas in which the Government of the Republic of the Marshall Islands exercises jurisdiction over the living resources of the seabed, subsoil or water column adjacent to its coasts.

Section 315

The Government of the United States may invite members of the armed forces of other countries to use military areas and facilities in the Republic of the Marshall Islands, in conjunction with and under the control of United States Armed Forces. Use by units of the armed forces of other countries of such military areas and facilities, other than for

transit and overflight purposes, shall be subject to consultation with and, in the case of major units, approval of the Government of the Republic of the Marshall Islands.

Section 316

The authority and responsibility of the Government of the United States under this Title may not be transferred or otherwise assigned.

Article II

Defense Facilities and Operating Rights

Section 321

(a) Specific arrangements for the establishment and use by the Government of the United States of military areas and facilities in the Republic of the Marshall Islands are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

(b) If, in the exercise of its authority and responsibility under this Title, the Government of the United States requires the use of areas within the Republic of the Marshall Islands in addition to those for which specific arrangements are concluded pursuant to section 321(a), it may request the Government of the Republic of the Marshall Islands to satisfy those requirements through leases or other arrangements. The Government of the Republic of the Marshall Islands shall sympathetically consider any such request and shall establish suitable procedures to discuss it with and provide a prompt response to the Government of the United States.

(c) The Government of the United States recognizes and respects the scarcity and special importance of land in the Republic of the Marshall Islands. In making any requests pursuant to section 321(b), the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy its requirement through public real property, where available, rather than through private real property.

Section 322

The Government of the United States shall provide and maintain fixed and floating aids to navigation in the Republic of the Marshall Islands at least to the extent necessary for the exercise of its authority and responsibility under this Title.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in the Republic of the Marshall Islands are set forth in separate agreements, which shall remain in effect in accordance with the terms of such agreements.

Article III

Defense Treaties and International Security Agreements

Section 331

Subject to the terms of this Compact, as amended, and its related agreements, the Government of the United States, exclusively, has assumed and enjoys, as to the Republic of the Marshall Islands, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as Administering Authority of the Trust Territory of the Pacific Islands as of October 20, 1986.

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in the Republic of the Marshall Islands. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of the Republic of the Marshall Islands.

Article IV

Service in Armed Forces of the United States

Section 341

Any person entitled to the privileges set forth in Section 141 (with the exception of any person described in section 141(a)(5) who is not a citizen of the Republic of the Marshall Islands) shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States as long as such person has resided in the United States for a period of less than one year, provided that no time shall count towards this one year while a person admitted to the United States under the Compact, or the Compact, as amended, is engaged in full-time study in the United States. Any person described in section 141(a)(5) who is not a citizen of the Republic of the Marshall Islands shall be subject to United States laws relating to selective service.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from the Republic of the Marshall Islands, as may be nominated by the Government of the Republic of the Marshall Islands, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195.

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to section 342(b) of this Compact, as amended.

Article V

General Provisions

Section 351

(a) The Government of the United States and the Government of the Republic of the Marshall Islands shall continue to maintain a Joint Committee empowered to consider disputes arising under the implementation of this Title and its related agreements.

(b) The membership of the Joint Committee shall comprise selected senior officials of the two Governments. The senior United States military commander in the Pacific area shall be the senior United States member of the Joint Committee. For the meetings of the Joint Committee, each of the two Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the Joint Committee shall meet annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The Joint Committee also shall meet promptly upon request of either of its members. The Joint Committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree. Upon notification by the Government of the United States, the Joint Committee of the United States and the Republic of the Marshall Islands shall meet promptly in a combined session with the Joint Committee established and maintained by the Government of the United States and the Government of the Federated States of Micronesia to consider matters within the jurisdiction of the two Joint Committees.

(d) Unresolved issues in the Joint Committee shall be referred to the Governments for resolution, and the Government of the Republic of the Marshall Islands shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under Title Three, the Government of the United States shall accord due respect to the authority and responsibility of the Government of the Republic of the Marshall Islands under Titles One, Two and Four and to the responsibility of the Government of the Republic of the Marshall Islands to assure the well-being of its people.

Section 353

(a) The Government of the United States shall not include the Government of the Republic of the Marshall Islands as a named party to a formal declaration of war, without that Government's consent.

(b) Absent such consent, this Compact, as amended, is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or Government of the Republic of the Marshall Islands, which arise out of armed conflict subsequent to October 21, 1986, and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under section 353(b)(1) shall be treated as if they were made by citizens of the United States.

Section 354

(a) The Government of the United States and the Government of the Republic of the Marshall Islands are jointly committed to continue their security and defense relations, as set forth in this Title. Accordingly, it is the intention of the two countries that the provisions of this Title shall remain binding as long as this Compact, as amended, remains in effect, and thereafter as mutually agreed, unless earlier terminated by mutual agreement pursuant to section 441, or amended pursuant to Article III of Title Four. If at any time the Government of the United States, or the Government of the Republic of the Marshall Islands, acting unilaterally, terminates this Title, such unilateral termination shall be considered to be termination of the entire Compact, as amended, in which case the provisions of section 442 and 452 (in the case of termination by the Government of the United States) or sections 443 and 453 (in the case of termination by the Government of the Republic of the Marshall Islands), with the exception of paragraph (3) of subsection (a) of section 452 or paragraph (3) of subsection (a) of section 453, as the case may be, shall apply.

(b) The Government of the United States recognizes, in view of the special relationship between the Government of the United States and the Government of the Republic of the Marshall Islands, and in view of the existence of the separate agreement regarding mutual security concluded with the Government of the Republic of the Marshall Islands pursuant to sections 321 and 323, that, even if this Title should terminate, any attack on the Republic of the Marshall Islands during the period in which such separate agreement is in effect, would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, the Government of the United States would take action to meet the danger to the United States and to the Republic of the Marshall Islands in accordance with its constitutional processes.

(c) As reflected in Article 21(1)(b) of the Trust Fund Agreement, the Government of

the United States and the Government of the Republic of the Marshall Islands further recognize, in view of the special relationship between their countries, that even if this Title should terminate, the Government of Republic of the Marshall Islands shall refrain from actions which the Government of the United States determines, after appropriate consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Republic of the Marshall Islands or the Federated States of Micronesia.

TITLE FOUR

GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

Pursuant to section 432 of the Compact and subject to subsection (e) of section 461 of the Compact, as amended, the Compact, as amended, shall come into effect upon mutual agreement between the Government of the United States and the Government of the Republic of the Marshall Islands subsequent to completion of the following:

(a) Approval by the Government of the Republic of the Marshall Islands in accordance with its constitutional processes.

(b) Approval by the Government of the United States in accordance with its constitutional processes.

Article II

Conference and Dispute Resolution

Section 421

The Government of the United States shall confer promptly at the request of the Government of the Republic of the Marshall Islands and that Government shall confer promptly at the request of the Government of the United States on matters relating to the provisions of this Compact, as amended, or of its related agreements.

Section 422

In the event the Government of the United States or the Government of the Republic of the Marshall Islands, after conferring pursuant to section 421, determines that there is a dispute and gives written notice thereof, the two Governments shall make a good faith effort to resolve the dispute between themselves.

Section 423

If a dispute between the Government of the United States and the Government of the Republic of the Marshall Islands cannot be resolved within 90 days of written notification in the manner provided in section 422, either party to the dispute may refer it to arbitration in accordance with section 424.

Section 424

Should a dispute be referred to arbitration as provided for in section 423, an Arbitration Board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An Arbitration Board shall consist of a Chairman and two other members, each of whom shall be a citizen of a party to the dispute. Each of the two Governments that is a party to the dispute shall appoint one member to the Arbitration Board. If either party to the dispute does not fulfill the appointment requirements of this section within 30 days of referral of the dispute to arbitration pursuant to section 423, its member on the Arbitration Board shall be selected from its own standing list by the other party to the dispute. Each Government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a Chairman within 15 days after selection of the other members of the Arbitration Board. Failing agreement on a Chairman, the Chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) Unless otherwise provided in this Compact, as amended, or its related agreements, the Arbitration Board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles I, II, III, IV and V of Title One, Title Two, Title Four, and their related agreements.

(c) Each member of the Arbitration Board shall have one vote. Each decision of the Arbitration Board shall be reached by majority vote.

(d) In determining any legal issue, the Arbitration Board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The Arbitration Board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact, as amended. Unless the parties provide otherwise by mutual agreement, the Arbitration Board shall endeavor to render its decision within 30 days after the conclusion of arguments. The Arbitration Board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the Arbitration Board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of the Republic of the Marshall Islands.

Article III

Amendment

Section 431

The provisions of this Compact, as amended, may be further amended by mutual agreement of the Government of the United States and the Government of the Republic of the Marshall Islands, in accordance with their respective constitutional processes.

Article IV

Termination

Section 441

This Compact, as amended, may be terminated by mutual agreement of the Government of the Republic of the Marshall Islands and the Government of the United States, in accordance with their respective constitutional processes. Such mutual termination of this Compact, as amended, shall be without prejudice to the continued application of section 451 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 442

Subject to section 452, this Compact, as amended, may be terminated by the Government of the United States in accordance with its constitutional processes. Such termination shall be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended. Such termination of this Compact, as amended, shall be without prejudice to the continued application of section 452 of this Compact, as amended, and the provisions of the Compact, as amended, set forth therein.

Section 443

This Compact, as amended, shall be terminated by the Government of the Republic of the Marshall Islands, pursuant to its constitutional processes, subject to section 453 if the people represented by that Government vote in a plebiscite to terminate the Compact. The Government of the Republic of the Marshall Islands shall notify the Government of the United States of its intention to call such a plebiscite, which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by the Government of the Republic of the Marshall Islands in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, the Government of the Republic of the Marshall Islands shall, upon certification of the results of the plebiscite, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V

Survivability

Section 451

(a) Should termination occur pursuant to section 441, economic and other assistance by the Government of the United States shall continue only if and as mutually agreed by the Governments of the United States and the Republic of the Marshall Islands, and in accordance with the countries' respective constitutional processes.

(b) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections (b) and (c) of section 354 of this Compact, as amended, and the separate agreement entered into consistent with those subsections, if termination occurs pursuant to section 441 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 216 of this Compact, as amended.

(c) In view of the special relationship of the United States and the Republic of the Marshall Islands described in subsection (b) of this section, if termination occurs pursuant to section 441 following the twentieth anniversary of the effective date of this Compact, as amended, the Republic of the Marshall Islands shall be entitled to receive proceeds from the Trust Fund described in section 216 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 452

(a) Should termination occur pursuant to section 442 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this amended Compact shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

(1) Article VI and sections 172, 173, 176 and 177 of Title One;

(2) Article One and sections 232 and 234 of Title Two;

(3) Title Three; and

(4) Articles II, III, V and VI of Title Four.

(b) Should termination occur pursuant to section 442 before the twentieth anniversary of the effective date of this Compact, as amended:

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, economic and other assistance by the United States shall continue only if and as mutually agreed by the Governments of the United States and the Republic of the Marshall Islands.

(2) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections (b)

and (c) of section 354 of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, the United States shall continue to make contributions to the Trust Fund described in section 216 of this Compact, as amended, in the manner described in the Trust Fund Agreement.

(c) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 442 following the twentieth anniversary of the effective date of this Compact, as amended, the Republic of the Marshall Islands shall continue to be eligible to receive proceeds from the Trust Fund described in section 216 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 453

(a) Should termination occur pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:

(1) Article VI and sections 172, 173, 176 and 177 of Title One;

(2) Sections 232 and 234 of Title Two;

(3) Title Three; and

(4) Articles II, III, V and VI of Title Four.

(b) Upon receipt of notice of termination pursuant to section 443, the Government of the United States and the Government of the Republic of the Marshall Islands shall promptly consult with regard to their future relationship. Except as provided in subsections (c) and (d) of this section, these consultations shall determine the level of economic and other assistance, if any, which the Government of the United States shall provide to the Government of the Republic of the Marshall Islands for the period ending on the twentieth anniversary of the effective date of this Compact, as amended, and for any period thereafter, if mutually agreed.

(c) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the United States shall continue to make contributions to the Trust Fund described in section 216 of this Compact, as amended.

(d) In view of the special relationship of the United States and the Republic of the Marshall Islands, as reflected in subsections 354(b) and (c) of this Compact, as amended, and the separate agreement regarding mutual security, and the Trust Fund Agreement, if termination occurs pursuant to section 443 following the twentieth anniversary of the effective date of this Compact, as amended, the Republic of the Marshall Islands shall continue to be eligible to receive proceeds from the Trust Fund described in section 216 of this Compact, as amended, in the manner described in those provisions and the Trust Fund Agreement.

Section 454

Notwithstanding any other provision of this Compact, as amended:

(a) The Government of the United States reaffirms its continuing interest in promoting the economic advancement and budgetary self-reliance of the people of the Republic of the Marshall Islands.

(b) The separate agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms.

Article VI

Definition of Terms

Section 461

For the purpose of this Compact, as amended, only, and without prejudice to the views of the Government of the United States or the Government of the Republic of the Marshall Islands as to the nature and extent of the jurisdiction of either of them under international law, the following terms shall have the following meanings:

(a) ''Trust Territory of the Pacific Islands'' means the area established in the Trusteeship Agreement consisting of the former administrative districts of Kosrae, Yap, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, section 1, in force on January 1, 1979. This term does not include the area of Palau or the Northern Mariana Islands.

(b) ''Trusteeship Agreement'' means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) ''The Republic of the Marshall Islands'' and ''the Federated States of Micronesia'' are used in a geographic sense and include the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States.

(d) ''Compact'' means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99–239 (Jan. 14, 1986) and went into effect with respect to the Republic of the Marshall Islands on October 21, 1986.

(e) ''Compact, as amended'' means the Compact of Free Association Between the United States and the Republic of the Marshall Islands, as amended. The effective date of the Compact, as amended, shall be on a date to be determined by the President of the United States, and agreed to by the Government of the Republic of the Marshall Islands, following formal approval of the Compact, as amended, in accordance with section 411 of this Compact, as amended.

(f) ''Government of the Republic of the Marshall Islands'' means the Government established and organized by the Constitution of the Republic of the Marshall Islands including all the political subdivisions and entities comprising that Government.

(g) ''Government of the Federated States of Micronesia'' means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

(h) The following terms shall be defined consistent with the 1978 Edition of the Radio Regulations of the International Telecommunications as follows:

(1) ''Radiocommunication'' means telecommunication by means of radio waves.

(2) ''Station'' means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service, or the radio astronomy service.

(3) ''Broadcasting Service'' means a radiocommunication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other types of transmission.

(4) ''Broadcasting Station'' means a station in the broadcasting service.

(5) ''Assignment (of a radio frequency or radio frequency channel)'' means an authorization given by an administration for a radio station to use a radio frequency or radio frequency channel under specified conditions.

(6) ''Telecommunication'' means any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems.

(i) ''Military Areas and Facilities'' means those areas and facilities in the Republic of the Marshall Islands reserved or acquired by the Government of the Republic of the Marshall Islands for use by the Government of the United States, as set forth in the separate agreements referred to in section 321.

(j) ''Tariff Schedules of the United States'' means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(k) ''Vienna Convention on Diplomatic Relations'' means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

(a) The Government of the United States and the Government of the Republic of the Marshall Islands previously have concluded agreements, which shall remain in effect and shall survive in accordance with their terms, as follows:

(1) Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association;

(2) Agreement Between the Government of the United States and the Government of the Marshall Islands by Persons Displaced as a Result of the United States Nuclear Testing Program in the Marshall Islands;

(3) Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding the Resettlement of Enjebi Island;

(4) Agreement Concluded Pursuant to Section 234 of the Compact; and

(5) Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association.

(b) The Government of the United States and the Government of the Republic of the Marshall Islands shall conclude prior to the date of submission of this Compact to the legislatures of the two countries, the following related agreements which shall come into effect on the effective date of this Compact, as amended, and shall survive in accordance with their terms, as follows:

(1) Federal Programs and Services Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Concluded Pursuant to Article III of Title One, Article II of Title Two (including Section 222), and Section 231 of the Compact of Free Association, as Amended, which include:

(i) Postal Services and Related Programs;

(ii) Weather Services and Related Programs;

(iii) Civil Aviation Safety Service and Related Programs;

(iv) Civil Aviation Economic Services and Related Programs;

(v) United States Disaster Preparedness and Response Services and Related Programs; and

(vi) Telecommunications Services and Related Programs.

(2) Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 (a) of the Compact of Free Association, as Amended;

(3) Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands on Labor Recruitment Concluded Pursuant to Section 175 (b) of the Compact of Free Association, as Amended;

(4) Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as Amended, of Free Association Between the Government of the United States of America and the Government of the Republic of the Marshall Islands;

(5) Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Implementing Section 216 and Section 217 of the Compact, as Amended, Regarding a Trust Fund;

(6) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended; and,

(7) Status of Forces Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Concluded Pursuant to Section 323 of the Compact of Free Association, as Amended.

Section 463

(a) Except as set forth in subsection (b) of this section, any reference in this Compact, as amended, to a provision of the United States Code or the Statutes at Large of the United States constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended.

(b) Any reference in Article IV and VI of Title One, and Sections 174, 175, 178 and 342 to a provision of the United States Code or the Statutes at Large of the United States or to the Privacy Act, the Freedom of Information Act, the Administrative Procedure Act or the Immigration and Nationality Act constitutes the incorporation of the language of such provision into this Compact, as amended, as such provision was in force on the effective date of this Compact, as amended, or as it may be amended thereafter on a nondiscriminatory basis according to the constitutional processes of the United States.

Article VII

Concluding Provisions

Section 471

Both the Government of the United States and the Government of the Republic of the Marshall Islands shall take all necessary steps, of a general or particular character, to ensure, no later than the entry into force date of this Compact, as amended, the conformity of its laws, regulations and administrative procedures with the provisions of this Compact, as amended, or, in the case of subsection (d) of section 141, as soon as reasonably possible thereafter.

Section 472

This Compact, as amended, may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Republic of the Marshall Islands.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Compact of Free Association, as amended, which shall enter into force upon the exchange of diplomatic notes by which the Government of the United States of America and the Government of the Republic of the Marshall Islands inform each other about the fulfillment of their respective requirements for entry into force.

DONE at Majuro, Republic of the Marshall Islands, in duplicate, this thirtieth (30) day of April, 2003, each text being equally authentic.

Signed (May 14, 2003) For the Government of the United States of America:	**Signed (May 14, 2003) For the Government of the Federated States of Micronesia:**

Approved _____, 2003.

SA 2138. Mr. MCCAIN (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the joint resolution H.J. Res. 63, to approve the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to appropriate funds to carry out the amended Compacts.''; as follows:

Strike the preamble and insert the following:

Whereas the United States (in accordance with the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the United Nations Charter, and the objectives of the international trusteeship system of the United Nations) fulfilled its obligations to promote the development of the people of the Trust Territory toward self-government or independence as appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned;

Whereas the United States, the Federated States of Micronesia, and the Republic of the Marshall Islands entered into the Compact of Free Association set forth in title II of Public Law 99–239, January 14, 1986, 99 Stat. 1770, to create and maintain a close and mutually beneficial relationship;

Whereas the United States, in accordance with section 231 of the Compact of Free Association entered into negotiations with the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands to provide continued United States assistance and to reaffirm its commitment to this close and beneficial relationship; and

Whereas these negotiations, in accordance with section 431 of the Compact, resulted in the ''Compact of Free Association, as amended between the Government of the United States of America and the Government of the Federated States of Micronesia'', and the ''Compact of Free Association, as amended between the Government of the United States of America and the Government of the Republic of the Marshall Islands'', which, together with their related agreements, were signed by the Government of the United States and the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands on May 14, and April 30, 2003, respectively: Now, therefore, be it

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SA 2139. Mr. MCCAIN (for Mr. DOMENICI) proposed an amendment to the joint resolution H.J. Res. 63, to approve the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to appropriate funds to carry out the amended Compacts.''; as follows:

Amend the title so as to read: ''A joint resolution to approve the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to appropriate funds to carry out the amended Compacts.''.

SA 2140. Mr. ALEXANDER (for himself, Mr. CARPER, Mr. HOLLINGS, Mr. STEVENS, Mr. VOINOVICH, Mr. GRAHAM of Florida, Mr. DORGAN, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 2136 proposed by Mr. MCCAIN (for himself, Mr. ALLEN, Mr. WYDEN, Mr. BURNS, Mr. ENSIGN, Mr. SUNUNU, Mr. WARNER, Mr. SMITH, Mr. LEAHY, Mr. GRASSLEY, Mr. HATCH, Mr. BAUCUS, Mrs. BOXER, Mr. CHAMBLISS, and Mrs. LINCOLN) to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

On page 2, strike lines 1 through 10 and insert the following:

SEC. 2. 2-YEAR EXTENSION OF MORATORIUM.

(a) IN GENERAL.—Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 nt) is amended—

(1) by striking ''2003—'' and inserting ''2005:'';

(2) by striking paragraph (1) and inserting the following:

''(1) Taxes on Internet access.''; and

(3) by striking ''multiple'' in paragraph (2) and inserting ''Multiple''.

On page 3, beginning with line 10, strike through line 2 on page 4 and insert the following:

(c) INTERNET ACCESS SERVICE; INTERNET ACCESS.—

(1) INTERNET ACCESS SERVICE.—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting ''The term 'Internet access' does not include telecommunications services, except to the extent such services

are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(3) 2-YEAR GRANDFATHER FOR STATE AND LOCAL TAX LAWS AFFECTED BY CHANGE IN DEFINITION.—The amendments made by paragraphs (1) and (2) take effect on the date of enactment of this Act but shall not apply until November 2, 2005, with respect to a law imposing a tax that was generally imposed and actually enforced prior to November 6, 2003.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Commerce, Science and Transportation be authorized to meet on Thursday, November 6, 2003, at 9:30 a.m. on Robert Crandell, Floyd Hall, and Louis Thompson to be members of the Amtrak Reform Board.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, November 6, 2003 at 10 a.m. to hold a Business Meeting.

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

COMMITTEE ON THE JUDICIARY

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, November 6, 2003, at 9:30 a.m. in Dirksen Room 226.

I. Nominations

Henry W. Saad to be U.S. Circuit Judge for the Sixth Circuit; Janice R. Brown to be U.S. Circuit Judge for the District of Columbia Circuit; D. Michael Fisher to be U.S. Circuit Judge for the Third Circuit; James B. Comey to be Deputy Attorney General; Michael J. Garcia to be Assistant Secretary of U.S. Immigration and Customs Enforcement; and Mark R. Filip to be U.S. District Court Judge for the Northern District of Illinois

II. Bills

S. 710, Anti-Atrocity Alien Deportation Act of 2003 [Leahy, Hatch]; H.R. 1086, the Standards Development Organization Advancement Act of 2003 [Sensenbrenner]; S. 1685, Basic Pilot Program Extension and Expansion Act of 2003 [Grassley, Kyl]; S. Con. Res. 77, Expressing the sense of Congress supporting vigorous enforcement of the Federal obscenity laws [Sessions, Hatch]; and H.R. 1437, To improve the United States Code [Sensenbrenner, Conyers].

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BENNETT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, November 6, 2003 at 2:30 p.m. to hold a closed hearing.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. BENNETT. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology, and Space be authorized to meet on Thursday, November 6, 2003, at 2:30 p.m. on Lunar Exploration.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Thursday, November 6, 2003, at 2:00 p.m., for a hearing entitled ''DOD's Improper Use of First and Business Class Airline Travel.''

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

PRIVILEGES OF THE FLOOR

Mr. SESSIONS. I ask unanimous consent that Marie Rapert, with Senator INHOFE, be allowed the privilege of the floor during the next rollcall vote.

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

Mr. SESSIONS. I ask unanimous consent that the request for floor privileges that I made earlier be vitiated.

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

Mr. BURNS. I ask unanimous consent that Dr. Prabhat Hajela, a congressional fellow in my office, be granted the privilege of the floor for the duration of the consideration of H.R. 7623.

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

MEASURE PLACED ON THE CALENDAR—S. 1832

Mr. MCCAIN. I understand S. 1832, introduced earlier today, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (S. 1832) entitled ''Senator Paul Wellstone Mental Equitable Treatment Act of 2003.''

Mr. MCCAIN. I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

AUTHORIZING REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. MCCAIN. I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 261, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 261) to authorize testimony and document production and legal representation for the State of Colorado v. Daniel Raphael Egger, Sarah Jane Geraldi, Jennifer Melissa Greenberg, Lisa Gale Kunkel, Bonnie Catherine McCormick.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, this resolution concerns a request for testimony, documents, and representation in related criminal trespass actions in Arapahoe County Court in the State of Colorado. In these actions, five defendants have been charged with criminally trespassing on the premises of Senator WAYNE ALLARD's Englewood, CO, office on April 24, 2003. Upon its closing that day, the defendants refused repeated requests to leave Senator ALLARD's office, and, as a result, were arrested. Trials on the charge of trespass are scheduled to be held on or about December 8, 2003. The State has subpoenaed a member of the Senator's staff who witnessed the defendants' conduct. The enclosed resolution would authorize that staff member, and any other employees of Senator ALLARD's office from whom evidence may be required, to testify and produce documents in connection with these actions. The enclosed resolution also authorizes representation by Senate Legal Counsel of Senator ALLARD and his staff in these actions.

Mr. MCCAIN. Mr. President, 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 any statements related to this matter be printed in the RECORD.

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

The resolution (S. Res. 261) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 261

Whereas, in the case of State of Colorado v. Daniel Raphael Egger, Sarah Jane Geraldi, Jennifer Melissa Greenberg, Lisa Gale Kunkel, Bonnie Catherine McCormick, pending in the Arapahoe County Court, Colorado, testimony and documents have been requested from an employee in the office of Senator Wayne Allard;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members of the Senate and their employees with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the

Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, that employees of Senator Allard's office from whom testimony or the production of documents may be required are authorized to testify and produce documents in the cases of State of Colorado v. Daniel Raphael Egger, Sarah Jane Geraldi, Jennifer Melissa Greenberg, Lisa Gale Kunkel, Bonnie Catherine McCormick, except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Senator Allard and his staff in the actions referenced in section one of this resolution.

REAUTHORIZING CERTAIN SCHOOL LUNCH AND CHILD NUTRITION PROGRAMS

Mr. MCCAIN. I ask unanimous consent the Agriculture Committee be discharged from further consideration of H.R. 3232, 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 (H.R. 3232) to reauthorize certain school lunch and child nutrition programs for fiscal year 2004.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. I ask unanimous consent the bill be read the third time, passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The bill (H.R. 3232) was read the third time and passed.

EXEMPTING CERTAIN COASTAL BARRIER PROPERTY FROM FINANCIAL ASSISTANCE AND FLOOD INSURANCE LIMITATIONS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 352, S. 1643.

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

The legislative clerk read as follows:

A bill (S. 1643) to exempt certain coastal barrier property from financial assistance and flood insurance limitations under the Coastal Barriers Resources Act and the National Flood Insurance Act of 1968.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 1643

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

SECTION 1. FINANCIAL ASSISTANCE; FLOOD INSURANCE.

The limitations on Federal expenditures or financial assistance in **[**section 6**]** *section 5* of the Coastal Barrier Resources Act (16 U.S.C. 3504) and the limitations on flood insurance coverage in section 1321(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4028(a)) shall not apply to lots 15, 16, 25, and 29 within the Jeremy Cay Subdivision on Edisto Island, South Carolina, depicted on the **[**map**]** *reference map* entitled ''John H. Chafee Coastal Barrier Resources System Edisto Complex M09/M09P'' dated January 24, 2003.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendments were agreed to.

The bill (S. 1643), as amended, was read the third time and passed, as follows:

S. 1643

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

SECTION 1. FINANCIAL ASSISTANCE; FLOOD INSURANCE.

The limitations on Federal expenditures or financial assistance in section 5 of the Coastal Barrier Resources Act (16 U.S.C. 3504) and the limitations on flood insurance coverage in section 1321(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4028(a)) shall not apply to lots 15, 16, 25, and 29 within the Jeremy Cay Subdivision on Edisto Island, South Carolina, depicted on the reference map entitled ''John H. Chafee Coastal Barrier Resources System Edisto Complex M09/M09P'' dated January 24, 2003.

CORRECTION OF ERROR ON THE JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM MAP

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 351, S. 1066.

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

The legislative clerk read as follows:

A bill (S. 1066) to correct a technical error from Unit T–07 of the John H. Chafee Coastal Barrier Resources System.

There being no objection, the Senate proceeded to consider the bill, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 1066

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

[SECTION 1. EXCLUSION OF CERTAIN LAND FROM THE JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM.

[(a) IN GENERAL.—The John H. Chafee Coastal Barrier Resources System shall not include any land in Matagorda Dunes subdivision or Bahia de Matagorda subdivision, located in Matagorda County, Texas.

[(b) MAPS.—Not later than 180 days after the date of enactment of this section, the Secretary of the Interior shall modify the maps referred to in section 4(a) of the Coastal Barrier Resources Act (16 U.S.C. 3503(a)) to reflect the exclusion of land under subsection (a).**]**

SECTION 1. REPLACEMENT OF JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM MAP.

(a) IN GENERAL.—The map described in subsection (b) is replaced by the map entitled ''John H. Chafee Coastal Barrier Resources System Matagorda Peninsula Unit T07/T07P'' and dated July 12, 2002.

(b) DESCRIPTION OF REPLACED MAP.—The map referred to in subsection (a) is the map relating to the John H. Chafee Coastal Barrier System unit designated as Coastal Barrier Resources System Matagorda Peninsula Unit T07/T07P that is subtitled ''T07/T07P'' and included in the set of maps entitled ''Coastal Barrier Resources System'' and referred to in section 4(a) of the Coastal Barrier Resources Act (16 U.S.C. 3503(a)).

(c) AVAILABILITY.—The Secretary of the Interior shall keep the replacement map referred to in subsection (a) on file and available for inspection in accordance with section 4(b) of the Coastal Barrier Resources Act (16 U.S.C. 3503(b)).

Mr. MCCAIN. Mr. President, I ask unanimous consent that the committee substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1066), as amended, was read the third time and passed.

REPLACING CERTAIN COASTAL BARRIER RESOURCES SYSTEM MAPS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 354, S. 1663.

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

The legislative clerk read as follows:

A bill (S. 1663) to replace certain Coastal Barrier Resources System maps.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to consider 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. 1663) was read the third time and passed, as follows:

S. 1663

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

SECTION 1. REPLACEMENT OF CERTAIN COASTAL BARRIER RESOURCES SYSTEM MAPS.

(a) IN GENERAL.—The 2 maps subtitled ''NC–07P'', relating to the Coastal Barrier Resources System unit designated as Coastal Barrier Resources System Cape Fear Unit NC–07P, that are included in the set of maps entitled ''Coastal Barrier Resources System'' and referred to in section 4(a) of the Coastal

Barrier Resources Act (16 U.S.C. 3503(a)), are hereby replaced by 2 other maps relating to those units entitled ''Coastal Barrier Resources System Cape Fear Unit, NC–07P'' and dated February 18, 2003.

(b) AVAILABILITY.—The Secretary of the Interior shall keep the maps referred to in subsection (a) on file and available for inspection in accordance with the provisions of section 4(b) of the Coastal Barrier Resources Act (16 U.S.C. 3503(b)).

CONGRATULATING SHIRIN EBADI FOR WINNING THE 2003 NOBEL PEACE PRIZE

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 244, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 244) congratulating Shirin Ebadi for winning the 2003 Nobel Peace Prize and commending her for her lifetime of work to promote democracy and human rights.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motions to reconsider be laid upon the table en bloc, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 244) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 244

Whereas Shirin Ebadi is the winner of the 2003 Nobel Peace Prize;

Whereas Shirin Ebadi has fought to support basic human rights in Iran through her work as a lawyer, judge, lecturer, writer, and activist;

Whereas Shirin Ebadi believes that conflict should be resolved peacefully through dialogue and mutual understanding;

Whereas Shirin Ebadi supports democracy and democratic elections and has defended those who have been attacked for exercising their freedom of speech;

Whereas Shirin Ebadi argues for an interpretation of Islamic law that is in harmony with democracy and vital human rights such as equality before the law, freedom of religion, and freedom of speech;

Whereas Shirin Ebadi has been a leader in promoting the human rights of women and girls; and

Whereas Shirin Ebadi has been arrested numerous times for her courageous defense of basic human rights and democratic ideals, sacrificing her own freedom for the freedom of others: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates Shirin Ebadi for winning the 2003 Nobel Peace Prize; and

(2) commends Shirin Ebadi for her lifetime of work to promote democracy and human rights.

COMPACT OF FREE ASSOCIATION AMENDMENTS ACT OF 2003

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 350, H.J. Res. 63.

The PRESIDING OFFICER. The clerk will report the joint resolution by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 63) to approve the ''Compact of Free Association, as amended between the Government of the United States of America and the Government of the Federated States of Micronesia,'' and the ''Compact of Free Association, as amended between the Government of the United States of America and the Government of the Republic of the Marshall Islands,'' and otherwise to amend Public Law 99–239, and to appropriate for the purposes of amended Public Law 99–239 for fiscal years ending on or before September 30, 2023, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DOMENICI. Mr. President, I rise today to support passage of H.J. Res. 63, legislation to approve and extend the Compacts of Free Association between the United States and the Federated States of Micronesia, FSM, and the United States and the Republic of the Marshall Islands, RMI. As chairman of the Senate Committee on Energy and Natural Resources with jurisdiction over these islands, I am pleased that we are ready to pass this legislative package. We have made great progress in a short amount of time. The administration did not transmit the joint resolution to the Senate until July 14, 2003, and the original Compact expired on September 30. Since that time, we have been on an extension. However, in just over 3 months, Congress has completed its work and is now poised to enact the agreements that will govern our mutually beneficial relationship for the next 20 years.

The legislation now before the Senate encompasses a broad array of important policy issues, including funding, education, labor, disaster assistance, and immigration matters. Consequently, a number of committees have assisted the Energy and Natural Resources Committee in reaching this bipartisan agreement. For helping us resolve these numerous issues, I would like to thank Budget Committee Chairman NICKLES and Ranking Member Senator CONRAD; Health, Education, Labor and Pensions Committee Chairman GREGG and Ranking Member Senator KENNEDY; Labor, Health and Human Services and Education Appropriations Subcommittee Chairman SPECTER and Ranking Member Senator HARKIN; and Environment and Public Works Committee Chairman INHOFE and Ranking member Senator JEFFORDS. Thanks also to the staff from these committees for their assistance.

I must of course express my appreciation to the members of the Senate Energy and Natural Resources Committee. In particular, I would like to commend the leadership, provided by Senator BINGAMAN, the ranking member of the committee and Senator CRAIG, chair of the Public Lands and Forests Subcommittee. A special thanks to Senator AKAKA, a great friend and voice for the islands. The committee is grateful for his assistance in this effort. Finally, I would like to thank Kellie Donnelly and Allen Stayman of the committee staff for their hard work and dedication throughout this process.

Enactment of the amended Compacts will continue a remarkable relationship first forged after World War II. It is important to remember that these islands were occupied by Japan and experienced some of the bloodiest fighting during World War II. After the war, the islands were placed under the United Nations' trusteeship system. The United States served as U.N. trustee and in that capacity, aided the islands' transition into self-governing nations, freely associated with the United States. With the ratification of the original Compact of Free Association in 1986, a unique relationship with these islands was formed.

The Compact of Free Association has guided our Nation's relationship with the FSM and RMI for the past 17 years. Most would agree that the original Compact has been a success. Indeed, the Compact has achieved its goals of, 1, establishing full self-governance for the islands and ending the U.N. trusteeship; and 2, securing our mutual defense interests. One final goal remains, to assist Micronesia and the Marshall Islands in their efforts to advance economic self-sufficiency. The amended Compacts aim to achieve this goal.

The amended Compacts also seek to improve upon the original. After nearly 20 years of free association, the United States has learned a great deal and has identified areas in need of improvement. The legislation now before us continues U.S. economic assistance and each nation, including the United States, has increased oversight and accountability responsibilities via the Joint Economic Management Committees that have been established.

In order to realize the goal of economic self-reliance for the islands, the amended Compacts establish and capitalize trust funds for the FSM and RMI, respectively. Properly managed, the trust funds will provide an ongoing source of revenue when annual payments by the United States end in 2023.

H.J. Res. 63 further provides annual funding to address the migration impacts to neighboring Hawaii, Guam, the Northern Mariana Islands, and American Samoa. In the wake of September 11, the Compacts' immigration provisions have been strengthened. In addition, funding is provided for food importation programs and judicial training.

Importantly, the amended Compacts maintain our Nation's defense rights in the western Pacific. It should be noted that the FSM and RMI have proven to be two of our country's most steadfast

allies in this region of the world. The United States has a ''strategic denial right,'' that is, the right to deny access to the islands by the military forces of other nations. In addition, the United States has a ''defense veto'' that allows our Government to veto local actions that are determined to be incompatible with our defense responsibilities. The amended Compacts also seek to continue access to the U.S. military facilities at Kwajalein for the next 50 to 70 years.

The major policy issues of education and disaster assistance that are addressed in the amended Compacts have a very real impact on the daily lives of Micronesian and Marshallese citizens. Federal education programs have been available to the FSM and the RMI under the current Compact since 1986 and the administration testified that it assumed their continuation when it renegotiated the Compact. The Compact's goal of moving the islands to economic self-sufficiency will fail without these programs or funds to replace them.

In response to concerns expressed by the House and Senate Education Committees, we have reached agreement on an alternative approach to the education issue. The amended Compacts maintain the vital education programs of Pell Grants and the Individuals with Disabilities and Education Act. The remaining Federal formula grant education programs are terminated. In their place, a straight authorization is provided, $12,230,000 for the FSM and $6,100,000 for the RMI. This authorization creates a new discretionary grant program for the islands. The intent is to shift funding for these island's programs from their formula allocation of the national appropriation for these programs, to a separate appropriation of equal value.

In both chambers, the Labor, HHS, and Education Appropriations Subcommittees, which have funded the education programs for the islands for the past 17 years, have agreed to assist in funding this new approach. Once appropriated, the education funding would be disbursed and monitored in accordance with the Compact's fiscal procedures agreements with the FSM and RMI, respectively.

Islands are prone to natural disasters such as typhoons and, surprisingly, droughts. Disaster assistance, then, is of the utmost importance. In approving the original Compact, Congress ensured FEMA assistance for both the FSM and RMI. Clearly, some form of disaster assistance is necessary for infrastructure repair, to promote the goal of economic self-sufficiency, and to protect our investments.

As transmitted by the administration, the amended Compacts replaced FEMA with the U.S. AID's office of Foreign Disaster Assistance, OFDA. Because of the Energy Committee's concerns with OFDA's lack of reconstruction capability, the committee reinstated FEMA's services for the FSM and RMI. Only last week, the administration submitted an alternative proposal for disaster assistance that includes both FEMA and OFDA participation. While the proposal may be workable, it would be premature to adopt it at this time. The legislation now before the Senate maintains FEMA's services for a period of 5 years. During this time, the administration will negotiate disaster assistance that provisions with the Governments of the FSM and RMI. It is the Committee's expectation that an agreement will be concluded expeditiously and if progress is not made in a timely fashion, the committee may conduct an oversight hearing on the matter. At the end of 5 years though, if a conclusion is not reached and enacted during that time period, the administration's hybrid proposal will be triggered.

I am pleased that the amended Compacts will soon be signed by the President, and I thank my colleagues for their support of this significant legislative package.

Mr. BINGAMAN. Mr. President, I am pleased to support passage of the Compact of Free Association Amendments Act of 2003, legislation that will extend and strengthen our Nation's special relationship with two young Pacific Island nations, the Federated States of Micronesia, FSM, and the Republic of the Marshall Islands, RMI.

The special ties between these islands and the United States have a long history, from the 19th Century New England whaling industry, through the terrible years of World War II, to the period of United States administration under the United Nations Trusteeship system. From 1947 to 1986, the U.S. governed these islands on behalf of the U.N. and was responsible for promoting the political, economic, and social development of the inhabitants. In 1986, the U.S. fulfilled its obligations to the U.N. with implementation of the Compact of Free Association, approved by Public Law 99–239. The Compact formally ended U.S. administration and allowed the FSM and RMI to achieve self-government and international recognition. The Compact also allowed the U.S. to continue the special security relationship forged during the Trusteeship. Now 17 years later, the Compact continues to provide for mutual defense and for political and economic stability in a region of significant interest to the U.S.

Prompt enactment of H.J. Res. 63 is needed to update and extend provisions of the Compact, particularly those economic assistance provisions which expired on September 30, 2003, but which have been temporarily extended.

I would like to remind my colleagues of the scope and importance of his security relationship because it provides one of the compelling reasons to support this resolution. Our mutual security includes the obligation of the U.S. to defend these nations as if they are a part of the U.S., and it is based on a simple geographic reality—the FSM and RMI lie between the state of Hawaii, and our Territories of Guam and the Commonwealth of the Northern Mariana Islands in the western Pacific. During World War II, the islands of the FSM and RMI served as hard-fought stepping-stones in the Allied defeat of Imperial Japan. To help assure that such a struggle will never need to be repeated, the Compact grants the U.S. the right to deny access to the islands by the military forces of other nations, as well as the right to veto local actions that the U.S. determines are incompatible with its defense responsibilities. The Compact also provides that the FSM and RMI will sympathetically consider U.S. requests for military basing rights. In the past, U.S. nuclear weapons tests in the Marshall Islands played a central role in the development of our Nation's nuclear deterrent. Today, the missile test range at Kwajalein continues to play a vital role in maintaining the nation's ballistic missile capability and in developing missile defense systems. Enactment of this legislation could secure U.S. access to the missile test and space surveillance facilities at Kwajalein beyond 2016.

A second major element in the special relationship established by the Compact is the mutual interest in promoting economic development. This goal has been approached by providing a combination of financial and program assistance. Significant economic development occurred from 1986 to 2003, but the remote and resource-poor island economies continue to be based on the government-sector, and they are heavily dependent on U.S. assistance. Development has also been hindered by the Compact's weak accountability mechanisms and by the island governments' poor planning and management capabilities.

A third element in this special relationship is the Compact's provision granting FSM and RMI citizens the opportunity to live, work, and study in the U.S. as resident aliens. This privilege provides an outlet for the islands' population growth, but it has also resulted in significant migration to Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands, CNMI. Due to relatively poor health and education conditions in the FSM and RMI, these migrants pose a disproportionately high impact on social services in the jurisdictions to which they migrate.

Finally, the Compact included a full and final settlement of all claims resulting from the U.S. nuclear weapons testing program that was conducted in the RMI from 1947 to 1958 and which significantly contaminated the islands of four atolls.

I commend the representatives of Micronesia, the Marshall Islands, and the United States for their work over the past 4 years to extend and strengthen the Compact. The two new Compact agreements they concluded are nested within this joint resolution and will

provide the assistance needed to assure continued economic development and mutual security in partnership with the United States. The administration transmitted the legislation on June 27, it was introduced as S.J. Res. 16 on July 14, 2003, and ordered reported by the committee, with amendments, on September 17. It would provide about $4 billion in funding over the 20-year period from fiscal year 2004 to 2023 for grants, contributions to trust funds, payments to extend the lease at Kwajalein, the cost of certain domestic services and programs, and $30 million annually to be allocated among Hawaii, Guam, the Northern Mariana Islands, and American Samoa to mitigate the impact of migration from the FSM and RMI. The package would also continue program assistance to the FSM and RMI through a range of domestic programs

To improve the effectiveness of U.S. assistance in the future, the amended Compacts have enhanced accountability mechanisms. For example, instead of providing financial assistance in the form of direct cash payments, funds will be disbursed through sector grants targeted to priority areas such as health and education. A new ''Fiscal Procedures Agreement,'' will establish new planning and reporting requirements, including the establishment of a joint economic management committee with each nation. These committees will have a U.S. majority membership, and the power to impose grant conditions and withhold funds. Finally, the Compacts anticipate the end of annual U.S. financial assistance after 2023 and provide fro contributions to two trust funds that will become an alternate source of funding after that year.

The U.S. currently has access to military sites at Kwajalein Atoll until 2016, but this legislation provides an opportunity to extend U.S. access until 2086. The new arrangement regarding Kwajalein was negotiated with the Marshall Islands national government which has not yet reached agreement with all of the landowners involved. Accordingly, a new land use agreement will need to be concluded between the landowners and the Government of the RMI in order to give effect to the new access agreement. Until that time, this legislation requires that the increased payments be held in an interest-bearing escrow account.

Two issues that were not resolved during the Energy and Natural Resources Committee's consideration of this resolution are education and disaster assistance. As pointed out earlier, U.S. assistance under the Compact is provided through a combination of financial assistance and program assistance. In the case of education, U.S. domestic programs account for roughly 40 percent of education funding, with local and U.S. financial contributions making-up the balance. These U.S. programs were first made available to the FSM and the RMI as an initiative of President Kennedy during the Trusteeship period and were continued under the Compact as negotiated and approved under President Reagan. The administration testified on this resolution in July before the Energy Committee that continuation of these programs was assumed when it renegotiated the Compact. Unfortunately, as the legislation moved forward, the House and Senate HELP Committees opposed continuation.

It was clear during the committee's consideration that the Compact's goal of promoting economic self-sufficiency would fail without maintaining current levels of support for education. This could be done by either continuing these programs, as assumed by the administration, or by providing an alternative source of funding.

The Energy Committee recommended continuation of critical programs and the ''cash-out'' of the remainder. Three domestic education programs that would be very hard, if not impossible, for the island governments to duplicate would continue: Pell Grants, programs under the Individuals with Disabilities Education Act, IDEA, and Job Corps. Pell grants to students attending the two community colleges in the FSM and RMI rate vital to the survival of these two institutions and there is consensus to support their continuation. IDEA serves a special population in the islands that, without the extension of the U.S. program, is unlikely to be adequately served. Finally, an exception is made for Job Corps because of the role it plays in preparing young people to enter the workforce. This is particularly true at Kwajalein Atoll where the U.S. Army vigorously supports the continuation of Job Corps because it helps maximize local employment at the U.S. Army base there.

For the remaining Federal formula-grant programs administered by the Departments of Education and Labor, and for the Head Start Program, the committee recommended termination of the islands' eligibility and providing the islands with mandatory funding to replace, or ''cash-out'', the actual programs. However, the compromise agreed to with the House would provide an authorization for a discretionary, not mandatory ''cash-out'' of the programs to be terminated. The replacement funding under this proposal would continue to be provided by the appropriations subcommittee for Labor, HHS, and Education, but instead of being allocated from the appropriation for each of the national programs, there would be a new, separate appropriation of equal value to supplement the education sector grants provided by the Secretary of the Interior under section 211(a) of the two Compacts.

The initial authorization levels for these two new discretionary grants are based on estimates obtained from the Congressional Research Service and the Department of the Interior's Federal Program Coordinator, $12,230,000 for the FSM, and $6,100,000 for the RMI, and the authorization includes an inflation adjustment. Once appropriated, this supplemental funding would be used in accordance with an agreement between the appropriate cabinet officer and the Secretary of the Interior, and would be disbursed and monitored in accordance with the Compact's Fiscal Procedures Agreements with the FSM and RMI, respectively.

I support this compromise reluctantly because I am uneasy with discretionary funding for such a critical element of the Compacts. Nevertheless, it appears to be the best that can be worked out under the circumstances and I look forward to working with my colleagues next year to make sure that the funding is shifted smoothly from the allocation for each of these national programs to a new FSM–RMI supplemental appropriation of the same amount. I thank Senator GREGG and Senator KENNEDY for their cooperation in resolving these difficult education issues, and Stephanie Monroe and Jane Oates of the HELP staff for their time and effort in working out this compromise. I particularly want to thank Senator AKAKA for his hard work and commitment to this legislation, and to recognize Noe Kalipi and Melissa Hampe of his staff for their contributions.

A second item that was not resolved during the Energy Committee's deliberations was disaster assistance. The administration proposed that the current eligibility of the islands to participate in the disaster assistance programs of FEMA be terminated and replaced with eligibility for assistance from the Office of Foreign Disaster Assistance, OFDA. This approach was clearly flawed because OFDA is not required to rebuild essential infrastructure following disasters.

In response to this need, the administration transmitted a new proposal last week that would provide for assistance from both OFDA and FEMA. However, the details for implementing this new joint-program approach were not set forth in a subsidiary agreement, as has been done with other programs to be extended to the islands. Accordingly, a compromise has been developed that would continue FEMA assistance, as recommended by the Energy Committee, while the administration undertakes negotiations with the islands and FEMA on the new approach in which all parties seek to conclude subsidiary agreements that would clarify implementation of the new approach. To help assure that all parties will negotiate in good faith, the compromise further provides that the statutory language for the new approach, as submitted by the administration, would go into effect 5 years after the date of enactment of this joint resolution. It is my expectation that subsidiary agreements and any negotiated changes to the statutory language would be agreed to between the island governments and representatives of FEMA, OFDA, the

State Department and the Interior Department long before that deadline. I thank Senators INHOFE and JEFFORDS for their help in resolving this matter and I look forward to working with them next year to assuring that the islands have the disaster assistance that is essential to the success of their economies, and to the success of the Compacts.

I believe that we have taken two excellent agreements, as negotiated between the U.S. and the FSM, and between the U.S. and the RMI, and we have improved them so that they will serve as a solid foundation for future relations. I want to thank the chairman of the committee, Senator DOMENICI, for his leadership on this legislation and for his commitment to continuing the bipartisan approach that has characterized the committee's work on insular affairs. Finally, I wish to recognize the work of Al Stayman and Kellie Donnelly of the Energy Committee staff for their dedication and hard work in guiding this legislation through the process.

In 1986, the United States fulfilled its obligations under the Trusteeship and established a successful partnership under the Compact of Free Association to advance the interests of the United States, the FSM, and RMI in mutual security, and to economic development. Today, I urge my colleagues to support passage of H.J. Res. 63 and to affirm our Nation's commitment to mutual security, economic development and to the continuing special relationship with the islands, and the people, of the Federated States of Micronesia and the Republic of the Marshall Islands.

Mr. DOMENICI. Mr. President, I would like to take this opportunity to engage in a colloquy with Senator SPECTER, Senator BINGAMAN, and Senator HARKIN regarding the education provisions of H.J. Res. 63, to approve and extend the Compacts of Free Association between the U.S. and the Federated States of Micronesia, FSM, and the U.S. and the Republic of the Marshall Islands, RMI.

Mr. BINGAMAN. Of course.

Mr. DOMENICI. U.S. assistance under the current compact is made available as both financial and program assistance. In the case of education, several U.S. domestic programs have been extended to the FSM and RMI since the compact was first approved in 1986. In July, the administration testified on this legislation and stated that ''funding in the compact was not structured to replace expiring Federal programs, or take the place of any program that is eliminated now, or could be eliminated in the future.'' In other words, continuation of the current program assistance was assumed. However, the House and Senate HELP committees have raised objections to this approach. Because these programs account for about 40 percent of the FSM and RMI education budgets, the success of the compacts depends upon either continuing the extension of these programs, or providing an alternate source of funding.

The Domenici-Bingaman amendment in the nature of a substitute to H.J. Res. 63 includes language modeled on that passed in the House, that would create an authorization for alternate funding. The amendment would continue eligibility for certain essential programs, but eligibility would be ended for the remaining Department of Education and Department of Labor formula-grant programs, and for the Head Start program. In their place, an authorization is provided to fund two discretionary supplemental education grants: $12,230,000 for the FSM, and $6,100,000 for the RMI. Once appropriated, these supplemental education grants would be disbursed, used, and monitored in accordance with an agreement between the Secretary of Education and the Secretary of the Interior, and in accordance with the compact's fiscal procedures agreements with the FSM and RMI, respectively. This approach resolves the disagreement with the HELP committees while best assuring that the FSM and RMI will continue to have the resources needed to meet their education needs.

Mr. BINGAMAN. I agree. These grants, if funded, would continue the level of assistance which the administration and the island representatives assumed would be available to meet the education goals which they jointly established in the new compacts.

Mr. DOMENICI. I would like to ask the chairman and ranking member of the Appropriations Subcommittee on Labor, Health and Human Services, and Education, whether they support this approach and whether they will fund these alternate grants?

Mr. SPECTER. Yes. I support this approach proposed by my colleagues from the Energy Committee and assure them that, given a sufficient allocation, I will support funding for education in the FSM and RMI through the new supplemental education grants authorized in their amendment to H.J. Res. 63.

Mr. HARKIN. I concur in this approach and also assure my colleagues of my support for continued funding for education in the FSM and RMI under this new authorization.

Mr. DOMENICI. I thank my colleagues for their support.

Mr. DOMENICI. Mr. President, I would like to take this opportunity to engage in a colloquy with Senator INHOFE, Senator BINGAMAN, and Senator JEFFORDS regarding the disaster assistance provisions of H.J. Res. 63 to approve and extend the Compacts of Free Association between the U.S. and the Federated States of Micronesia, FSM, and the U.S. and the Republic of the Marshall Islands, RMI.

Mr. BINGAMAN. Certainly.

Mr. DOMENICI. Under the current compact, the disaster assistance programs of the Federal Emergency Management Agency, FEMA, have been available to the FSM and RMI since 1986. Located in the western Pacific, the RMI and FSM are vulnerable to typhoons and experience periodic droughts in connection with the El Niño weather pattern. This vulnerability to disasters presents risks to public health and safety, jeopardizes the substantial investment made by the U.S. in the island's infrastructure, and it threatens achievements of the common goal of all three nations—promoting economic growth. Consequently, FEMA's presence in the islands has been shown to be an essential component of the assistance provided under the compact.

Mr. BINGAMAN. Would my colleague yield for a brief point?

Mr. DOMENICI. Yes.

Mr. BINGAMAN. As transmitted by the administration, the joint resolution approving the amended compacts would have eliminated FEMA and replaced it with the U.S. AID's Office of Foreign Disaster Assistance, OFDA. However, during consideration of this joint resolution by the Senate Committee on Energy and Natural Resources, the Committee recommended reinstatement of FEMA's availability.

Mr. DOMENICI. That is correct. In the final days before approval of the compacts, FEMA has transmitted a revised proposal regarding disaster assistance that would involve both FEMA and OFDA. This new proposal, coming at such a late stage in the process, has not been shared with the FSM and RMI. Indeed, it is my understanding that there are a number of questions about how the new proposal would work. Nevertheless, the concept appears sound and staff from the committee have worked with our colleagues on the Environment and Public Works Committee to craft a compromise.

Mr. INHOFE. That is correct. Our staffs have been working for the past few months on this issue. The compromise we have reached would continue the FEMA program in the islands for the next 5 years, as recommended by the Energy Committee. In addition, the Secretary of State would be directed to immediately undertake negotiations, in consultation with FEMA, with the governments of the FSM and RMI regarding disaster assistance. Finally, if an agreement is not concluded and legislation is not enacted which reflects the new agreement within 5 years, then the administration's revised disaster assistance proposal would go into effect.

Mr. JEFFORDS. That is correct. The compromise also directs the administration to report to Congress by June 30, 2004, on the outcome of such negotiations.

Mr. BINGAMAN. Yes. We hope and expect that an agreement will be concluded and transmitted by next June 30 and do not believe it should take the full 5 years.

Mr. DOMENICI. That is right. The Committees expect that FEMA, the administration, and the island governments will engage in such negotiations expeditiously and in good faith. Depending on the progress made by June 30, 2004, the Energy and Natural Resources Committee may hold an oversight hearing on the matter.

Mr. INHOFE. I agree with this approach.

Mr. JEFFORDS. As do I.

Mr. DOMENICI. I thank my colleagues for their support and for their cooperation in reaching this agreement.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the substitute amendment which is at the desk be agreed to, the joint resolution, as amended, be read the third time and passed, the amendment to the preamble which is at the desk be agreed to, the preamble, as amended, be agreed to, the amendment to the title which is at the desk be agreed to, the motions to reconsider be laid upon the table en bloc, and that any statements related to the resolution be printed in the RECORD.

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

The amendment (No. 2137) was agreed to.

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

The amendment (No. 2138) was agreed to, as follows:

AMENDMENT NO. 2138

Strike the preamble and insert the following:

Whereas the United States (in accordance with the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the United Nations Charter, and the objectives of the international trusteeship system of the United Nations) fulfilled its obligations to promote the development of the people of the Trust Territory toward self-government or independence as appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned;

Whereas the United States, the Federated States of Micronesia, and the Republic of the Marshall Islands entered into the Compact of Free Association set forth in title II of Public Law 99–239, January 14, 1986, 99 Stat. 1770, to create and maintain a close and mutually beneficial relationship;

Whereas the United States, in accordance with section 231 of the Compact of Free Association entered into negotiations with the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands to provide continued United States assistance and to reaffirm its commitment to this close and beneficial relationship; and

Whereas these negotiations, in accordance with section 431 of the Compact, resulted in the ''Compact of Free Association, as amended between the Government of the United States of America and the Government of the Federated States of Micronesia'', and the ''Compact of Free Association, as amended between the Government of the United States of America and the Government of the Republic of the Marshall Islands'', which, together with their related agreements, were signed by the Government of the United States and the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands on May 14, and April 30, 2003, respectively: Now, therefore, be it

The amendment (No. 2139) was agreed to, as follows:

AMENDMENT NO. 2139

Amend the title so as to read: ''A joint resolution to approve the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to appropriate funds to carry out the amended Compacts.''.

The resolution (H.J. Res. 63), as amended, was read for the 3rd time and passed.

The preamble, as amended, was agreed to.

The title, as amended, was agreed to.

ORDERS FOR FRIDAY, NOVEMBER 7, 2003

Mr. MCCAIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Friday, November 7; 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 resume consideration of S. 150, the Internet tax moratorium bill.

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

PROGRAM

Mr. MCCAIN. For the information of all Senators, tomorrow the Senate will resume debate on S. 150, the Internet tax moratorium bill. It is anticipated that the first amendment to the bill will be offered early tomorrow morning. It is the intention of the managers to work through as many amendments as possible tomorrow. Therefore, Senators should make themselves available for rollcall votes throughout the morning and into the afternoon.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MCCAIN. Mr. President, 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 9:58 p.m., adjourned until Friday, November 7, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate November 6, 2003:

DEPARTMENT OF DEFENSE

FRANCIS J. HARVEY, OF CALIFORNIA, TO BE AN ASSISTANT SECRETARY OF DEFENSE, VICE JOHN P. STENBIT.

THE JUDICIARY

LAWRENCE F. STENGEL, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, VICE RONALD L. BUCKWALTER, RETIRING.