The Senate met at 9:30 a.m. and was called to order by the Honorable J OHN E. SUNUNU, a Senator from the State of New Hampshire.

The PRESIDING OFFICER. The Senate will be led in prayer this morning by our guest Chaplain, Rev. Fredricka A. Steenstra of Christ Episcopal Church, Elizabeth City, NC.

PRAYER

The guest Chaplain offered the following prayer:

Gracious God, accept our thanks and praise for all that You have done for us. We thank You for the splendor of creation, for the beauty of this world, and for the wonder of life. We thank You for the blessing of living in this Nation and for the freedoms we enjoy. We thank You for the men and women of the Senate, both the Senators and their staffs. We are grateful for the sacrifices they make in order to serve the people of this Nation faithfully and in accordance with Your will.

We thank You also, Lord, for setting forth - appointments and failures that lead us to acknowledge our dependence on You alone.

Bless our Senators this day and in all the days ahead, that they may enact such laws as shall please You, O God, and further the welfare of Your people. Give all who labor in this great institution a zeal for justice and the strength of forbearance that they may help the people of this Nation to use our liberty rightly, in accordance with Your gracious will. Amen.

PLEDGE OF ALLEGIANCE

The Honorable J OHN E. SUNUNU 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:


To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable J OHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

THE BUSH ADMINISTRATION'S MISTREATMENT OF RICHARD CLARKE AND OTHERS

Mr. DASCHLE. Mr. President, I have a simple request for the President today: Please ask the people around you to stop the character attacks they are waging against Richard Clarke. Ask them to stop their attempts to conceal information and confuse facts. Ask them to stop the long effort that has made the 9/11 Commission's work more difficult than it should be.

Regardless of whether one agrees or disagrees with Mr. Clarke's facts, he set an eloquent example for all of us yesterday. He acknowledged to the families of the victims of September 11 that their Government had failed them. He accepted responsibility for September 11. He made himself accountable and he tried, in my view, to help us understand what happened in the months and years before September 11. I could not be more disappointed in the White House response. They have known for months what Mr. Clarke was going to say. Instead of dealing with it factually, they have launched a shrill attack to destroy Mr. Clarke's credibility.

I know something about those attacks. On several occasions, I have been on the receiving end of the White House
broadside. I saw the White House fe-
rocity firsthand. I saw the people around
the President attack JOHN
McCain when he ran for President in
2000. I will never forget the distortions,
the recklessness, and the viciousness of
those attacks. They were wrong and they
impugned one of our great patri-
ts.
I saw the same viciousness 2 years ago
when Senator Max Cleland, a man
who served when called during the
Vietnam war, had his reputation and
patrician status attacked in his reelec-
tion campaign. The idea that a man who
served when called during the
Vietnam war and fought in the war
ought.

Mr. REID. Would the Senator allow
me to ask him a question through the
Chair?
Mr. DASCHLE. Yes.
The PRESIDING OFFICER. The Sen-
ator from Nevada.
Mr. REID, I have listened to the
statement of the Democratic leader. I
acknowledge what happened to Senator
McCain and the tragedy with Max
Cleland, but one thing the leader
undersold
Richard Clarke, but the one thing the
leader underplayed was the ab-
ility and unwelcome political con-
sequences. It ought never have hap-
pended. It was shameful, and it crossed
a line that had never been crossed be-
fore.
Now when I watch what the people
around the President are trying to do
to Richard Clarke, I think it is past
time to say enough is enough.
The President came to Washington 4
years ago promising to change the
tone. The people around him have done
that. They have changed it for the
worse. They are doing things that should
ever have been done before. What they need
to do, what we all need to do, is to put
politics aside and put the American
people and their security first.
I know how difficult that is in an
election year, but we all, every one of
us needs to do exactly that. Some
things are more important than poli-
tics, and September 11 ought to be at
the top of the list. We need the facts on
September 11, not spin and not char-
acter assassinations. We need the ad-
ministration and everyone involved to
follow Mr. Clarke’s example and accept
responsible accountability.
We need Condoleezza Rice, who seems
to have time to appear on every televi-
sion show, to make time to appear
publicly before the 9/11 Commission.
She is not constrained by precedent
from doing that, as the White House
has argued. As the Congressional Re-
search Service documented, two of her
predecessors have given testimony in
open session on matters much less im-
portant than September 11.
I have reluctantly reached the con-
clusion that what really constrains Ms.
Rice’s full cooperation is political con-
consideration. The September 11 families
deserve better than that and, just as
importantly, our country deserves bet-
ter.
There is only one person who can
change what is going on at the White
House, and that is the President. So I
appeal to President Bush to change it.
He deserves better than the tactics his
staff are using and, as I have said, the
September 11 families and our country
deserve better, too.
I yield to Mr. Wilson.
Mr. WILSON. The PRESIDING OFFICER.
Mr. REID, I have listened to the
statement of the Democratic leader. I
acknowledge what happened to Senator
McCain and the tragedy with Max
Cleland, but one thing the leader
mentioned was what was done to
Paul O’Neill when he published his
who is a certified, card-carrying con-
servative Republican, one of the great
businessmen of this country, who, in effect was trashed for what
he thought was good for the country.
I heard the Senator describe Joe Wilson
and what was done to his wife and
Richard Clarke, but the one thing the
leader undersold
Richard Clarke, but the one thing I did not hear
in the leader mention was what was done to
Paul O’Neill when he published his
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servative Republican, one of the great
businessmen of this country, who, in effect was trashed for what
he thought was good for the country.

Mr. REID. Would the Senator allow
me to ask a question through the Chair?
Mr. DASCHLE. Yes.
The PRESIDING OFFICER. The Sen-
ator from Nevada.
Mr. REID, I have listened to the
statement of the Democratic leader. I
acknowledge what happened to Senator
McCain and the tragedy with Max
Cleland, but one thing the leader
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who is a certified, card-carrying con-
servative Republican, one of the great
businessmen of this country, who, in effect was trashed for what
he thought was good for the country.

Mr. REID. Is there objection?
Mr. DASCHLE. I thank the Senator
from Nevada for his very kind words,
and I thank my colleagues for yielding
the floor to accommodate my leader
time this morning.
I yield the floor.

MORNING BUSINESS
The ACTING PRESIDENT pro tem-
pore. Under the previous order, there
will be a period for the transaction of
morning business until 10:30 a.m.
The majority leader or his designee will
control the first half of this time and
the minority leader or his designee will
control the remaining time.
Mr. REID. I suggest the absence of a
quorum, and have the time run equally
on both sides.
The ACTING PRESIDENT pro tem-
pore. The clerk will call the roll.
The legislative clerk proceeded to
call the roll.
Mr. MCCONNELL. Mr. President, I
ask unanimous consent that the order
for the quorum call be rescinded.
The ACTING PRESIDENT pro tem-
pore. Without objection, it is so or-
dered.

UNANIMOUS CONSENT
AGREEMENT—H.R. 4
Mr. MCCONNELL. Mr. President, I
ask unanimous consent that at a time
to be determined by the majority lead-
er in consultation with the Democratic
leader on Monday, March 29, the Sen-
ate proceed to consideration of H.R. 4,
the welfare reauthorization bill.
The ACTING PRESIDENT pro tem-
pore. Without objection, it is so or-
dered.

WELFARE REFORM EXTENSION
ACT OF 2004
Mr. MCCONNELL. I ask unanimous
consent that the Senate proceed to the im-
mediate consideration of S. 2231, which
was introduced earlier today by Sen-
ators Grassley and Baucus.
The ACTING PRESIDENT pro tem-
pore. The clerk will report the bill by
title.
The legislative clerk read as follows:
A bill (S. 2231) to reauthorize the Tem-
porary Assistance for Needy Families block
grant program through June 30, 2004, and
for other purposes.
The ACTING PRESIDENT pro tem-
pore. Is there objection?
Mr. REID. Mr. President, it is my un-
derstanding the majority leader has in-
dicated there will be no votes on Mon-
day. Is that true?
Mr. MCCONNELL. I say to my friend
from Nevada, that is true.
Mr. REID. No objection.
The ACTING PRESIDENT pro tem-
pore. Without objection, it is so or-
dered.
Mr. REID. I ask unanimous consent
that the bill be read the third time and
passed, the motion to reconsider by laid upon the table, and any state-
ments regarding this matter appear in the RECORD at this point.

The ACTING PRESIDENT pro tem-
pore. Without objection, it is so or-
dered.

The bill (S. 2231) was read the third
time and passed, as follows:
S. 2231

Be it enacted by the Senate and House of Rep-
resentatives of the United States of America in Con-
gress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Welfare Re-
form Extension Act of 2004”.

SEC. 2. EXTENSION OF THE TEMPORARY ASSIST-

(a) IN GENERAL.—Activities authorized by part A of title IV of the Social Security Act, and by sections 510, 1100(b), and 1205(b) of such Act, shall continue through June 30, 2004, in the manner authorized for fiscal year 2002, notwithstanding section 1902(e)(1)(A) of such Act, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the third quarter of fiscal year 2004 at the level provided for such activities through the third quarter of fiscal year 2002.

(b) CONFORMING AMENDMENT.—Section 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C. 603(a)(3)(H)(iii)) is amended by striking “March 31” and inserting “June 30”.

SEC. 3. EXTENSION OF THE NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE AND CHILD WELFARE WAIVER AU-

Activities authorized by sections 429(a) and
1130(a) of the Social Security Act shall con-
tinue through June 30, 2004, in the manner
authorized for fiscal year 2002, and out of any
money in the Treasury of the United States
not otherwise appropriated, there are hereby
appropriated such sums as may be necessary
for such purposes and payments may be
made pursuant to this authority through the
third quarter of fiscal year 2004 at the level
provided for such activities through the
third quarter of fiscal year 2002.

The ACTING PRESIDENT pro tem-
pore. The Senator from Wyoming.

THE MARINES
Mr. THOMAS. Mr. President, I will
make some comments in morning bus-
iness. First of all, I had the privilege
this morning of attending a meeting of
Marines, which we have periodically,
and I was very pleased to listen to a re-
port from the commandant about the
current situation in Iraq and Afghan-
istan. Certainly, he is very pleased with
what is happening there with regard to
our military, what they are able to do
and accomplish there. We do not hear
much about the good stuff that is going
on. We hear, of course, the news on bad
things. It was an excellent report. Cer-
tainly we are very proud of our Ma-

HEALTH INSURANCE COSTS
Mr. THOMAS. Mr. President, I take a
few minutes today to talk about an
issue I am sure we are all concerned
about and interested in. As I go about
Wyoming and talk to people, particu-
larly in town meetings, the issue that
arises most often and with the most
passion is the high cost of health insur-
ance. This is not new. It is not a prog-
hibitive. It seems to me we are going
to have to focus properly on Medicare,
Medicaid, veterans, those government
programs for which we are responsible.
I suggest we need to focus now and
begin to take a look at the broader pic-
ture of health care. We have a system
that has available certainly some of
the best health care in the world, but
the key is to have access. If the cost
limits access, we have a problem.
We have secured instruments in Wy-
oming. Because of a small population,
we cannot have all the various profes-
sional services in every small town.
There has to be a system. We have
developed at the state level, worked with
hospitals with the different kinds of spe-
cialties that help serve communities.
We have had more and more critical
access facilities which make it easier
for small communities to work.
I visited Dubois, WY, this week, a
new clinic to a small town. I also met
with a group of physicians and hospital
operators in Cheyenne. We talked
about some of these issues. Before it
was over, these professionals, these
providers, indicated they agree this
system is broken and there needs to be
some kind of change made in the fu-
ture. I don't know the answer. I don't
know that anyone yet knows the an-
swer. I suggest to my fellow Members
of the Senate, the House, we need to
begin to take a look.
If I can start out by saying I am not
one who favors a Federal socialized
medicine program, we need to find
some ways to do something with what
we have now.
National health expenditures grew
$16 trillion in 2002, a 9.3-percent in-
crease over the previous year. The
costs of health care generally have
gone up 15 percent a year for several
years.
It is hard to sustain 15-percent in-
crease, particularly when, increas-
ingly, health care for families is a rel-
ative large portion of expenditures.
Health care as a share of GDP in 2002
was 14.9 percent, up from 14.1 percent
in 2001. So we are seeing substantial in-
creases. And over the years those in-
creases have continued.
So one has to ask, if the costs are
going up 15 percent a year, how long
can you sustain that? What do we need
to do? Folks are seeing double-digit
premium increases each year, includ-
ing Federal employees. So it is quite
obvious to me that we cannot continue
to grow rates at that level.
I indicated I had talked to some folks
who certainly agree we need to deal
with that. We face more challenges in
the health care system than just re-
forming the public programs or ad-
ressing the nearly 42 million people—
15 percent— who do not have health in-
surance.
There are some things, of course, we
need to consider. We need to improve
the underlying health care infrastruc-
ture. Its rising costs affect all of us. I
think we have to take some of the re-
ponsibility for fixing that system.
I think we have to focus on fixing the
need of the system where, for instance,
hospital charges do not reflect the actual
costs because of public and private insurance
reimbursements. I recently met with a hos-
pital CEO in my hometown. At that
hospital, they had some very inter-
esting topics they talked about. Their
gross charges, for example, were $202
million; $80 million was written off;
$120.7 million reflects actual costs; $1.4
million was income from insurance,
and they had $3.3 million in other in-
come. This is not a sliver. This is not
true. On the other hand, if their
premiums are not equal to the cost, then
someone else has to bear the cost; Medi-
caid even more so.
Medicare pays even a smaller per-
centage of the actual cost than does
Medicare. This is a combination, of
course, of State and Federal programs.
So we find that situation.
Charity, for those who are uninsured,
for those who come in and are not able
to pay, we still take them, of course.
Trauma care, sometimes, is reimbursed
by the county or the State. But if
someone has an accident and arrives at
the hospital, they are given care, of
course, whether they have the ability
to pay, whether they have insurance.
And guess who pays the principal cost of
that? Those who have commercial insurance.
People who are insured represent
about 35 percent of the people in a hos-
pital, but they pay 98 percent of the
cost. So what we are doing basically is
taking the costs that are there, and the
insurance companies are paying a very large percentage of
that cost. Therefore, we are shifting
costs from the broad user base to a rel-
atively small group who buy insurance,
which causes the private insurance to be
higher.
So there are some weaknesses there.
Certainly, we have to do something
about it. Health providers must shift
this cost to private insurance or they
do not make it up.

Emergency room costs, of course, are
extremely expensive. They are used
a great deal, particularly with Medicaid
where there is no first-dollar payment
by anyone. When anything goes wrong
for someone who is under Medicaid,
they can go to the emergency room be-
cause it does not cost anything.
Of course, we pay the highest prices
for prescription drugs and shoulder the
research and development costs for
much of the rest of the world. I think most of us are working on that issue. I think we are going to have a hearing next week in the Finance Committee to see if there is any relationship in terms of the trade aspect of it—with Canada and, of course, where you can send goods from this country that cost a certain amount, and the Government up there says they will cost less. Is that part of a trade problem? I think it is something we ought to talk about.

Also, one of the things we have tried to fix—and I hope we continue to try to do something about it—is putting a limit on noneconomic damages for liability in health care. We have tried to pass that. We tried to pass it in the Wyoming Legislature. I think, hopefully, they will continue to do that.

But what it has done in our State—and I think in a number of other States—is it certainly has raised the costs because the cost for malpractice insurance has gone up a great deal. It has also caused some practitioners, particularly OB/GYNs, to not serve any longer. Again, in a State such as ours, where there may be just one provider in a community, if that person cannot provide services there, there is no one there and people have to go miles and miles to find care.

So it has a great impact. Not only is it the impact of increased costs to the provider, which he or she passes on to his or her patients, but it also has caused practices to be quite different and to be overly general about care. A number of years ago, if you hurt your arm, you would go to a general practitioner, he would fix it, put a cast on it, and you would go home. Now you would go in and: Oh, my gosh, you hurt your arm? You better see an arm specialist. We need to take some tests. We need to have an MRI and a few other tests that you could keep tax free and then use it. In many cases you could use it for the first dollar cost, and then all you have to buy is a higher level insurance, which is much cheaper, catastrophic insurance, rather than the first low dollar, which is much more expensive. We are going to be working on a better medical savings program.

Last year we had a forum on rural health care which is a little unique, but some of the problems are the same. We began to discuss those problems of the future. That is what we have to ask, what is health care going to look like 5 or 10 years from now, if we can make that sort of projection, and then begin to look at what we can do to get where we want it to be rather than where we think it will be if we do nothing.

There are some ideas out there. I don’t suggest they are all the best, but some are being talked about—tax credits to have a medical setaside for pay- ment of medical expenses. We should keep tax free and then use it. In many cases you could use it for the first dollar cost, and then all you have to buy is a higher level insurance, which is much cheaper, catastrophic insurance, rather than the first low dollar, which is much more expensive. We are going to be working on a better medical savings program.

Association health plans have been talked about. The idea of insurance is to get enough people into the package so you can cut out the cost between the very poor and those who are more healthy. But if you do not have large numbers, that doesn’t happen. There is some objection to that in terms of the States. I am not necessarily supporting all these ideas. But, for example, if you were a service station operator, you could be part of a national service station operators insurance program.

Some have talked about the idea that everyone, even if they had to be helped, should have insurance. We require insurance on your car. We don’t require it, but somebody else has to pay for it. So that is something we should talk about.

Better education efforts for consumers to make healthier choices, certainly that is something we ought to take seriously. As I mentioned, medical malpractice reform is clearly something we ought to do. We, obviously, have been blocked in the Senate from doing that.

There are a lot of issues we need to look at, and they deal with where we are going to be in a few years and where we are now. But we will be worse off in a few years unless we begin to deal with some of those issues.

I appreciate the time and look forward to continuing to have the debate.

I yield the floor.

Mr. McCONNELL. Mr. President, I say to my good friend from Wyoming, before he leaves the floor, I share his frustration over our failure to act on any kind of medical malpractice reform. We have tried a broad approach. We have tried a narrow approach. We have backed again to try another narrow approach. We can’t even seem to get cloture on the motion to proceed. That is how dug in the Senate seems to be against any effort to lower those liability insurance premiums for doctors. The Senate from Wyoming brings up a very important issue. I thank him.

RICHARD CLARKE

Mr. McCONNELL. Mr. President, I come to the Chamber this morning to talk about Richard Clarke’s testimony yesterday.

We all now know who Richard Clarke is. He has sort of burst on the national scene with his effort to defeat President Bush. Richard Clarke was the man in charge of counterterrorism under the previous administration for 8 years. During those 8 years, we had hubbub terrorist attacks against America: In 1993, the first attack against the World Trade Center in New York; against the U.S. Embassies in Africa in 1998; and against the USS Cole in 2000.

The most aggressive action, apparently, Mr. Clarke was able to convince his superiors to undertake. Those years was to launch a few cruise missiles at a single terrorist camp in Afghanistan and take out a pharmaceutical factory in Sudan—not a really robust response to multiple terrorist attacks against America.

Now Mr. Clarke has the gall to come forward and suggest that President
Bush was not particularly interested in the war on terrorism or in going after al-Qaeda. But interestingly enough, back in an August 2002 interview with the news media, Mr. Clarke himself said the Bush administration, in the spring of 2002, was planning to increase U.S. resources for covert action fivefold to go after al-Qaeda. Back in 2002, he was singing an entirely different tune than he was portraying either in his testimony yesterday before the 9/11 Commission or in his new book, which I am sure will be a best seller and help defeat President Bush.

But before he had some epiphany and went in a different direction, in August 2002, he said the Bush administration plan was actually more aggressive than Clinton’s, and that the Bush administration changed the strategy from one of rollback by al-Qaeda over the course of 5 years, which it had been under the Clinton years, to a new strategy that called for the rapid elimination of the al-Qaeda terrorist network.

That is what Mr. Clarke was saying in August of 2002—quite different from what he said yesterday before the 9/11 Commission or in his new book.

Also in this August 2002 interview, Clarke noted the Bush administration, in mid-January of 2001—before the 9/11 attack—decided to do two things to respond to the threat of terrorism: “One, to vigorously pursue the existing policy, including all the lethal covert action funds which we have now made public, to some extent; the second thing the administration decided to do was to initiate a process to look at these issues which had been on the table for a couple of years and get them decided.”

In other words, what Clarke was saying in 2002 to members of the press was that the Bush administration’s response to the war on terror was much more aggressive than it was under the Clinton administration.

Now he is singing an entirely different tune. This is a man who lacks credibility. He may be an intelligent man, he may be a dedicated public servant, but clearly he has a grudge of some sort against the Bush administration. If he was unable to develop a more robust response during the Clinton years, he would only be able to blame himself. He was in charge of counterterrorism during those 8 years. How could the Bush administration be to blame in 8 months for the previous administration’s failure over 8 years to truly declare war on al-Qaeda?

Let me be clear, I do not believe the Clinton administration is responsible for September 11. Rather, I believe Osama bin Laden and his al-Qaeda terrorist network are responsible. I also believe there exist other terrorists organizations that share al-Qaeda’s goal of murdering innocent civilians who oppose their extremist ideology. These terrorists don’t hate us because of our policies. They hate us because of who we are. And if we don’t work together to bring the fight to the terrorists, they will almost certainly bring it to us.

Bringing the fight to the terrorists is, of course, exactly what President Bush has been doing. Instead of finger-pointing, we should instead be working to bolster our intelligence infrastructure, continue our aggressive efforts to monitor, apprehend and bring to justice terrorists around the world, and improve our own ability to defend America and its ideals from attack.

Although work remains to be done, I believe the Bush administration has made truly admirable progress in the war on terrorism. Who could argue with a straight face that America is not safer today than it was on September 10, 2001? The Taliban is gone. Saddam Hussein is gone. We have destroyed all—not just one—all of al-Qaeda’s training camps in Afghanistan. All of them are gone from that country.

We have apprehended or killed two-thirds of al-Qaeda’s leaders. We have launched international efforts to make it difficult for terrorists to raise or transfer their funds to fund their deadly activities. We have worked with allies across the world to break up al-Qaeda cells and other terrorist networks.

We passed the PATRIOT Act, which provides U.S. law enforcement better capabilities to monitor, apprehend, and bring to justice terrorists plotting in the United States.

We have worked new allies in Pakistan and Uzbekistan. And by engaging these countries we have scored further victories against terrorists.

As I said earlier, there has been the end of the regime of Saddam Hussein who provided direct material support to Palestinian terrorists and who offered safe haven to other Islamic terrorists.

We have rounded up and continue to kill foreign terrorists in Iraq. These terrorists would be blowing up buses in midtown Manhattan. Believe me, that is where the terrorists would rather be on the attack. Instead they are in Iraq. That is where the war on terror is going on, right in Iraq.

While we mourn the loss of every American soldier and innocent Iraqi citizen, we are glad we are dealing with al-Qaeda over in the Middle East and not on American soil.

Finally and most importantly, it is important to remember what is happening in Libya. Prime Minister Blair is meeting with the Libyan leader today. He has been somewhat born again. He is now denouncing terrorism. His weapons of mass destruction are now being eliminated.

It is noteworthy that Gadhafi seemed to have gotten religion in March 2003, the same month we launched the invasion of Iraq, and seemed to have fully converted shortly after Saddam Hussein was put in a hole. Clearly, our Iraq policy is helping reduce or eliminate rogue regimes with weapons of mass destruction.

Let me conclude by saying by any objective standard, the war on terrorism is going well. I think Mr. Clarke’s efforts to convince the American public somehow President Bush was inattentive to the war on terror or obsessed with Iraq are simply foolish and erroneous, and will not be believed by the American people.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Hawaii.

WAR ON TERRORISM

Mr. AKAKA. Madam President, I rise today to discuss the war on terrorism and the situation in Iraq on the 1-year anniversary of Operation Iraqi Freedom.

I had the honor and privilege of traveling to Iraq and Afghanistan over the recent recess to visit our troops. I had the similar honor of visiting them in the medical center at Ramstein, Germany.

I report to my colleagues the troops with whom I met were in good spirits. They are, of course, eager to return home to their loved ones, but they are also proud of the work that they are doing to stabilize Iraq and assist the Iraqi people in building a democratic state. I was proud of them, proud of the leadership of our military, and proud of all the troops there.

As a veteran of World War II, I was proud to see in the troops the same dedication to duty, mission, and country I remember so well from my own comrades in arms. In Ramstein, I was impressed with the wonderful support our wounded were receiving from the medical staff, and I was equally impressed with the eagerness our wounded expressed to return to the sides of their comrades. In that eagerness to rejoin their units, they shared a bond with all their past brothers in uniform.

In Iraq, I visited the newly deployed Stryker brigade in Mosul. This unit is demonstrating in the field for the first time a powerful new capability. But it has also been given the difficult objective of patrolling a large area. They are still waiting for Iraqi forces to be trained and adequately equipped to supplement their effort. Clearly, one reason why the security situation still remains so tenuous is the failure to train and field sufficient Iraqi security forces. But the apparent ambuscade of two American civilians recently by Iraqi police indicates even some of the newly deployed security forces cannot be trusted.

According to the Coalition Provisional Authority, or CPA, we are only about 30,000 short of the approximately 236,000 security forces planned for Iraq. This may be so in terms of absolute numbers, but it is not a reflection of how well equipped they are, how well trained they are, and how well led they are.

For example, the CPA carries about 60,000 police on payroll, but only 2,300 of those have been fully qualified.
Prior to the war, the Iraqi police had a well-deserved reputation for being corrupt. Reports continue to indicate this remains a problem and, as I mentioned, there are indications the security forces have been infiltrated by terrorists. At times many of the honest policemen are being targeted by terrorists. On Tuesday, 11 were killed in an ambush. So one should view numbers with a healthy skepticism and focus on quality.

I also had the opportunity to visit Balad, about 25 miles north of Baghdad. This will become the future center of air operations in Iraq, and we are now preparing a major airbase to service American troops for the next 3 to 5 years.

Elsewhere, there is the intent to move American troops out of Baghdad and consolidate forces in fewer installations on the periphery, thus reducing the visibility of the American footprint. This is going to be a very delicate process, but the American presence in Baghdad has to be balanced by an increase in the effectiveness of Iraqi security forces inside the city. We could run the risk of having that city of about 6 million become an even safer haven for terrorists while we hunker down in bases on the outskirts.

It also means we are planning for an extended stay in Iraq. While the administration indicates 33 countries are now contributing troops to Iraq, the bulk of the fighting and the burden of the war is American. Unless there is a change in strategy by the administration or a change in attitude by the international community, those troops for the foreseeable future will remain largely American.

Will there be American troops in Iraq by the time of the next Presidential election in 2008? Right now the answer is yes.

I was able to visit Kabul as well. So much attention and money have been focused on Iraq that I believe Afghanistan has been neglected to the detriment of our goal of defeating the terrorists who attacked us on 9/11.

One example: in Iraq we hope to field an army of 27 battalions in 12 months at a cost of $1.8 billion, while in Afghanistan we hope to field an army of 15 battalions in 26 months at a cost of $569 million. Yet, in Iraq, there is a military infrastructure of garrisons, facilities, and a history of a national army. Afghanistan lacks all of these. Afghanistan is also facing huge cultural barriers to overcome in linguistics and ethnicity that make Iraq look homogenous in comparison.

Our military is doing a great job in trying to stand up an army in Afghanistan, but it is an enormous job, and so far the international community is not providing sufficient resources either to rebuild the country or create a sustainable and professional security force.

Afghanistan has an even greater problem of a civilian uni-

| strategy and oversight of its implementation are essential tools in sharpening the tip of our policy weapons. But they need to take place in an atmosphere where such debate is not just another arrow in the quiver of partisan politics. It is that the work of the 9/11 Commission and other discussions in this very political year will be a determination to restore comity in foreign policy.

My recent travels in Iraq and Afghanistan have convinced me that, if we are to succeed in either country, we need to be prepared to remain in both countries for a long time, and we need to be prepared for additional sacrifices in terms of lives and financial resources. To accept that burden, there has to be a consensus in foreign policy.

To bear that burden will require a determination to establish international support for our policies.

I thank the Chair. I yield the floor.

I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

UNBORN VICTIMS OF VIOLENCE ACT OF 2004

The PRESIDING OFFICER. Under the previous order, the hour of 10:30 having arrived, the Senate will proceed to the consideration of H.R. 1997, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1997) to amend title 18, United States Code, and the Uniform Code of Military Justice to protect the unborn against assault and murder, and for other purposes.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, I come to the floor this morning to begin the debate on the Unborn Victims of Violence Act. I would like first to thank our 40 cosponsors for their leadership and support on this issue.

Let me also thank specifically Senator LINDSEY GRAHAM, who championed this issue on the House side for a number of years before he joined us here in the U.S. Senate. He has worked tirelessly to see to it that the most vulnerable members of our society are, in fact, protected.

Let me also thank our lead House sponsors, Congresswoman MELISSA HART from Pennsylvania, and my friend and colleague from the State of Ohio, Congressman STEVE CHABOT. They have both been great champions of this great cause. They worked tirelessly to help get this important bill passed in the House of Representatives.
Our bill is very simple. I will take just a couple of minutes to explain it. It is a bill about simple justice. It is a bill about doing what is right. I was asked yesterday by one of my colleagues, Why do we need this bill? Why is this bill needed on the floor?

This is what I responded yesterday and this is what I would say to my colleagues here in the Senate this morning. Imagine a pregnant woman in a national park or a pregnant woman on an Air Force base and she is violently assaulted. As a result of that assault, she loses her child; that child dies. Today, there is no Unborn Victims of Violence Act. Today, unless that Federal park or Air Force base is located in a State that has a similar law, a Federal prosecutor would search the Federal statute books in vain to find anything to charge that assailant for the death of that child, for the death of that unborn infant, the fetus. The only thing that Federal prosecutor would be able to charge that defendant with is the assault of the woman. The death of that child would not be able to be charged as what we would think would be a separate offense. Justice would not be done for that, what we would think would be a separate offense.

This bill corrects that. This bill recognizes there are two victims. There is the victim, the mother, who was assaulted; and there is the victim, the unborn child, who was either injured or killed. It is that simple.

This bill recognizes when someone attacks and harms a mother and her unborn child that attack does in fact result in two separate victims: the mother and her child. That is what this bill does.

I will have more to say about this bill later. I will reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I would like to call up amendment 2858.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN] for herself and Mr. LAUTENBERG, Mr. BOXER, Mr. KENNEDY, and Mr. CORZINE, proposes an amendment numbered 2858.

Mrs. FEINSTEIN. 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: Entitled the Motherhood Protection Act)

Strike all after the enacting clause and insert:

SEC. 1. SHORT TITLE.

This Act may be cited as the "Motherhood Protection Act".

SEC. 2. PROTECTION OF PREGNANT WOMEN.

(a) In GENERAL. —Title 18, United States Code, is amended by inserting after chapter 90 the following:

"THE PRESIDING OFFICER. The amendment is as follows:

"CHAPTER 90A—PROTECTION OF PREGNANT WOMEN"

"CHAPTER 90A—PROTECTION OF PREGNANT WOMEN"

"Sec. 1841. Causing termination of pregnancy or interruption of the normal course of pregnancy."

"(a)(1) Any person who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the termination of a pregnancy or the interruption of the normal course of pregnancy, thereby intentionally causes or attempts to cause the termination or interruption of the pregnancy other than by live birth, is guilty of a separate offense under this section.

"(2) A person who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the termination or interruption of the normal course of pregnancy, thereby intentionally causes or attempts to cause the termination or interruption of the pregnancy other than by live birth, is guilty of a separate offense under this section.

"(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment for that conduct under Federal law had that injury or death occurred to the pregnant woman."

"(B) An offense under this section does not require proof that—

"(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

"(ii) the defendant intended to cause the termination or interruption of the normal course of pregnancy.

"(C) If the person engaging in the conduct thereby intentionally causes or attempts to cause the termination of or the interruption of the pregnancy, that person shall be punished as provided under section 1111, 1112, or 1113, as applicable, for intentionally terminating or interrupting the pregnancy or attempting to do so, instead of the penalties that would otherwise apply under subparagraph (A).

"(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

"(2) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b), 924(b), 924(d), 924(e), 924(f), 924(g), 926, 928, 930, and 931 of this title (articles 111, 111a, 116, 117, and 119), 119, 120(a), 122, 124, 126, and 128.

Reduction of the death penalty shall be imposed for an offense under this section.

"(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b), 924(b), 924(d), 924(e), 924(f), 924(g), 926, 928, 929, and 930 of this title (articles 111, 111a, 116, 117, and 119), 119, 120(a), 122, 124, 126, and 128.

"(c) Subsection (a) does not permit proscription—

"(1) for conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency;

"(2) for conduct relating to any medical treatment of the pregnant woman or matters relating to her pregnancy; or

"(3) of any wounding with respect to her pregnancy.

"(d) CLERICAL AMENDMENT.—The table of chapters for part 1 of title 18, United States Code, is amended by inserting after the item relating to chapter 919 the following:

"90A. Protection of pregnant women 1841."

"Sec. 2. MILITARY JUSTICE SYSTEM."

(a) PROTECTION OF PREGNANT WOMEN.—Subchapter C of chapter 47 of title 10, United States Code (relating to the Uniform Code of Military Justice), is amended by inserting after section 919 (article 119) the following:

"919a. Art. 119a. Causing termination of pregnancy or interruption of normal course of pregnancy

"(a)(1) Any person subject to this chapter who, in the course of conduct prohibited by any of the provisions of law listed in subsection (b) and thereby causes the termination of a pregnancy or the interruption of the normal course of pregnancy, thereby intentionally causes or attempts to cause the termination or interruption of the pregnancy other than by live birth, is guilty of a separate offense under this section.

"(2) A person who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the termination of a pregnancy or the interruption of the normal course of pregnancy, thereby intentionally causes or attempts to cause the termination or interruption of the pregnancy other than by live birth, is guilty of a separate offense under this section.

"(B) An offense under this section does not require proof that—

"(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

"(ii) the defendant intended to cause the termination or interruption of the normal course of pregnancy.

"(C) If the person engaging in the conduct thereby intentionally causes or attempts to cause the termination of or the interruption of the pregnancy, that person shall be punished as provided under section 918, 919(a), 919(b), or 920 of this title (articles 111, 111a, 116, 117, and 119, 119, 120(a), 122, 124, 126, and 128).

"(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

"(2) The provisions referred to in subsection (a) are sections 919(a), 919(b), 924(b), 924(d), 924(e), 924(f), 924(g), 926, 928, 929, and 930 of this title (articles 111, 111a, 116, 117, and 119), 119, 120(a), 122, 124, 126, and 128.

Reduction of the death penalty shall be imposed for an offense under this section.

"(b) CLERICAL AMENDMENT.—The table of chapters for part 1 of title 18, United States Code, is amended by inserting after the item relating to chapter 47 of title 10, United States Code (relating to the Uniform Code of Military Justice), is amended by inserting after section 919 the following:

"90a. Causing termination of pregnancy and interruption of normal course of pregnancy.

Mrs. FEINSTEIN. Madam President, I agree with virtually everything the Senator from Ohio has said. Although there are many State laws which do take into consideration a fetus, it is true that the Federal laws, which would impact only those on Federal property, are silent. I am in complete concurrence with everything the Senator from Ohio has said. I have no objection to working with him, so it is a delight for me to be able to discuss and debate this issue with him.

The substitute amendment I have called up is on behalf of Senators BINGAMAN, BOXER, CORZINE, KENNEDY and LAUTENBERG. I would like to make clearer a couple of places in that amendment.
I ask unanimous consent to send a modification to the desk. 

Mr. DE WINE. I object. 

The PRESIDING OFFICER. Objection is heard. 

Mrs. FEINSTEIN. I hear the objection. I am rather surprised by the objection. It is generally common courtesy to allow a Senator to amend his or her amendment. However, I believe our amendment is clear on its face. 

I would like to point out that since 2000, in the Senate, there has been no hearing on this amendment and no opportunity for the Judiciary Committee to make corrections. This amendment is on the floor as a rule XIV. 

I am very disappointed the Senator will not allow me to make a modification to the record. Let me simply state that I was proposing a minor change designed to further clarify what I believe to be the clear intent and application of our amendment. The bottom line is this: Whichever bill passes in the end, a prosecutor will be given exactly the same ability to charge a defendant. The crimes are the same. The penalties are the same. Everything will be the same except a few simple words that inject the abortion debate into this issue by clearly establishing in criminal law for the first time in history that life begins at the moment of conception. I contend that if this result is incorporated in law, it will be the first step in removing a woman’s right to choose, particularly in the early months of a pregnancy before viability. 

As we all know, the question of when life begins is a profound and a deeply divisive one. So I don’t believe we should be addressing that issue here today—without a hearing since the year 2000, without expert testimony, and without need to do so. But, more importantly than that, this language unnecessarily turns a simple law into a complex and controversial one and, most importantly, this language could make it much more difficult for prosecutors to obtain a conviction for the second defense of harming or ending a pregnancy. I will describe why later. 

It is possible that some pro-choice jurists might refuse to convict simply because the language of the law refers to an unborn “child in utero”—that is a quote, “child in utero,” that is bill language—when the victim may have only been 6 weeks or even 1 day pregnant. 

An embryo in this bill becomes a person for the purpose of Federal criminal sanctions for the first time in America’s history. That is the significance of this bill. This substitute allows jurists to look at evidence and the law and decide for themselves to grapple with the complicated and controversial issue of when life begins. 

Including language defining the beginning of life is not in any way necessary to the criminal law but, rather, it is only relevant to the abortion debate. 

Let me show you a statement that I believe reveals the clear intent of this
bill. That statement is made by Samuel Casey, executive director and CEO of the Christian Legal Society. This is the intent:

In many areas as we can, we want to put on the books that the embryo is a person. That would be a new law. But a cloning ban has been able to do that.

Professor of Law, Alta Charo of the University of Wisconsin further points out how these efforts are aimed at changing the law and how the Supreme Court might rule in future abortion cases. Charo said recently:

If you can get enough of these bricks in place, do not start from different parts of the house. Then do not get the Supreme Court to say they’re not. This is, without question, completely changing the law.

This is a professor of law at the University of Wisconsin, pulling the veil back further and exposing exactly what it is, a conscious strategy to say life begins at conception and enshrine it in this Federal law, and then other laws, and then go to the Supreme Court and Roe vs. Wade is struck down.

In a CNN interview last May, the distinguished chairwoman of the Senate Judiciary Committee—and I had the pleasure of serving on that committee for 12 years—made the following comment:

They say it undermines abortion rights. It does undermine it. But that’s irrelevant. We’re concerned here about a woman and her child. The partisans argue over abortion should not stop at a bill that protects women and children.

If that is true, then the Senator from Utah should vote for our amendment because our amendment does exactly the same thing, the same penalties for the same crimes as the House bill.

When Justice Harry Blackmun wrote in 1973 the Roe decision, he said:

... the unborn have never been recognized in law as persons in the whole sense.

Let me repeat that: “the unborn have never been recognized in the law as persons in the whole sense.”

What he did by saying that was actually, inadvertently, provide a roadmap for the anti-choice people and those who want to undermine Roe and eventually reverse it. This bill, the underlying bill, is following that roadmap by changing a criminal law in a way which clearly says an embryo can be an individual as a person for the purposes of criminal prosecution.

Clearly, this aperempted effort to codify in law the legal recognition life begins at conception. If we allow that to happen today in this bill or in any bill, we put the right to choose squarely at risk. Roe v. Wade allowed States to claim a valid interest in preventing abortion postviability. Many states—and we both know that—have laws on the books with respect to the third trimester and even the second trimester.

The concept of viability, which means when a fetus can live outside of the womb, gives way to a definition that provides life begins at conception, we could soon see abortion in this country outlawed entirely. Our amendment avoids that problem and focuses only on the need to increase penalties for those who attack pregnant women. There has been a lot of discussion about the tragic Laci Peterson case in California. I have had the pleasure of meeting with Laci’s mother, Sharon Rocha, a very fine woman and a woman who I can understand is decimated by what happened to her daughter. Some in the Senate have suggested that this tragedy is evidence that we need a law in Federal law that needs to be closed.

However, the House bill and the DeWine bill will have no impact in any way, shape, or form on the Laci Peterson case. The perpetrator of that crime will be prosecuted and punished under current California law and the perpetrators of almost all similar crimes through the country will, in fact, be prosecuted under State law, not a Federal law, unless the crime takes place on Federal property.

In my State of California, the legislation amended California’s existing murder statute in 1970—that is 34 years ago—read as follows:

Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

Now, if this were the case, if this were written in Federal law, easy. I would support it in a minute because it draws a distinction, it permits the double charge that both Senator DeWine and I agree is necessary. But the use of the words “or fetus” makes a distinction between a human being and a fetus for purposes of the application of the homicide statute. That is important. And that is the law under which Laci Peterson’s alleged murderer is going to be prosecuted.

If you look at it, you will see it is completely adequate. The complexity of that case, which continues today, is one that relates to evidence and proof, not a problem with statutes or penalties. The California statute is wholly adequate. So the bill we discuss today would have absolutely no impact on the Laci Peterson case, none.

Now, I would like to bring to the Senate’s attention a July 10 letter from a Stanford law professor. He goes into the problems of what this law, if passed, could actually do in the Commonwealth of Pennsylvania. The letter is from a Stanford law professor. He served as an assistant DA, as an attorney general. He had taught criminal law at Stanford Law School since 1995, and he has founded Stanford’s criminal prosecution unit. He makes three points. Let me quote him:

The Bill’s apparent purpose of influencing the course of abortion politics will discourage prosecutions under any future Act, I do not know what motives gave rise to the Bill’s use of the expressions “child in utero” and “woman.” I do not know that any vaguely savvy reader will conclude that these terms and the Bill’s definition of

March 25, 2004 CONGRESSIONAL RECORD — SENATE S3127
them were intended by the Bill's authors to influence the course of abortion politics. If the authors of the Bill truly seek to protect unborn life from criminal violence, they will both accomplish this purpose by avoiding such expressions as "child in utero." Better alternatives would refer to injury or death to a fetus or damage to or termination of a pregnancy.

Dr. Fisher goes on to say:
The Bill's apparent purpose of influencing the course of abortion politics will motivate prosecutors to exclude those prospective jurors who would otherwise be most sympathetic to the rights of pregnant women. This result clearly would frustrate the Bill's stated purpose of protecting unborn life from criminal violence.

He concludes:

The Bill's apparent purpose of influencing the course of abortion politics offends the integrity of the criminal law. To anyone who cares deeply about the integrity of the criminal law, the Bill's apparent attempt to insert an abortion broadly into the criminal code is greatly offensive.

Now, that is a former prosecutor, a professor of law at Stanford Law School, and a member of the Criminal Prosecution Unit at Stanford Law School.

I ask unanimous consent to have the entire letter printed in the Record following my remarks.

The PRESIDING OFFICER (Mr. Ensign). Without objection, it is so ordered. (See exhibit 1.)

Mrs. FEINSTEIN. Mr. President, the substitute amendment, which I have offered, has been crafted to avoid these problems.

Our amendment, the Motherhood Protection Act, will accomplish the same goal as the Unborn Victims of Violence Act, but will do so in a way that does not involve us in the debate about abortion or when life begins. In my view, there is no reason to vote against this substitute unless the intention is to exclude from the debate about the purposes of Federal criminal law, begins at the moment of conception because, ladies and gentlemen, that is exactly what this bill does.

To emphasize the point, let me again turn to the words of Samuel Casey, executive director and CEO of the Christian Legal Society, who clearly states the intention behind the bill in this quote:

In as many areas as we can, we want to put on the record this time is a person. . . . That sets the stage for a jurist to acknowledge that human beings at any stage of development deserve protection—even protection that would trump a woman's interest in terminating a pregnancy.

Let there be no doubt about the intent. Anyone who is pro-choice cannot vote for this bill without the expectation that they are creating the first legal bridge to destroy Roe v. Wade. Now, there is a time and a place to discuss the morality and philosophy of when life begins. This is not that time. As President Bush's Federal law to punish criminals who would inflict grievous injuries or death upon pregnant women on Federal lands. So I urge my colleagues to support the substitute amendment.

In many areas as we can, we want to put on the record this time is a person. . . . That sets the stage for a jurist to acknowledge that human beings at any stage of development deserve protection—even protection that would trump a woman's interest in terminating a pregnancy.

Mrs. FEINSTEIN. Mr. President, how much time have I consumed?

The PRESIDING OFFICER. Twenty seconds.

Mrs. FEINSTEIN. I have 22 seconds left.

The PRESIDING OFFICER. The Senator has 99 minutes remaining.

Mrs. FEINSTEIN. I have 99 minutes remaining.
Mrs. FEINSTEIN. Mr. President, I yield 10 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senate is recognized for 10 minutes.

Mr. LAUTENBERG. Mr. President, thank my colleague from California and also our distinguished colleague from Ohio.

I rise to express my strong opposition to the underlying bill and support for the amendment by the Senator from California.

I have long supported legislation that combats domestic violence. I was the author of the domestic violence gun ban because abusers should not have access to weapons, to guns. Whether an abuser is terrorizing his wife or his children, let’s take away their means to inflict further terror and abuse. So far, my law has prevented nearly 30,000 abusers from obtaining guns.

Because of my long-term commitment to stopping violence against women and children, I take offense at the fact that the backers of this bill are exploiting this issue in order to advance another anti-choice agenda. We know the story behind this place. I saw it in a commerce subcommittee meeting that was supposed to discuss science, space, and technology. The witnesses who were at the table were there to talk about their opposition to abortion and their experience after they themselves had abortions. They made their decisions after an action that they took that placed them in that position. Now they wanted to block everybody else from having a chance to make their personal choices.

We have to understand what underlies this issue. Yes, it is worthwhile to protect people and those who are not yet born against violence, but to make this the focus of this magnitude, when there is so much else at stake in the matter of choice, decided many years ago by the Supreme Court—supporters of this bill will tell you this legislation protects women, protects children—and this is a bill about punishing crime. But if you want to know what this bill is really about, you only need listen to what a leading supporter of this bill told CNN when asked about the legislation. I quote him:

They say it undermines abortion rights. It does. It’s irrelevant.

That is the prevailing attitude of those who want to impose yet another restriction on a woman’s choice, on the protection of a woman’s health. This bill is intended, plainly and simply, to undermine the rights of women.

Over and over, we see this body taking up legislation that I believe is the product of an attempt to establish what I call a “male-gagarchy” in our society. A male-gagarchy is a society in which men are making decisions for and about women. Anti-choice advocates simply don’t trust women and their doctors to know what is best for their bodies and their lives. We even encountered this male-gagarchy last year when this body told doctors and their patients that it is Congress, rather than the medical experts, who know what is best for their health. And when the so-called partial-birth abortion bill was signed, there were all men on the stage with the President of the United States, smiling and gloating as they took away the right of a woman to make a decision with her doctor and her conscience, to make a decision that, though painful, is appropriate for her well-being.

Do we want to decide here whether or not a woman has a right to make a decision about her choice for an abortion? Perhaps she has two, three, four other children at home and her health is in jeopardy. We are saying: It doesn’t matter what you think, Madam. We are going to make the decision for you.

That is what one woman standing with the President at the White House the day that so-called partial-birth abortion prohibition passed the Senate, when the President signed the bill.

President Bush and his supporters in the Senate say they care about domestic violence and protecting women. But if that is the case, how, then, do we explain the fact that the President’s budget cuts funding for the Violence Against Women Act programs by $116 million next year? Is that going to help women? Is that going to make life better for them? No. It is going to make life worse. Those are living people. Those are people who were here. Those are people for whom this man group wants to decide, make decisions.

If Congress wants to get serious about violence against women and children, let’s do something real about it. Let’s fund programs that provide funding to help law enforcement to prevent domestic violence and sexual assault. Let’s fund battered women’s programs and rape crisis centers instead of cutting funding for these often lifesaving services. Let’s improve access to shelters, making it easier for abused women and their children to flee that abuse.

If this so-called Unborn Victims of Violence Act were actually about violent crime, then the domestic violence and the assault on women and children would be the focus of it. But they oppose the bill. The National Network to End Domestic Violence, the National Coalition Against Domestic Violence, and the Family Violence Prevention Fund, all oppose this legislation.

Many backers of this bill also support giving a $1 trillion tax break to the wealthiest among us, rather than giving it to the struggling working families who need it to help pay for everyday goods and services, programs such as Head Start for children who don’t have a comfortable home life that permits them to engage in the process of learning or of expecting to learn, who often get their only nutritional meal from the program. Three hundred thousand of those children are denied access to these programs because we have taken away the funding to give tax breaks to those who have been fortunate enough to live in this country, to make a lot of money, to succeed.

I am one of those. I had a good business career, as did many here. We don’t need this kind of thing. We don’t want to accept our country to be strong. We want the strength to be built in a harmonious society and to lend a hand to those who don’t have the ability to help themselves. But now that can’t happen. We are focused on giving tax breaks to the wealthy and making them permanent, as we dig ourselves deeper into debt.

Many of my colleagues who support this bill also reject expending health insurance coverage for poor and lowerclass children and their families. Many who support this bill will tell you they want to simply protect children. I find it ironic that they only want to protect children before they are born, but they don’t want to do what they have to do after they are born. I see it as hypocrisy.

I challenge supporters of this bill to get serious about protecting women and children and pass meaningful legislation that improves the lives of these women and children, not this undercover move to restrict choice for women.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DeWINE. Mr. President, I have a great deal of respect for my colleagues from New Jersey and California. My colleague from New Jersey knows I care about what happens after children are born. I care about their health. I believe I have defended that in the Senate. In fact, he and I have worked on these issues together. I have worked with my colleague from California on many issues having to do with children. We just happen to disagree on this issue.

I have a great deal of respect for both of them. We have worked together on a bipartisan basis on a wide range of issues. I would hope that as we debate this bill, we would focus on the legislation that improves the lives of these children and not this undercover move to restrict choice for women.

The PRESIDING OFFICER. The Senate is recognized for 10 minutes.

Mr. DEWINE. Mr. President, I have a great deal of respect for my colleagues from New Jersey and California. My colleague from New Jersey knows I care about what happens after children are born. I care about their health. I believe I have defended that in the Senate. In fact, he and I have worked on these issues together. I have worked with my colleague from California on many issues having to do with children. We just happen to disagree on this issue.

I have a great deal of respect for both of them. We have worked together on a bipartisan basis on a wide range of issues. I would hope that as we debate this bill, we would focus on the legislation that improves the lives of these children and not this undercover move to restrict choice for women.

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No. 1, the Feinstein amendment does not recognize a second victim. Our bill does. The Feinstein amendment creates a legal fiction. It is contorted, it twists the law in a sense—maybe a better way of saying it is that it twists the law; that, but it ignores the reality of the common sense of people when they look at this. When they see a pregnant woman who is assaulted and her child dies, they intuitively know there is a victim besides the mother. They know the mother is a victim, but they also know there is a second victim.

The vast majority of the American people, if you ask them was there another victim, of course there are two victims. Our bill recognizes the second victim. The Feinstein amendment refuses to recognize the second victim. Now we can talk about punishment and all kinds of things, but it refuses to recognize common sense.

This bill in front of us has nothing to do with abortion. It has absolutely nothing to do with abortion. We have explicitly exempted abortion in this bill. Yet opponents still try to argue this point.

Our statute could be no more clear on this point. Senator Feinstein uses identical language to exempt abortion or any related activity in her amendment. This bill simply does not affect abortion rights whatsoever. The language could not be clearer. I invite my colleagues to pick up the bill and look at the section. It exempts any reference to abortion, anything a mother would do to her own child, anything a doctor would do is exempted. It has nothing to do with abortion, not at all.

That is not what this is about.

Point No. 1, this bill recognizes a second victim; the Feinstein amendment does not. If you believe there is a second victim, you cannot vote for the Feinstein amendment. It denies there is a second victim.

There is a point I want to make will come as a surprise, I think, to the Members of the Senate. It will come as a surprise to you until you pick up the Feinstein amendment and read it carefully. I invite you to do that. Pick up the amendment and read it carefully.

First, the Feinstein amendment does not punish the criminal for harming or injuring the baby. Let me read it. It only punishes the criminal for “interrupting or terminating a pregnancy.” That is the language, “interrupting or terminating a pregnancy.” But not for injuring. So if a child is injured, not killed, the pregnancy not terminated, the Feinstein amendment will not cover it. That is a fatal fallacy, fatal problem.

Here is the language:

Any person who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the termi-

nation of a pregnancy or the interruption of the normal course of pregnancy, including termination of the pregnancy other than by live birth is guilty of a separate offense under this section.

It does not cover the injury of a fetus. That is a problem.

Let’s turn to the penalty section. The penalty section is fatally flawed. The penalty section won’t work. The Justice Department has sent a letter and, in their opinion, the penalty section provides no penalty, under the Feinstein amendment, of the fetus. It is vague; it is unclear at best. It defines additional crimes as the interruption or termination of a pregnancy. When it describes the punishment, it refers to injury or death. Whose injury or death are we talking about? Is it the unborn child? Whose injury?

The Feinstein amendment doesn’t recognize that the interruption and termination of the pregnancy means the injury or death of the fetus because it won’t acknowledge the fetus, of course, as a separate being.

The amendment is circular and really without meaning. Put simply, there is no additional punishment because the law that provides for the additional victim. The Feinstein amendment goes out of its way not to recognize another victim. What is the reference to? Let me read this section and, again, this is a technical reading, but this is to read a criminal section. This is how judges have to do it. The bottom line is—I am going to say it again and again—if you vote for Feinstein, there will be no penalty at all for the killing of a second victim; the killing is now for the injury of that child. Let me read the penalty section, 2(a), under the Feinstein amendment:

Except as otherwise provided in this paragraph, the punishment for that offense is the same as the punishment provided for that conduct under Federal law had that injury or death occurred to the pregnant woman.

What injury or death are we talking about? To whom?

The language doesn’t acknowledge injury or death to the fetus. Who is it referencing in the previous paragraph? Clear and certain. It is difficult for me to read this and for people to understand it. But to get the section out, it clearly doesn’t work and is fatally flawed. So this does not recognize the death, does not recognize any punishment. It would not provide punishment and it clearly presents a problem.

My friend from California has said the DeWine bill would have no effect on the Laci Peterson case. That is true; it would not. Fortunately, California has a similar law for a second victim, the punishment for the death of that child. While it is true the DeWine bill would have no effect on the Laci Peterson case, the fact is if the Feinstein amendment, or a similar amendment to the Feinstein amendment, had been approved by the California legislature at the time their law was being considered, there would be no punishment for the death of baby Conner Peterson. There would have been in California a penalty for that second victim. There would have been no recognition of the death of that second victim.

If the Feinstein amendment would have passed, or a version of it, in California, if the California legislature would have done what Senator Feinstein is asking us to do today in this Federal legislation, they would not have been able to prosecute for the death of Conner Peterson. They would not have been able to recognize that death as a second victim death. That is the fundamental fact, and that is the fundamental difference between the DeWine bill and the Feinstein amendment.

We have heard a lot of talk about motives and agendas. I think we should stop doing that, and I think we should look to the victims and hear from the victims. There are three victims. The families of the victims were here yesterday. When one talks with the victims, it is clear the victims believe there are two victims. Let me talk about several cases. They are tragic cases and are difficult to listen to, but I think it brings home what we are really talking about.

Let me talk about the example of Air Force Airman Robbins and his family. The Airman Robbins and his family were stationed in my home State of Ohio at Wright-Patterson Air Force Base in Dayton. At that time, Mrs. Robbins was more than 8 months pregnant with their second child, named Jasmine. On September 12, 1996, in a fit of rage, Airman Robbins wrapped his fist in a T-shirt and savagely beat his wife with striking her repeatedly about the head and stomach. Fortunately, Mrs. Robbins survived this violent assault, but tragically, her uterus ruptured during the attack, expelling the baby into her abdominal cavity, causing Jasmine’s death.

Does anyone truly think Jasmine was not a victim? I think we know she was. Not only was her mom a victim, but she was as well.

Let me give another example. In August 1999, Shiwna Pace of Little Rock, AR, was days away from giving birth. She was understandably thrilled about her pregnancy. Her boyfriend, Eric Bullock, however, did not share her joy and enthusiasm. In fact, Eric wanted to make sure to Shiwna that he had no plans to stick around and help her raise the baby. He was determined to make sure she was not able to keep her baby. Shiwna was not able to keep her baby because Eric Bullock strangled her and killed her. Her baby into her abdominal cavity, causing Jasmine’s death.

I begged and pleaded for the life of my unborn child, but they showed me no mercy. In fact, they killed my baby because they thought I was pregnant with a baby they didn’t want. They thought I was pregnant with a baby they didn’t want. Your baby is dying tonight. ‘I was choked, hit in the face with a gun, slapped, punched, and kicked repeatedly in the stomach. One of them even put a pool noodle in my mouth and threatened to shoot.

Do we really believe Shiwna was the only victim here? Do we really think
we should adopt an amendment that says she was the only victim? I don’t think so. How can we suggest to Shiwona that her child was not murdered? Should we twist the law so we don’t recognize that? I don’t think we should. In a case like this, we must recognize this wrong for what it is. It is a wrong against two separate and distinct victims.

Another example: I can think of no better way to tell the story of Baby Zachariah and his mother Tracy DeWine than to simply reading from her testimony before the House Judiciary Subcommittee on the Constitution which occurred on July 8, 2003. Let me read it:

I carried Zachariah in my womb for almost nine full months. He was killed in my womb, only 5 days from his delivery date. The first time I ever held him in my arms, he was already dead.

There is no way that I can really tell you about the pain I feel when I visit my son’s grave site in Milwaukee, and at other times, thinking of all that we missed together. But that pain is greater because the man who killed Zachariah got away with murder.

Zachariah’s delivery date was to be February 13, 1992. But on the night of February 8, my husband brutally attacked me at my home in Milwaukee. He held me against a couch by my hair. He knew that I very much wanted my son. He punched me very hard in the face because the man who killed Zachariah got away with murder.

After about 15 minutes of my screaming in pain that I needed help, he finally went to a bar and from there called for help. Zachariah was delivered by emergency Caesarean section. My son was only 5 days from his delivery date. The first time I ever held him in my arms, he was already dead.

The physicians said he had bled to death inside me because of blunt force trauma. He was devastated.

My own injuries were life-threatening. I nearly died. I spent 3 weeks in the hospital. During the time I was struggling to survive, the legal authorities came and they spoke to my son’s father. We said something that he found incredible. They told her that in the eyes of Wisconsin law, nobody had died on the night of February 8, my husband brutally attacked me. He killed Zachariah that night, and he killed me. But he was never arrested.

We surviving family members of unborn victims of violence are not asking for revenge. We are begging for justice—we like we were brought up to believe in and venge. We are begging for justice for the victims of violence are not asking for retribution. We have been made crystal clear to everyone.

I think this is clearly a misunderstanding of the plain text of our amendment. We explicitly create a separate offense for interrupting or ending a pregnancy, and we explicitly state that the offense is the same as if the crime had resulted in the injury or death of a mother. That is explicit.

So the intent is clear. I think quibbling about whether the language is perfect is beside the point. What we need to consider is whether it is constitutional to make a huge difference in the law depending on whether the victim is a woman or a fetus.

So I firmly believe our amendment does exactly the same thing as the DeWine amendment, but it does not do something his amendment does, and that is cause life at the point of conception. His use of the words “child in utero” or fetus as opposed to the California statute’s use of the words “or fetus” make a huge difference in the law legally. Once again, I think that is clear.

The bottom line is we believe the intent and the crafting of this bill is very clear. We do not create a child in utero. We try to avoid getting to the point where life is defined.

We say that if the pregnancy is intentionally terminated and specific damages are done to the fetus, it is punished either through manslaughter in a second charge or murder in a second charge. I think the language is very clear. I think it is nitpicking to say it isn’t clear.

I can change it, but I am not allowed to change it. We have the modification, but we are not allowed to send the modification to the desk. I believe Members can vote on this amendment and know clearly those are assessing the same penalties for the same crimes as the underlying bill does. The only difference is we do not decide in our bill when life begins.

Let me read a couple of editorials and statements that have come out in recent days. There is one editorial this morning in the Los Angeles Times. I would like just quickly to read one paragraph:

The Senate is likely to vote today on a bill intended largely to score points in the endless, weary abortion battle. The proposed Unborn Victims of Violence Act defines a child in utero as a member of the species Homo sapiens, at any stage of development, who is carried in the womb. In other words, the child exists at the moment of conception. The House passed similar legislation last month. As with every other aspect of the abortion debate, Americans are deeply divided over when human life begins. However courts in most States generally accord a single woman whose husband brutally attacked her then tried to murder her fetus the same rights to a fetus considered viable outside the womb. DeWine’s bill, S. 1019, offers a sweeping declaration that ignores prevailing scientific views and the national legal consensus. True, his bill specifically bars prosecution for abortion, but its effect, as DeWine intends, would be to give one side a new legal bullet in the broader abortion wars.

That is clear. I will go on. The Los Angeles Times is not the only editorial page that believes that. I indicated earlier this is true of an editorial in the Philadelphia Inquirer:

It is so easy to see how a federal unborn victim’s law, coupled with unborn victims’ laws in 29 States, will form the basis of a new legal challenge to Roe v. Wade, a landmark case that gives women the right to terminate certain pregnancies. If a child who dies during a crime is a murder victim, why, then, isn’t abortion murder?

From the Buffalo News:

Passage by House Republicans of a bill that treats an attack on a pregnant woman as separate crimes against her and her unborn child is at heart an attempt to erode abortion rights. It’s a disingenuous and misguided bill and the Senate should make sure it goes no further.

That is the Buffalo News. The New York Times, April 25, This is 2001.

Packaged as a crime fighting measure unconnected to abortion, the bill is actually an overwhelming fulfillment of the pro-life movement. The goal is to enshrine in law the concept of fetal rights equal to but separate and distinct from the rights of pregnant women.

Another editorial of the New York Times:

The bill would add to the Federal Criminal Code a separate new offense to punish individuals who injure or cause death to a child in utero.


What makes this bill a bad idea is the very aspect of it that makes it attractive to its supporters, that it treats the fetus as a person separate from the mother though that same mother has a constitutional right to terminate her pregnancy. This is useful rhetorically for the pro-life world, but it is analytically incoherent.

The Blethen, ME, newspaper:

First considered in 1999, the bill purports to create new Federal crimes for the intentional harm or death of a fetus or unborn child. But, no matter how much supporters deny it, the bill’s real intent is to undermine women’s reproductive choices. If the bill is passed and signed into law, it would weaken
the prudent and pragmatic decision handed down in Roe v. Wade.

In my remarks, I have tried to show that this is a concerted effort. It need not be so. You can attach the same penalties for the same crimes, as our substitute does, without getting into the debate of where life begins. This bill chooses to get into the debate of where life begins and it defines life beginning at conception. It does so in a Federal criminal statute. It is one step in the building blocks of statutes that will constitute the ability to demolish Roe v. Wade.

I think every Member of this body who is pro-choice should vote against the underlying bill and for this amendment because in this amendment, without creating the separate person at conception, we establish the penalties for interruption or termination of a pregnancy. Those penalties are the same—same for murder, same for manslaughter, same for attempted murder, same for human slaughter.

Again, I point out that in California what the State did 34 years ago was essentially amend the murder statute. By amending the definition in the Penal Code, Section 189, they provided a new definition of murderer which said:

Murder is the unlawful killing of a human being, or a fetus with malice aforethought.

That is the bill under which the Laci Peterson case will be brought to court. It is a different idea because it clearly says that it is a fetus.

Additionally, there is information from those who wish to continue this pursuit to make a fetus a human life, to make an embryo a human life, that this is a concerted strategy aimed at weakening Roe v. Wade.

What we have tried to do is mimic the House bill with respect to the penalties but connect it to the termination of a pregnancy. Those penalties are the same—same for murder, same for manslaughter, same for attempted murder, same for human slaughter.

I have indicated, from legal scholars, where they believe this will undermine Roe v. Wade. By amending the definition in the Penal Code, Section 189, they provided a new definition of murderer which said:

Murder is the unlawful killing of a human being, or a fetus with malice aforethought.

That is the clear intent.

I regret that the Senator would not allow me to modify my amendment. I can hardly understand why any Senator being refused the right to modify an amendment, but perhaps we are playing by new rules these days. I know what goes around comes around in this body. I regret that.

But I believe that our substitute amendment is clear, it is definitive, it will stand the test of time, and it will prevent what we hope to prevent, which is the first major law which decides when life begins.

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

The PRESIDING OFFICER (Ms. Murkowski). The Senator from Ohio.

Mr. DeWINE. Madam President, once again, I want to bring this debate back to its essence. I am afraid so much of the debate from the other side has been about motives—by quoting, with all due respect, the L.A. Times about peripheral issues.

Our intent, if you want to go by intent, is very simple. Our intent is to bring about justice for the victims of crime. Our intent is to bring about justice for the mother and for the child—for the unborn child as well as the mother. It is to conform with what the vast majority of the American people believe; that is, when a pregnant woman is assaulted and she neither loses that child or that child is injured, there are, in fact, two victims. It is as simple as that.

On the abortion issue, let us be done with this once and for all. This bill has nothing to do with abortion. The language could not be simpler.

Let me read to the Members of the Senate and invite everybody to read it. Nothing in this section shall be construed to permit the prosecution of any person with conduct relating to abortion for which consent of the pregnant woman or a person authorized by law to act on her behalf has been obtained or for which such consent is implied by law.

Two, of any person for medical treatment of the pregnant woman or her unborn child, or of any woman with respect to her unborn child.

It is very clear. My colleague argues that this language is going to somehow roll back abortion rights. That is a debate for another day. It is not a debate for today. That language in this bill is very clear.

If this language was a threat to abortion rights, then the language in 29 other States would have been a threat. We have 29 States that recognize fetal homicide law. The language in 16 of those States is virtually identical to the language in this bill.

If the language in this bill was a problem for abortion rights, then it would have been a problem with these other States.

The point is, there are some States that have had this language on the books for 30 years, and it has not been a problem for abortion rights.

That is just a bogus issue. Let us stop talking about it, and let us talk about what real issues are.

Let me get back to the two points that I made before. I want everyone to understand the Feinstein amendment. One is not in debate, and one my colleague, I do not see anyone who thinks is not in debate at all; that is, the Feinstein amendment does not recognize a second victim. It goes against good common sense.

Ask someone back in your home State if a pregnant woman is assaulted and she loses her child, how many victims are there? There are two. If you ask the average person in your State—whether your State is Ohio, California, wherever it is—the average person on the street is going to say: Senator, there are two victims.

That is all we are saying with this bill. We are trying to close a loophole so that if a pregnant woman who is hiking in a national park or is walking in a national park or a pregnant woman on an Air Force Base—we are not making these stories up. This happens. Pregnant women are attacked all the time. I saw it as a county prosecutor. You ask any county prosecutor—yes, any police officer, anybody who is a victims rights advocate—how often pregnant women are attacked, a pregnant woman who is in a national park, a pregnant woman who is on Federal property and is attacked. They are simply saying that it is wrong if a pregnant woman on Federal property is in a State that does not have a similar law to this. It is wrong for that Federal prosecutor searching in vain the Federal statutes to find a law for which he can charge that person with the death of the fetus or a child—whatever word you want to use. It is wrong. That happens today. We are closing that loophole.

When this law passes, that won't happen anymore. A Federal prosecutor will be able to say, when law enforcement people come in and they have that case where a woman has been violently attacked, she has been injured but the
child has been killed, they will be able to charge for death of that child. That is the right thing to do. They will be able to file two charges, recognize two victims, and recognize that reality. That is what this does.

Let us look at the second thing about the Feinstein amendment. Look at the amendment.

We have to go to the penalty section. This is the Feinstein amendment. Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as that punishment provided for that conduct under Federal law had that injury or death occurred to the pregnant woman.

Remember, this is a criminal law. I go back to my days as a prosecutor: You have to construe a law strictly. When it is a criminal law, you construe it in favor of the defendant. You give every benefit of the doubt to the defendant. If this is vague, there is a problem for the prosecutor. We have a problem with this one. A serious problem.

We have a letter from the Justice Department that says there is no penalty under the Feinstein amendment. Let's look up the Justice Department and see why:

"Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as that punishment provided for that conduct under Federal law had that injury or death occurred to the pregnant woman."

What injury or death? The problem under the Feinstein amendment is it does not recognize the baby or fetus. Who are we talking about? Read this section above. It talks about "termination of a pregnancy or the interruption of the normal course of pregnancy." It does not recognize two assaults, two injuries, two people. There is nothing for it to reference to. With all due respect, it is not drafted right. If we pass the Feinstein amendment, we are left with all due respect, not only are you not recognizing a separate victim—which we all agree on—but, worse than that, there is no penalty for killing the unborn; there is no penalty for injury.

I have already pointed out, and we looked at the language, why there is no penalty at all for injury. That is clear when we look at this: "causes the termination of a pregnancy or the interruption of the normal course of pregnancy, including termination of the pregnancy other than by live birth," etcetera.

Clearly, that is no reference to the injury. What word here has to do with injury? Nothing. Clearly, this has nothing to do with injury. Any child who is injured, not killed, would not be covered. And in the paragraph below, there is no penalty at all.

If we get by that, which we cannot, but even if you get by all of that, you have the problem of the lesser included offense. We cannot get by that. But take one more problem, assuming you could get by that. There is another reason the Feinstein amendment fails to create a separate punishable offense to terminating pregnancy. All it does is recognize attacks on an unborn child under the label of "interruption or termination of pregnancy," then tracks that label on as an element to any one of the offending acts. The result is a new series of offenses identical to the previous 68, except for the addition of that one element.

For example, now a criminal could face a Federal charge of assault with the result of abortion, as well as the original charge of assault. This is important. But because he could be charged with both does not mean he could be convicted and punished for both. Instead, he would be protected by a legal principle known to lawyers as lesser included offenses. That principle protects a defendant from being convicted in and punished for a whole series of crimes that are all a subset of a lesser crime.

We know, for instance, the crime of manslaughter and murder. We know one defendant cannot be convicted of both charges for the death of only one victim. If someone is guilty of murder, then he or she must have been guilty of all the components of murder, including the one that made him guilty of manslaughter, but that person, of course, is not convicted of both. You cannot be convicted of both manslaughter and murder. If a man is convicted of a felony for stealing $30,000, he is not also convicted of the misdemeanor of having stolen $500.

Of course, we can convict one criminal of the murder and manslaughter of two separate people because the laws of these crimes differ on one critical point: They have different victims. That is the difference between our bill and Senator Feinstein's amendment. Ours does not have that problem because we recognize two victims. Her amendment does not. Therefore, it is fatal under this principle. There is another problem.

The bottom line is the Feinstein amendment centers on the death of the child. It is not fatal under this principle. Therein lies another problem.

The Justice Department analyzed and came to the same conclusion. Again, it is a vague amendment. They come at it a little differently, but here is what they say in a letter of March 24:

Additionally, by omitting any reference to the unborn child but retaining language contained in H.R. 1997 as introduced, the substitute appears to create an ambiguity that likely leaves an offense, could one be found, without a corresponding penalty. The substitute provides that punishment for the offense prescribed by the legislation is the same as the punishment provided under Federal law had the "injury or death occurred," to the pregnant woman.

In H.R. 1997, the result of the "injury or death" was the unborn child. However, in the substitute the injury or death provision has no object because the only victim under the substitute is the woman herself. Because it is self-evident there are currently no penalties in federal law for the offenses of "termination of a pregnancy," or "the interruption of the normal course of pregnancy," there would be no penalty even assuming that a successful prosecution could be brought.

They have analyzed it a little differently than I did, but they come to the identical conclusion for the same reason. Again, it goes back to this sentence in their letter, "However, in the substitute, the injury or death provision has no object because the only victim under the substitute is the woman herself."

That is the problem. That is what we have.

Members who come to the Senate and vote on this Feinstein amendment, which is the key vote, need to understand three things: One, abortion has nothing to do with this debate. We have covered that in the language of the bill. But more important is the precedent in the States has already been set. States have bills like this. They have not interrupted people's rights under the Supreme Court in regard to Roe v. Wade and all the other court decisions. It has not interrupted rights having to do with abortion. It has nothing to do with abortion. That is a fact.

No 2, the Feinstein amendment fails to recognize what everybody in this country knows: When a woman is attacked, there are two victims. Additionally, by omitting any reference to the unborn child but retaining language contained in H.R. 1997 as introduced, the substitute appears to create an ambiguity that likely leaves an offense, could one be found, without a corresponding penalty. The substitute provides that punishment for the offense prescribed by the legislation is the same as the punishment provided under Federal law had the "injury or death occurred," to the pregnant woman.

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two victims. He has hurt mom, or maybe done worse to her, and he has killed the baby, which is what his intention was to do.

I think all of us recognize the seriousness of that kind of offense and acknowledge the offense like that against a pregnant woman, and directed at the baby, is more serious because of the status of pregnancy and because of the existence of that child than it would otherwise be.

So I think we are agreed. My friend, the Senator from California, wants to call that second offense the “interruption” of a pregnancy rather than the claiming of the life of a child.

I appeal to the Senate, and to the country, through the Chair, and ask what our understanding is, what our instinctual reaction is to that kind of a crime.

When a woman loses a child in that kind of instance, she has not lost a pregnancy, she has lost a child.

Earlier in our marriage, my wife had several miscarriages. She did not think of it as losing a pregnancy. She lost children. That is why people have memorial services sometimes—often—in cases like that. That is why they go through a grieving process. That is why they may get counseling.

I do not see why, with the greatest respect to the substitute amendment and to the Senator from California, why we cannot conform Federal law to that common understanding. I think we should.

I understand the sensitivity on the issue of abortion. I really do. I think the Senator from Ohio and the Senator from South Carolina have tried to convince this bill to avoid those sensitivities. It is hard to do.

But just because—for overriding reasons of public policy that some here adhere to very strongly—we cannot recognize the status of this child when questions about what she thinks are justified, believes she must end the pregnancy, it seems to me, it does not mean we cannot accord the child the dignity of the status of a human being when the child has been the victim of a vicious act of violence against both mom and the child.

I thank my friend again for allowing me to intervene for a moment. I yield the floor.

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

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Madam President, I thank the Senator for yielding. I may take a few minutes. I say to the Senator from Kansas, to explain my relationship to this bill and why I am here today.

No. 1, I want to thank the leadership for allowing the bill to come to the floor. And so Senator麦康内尔 and our leadership team has worked hard with Senator达谢尔德 to get an agreement so we could come to the floor and debate why I think is an important issue, and to allow Senator费因斯坦 to have her say about how we should craft this bill.

In July 1999, this bill was first introduced in the House. I was the author of the bill. Before I came to Congress, I spent almost a year in the Senate. SenatorDeWine has taken the cause up in the Senate since it was first introduced. I really appreciate all that Mike has done. He has been very sympathetic to what we are trying to do. He has been leading the charge in the Senate as this bill was being debated and voted on in the House.

But prior to getting into politics, from 1982 to 1988, I served as a prosecutor and a defense attorney in the U.S. Air Force domestically and overseas. During that experience, I realized at the Federal level there was a gap in law.

We had a case involving a pregnant woman who was beaten up, and her child was lost, and she was almost killed. We tried to bring in the idea of charging the offender with the damage done to the unborn child, and under the Uniform Code of Military Justice there was no way to do that. So I was sensitive to it from a prosecutor’s point of view on my legal career.

When I got to Congress, there was an effort in some States to create unborn victims statutes, and I associated myself with that effort federally. A lot of pro-life people came over and were very supportive of what we were doing. That is true. Pro-life people generally like the idea of protecting unborn children whenever they can.

Pro-choice people are very sensitive to the fact that a woman should decide what to do with her body in an intimate situation like a pregnancy. I understand that debate clearly.

I am a pro-life person, so I have biased there. But having said that, there are pro-life people who hate this bill. It turns that, is it the consequence of a person who is opposed to the law in the bill, we wrote it in a way that abortion is not covered at all. As a matter of fact, we preserve, under the current law—under this bill—the right to have a legal abortion, and you cannot prosecute the mother under any circumstance.

There are cases out there where mothers are being prosecuted who abuse drugs and alcohol and do damage to their children. What I wanted to do was bring someone, we thought all could agree on, to a large extent. The Amendment in abortion really do not play well here because we are talking about criminal activity of a third party. I do not know why you would want to give a criminal any more breaks than you had to if they go around beating on pregnant women.

And people say: Well, don’t they have to know if the woman is pregnant? No. And they would say: If you attack a woman of childbearing years, you do so at your own peril. If you push somebody, you do not know if they have a severe medical condition. You are liable for the consequences of your actions.

There are plenty of cases that say, if you attack a woman of childbearing years, you do not have to have actual knowledge. You are responsible for the consequences of your actions.

In a poll, when people were asked, if a violent, physical attack on a pregnant woman leads to the death of her unborn child, do you think prosecutors should be able to charge the attacker with a murder for killing the fetus? 79 percent said yes; 69 percent of pro-choice people, in that poll, said yes.

Why would a pro-choice person support this legislation? It passed three times in the House. The first time we had it up for a vote was September 30, 1999. I believe, Madam President, 254 folks voted for the bill in the House, as I recall. I assure everyone listening to my voice today, there are not 254 pro-life people in the House. Madam President, 52 Democrats have voted for this bill.

The parties tend to split on the issue of abortion, with the Democratic Party being more pro-choice and the Republican Party being more pro-life. But we had Democratic support, and we had a lot of people support this idea that when it comes to criminal activity, we are going to define the unborn in terms that make it hard on the criminal—not hard on the mother.

You cannot prosecute a woman for anything she does to her child, no matter how much you would like to, under this bill. I did not want to get into that debate. You can never ever prosecute anybody for receiving medical treatment related to their pregnancy or lawful abortion.

For over 30 years, in the State of California, two things have coexisted: The Roe v. Wade rights of a woman and a statute that will allow you to do what is happening in California today—prosecute a person who is pregnant for killing the fetus, that is the Laci Peterson case.

This has been a long journey. This July will be the fifth anniversary of the time that I introduced this bill. Back in 1999 I remember saying on the floor of the House there will be a case where a pregnant woman is brutalized and she loses her child and it will be front-page news.

The reason I said that then is, having being a prosecutor and a defense attorney, I understand the following: There are a lot of good people in this world, but there are some mean people, too. This happens more than you would ever want to believe. The No. 1 cause of death among pregnant women in the District of Columbia is murder. As much as we would like to believe otherwise, pregnant women have things come their way because of their pregnancy that shocks the conscience.

And there are other people sitting on death row today because they were hired by the boyfriend, who didn’t want to pay child support, to kidnap his girlfriend, who wanted to
have the child, took her off to a remote area and beat her within an inch of her life with the express purpose of killing the child. And when she was on the floor, she begged for two things: Her own life and her baby’s life. Those people used the law to wage war against us, with two crimes, making them eligible for the death penalty. They deserve to be.

Under this bill, you cannot get the death penalty. The reason I chose not to include the death penalty is, I did not want to get into the death penalty debate because people of goodwill and good reasoning may disagree with the State imposing that punishment. The Senator from California cares as much about pregnant women as anybody here. This is not about who cares about women and who is trying to do this or that. Her amendment may not be written the way she would like. I would oppose it, if it was changed.

It happens in America more times than you can imagine. Believe that pregnant women are the victims of violent assault and their children get killed or severely injured.

That concept can and does exist with the idea that a woman, early on in the pregnancy, can choose whether to carry that child. These are two concepts the law recognizes that exist side by side.

Why do 84 percent of the people believe a woman should be prosecuted twice, not once? Because it really does violate common decency. If a woman chooses to have a baby and she loses her baby because of a violent act, most of us, a large percentage of us, want to whack the person who did it as hard as we can. And we don’t want to get into the debate about abortion. We want to make sure the prosecutor has the tools to bring about the most severe and just verdict possible.

This bill excludes abortion. It excludes the death penalty for political reasons and legal reasons. Pro-life people have criticized me because in this bill, in their opinion, I am legalizing abortion. This bill doesn’t legalize abortion. This bill doesn’t ban abortion. This bill says: If you are a criminal and you attack a pregnant woman and you hurt her kid, you will get the full force of the law.

What is going on in California? In 1999, when I said there will be a woman out there who suffers brutally and loses her child and we will all know about it because it will be front page news, I never dreamed it would happen so quickly. I never dreamed it would be so vicious. The authorities investigated the Laci Peterson crime and have two pieces of evidence to offer the jury: The decomposed body of the mother and the decomposed unborn child late in the pregnancy. It is important the jury know about both. It is important the criminal be held accountable for both. We will debate abortion another day.

Sixteen States define life under the same legal terms I chose when we wrote this bill. That is as to the criminal world, if the pregnancy comes to an end and the unborn child’s right to develop comes to an end because of third-party criminal activity, we are going to hold you legally responsible at the earliest onset of pregnancy. The Roe v. Wade standard makes no sense. Why give a criminal a benefit of the legitimate debate of abortion?

Thirty States define it in stages. California, I think by law, defines the unborn victim statute at the sixth week of pregnancy. Some States, one or two, have the term “viability.” There is a sliding scale. But the dominant way to define this in State law is the way we have chosen to define it in this bill. This chart illustrates how the States break out.

There is another situation I would ask you to think about. Let’s say there is a woman on death row. She is pregnant for whatever reason. How many people would let the execution go forward knowing the woman is pregnant? Think about that. What good would it do to allow the execution to go forward if you knew the woman was pregnant? Would you wait?

Here is one thing I suggest to you, if any State or the Federal Government decided to impose the death penalty on a woman who was pregnant during any stage of the pregnancy, there would be a riot in the street—among pro-choice people, too, because what good would it do at any stage of pregnancy to have the State kill the kid? You are not enhancing Roe v. Wade. You are not advancing the abortion debate. You are doing something you don’t need to do.

The definition that was used in the Innocent Child Protection Act of 2000, which I was involved in drafting, is the same definition that is in this bill about the unborn child. It passed 417 to nothing. To me, that makes perfect sense. If we know pro-life people do not exist in the House of Representatives. But when faced with the question, should the State wait if a woman is pregnant, even at the earliest stages of pregnancy, 417 people said yes.

The reason I mention this to you is, when it comes time to prosecute people who unlawfully attack a woman at the earliest stage of pregnancy, why should they get a pass? What good have you done? Nothing. You gone down in the abortion debate. Roe v. Wade rights still exist. All you have done is allow someone to interrupt another person’s life, take something of value, and they get a pass because you are mixing concepts that don’t need to be mixed. That is why over 50 pro-life people voted for this bill in the House.

That is why if we ever get to final passage, we are going to have a bipartisan coming together of pro-life and pro-choice people to say one thing loud and clear: If you attack a woman of childbearing years where Federal law applies, you do so at your peril, and you are going to suffer the full consequences of your action. And the full consequences of that action could be the loss of the child and the loss of the mother or a combination thereof.

Why not sentence enhancement? I think there is a reason under the law some of what happened to them. Sentence enhancement would say the following: You get a stiffer penalty if the woman is pregnant, but you don’t talk about the consequences in terms of the victim’s life. That is an artificial distinction that I think denies justice.

This was a statement by Kent Willis, executive director of ACLU, and I disagree with this statement:

That baby was not a murder victim.

He was talking about the Laci Peter- son case. The father came to me. I think Connor was a murder victim. The point I guess I am trying to make is that when people talk about what happens to them, the law, wherever it can, should address the full range of what really happened to them.

There is another case you don’t know about because it didn’t get nearly the publicity, but it is just as real. It is a good example of why we need this statute.

Michael Lenz and his wife were expecting their first child. She worked in the Federal Building in Oklahoma City. She was in the midstages of her pregnancy. She went to work early the morning of April 19. They were going to have an ultrasound to her colleagues of their baby. That was going on at the moment the bomb goes off. She was killed. Michael Lenz III was killed. They had already named their little baby boy.

The father came to me when I was on the House to testify for this bill. He said: I am no expert on abortion, but here is what happened to my family. My wife was killed, and at the same moment I lost my son, Michael Lenz III.

The reason they lost their son is not because of Roe v. Wade rights; it was because of a third party crazy man, a criminal, who destroyed many lives that day. When you look at the victims of the Oklahoma City bombing case, when it came time in Federal court, you don’t find a place for Michael Lenz III. If this bill had been law, there would have been 22 people, not 21 people, that would have been before the court. I cannot say it any better than that.

In terms of Michael Lenz and all the other victims who testified in support of this legislation, sentence enhancement doesn’t speak to what happened to them. From a prosecutor’s point of view, it makes all the difference in the world to have two charges facing the accused versus one. It gives you more leverage than you could ever dream of. Victims and their families, in cases like this, it is the right thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Madam President, I yield as much time as she requires to the Senator from California, Mrs. BOXER. She was here a moment ago.
Mr. DeWINE. Madam President, I inquire of the Chair, how much time does each side have remaining?

The PRESIDING OFFICER. The Senator from Ohio has 58 minutes. The Senator from California has 62 minutes.

Mr. DeWINE. Sixty-two?

The PRESIDING OFFICER. Right.

Mr. DeWINE. Thank you. Madam President, I yield to the Senator from Pennsylvania 5 minutes.

Mr. Santorum. Madam President, I thank the Senator from Ohio. If Senator Feinstein’s speaker arrives, I will be happy to abbreviate my remarks to accommodate the other side of the aisle.

I wanted to congratulate Senator DeWine and Senator Graham, who have really worked hard not just on this legislation, but getting this legislation to a point where we can have an up-or-down vote, have a vote on the amendments, and let the Senate work its will. That is one of the things we have not seen done in recent weeks. We have had an opportunity here on a very important issue to have the Senate’s will be done. I also congratulate Senator Senator McCain and the Democratic leaders for allowing us to debate this issue. This is an important debate.

I think Senator Graham, who I had the privilege of listening to for a few moments, summarized it very well. The issue is, how many victims are there? Do we recognize the loss of a child in the womb, a child who is anticipated, is wanted, and whose life is very real to the mother and father and the family? When that life is taken away by a third party, do we recognize that child’s existence in the law?

I don’t think anyone would doubt that when a woman who has a child in the womb is attacked and injury comes to that child, another person is affected. There is something that goes on to another human being. The issue here is whether we are going to recognize that in the law. I agree with the Senator from South Carolina that it has nothing to do with abortion. It is specifically excluded from this legislation. So why do all of the abortion rights activists have a problem with this legislation?

It comes down to the very issue, do we recognize the humanity of a child in womb? How far would we go to protect this right to an abortion? Do we go so far as to even deny the existence of a child who is not subject to abortion? How far do we go to protect this right, the supreme right above all, the right to an abortion, a right that can have no restriction on it? In fact, it cannot even have a restriction that is not at all applicable to it. So, in other words, we cannot even talk about this, or some way, through some logic, attack the issue. We have to deny under any circumstance that the child in the womb is a human life. That is what this is about.

This is all about denying the humanity of the child. We just cannot contemplate that in our laws. We cannot have any admission anywhere in law that says what is inside the woman’s womb is a child—when, of course, we all know that is exactly what it is. But we cannot express that legally. If we do, somehow or another, this right to abortion may be threatened down the road. Who cares about what harm we may bring? Who cares about what harm we may bring to a mother whose child is in the womb if we may bring to the family who may lose or have an injury to a child in womb? Who cares that we cannot bring somebody who has done violence to a child in the womb to justice? All of those things are worth ignoring to protect this right that is not even at stake today.

This issue, as I have said many times, is a cancer. I thought at first it was a cancer that ate away at us in how we view the relationship between mother and child, but it is worse. It is a cancer that reaches in and infects even areas that have nothing to do with abortion.

We need to let common sense reign in the Senate today. The common sense is this: The unborn child who is loved and wanted by the mother. This is a child who, in many cases, has been given a name, such as Conner Peterson, and this is a child who deserves the dignity of recognition by our society.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. Santorum. Madam President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DeWINE. I yield to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. Hatch. Madam President, I appreciate my colleague from California permitting me to speak.

I rise today to urge my colleagues to vote in favor of the Unborn Victims of Violence Act. The importance of this issue has been tragically clear by the grisly murders of Laci Peterson and her unborn son Conner. I met with her mother again yesterday and was very impressed with her and how she is handling this situation.

This bill will ensure Federal law appropriately protects unborn children from criminal assaults. It has passed the House of Representatives by a strong bipartisan vote of 254 to 163. I believe the Senate should give similar overwhelming approval.

Before I begin the substance of my remarks, I commend Senators DeWine and Lindsey Graham for their long-standing and essential leadership on this most important issue and for drafting the legislation that is before us today. This issue has already been addressed in many States across the country. In fact, in the State of Utah, if a criminal assaults or kills a woman who is pregnant and thereby causes death or injury to the unborn child, the criminal faces the possibility of being prosecuted for having taken or injured that unborn life. Twenty-eight additional States have similar laws on the books. Sixteen of those States recognize the unborn child as a victim throughout the entire period of prenatal development. It is not only proper and, it seems to me, only just.

However, there is a gap in the law under existing Federal criminal statutes. Current Federal law provides for no additional criminal penalty when a criminal assaults or kills a woman who is pregnant and thereby causes death or injury to that unborn child. It is time Congress eliminates this unjustified gap in the law.

This bill bridges this existing gap, and it does so in a way that protects the rights of the States. It creates a separate Federal offense to kill or injure an unborn child during the commission of certain already defined Federal crimes committed against the unborn child’s mother.

Importantly, because this bill only applies to Federal crimes, it does not usurp jurisdiction over State law. If someone commits a crime that violates State law, but does not violate any Federal law, then the State law will prevail, regardless of whether that State has laws that protect unborn victims of violence.

I cannot imagine why anyone would oppose this bill. Some have mistakenly characterized this bill as anti-abortion. It is not, and I am not saying that because I am pro-life. Let me take this opportunity to clarify a remark I made on May 7 of last year. I am quoted as saying the bill undermines abortion rights, but that effect is irrelevant. The point I was trying to make, and I guess I did not make it well and it has been quoted out of context many times, is there is no conflict between the bill language and Roe v. Wade. Some are prepared to bring the abortion issue into anything, any time, for any reason, even when it does not fit, such as in this case.

I do not believe this bill in any way undermines abortion rights. It certainly does not.

The bill explicitly says the Federal Government cannot prosecute a pregnant woman for having an abortion. In fact, the bill goes even further. The bill does not permit prosecution against any woman with respect to her unborn child regardless of whether the mother acted legally or illegally. If a woman chooses not to have her baby, the bill says she can have an abortion without Federal prosecution. That is how far the authors of this bill have gone.

But importantly, for those women who have chosen to keep their baby, this bill says no coldblooded murderer can take that choice away from her by killing her baby and going unpunished. Who wants to hold all are in effect, saying the murderer, not the mother, has the choice to take the baby away from his or her mother.
against the mother's will and against the individual's will. Since the murderer will not be punished for this terrible offense, it exonerates his or her actions. That is simply not right.

I understand my dear friend Senator Feinstein on this bill. Somehow threatens stem cell research. It does no such thing. I have been a supporter of embryonic stem cell research, and everyone in this body knows it and I guess most scientists throughout the world. I have been providing my stand on that to Senator Feinstein, Senator Specter, Senator Kennedy, and Senator Harkin on stem cell research. I believe we are right on that issue. But this bill in no way impedes stem cell research. This bill is about stopping and punning heinous crimes.

Why would I support Laci and Conner's law? If it jeopardized that research? The words "stem cell research" are nowhere in the bill. This is a criminal law, not an abortion law.

As I have said on many occasions, it is my view life begins in a mother's womb. That this bill does penalize those who viciously end that life in the womb or any life in the womb.

Senator Feinstein, the distinguished Senator from California, suggested this bill somehow may result in assigning legal status to the term "embryo." But I cannot find the term "embryo" anywhere in the bill. Nor for that matter can I find the term "embryo" in the amendment put forth by the distinguished Senator from California, Mrs. Feinstein.

In short, this bill does not affect abortion, embryos, or, for that matter, stem cell research. There is no legislative intent here to prosecute researchers working on stem cell research—none.

I have the utmost respect for my dear friend from California, and she knows that. We have worked together on many issues during her 12 years on the floor, and I have been proud to stand shoulder to shoulder with Senator Feinstein, Senator Specter, Senator Kennedy, and Senator Harkin on stem cell research. I believe we are right on that issue.

This bill focuses attention on both a pregnant woman and her child. Before the Government could prosecute someone for hurting the unborn child, it would first need to prove the pregnant woman was hurt. In other words, the Government would first need to prove 1 of 66 enumerated predicate Federal crimes against the mother before it could obtain a conviction under this provision of this bill.

Moreover, this provision empowers abused women because it gives the Government a greater arsenal of prosecutorial tools to put the abusive spouse behind bars for a longer period of time. Many today will talk about the Peterson case. Suffice it to say that the public reaction to that case underscores the widespread support for the changes that we are making with H.R. 1997.

A news poll taken last April consisting of an almost even split of pro-life and pro-choice individuals indicated that 84 percent—let me repeat that, 84 percent—believed that Scott Peterson, who is currently on trial for the murder of his wife, should be charged with two counts of homicide for murdering his unborn son. California law permits criminals to be charged with murder for killing an unborn child when that child has developed past the embryonic stage. The tragic murder of an innocent unborn child is so shocking and so disturbing that regardless of any stance on abortion, the vast majority of all Americans strongly believe an unborn life taken in murder should result in murder charges brought against the perpetrator.

It is only fair and just to ask for our Federal judicial system to incorporate this strong desire of the vast majority of the American people on this issue. I urge my colleagues to vote for H.R. 1997. I urge my colleagues to vote against amendments to H.R. 1997. Do it for Laci and Conner Peterson and for thousands of others in similar situations who have been abused. Do it for all women who have chosen to have their baby and are having that choice taken from them. Do it for the cold-blooded murderer. Most of all, do it because it is the right thing to do.

I yield the floor.
I ask unanimous consent that Peter Rubin’s letter be printed in the RECORD.

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

GEORGETOWN UNIVERSITY
LAW CENTER,

Re: H.R. 2436, The Proposed “Unborn Victims of Violence Act of 1999” — written testimony of Elizabeth A. Throop, Associate Professor of Law, Georgetown University Law Center, before the Subcommittee on the Constitution of the House Committee on the Judiciary.

I have been asked by this subcommittee to review and comment upon H.R. 2436, which would create a separate federal criminal offense where criminal conduct prohibited under a list of over sixty federal statutes, in the words of the proposed law “causes the death of, or bodily injury . . . to a child, who is in utero.” I am honored to have the opportunity to convey my views to the subcommittee.

Where an act of violence against a pregnant woman results in a miscarriage, that act is not the same separate penalty for this separate crime, a maximum of twenty years for harm and a maximum of life in the event a pregnancy is terminated. It does not require proof that the offender had knowledge of the woman’s pregnancy.

The sole difference between the substitute that Senator Feinstein is offering and the Unborn Victims of Violence Act is that they want to bring in the issue of a woman’s right to choose, and they want to make this bill about a woman’s right to choose.

What on Earth does this have to do with a woman’s right to choose? Nothing, not a thing. Senator Feinstein’s substitute focuses on the pregnant woman. That is the issue, the pregnant woman. So one wonders why the other side cannot accept it. The answer is simple. Again, they are trying to make this about abortion, not about convicting a criminal.

I want to correct something. When I referenced the House bill, I meant to reference the Zoe Lofgren bill — and I am not sure of that number — not the House bill that is identical to Senator DeWine’s bill. Zoe Lofgren in the House had a similar bill to Senator Feinstein, that bill got a lot of support but not enough support.

Again, it is very simple why people over there who are anti-choice did not support the Lofgren bill, and they do not support the Feinstein bill, because they want to make this about abortion and they want to undermine Roe v. Wade and a woman’s right to choose.

I am a little bit shocked because the experts who have written to us have told us that the bill that the anti-choice sponsors want to make it harder to convict a criminal.

For example, Peter Rubin, visiting associate professor at Georgetown Law Center, when he testified before the House Judiciary Committee, said:

The phrase “child in utero” is ambiguous and would actually aid an offender in avoiding prosecution.

Imagine. It seems to me the other side is so anxious to undermine Roe and to confuse the subject and to make this bill about abortion, they are blithely ignoring a clear ambiguous bill which would actually aid the offender, the criminal, and would actually allow some heinous criminal to go free.

Many state laws address fetal injury and death only in certain circumstances, and reflecting the unique nature of the developing fetus, many provide some penalty that is different from the penalty that would have applied had the defendant killed or injured a person who was already born. They tend also to take account of the fetus’s stage of development. State statutes that treat even intentional killing of a fetus through violence perpetrated upon the pregnant woman as murder equivalent to the murder of a person who has been born. Some, like North Carolina, enhance the penalty for the underlying criminal conduct. Others treat even intentional feticide only as manslaughter. Thus, in Mississippi, for example, the law provides that “The wilful killing of an unborn quick child, by an injury to the mother of such child, which would be murder if it resulted in the death of the mother, shall be manslaughter.” (Miss. Code. Ann. §97-37.)

The proposed law by contrast says that whenever causing death or injury to a person in violation of a listed law would subject an individual to a particular punishment, he shall be subject to the same punishment if he caused death or injury to an unborn child in violation of any such law. The law is true regardless of the stage of fetal development. What its rhetorical force, the proposed law would lead to some unusual, and probably unintended results. For example, under the Freedom of Access to Clinic Entrances Act (“FACE”), 18 U.S.C. §248,
one of the statues listed in H.R. 2436, if an individual who is engaged in obstructing access to an abortion clinic knocks a pregnant woman to the ground during a demonstration, he may be liable for imprisonment for up to one year. If he causes her “bodily injury” when he knocks her down, he would be subject under FACE to a ten-year term of imprisonment. As proposed law, however, if she miscarried as a result of being knocked down, he would be subject to life imprisonment, because as if his action had caused her to lose the unborn child’s life.

In addition to being far more practical, it would be far easier to reach common ground on this point in the same way that abortion-related conduct is now recognized as a federal offense. See, for example, the federal offense of attempting to murder an officer of the United States. He, too, believes it makes things significantly easier.

In conclusion, the practical considerations that counsel in favor of an alternative approach, the proposed law would also unnecessarily set federal standards, establishing a de facto federal collateral collision with the Supreme Court’s abortion decisions. Whatever one may think of those decisions, an unnecessary conflict about them would not contribute to the important work of healing where possible the country’s division over abortion.

Mrs. BOXER. Then you have Jon & J ennings who in 1999 was the Acting Assistant Attorney General. He submitted a letter on behalf of the Department of Justice. He also wrote the law.

Hon. HENRY HYDE, Acting Assistant Attorney General.

I ask unanimous consent the letter of George Fisher, a tenured professor at Stanford, former prosecutor and expert on the criminal justice system. He, too, believes it makes things worse in terms of convicting a criminal.

The PRESIDING OFFICER. The Senator has now used 9 minutes of time.

Mrs. BOXER. I ask unanimous consent for 2 more minutes from my colleague.

The PRESIDING OFFICER. Does the Senator from California yield an additional 2 minutes?

Mrs. FEINSTEIN. I yield as much time as she may require.

Mr. JON P. JENNINGS, Acting Assistant Attorney General.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I ask unanimous consent the letter from George Fisher be printed in the RECORD.
There being no objection, the material was ordered to be printed in the RECORD, as follows:


Senator DIANNE FEINSTEIN, U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN, I wish to express my concern about the current formulation of S. 1078, the Unborn Victims of Violence Act of 2003. Although I fully endorse the Bill's ultimate aim of protecting pregnant women from the physical and psychological trauma of an abortion, I believe that the Bill's current formulation will frustrate rather than forward this goal.

I write both as a former persecutor and as a law professor teaching in criminal law and criminal prosecution. At the outset of my career, I served as an assistant district attorney in Middlesex County, Mass., and as an assistant attorney general in the Massachusetts Attorney General's office. I then went to Boston College Law School, where I administered and taught in the criminal prosecution clinic. I have been at Stanford since 1995 and a tenured professor of law since 1999; during the next academic year, I will serve as the Visiting Associate Dean. In 1996 I founded Stanford's criminal prosecution clinic and have administered and taught in the clinic ever since. I have also created a course in social ethics, which I taught at Boston College Law School and, as a visitor, at Harvard Law School.

My background and interest in criminal prosecution prompt me to raise the objections to this Bill. All of them focus on the Bill's use of the expressions "child in utero" and "child, who is in utero," and on its definition of "person" as "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

First: The Bill's apparent purpose of influencing the course of abortion politics will discourage prosecutions under any future Act.

I do not know what motives gave rise to the Bill's use of the expressions "child in utero" and "child, who is in utero," but I do know that any vaguely savvy reader will conclude that these terms and this Bill's definition of "person" as a "member of the species homo sapiens, at any stage of development, who is carried in the womb" is offensive. To avoid this offense, the Bill's authors attempted to insert an abortion-broadside into the criminal code. The power to inflict criminal penalties is, second only to the power to wage war, the highest trust invested in our institutions of government. Because the power to make and enforce criminal laws inherently carries enormous potential for abuse, those who exercise that power must always do so with a spirit free of any ulterior political motive. The American Bar Association's Standards Relating to the Administration of Criminal Justice provide that "[i]n making the decision on whether to proceed, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved." (Standard 3-3.9(d)). Not all corporations have themselves with oaths to this principle, but we may readily condemn those who do not. We may likewise condemn other public actors who abuse the sacred public trust of the criminal sanction for political ends.

For these reasons, I object to the current formulation of the Unborn Victims of Violence Bill. As I am confident that an alternative version of the Bill can fully accomplish its stated purpose of protecting unborn life from criminal violence while avoiding each of the difficulties I have outlined above, I strongly encourage the Senate to modify the Bill in the ways I have suggested above or in some other manner that avoids the fraught and frankly politicized terms, "child in utero" and "child, who is in utero."

My thanks to you for your consideration of my views.

Sincerely,

GEORGE FISHER,
Professor of Law.

Mrs. BOXER, Mr. President, according to the experts, creating a separate offense for a child in utero would make it less likely that someone who harms or terminates a pregnancy would be convicted of a separate offense. So I find it stunning that, rather than back off the support which is very clear—you harm a pregnant woman, you are going to do double the time, you are going to get double the punishment, and it avoids all question of Roe v. Wade—it shocks me my colleagues on the other side would rather act largely on instinct, prosecute a criminal, soft on crime, in order to undermine Roe v. Wade. It is an injection of a political agenda into the criminal justice system which I think harms the integrity of the system.

Again, I am at a loss for words. That is hard for me to believe. But if you look at domestic violence groups, they will tell you how they feel about it. They say they don't support the legislation. They feel it would actually be harmful to battered women.

Again, as someone who coauthored the Violence Against Women Act with Senator Biden, here we have a piece of legislation that is going to be harmful to battered women, who other side will not support Senator Feinstein's amendment, which absolutely avoids this problem.

Juley Fulcher, public policy director of the National Coalition on Domestic Violence, who testified before the House subcommittee in July 2003, said in her written statement:

The bill is not designed to protect women and does not help victims of domestic violence. Instead, it is focused on shifting the impact of the crime on the unborn embryo or fetus, once again diverting the attention of the legal system away from domestic violence or other forms of violence against women.

I commend to my colleagues the July 8, 2003 testimony of Juley Fulcher before the Subcommittee on the Constitution of the House Committee on the Judiciary.

We also have a letter from Lynn Rosenthal, the executive director of the National Network to End Domestic Violence, and the letter of Esta Soler, president of the Family Violence Prevention Fund. I ask unanimous consent to have them printed in the RECORD.

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

CONGRESSIONAL RECORD — SENATE
March 25, 2004

NATIONAL NETWORK TO END DOMESTIC VIOLENCE,

DEAR MEMBER OF CONGRESS: The National Network to End Domestic Violence (NNEDV), a social change organization representing state domestic violence coalitions, is dedicated to creating a social, political and economic environment where violence against women no longer exists. We are writing because we feel that the Senate is considering the Unborn Victims of Violence Act (UVVA). We know that this is a difficult and emotional issue, but I hope you are carefully considering your position.

After very careful consideration and study on our part, we have concluded that the UVVA is not the appropriate remedy for addressing violence against pregnant women. We certainly share the concerns of the sponsors of the legislation about tragic crimes such as the murder of Laci Peterson and other pregnant women. We know that Congress is seeking tools and remedies to address such violence, and appreciate your ongoing support for such an effort.

Our first concern is that the legislation could potentially remove the focus on the women as the victim of violence. It would be possible under the UVVA that a violent crime specifically targeted at a woman could be prosecuted with the fetus presented as the primary victim. Yet, it is the violent act against the woman that is at the root of the devastating injuries to the women and the pregnancy. In our view, legislation and policy should be focused on recognizing violence against women as the crime it is, and not rely on loss of a pregnancy to vigorously prosecute these crimes.
Our second concern is that while the UVVA on its face seems to protect women from prosecution of the violence causes her to lose the pregnancy, it may lead to a slippery slope of women’s rights and holds them responsible for this loss. This slippery slope has already formed in South Carolina and California, two states with unborn victims of crimes under the law. In August, the State, the court found that South Carolina’s child endangerment statute could be used to punish a pregnant woman who engages in any behavior that might endanger her fetus.

Legislation regarding violence against women must be carefully considered in order to prevent unintended effects from backfiring. While the very women it is supposed to help. Barred women cannot control the violence against them, and should not face the possibility of prosecution simply because they are victims of domestic violence. The landmark case of Nicholson v. Williams, decided in the Eastern District of New York, represents an enormous step in clarifying this position. The federal district court in Nicholson found that mothers’ due process rights had been violated when their children were taken away from them merely because they were victims of abuse. That decision correctly puts the emphasis on the abused woman, and stands for the proposition that no woman should not be punished, or prosecuted, for occurrences beyond her control.

Because of our work with battered women, we do not support sentencing enhancements, and that pregnant women may be both physically and psychologically more vulnerable to such abuse. We believe that by supporting sentencing enhancements, Congress can advance both its goals of protecting victims of domestic violence and providing a legal sanction for loss of pregnancy resulting from battering. Sentencing enhancements appropriately punish the additional injuries that such acts cause without causing the unnecessary complications, and potentially dangerous consequences, for the women we serve.

There are also a number of other steps Congress can take to more effectively address the problem of violence against women. First, Congress can fully fund the Violence Against Women Act. Unfortunately, the 2004 budget includes $151.1 million in cuts to the STOP Grant program, which provides funding to states, tribes and territories to enhance the law enforcement response to domestic violence, improve judicial services and support victim services. These cuts will have a detrimental impact on communities all across the country that are struggling to maintain core interventions for victims. In addition, the Battered Women’s Shelter and Services funding was also cut in 2004, and remains at $48 million below the authorizing level. These programs and crisis centers have also received cuts at the local and state level over the past several years. These losses are devastating for actually being faced by battered, and bleeding women every day. Congress can work to address the problem of violence against women by fully funding these lifesaving services.

Thank you for considering our perspective on the UVVA. While the bill is noble in its intentions, we are concerned that it may not fulfill its promise of creating a legal environment in which women feel protected from violence. Please feel free to call me if you need any additional information. We appreciate for your attention to ending violence against women, and look forward to continuing to work with you to address this most urgent social problem.

Sincerely,
LYNN ROSENTHAL, Executive Director.
We start with the story of Christina and Ashley Nicole Alberts. We have a chart which presents a heartbreaking picture. I think it needs to be shown to better tell the story. This is a gut-wrenching picture of Christina and Ashley Nicole Alberts' (you can see them there in the coffin). It is a difficult picture. This body needs to know what the Unborn Victims of Violence Act is about—the victim.

I ask my colleagues to bear in mind that the Unborn Victims of Violence Act states there are two victims—there are two victims in this picture. The amendment we are considering right now, the Feinstein amendment, says there is only one victim—one victim in this picture. I simply ask my colleagues to make that determination. Is there one victim or are there two in this picture? Here is the story.

In December 1998, Christina was nearly 9 months pregnant. Ashley was looking forward to life with their soon-to-be-born daughter whom she could definitely feel moving, alive and well, and growing in her womb. When she found out she was going to have a girl, she decided to name her Ashley Nicole.

In the 7th month—life—which all of us living and breathing here today enjoy—tragically came to a screeching halt for Christina and Nicole on December 12, 1998. On that day, some thugs were going around robbing homes for money. The thugs entered the house where Christina was. Christina recognized one of them, and because she recognized one of them, it cost her and her baby Ashley Nicole their lives.

Christina was beaten. Can you imagine someone beating a woman in the ninth month of her pregnancy? Yet they did. I think of my own family and my own wife if she were in that type of situation.

Christina was then forced to kneel, and she was executed—shot in the head. Once the trigger had been pulled, releasing the bullet that abruptly ended her life, one might think at least the physical pain from the crime was over for Ashley Nicole. It was not. When her mother's heart stopped, her inutero child does not die instantly. Instead, the inutero baby dies slowly. When the mother's heart stops beating, the baby begins to suffocate for lack of oxygen, and the baby can feel. The baby is in pain. At 4 months, the baby begins to suffer severe neurological damage. The process gets worse. Ashley Nicole would have finally died 15 minutes after her mother Christina had been shot and killed.

Look at this photo again of Christina and Ashley in the coffin. Is there one victim? Or are there two? Who will say there is only one victim in this coffin? Yet this substitute amendment we are considering will say there is only one victim.

What about the family? What about Ashley Nicole's grandparents? What happened to them after the murders?

Christina and Ashley Nicole lived in Kanawha County, West Virginia. Her grandmother is here today.

In addition to the horrific news of her daughter and granddaughter's murder, her heart was also traumatized to learn the West Virginia murder statute does not allow the prosecution of an individual for the murder of an unborn child.

Do you know what happened in the murder trial for Christina and Ashley's killer? Christina's pregnancy could not even be discussed in court. Any recent photos of Christina shown during the trial could only show facial shots. Why? Because the court said any pictures of Christina would have been obvious she was pregnant would have been prejudiced.

I ask my friends from West Virginia to support their constituents, the Alberts, by opposing the Feinstein substitute and voting for passage of unamended Unborn Victims of Violence Act.

I have another story to tell—Heather F. Siegelman Sargent. In this picture with her mother, as you can see, 20-year-old Heather was well into her pregnancy. Heather was 8 months pregnant with her son Jonah. I also point out that her mother and the grandmother of Jonah are here with us today in the gallery, if people should care to visit with her.

Sadly, both the lives of Heather and Jonah were taken in January 2003, over a year ago. Heather was found dead with multiple stab wounds in her home in Bangor, ME. Her husband Roncole Sargent was tried on one—only one—count of murder.

The Bangor Daily News reported on January 10, 2003, "That Heather Sargent was pregnant did not affect the charges brought against her husband . . . No matter how advanced the pregnancy, Maine's homicide law does not apply to unborn fetuses."

But listen to this. Another news story on that same day, January 2, 2003, tells us that "Police also reportedly found several dead cats at home. Whoever killed the cats faces charges under the State's animal welfare act, while no charges will stem from the death of the unborn baby."

Is it even remotely rational to charge someone with the death of these cats and yet not charge them with the death of a viable 8-month-old baby? As we move to the next chart in the same case, we must pause for a moment and urge caution for any parents who may be watching with young children present. They may not want to view this. It is a serious matter, and these are real life stories that people need to hear. But, nonetheless, they are difficult.

I would simply ask as we move to the next chart, are we looking at one victim or two? On the left in the chart is Heather before she was stabbed to death, and on the right is Jonah who also died in the attack.

The grandmother of Jonah is here with us today.

I hope Senators will hear the pleas of their constituents—the family of Heather and Jonah—who are here in the Senate today watching, as I noted. Please, in their behalf, on behalf of Heather and Jonah, oppose this substitute that says there is only one victim.

The Feinstein substitute would increase penalties for Federal crimes in which a pregnant woman is a victim, but it would also write into Federal law the doctrine that such a crime has only one victim. Under this amendment, and a mother survives such an attack, she will be told, "We can prosecute your attacker for assault but not for murder—the law says nobody died.

This cannot and should not be. On behalf of Heather and Jonah, I urge my colleagues to oppose the Feinstein substitute and support the underlying bill unamended.

I have another story to tell. This picture shows the late Ashley Lyons of West Virginia. Ashley was 21 weeks pregnant when she was shot to death in a local park. If we pass this Feinstein amendment, and a mother survives such an attack, she will be told, "We can prosecute your attacker for assault but not for murder—there is only one victim.

This cannot and should not be. On behalf of Ashley and Landon, I urge my colleagues to oppose the Feinstein substitute and support the underlying bill unamended.

I will read you this story which actually quotes Ashley, as written by her mother, the grandmother of Landon. It was written February 25, 2004.

I note parenthetically that if this crime had happened on a military base where only Federal law applies, there would be only one victim—not two—unlike California law, which acknowledges two victims of violence.

Ashley's mother writes:

January 3, 2004

I was seeing my grandson, Landon, for the first time. Landon was moving around in an ultrasound image on the TV screen in our home in Stomping Ground, KY. We could clearly see Landon's little heart beating. We could see his little face. I just a few hours later, Ashley and Landon were both dead. They were found murdered—shot to death in a local park. I found this letter which Ashley had been writing to her baby. Right at the beginning, when she was only two months pregnant, she wrote how she had rejected advice to get an abortion.
Clearly Ashley made a choice to have a child. She wrote in her journal: "I couldn't do that. I already loved you." Ashley also wrote: "You are the child I have always dreamed about. I know that it will be a long time before I meet you, but I can't wait to hold you for the first time. I love you more everyday. Always, Mommy.

Yes, the killer took two lives—each with a long, bright future ahead. It is heartless and cruel to say that the law must pretend this is not so, in order to preserve "choice" on abortion. Ashley had made her choice—and she chose life.

This, again, is her mother Carol speaking.

Our case has been widely reported in Kentucky. In response, both houses of the legislature passed a strong fetal homicide bill, and on January 20th, Governor Ernie Fletcher signed it into law. I pray that Congress, too, will soon pass the Unborn Victims of Violence Act, which will allow a criminal to be charged for any homicide of a child during commission of a Federal or military crime.

Of course, laws are not retroactive, so no laws enacted now will allow full justice to be done to a годning. But they will ensure in the future no mother, grandmother, or other family member will ever again be told that the law is blind to the pain of a child who is unborn but already living and loved.

I ask my colleagues to listen again to Ashley's words to her child Landon—both victims, both were murdered:

You are the child I have always dreamed about. I know that it will be a long time before I meet you, but I can't wait to hold you for the first time. I love you more everyday. Always, Mommy.

I ask my colleagues, is there one victim, or are there two? Is it one victim or two when Ashley and Landon were murdered?

I have another case—unfortunately, there are too many of these cases—that demonstrates why this law needs to be dealt with. Here is a picture of Tracy Marciniak. Tracy was murdered in her home by her son Zachariah 12 years ago. This is a case from Wisconsin.

We all have precious baby photos. I have five children, and I love each of them and have precious photos. This should be a happy baby photo, but if you look closely, you will see it is not. You can see it by the look on Tracy's case, by the coffin behind her, and by the funeral flowers. Tracy's son Zachariah is dead and she, Tracy, survived, and if people want to love like to visit her, she is in the lobby.

In 1992, in Wisconsin, Tracy was terribly beaten. She lived and her son Zachariah died. I have spoken with Tracy, and I have heard the loss of Zachariah hurt her to this very day. Regrettably, justice was not served. Was Tracy and Zachariah's assailant charged with the murder of Zachariah? No. In Wisconsin, law enforcement authorities told Tracy's family they could only charge the attacker with assault; in the eyes of the law, no one died.

What is more, Tracy's attacker says he would not have attacked her if he could have been charged with murder. Let me state that again: If Tracy's attacker had known he could have been charged with murder, he would not have attacked her.

I would like to read a portion of Tracy's testimony today in front of the House Judiciary subcommittee, where she has spoken about this case before. This is Tracy Marciniak's statement:

I respectfully ask that the members of the subcommittee examine the photograph that you see before you. I am holding the body of my son, Zachariah Nathaniel. Often, when people see the photo for the first time, it takes a moment for them to realize what Zachariah really is. He is not merely sleeping. Zachariah was dead in this photograph. This photo was taken at Zachariah's funeral. I carried Zachariah in my womb for almost nine full months. He was killed in my womb only five days from his delivery date. The first time I ever held him in my arms, he was already dead. This photo shows the second time I held him—it was the last time.

There is no way I could really tell you about the pain I feel when I visit my son's grave site in Milwaukee, and at other times, thinking of all we missed together. But that pain was greater because the man who killed Zachariah got away with murder.

I know there is no doubt in anyone's mind that my son was not a real victim of a real crime. We were both victims, but only I survived. Zachariah's delivery date was to be February 8, 1992. But on the night of February 8, my own husband brutally attacked me in my home in Milwaukee. He held me against a couch by my hair. He knew that I very much wanted my son. He punched me very hard, twice, in the abdomen. Then he refused to call for help, and prevented me from calling.

After about 15 minutes of my screaming in pain that I needed help, he finally went to a bar and from there called for help. I and Zachariah were rushed by ambulance to the emergency Caesarean section. My son was delivered by emergency Cesarean section. My son was dead. The physicians said he had bled to death inside me because of blunt-force trauma.

My own injuries were life-threatening. I nearly died. I spent three weeks in the hospital. During the time I was struggling to survive, the legal authorities came and they spoke to my sister. They told her something that she found incredible. They told her that in the eyes of Wisconsin law, nobody had died on the night of February 8.

Later this information was passed on to me. I was told that in the eyes of the law, no murder had been committed. My life already seemed destroyed by the loss of my son. But there was so much additional pain because the law was blind to what had really happened. I had been raised to believe was based on justice, was telling me that Zachariah had not really been murdered.

Before his death, the attacker said on a TV program that he would never have hit me if he had thought he could be charged with killing an unborn baby.

My family was outraged. We spoke to somebody who would help us reform the law so that no such injustice would occur in our state in the future. We found only one group that was willing to listen to our story. They never asked me my opinion on abortion or on any other issue. They simply worked with me, and other surviving family members of unborn victims, to reform the law.

It took years. Again and again I told my story to state lawmakers and pleaded with them. I now plead with you, to correct this injustice in our criminal justice system.

Finally, on June 13, 1998, Governor Tommy Thompson signed into law the Unborn Victims of Violence Act. This means it will never again be necessary for state authorities in Wisconsin to tell a grieving mother, who has lost her baby, that nothing had really died. Under this law, any unborn child is recognized as a legal crime victim, just like any other member of the human race.

The state still has to prove anything beyond a reasonable doubt to a jury, which is as it should be. But when this bill was under consideration in the legislature, it was actually shown to some of the former jury members in our case, and they said if that had been the law at the time I was attacked, they would have had no problem convicting my attacker under it.

Next, I present a statement from Ms. Shiwona Pace of Arkansas. Ms. Pace suffered a horrible tragedy. She was severely beaten by several attackers, and as a result resulting in her son's birth. She had named Heaven, died. Fortunately, Arkansas passed an unborn victims of violence law prior to the crime committed by Ms. Pace's assailants. Under the Feinstein amendment, Ms. Pace's son would have been recognized as a crime, other than assault.

Please listen to her plea to legislators.

My name is Shiwona Pace. On August 26, 1999, I was a 23-year-old college student in Little Rock. I was the mother of a five-year-old son, and an unborn baby girl named Heaven Lashay.

August 26 was one day before my predicted full-term delivery date. But at night, three men brutally murdered my unborn baby daughter. I curled up face down on the floor, crying, begging for them to stop beating me. But they did not stop. One shouted, "F*** you! Your baby is dying tonight!"

They choked me, punched me, hit me in the face with a gun. They kicked me again and again and in the abdomen. After about thirty minutes, they left me sobbing there on the floor. At the hospital, they found that Heaven Lashay had been violently attacked. She was a perfect baby, almost seven pounds.

The assailants were arrested. They had been hired by Erik Bullock, my former boyfriend. He paid them $400 to kill little Heaven Lashay.

Only a month before, a new state law took effect that recognized unborn children as crime victims. If that law had not been enacted, Erik Bullock would have been prosecuted only for the assault on me, but not for the death of my baby.

But thanks to the state law, Bullock was also convicted for his role in killing my baby. The men who attacked me are also being prosecuted for what they did to Heaven.

I tell my story now for one reason: If this same attack occurred today within a federal jurisdiction, the man who killed my baby would be prosecuted only for assault. That is why I urge members of Congress to support the Unborn Victims of Violence Act, which recognize unborn victims of violence under 88 federal laws dealing with crimes of violence.

I am dismayed to learn that some members of Congress oppose this bill, and insist on adoption of a radically different version that says that such crimes only have one victim: the pregnant woman. This is not the same as what would happen under the Feinstein amendment. They are...
wrong. On the night of August 26, 1999, there were two victims. I lived—but my daughter died. I lost a child, and my son lost the baby sister he had always wanted—but little Heaven lost her life.

It seems to me that any congressman who votes for the “one-victim” amendment is really saying that nobody died that night. And that is a lie.

Then we have the well-known case of Laci and Conner Peterson in California that has been spoken of previously. This is a statement from Sharon Rocha, Laci Peterson’s mother, and Conner Peterson’s grandmother. This has spoken out often on this issue. This is a California case that is well known and has probably gone as much to bring this up today on this floor as anything else we have examined.

The House of Representatives has shown their support for this law by approving it twice thus far, but the Senate has consistently failed to act. I call on every Senator to vote for this bill, so that the law will do justice for families of murder victims whose support for this law by approving it twice thus far, but the Senate has consistently failed to act. I call on every Senator to vote for this bill, so that the law will do justice for families of murder victims.

So California law does recognize it.

When I became aware that Congresswoman Melissa Hart was working on a bill to correct this problem, I contacted her to express my support for her effort to pass it. My grandmother, who is the “Laci and Conner’s Law” in memory of my daughter and grandson. I am grateful to Congresswoman Hart, the House leadership, and the many congressmen, both Republicans and Democrats, who have agreed to support this common-sense legislation. I thank President Bush for his willingness to sign it into law.

I urge a vote against the Feinstein substitute because the proponents of this substitute would not want to say this child who is so close to birth, who would be capable of life outside the womb at that moment—is a victim because, in fact, that child is a victim. I appreciate that and understand it.

This is what causes the problem in the law once you set it in the law. That is what is so distressing about this bill. Because every Member of this Senate wants to vote yes. Every Member of this Senate wants to say: Throw the book at him. That is what we want to do. And I understand it. I understand the debate because the proponents of the Feinstein substitute believe that the 8-month-old baby or the 7-month-old baby, who is capable of life today, is what we are talking about. It says the recently fertilized egg is what we are talking about. That is the difference.

It is so hard, because you stand here and you listen and your heart goes out, and you think of these beautiful women and their beautiful children, and some animal comes at them, and in some cases kills them both, in some cases kills one, and in some cases kills the mother and the child.

I will go a step further. I would give them a death penalty because they have taken two lives, and I do believe a child at that period of gestation is a life.

The problem is the bill language, which begins this at the point of conception.

Now, every single case presented on this Senate floor this morning is of a child who is viable outside the womb. But the bill covers children that are not children; that are a day old in the womb, that are at conception. That is the problem we have with this bill. Because once you give an embryo, at the point of conception, all of the legal rights of a human being, and you have said that embryo, then, if it is lost to humankind, is murdered, you have created the legal case to go against Roe v. Wade.

The problem is this is a much more comprehensive definition that doesn’t make any of the distinctions that are made by many of the States with respect to these criminal statutes. Many other States do not differentiate between the embryo and the fetus. And, in fact, many other State laws do.

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sets the stage for a jurist to acknowledge that human beings at any stage of development deserve protection. Once you have the embryo being a human being, then that human being at any stage of development deserves protection. Not every embryo being a human being under the law, which this establishes because it makes that embryo a victim—protection that would trump a woman’s interest in terminating a pregnancy. Think of that, that would trump a woman’s interest in terminating a pregnancy.

Now, I am one who believes there should not be abortion if the baby is viable. I agree with Roe because it provides the woman the choice in the first 3 months of a pregnancy where there is not viability. I lived and grew up at a time when abortion was illegal in California. I saw a good friend commit suicide because she was pregnant and in college. I saw women pass the plate so someone could go to Tijuana for an illegal abortion. Roe doesn’t address that. Roe is not relevant to this debate—“don’t discuss it; don’t bring it up in the Senate—just think about the mothers and the babies who were killed.”

I want to do that, too. And I think about the mothers and the babies. I want to throw the book at those guys. And the death penalty, too. I don’t have a problem with that because I believe by your actions, you can vitiate your own right to live. That has been true of me since 1921, as well. That has been my consistent position.

But once in a statute you create a fertilized egg as a human being with specific rights, the march to eliminate Roe v. Wade is on its way in statute. That is what is happening with this bill. That is what I object to. There is no reference to viability.

I have the list of what all the States do. They all do different things. Many of them recognize it. For example, seven States impose criminal liability starting at the point of viability: Florida, Georgia, Mississippi, Nevada, Oklahoma, Rhode Island, Washington. Seven States impose criminal liability starting at the point of viability: Florida, Georgia, Mississippi, Nevada, Oklahoma, Rhode Island, Washington. Seven States impose criminal liability starting at the point of viability: Florida, Georgia, Mississippi, Nevada, Oklahoma, Rhode Island, Washington. Seven States impose criminal liability starting at the point of viability: Florida, Georgia, Mississippi, Nevada, Oklahoma, Rhode Island, Washington. Seven States impose criminal liability starting at the point of viability: Florida, Georgia, Mississippi, Nevada, Oklahoma, Rhode Island, Washington.

So there are many differences. Different States do different things, even when they have this law. But I believe, what this underlying bill does, is say from the moment of conception there is a baby and that baby is a human being and that baby has rights.

That is a problem in the criminal law. As the Stanford law professor pointed out, if a case comes before the court where, let’s say, a woman was assaulted and she was 3 days pregnant, and the forensics could establish that she was 3 days pregnant, and you are voir-diers, and you are a juror and you are telling them that there is a second victim, and it is a fertilized egg that is 3 days old and there is a 20-year charge pending or life imprisonment pending for that 3- or 5-day-old fertilized egg, then this is what the law professor meant when he said: “You are going to get the very people who are the most interested in protecting the woman being reluctant to go on that jury.”

Not every fertilized egg is going to be post-viability, going to be like the cases that the Senator from Kansas brought forward, where I would say: “Give the guy the death penalty.” I wouldn’t have a problem with that. They did terrible things, the acts of an animal. But what this law says is that this is not murder there? What are the repercussions of doing that? They are enormous.

The other side doesn’t talk about this. They talk about 7- or 8-month pregnant women. They talk about the most heinous and brutal assaults. But the law does much more. The bill says a 1-day-old fertilized egg is a member of the species Homo sapiens. Translation: It is a person. Translation: It is a human being.

That is the problem, and this Senate, before it passes out this bill, should understand there is an alternative, and the alternative aims to impose the same penalties on the personhood of a 7-day-old fertilized egg, 1 day old—by nobody’s stretch a human being—possible of becoming a human being, but not a human being. I have live cells, but they are not capable of producing life. But the single cell in the womb is capable of living, that is a different story. I am the first one to admit that is a different story. But everywhere in this bill, the underlying bill, goes back to the basic definition of what we are being done here, and that is that personhood, life, is being given to a 1-day-old fertilized egg.

Now I have one child biologically, I have three stepdaughters, and I have five grandchildren. I have seen close friends—I know the glory of motherhood. I know the catastrophe that takes place when you lose a child. I have had miscarriages, so I understand that. But then there is the march to turn back the clock when I was in college, when abortion was illegal. Then after college, when I went out into the world, I actually sentenced women convicted of abortion in the State of California in the State prison. I saw the terrible morbidity and the terrible things they did illegally in back-alley abortions. At that point, I said this is so terrible. Then Roe v. Wade passed in 1973, and a woman could control her own reproductive system, particularly in that first trimester. I thought to myself, we should never go back to the way it was.

My concern about the underlying bill is it is the first bridge to take us back to the way it was because of the definition that is in this bill, which gives fundamental rights to a 1-day-old fertilized egg in utero. That is the problem for me. That is the problem for a lot of us in the Senate. Whether it will be enough, I don’t know.

I tried to perfect the bill. Remember, there was a rule XIV. We didn’t have a chance to mark it up. I tried to perfect it. Unfortunately, I was not granted the usual privilege of being able to send a modified amendment to the
The PRESIDING OFFICER. The Senator has 23 minutes 40 seconds.

Mrs. FEINSTEIN. Mr. President, I rise to respond to a statement by the Senator from South Carolina, Mr. Graham.

Mr. President, before I yield to my colleague, I want to respond very briefly to my colleague and friend from California in regard, again, to the question of abortion. My colleague is concerned—understand her sincerity because she has expressed it many times on the Senate floor. I don’t doubt that sincerity at all—that somehow this bill sets a precedent regarding abortion.

First of all, we all know statutes cannot define what is constitutional law. The Supreme Court has said. This is what the language is:

[in this statute what some others are defined differently. But we follow California and some States do. They unborn. Some States define it dif-

fering with abortion rights. So there is al cause she has expressed it many times in regard, again, to the ques-

tal clear they will not in any way af-

fect that. So we have precedent.

My friend has talked about the fact of abortion rights because it is not; we

iner with constitutional law, plus we have precedent of many years of experience of State laws not interfering with abortion rights. So there is just no reason for anybody, when they come to the floor to vote on this, to think this is in any way going to affect abortion rights at all.

My friend has talked about the fact that we follow what I believe 16 States have done when we begin to protect the unborn. States define it differently. My colleague has cited what California and some States do. They are defined differently. But we follow in this statute what some others States have done.

In actual proposed statute, we use this language, and I would say it is not what my colleague, with all respect, has said. This is what the language is: . . . who is carried in the womb.

[Who is carried in the womb,” that is the language, the precise term that is used, “carried in the womb.”]

As a practical matter, since this is a criminal statute, we all know that to prosecute under this statute, a prosecutor would have to prove beyond a reasonable doubt, to prosecute under this law, that there was this unborn child. They would have to prove the existence of the child. And then they would have to prove there was death or injury to the child beyond a reasonable doubt. They have to prove the existence first beyond a reasonable doubt, and then they have to prove the death or injury beyond a reasonable doubt.

It is not, with all due respect, a question of at the moment of conception that this particular statute, a practical matter, would kick in. First, it has to be carried in the womb; second, you would have to be able to prove the existence and then prove there was injury or prove there was death. That is the practical application of the statute we propose to pass.

I yield to my friend and colleague from South Carolina.

Mr. GRAHAM of South Carolina, Mr. President, how much time remains?

The PRESIDING OFFICER. Eleven minutes.

Mr. GRAHAM of South Carolina. Will the Chair notify me when I have used 4 minutes?

The PRESIDING OFFICER. Yes.

Mr. GRAHAM of South Carolina. Mr. President, I wish to speak to how the bill was drafted and why.

Senators DeWeine articulated it well. You have to prove the pregnancy, and we define it in 13 other States. That is the dominant way of defining the child for the purpose of this statute. Thirteen States have a different view of it. In California, I think the law is at 6 weeks. If you can prove the child is beyond 6 weeks—not viable but beyond 6 weeks—the law kicks in.

In 1999, when we first drafted this statute—Senator DeWeine was carrying it in the Senate, I carried it in the House, and we are finally coming to get it here. Mr. Graham, you have made sense to me, if you believe this is not about abortion—because it is not; we wrote it so it is not—why would you give a criminal a break who destroyed a family’s life in two ways, not one?

You are not going to prosecute medical researchers under this statute. You have to hurt the mother. This is not about medical research. It is not about abortion. It is about criminals who attack pregnant women.

Why would you give the criminal a break at 3 weeks? You could prove the baby has been around for 3 weeks. The criminal just totally gets away with it.

The Feinstein amendment—as much as I like Senator Feinstein, and she is wily one of my favorites—nobody goes this way because this is not the way you would want to go if you are prosecuting criminals. You do not want to ignore the reality of what happened to this family and to these victims. This is not about abortion. If it was abortion law you would have any provocations except until the late terms of the abortion. Why would you let a criminal do that? This is not about a mother’s right to choose. Under the statute, you cannot prosecute the woman at any time. You cannot do anything about abortion rights because the statute protects lawful abortions.

For 30-something years in California, there was the abortion statute that allows people to be put in jail who attack a pregnant woman and do damage to her unborn child at the 6-week period.

My point is, when criminals attack pregnant women, don’t play this game of the abortion debate. Don’t bring it over here. The reason we voted 417 to 0 in the House was to prevent an execution of a pregnant woman at the earliest stages of pregnancy. It does not force the infant to be born, if you do not want to have the child, to grow to render justice to the mother.

With a vote of 417 to 0 the House adopted the same definition as this statute because the purpose of that statute was to prevent executions except until the late terms of the abortion. If you believe this is not about abortion, why would you give the criminal a break who destroyed a family’s life in two ways, not one?

The criminal just totally gets away with it. The Roe v. Wade rights that exist today are not going to be eroded. They have existed in conjunction with these statutes for years and years, and that debate will go on for years and years. But here is what is wrong.

The PRESIDING OFFICER. The Senator has used 4 minutes.

Mr. GRAHAM of South Carolina. There will be, unfortunately, human nature being what it is, another assault against a pregnant woman where Federal jurisdiction would exist if we have this statute. It is going to happen because people are mean, people are cruel, and they need to be dealt with when they are mean and cruel.

The Senate enhancement option has been rejected by everybody who looked at this because it does not render justice. It creates a legal fiction that is not necessary and destroys the whole purpose of this statute.

I mentioned the Arkansas case. Three teenagers were prosecuted for beating up a pregnant woman for the purpose of making sure one of them did not have to pay child support. They are not on death row. I misspoke. One of them received 40 years, one received life imprisonment. It was a capital statute, but it was not a death penalty case. I was wrong. I apologize.

The PRESIDING OFFICER. The Senator used 5 minutes.

Mr. GRAHAM of South Carolina. Five more seconds.
The Laci Peterson case is a death penalty case because there are two victims. All we are saying is Federal law should address reality. When Michael Lenz lost his wife in the Oklahoma City bombing, he also lost his son, Michael Lenz III. All I am asking for is that justice be rendered in cases such as that. When somebody chooses to destroy a family—the mother and the unborn child—let them pay a severe price, and let’s debate abortion another time, and consider it a separate, and I think it is a very important, question. Mr. DeWINE. And the Senator from California?

The PRESIDING OFFICER. The Senator from California?

Mrs. FEINSTEIN. Mr. President, could you give us the time remaining on both sides, please?

The PRESIDING OFFICER. Yes. The Senator from California has 23 minutes remaining. The other side has 5 minutes remaining.

Mrs. FEINSTEIN. I thank the Chair. Mr. President, this is a difficult discussion because I am very fond of both the Senators with whom I am debating. However, we do not agree with the statement the Senator from Ohio just made with respect to the definition that is in the bill. I will read the definition that is in the bill. The term “a child who is in utero at any stage of development who is carried in the womb”.

A member of the species Homo sapiens at any stage of development who is carried in the womb.

The one thing neither Senator DeWine nor I know is how fast the egg gets to the womb, but I think it is pretty fast. I just had a note passed to me by someone more erudite than I. I think we can all put this in our lexicon.

It takes about 7 days for a fertilized egg to get to the womb, but there is also the belief the underlying bill applies at the moment of conception. Let us say the egg gets to the womb in 7 days. The problem these of us on this side of the aisle have with the bill is it gives the status of a human being to that egg as soon as it is in the womb, and that creates for the first time in Federal criminal law a scenario whereby if that egg is hurt, criminal assault charges, criminal manslaughter charges, criminal murder charges can be brought because that egg, at any stage of development—they do not use trimesters, they do not use any way of deciding the development—at any stage of development, that egg in utero is a member of the species Homo sapiens, and that is where this, for criminal purposes, becomes so difficult.

That is why the letter from the professor from Stanford, who runs the criminal prosecution unit at Stanford Law School, becomes so relevant, because it says I am a jury pool and a woman has been beaten up and she was 7 days pregnant—at that moment it is a fertilized egg—and she lost the fertilized egg, and I was told the penalty would be an additional 10 years in prison because she lost that egg. Well, I would have to make a decision as to whether I want to be on that jury. So what the professor says is this can actually work contrary to our intent, particularly with respect to women. He also said he suspects it is independent on the administration as to whether early cases will be brought to a court or not, but the point is we cannot make this law. We cannot say this is only going to be used when a mother is 7 months, 8 months, or 9 months pregnant. In the horrific circumstances described by the Senator from Kansas, which got all of our hearts beating faster, we cannot assume that all cases will be of that type. The legislation clearly says for the purposes of definition the child is defined from the point it is in the womb at any stage of development as a child, as a person, with rights. Everyone must agree that is why we have tried to craft a bill that does not do that, that says if someone harms or ends a pregnancy, they are subject to the same penalties.

This body has to decide—and it is a very hard question. I think this is one of the most controversial bills we have had. This is probably why this bill has been around for 5 years now. I think it had a hearing in Judiciary in 2000. It has not had a hearing since. It has been ruled XIXed to the floor.

Again, I wanted to make some small changes—I was not permitted to do so—by modifying my amendment. I believe, and my chief counsel believes, this bill provides the same penalties. The one difference is the definition is different. We use harm or end pregnancy, rather than that the unborn child becomes a child—well, that is the child who is in utero means a member of the species Homo sapiens, at any stage of development, who is carried in the womb. That is the problem and that is where for those of us who want to protect a woman’s right to choose, the statements that are put out by the far right, we take them at their word that this is where they are going.

I did not make this up. This is a rather well-known statement. It clearly says, “As many areas as we can, we went to put on the books,”—this statute on the books—“that the embryo is a person.”

For me, I am also very interested in being able to see that there are prudent regulations and Federal controls that will allow embryonic stem cell research. Well, if it is murder of a 7-day-old fertilized egg, then it is murder if it is used in stem cell research as well. That is where the legislation is.

There are also statements by people who want to ban embryonic stem cell research that also say this is the strategy. So I say, why get into it at all? Particularly if we do not just say, if someone ends or terminates a pregnancy, the same penalties will apply. That is what we have tried to do. That is the intent of what we are doing.

I think the votes are very close. At this point, I will yield the floor, but I reserve the remainder of my time.

Mr. DeWINE. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Five minutes.

Mr. DeWINE. And the Senator from California?

The PRESIDING OFFICER. Fifteen minutes.

Mr. DeWINE. I suggest the absence of a quorum, with the time to run equally on both sides.

Mrs. FEINSTEIN. Equally divided.

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

The assistant legislative clerk proceeded to call the roll.

Mr. DEWINE. 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. DeWINE. We are getting close to the end of this debate. I think there are just a few points about this amendment I would again like to stress. One is this whole debate today has nothing to do with abortion. I talked about that. I will not belabor the point. We have made that clear in the language we have written. It is set down in the precedent of States that have passed similar legislation. It has not had anything to do with abortion.

If Members of the Senate truly believe what the vast majority of the American people believe, and that is there are two victims, then they have to turn down the well-intended Feinstein amendment. The Feinstein amendment tries to provide for enhanced penalties. I believe it is clear, from what I have spelled out a few moments ago, she has failed to do that, that there are no enhanced penalties. Even if there were, it is a contortion of the legislation. The fact that when a pregnant woman is violently attacked and she loses her child, for the law to say we refuse to recognize there is a second victim, and that is what the Feinstein amendment, unfortunately, says. The Feinstein amendment denies the fact there is a second victim.

We have heard on the Senate floor today, time and time again, these horrible stories that Senator FEINSTEIN and our hearts go out to these victims. Everyone’s heart goes out. But how can we say to these families that these children who were lost, sometimes the grandchildren who were lost, were really not, in the eyes of the law, victims? In the eyes of our law, in the eyes of our society they are victims. Shouldn’t the law also recognize them as victims? That is what we are saying with our bill. Unfortunately, the Feinstein amendment denies them that.

I reserve the remainder of my time.

Mr. KYL. Mr. President, I am pleased that the Senate is debating this sensible measure, and I certainly hope that the outcome will be the rejection
of the two amendments and passage of the underlying bill. Such an outcome will lead immediately to the enactment of the Unborn Victims of Violence Act, as the legislation has already passed the House and the President was in agreement.

The Unborn Victims of Violence Act would recognize an unborn child as a victim when he or she is killed or injured during the commission of a Federal or military crime. The gist of this debate is the question of whether there are one victim or two in such instances. Polling suggests that upwards of 80 percent of the American people believe that there are two victims, a view no doubt reinforced by the well-known case of Laci and Connor Peterson. It has been noted that when definitive evidence of foul play in that case came to light, two bodies washed up on the shore, not one. The Unborn Victims of Violence Act would codify that common sense observation in Federal law.

The Unborn Victims of Violence Act, as the legislation has already passed the Senate, would provide an effective means to prosecute ordinary criminals who commit violence against a woman’s unborn child. 

Mr. LEAHY. Mr. President, acts of violence against women are always abhorrent, but they are especially disturbing when committed against pregnant women. When a violent crime causes injury to a pregnant woman that results in a miscarriage or other damage to the fetus, we all share the desire to ensure that our criminal justice system responds decisively and firmly to exact appropriate punishment. This is not an issue on which you will find any disagreement among Members of Congress, no matter their party affiliation or whether they are pro-choice or anti-abortion. Protecting pregnant women and their families from violence is a serious and compelling problem that deserves to be elevated above political agendas and partisan politics.

Today we consider a bill that proposes a new Federal crime to punish conduct that violates a list of over 60 existing federal crimes and “causes the death of, or bodily injury to, a child who is in utero.” A “child, who is in utero” and “unborn child” are defined in this proposal to be “a member of the species homo sapiens, at any stage of development.” Through this proposal, we are forced to revisit the division of political debate about when human life begins and what is meant by these terms—whether, for example, the term “any stage of development” is intended to cover an unfertilized human egg or a zygote, and how far away from viability the proposal is designed to move the federal definition of a “person.”

Generally, our Federal and State criminal laws only penalize conduct that affects a person who was born alive. That does not mean we cannot or should not go further. I support additional punishment if a violent crime against a pregnant woman causes her to miscarry or otherwise injures the fetus. Senator FEINSTEIN will offer an amendment on this point, which I support, and which I will discuss in a moment.

While no other Federal criminal statute identifies a fetus as a distinct victim of crime, this does not mean that a fetus is left unprotected under our criminal laws. The Justice Department pointed out the obvious, in a letter dated September 9, 1999, to then-Chairman of the House Judiciary Committee, Representative Hyde. That letter states that “because the criminal conduct that would be addressed . . . is already the subject of federal law (since any assault on an ‘unborn child’ cannot occur without an assault on the pregnant woman), [the bill] would not create new defenses, violations, or additional penalties.” As Ronald Weich, a former prosecutor and former Special Counsel to the Sentencing Commission, noted in his February 2000 testimony, defendants whose violent attacks against pregnant women resulted in harm to a fetus have been prosecuted, and thus “it is very clear that criminal liability may be imposed under current federal law.

Moreover, the Federal Sentencing Guidelines already provide for sentencing enhancement of two levels where the defendant knew or should have known that the victim was a “vulnerable victim,” a term that is defined as someone who is unusually vulnerable due to an mental condition. Guidelines Manual, §3A.1(b)(1). This provision has been used to cover violent crimes against pregnant women. Mr. Weich described several cases in which a pregnant woman was treated as a vulnerable victim, resulting in enhancements and upward departures in the applicable guideline sentencing ranges for the defendants. Nevertheless, if there is any question about the application of these enhancements in violent crimes against pregnant women, we should clarify that matter promptly.

Respectfully, it seems to me that this bill has not been crafted to find that common ground, nor designed to provide an effective means to prosecute or prevent violence against pregnant women.

First, this bill unnecessarily injects the abortion debate into our national struggle against violence towards women. The Supreme Court in Roe v. Wade held that “the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn.” This bill purposely employs terms designed to undermine a woman’s right to choose by recognizing for the first time in Federal law the legal rights of a person as applied to the earliest stages of development of a fetus, an embryo or an egg.

Second, the National Coalition Against Domestic Violence has warned that a consequence of the bill is that battered women who are financially or emotionally reliant on the batterer may be less likely to seek appropriate medical attention if doing so could result in the prosecution of the batterer for an offense as serious as murder. We should pay attention to the experts about the consequences of legislative proposals such as this one, particularly when the experts say this bill could have devastating effects for victims of domestic violence.

Finally, the bill ignores the problems of domestic violence, sexual assault and other forms of violence against women; in fact, the UVVA does not even mention the woman. In short, this bill ignores the reality that an attack that harms a pregnancy is inherently an attack on a woman.

The senior Senator from California is proud of my record of support for victims of domestic violence, and I believe that some of the ideas contained in the Murray amendment merit our consideration.

But passing the amendment we are presented with today would be a serious mistake. First, I must note that the Murray amendment was obviously drafted in haste because it contains several technical flaws—not the least of which is a provision that would—as I understand it—give an abusive family member the same rights as a victim! The Murray amendment would create an unpaid leave provision that is distinctly narrower than the FMLA, an unpaid leave provision that is distinct from the provisions contained in the Family Medical Leave Act, FMLA, and State laws. This new leave provision would apply to employers with as few as 15 employees—compared to 50 for FMLA. FMLA applies to workers who have been employed for at least a year, but the proposed Murray leave program has no minimum requirements for length of service. Moreover, under this amendment, domestic violence leave could be taken without advance notice to an employer. This would create a regime that would make employers vulnerable to lawsuits based on creating an unwarranted chilling effect. Given the extraordinary degree of uncertainty such a regime could create for employers,
commonly referred to as the Motherhood Protection Act, creates a separate, additional Federal criminal offense for harm to a pregnant woman. Under this legislation, the prosecutor may (1) charge the defendant with an offense against the woman, and (2) subsequently charge the defendant with the separate offense of interfering—e.g., causing brain damage to the child—or terminating the normal course of her pregnancy. A defendant would face a maximum of 20 years in prison for interfering with the development of the fetus and a maximum of life imprisonment for terminating the pregnancy. Such sentences would be in addition to any penalties for the underlying federal crime. These terms of imprisonment reflect the same sentences included in the UVVA.

Senator Feinstein's amendment addresses harm to a pregnant woman, while recognizing the loss she suffers through injury to the fetus. By excluding the language in the UVVA that defines a human to include a fetus, the Feinstein amendment accomplishes the stated goal of the UVVA without undermining reproductive rights or ignoring violence against women.

The senior Senator from Washington will offer an amendment in support of domestic violence victims, which I am proud to co-sponsor. The Murray amendment would authorize HHS grants to nonprofit agencies to help service providers design and implement intervention programs for children who witness domestic violence. The grants would encourage domestic violence agencies and schools to work together to address the needs of affected children. The amendment would also establish entitlement standards and guidelines for employees to use emergency leave to address domestic and sexual violence.

Unlike the UVVA, these two amendments address the issue of violence against women. If we are serious about addressing this problem and trying to end the violence, then we should put a stop to the partisan politics surrounding UVVA and vote for these amendments.

When it has focused on the real issue of violence against women, Congress has taken aggressive action to address the problem of violence against women. Congress made great strides in the fight against domestic violence by passing the bipartisan Violence Against Women Act as a part of the 1994 Violent Crime Control and Law Enforcement Act. Senator Biden and Senator Hatch contributed considerable time and leadership to achieving the enactment of VAWA, which marked a turning point in our Nation's effort to address domestic violence and sexual assault.

This landmark legislation created federal criminal violence offenses with severe penalties to hold offenders accountable for their destructive and criminal acts of violence. Since the end of 1994, the Department of Justice has brought over 1000 VAWA and VAWA-related indictments and awarded over one billion dollars in VAWA grants to communities working hard to combat violence against women and to help cure the pain and suffering that results from it.

I am proud to say that Vermont was the first State in the country to apply for and receive funding under VAWA, and I have seen the way in which groups such as the Vermont Network Against Domestic Violence and Sexual Assault have worked effectively to stem violence against women and children and to assist those who have suffered from it.

I am also pleased that the conference report on the AMBER Alert and PROTECT Acts included Leahy-Kennedy-Biden legislation to establish a transitional housing grant program within the Department of Justice to provide victims of domestic violence, stalking, or sexual assault the necessary means to escape the violent control of their perpetrator. It amends the Violence Against Women Act of 1994 to authorize $30 million for each of fiscal years 2004-2008 for the Attorney General to award grants to organizations, States, units of local government, and Indian tribes.

The grants will help victims of domestic violence, stalking, or sexual assault who need transitional housing or related assistance as a result of fleeing their abusers, and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. President Bush signed the conference report into law on May 7, 2003.

We know that violence against women pervades all areas of our country. It makes no difference if you are from a big city or a rural town; domestic violence and other violence against women can be found anywhere. This is a serious issue. We owe this country a difficult subject and it is a controversial subject. I appreciate the manner in which the debate has been conducted, and I think it has been conducted in the best tradition of the Senate, with the exception of your not letting me modify my amendment. But I will only interpret that as caused by the fact that the other side is worried and doesn't want my amendment to get any better, so they refuse to let me modify it.

We have two different bills here. I think we have expressed the differences. The underlying bill does recognize the unborn at any stage of development, as long as they are in the womb, as a human being, as a victim and with rights.

My bill, rather than enter into where life begins, at what point in this gestation period life actually begins enough to say this is a person with rights—it doesn’t get into that. It takes the penalties and does a double charge and says if the predicate crime is present, and you carry out the crime to harm or end the pregnancy, the double charge is twice the double charge. The double charge is twice the double charge.

The hard part of this is that we all know there has been a march to turn back Roe v. Wade. Every Member of
this Senate knows it. We have had vote after vote after vote. Since 1994, the pro-choice side has lost most of the votes. That is irrevocable fact. We know the march is on.

So those of us who are pro-choice naturally are going to look at laws to see if those laws can constitute, in addition to what they are supposed to do, any kind of bulwark from which to attack Roe.

Because of the definition of a child in utero, at any stage of development, a member of the species Homo sapiens, we come to a conclusion. We asked the question, first, why do they use that definition? So many States have passed laws and many of them have used different definitions, why do they select that definition?

Answer, because it accomplishes the purpose of determining that once a fertilized egg is in the womb, it becomes a human being. That, then, buttresses statements such as this one on the ease.

This isn't the only statement. I can give another statement by another professor in my opening remarks. It is a statement of a Republican strategist. Professor Charo is at the University of Wisconsin. She made the statement recently:

If you can get enough of these bricks in place, you draw enough examples from different parts of life and law where embryos are treated as babies, then how can the Supreme Court say they are not? This is, without conscious strategy.

So if you believe it is without question a conscious strategy—and I, based on the history of how the erosion against Roe is being waged, piece by piece, by bit by bit, law by law, action by action, I believe it is a conscious strategy. The hard part about it for me is the Supreme Court say they are not? This is, as I have tried to elucidate

On the one hand, you have the situation the Senator from Kansas, the Senator from Ohio, and the Senator from South Carolina pointed out—situations where you have women who have gotten involved in this late, I would like to use the 5 minutes to say a few things.

The first is that this is one of the most difficult areas in which to legislate because it is filled with such incredibly various differences of opinion. It is one of those great cultural problems that exists out there in our real world, as opposed to this world, where human lives are very much affected.

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T...
The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

The Assistant Secretary of the Senate, at the request of Mr. DeWINE, announces that a sufficient second is present.

The clerk will call the roll.

The PRESIDING OFFICER. The result was announced—yeas 49, nays 50, as follows:

[Rollcall Vote No. 61 Leg.]

YEAS—49

Akaka  
Baucus  
Bayh  
Bingaman  
Boxer  
Byrd  
Cantwell  
Carper  
Chafee  
Clinton  
Collins  
Conrad  
Corzine  
Daschle  
Dayton  
Dodd  
Dorgan  
Alexander  
Allard  
Allen  
Bennet  
Bond  
Breaux  
Brownback  
Bunning  
Burns  
Campbell  
Chambliss  
Coats  
Coahan  
Colman  
Cornyn  
Craig  
Crapo  
DeWine

NAYS—50

Alaska  
Baucus  
Bayh  
Bingaman  
Boxer  
Byrd  
Cantwell  
Carper  
Chafee  
Clinton  
Collins  
Conrad  
Corzine  
Daschle  
Dayton  
Dodd  
Dorgan  
Alexander  
Allard  
Allen  
Bennet  
Bond  
Breaux  
Brownback  
Bunning  
Burns  
Campbell  
Chambliss  
Coats  
Coahan  
Colman  
Cornyn  
Craig  
Crapo  
DeWine

NOT VOTING—1

Biden

The amendment (No. 2858) was rejected.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2859

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I have an amendment No. 2859 at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY] proposes an amendment numbered 2859.

Mrs. MURRAY. 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 printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. There are 2 hours equally divided on the amendment. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, today I am offering an amendment to help prevent violence against women and children. We have heard a lot of talk today about punishing abusers. Now it is time to see who is serious about preventing abuse in the first place.

As someone who has spent my entire public life as a victim's advocate, visiting shelters, working with advocates in law enforcement, and funding the programs victims rely on, I am here this afternoon to offer an amendment that will help women and children get the help they need to be safe and, most importantly, to save their lives.

Mr. President, the amendment I am offering this afternoon is built on what experts and experts have told me they need. That is why this amendment has been endorsed by the National Coalition Against Domestic Violence and the Family Violence Prevention Fund. These organizations know what victims need, and they say the Murray amendment will really help victims of violent relationships.

Mr. President, I am honored to say that my amendment is named for Paul and Sheila Wellstone, who were such champions for victims of domestic violence. Senator Wellstone and I introduced legislation that is today included in this amendment. Paul's desk was just behind me here on the Senate floor. I can still see him behind me waving his arms and making the case for people who have no voice.

This amendment is a true tribute to Paul and Sheila Wellstone, and the fight we carry on for the millions of people who need a voice in the U.S. Senate. Whenever Paul debated an issue, you could always tell who was truly standing up for families and who was just talking. The vote on this amendment will reveal who is truly concerned about giving women and children the tools they need to escape violent relationships, and who is more interested in playing politics and attempting to undermine women's constitutional rights. Any Senator who is truly concerned about the safety of women and children will join me and give battered women the support they need to escape violent relationships before it is too late.

Now, I have a feeling that during this debate we are going to hear a lot of excuses. Some Senators are going to stand up here with the talking points that have been prepared for them by the Chamber of Commerce and say that protecting women from deadly abuse is somehow bad for business.

We are going to hear a lot of excuses. But I know something stronger. I have read the actual stories of dozens of women who are being abused, who have escaped abuse, or who have been killed by their abusers. Those are the voices that need to be heard on the Senate floor, not talking points from lobbyists, not the same old excuses from the very people who are cutting Violence Against Women Act programs by $10 million. We have had enough of that. We have had enough of the 1 million women assaulted every year.

Nearly 1 in 3 adult women are assaulted. There are 4.9 million intimate partner rapes and physical assaults, and thousands of mothers and their small children are killed by a spouse or a boyfriend. We know what all those excuses have produced: Women who are beaten, raped, and murdered.

Some lobbyists and Members of Congress want to bury my amendment. You know what. We have had to bury enough people already. Let's see who is serious about helping to prevent violence and who is just playing politics with the lives of battered women.

Let me read a note I received from an advocate for victims of abuse. She writes:

I have had many many clients over the years who have come to me after they have been fired from work because they missed a day of work to go to court to get a civil protection order. In some of these instances, the women who had court orders still were fired. Several of these women were forced to return to their batterers after they lost their jobs because they lost their income and they and their children would have been homeless if they did not return.

These are some of the women who are trapped today and who desperately need our help. Mr. President, my amendment is especially important because the Bush administration is cutting or freezing funding for critical domestic violence programs. Every year, 2 million American women are sexually assaulted, stalked, or physically assaulted—2 million women every year. You would think that the White House would recognize the need to fund domestic violence programs, but the President's latest budget offers more bad news to victims of violence.

Let me give you some examples. The President's budget cuts Violence Against Women Act programs by $10 million. It cuts a justice Department rape prevention program by $29 million. It freezes funding for the domestic violence hotline, and it freezes funding for grants for battered women shelters, precisely at a time when we need increases because evidence shows us that domestic violence increases during tough economic times just as we are having today.

So I find it pretty ironic to be here today with a bill before the Senate that purports to help victims of domestic violence while it ignores all we know about preventing it. Anyone who has talked with victims and law enforcement knows that domestic violence prevention requires more support, not less—not less. It is clear that we need to help victims escape violent relationships, and the Paul and Sheila Wellstone domestic violence prevention amendment will help.

Mr. President, my amendment does several things. It gives victims of abuse
access to unemployment insurance if they have been forced to leave their job because of violence. It gives victims of violence access to expanded emergency leave so they can go to court or to the police to stop the abuse. It protects victims from job discrimination andviolence discrimination. It provides services for children who witness domestic violence so we can end that cycle of abuse. It helps health professionals screen for abuse and respond appropriately to the needs of domestic violence victims better access to critical health services. Those are the steps we need to take today to protect the more than 2 million women who are sexually assaulted, stalked, or physically assaulted every single year. Mr. President, let me say a word about the relevance of my amendment. I expect some Senators will come here and claim that preventing violence against women is somehow not relevant to the bill that their daily debate. To them, it never seems to be the right time. There is always an excuse. In fact, these Senators are sending a message that victims are not relevant until they are dead. If any Senator wants to know what I mean by this, the 1,400 women across America that the abuse they face is not relevant, then they will have to make that insulting claim alone because I am going to keep fighting to get victims the help they need, to prevent future abuse, and break the cycle of violence. You tell a woman who is being abused she doesn’t deserve more help; you tell a child who is witnessing abuse every night that my amendment is unnecessary. I am not going to tell victims that. My amend ment gives them the real help they need.

Mr. President, victims of violence have heard a lot of excuses over the years. The reason their daily debate is not relevant to this Senate debate is just another of the excuses that have trapped women every year in this country. That claim is as insulting as it is false. I just look at the recent debate in the House of Representatives on this underlying bill. During that debate, every single anti-choice Member who spoke referred to criminal acts of violence against women. Violence against women is a central part of this debate. Preventing violence against women and helping women and children who are being abused is central to this discussion. Opponents cannot have it both ways. They cannot claim that their bill is needed to address the violence against women and then claim we should not debate ways to prevent violence against women. This amendment is clearly relevant and will truly help women and children.

Anyone who wants to claim it is not relevant will have to answer to the victims to whom they are denying help. Either you are serious about helping women and victims or you are playing politics and making excuses.

Women and children who are being violently abused every day deserve to know where their Senators stand, and Members of Congress are certainly hearing from outside groups on this, from groups that are not known—not known—for their advocacy on fighting domestic violence.

Yesterday, Senators received a letter from the U.S. Chamber of Commerce urging them to oppose my amendment. Bruce J. osten, the Chamber’s Executive Vice President for Government Affairs, makes the Chamber’s case rather forcefully in his letter. He writes:

“It is important as a preliminary matter that H.R. 1997 is clearly an inappropriate vehicle for this amendment as the issues involved are completely unrelated.

“Unrelated.” We are dealing with a bill that claims to address the crime of violence against women, but an amendment that would actually prevent violence is “unrelated,” according to the Chamber of Commerce.

Mr. J osten goes on to write:

“The ill-designed programs promise to impose significant costs on business, particularly small business.”

So the Chamber argues that the cost of preventing further violence against women is too high to pay. In other words, preventing domestic violence and giving women the tools to escape from abusive relationships is bad for the bottom line.

Let’s, for a minute, examine the economics of domestic violence. There are costs associated with allowing domestic violence to continue, not just for women but for business.

In 2002, economists Amy Farmer of the University of Arkansas and Jill Tiefenthaler of Colgate University published a report on the economic impact of domestic violence. They examined publicly available studies performed in the United States, including the annual National Crime Victimization Surveys, two Physical Violence in American Families studies, and seven studies in the national violence against women surveys.

As Ms. Farmer explained:

“Each study was intended to answer different questions, so the data sets have different strengths and weaknesses. When we incorporated these data into a single model of domestic violence, a different picture emerged that can be seen from any one study.”

They found that absenteeism, tardiness, and turnover rates are all high among domestic abuse victims. Farm er’s research also concludes that domestic abuse may result in almost 7 million lost work days annually—7 million—reduced workplace productivity, increased insurance costs, and lower profits.

The researchers also cited a 1995 Roper report that found that 49 percent of the Fortune 100 executives surveyed believed that domestic violence hurt their company’s productivity, and 33 percent said it lowered their profits. So the cost is a real, and it has real costs for businesses.

If you go to the Corporate Alliance to End Partner Violence, you can learn some other interesting facts about domestic violence and how it affects the bottom line. On their site, you will find medical expenses from domestic violence costs $3 billion to $5 billion a year. Businesses are paying $3 billion to $6 billion a year to provide health care for victims of domestic violence.

You also learn that 94 percent of corporate security directors rank partner violence as a high security problem. They estimate that 75 percent of victims of domestic violence are harassed at work by their abuser.

Here is a startling fact they have on their Web site: Homicide is the No. 1 leading cause of death on the job, and 20 percent of those murders were committed by their intimate partner at the workplace.

What should we conclude from this data? Domestic violence is bad for business. It has real and it has painful costs on employers. So for those Members who want to weigh this measure against its economic merits, the Chamber does, the facts are clear. Providing the tools that will allow abused women to escape abusive relationships can help offset billions of dollars in costs that domestic violence imposes on businesses.

But I hope my colleagues will consider more than the economics as they cast their vote. I hope my colleagues will consider the cost to the women and children who are the victims of domestic violence—the cost in lives—and the pain and the lives we can protect by giving women the tools they need to escape abusive relationships.

I would like to share with my colleagues this afternoon some of the stories of the women we are trying to help with this amendment. These stories were shared with me by a nationally recognized advocate for domestic violence victims.

Let me tell my colleagues a story about a woman who had worked at a medium-sized organization for over a year as an administrative assistant. Her husband had been beating her on and off for over 15 years of their relationship. When things escalated, she missed work due to a severe beating. She called in to work and was honest about what happened to her. She came in to work the next day and was told she was fired. Her company told her her absence was unexcused and he would come to the workplace and hurt her coworkers, although that had never happened before.

She did not qualify for job guaran teed leave under the Family and Medical Leave Act because the company employed less than 50 employees and, arguably, her injuries from the beating did not qualify as a serious health condition. So it made her firing legal.

If VESSA—the act we are talking about—were to have been in effect, she would have had access to job protected leave or perhaps a provision prohibiting employers from discriminating against victims of domestic violence.
She applied for and was denied unemployment insurance.

This is a real woman. This is what happened to her. It could be your next-door neighbor. It could be your daughter.

There is another woman who worked as a hospital nurse. She just left her batterer and was concerned that he might follow her to her workplace. She told her employer of her fears, and they fired her. She applied for unemployment insurance. She was denied.

Another story: Abusers often contact employers themselves to get the women they are abusing fired. One batterer called up the workplace and told them his victim was HIV positive.

Let me tell you about a woman who was strangled by her batterer. Her doctor told her to stay home from work for 5 days after being strangled. She called in sick to work, and she was fired because she did not have enough vacation days and she did not qualify for family and medical leave because her employer was too small.

These are real people. Mr. President. These are our next-door neighbors. These are women who live in our communities. These are real stories.

Another example: One morning a woman was getting ready to go to work and her abuser came to her home with a gun. He told her that if she left the house he would kill her. She was able to call the police, and the police came to her home and arrested the batterer. She got a police report. She called her workplace and explained why she was unable to come to work that day. The next day she returned to work and was fired for missing work and was denied unemployment insurance.

Let me tell you another story: One woman got a call at work from her abuser. Her coworker overheard the conversation when her abuser took her aside and said since she was dealing with so much, she couldn't possibly continue to work for him and fired her.

Here is an example of what happens when a woman tried to go to court to get help. A woman told her employer that she was in a violent relationship and that she would need to take a day off from work to go to court to get a protection order.

The woman's employer seemed supportive, and so she took the day off and went to the court. The next day when she arrived at work, her supervisor called her into his office and she was fired for missing work, even though she had obtained permission the day before.

These are just some of the people who desperately need our help. These are real stories. These are real women. They need help to break out of these abusive relationships.

Let me take a minute to put this amendment in context because it is the next logical step in the progress that we have been making in fighting domestic violence. We have come a long way over the past few years in dealing with domestic violence. Not long ago domestic violence was considered a family problem. It was something people did not talk about. That climate made it very difficult for victims to seek help. It prevented friends or neighbors from getting involved in what was considered someone else's business.

Today stopping domestic violence is everyone's business. Thanks to the Violence Against Women Act, which I was proud to work on and help pass. For the first time, the Violence Against Women Act recognized domestic violence as a violent crime and a national public health crisis. It laid out a coordinated strategy to bring advocates, shelters, prosecutors, and law enforcement professionals together to fight domestic violence. I was proud to help reauthorize the Violence Against Women Act in 2000.

Over the years, I have been proud to work with advocates from Washington State and across the country to strengthen these violence against women programs, to increase the funding, and to help raise awareness. So the Violence Against Women Act was the first step and it helped us respond to the immediate threat of abuse. Now it is time for us to address the long-term problems that victims face. We need to break down the economic barriers that trap these women in their relationships, and we need to reach out to the children who witness this violence, help health care professionals stop the cycle of violence and truly protect women and children.

Let me take a few moments to walk through the parts of my amendment and show how it will help prevent and stop abuse. My amendment gives victims of violence access to unemployment compensation. Specifically, it provides victims of domestic violence, dating violence, sexual assault, or stalking with unemployment insurance if they have been separated from their employment as a result of the violence. Many abusers trap their victims financially, limiting their ability to work and forcing them out of a job. I will share some statistics that have been compiled by the National Coalition Against Domestic Violence. Many victims of domestic violence have current or former intimate partners who干扰 their efforts to work by harassing them on the job, threatening them and their children, withholding transportation, or beating them so severely they cannot work. In addition, more than 25 percent of domestic violence victims surveyed in three national studies reported they lost a job due at least in part to domestic violence.

We know that a job is often the only way a victim will have resources for themselves to eventually leave a violent relationship, but abuse and stalking make it impossible for a victim to keep a job. We know of cases where abusers will deliberately sabotage the victims' ability to work, placing harassing phone calls, cutting off their transportation, showing up at the workplace and threatening employees. When a victim loses her job because of violence, she should have access to unemployment insurance compensation benefits.

During this debate some may claim this is some big, onerous expansion. I have seen the talking points from the groups that want to kill this genuine effort to protect women from violence, and they have it wrong. This is not some dramatic expansion. In fact, today 25 States already provide some type of unemployment insurance assistance for victims of violence. They can offer that same protection to victims in every State, and we have an obligation to do it.

My amendment will protect victims by allowing them unpaid time to get the help they need. Today a woman can use family and medical leave to care for a sick or injured spouse, but many women cannot use that act to go to court to stop the abuse. My amendment fixes that. We know that taking a day off of work to go to court or to go to the police can save a woman's life. My amendment ensures women will not be punished for taking those steps that they need to take to protect themselves from abuse.

Let me turn to another part of my amendment which deals with the children who witness domestic violence. Batterers often harm children as well as their intimate partners, and witnessing violence can have an impact on young children and all children. Let me offer some statistics about abuse and children to put this in perspective.

Between 3.3 million and 10 million American children annually witness assaults by one parent against another. In 43 percent of households where intimate violence occurs, at least one child under the age of 12 lives in that home. Children are caught in the crossfire of abuse, and while we know all children are affected differently, we do know that children who witness violence at home may display emotional and behavioral differences as diverse as withdrawal, low self-esteem, nightmares, or aggression against their peers, family members or property.

We know that witnessing abuse by a child can contribute to the cycle of violence. A victim to domestic violence and Delinquency Prevention at the U.S. Department of Justice finds that as many as 40 percent of violent juvenile offenders come from homes where...
there is domestic violence. In my home State of Washington, we are now all too aware of the price children pay in cases of domestic violence.

In April of 2003, the Tacoma police chief, David Brame, shot and killed his wife Crystal. Brame then took his own life, all while their two young children watched. The final tragic act was the last in a long history of abusive events that often played out in front of their two small children.

According to the police report, David Brame had been driving around in a shopping center parking lot in Gig Harbor that day when he spotted his wife Crystal and the couple's children as she was parking the car. Brame shot her and then turned the gun on himself.

As a witness, 7-year-old Haley told her: 'My daddy is a policeman and he is very mean to my mommy. I think my daddy has killed her.'

Then Haley told officers she had seen her dad point a gun at her mom's head in the past.

Detectives talked to the son, David, 5 years old, at the hospital a few hours later as the mother was fighting for her life. He asked the little boy, 5 years old, "Did you see the gun?"

He answered: 'Yeah. And, it shot my mom into flat dead.'

The children talked about past anger between their mother and their father and what led to that terrible day. That is just one terrible example of the trauma that children who live with domestic violence have to live with. It should be our collective goal to help them overcome it.

This is how this amendment would help children who witness domestic violence. It establishes grants to children who have been exposed to domestic violence such as I just described. It supports direct counseling and advocacy, early intervention and mental health services, legal advocacy and specialized services. It provides training for school personnel to develop effective prevention and intervention strategies. It helps child welfare agencies, domestic violence, and sexual assault service providers work together to protect the children.

Finally, it supports multisystem intervention models and crisis nurseries for children who are exposed to violence.

Children who witness domestic violence have special needs. They are not being addressed today. We have an obligation to change that.

Let me turn to the next part of my amendment, which expands the services available for abuse. My amendment gives the States the option to use Medicaid to help victims, it ensures domestic violence screening and treatment is covered by the Federal Employees Health Benefit Program, and finally my amendment ensures the wireless States use some of the maternal and child health block grant on domestic violence screening and treatment.

Those are the main provisions of my amendment. Extending unemployment insurance to victims of abuse, offering family and medical leave so a victim can go to court or the police station to get help, ending insurance and employment discrimination, providing help for those children who witness abuse, offering access to health care for victims, and improving the way our health care providers screen for domestic violence.

My amendment combines the protective services for victims, law enforcement, and advocates tell us are needed, based on their real world experiences every day on the front lines of domestic violence. We have an opportunity today finally to make a real difference for millions of women who are being abused, and we can eliminate all the costs domestic violence imposes on our businesses, on our families, and on our communities. The question is whether we are serious about helping to prevent violence against women.

The underlying bill before the Senate today focuses only on penalties after a woman has been abused. My amendment aims to prevent that abuse in the first place. After a woman has been killed, it is too late. We have to stop this abuse before it ends up killing some woman. My amendment gives women today the tools to escape deadly abuse.

Are the Senators in the Chamber serious about helping victims of abuse? That is the question before us.

Frankly, I don't care what the lobbyists say out there. The Chamber of Commerce has lobbyists lined up and down the hall, and they have plenty of people making their case. But I tell you, the women whose stories I shared with you today don't have lobbyists lined up in the hall.

I have been to the shelters. I talked to the women who have been beaten. I have looked in their eyes and I know the odds they are up against. I know what I would say next time I am looking into the eyes of the victim of abuse.

My colleagues will have to decide for themselves if they are going to give her excuses or throw a lifeline to help her escape the violence that may kill her. I say to my colleagues, what are you going to say to the victims of abuse? Your vote will speak volumes.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DeWINE. Mr. President, I want to take a moment to address my concerns about the amendment my friend and colleague from Washington, Senator Murray, has offered to the underlying bill.

First, let me commend my colleague for her passion, for her dedication to promoting public awareness about domestic violence, and for her dedication to this cause. She certainly is a tireless advocate in these efforts to help end domestic abuse. She is steadfast and unwavering in her commitment to these issues, and I applaud her for offering this amendment today.

But reluctantly, I came to the floor this afternoon to oppose this amendment. I say this not because I am opposed to all the provisions of her amendment, but because the reality is...
this is not the time or the place for this amendment. Her amendment being offered to this bill, as a practical matter, does not have any chance of becoming law. We understand how not only this body but the other body operates. So, the key question is what the purpose of this amendment would do is stop the underlying bill. When we look at the calendar, when we look at the reality of the other body, when we look at what is going on in this body, the agreement to this amendment to this bill will stop this bill. It will kill this bill.

So when Members come to the floor, I implore them to think about this, however tempting it might be to agree to this amendment. It is this big amendment. It is a very complex amendment. Some of my other colleagues in just a moment will talk about the merits of this amendment. I am not going to get into that.

I have a story in the House, when I was in the House and later when I was Lieutenant Governor of Ohio, and now in the Senate, of supporting the cause of dealing with the problem of domestic violence. So many other Members of the Senate have done that as well. I don't say I am the only one. Other Members have had a great record. My colleague has a great record.

But the reality is this amendment, however well intended, cannot become law this way. It will not become law this way, and it will have the effect of killing this underlying bill. So, therefore, I must oppose this amendment. This amendment would kill this bill.

We are so close to seeing the underlying bill, a bill we have worked so hard to pass, actually go to the President.

The House has passed it. We are very close to passing it here in the Senate and sending it on to the President for his signature. The only thing, frankly, that now stands between this bill becoming law and going to the President for his signature is the Murray amendment.

At this point, I will yield time to my colleagues from the State of Utah for his comments about this amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I don't agree more with the comments the distinguished Senator from Ohio just made. This is a very important piece of legislation. It would not be killed by this last-minute, 159-page amendment, which has not had a single hearing.

I have long been a supporter of ensuring that our Nation's laws extend all the protections available to women who are victimized by domestic and other violence.

Along with Senator BIDEN, I have taken the lead in addressing this issue through national legislation with the passage of Violence Against Women Act.

I commend Senator BIDEN for the work he has done on that. But it took a bipartisan effort to get that through. Of course, I worked very hard side by side with him to get that bill passed, and have stood up for it ever since.

Because of the passage of the Violence Against Women Act, the Department of Justice is now authorized to coordinate with Federal and State governments, as well as international governments, on matters concerning violence against women.

In fact, the Bush administration will allocate a record $700 million this year alone for these worthy programs.

I note with a sense of pride that a former adviser to my Woman's Advisory Council from Utah is now the director of the Office on Violence Against Women in the Department of Justice. She is doing a terrific job.

Violent crimes against women continue to be among the most under-reported. Even so, the statistics that are reported do not convey the feeling of fear and vulnerability millions of women confront every day as they face our streets and all too often in their own homes.

To address this problem, effective intervention in the area of domestic violence requires coordinated efforts by law enforcement, and preferably by Federal courts. It demands a major commitment by Government at all levels, Federal, State, and local. I am proud to help in coordinating the response to this important issue and have been very prominent in the so in the past.

I intend to continue addressing these concerns in the future.

I say all of this to set the backdrop for why I urge my colleagues to vote against the Murray amendment.

Let me say at the outset I appreciate my colleague, Senator MURRAY, for attempting to advance the discussion on this issue. As someone who has been working on this matter my whole political career—fear and vulnerability millions of women confront every day as they face our streets and all too often in their own homes.

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The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I don't agree more with the comments the distinguished Senator from Ohio just made. This is a very important piece of legislation. It would not be killed by this last-minute, 159-page amendment, which has not had a single hearing.

I have long been a supporter of ensuring that our Nation's laws extend all the protections available to women who are victimized by domestic and other violence.

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The one reason we created the committee system, of course, is to correct and vet legislation rather than wasting valuable floor debate time.

An additional provision found in the Murray amendment pertaining to class action—section 112(c)—appears to fly in the face of the efforts of a vast majority of Senators. It makes no effort to take into consideration issues that trouble the majority of Senators. This amendment codifies in the United States Code a right to bring class actions.

I have helped lead the fight in this Congress to reform the substantial
longer because there is only an hour on each side in this debate. These are just a few of the problems caused by this amendment as it relates to civil justice judiciary issues, important issues that should not be dealt with frivolously. I have mentioned the increase in others caused by the amendment such as the increase in taxes on small business that will inevitably follow if it is passed, the wholesale restructuring of state unemployment insurance rules and regulations, as well as the substantial 11th hour amendments raised by this poorly drafted but well-intentioned amendment.

I understand others will come to the floor to discuss these issues so I don't intend to repeat them now. They are important issues. This is not an itty-bitty amendment. This is a major amendment that literally has not had a day of hearings.

I take a backseat to no one, not anyone, in ensuring that Congress does everything it can to protect our workers, support, and resources to combat domestic violence. But this amendment is not well written. Or perhaps I should say, not only is it not well written, it is overwritten in many respects.

Because of what is enshrined in the Murray amendment, I cannot vote in favor of it. I recommend Senators on both sides of the aisle vote against this amendment. We will certainly sit down with the distinguished Senator and look at her goals and her aims try to help her fashion this amendment so that it can pass the Senate in a form that literally makes sense in the law, makes sense in reality, and makes sense in practicality.

I yield the floor.

The PRESIDING OFFICER (Mr. Chambliss). Who yields time?

Mr. HATCH. I yield such time as he needs to the distinguished Senator from Wyoming. The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I rise in opposition to the amendment offered by the Senator from Washington. This amendment is a sweeping expansion of Federal employment law without a hearing, without committee debate, without committee amendments, and without any potential for floor amendments. We never legislate like that. This bill does not just have one concept in it; it has many concepts in it 158 pages. That makes it evermore unworkable to do in the Senate. This just is not how we legislate.

As chairman of the Subcommittee on Employment, Safety, and Training, I am compelled to discuss the implications of such an unprecedented and misguided expansion of current law.

Let me begin by saying I share Senator Murray's concern about domestic violence. Domestic violence shatters families and breaks the very foundation of our society. My opposition to the amendment is not based on a lack of concern for victims of domestic violence. A good title does not make a good amendment. I am opposing this amendment because it is an unprecedented expansion of workplace laws without any consideration for the committee of jurisdiction.

This amendment greatly expands workplace laws without any hearings or Committee consideration. The amendment creates a new set of laws requiring businesses—including small businesses—to provide employees with extraordinary leave and accommodation. However, the amendment has not been reviewed by the Committee of jurisdiction. It creates new workplace requirements without considering the impact of its implementation or its relation with existing laws. The process is flawed and irresponsible.

The amendment creates broad, vague workplace requirements that conflict with existing law and invite litigation. It creates new rights to leave and protection on small businesses with limited resources. The FMLA exempts businesses with fewer than 50 employees from coverage. The Murray amendment would cover all employers with 15 or more employees.

A lack of administrative alternatives increases litigation and burdens courts. Unlike existing federal anti-discrimination laws, the Murray amendment allows claimants to bypass the Equal Employment Opportunity Commission, EEOC, and file a private suit directly in court. This undermines the efficacy of the EEOC and this amendment.

These are unlimited damages for employment discrimination caused by someone else. Unlike existing Federal laws which cap damages for employment discrimination, the Murray Amendment allows unlimited compensatory damages, and punitive damages based on Federal mandates. Why should a victim of domestic violence discrimination be able to recover greater damages than a victim of race or disability discrimination?

The amendment imposes unfunded Federal mandates on state unemployment compensation. The Murray Amendment imposes a Federal mandate to cover domestic violence under
The first time we are considering this major expansion of Federal employment law is on the Senate floor on a bill totally unrelated to employment and, I have to add, unamendable. There is an agreement between the two sides there would be two amendments today, and neither amendments would be amendable, nor would there be allowed any intervening action. What we have is what we get. I have to say, no one is going to want to get that.

The problem with vague provisions of this amendment conflict with and undermine existing employment laws. The committee process is so important because that is where we carefully evaluate in a much less formal situation the impact of pending legislation and its relation with current law.

Let me explain a little bit more how the committee process works. Besides the hearing part where we get to bring in panels of experts before us and ask them extensive questions so we have a better understanding of what is going on and to give them an opportunity to speak on the provisions that are before us, we also have what we call a committee markup.

The committee markup is where most of the work for this Chamber is done. It is a much smaller group; it is a much more informal group. People turn in their amendments ahead of time so that they can be reviewed by all. Even on the day of the markup people can get together and work on amendments to get agreement. It is fairly successful. The amendment process usually results in a bill coming from committee with about 80-percent agreement.

The unfortunate thing for this country is that the bill comes to the floor, and what we usually debate is the 20 percent we do not agree on. That is not the case on this particular item. This has not been discussed in committee so the 80-percent agreement is not there. The ability to work out issues with some flexibility is not there. I am sure there are provisions in this bill that are written in a way that the author probably wished were different. I certainly wish they were different.

The first bill I ever did in the Wyoming legislature was only a three-sentence bill when I took it to the legislature and it was amended two amendments. On the floor, it got three amendments. When it went to the Senate side, it did not get any in committee but it got one on the floor. What I learned through that process was that every step that made an important difference. It turned out to be a far better bill because all of the opinions of all of the people serving in that body were injected and they could see a lot more different directions than any one member of that body.

That is how we work it here. We work it so that the 100 Senators have an opportunity to take something as complicated as this and make changes to it. Then we have a House that looks at the same thing. Again, there are a lot more opinions that get into the bill.

The committee process is so important because that is where we carefully evaluate the impact of pending legislation and its relation to current law. We did not do that here. What we have here is a 158-page proposal which is not related to the underlying bill, and that proposal rewrites employment law without the benefit of hearings or committee consideration. That process is flawed and irresponsible.

So, more specifically, what will this amendment do? It creates a new Federal law that mandates employers, including small employers, to give up to 30 days of leave to an employee to address domestic or sexual violence. However, this proposal ignores important requirements that Congress applied to leave taken under the Family and Medical Leave Act.

Let me highlight a few of the differences between FMLA and the Murray amendment.

The Family and Medical Leave Act applies to employers of 50 or more employees. The Murray amendment applies to employers with 15—that is 15, instead of 50—employees. Most small businesses do not have the processes or personnel necessary to begin complying with this new leave requirement.

In the past, Congress has recognized the burden of workplace regulations on small businesses. However, this amendment would impose workplace regulations on small businesses never before covered by Federal employment laws. This amendment would undermine the small business exemption Congress included in the Family and Medical Leave Act.

The Family and Medical Leave Act imposes a length-of-service requirement for employees to be eligible for leave. The Murray amendment has no service requirement for an employee to be eligible. Under this amendment, a worker is presumptively eligible for leave on the first day of work.

Under the Family and Medical Leave Act, employers can require a health provider to certify the need for leave. This amendment invites misuse and abuse because there is no third-party verification—no third-party verification—for the leave to be required. So if a person says they were abused, that is good enough to take time off.

The Murray amendment does not amend the Family and Medical Leave Act itself; instead, it gives more capability to someone, under this amendment, than they would get under the regular law. It is a backdoor effort to expand Federal leave law at the expense of equity and fairness.

This amendment prohibits employers from discriminating against an individual who is “perceived” to be a victim—that is interesting wording, “perceived” to be a victim—of domestic or sexual violence. Individuals with absolutely no legitimate claims of domestic or sexual violence would have a cause of action under this vague and broad standard.

How are employers and courts to determine who a “perceived” victim is? Whatever the intent of this legislation, the result will be excessive confusion and ambiguity. The amendment defines a “victim of domestic or sexual violence” to include—and I am sure the Senator from Alabama, who is on this committee that has not had a hearing on it yet, has given the floor to some comments on this—an “individual whose family or household member has been a victim of domestic or sexual violence.”

Under this definition, family-member abusers—such as parents who molested their own children—would be protected under this poorly drafted legislation. People could get time off for bad behavior.

There is a good reason for this process. We have of hearings, committee markup, debate on the floor, with amendments, and then the discussion between the two bodies.

The problems with the amendment extend beyond poor drafting. This amendment is inconsistent with the remedy and enforcement provisions of existing employment discrimination laws. Under title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, Congress gave the Equal Employment Opportunity Commission the role of investigating and enforcing complaints of employment discrimination. These existing laws require a claimant to first file a complaint with the Equal Employment Opportunity Commission before being able to file a private suit in court.

The Equal Employment Opportunity Commission plays a vital role in employment nondiscrimination laws. The committee markup in this case expedites resolution of cases and reduces the back log of employment cases in our courts. This amendment would...
allow victims of domestic violence discrimination to bypass the administr-ative process and file suit in court. Al-low ing claimants to bypass the Equal Employment Opportunity Commission undermines the efficiency of the agency and the law itself.

This amendment disregards the remedy structure of other Federal employment discrimination laws. Existing laws limit available damages. For example, consequential and punitive damages for claims under Title VII of the Americans with Disabilities Act are progressive with the size of the employer and capped at $300,000. This amendment provides unlimited compensatory damages and punitive damages up to three times the amount of the actual damages.

Why should a victim of domestic vio-lence discrimination be able to circumvent the complaint process that victims of race or disability discrimi-nation must follow? Why should a vic-tim of domestic violence discrimination be able to recover greater damages than victims of race or disability discrimi-nation? There is no justification for this unequal treatment. We must guard against enacting legislation that, "in the name of protecting...individuals from one type of discrimination, creates inequities for those who have been subjected to another type of discrimi-nation.

I find the leave and discrimination provisions of this amendment very troubling. I find the unemployment compensation provisions to be misguided as well. The amendment re-quires States to provide unemployment compensation benefits to individuals who are separated from employment as a result of domestic violence. That has always been and is a State decision.

Under the amendment, that is taken away from the States. States can decide, and, in many instances, have decided, should recipients of unemployment compensation if they leave employment because of a reasonable fear of domestic violence, a desire to relocate to avoid domestic violence, or to obtain physical or psychological treatment.

Eligibility for unemployment compensa-tion is and should continue to be a State—not a Federal—decision. The terms of unemployment compensation are decided on a State-by-State basis. States have the authority to extend unemployment compensation to vic-tims of domestic violence. A number of States have already done so. This amendment imposes a Federal mandate and higher costs on State unemploy-ment compensation programs. The Federal mandate will impose huge pen-alities on employers in States that fail to comply. It is estimated that the Federal unemployment tax on all em-ployers in the State will be increased from $56 per worker to $434 per worker.

How many jobs will that cost? A Federal mandate to cover domestic violence under State unemployment compensation programs requires States to pay the tab. However, we give the States no voice in whether or how to do so. It is unfair and irresponsible for Washington to impose this burden—and, in fact, against the law—on already burdened State unemployment programs nationwide.

Domestic violence is a serious prob-lem that devastates lives and shatters families. However, we cannot allow a misguided attempt—with no hearings—to address this problem and create new problems. This amendment imposes unfair burdens on States and employers, particularly small businesses.

When I am back in Wyoming, I like to hold town meetings so I can find out what is on the minds of my constituents. At each town meeting, there is usually someone in attendance who is quite concerned about Government reg-ulations. I am often told to rein big government in, keep the rules and reg-ulations simple and responsive, and make sure they are fair.

This amendment takes the opposite approach. It is a classic example of one size fits all that doesn’t fit outside the beltway.

The amendment ignores the careful consideration Congress has given to ex-isting employment laws with vague and broad language that conflicts with current Federal employment law. Law-yers, not domestic violence victims, will be the big winners in this one.

I will close by sharing a letter from a survivor of domestic violence who div-orced her first husband in 1978 because of abuse and, in addition, is an employ-ment attorney with 23 years of experi-ence specializing in employment law.

I ask unanimous consent to print the letter in the RECORD.

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


Re: Murray amendment S.A. 2859 (Domestic Violence Prevention Act) to H.R. 97 (Unemployment Victims of Violence Act of 2004).

Senator SASKIA ROBERTS,

Hart Senate Office Building, Washington, DC.

DeAR Senator BROWNBACK: I am writing to ask that you oppose S.A. 2859 (Domestic Vio-lence Prevention Act), proposed by Senator Murray as an amendment to H.R. 97.

I have reviewed the Murray Amendment from what I believe is a rather unique per-spective. I am a survivor of domestic vio-lence and divorced my first husband in 1978 because of abuse and threats of abuse. It will en-able abuse instead of helping a victim be-come a survivor.

3. Adequate Time Off From Work Already Available. I also question the necessity of this law. I believe that most employers already have adequate time off programs available to them in the event they need do-mestic violence leave. These programs include family and medical leave under the Family and Medical Leave Act (FMLA) and its state counterparts, leave of absence under the Americans with Disabilities Act (ADA) and its state counterparts, employers’ existing vacation and sick day policies, and employ-ers’ existing attendance policies. The pro-ponents of Subtitle A have not provided any data to verify that employers’ existing time off programs are inadequate.

4. Lack of Due Process for Employers. Con-sidering that Subtitle A requires employers to provide a new benefit to employees, I find it appalling that employers have had no oppor-tunity to provide feedback on this proposed law. Basic principles of fair-ness would seem to suggest that employers be given due process (rather than be dictated to) and that issues of this magnitude have no doubt that employers could provide very useful comments and suggestions.

Subtitle A of the Murray Amendment raises many questions that obviously have not been given much, if any, thought. This letter is by no means to be read as including all of my concerns about Subtitle A. I have others, but have tried to focus on the major one in this letter.

For the sake of sound policy for victims of domestic violence, I am aware of the challenges faced by employ-ers who will have to absorb their work-load when they are absent due to domestic violence. That has always been and is a State decision.
Ms. LANDRIEU. Mr. President, I come to the floor to support my colleague from the State of Washington and her comprehensive amendment on this important bill and discuss this afternoon. I thank her for the extraordinary work on this area of domestic violence, not just this year but in every year she has been a Member of this body, over a long period of time, her intense interest and advocacy for women and for children and for families and for communities which her effort shows today.

I have a great deal of respect for the Senator from Ohio. He and I usually don't find ourselves on opposite sides, so it is unusual that I would be here supporting an amendment and the Senator from Ohio. Mr. DeWINE, would be opposing it. I understand there are a few—not many—good reasons that people could raise today against this amendment. But I will tell you what one of the reasons is not that I have heard from this Chamber and I have not been sent out by such groups as the U.S. Chamber of Commerce and the U.S. Right to Life organization, two organizations that oppose Senator MURRAY's amendment. They have some legitimate and legitimate reasons, one of the details of the amendment, but they also go so far as to say that one of the reasons we should not support this amendment is because it is irrelevant to the underlying subject. It is irrelevant to the deaths of pregnant women, when experts across the board, Republican and Democratic, people who have been prosecutors before—go look at any study—will tell you that the majority of women who are killed in the latter terms of their pregnancies are killed not by strangers, not by people who just happen on to their house, but they are killed by the hands of their husbands or the fathers of their children.

I have to sit here and read a vote alert from the Chamber of Commerce, supposedly representing women who own businesses, supposedly representing women, many of whom are business owners, who perhaps have been victims of domestic violence, and not a word in this memo about "so sorry that you were beaten so badly that you and your unborn died," nothing. They go on to say this is an inappropriate amendment because the issues involved are "completely unrelated."

I hope my Chamber of Commerce in Louisiana did not approve this document because I don't believe businesses in Louisiana think these subjects are unrelated, since one of the recent things that just happened in my State was a woman shows up to go to work about 2 years ago in Jefferson Parish, gets out of her car, and in front of her house and another house,

Mr. President, that is frustrating. I listened to the Senators from the other side say they want to do something about prevention. I hear them saying they have objection to special interests and willing to make a modification to my amendment to move it forward. It is very clear the Republican leadership simply doesn't want to engage in a serious debate to address the cycle of violence. That is unfortunate.

I yield 15 minutes to the Senator from Louisiana, and I ask unanimous consent that she be listed as a cosponsor of the amendment.

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

The Senator from Louisiana is recognized for 15 minutes.
I don't think this is complicated. Let me go on to read this:

"Sometimes it depends on how far along the woman is in the pregnancy," she said.

This is Pat Brown, a criminal profiler and CEO of the Sexual Homicide Exchange. I am sorry, I don't know what that is.

"Sometimes it depends on how far along the woman is in the pregnancy," she said. "If it's a serial killer, they normally go after women who may be three months pregnant and are showing very much. With serial killers, the women are tiny, easy to handle, not too big—someone they can easily overpower. They go after a 'nate package,' something that is desirable where they could get something big.

"With husbands or boyfriends, women tend to be eight months pregnant—they're there and the baby is coming," Brown continued. "They can see the woman and unborn child as something that is in the way, keeps them from living the lifestyle they want.

And we come to the floor and ask for a little help for domestic or sexual violence, maybe a little time off of work to get her situation in order because her husband is working and he also happens to be the one beating her. She needs 30 days to get a job. They say: No, when you 30 days of unpaid leave, and the Chamber of Commerce goes wild saying they can't afford it—and they don't have to pay for it. We talk about increasing grants to local communities to help them provide shelters, since we have not seen a significant increase in shelters, but that is too complicated.

So I ask, What have we done today? Are we going to save any lives, whether it is the life of the unborn, or whether it is the life of a woman? No, because there is no money in this for prevention. We, obviously, want to just prosecute people for domestic or sexual violence, maybe a little time off of work to get her situation in order because her husband is working and he also happens to be the one beating her. She needs 30 days to get a job. They say: No, when you 30 days of unpaid leave, and the Chamber of Commerce goes wild saying they can't afford it—and they don't have to pay for it.

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We talk about increasing grants to local communities to help them provide shelters, since we have not seen a significant increase in shelters, but that is too complicated.

In conclusion, I want to say something about the Right to Life Association. I have worked with them on cloning. I don't support human cloning. Some people do; I don't. I have worked with them. When they came to my office, one person on the team was sorry that they could not support the Murray amendment because it would "mess up the bill!"—and they need a clean bill—I would like to think they need an effective bill. But they just need a clean bill. For what, I am not sure. Maybe for television commercials.

I think we need an effective bill. I would like to prevent these deaths of unborn children, of women, give prevention on the front end, and then go ahead and prosecute people for my State, that is what we do because we already have a law on the books. So I am happy that Louisiana is already there. The Right to Life Association said they could not support help for domestic violence victims because they, again, agreed with the Chamber of Commerce that it is not relevant.

I hope people who support the Right to Life Association might write them and explain to them that regardless of how you feel, whether you are pro-choice or pro-life, clearly, this is relevant to the underlying bill.

With this, I yield the floor. I support the Murray amendment.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DeWINE. Mr. President, before I yield to my friend and colleague from Alabama, let me say that I understand what my colleague from Louisiana has said and what my colleague from Washington State has said. I will reiterate what I said a few minutes ago.

The reality of the way this place works, the way the House works, is that whatever the merits of this amendment, the passage of this amendment will effectively mean, that the underlying bill will simply die. The only thing to prevent the underlying bill from going to the White House and being signed is the President of the United States is the Murray amendment. That is what the facts are.

If the Murray amendment is attached to this bill, we can kiss this bill goodbye. That is what I yield to my colleague from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Ohio for his leadership on this issue. He has taken the issue and considered it thoughtfully and prepared a seven-page piece of legislation that I believe, as a former prosecutor, stands the test of careful draftsmanship and is worthy of passage. I believe we have a majority that would support it in this House. I hope this bill also gets passed by the President of the United States.

I further say the amendment—the 158-page amendment—is not so carefully drafted, has quite a number of problems, and does not deal effectively with the issue that the Senator seeks to prevent.

The day before yesterday, in my office, I met with a group of people from one of America's great corporations, an international corporation. I asked the human resources officer—and I asked them all—how things were going out there and what we can do to help, what problems do they have. The human resources officer said: The one thing causing us the most grief is the Family Leave Act. For a lot of different reasons, complex reasons, this act is subject to abuse. Some people believe and support a mother being home with a young child. We support the purposes of the act, but there are problems with it. We would like for you to look at it and see.

That was shared with me the other day. It was totally unrelated to this 158-page amendment that has not undergone careful scrutiny, and I believe goes much further and provides benefits for those who want to abuse the current Family Leave Act, which has problems with it.

We need to, as Members, be careful what we pass, what we mandate on private entities, and what we tell them they must do. We should do so in a way that furthers the people who want to further, which is to help families who need leave for family emergencies. We want to do that, and the act does it in many different ways. But it is not perfect. This amendment is even less perfect.

Let me show you a couple things we discussed in a brief reading of the Murray amendment. It says:

The term "victim of domestic or sexual violence" includes an individual whose family or household member has been a victim of domestic or sexual violence.

Clearly, I think I can say, as a former prosecutor, that would include the perpetrator. That would include the wrongdoer. So now is the wrongdoer going to be able to ask for time off? The law would mandate it, I suspect.

Some say that would not happen. But if I am telling you, people use the law as it is written to further their agendas when they want to. Maybe he had to go to court to defend himself, and he is going to claim time off for that. I bet you his lawyer would say he is entitled to time off.

Here is another one:

The term "employee" means any person employed by an employer on a full or part-time basis, for a fixed time period, on a temporary basis, pursuant to a detail, or as an independent contractor.

That is not even in the current Federal Leave Act. So we have added this statement. So the businessperson has to take care and provide leave or suffer. I think that is a step to which we ought to give a lot of thought before we put it into law.

Another thing that hit me in talking with this lady the day before yesterday, and talking about problems with the act, is the difficulty of a business in having any proof to ascertain that the person really needs to take leave. Under the act, after you get one approval, say, for a child's asthma, you never have to present proof again, or even just make a statement that it is so and the businesses are bound by it.

A lot of businesses on a manufacturing basis try to do things well. They have a team that produces a product. When one member of that team unexpectedly or routinely misses, it makes it difficult for them. If they have a legitimate excuse, OK. This says:

An employee may satisfy the certification requirement of paragraph (b) by providing to the employer a... a sworn statement of the employee.
That automatically takes care of it—no proof of a doctor’s certificate, a lawyer’s statement, or anything else. I just point that out.

The hour is late. As a member of the Health, Education, Labor, and Pensions Committee, I have been working this entire week so eloquently and in detail, these issues need to be given careful thought.

Let’s don’t kill this underlying bill. Senator DeWine worked so hard on and has dealt with so many Members of this body to refine language so everybody can agree to it and it will have a majority vote.

Let’s don’t kill this legislation that is important to protecting those unborn victims of violence in America by tackling on an amendment that is not ready, that has problems with it, on which we have not had hearings and should not be added to this bill, anyway. If it is added to the bill, the bill will be in trouble.

I yield the Chair. I thank Senator DeWine for his leadership, I yield the floor.

Mr. DeWINE. Mr. President, I yield time to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. COLEMAN. Mr. President, I had a chance to hear my colleague from Ohio speak in humble terms about the work he did, the commitment he made when he was working in Ohio at the State level and now in the Senate regarding issues of domestic abuse and sexual violence.

I don’t know if there is a stronger champion in the Senate than my colleague from Ohio, Senator DeWine, on these issues. I know where his heart is. I know where his passion is.

When I look at the Murray amendment, there are provisions in this amendment I would like to support. There are principles in this amendment on which I would like to work with her and I don’t see happen. I believe—I know my colleague from Ohio feels the same way, and we have to be very candid, we have to be very blunt—that the reality is that the effect of the Murray amendment, if it were to pass, would simply kill the underlying bill.

We have an opportunity to do something today for unborn victims of violence. We have an opportunity to do something. Or we can do what I see going on far too often in this Chamber, and that is—don’t know whether it is political gamesmanship, I don’t know if it is “gotcha” policy, don’t know what it is, but it is not about getting something done. We can get something done today. We can pass a clear Unborn Victims of Violence Act. For those of us who would like to work with my colleague from Washington on some of these important principles, who really want to get something done, let’s be honest and let’s do it in a form and manner in which we know something will happen.

If this amendment is attached to this bill, this bill dies. Some of the principles I may believe in and want to work on that are in the Murray amendment will go nowhere, and we all know that.

I did not come here to play a game, to participate in endless debates for the sake of debating, to cast votes to be sure you are for sexual violence or you are against.” That is not what this is about. I got elected on a belief that we could get some things done, and that is hard in this body because it is so easy to kill a bill. It is so easy to kill a bill. It is so hard to vote against because we are afraid of being accused of being against domestic violence.

I am passionate about dealing with domestic violence. I was a prosecutor in the State of Minnesota and prosecuted some of the early child abuse cases. I was mayor of the city of St. Paul. I thought we did cutting edge things to deal with domestic and sexual violence, I want to do more about domestic and sexual violence while I am here in the Senate, but we are not going to do more about it by voting for the Murray amendment today.

I am going to cast my vote against the Murray amendment. When I share a belief in some of the principles the good Senator from Washington is trying to raise. I am going to vote against it because I want to get something done, and the one opportunity we have today, I say to my colleagues, to get something done is to pass out of this body a clean Unborn Victims of Violence Act. If we pass this bill and it is signed into law, we have provided protection on the Federal level—by the way, it is similar to what many States do and what we do in the State of Minnesota—for a mom and an unborn baby, such as the Laci and Conner Peterson case. We all know many cases like that.

Again, I appreciate the principles my colleague from Washington is attempting to raise, but I think it is time to be very blunt and very honest. If you want to do something about that issue, this bill is not the place to do it. It will not go forward. It will not go forward as long as we are talking.

We have an opportunity to do something today, and that is to pass the Unborn Victims of Violence Act. I support this bill in a clean manner. Tomorrow I will work with my colleague from Washington and my colleague from Ohio and do what needs to be done to further some of the very laudable goals she desires.

Mr. President, I yield the floor. The PRESIDING OFFICER. The Senator from Ohio.

Mr. DeWINE. Mr. President, I yield to my colleague from Oklahoma.

Mr. NICKLES. Mr. President, to inform my colleague from Washington, at the appropriate time, when she concludes her statement, I plan on making a budget point of order.

First, I compliment my colleague, Senator Graham from South Carolina, for his leadership on this issue for years. I believe today we are going to pass a bill that is long overdue.

I also compliment my colleague, Senator DeWine from Ohio, for his leadership. I complimented him in private. I have observed his very high quality of debate. We have had some excellent debate today, and I compliment Members
on all sides. I think it has been very important and we are going to pass a good bill today, largely due to the leadership of the Senator from Ohio, Mr. DeWine, and also Senator Graham of South Carolina. I compliment both of our colleagues on their efforts. This is an important bill, one that deserves to be passed and sent to the President.

I rise today to speak against the amendment of our colleague from Washington. I have great respect for our colleague. I am not sure about the Family Medical Leave Act. I think it is basically a whole new act. It is not consistent with the Family Medical Leave Act. To qualify for the Family Medical Leave Act, we exempt employes with 50 or less. This says employers of 15 or less. That does not make sense to me.

I look at the unemployment section of it, and a lot of people are not even aware of this—I have not heard very much about this—but if a State does not comply with the unemployment dictates given by this bill we tell the States they must have unemployment compensation for people who are victims of abuse as defined by this. The tax to the State goes from $56 a year to $3434 a year. That is a 675-percent increase. That is a heavy penalty on the States.

One could say, well, they give States time to amend their law. They are given 180 days if they are in session and 360 days if they are not in session. Oklahoma is shortly going to be out of session and we do not go back into session for the rest of the year, so 180 days would not be adequate. I guess there would have to be a special session. I used to serve in the Oklahoma Legislature. Most legislatures are kind of like Congress, they do not move that fast. If they do not move that fast, they have a very heavy penalty increase in their unemployment compensation taxes.

The main thing I guess I am objecting to, as I look at it, there is a new tax credit in this bill. It is a 40-percent tax credit for a provision that is very expensive. It applies to a lot of things. It applies to a very long definition. This would qualify expenses that an employer might incur to implement workplace safety.

I used to be an employer in the private sector, and I know all employers are interested in safety. Almost all of those expenses related to safety are expensed. None of them, to my knowledge, get a tax credit. This amendment would say for some safety provisions employers are going to get a 40-percent tax credit.

Then I started looking at the definition. It applies to basically any new security personnel, purchase, or installation of new security equipment, and so on. That is wide open. In this day and age of terrorist threats, there are a lot of people who are going to be hiring more security personnel and they are going to say: Thank you very much, Government, because you just gave us a 40-percent tax credit. If a company is profitable, that is worth a lot. If they are not profitable, it is not worth much.

I asked the Joint Tax Committee to give an estimate on how much this would cost. I just received it. I ask unanimous consent that a letter I received from Dr. George Yin, that gives the revenue estimate, be printed in the Record.

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

Joint Committee on Taxation,

Hon. Don Nickles,
U.S. Senate, Committee on the Budget,
Washington, D.C.

Dear Senator Nickles: This letter is in response to your request dated March 17, 2004, for a revenue estimate for Senate amendment 2859, which according to your request may come up for a vote on March 24, 2004, under a unanimous consent agreement for H.R. 1997.

In general, the amendment would establish a new general business tax credit equal to 40 percent of the domestic and sexual violence safety and education cost paid or incurred by an employer during the taxable year. Any amount taken into account for purposes of determining the credit would not be eligible for any other credit or deduction. Under the amendment, the types of cost that may be included for purposes of determining the amount of the credit include, among other things, the hiring of new security personnel and the purchase or installation of new security equipment, the purpose of which is to address domestic and sexual violence. Because the hiring of all new security personnel and the purchase or installation of all new security equipment is, in part, for the safety of employees, we have assumed that all such expenditures would be eligible for the tax credit.

The amendment would apply to taxable years beginning after December 31, 2003. Estimated changes in Federal fiscal year budget receipts are as follows:


<table>
<thead>
<tr>
<th>Year</th>
<th>Change (in billions of dollars)</th>
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<tbody>
<tr>
<td>2004</td>
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</tr>
<tr>
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<td>2006</td>
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<tr>
<td>2014</td>
<td>-2.0</td>
</tr>
<tr>
<td>2004-14</td>
<td>-18.4</td>
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</tbody>
</table>

I hope this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,

George K. Yin.
The harm to women at the hands of their abusers and attackers is not addressed anywhere in this bill. The support and services they need to avoid violence in their homes or escape from it are not addressed. It offers no financial safety net for victims of abuse. The real purpose of this bill is to give new legal rights to the fetus, in a blunt effort to undermine women's rights under the Constitution and Roe v. Wade. In other words, this bill is a threat to women, not a protection for them.

Proponents of this measure also call it the Laci Peterson Act, but this bill would have done nothing to prevent that tragedy. Federal criminal jurisdiction over violent crimes is very limited. The bill applies only to federal and military crimes. It would have no bearing on the law of California or any other State. Today, 95 percent of all criminal prosecutions, like the prosecution of Laci Peterson's murderer, take place at the State or local level.

A majority of States already have laws that enable prosecutors to file fetal homicide charges. In Massachusetts, the courts have treated the fetus as a separate victim of crime if the developing fetus has reached the stage of viability. That view is consistent with the careful balance between women's rights and fetal rights established by the Supreme Court in Roe v. Wade and reaffirmed in Planned Parenthood v. Casey. This bill completely ignores the Supreme Court's viability standard.

In cases where federal law or military law applies, prosecutors and judges already have ample discretion to impose longer sentences for flagrant crimes committed against vulnerable victims. Courts have regularly held that the Federal Sentencing Guidelines provide for a sentencing enhancement based on the victim's pregnancy or injury to a fetus. The military also makes clear that the pregnancy of the victim can lead to a harsher sentence.

The administration says it wants to prevent violence against women and children. But that priority is not reflected in this bill. The President's budget is cutting or starving key violence-prevention programs.

If Congress genuinely intends to do more to prevent such tragedies, we should be discussing ways to strengthen the Violence Against Women Act and its funding.

Since its enactment in 1994, violence against women has been reduced by 21 percent, so we are clearly making progress. We are on the right track, and there's no excuse for making a u-turn.

The most urgent priority is the need for additional funds. The services available today to victims of domestic violence come nowhere close to meeting the obvious need. The New England Learning Center for Women in Transition in Greenfield, MA, has to turn away ten families from its shelter for each family it is able to serve. Life-saving services such as hotlines and emergency housing for battered women are funded $48 million below the level authorized by Congress. Women across the country are not obtaining the help they need when they face these dangers or suffer from them. We can do far better.

Incredible as it seems, nearly one-third of all American women report being physically or sexually abused by their husbands or boyfriends at some time in their lives. They need help. Nearly a quarter to 40 percent of all women who are battered are battered when they are pregnant. One study found that 37 percent of all women who visited a hospital emergency room for violence-related injuries were pregnant. A quarter of all children are exposed to parental violence in the United States every year. According to a report of the American Psychological Association, a young boy who sees his father abusing his mother is the strongest risk factor for future violent behavior by that child.

Far from preventing such violence, the so-called Unborn Victims of Violence Act will actually prevent victims of abuse from seeking help. Juley Fulcher, Public Policy Director of the National Coalition Against Domestic Violence, testified before the House Subcommittee on the Constitution last July. She said that if a battered woman is financially or emotionally dependent on her batterer, she is less likely to seek medical assistance if she thinks it may result in the criminal prosecution of her husband.

The underlying bill contains none of these urgently needed protections for battered women. It does so without undermining a woman's fundamental right to choose.

The bill makes clear that the pregnancy of the fetus is no excuse for making a u-turn.

Senator MURRAY's amendment helps far more than the underlying bill. Unlike the underlying bill, her proposal will genuinely help to combat the serious problem of domestic violence in our country.

Senator MURRAY's amendment will do that. Unlike the underlying bill, her proposal will actually prevent victims of domestic violence from their homes to escape from their abusive relationships.

Senator MURRAY's amendment helps these victims by guaranteeing them access to emergency leave to obtain medical attention, counseling, and other services without fear of losing their job. It provides unemployment compensation. It supports the specific training for medical providers to recognize the signs of abuse, so that frightened women who arrive in the emergency room with tell-tale bruises will know that help is available and will be more likely to reveal and seek the further support they recall is available.

We need laws that genuinely protect women in all of these ways, as Senator MURRAY's amendment does, and it does so without undermining a woman's fundamental right to choose.

The underlyng bill would provide long and overdue support to victims, employers, public health professionals and families. Senator MURRAY's amendment provides long and overdue support to victims, employers, public health professionals and families.

If the amendment is not agreed to by the Senate, it will be impossible for the House to pass a compliant bill. I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. I think we are about ready to close this out.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, if my colleagues on the other side are going to yield back, I will take a couple of minutes to wrap it up. Senator MURRAY's amendment helps us to recognize the tragic cycle of violence before it consumes the next generation in their families too.

We need laws that genuinely protect women in all of these ways, as Senator MURRAY's amendment does, and it does so without undermining a woman's fundamental right to choose.

The underlying bill contains none of these urgently needed protections for battered women. It does so without undermining a woman's fundamental right to choose.

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If the amendment is not agreed to by the Senate, it will be impossible for the House to pass a compliant bill. I urge my colleagues to support it.
They have other issues they are going to defeat it today.

I believe we have the responsibility to do everything we can to prevent domestic violence. I hope the bill Senators are putting forward today never has to be used because we have prevented violence, but the fact is, they are going to prevent us today from offering an amendment that would preclude the underlying bill from ever having to be used. I think that is a tragedy. I think it is a tragedy for the Senate. I think it is a tragedy for the country. I certainly think it is a tragedy for women who face abuse every single day.

Two million women are assaulted every year. I introduced this bill with my colleague Senator Paul Wellstone 3 years ago. We introduced it in three consecutive Congresses and the other side has not allowed us to bring it forward. I keep hearing that we have not had hearings on it. Well, we would love to have hearings on it. We would love to move forward, but it is always said that the time is never right. That is certainly something victims of abuse hear far too often.

This bill simply allows women the time to be able to go to court to get a court order to prevent their abuser from tracking them down and killing them. It allows them the ability to make sure that children who have seen domestic violence get the kind of help they need so they do not create a cycle of violence in their lives, which we know happens too often. It makes sure we offer health care to victims of domestic violence. These are victims who are still alive and need help. It makes sure our health care providers screen for domestic violence so we do not end up with murdered victims every single day. Not relevant? The Chamber of Commerce says this is unrelated? How can anyone look in the eye a woman who has been abused by a batterer and tell her we are not going to help you until you are gone, until you die? I think that is a real tragedy. I am sorry my colleagues on the other side see it that way. I don’t.

I have heard rhetoric out here from some of my colleagues—and I do want to commend the Senator from Ohio. He has worked on this issue. I do want to work with you. But I find it a tragedy today that, again, the time is not right. That is what women who are victims of domestic violence hear every single day; the time is not right. We can’t help you today. That is what we are doing today. I find that a tragedy. I am going to continue to work on this issue. I know my colleagues on the other side are going to work on it today. I know they are going to move on. They have other issues they are going to deal with. But this issue is critical. I have been to the shelters; I have looked the women in the eyes; I have promised them I will not forget, and I will not.

This amendment is named after Senator Paul Wellstone. Every one of us here know he and Sheila cared and were adamant that we provide victims of abuse with the ability to get out of their abusive situation. I hope my colleagues will continue to work with us and that the rhetoric we have heard on the other side about working with us is not forgotten when this bill is gone.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. DeWINE. I commend my colleagues for their dedication to this issue, and her passion. But the fact is, as I have said, this bill cannot pass through this method. It will have the unifying, the underlying bill. That is why I must come to the floor and oppose it.

Let me yield the remainder of my time to my colleague from Oklahoma, Mr. NICKLES.

Mr. NICKLES. Mr. President, is all time yielded back from our colleague from Washington?

Mrs. MURRAY. Yes.

Mr. NICKLES. The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, this bill has a big tax provision that is estimated to cost $134 billion. Therefore, a budget point of order does lie against this amendment.

Mr. President, I yield the remainder of our time.

The PRESIDING OFFICER. All time yielded back from our colleague from Oklahoma.

Mr. NICKLES. Mr. President, the pending amendment offered by our colleague from Massachusetts, Mr. MURRAY, decreases revenues and if adopted would cause an increase in the deficit in excess of the levels permitted in the most recent budget resolution. Therefore, I raise a point of order against the amendment pursuant to section 505 of House current resolution on the budget for fiscal year 2004.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mrs. MURRAY. Mr. President, pursuant to section 505(b) of H. Con. Res. 95 of the 108th Congress, I move to waive the Budget Act.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

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

The yeas and nays resulted—yeas 46, nays 53, as follows:
child. I am correct in understanding that there is no legal precedent where a court has held that any of these State statutes in any way undermine abortion rights of a woman, as expressed by the Supreme Court in Roe v. Wade, and that during pregnancy, my colleague Mr. Graham, the Senator from Maine is correct. There is no legal precedent where a court has concluded that any of these State statutes undermines the legal basis for abortion rights.

Ms. Collins. Mr. President, I have one final inquiry I would like to make of my colleague. It is my understanding that the intent behind the language of this bill, H.R. 1997, is that this bill, like those State laws, not be construed to undermine the legal basis for abortion rights.

Mr. Graham. The Senator from Maine is correct.

Ms. Collins. I thank my colleague for making the intent in this respect clear.

Mr. Voinovich. Mr. President, I rise today in strong support of the Unborn Victims of Violence Act. I firmly believe that we need this legislation to correct a legal gap in federal law that currently does nothing to criminalize violent acts against unborn children. Sadly, we live in a violent world where unborn babies are the victims, intended or otherwise, of violent acts. I find this horrifying, and believe that all children, born or unborn, are a precious gift and responsibility.

This is something we have already recognized in Ohio. I am proud to say that we got this done on my watch when I was Governor of Ohio. In June 1996, I signed legislation making it a crime to injure or kill a pre-natal child who could survive on his or her own outside the mother's womb. We passed this legislation in record time due to public outcry over a case in Indian Hill, a suburb of Cincinnati in 1995. Joseph Daly's wife and her unborn baby were killed in a car accident when a drunk driver hit her car. People were outraged that action could be brought on behalf of Mrs. Daly, but not their unborn daughter, who was 2 weeks away from being born. And people will be outraged.

Under current Federal law, an individual who commits a Federal crime of violence and kills or injures an unborn child, born or un-born, is prosecuted separately for those violent acts against the unborn child because Federal criminal law does not recognize the unborn child as a crime victim. Can you imagine? A baby that could be viable outside of its mother's womb and who would not be considered a crime victim? This bill will close that gap.

Under this bill, if an unborn child is injured or killed during the commission of a Federal crime of violence, the assailant could be charged with a separate offense on behalf of the unborn child. In 29 States, including Ohio, if a person commits a crime of violence against a pregnant woman under State law and kills or injures her unborn child, that person can be punished for the violence against both the mother and the unborn child. But if a person commits a Federal crime of violence against a pregnant woman and injures or kills her unborn baby, the death or injury of the child would not be punished as a crime.

This bill extends the protections currently available in 29 States to the unborn victims of violent acts committed in violation of Federal law. Thus, where a Federal crime of violence has been committed and the injury or death of an unborn child results, the perpetrator will be held to account for the crime of violence against the unborn child.

I know some of my colleagues will want to paint this as an abortion issue. But, it is important to note that this bill has been drafted narrowly to apply only when the death or injury to the unborn baby occurs as a result of an act that is committed in a violent world where unborn babies are the victims, intended or otherwise, of violent acts. And these babies, the smallest and most helpless victims, deserve justice, too. We must pass this legislation and take a stand against crimes committed against mothers and children. I therefore ask my colleagues to support this very important legislation.

Mr. Bond. Mr. President, I rise today to express my support for the Unborn Victims of Violence Act.

Any pregnant woman will tell you that all she wants is for her baby to be born healthy. A pregnant mother can take her vitamins, follow the instructions of her doctor, and do everything in her power to deliver a healthy baby. But, no amount of prenatal care can protect her unborn child from the hands of a violent criminal.

This question before us is simply—when a violent crime is committed against a pregnant woman—is there one victim or two? Pregnant women who have been harmed by criminal violence and their families know that there are two victims.

In a letter to the sponsors of this bill, the family of Laci and Conner Peterson, whose lives were brutally ended, requested that the bill before us today be referred to as "Laci and Conner's Law in their memory." The Peterson family can, better than any of us, express the impact of this terrible loss. They wrote, "As the family of Laci Peterson and her unborn son Conner, this bill is very close to our hearts. We have not only lost our future with our daughter and sister, but with our grandson and nephew as well." No one can tell the Peterson family that there was only one victim. The Peterson family mourns for two lives that were brutally ended. There is no question that the criminal responsible should be accountable for the loss of both lives.

When pregnant women suffer at the hands of violent criminals I urge my colleagues to protect both victims under Federal law.

Mr. Allen. Mr. President, I rise today in support of the Unborn Victims of Violence Act, or what many individuals refer to as "Laci and Conner's Law."

We have all heard the tragic story of Laci and Conner Peterson. Laci, 8 months pregnant with her unborn son Conner, were viciously murdered at the hands of a killer. Regrettably, Laci and Conner's story is only one of many instances where a woman is harmed and may not only lose her life but the life of her unborn child.

In my Commonwealth of Virginia, we had a similar tragic situation occur in April of 2002. Ronda Robinson was maliciously gunned down in her Lynchburg home, while her two daughters watched in terror. Like Laci, Ronda was in her third trimester when she and her unborn child had their lives taken.

At that time, Virginia did not have a fetal homicide law on the books, and the Commonwealth was unable to bring a homicide charge against the murderer for the killing of Ronda's unborn child.

Unfortunately, the situation in Virginia and many other States remains the same. If a mother survives an assault, but loses her unborn child, the law currently does not recognize any legal or human life at all.

However, I am pleased that the Virginia General Assembly has taken steps to correct this wrong. This year, the Virginia General Assembly overwhelmingly passed legislation that would hold an individual accountable who, "unlawfully, willfully, deliberately, maliciously, and with premeditation" kills the fetus of another. Twenty-Nine senators or 72 percent of the senate and 77 percent of the house of delegates or 77 percent of the house supported this legislation.

While this legislation has not yet been signed into law, I am hopeful that Virginia will follow the lead of the 29 other States that have passed this important and meaningful legislation.

I have the same optimism for the Unborn Victims of Violence Act. We have a chance to hear the voice of the voiceless and bring fairness to a system that has essentially told hundreds of women and their families, their unborn child never existed.

I have been blessed with four great gifts, my loving wife and my three children. I have witnessed my children grow and live happy and healthy lives. I see what my children have accomplished so far in their lives and I am eager to see what other great accomplishments will follow. But many individuals are unable to witness the birth and growth of their children because of a violent criminal act.

Throughout my tenure in public service, whether it was in the Virginia
Mr. DODD. Mr. President, I share the outrage of every other Member in this Senate over the heinous and violent crimes that are committed against over 300,000 women a year. These crimes are especially horrific when the perpetrator knows his victim and knows her to be pregnant.

Today, a significant number of States already allowed stricter penalties for crimes of violence committed against pregnant women. At the Federal level, I believe that it is appropriate and necessary to conform our Federal laws to the statutes of these States. Particularly heinous crimes ought to receive particularly harsh penalties. And for that reason, I strongly supported the Feinstein amendment during today's debate. Like the underlying legislation, this amendment would have allowed Federal prosecutors to “double-charge” those individuals convicted of crimes against pregnant women, and would have set forth severe and just punishments for those crimes. Unfortunately, this amendment was defeated.

I also realize that punishing individuals for crimes against women, both pregnant and not, is only one step toward reducing domestic violence. We must be focused on eroding the violence. For this reason, I strongly supported the Murray amendment today. This amendment would have protected the economic security of women who are victims of violence by allowing them to keep their jobs if and when they needed to take time off to attend court and receive medical care related to an act of domestic violence committed against them. It would have also authorized new initiatives for the establishment of family violence research and education centers to develop, implement, disseminate, and evaluate family violence prevention and early intervention services and strategies. Again, I was disappointed when this amendment failed.

We have come a long way from the days when domestic violence was considered a private matter. Major initiatives like the Violence Against Women Act have offered protection for women while treating domestic violence for what it is—a crime committed by others. However, as the continued prevalence of domestic violence cases show, we have a long way to go.

Regrettably, the underlying bill that was before us today is not principally focused on curbing violence and punishing those individuals found guilty of committing these heinous crimes. Rather, the legislation was focused on advocating a cause about which its proponents feel very deeply, but a cause that a majority of Americans do not share—the cause of eroding and ultimately ending women's right to choose.

I happen to support a woman's right to choose as set forth in the Roe v. Wade decision. I find it regrettable and inappropriate that legislation that is purported to be eroding the number of heinous crimes committed against all women focuses instead on eroding a woman's right to choose. For this reason, while I supported both the Feinstein and Murray amendments, I was unable to support the underlying bill.

For those who wish to advocate a cause not related to the issue of domestic violence, I urge them to advocate it in the open and not by stealth. But for those who want to reduce further the number and severity of crimes against women to continue working with people like Senators Feinstein and Murray and working together to ensure we can make a substantial difference in the lives of hundreds of thousands of women across the country.

Mr. SMITH. Mr. President, I rise today to speak about the Unborn Victims of Violence Act and our duty to protect the most innocent among us. A woman becomes a mother the moment she hears she is with child. From that time forward, her primary concern is providing for and protecting the new life within. Our concerns should be no different.

It is horrifying that an expectant mother could be the target of violence—yet it happens. And when such a crime is committed, there is not one victim, but two. Recognizing this fact in Federal law not only fulfills our commitment to mothers and the unborn, it also serves as a deterrent to crimes against the innocent.

Under the laws of 29 States, if a person commits a violent crime against a pregnant woman and seriously injures or kills her unborn child, that assailant can be punished for both the violence against the mother and the unborn child. This is not the case in Federal law. A perpetrator who commits a violent crime under Federal jurisdiction and kills an unborn child cannot be prosecuted for that death. This is wrong.

Today, I am proud to join my colleagues in voting in favor of the Unborn Victims of Violence Act. Under this legislation, an assailant who commits a Federal crime and kills or injures an unborn child can be charged with a separate offense on behalf of the mother. Passage of this bill sends an important message that they will be punished for violence against women and their unborn children.

This legislation and the ban on partial-birth abortion enacted last year further protect the sanctity of life. Like the ban on partial-birth abortions, this bill is supported by the vast majority of Americans who recognize it as a reasonable stop we can take to protect women and children.

I look forward to President Bush signing this legislation into law. It will show criminals that they can no longer act with impunity and it will tell expectant parents what they already know—that their unborn children have value, too.

Mr. DEWINE. I am prepared to yield back our time on the general debate.

The PRESIDING OFFICER. There is still time on the underlying bill.

The minority leader.

Mr. RISCHLE. We yield back on the minority side.

The PRESIDING OFFICER. The clerk will read the bill for the third time.
The bill was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, for the information of our colleagues, the next vote is the last vote of the week. We will begin consideration of welfare reauthorization on Monday. There will be no roll call votes on Monday. Any votes ordered will be stacked on Tuesday of next week.

Mr. DOMENICI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The PRESIDING OFFICER. Both sides having yielded back their time and 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 New Hampshire (Mr. GREGG) is necessarily absent.

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

The result was announced—yeas 61, nays 38, as follows:

[Roll Call Vote No. 63 Leg.]

YEAS—61

Alexander
Allard
Allard
Allen
Bennett
Bingaman
Bond
Breaux
Brownback
Bunning
Burns
Campbell
Carper
Chambliss
Cochran
Coleman
Collins
Conrad
Coryn
Craig
Crapo
Daschle

Dayton
Dewine
Dole
Domenici
Dorgan
Ensign
Enzi
Fitzgerald
Frist
Graham (SC)
Grassley
Hagel
Hatch
Hutson
Inhofe
Kyl
Landrieu
Lott
Lugar
McConnell

Miller
Mukowski
Nelson (NE)
Nickles
Prayon
Reid (NV)
Roberts
Rockefeller
Santorum
Shelby
Smith
Specker
Stevens
Sununu
Talent
Thomas
Voinovich
Warner

NAYS—38

Akaka
Baucus
Bayh
Biden
Boxer
Byrd
Cantwell
Cheffie
Clinton
Corzine
Dodd
Durbin
Edwards

Feingold
Feinstein
Grimm (FL)
Harkin
Hollings
Inouye
j effords
Johnson
Kennedy
Kerry
Kohl
Launtenberg
Leahy

Levin
Lieberman
Lincoln
Mikulski
Murray
Nelson (FL)
Reed (RI)
Schumer
Sarbanes
Snowe
Stabenow
Wyden

NOT VOTING—1

Gregg

The bill (H.R. 1997) was passed.

Mr. SPECTER. Mr. President, I support enhanced penalties for criminal acts of violence against pregnant women.

My concern with the DeWine bill is that it unnecessarily seeks to weigh in on the abortion controversy with the definition of “unborn child” and “child in utero.”

I voted for the Feinstein amendment because it accomplishes the substantive criminal law objectives of the DeWine bill without raising a potential issue on a possible challenge to Roe v. Wade.

When the Feinstein Amendment lost, I voted for final passage of the DeWine Bill in order to impose appropriate double sanctions for the murder or assault of a pregnant woman that interferes with a pregnancy.

MORNING BUSINESS

Mr. DeWINE. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

Mr. DeWINE. 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. GRASSLEY. 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. GRASSLEY. Mr. President, am I right that we are in morning business?

The PRESIDING OFFICER. The Senator is correct.

DRUG TRAFFICKING AND TERRORISM

Mr. GRASSLEY. Mr. President, since the tragic events of September 11, we have all strived mightily to ensure that our great homeland is never subjected to a terrorist attack by the evil doers again. But everyday those very evil doers weaken the fabric of our country, their enemy, by flooding our great society with addictive and deadly drugs. While the link between terrorists and drugs has been made countless times publically, we, as a Nation, have yet to attack the problem with an approach that is consistent and successful.

On March 13, 2002, Rand Beers, Assistant Secretary for International Narcotics and Law Enforcement Affairs, and Francis Taylor, Ambassador-at-large for Counterterrorism, made the points in joint testimony prepared for a hearing on "Narco-Terror: The Worldwide Connection Between Drugs and Terror" held by the Judiciary Committee Subcommittee on Technology, Terrorism and Government Information. Taylor, who delivered the opening testimony, told us that "relations between drug traffickers and terrorists benefit both."

"Drug traffickers benefit from the terrorists’ military skills, weapons supply, and access to clandestine organizations. Terrorists gain a source of revenue and expertise in illicit transfer and laundering of proceeds from illicit transactions," he said.

Taylor listed terrorist groups with known links to drug trafficking around the world—from the South American nations of Colombia, Peru, Bolivia and Paraguay to Afghanistan, which, he said, accounts for more than 50 percent of the world’s supply of opiates.

Mr. President, we know that 12 of the 25 major terrorist organizations identified by the State Department in 2002 have ties to drug traffickers and we know that drugs are a major source of funding for these terrorist groups. We know these groups sometimes work as contractors to carry out their evil purposes.

The Lebanese Hezbollah group is increasingly involved in drug trafficking and terrorist organizations in Europe and Southeast Asia also are tied to illicit drugs.

The Revolutionary Armed Forces of Colombia, commonly known as the FARC, protects cocaine laboratories and clandestine airstrips in southern Colombia, and some FARC units directly control local cocaine base markets.

As evidence that terrorist groups cooperate and work together, the Colombians National Police arrested three members of the IRA in July, 2001, who are believed to have used the demilitarized zone to train the FARC in the use of explosives.

While we know these connections, we have not taken full advantage of the vast resources and knowledge available to exploit this connection. The link between terrorism and drug trafficking that may take many forms, ranging from facilitation—protection, transportation, and tax—to direct trafficking by the terrorist organization itself in order to finance its activities. Traffickers and terrorists have many of the same needs in terms of the secret movement of goods, people and money. There are no swans in the sewers, and the relationships between drug traffickers and terrorists benefit both. As Mr. Beers stated, “Drug traffickers benefit from the terrorists’ military skills, weapons supply, and access to clandestine organizations. Terrorists gain a source of revenue and expertise [from drug traffickers] in illicit transfer and laundering of proceeds from illicit transactions. Corrupt officials who are influenced by the dirty money of the narco-terrorists make it easier for the groups to get access to fraudulent documents, including passports and travel documents. This allows the terrorists to travel abroad under the radar, or, if necessary, as a shadowy network that is virtually undetectable.

Terrorists and drug traffickers also use the same methods to hide their illegal profits and conduct fundraising to feed their evil plans. The schemes used by the terrorists for the transferring and laundering of drug money for general criminal purposes are similar to those used to move money to support terrorist activities. The use of “charities” and informal networks such as “hawalas” are easy and efficient ways to launder money.

Yet these are the only methods we know about. Congress is in the process...
of crafting a budget for the 2005 fiscal year. We have some tough choices ahead of us. But as we move forward, I would urge my colleagues to keep in mind the lessons we have learned in our efforts to go after drug trafficking organizations.

First, to be successful, we need the assistance of other nations. Though many countries have been quick to update their regulations, few have the law enforcement structure in place to carry out interdiction. Law enforcement cooperation must be a priority. In addition, communication between law enforcement agencies nationally and internationally, must become seamless in order to rapidly and effectively identify, target and eradicate terrorist and their drug trafficking brothers before they eradicate us.

Second, our various law enforcement efforts within the United States must be coordinated. As our efforts to catch drug traffickers have taught us, no one agency has all of the tools, information, resources or skills to get the job done alone. Encouraging interagency cooperation, then, must be a priority.

And third, the efforts made at the State and local level to go after drug traffickers are also an important piece of our war on terror. We cannot, should not, and must not, overlook the efforts and expertise of our State and local law enforcement officers. They know best what’s going on in their communities and often have the best, most effective approach to stem the flow of crime within their borders.

I will say more about the links between drug trafficking and terrorism in the future. But the connection is there and should not be ignored. Whether we discuss the financing or smuggling by terrorists, document fraud or corruption by drug traffickers, the sewer where the individuals went on these activities is to be cleaned. Let’s not overlook the other filth in the water just because the sewer rat floats by.

A STEW POT OF TROUBLE

Mr. GRASSLEY. Mr. President, I think we have a bubbling stew pot of trouble brewing in Afghanistan, and we need to take stronger action action requested by President Karzai, by the way—before we root out lawlessness in Afghanistan may be undercut.

What am I talking about? Narcotics—particularly about the significant increase in opium production and trafficking in Afghanistan, I am not challenging the significant progress which has been made in the past 2 years. Removing the Taliban and preparing the groundwork for a democratically elected government is no small feat. Under prior administration, we have gathered all of the right ingredients together to build a new Afghanistan that will benefit everyone—particularly the people of Afghanistan. But the outcome is far from certain, and it doesn’t seem as if we are paying enough attention to the danger signs.

According to the latest International Narcotics Control Strategy Report, released by the State Department at the beginning of this month, Afghanistan had the potential to produce 2,865 metric tons of opium in 2003. This represents almost two-thirds of the total potential opium production in the world. We know the havoc that drug use creates in a society. We know the corruption and instability that drug production encourages wherever it occurs. Experience has shown us that ignoring drug production and trafficking has only made things worse. These factors alone should be a reason for concern.

We should also be concerned about who is profiting from this resurgence. The difference between what the Afghan farmer is getting and what an eightball of heroin is worth on the streets of Paris is astronomical. And I am not talking about the enormous profit are not the same individuals who support the Karzai government, or who are happy to see coalition troops there.

The profit and instability that follow drug production wherever it occurs should be raising alarms for everyone involved. Whatever is worth tomorrow, is the key ingredient to the conclusion that both the AUC and FARC fight each other for control of millions of Colombians as they battled the government and each other over drugs and politics. Only after coming to the conclusion that both drug trafficking and terrorism must be addressed equally has there been progress in restoring the control of Colombia to the legitimate government.

Fast forward to Afghanistan. Like the FARC, there are groups within Afghanistan, primarily operating in the form of warlord networks, who for ideological reasons would like to overthrow the government. Today we know that both the AUC and the FARC fight each other for control of the country. For ideological reasons would like to overthrow the government. The Taliban is perhaps the best known, but there are others as well. Numerous warlords also operate throughout the countryside, some of whom have even had the blessing of the government.

The Taliban, like the FARC after the fall of the Soviet Union, need to secure an alternative means of financing their operations if they are to survive. Our success in choking off their traditional financial sources has created this necessity. Opium—like coca for the FARC—is an easy, local, and available opportunity to do exactly that, and will not be a new source of revenue for the Taliban. While the Taliban banned opium production for a period of time when they controlled Afghanistan, they also taxed the trafficking and resulting profits from the sale of stored opium after the ban.

Add to this equation some of the major warlords that control various areas of Afghanistan. Some of these warlords even worked with coalition forces to oust the Taliban. But most have no intention of surrendering any
of their power or authority to the central government in Kabul, preferring to fight for their own fiefdoms.

They have no interest in enforcing edicts from Kabul, or in taking any action that might give the central government additional legitimacy. Profits from opium production and trafficking are a key method for continuing to fund their war clan.

These efforts are not as blatant or as well organized as what we have in Colombia today, but the ingredients are there. It is time we start connecting the dots.

Today, several thousand U.S. and coalition soldiers are hunting down terrorists. These terrorists are receiving physical and financial support from somewhere. Meanwhile, the Karzai government is working furiously to establish the police, judicial, and military systems necessary to protect the people of Afghanistan can equitably govern themselves. But they must overcome the decades created by 20 years of occupation and civil war. The last thing that they need is a well funded rebellion in their backyard.

The Karzai government recognizes the dangers posed by bumper crops of opium. They know the profits being generated by this production go not to the Afghani people, but to the few powerful enough to move the opium out of Afghanistan. These drug traffickers flourish in the same kind of lawless environment where terrorists train.

We need to start connecting the dots. We cannot continue to separate terrorism and narco-trafficking. I fear that if the United States narcotics policies in Afghanistan are not connected up to that of the Karzai government, we will be facing the same mess that we are working to clean up in Colombia. We have watched this pot before. We need to begin looking at our options now, before it boils over and we have a real train.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak as in morning business for up to 20 minutes.

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

LEWIS AND CLARK MOUNT HOOD WILDERNESS ACT OF 2004 DRAFT LEGISLATIVE PROPOSAL

Mr. WYDEN. Mr. President, I rise today to discuss a draft legislative proposal I have developed and am soliciting comment from people in my State to add 160,000 acres of new wilderness in the Mount Hood National Forest.

The year 2004 is momentous for wilderness in Oregon. It marks the 40th anniversary of the 1964 Wilderness Act and the 20th anniversary of the last Oregon wilderness bill. Perhaps most importantly, 2004 marks the bicentennial of the single most important exploratory committee ever launched by the Federal Government and that is the Lewis and Clark Expedition.

One way to mark this very special time would be to enact a new Oregon wilderness bill, which I could conceive of as the Lewis and Clark Mount Hood Wilderness. I believe there is a great river-dependent journey of Lewis and Clark, I believe it would also be appropriate to add four free-flowing stretches of rivers to the National Wild and Scenic River System.

In the last several Congresses the House and Senate Committees on the highway to Mount Hood are often market themselves as the "Gateway to Mount Hood," and see this as a special opportunity to improve their tourism.

So it seems to me, rather than to tell people they are going to be restricted from using our public lands, the solution lies in providing more opportunities for millions of Oregonians and all of our visitors.

Mount Hood is the highest mountain in my home State. Captain Clark described it as "a mountain of immense height, covered with snow," while John Muir described Mount Hood a bit more poetically as "one glorious manifestation of divine power."

Wy'd, the Western American Indian name for Mount Hood. Before Lewis and Clark came to what we now know as my home State, these forests and species they supported in turn supported native Indians for thousands of years. These are the forests that connect the high elevation snowfields with the rich, diverse lower valleys that produce our famous salmon which were described as so plentiful one could walk across the river on their backs.

Although Mount Hood and her environs are fascinating, the need to designate these areas as protected wilderness and wild and scenic rivers is best expressed by the very modern stories of increased pressures for development and recreational use that are at the heart of our State's future.

The need to protect and build on Oregon's wilderness system that is as important now as when it was in 1804, 1964, or 2004, is so that the 200,200 acres of designated wilderness on the Mount Hood National Forest. I believe it would be appropriate this year, 2004, to discuss a draft bill which would almost double that amount by designating approximately 160,000 new acres of wilderness thereby lessening the pressures of overuse while also staying off the threat of development.

Today, the economic role of these important public areas has shifted. Communities on the highway to Mount Hood often market themselves as the "Gateway to Mount Hood," and see this as a special opportunity to improve their tourism.

So it seems to me, rather than to tell people they are going to be restricted from using our public lands, the solution lies in providing more opportunities for millions of Oregonians and all of our visitors. I have heard from community after community that they fear a threat to their local drinking water or the need for further protections from development. Congressional statutory designation as wilderness provides the only real protection of the historic, scientific, cultural, environmental, scenic, and recreational values that contribute to the quality of life which the people of my State are so proud.

The protection of the special Oregon places is going to depend on the hard work and dedication of all Oregonians, and especially my colleagues in the Congress.

I have had a chance already to discuss this with Senator Smith. He and I always work in a bipartisan way. As always, he has been very gracious with respect to saying he would work with me, and I will join me in listening to the people of Oregon.

I have also been pleased today to be able to talk to Congressman WALDEN, who is the new chair of a very important subcommittee who will be in a position to take their ideas, and take their input on this draft. I also have talked to Congressman BLUMENAUER today, who represents the congressional district that I was so proud to represent for 15 years in the House of Representatives.
entrepreneurs, the chambers of commerce, the Governor, various State-elected officials who have an interest in this issue, and other interested parties and work to try to get this important work done in the right fashion.

I have been very proud to have been involved in two natural resource efforts in the last few years where people thought the polarization was so great that you could not get anything done. With respect to the county payments legislation from Senator Craig and I teamed up on a matter that was absolutely critical to funding schools and roads. We worked in a bipartisan way, listened to people, and got an important piece of legislation passed.

We did the same thing with respect to forest health legislation earlier in this Congress. People said we couldn’t get a bill out of the Senate. A lot of people of good will, including the President, were working together and we got 90 votes for it in the Senate.

When you listen to people, it is possible to get important natural resource legislation passed. I think it would be very appropriate to take the draft legislation that Senator Craig and I are circulating to the people of Oregon, spend the necessary time listening to people of our State, and turn it into legislation that could be considered formally by the Congress and perfect it in the coming weeks and days. We have to get 80 votes in the Senate. We got 90 votes for it in the Senate.

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

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

Mr. Frist. Mr. President, in a few minutes we will be closing for the evening, but over the next several minutes I would like to comment on the way my day began. It happened to begin with the distinguished Presiding officer, the Senator from Minnesota, early this morning, as we engaged in a project that many people around the country have participated in. For those who have not, I hope they do participate in it; and that is, to build—l was not going to say a house—indeed, a home as part of Habitat for Humanity.

Not too far from here—about 15 minutes from our Nation’s Capitol—there is a plot of land. We have been blessed in many ways because, right now, we have been part of a group of people who put up several houses. We did not put them all up today, but eventually that whole site—and it is probably a couple-acre site; actually, it must be larger than that—will have 50 different houses with individual homeowners, families who will call those houses their homes.

Many of those people have no homes today, but they have devoted a fair amount of planning, with their sweat and their equity and their spirit, in helping to construct these houses through Habitat for Humanity.

We were there with a number of House Members and Senate Members. It was bipartisan, bicameral. It was part of what is called “Congress Building America.” Today was called: “Congress Building America National Build.”

It was a great celebration this morning. Millard Fuller was there. Millard Fuller is the man who had the vision and the heart to first think of and then lay out and then implement Habitat for Humanity International. His commitment reflects a merging, a coming together of faith, a call to service. He has professional training. He has been a very successful attorney. We had an opportunity to tour this site, and he also spent most of the morning working side by side with him.

Millard is a fascinating individual. He travels around the world both promoting and educating people about Habitat for Humanity. I talked to him a bit this morning about recent trips I have had the opportunity to make, again, one with the Presiding Officer to Africa, where, to me, we have a great opportunity, but also there is great hope, as we look at that continent today.

This morning there were teams of five or six people who worked together, with a leader in that team. I was not the leader for those 3 to 4 hours. We had a young woman by the name of Dawn, who is part of the AmeriCorps affiliation with Habitat for Humanity, who walked us through the construction of this house that was nothing but a slab of concrete, but by the time we left, it had the walls up around it.

But part of my team was also Charlissa Tomlinson. Charlissa is the owner of the home, who began, about 2 years ago, with this dream, and now, with her three children there today, participated in the construction of that very house.

As we put up that last wall, and there was a window there, and we looked out the window, I asked: Whose bedroom is this going to be? She very quickly told me which child’s bedroom it was going to be.

She has been very active in her church, very active in her community. The realization of her family’s dream shows us how powerful volunteers can be. The very best of the public sector, Government, which funds, in part, Habitat for Humanity, and the 10 or 15 sponsors, organizations, companies that invest, and invest heavily, in support of Habitat for Humanity can come together.

I thank my colleagues because this is the first year we have had broad bipartisan, bicameral participation. A number of Senators have gone out and participated before, but today we broke all records in terms of Senate participation in this wonderful, wonderful project.

We were there to demonstrate our commitment, as elected leaders. I should also add that the spouses of the Senators were there as well throughout the morning. They even stayed into the afternoon. But we really were there to demonstrate our commitment, our deep, personal commitment to affordable home ownership for low-income American families.

We were also there to show our appreciation for faith-based groups and other nonprofits such as Habitat for Humanity that do provide these critical services to individuals and families in need across America.

Home ownership is such an essential part of our lives, of our social investments, of our economic investments. It is empowering to families. It is empowering to communities. It contributes to the economic vitality to areas and regions in communities where these beautiful new homes arise. So it was an exciting project this morning. We have done a lot.

As we were there and looking around, we saw the AmeriCorps volunteers. There was a group of college students from Cornell who, instead of going where 99.9 percent of the college students go—to vacation, which I guess is Florida or the west coast or to warmer weather—dedicated their spring vacation in the public service. They were volunteering. They were working outside, in the weather, in the mud. They were working outside, in the weather, and spending their 8 days away from Cornell—again, colleges all over the country are doing this, but they...
were with us today, and the volunteers from the community, working with the corporate executives, working with the Members of the Senate. It was really, really gratifying.

The Congress participates and works with the administration. We provided $27 million this year for the Self-Help Homeownership Opportunity Program, SHOP. Under this grant program, homeowners contribute significant amounts of their own volunteer labor to the construction or to the rehabilitation of homes. President Bush has requested $67 million next year for this particular program, SHOP, Self-Help Homeownership Opportunity Program.

The 108th Congress passed and President Bush signed the American Dream Downpayment Act of 2003. That is going to help over 40,000 families a year with their downpayment and closing costs and further strengthen our housing market all over the country. Seeing the Senate in action, as we have hammered out the best possible deal, made me realize how much this body does do and cares in terms of eliminating poverty housing in America. I hope that demonstrates our commitment to that goal and our continued commitment to affordable housing throughout America but in particular for low-income American families.

UNBORN VICTIMS OF VIOLENCE

Mr. FRIST. Mr. President, the rest of today was spent on a very important initiative that was really long overdue. That was addressing the issue of the Unborn Victims of Violence Act.

I very much appreciate the Democratic leadership working with us to have a unanimous consent agreement today where we could begin this morning and continue straight through in a very orderly way, have very good debate, very good amendments on the floor of the Senate, and then, 8 hours after we began, to come to a conclusion with a vote that will have a huge impact, an impact on victims of violence that were protected in some States but in many States were not.

The issue at hand really boiled down to that single question, that when a pregnant woman is murdered along with her unborn baby, is there one victim or are there two? All of this is very simple. It is simple to me in terms of understanding it, but also simple in that it applies so directly to humanity.

There is a case that I never talked about on the floor today. It came to mind this afternoon in a press conference later where there were four families that were victims of violence, and they told their stories. It was very powerful. I am not sure if it was captured by the news cameras there or not, or if many people will see it—very powerful stories.

But it did remind me of a story, a recent case in my own State of Tennessee. It was an early morning in January, and two young men gunned down Tracey Owens on an empty street in south Nashville. Tracey was between 38 and 40 weeks pregnant, just about ready to deliver, could have delivered any day. The perpetrators said they believed they had hit the pregnant woman with their truck and they were afraid they could get into trouble. So they stopped and they got out and as Tracey was laying there crying out for help, one of the assailants just looked at her and said: Here is your help. And with that, he shot her in the abdomen, actually shot her five times with a .22-caliber bullet, quickly found the culprits, and they quickly confessed. The perpetrators now sit in jail awaiting the grand jury.

A police detective in the case said: In my 22 years, I have never seen anyone executed— and I mean executed—because someone thought they had hit the person with a vehicle.

Tennessee is one of 29 States with a fetal homicide law on the books. So that is why I use this example. When the question arises, was Tracey’s baby, who was only days away from delivery, also slain? That is what this bill was about today. That is what this act was about. That is why it is so important that this body responded and responded so positively with the final vote, now just an hour or an hour and a half ago. The answer to that question to me is simple. I think it is simple. Ultimately, no matter how you voted or responded so positively with the final vote, now just an hour or an hour and a half ago. The answer to that question to me is simple. I think it is simple. Ultimately, no matter how you voted today, the answer is straightforward.

The reason this example is because it is so obvious. You only have to look at the autopsy results themselves. The medical examiner did not examine just Tracey alone; she examined the baby. That is how we know that the baby was shot by one of those five shots. That little baby was hit. And common sense tells us that in examining the murder victims, the coroner was faced not just with one dead body but with two dead bodies.

We have groups such as the American Civil Liberties Union which opposed the bill, the Unborn Victims of Violence Act. They said that counting two victims is an attempt to separate a woman from her fetus in the eyes of the law. In other words, they tried to cast it as an abortion issue.

One of the wonderful things about the discussion today is that even someone tried to cast it as an abortion issue, that was debunked and was made very clear that this is not an abortion issue.

When a husband intentionally punches his expectant wife in the abdomen with the express purpose of causing a miscarriage, it is he who is separating the woman from the fetus.

I would argue that when a boyfriend of his pregnant girlfriend and hires an assassin to dispose of the girlfriend and the baby, he is killing two human beings. One may even argue that the baby is in fact—and many times is—the primary target.

But we don’t need to examine the motives of the perpetrators in these real-life cases to reach those conclusions. Even if an assailant is unaware of his victim’s pregnancy, should he, the perpetrator, determine if not the baby exists? Should we accept that because he didn’t know when he was killing one person he was snuffing out the life of a second, there is no second crime?

The Unborn Victims of Violence Act does. And now we know it is going to go to the President. This was the exact same act that passed in the House of Representatives and, thus, we know there is no stopping this one. It is going to go to the President. This act will come into this world as the mother intends, and it holds the criminal responsible for endangering the life and the health of the child.

We did have an amendment today from the senior Senator from California that was offered that said it was sufficient to add special penalties for attacking a woman who is pregnant. Indeed, it really pushed aside the intent of the underlying bill and said it is sufficient to add special penalties for attacking a woman who is pregnant. And tougher laws will assuage the feelings of the devastated family and compensate the mother for her sense of loss. All of that misses the point, the heart and soul of this underlying legislation. The harmed child is not a notion. The harmed child is not a sense. The harmed child is not an emotion. The baby is real and the loss is real.

Again, I wish my colleagues could have heard today the story of those who suffered such real and tragic losses. The second life has been harmed, whether intentional or not. Verbal evasions and euphemisms simply cannot hide this plain fact. I think about an expectant mother, her excitement about her family, her future family, how she starts to show, and even strangers, when she walks by, begin to smile and ask, “When is the baby due?” You cannot help but think of friends who are throwing showers or the metro riders who stand up and offer her seat for that expectant mother.

Our natural reaction is to celebrate the miracle of life and offer our love and compassion, not for a theory, or a theoretical baby, but for an actual baby—a baby we hope will be born and will be healthy.

Well, this act, the Unborn Victims of Violence Act, which now is going to be the law of the land, recognizes the simplicity, the obviousness, the fact that an abortion, as its opponents took great pains to argue but which was debunked today. It doesn’t undermine the 1973 Roe v. Wade Supreme Court decision, as even pro-
choice legal scholars admit. The Unborn Victims of Violence Act is about simple humanity, simple reality.

A child in the womb, whether you call it a baby or a fetus, is alive, it is real, and it deserves our best efforts to protect it from criminal harm, and with the action of this body today, and with the action of the House of Representatives in the past, this act will become the law of the land, soon to be signed by the President of the United States.

ORGAN DONATION

Mr. FRIST. Mr. President, it has been a satisfying day. Shortly, I will finish the day with a third issue which means a great deal to me. I will be asking unanimous consent for action on a bill that promotes organ donation, and for other purposes. I would like to close on that third topic.

The bill is called the Organ Donation and Recovery Improvement Act. For the 10, 12, to 15 years before I came to the Senate, that is what I had the privilege of doing, transplanting hearts and lungs together, for end stage disease, who would otherwise die but had the opportunity and blessing to be able to have taken out those diseased organs—out of somebody who otherwise would die usually within 3 to 6 months, and replace those with organs that would allow them to live, or, 15, 20 or 30 years.

It is marvelous what American medicine and science can do generally, but also that the good Lord allows that miraculous procedure to happen today. It was only imagined not too long ago.

This particular bill, which we will be passing shortly, represents the most significant reforms to organ donation in over a decade. It improves research, improves public awareness, and helps us improve the process, which makes organ transplantation possible. It is not hard to take the diseased organs out. The real challenge we have is finding the available, appropriate organs to transplant, actually implant into that chest. That is the shortage. People are dying every day, waiting for a heart, waiting for a lung, waiting for kidneys, a liver, or a pancreas, and the problem is the shortage of donors. But in truth, there are plenty of donors out there. It is how you get this potential supply to meet this huge demand. Right now, the supply is too small. When the demand is high, all these people are dying. If we increase the supply, these people begin to live. It is as simple as that. This legislation moves us in that direction.

I want to applaud the work of Senator Chris Dodd, our colleague from Connecticut, who helped lead the fight to pass this legislation in the Senate, and also our colleague from New Hampshire, Judd Gregg, chairman of the Health, Education, Labor, Pensions Committee, for his support. This particular bill that will pass tonight was passed by the House of Representatives yesterday. I recognize the leadership of Representative Bilirakis and Billy Tauzin, who have been instrumental in leading this initiative in the House.

Organ donation is one of the most challenging issues we face today because of this supply-demand issue. The real supply is bigger than the realized supply, and that is what this bill sets out to achieve. About 82,000 to 84,000 people are waiting today for an organ to become available. Many will become available tonight—hopefully, a lot—tomorrow, and every day. But it is not enough. You have to do more. I will be speaking principally, using figures on America, the U.S. While organ donations increased by 7.5 percent since 2002, it is a small increase. The 84,000 people waiting have far outstripped that in terms of the number of people added to the waiting list. By improving public awareness to encourage organ donation, we literally save lives, hundreds and thousands of lives.

This legislation takes a comprehensive approach. It will not solve the problem, but it is a comprehensive approach to increase organ donation and, at the same time, improving the overall efficiency of the organ donation process. I believe patients and families will soon benefit from this very important legislation tonight.

AMENDING THE PUBLIC HEALTH SERVICE ACT TO PROMOTE ORGAN DONATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3926, which is at the desk.

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

The assistant legislative clerk read as follows:

A bill (H.R. 3926) to amend the Public Health Service Act to promote organ donation, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate pass the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the Record.

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

The bill (H.R. 3926) was read the third time and passed.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator Kennedy and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that the presence of any kind of intolerance is unacceptable in our society.

On October 21, 2000, in Fort Worth, TX, a 17-year-old high school student was hospitalized after two peers allegedly attacked him in a parking lot. The young assailants beat the victim and scratched anti-gay slurs into his car. The victim suffered a broken nose and numerous other injuries, including blood clots on his brain.

I believe that our Government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing our laws, we can change hearts and minds as well.

HONORING OUR ARMED FORCES

SPECIALIST CHRISTOPHER E. HUDSON

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Carmel, IN, Specialist Christopher Hudson, 21 years old, who died in Abu Ghraib, just west of Baghdad, on March 21, 2004, during an attack when the Humvee he was riding in was struck by an improvised explosive device.

After joining the Army in November of 2002, Chris was assigned to the 2nd Battalion, 12th Cavalry Regiment, 1st Cavalry Division based in Fort Hood, TX. Chris served as a gunner during his deployment, which began when his unit joined the efforts in Iraq one year ago. With his entire life before him, Chris’ country will risk everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Chris was the twenty-fifth Hoosier soldier to be killed while serving his country in Operation Iraqi Freedom. This brave young soldier leaves behind his father, his mother, Sally; his wife, Michelle; his 1-year-old son, Gavon; and 3-year-old daughter, Veronika. May Chris’ children grow up knowing that their father gave his life so that young Iraqis will some day know the freedom they enjoy.

Today, I join Chris’ family, his friends, and the entire Carmel community in mourning his death. While we struggle to bear our sorrow over his death, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Chris. Chris’ memory that will burn brightly during these continuing days of conflict and grief.

When looking back on the life of her late husband, Chris’ wife Michelle told the Indianapolis Star that he “was proud to defend his country... His family loves him, misses him and is very proud of him.” Today and always, Chris will be remembered by family members, friends and fellow Hoosiers as a true American hero, and we honor the sacrifice he made while serving his country.
as he addressed the families of the fallen soldiers in Gettysburg: “We cannot dedicate, we cannot consecrate, we cannot hallowed this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.” This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Chris’ actions will live far longer than any record of these words.

It is my sad duty to enter the name of Christopher E. Hudson in the Official Record of the United States Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about these just causes in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Chris’ can find comfort in the words of the prophet Isaiah who said, “He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.”

May God grant strength and peace to those who mourn, and may Gold bless America.

OPPOSITION UNDER ATTACK IN BELARUS

Mr. CAMPBELL. Mr. President, in recent days the Belarusian Prosecutor General’s office opened criminal proceedings against one of the leaders of the embattled Belarusian democratic opposition, Anatoly Lebedka. Anatoly, who is chairman of the United Civic Party, has been accused of defaming the Belarusian dictator Alexander Lukashenko during an interview with Russian television last month where he linked the recent Belarusian-Russian dispute over gas deliveries with the Belarusian president’s failure to liberalize the economy.

Anatoly also mentioned a shadow budget replenished through illegal arms sales and the cover-up of the truth about political disappearances in Belarus.

Given the pattern of behavior of the Lukashenko regime, it is crystal clear that this case is politically motivated and designed to suppress dissent. Lebedka’s United Civic Party is a member of the Popular Coalition Five Plus, an opposition bloc which is planning to field candidates in this fall’s parliamentary elections.

The action against Anatoly Lebedka and on the opposition fits squarely within a pattern of the suppression of independent thought and action in Belarus. Lukashenko’s repression of those who would dare to challenge him has only intensified over the past year.

Just last week, a criminal case was opened against the Belarusian Helsinki Committee chairman, Tatyana Protasova, and the Human Rights activist Tatsiana Rudkevich. This comes after politically-motivated economic sanctions were imposed on the Committee recently. Also within the last few days, a court seized property of Iryna Makavetskaya, a correspondent for one of Belarus’ leading independent newspapers, Beloruskaya Delovaya Gazeta.

Lukashenko has a choice—he can continue to act as a pariah, suppressing the voices of democracy in Belarus, or he can realize that the only way to reverse his self-imposed isolation from the international community and increasingly, from his own people, is to end his offensive against democracy and civil society.

Meanwhile, it is essential that the United States back up its rhetorical support for democratic forces in Belarus through concrete assistance. Earlier this Congress, I introduced the Belarus Democracy Act, a measure with bipartisan support designed to promote democracy, human rights and the rule of law in Belarus. In light of the campaign of repression against democratic forces in Belarus, timely enactment of the Belarus Democracy Act is warranted. I urge colleagues to support this important legislation.

CLOSING THE GUN SHOW LOOPHOLE

Mr. LEVIN. Mr. President, three weeks ago the Senate passed an amendment during consideration of the gun control bill which would close the gun show loophole. I supported this amendment because I believe it is common sense gun safety legislation.

Under current law, when an individual buys a handgun from a licensed dealer, there are federal requirements for a background check to insure that the purchaser is not a person prohibited from purchasing or possessing a firearm. However, this is not the case for all gun purchases. For example, when an individual wants to buy a handgun from another private citizen who is not a licensed gun dealer, there is no requirement to ensure that the purchaser is not in a prohibited category. This creates a loophole in the law, which makes it easy for criminals, terrorists, and other prohibited buyers to evade background checks and buy guns. This loophole is the gateway to the illegal market because criminals know they are not subject to a background check and no record is made of the sale.

I cosponsored the amendment offered by Senators J ACK REED and J OHN McCAIN, which would close the gun show loophole, because I believe it is a critical tool in preventing guns from getting into the hands of criminals and other ineligible buyers. This amendment would have simply applied existing law governing background checks to individuals buying firearms at gun shows. Preventing easy and unchecked access to guns is critical in preventing gun violence.

This amendment also had the support of major law enforcement organizations including the International Association of Chiefs of Police, the National Troopers Coalition, the International Brotherhood of Police Officers, the Police Executive Research Forum, the Major Cities Chiefs, the National Association of School Resource Officers, the National Association of Police Chiefs, the National Organization of Black Law Enforcement Executives, and the Hispanic American Police Command Officers Association.

The gun industry immunity legislation would have provided unprecedented protection from liability to gun manufacturers and dealers, even in cases where their own gross negligence or recklessness led to someone being injured or killed. I opposed the bill and it was defeated in the Senate. However, before the bill was defeated, the gun show loophole amendment passed with bipartisan support. Given that, I hope the Senate will take up and pass gun show loophole legislation this year.

CBO REPORT

Mr. DOMENICI. Mr. President, at the time Senate Report No. 108-233 was filed, the Congressional Budget Office report was not available. I ask unanimous consent that the report, which is now available, be printed in the RECORD for the information of the Senate.

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

Hon. PETE V. DOMENICI, Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

Dear Mr. Chairman:
The Congressional Budget Office has prepared the enclosed cost estimate for S. 1107, the Recreational Fee Authority Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226-2860.

Sincerely,
DOUGLAS HOLTZ-EAKIN, Director.

Enclosure.

S. 1107—RECREATIONAL FEE AUTHORITY ACT OF 2004

Summary: S. 1107 would authorize the National Park Service (NPS) to establish, charge, and modify admission and user fees at units of the National Park System. Section 3 of the bill would allow the NPS to retain and spend all offsetting receipts collected under this authority without further appropriation. Both the authority to collect and to spend NPS recreation receipts would become effective on January 1, 2006, the day after the existing recreation fee demonstration program expires. (Created in 1996, the demonstration program authorizes the NPS and other federal land management agencies to charge higher recreation fees than would otherwise be permitted and to spend the proceeds.)

The effect of S. 1107 on total recreation fee receipts and spending would depend on how the NPS would use the bill’s authorities in conjunction with current law following the expiration of the current demonstration program. The CBO assumes that the NPS would use the authorities provided under S. 1107 to continue
May not be able to increase rates to the level recreation providers. In that event, the NPS competitive disadvantage with other federal NPS might not be able to charge higher fees increased under S. 1107, it is possible that the LWCFA when establishing fees under S. 1107, could be collected under S. 1107, the NPS increased in direct spending authority of $63 million in 2006 period. We estimate that direct spending would total $592 million over the 2006 other than to apply to other federal land management agencies that offer similar, often competing, recreation opportunities. This estimate is based on information provided by NPS and assumes that the NPS determines that the fee caps, fee prohibitions, and other fee limitations contained in the LWCFA would not apply to fees that would be established under S. 1107. CBO estimates that enacting S. 1107 would essentially continue the current recreation demonstration program. The bill—like the demonstration program—would allow the NPS to spend 100 percent of all receipts. Starting in 2006, the LWCFA would otherwise authorize the spending of 15 percent of recreation receipts. The net effect of these changes would be an increase in direct spending authority of $63 million for fiscal year 2006, $79 million in 2007 (the full year after the new authority would become effective), and $745 million through fiscal year 2014. CBO estimates that outlays from this new spending authority would total $592 million over the 2006–2014 period. Under the bill, recreation fees could also increase by as much as $52 million in 2006 and between $41 million and $47 million a year thereafter, but any new receipts would be offset by an identical increase in new spending. It is important to determine that it must abide by specific restrictions in the LWCFA when establishing fees under S. 1107, the agency would probably not implement any significant increase in offsetting receipts. In the event that no new receipts could be collected under S. 1107, the NPS would be authorized to spend recreation fees under the bill and the net budget impact would be similar. In addition, because fees charged by other land-management agencies would not be increased under S. 1107, it is possible that the NPS might not be able to charge higher fees at some parks without putting itself at a competitive disadvantage with other federal recreation areas. Under that event, the NPS may not be able to increase rates to the level estimated here; however, the net budget impact would be the same because spending would fall by the same amount.

Intergovernmental and private-sector impact: S. 1107 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated net budgetary impact of S. 1107 is summarized in the table below. The costs of this legislation fall within budget function 300 (natural resources and environment).

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1 The current law amounts represent net direct spending of the NPS under the existing recreation fee demonstration program (which expires on December 31, 2005) and under the Land and Water Conservation Fund Act (LWCFA), which will govern the collection and spending of NPS recreation fees after December 31, 2005.

Basis of Estimate: For this estimate, CBO assumes that the NPS would collect and spend recreation fees at all park units under the authority provided by S. 1107, at rates similar to those it now charges under the recreation demonstration program. S. 1107 would provide broad, permanent authority to collect and spend recreation fees at NPS sites similar to those it now charges under the temporary recreation fee demonstration program. Unlike that program, however, the bill would not specifically repeal or override the fee-related provisions in the Land and Water Conservation Fund Act (LWCFA). The LWCFA will govern the collection and spending of recreation fees after December 31, 2005. Moreover, the bill would not apply to other federal land management agencies that offer similar, often competing, recreation opportunities. This estimate is based on information provided by NPS and assumes that the NPS determines that the fee caps, fee prohibitions, and other fee limitations contained in the LWCFA would not apply to fees that would be established under S. 1107. CBO estimates that enacting S. 1107 would essentially continue the current recreation demonstration program. The bill—like the demonstration program—would allow the NPS to spend 100 percent of all receipts. Starting in 2006, the LWCFA would otherwise authorize the spending of 15 percent of recreation receipts. The net effect of these changes would be an increase in direct spending authority of $63 million for fiscal year 2006, $79 million in 2007 (the full year after the new authority would become effective), and $745 million through fiscal year 2014. CBO estimates that outlays from this new spending authority would total $592 million over the 2006–2014 period. Under the bill, recreation fees could also increase by as much as $52 million in 2006 and between $41 million and $47 million a year thereafter, but any new receipts would be offset by an identical increase in new spending. It is important to determine that it must abide by specific restrictions in the LWCFA when establishing fees under S. 1107, the agency would probably not implement any significant increase in offsetting receipts. In the event that no new receipts could be collected under S. 1107, the NPS would be authorized to spend recreation fees under the bill and the net budget impact would be similar. In addition, because fees charged by other land-management agencies would not be increased under S. 1107, it is possible that the NPS might not be able to charge higher fees at some parks without putting itself at a competitive disadvantage with other federal recreation areas. Under that event, the NPS may not be able to increase rates to the level estimated here; however, the net budget impact would be the same because spending would fall by the same amount.

Intergovernmental and private-sector impact: S. 1107 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated net budgetary impact of S. 1107 is summarized in the table below. The costs of this legislation fall within budget function 300 (natural resources and environment).

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Ms. CANTWELL. Mr. President, I rise today to begin the process of placing directly on the Senate calendar a stand-alone electric reliability legislation.

As all my colleagues in this body are well aware, devising a comprehensive policy that will help this nation achieve its energy independence is a task that has divided the Energy and Natural Resources Committee on which I serve, the United States Senate and the Congress as a whole for three years now. Regardless, I believe that there is at least one thing on which every Senator can agree—and that is the need to pass legislation giving the Federal Energy Regulatory Commission, working closely with regional entities, the statutory authority to put in place mandatory and enforceable reliability standards.

The call for legislation of the kind we are introducing today dates back to at least 1997, when both a Task Force established by the Clinton Administration’s Department of Energy and a North American Electric Reliability Council, or NERC, blue ribbon panel independently determined that reliability rules for our nation’s electric system needed to be mandatory and enforceable.

In response, the Senate passed stand-alone legislation on this matter, authored by my predecessor Senator Gorton, in June 2000. Since then, under the leadership of both parties, the Senate has twice passed consensus-based electric reliability provisions—most recently, last July.

There is no doubt that this nation’s consumers and businesses cannot afford further delay in improving the reliability of the electricity grid. Last August’s Northeast/Midwest blackout, which affected 50 million consumers from New York to Michigan, again sounded the wake up call for federal electric reliability legislation.

I would like to quote from a January 1, 2004 letter published in the New York Times from North American Electric Reliability Council President and CEO Michehl R. Gent. Mr. Gent wrote that the so-called NERC ‘‘slimmed down’’ energy bill introduced this year, which happens to be 100 pages longer than the original. However, I am of the firm belief that we cannot allow these crucial reliability provisions to be held hostage to a flawed comprehensive energy bill.

Now, I know that the distinguished Chairman of the Senate Energy and
Natural Resources Committee has worked to strip one of the most outrageous provisions of the H.R. 6 conference report—the MTBE liability protection, which many Senators simply cannot abide—from the new version of his energy bill. But I am one of those many who believe that the bill that remains requires very, very substantial revision and thorough debate. With its origins in last year’s conference report, there are far too many provisions in the new bill that the Senate Energy Committee has simply never considered. Moreover, if one of our primary policy goals is to improve the reliability of our nation’s electricity grid, I am hard-pressed to see how many of the provisions in that bill are relevant.

How will weakening the Safe Drinking Water Act help keep the lights on? Will providing MTBE producers with $2 billion in taxpayer-funded “transition” assistance in any way reduce the likelihood of outages?

Can anyone really argue that exempting some large corporations from Clean Water Act requirements will make our high-voltage transmission lines more reliable?

S. 2055 might not subsidize Hooters, but there remain plenty of handouts to the polluters and corporate locusts—none of which have anything to do with bolstering the reliability of our transmission infrastructure. And that’s before a non-existent conference with the House, the Leadership of which has publicly expressed its complete disinclination to improving the provisions of H.R. 6 most objectionable to the Senate. In fact, I ask my colleagues to consider the following passage, published in the February 14, 2004 edition of CQ Today:

“You can’t start carving out pieces of a deal you already made,” said Frank Maisano, a lobbyist who represents several MTBE producers. “What the Senate does at this point is irrelevant. This is just a vehicle to get to conference.” MTBE lobbyists—and perhaps our colleagues on the other side of the Capitol—believe that whatever the Senate does within the context of a debate on the new energy bill is “irrelevant.” As the saying goes, “fool us once, shame on you. Fool us twice, shame on us.”

So Mr. President, in view of the existing gridlock on comprehensive energy legislation, I believe the only responsible course is for this body to bring up and pass stand-alone electric reliability legislation. I reject the notion that passing comprehensive energy legislation—such as it is—the sole path to improving the reliability of our nation’s electricity grid. We can pass stand-alone reliability legislation. We’ve done it before. We can—and we must—do it again. Good energy policy must not be held hostage to the bad, and I am pleased to begin the process of placing the bill directly on the Senate calendar.

RULING AGAINST MICROSOFT

Mrs. LINCOLN. Mr. President, I rise today to voice my strong opposition to yesterday’s ruling by the European Commission against the Microsoft Corporation.

While Arkansas is not the headquarters of the Microsoft Corp., we are keenly aware of the negative impact that the European Union’s protectionist trade actions have on American business and our Nation’s economic growth and job creation. Time and time again, farmers and agribusiness in my state have been denied the opportunity to compete in the European market.

As a member of the Senate Finance Committee, I am dedicated to ensuring a level playing field with our trading partners. This goal cannot be accomplished alone. It will require a multinational cooperative effort which developed countries like the United States and Europe must lead.

The EU’s strictures specifically the one taken yesterday, are a significant step in the wrong direction.

I encourage the administration to continue to engage their European counterparts and demand a more cooperative effort. I yield the floor.

GREEK INDEPENDENCE DAY

Mr. SARBANES. Mr. President, March 25 has very special meaning in Greek history. On this date 183 years ago, a small but resolute band of Greek patriots began the struggle to end the foreign domination that for nearly four centuries had oppressed and impoverished Greece. For five years, the resolute and courageous Greek patriots fought against tremendous odds to secure the liberty of their homeland. On this same date 30 years ago the military junta, which had seized power in 1967 and for 7 long years suppressed democratic institutions and civil rights, was brought down, and democracy was restored to the land of its invention. These two events, distant in time and nature as they are from one another, both mark milestones in the road to the vigorous and prosperous democracy that is Greece today.

Nearly 200 years ago, the United States and Greece were two young republics for whom the future was still uncertain. Inspired by democratic ideas and the struggle for freedom and democracy: these two founders of modern democracy, Greece alike. The Games offer a splendid opportunity to present Greek achievements to the international community not only in sports but also in cultural, economic and political terms.

The founders of the American republic were ardent students of the classics, and they looked to the wisdom and experience of ancient Greece as they shaped our nascent political order. In turn, Greek patriots struggling to win independence in 1821 turned to the principles of the new American democracy as they sought to build their own new order. In today’s turbulent world, the strong and enduring ties between the two countries are momentous achievements. They give us cause for reflection and celebration on this independence day.

Mr. REED. Mr. President, I rise today to recognize the 183rd anniversary of Greek Independence and pay tribute to the contributions of Greece and our Greek-American community. It was on this day in 1821, that Greek patriots rose up against the Ottoman empire and began an 8-year struggle that culminated in a new Greek Republic.

It is fitting that we take this day to reflect on the enormous contributions...
Though changes to the Great Lakes are not seen immediately, we know we can impact the Lakes, for better or for worse, through our management policies. As the Director of the Great Lakes Environmental Research Lab said, “The one thing that we can predict is that near the coast the Great Lakes ecosystem will continue to change and the challenges for effective use and management will only increase.”

Because of the many challenges threatening the health of the Great Lakes and the health of the people who use the Lakes for their drinking water, fishing, or swimming, it is important to understand the link between our waters and human health. That is why we introduced the Oceans and Human Health Act. It would authorize the establishment of a coordinated Federal research program to aid in understanding and responding to the role of oceans in human health. The bill would authorize the establishment of an Oceans and Human Health initiative and create an Oceans and Human Health program at the Department of Commerce National Oceanic and Atmospheric Administration, NOAA. The bill also would direct the Secretary of Commerce to establish a coordinated public information and outreach program to provide information on potential ocean-related human health risks.

So, again, I thank Senator Hollings and Senator McCain for their efforts on this legislation and my request to ensure that this legislation includes the Great Lakes. It is a good bill and will help us improve the quality of the Lakes and protect them for future generations.

IN HONOR OF DR. DOROTHY IRENE HEIGHT—A NATIONAL TREASURE

Mr. DURBIN. Mr. President, I rise today to honor Dr. Dorothy Irene Height, a great leader in the struggle for equality, social justice, and human rights for all people, and a true American hero.

A recognized leader in the cause of civil and human rights, Dr. Height has shown her strength and vision through her efforts to promote school desegregation, educate others regarding the status of women in our society, and close our Nation’s racial divide. As an advocate for women’s rights, Dr. Height was a valued friend of First Lady Eleanor Roosevelt. She later encouraged President Eisenhower to desegregate the Nation’s schools and promoted the appointment of African-American women to sub-Cabinet posts under President Johnson.

Dr. Height served as the tenth national president of Delta Sigma Theta Sorority, Inc. from 1947 to 1956 and was responsible for advancing the organization’s political and social activism, both nationally and internationally.

Subsequently, as president of the National Council of Negro Women, NCNW,
Dr. Height worked ceaselessly to bring attention to the struggle of African-American women. Some of these innovative programs include: Operation Woman Power, a project to expand business ownership by women; the Women's Center on Education and Career Advancement, a facility established to empower minority women in nontraditional careers; and the Behnue Museum and Archives, a museum devoted to the history of African-American women.

Among her other roles, Dr. Height was the only female member of the “Big Six” civil rights leaders, alongside James Farmer, Roy Wilkins, Whitney Young, A. Philip Randolph, and Rev. Dr. Martin Luther King, Jr. She was a mainstay at countless civil and human rights events in the 1960s and organized “Wednesdays in Mississippi,” a program that brought together Black and White women from the North and South to create a dialogue of understanding.

Throughout her years of public service, Dr. Height has received numerous awards for her pursuit of equality including: the Spingarn Award, the highest honor given by the National Association for the Advancement of Colored People, NAAACP; the Presidential Medal of Freedom, awarded by President Clinton; the William L. Dawson Award, given by the Congressional Black Caucus for decades of service to people of color and women; the Citizens Medal Award for distinguished service, presented by President Reagan; and her most recent honor, the Congressional Gold Medal, presented by the 108th Congress of the United States.

Dr. Dorothy Height has been a clear voice in expressing the needs of not only African-American women, but of all women. She is a living legend, a catalyst for growth and positive change in our great country.

I proudly congratulate Dr. Dorothy Irene Height on the awarding of the Congressional Gold Medal and for her commitment to equality and civil rights in America.

ADDITIONAL STATEMENTS

THE GREEN STREET BAPTIST CHURCH

Mr. BUNNING. Mr. President, today I would like to take the opportunity to honor the 160th birthday of the Green Street Baptist Church in Louisville, KY.

The Green Street Baptist Church is one of the oldest and most established African-American churches in Kentucky. It has served as a spiritual focal point for Louisville since it was founded as the Second African Baptist Church by nine slaves. On September 29, 1844 it was opened as the Green Street Baptist Church by pastor Brother George Wells.

The Green Street Baptist Church is a historic place that has played a significant role for African-Americans in Louisville. The present church was built in 1930 by the noted African-American architect Samuel Plato. In August of 1967, with H.W. Jones as pastor, the church hosted a rally for voter registration led by Dr. Martin Luther King.

As one of the U.S. Senators from Kentucky, I know how important a wonderful center like the Green Street Baptist Church can be to a community. One of the more prominent trustees and longtime church members was a man named Ben Duke, who lived to be 100 years old. I have no doubt that his rewarding involvement with such a great organization like the Green Street Baptist Church contributed to his longevity.

I congratulate the Green Street Baptist Church on this momentous occasion of its 160th anniversary. I hope the church will continue to serve the Louisville community another 100 years and beyond.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Mr. HARKIN. Mr. President, this year marks the 75th Anniversary of the League of United Latin American Citizens, commonly known as LULAC. This national organization was founded in 1929 to fight for the civil rights of all Latin American Citizens. The LULAC founders saw a need for an organization that would strive for equality, fight discrimination and injustice, help Hispanics to claim their rights as United States Citizens and to have access to the American Dream.

Due to their success in the southwest, LULAC continued to open up chapters all over the United States. LULAC's first council was formed in Iowa in 1959 and continues to have a strong presence today. They have prospered over the past 45 years and continue to be a leader in Iowa, fighting for the rights of Latino Iowans.

LULAC has worked to affect national policy so that it better reflects the different cultures living in the United States. They continue to work tirelessly to reduce discrimination, close the achievement gap and improve the immigration laws and system.

LULAC seeks to reduce disparities in political representation. They work to develop leaders among the young Latino men and women in Iowa. Rita Vargas, a previous member of my staff, was nominated as “LULAC's Woman of the Year” in 2001, and has since been elected to the position of Scott County Recorder.

The Latino community is a vital, growing part of today's Iowa. In this great country, we find strength in our diversity. Iowa is stronger economically and richer culturally thanks to the many generations of our Latino friends, neighbors and colleagues.

I would like to say thank you to LULAC for all their hard work in Iowa and throughout the country. I wish them the best as they continue their community activism.

TRIBUTE TO COLONEL JOELLEN DE BERG, UNITED STATES AIR FORCE NURSE CORPS

Mr. INOUYE. Mr. President, I wish to recognize a great American and true military heroine who has honorably served our country for over 31 years in the United States Air Force Nurse Corps. Col. Joellen de Berg. Colonel de Berg began her military career as a reservist with assignments in Arizona, Pennsylvania, and Ohio. After serving as flight nurse, instructor, and evaluator in C-123 and C-130 aircraft, she entered active duty in July, 1978, at Malcolm Grow Medical Center, Andrews Air Force Base, MD. She quickly rose through the ranks and served throughout the world, including in the Philippines, Ohio, California, Oklahoma, Maryland, Illinois, Texas, Washington, District of Columbia, and Japan.

In each assignment, Colonel de Berg excelled and was rewarded with greater responsibilities. In 1983, her performance led to a promotion to the rank of major 3 years ahead of her peers. After serving as manager of emergency services at Wright-Patterson AFB, she transitioned from the clinical arena to medical systems management at the Inspector General, Norton AFB, CA. Once again, her exemplary performance led to a second below-the-zone promotion to lieutenant colonel. After serving as the associate director of nursing at Malcolm Grow Medical Center, she went on to serve as congressional fellow, U.S. Senate, Defense Appropriations Subcommittee. Her service in this capacity led to her appointment as chief of strategic plans, U.S. Air Force Surgeon General’s Office, Bolling Air Force Base, Washington, DC.

With her path to executive leadership clearly set, Colonel de Berg served as chief nurse at Tinker AFB and Andrews AFB. At Andrews, she assumed command of the Eighty-ninth Medical Operations Squadron. Her remarkable leadership earned her selection as group commander, Thirty-fifth Medical Group, Misawa, Japan. Colonel de Berg then assumed responsibilities as command nurse and chief, Primary Care Optimization, Office of the Command Surgeon, Air Mobility Command, Scott AFB, IL.

Colonel de Berg’s last assignment was in the State she considers home. She returned to Texas, as chief, Nurse Utilization and Education Branch, Air Force Personnel Center, Randolph AFB. In this position, she was responsible for managing assignments, career progression, and sponsored educational opportunities for 4,000 Air Force nurse practitioners.

Colonel de Berg is a meritorious leader, administrator, clinician, educator, and mentor. Throughout her career she has served with valor and profoundly
impacted the entire Air Force Medical Service. Her performance reflects exceptionally on herself, the United States Air Force, the Department of Defense, and the United States of America. I extend my deepest appreciation to COL Janelle DeBlanc on behalf of a grateful Nation for more than 31 years of dedicated military service.

NAVY AIRMAN JUSTIN TEAGUE

Mr. BUNNING. Mr. President, today I would like to take the opportunity to honor U.S. Navy Airman Justin Teague of Benton, KY. Eighteen-year-old Justin Teague shipped out aboard the USS Enterprise in October of 2003 as a teenager newly graduated from high school and returned March 28, 2004, as an American soldier.

The USS Enterprise was deployed October 1, 2003 and visited the northern Arabian Gulf, Afghanistan, Italy, Spain, as well as a few other countries. Teague’s job on the flight deck, where he secured planes that had landed and towed them into position, is vital for the function of the carrier. Justin admits his position was stressful but the hardest thing he had to endure was losing his best friend from home in a car accident while at sea. Despite missing the funeral, he remained positive throughout his journey and hopes to make a career out of the military.

Justin Teague’s parents are exceedingly proud of their son, and I am proud to have him as a fellow Kentuckian. In this time of conflict, it is important to remember the young people who risk their lives to ensure our freedom. Men like Justin should be commended for their dedication and hard work in the military. We need to remember to thank our soldiers whenever the opportunity arises.

100TH ANNIVERSARY OF THE AMERICAN LUNG ASSOCIATION

Mr. SARBANES. Mr. President, I would like to take a moment to extend my congratulations to the American Lung Association as it celebrates its 100th anniversary.

One of our Nation’s foremost health advocacy groups, the American Lung Association was established in 1904 as the National Association for the Study and Prevention of Tuberculosis, a cause that still remains very much devoted. From its early years during which it focused on promoting basic sanitation measures, the ALA has grown into a leader in the fields of health education and biomedical research, contributing over $11 million in 2003 alone to the study of lung disease.

The American Lung Association has long been at the forefront of efforts to warn the American public of the dangers of smoking. In fact, the ALA predicted Surgeon General Bill Holland by 20 years in establishing a link between tobacco use and chronic lung disease, issuing a public health statement on the risks of tobacco use as early as 1960. Subsequent public information campaigns, especially those targeting America’s youth, have helped cut smoking rates dramatically over the past two decades.

In the hope of addressing a root cause of lung disease, the American Lung Association has worked tirelessly to improve the quality of the air we breathe. This organization played a crucial role in the development and implementation of the 1970 Clean Air Act, and since then has provided a strong voice for improving emissions standards and reducing children’s exposure to poor air quality in schools.

Over the years, the American Lung Association has risen time after time to the task of combating new health challenges. Recognizing the growing problem of asthma, the ALA initiated a number of programs to help local officials, parents, and their children combat and manage this disease. And in 1996, the ALA established their Asthma Clinical Research Center network, a program with an annual budget of $3.5 million, consisting of 19 university and hospital centers and a coordinating center at the Johns Hopkins University.

I commend the ALA for its outstanding achievements over the past century, and I offer my best wishes for a successful future.

OREGON VETERAN HERO

Mr. SMITH. Mr. President, today I rise to honor an Oregon veteran who went above and beyond the call of duty to serve his country. On February 19, 1941, 16-year-old Mike Ryan left high school and voluntarily enlisted in the United States Army to serve in World War II.

Private Ryan underwent basic training at Fort Mills on Corregidor in Manila Bay. Japanese bombing attacks on the island intensified and ultimately led to the fall of Corregidor. U.S. forces surrendered on May 6, 1942. Pvt. Mike Ryan and other troops in the southern part of the Philippines became Japanese prisoners of war.

Ryan and hundreds of other prisoners were taken to Manila, were paraded through the streets and taken to prison, and transported to a prison camp in Cabanatuan, Philippines.

For the next 3 years, Mike Ryan suffered immensely, enduring hunger, fatigue, and sickness in a Japanese prisoner of war camp. Conditions were dismal: food and clothing were scarce and the heat was intense. After spending time in a holding area, which was nothing more than a cow pasture with no sanitary facilities, Ryan was sent out on work details and later transferred to Santo Tomas.

Thirty-seven percent of the prisoners did not survive. Mike says he never gave up hope, saying he always knew he would come back someday. On September 13, 1945, Ryan and his fellow prisoners were released from captivity. Mike Ryan had spent a total of 3 years, 4 months, and 6 days as a prisoner of war.

After spending a short time in a military hospital in Denver, CO, Ryan was honorably discharged from the service on June 20, 1946.

On March 30, 1948, he married and moved to Oregon. Mike worked at a number of jobs, but for more than 40 years until it shut down in 1985. Ryan served as the department commander of American Ex-prisoners of War. Now retired, Ryan enjoys spending his time with his wife of 56 years and his family. He has two sons, four grandchildren, and four great-grandchildren.

Mike Ryan made many sacrifices by entering the military at such a young age. He never had the opportunity to finish high school and receive his diploma. Last session, the Oregon Legislative Assembly passed S. 374 allowing World War II veterans who left school to serve in the war to receive their high school diploma. Ryan is hoping he will graduate this year with the Lebanon High class of 1944.

Now 79 years old, Ryan looks back on his life and gratitude, thankful for the opportunity to serve his country.

For his selfless service to others, and to the United States in time of war, I salute Mike Ryan as an Oregon veteran hero.

NOTIFICATION OF THE PRESIDENT’S INTENT TO ENTER INTO A FREE TRADE AGREEMENT WITH THE GOVERNMENT OF THE DOMINICAN REPUBLIC—PM 74

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 Finance:

To the Congress of the United States:

Consistent with section 2105(a)(1)(A) of the Trade Act of 2002 (Public Law 107-210) and the “Trade Act of 2002” of March 24, 2004, I am pleased to notify the Congress of my intent to enter into a free trade agreement (FTA) with the Government of the Dominican Republic.

This agreement will create new opportunities for America’s workers, farmers, businesses, and consumers by eliminating barriers to trade with the Dominican Republic, the largest economy in the Caribbean Basin. At the same time, it will help bring to the Dominican Republic expanded economic freedom and opportunity, and it will provide an opportunity for regional stability, democracy, and economic development through closer ties of commerce, investment, and friendship.

Consistent with the Trade Act, I am sending this notification at least 90 days in advance of entering into an agreement with the Dominican Republic. My administration looks forward to working with the Congress in developing appropriate legislation to approve and implement this free trade agreement.

GEORGE W. BUSH

MESSAGE FROM THE HOUSE

At 12:24 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1768. An act to amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and for other purposes.

H.R. 3026. An act to amend the Public Health Service Act to promote organ donation, and for other purposes.

H.R. 3772. An act to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide children with access to food and nutrition assistance, to simplify program operations, to improve children's nutritional health, and to restore the integrity of child nutrition programs, and for other purposes.

H.R. 3873. An act to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide children with access to food and nutrition assistance, to simplify program operations, to improve children's nutritional health, and to restore the integrity of child nutrition programs, and for other purposes; to the Committee on the Judiciary.

H.R. 3059. An act to designate the facility of the United States Postal Service located at 304 West Michigan Street in Stuttgart, Arkansas, as the “Lloyd L. Burke Post Office.”

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 189. Concurrent resolution celebrating the 50th anniversary of the International Geophysical Year (IGY) and supporting an International Geophysical Year-2 (IGY-2) in 2007-08; to the Committee on Commerce, Science, and Transportation.

H. Con. Res. 328. Concurrent resolution recognizing and honoring the United States Armed Forces and supporting the goals and objectives of a National Military Appreciation Month.

MEASURES REFERRED TO COMMITTEE

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1768. An act to amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and for other purposes; to the Committee on the Judiciary.

H.R. 3593. An act to designate the facility of the United States Postal Service located at 304 West Michigan Street in Stuttgart, Arkansas, as the “Lloyd L. Burke Post Office.”

The following bills were read the first time:

H.R. 339. To prevent legislative and regulatory functions from being usurped by civil liability actions brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for claims of injury relating to a person's weight gain, obesity, or any health condition associated with weight gain or obesity.

H.R. 3717. To increase the penalties for violations by television and radio broadcasters of the prohibitions against transmissions of obscene, indecent, and profane material, and for other purposes.

S. 2236. A bill to enhance the reliability of the electric system.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, with accompanying papers, reports, and documents, and referred as indicated:

EC-6763. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Bacillus Thuringiensis Cry3B1: Exemption from the Requirement of a Tolerance” (FRL #7341-3) received on March 25, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-6764. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Rhamnolipid Biosurfactant; Exemption from the Requirement of a Tolerance” (FRL #7347-7) received on March 25, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-6765. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Time-Limited Exemption from Requirement of a Tolerance; Exemption from the Requirement of a Tolerance” (FRL #7350-8) received on March 25, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-6766. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Device; Pesticide Emergency Exemptions” (FRL #7349-3) received on March 25, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-6767. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Epidemic; Protection Act; Revisions to Authority Citations; Technical Amendment” (Doc. No. 00-063-3) received on March 25, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-6768. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Epidemic; Protection Act; Revisions to Authority Citations; Technical Amendment” (Doc. No. 00-063-3) received on March 25, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-6769. A communication from the Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics, on the report of a rule entitled “Epidemic; Protection Act; Revisions to Authority Citations; Technical Amendment” (Doc. No. 00-063-3) received on March 25, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-6770. A communication from the Acting Under Secretary of Defense for Acquisition, Technology, and Logistics, on the report of a rule entitled “Food Safety; Protection Act; Revisions to Authority Citations; Technical Amendment” (Doc. No. 00-063-3) received on March 25, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-6771. A communication from the Director, Defense Procurement and Acquisition Policy, transmitting, pursuant to law, the report of a rule entitled “Medicare; Payment of Defense; Transplantation Services Program” (FRL #097-3) received on March 25, 2004; to the Committee on Armed Services.

EC-6772. A communication from the Deputy Under Secretary of Defense for Management, on the report of a rule entitled “Department of Defense; Government-wide; Report to the Congress of a Functional Assessment of the Department of Defense performed by 176 civilian employees; to the Committee on Armed Services.

MEASURES REFERRED

The following joint resolution previously received from the House of Representatives on February 4, 2004, for concurrence was read the first and second times by unanimous consent and referred as indicated:

H.J. Res. 84. Joint Resolution recognizing the 93d birthday of Ronald Reagan; to the Committee on the Judiciary.
EC-673. A communication from the Assistant Secretary, Division of Corporation Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule containing the provisions of the Federal Rules of Civil Procedure and Disclosure Requirements and Acceleration of Filing Date (RIN 3235-A147) received on March 23, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC-674. A communication from the Administrator and Chief Executive Officer, Bonneville Power Administration, Department of Energy, transmitting, pursuant to law, the Administration's Annual Report for Fiscal Year 2003; to the Committee on Energy and Natural Resources.

EC-675. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, the Administration's Annual Energy Outlook 2004; to the Committee on Energy and Natural Resources.

EC-676. A communication from the Assistant General Counsel for Regulatory Law, Office of Procurement and Assistance Policy, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Financial Assistance Rules" (RIN 1045-0021) received on March 23, 2004; to the Committee on Energy and Natural Resources.

EC-677. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Illinois; Deviation of Volatile Organic Material and Volatile Organic Compound" (FRL #7635-5) received on March 25, 2004; to the Committee on Environment and Public Works.

EC-678. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Texas; Control Emission of Oxides of Nitrogen (NOx) from Cement Kilns" (FRL #7638-5) received on March 25, 2004; to the Committee on Environment and Public Works.

EC-679. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of State Implementation Plans; Illinois" (FRL #7632-7) received on March 25, 2004; to the Committee on Environment and Public Works.

EC-680. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Ohio; Approval and Revision to Oxides of Nitrogen Regulations" (FRL #7632-4) received on March 25, 2004; to the Committee on Environment and Public Works.

EC-681. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Allowance Allocations for 2006-2007 and Revisions to Set-Aside Requirements" (FRL #7634-6) received on March 25, 2004; to the Committee on Environment and Public Works.

EC-682. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Louisiana; Final Rule" (FRL #7670-9) received on March 23, 2004; to the Committee on Environment and Public Works.

EC-683. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Research, Development, and Demonstration Permits for Municipal Solid Waste Landfills" (FRL #7637-9) received on March 25, 2004; to the Committee on Environment and Public Works.

EC-684. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revisions to the California State Implementation Plan; Yolo-Solano Air Quality Management District" (FRL #7636-7) received on March 25, 2004; to the Committee on Environment and Public Works.

EC-685. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a report relative to the Administration's Fiscal Year 2004 Capital Investment and Leasing Program; to the Committee on Environment and Public Works.

EC-686. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, a report relative to the Commission's licensing and regulatory duties; to the Committee on Environment and Public Works.

EC-687. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans for the State of Florida; Air Quality Mainte- nance Plan Update" (FRL #7640-6) received on March 25, 2004; to the Committee on Environment and Public Works.

EC-688. A communication from the Director, California Bay-Delta Authority, transmitting, pursuant to law, the Authority's 2003 Annual Report; to the Committee on Environment and Public Works.

EC-689. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to Regulation 23, Section 10-Aerospace Coatings" (FRL #7639-4) received on March 25, 2004; to the Committee on Environment and Public Works.

EC-690. A communication from the Deputy Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Florida; Final Rule" (FRL #7641-2) received on March 25, 2004; to the Committee on Environment and Public Works.

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. GRASSLEY (for himself and Mr. BAUCUS):

S. 2231. A bill to reauthorize the Temporary Assistance for Needy Families (TANF) grant program through June 30, 2004, and for other purposes; considered and passed.

By Mr. CAMPBELL (by request):

S. 2232. A bill to amend the Indian Gaming Regulatory Act of 1988 to revise the fee cap on National Indian Gaming Commission funding and make certain technical amendments; to the Committee on Indian Affairs.

By Mr. VOINOVICH (for himself and Mr. CARPER):


By Mr. DASCHLE (for himself, Mr. KENNEDY, Mr. REED, Mr. FEINGOLD, Mr. KOHL, Mr. BINGAMAN, Mr. GRAHAM of Florida, Mr. REID, and Mr. DODD):

S. 2234. A bill to amend title XVIII of the Social Security Act to allow prescription drug card sponsors to pass along discounts to beneficiaries under the Medicare prescription drug discount card program and to make certain technical amendments; to the Committee on Finance.

By Mr. HOLLINGS:

S. 2235. A bill to rename the Department of Commerce as the Department of Commerce and transfer the Office of the United States Trade Representative into the Department, to consolidate and enhance trade-related authority to protect American jobs from unfair international competition, and for other purposes; to the Committee on Finance.

By Mrs. BOXER (for herself and Mr. BINGAMAN):

S. 2236. A bill to enhance the reliability of the electric system; read the first time.

By Mr. LEAHY (for himself and Mr. HATCH):

S. 2237. A bill to amend chapter 5 of title 17, United States Code, to authorize civil copyright enforcement by the Attorney General; read the first time.

By Mr. BUNNING (for himself, Mr. SHELBY, Mr. SARBANES, Mr. SCHUMER, Ms. DOLE, and Mr. HAGELI):

S. 2238. A bill to amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claims have been made; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. BOXER:

S. 2239. A bill to establish a first responder and terrorism preparedness grant information hotline, and for other purposes; to the Committee on Governmental Affairs.

S. 2240. A bill to improve seaport security; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. MIKULSKI (for herself and Mr. BROWNBACK):

S. Res. 334. A resolution expressing the sense of the Senate relating to the extraordinary contributions resulting from the Hubble Space Telescope to scientific research and education, and to the need to reconsider the future servicing of the Hubble Space Telescope; to the Committee on Commerce, Science, and Transportation.
ADDITIONAL COSPONSORS

S. 308  
At the request of Mr. Breaux, the name of the Senator from New Jersey (Mr. Lautenberg) was added as a cosponsor of S. 333, a bill to promote elder justice, and for other purposes.

S. 478  
At the request of Mr. Sarbanes, the name of the Senator from Illinois (Mr. Durbin) was added as a cosponsor of S. 478, a bill to grant a Federal charter Korean War Veterans Association, Incorporated, and for other purposes.

S. 466  
At the request of Mr. Domenci, the name of the Senator from Colorado (Mr. Campbell) was added as a cosponsor of S. 486, a bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

S. 525  
At the request of Mr. Levin, the name of the Senator from Massachusetts (Mr. Kerry) was added as a cosponsor of S. 525, a bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1988 to reauthorize and improve that Act.

S. 693  
At the request of Mr. Allard, the name of the Senator from Virginia (Mr. Allen) was added as a cosponsor of S. 683, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to make volunteer members of the Civil Air Patrol eligible for Public Safety Officer death benefits.

S. 875  
At the request of Mr. Kerry, the name of the Senator from Louisiana (Ms. Landrieu) 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. 894  
At the request of Ms. Landrieu, the name of the Senator from Mississippi (Mr. Cochran) was added as a cosponsor of S. 894, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 976  
At the request of Mr. Warner, the names of the Senator from Pennsylvania (Mr. Specter) and the Senator from Texas (Mr. Cornyn) were added as cosponsors of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 1081  
At the request of Mr. Domenci, the name of the Senator from Colorado (Mr. Campbell) was added as a cosponsor of S. 1081, a bill to amend section 504(a) of the Higher Education Act of 1965 to eliminate the 2-year wait out period for grant recipients.

S. 1085  
At the request of Mr. Bingaman, the name of the Senator from South Dakota (Mr. Johnson) was added as a cosponsor of S. 1085, a bill to provide for a Bureau of Reclamation program to assist states and local communities in evaluating and developing rural and small community water supply systems, and for other purposes.

S. 1217  
At the request of Mr. Enzi, the names of the Senator from Mississippi (Mr. Cochran) and the Senator from New Jersey (Mr. Lautenberg) were added as cosponsors of S. 1217, a bill to direct the Secretary of Health and Human Services to expand and intensify programs with respect to research and related activities concerning elder falls.

S. 1287  
At the request of Mr. Domenci, the name of the Senator from Colorado (Mr. Campbell) was added as a cosponsor of S. 1287, a bill to amend section 502(a)(5) of the Higher Education Act of 1965 regarding the definition of a Hispanic-serving institution.

S. 1344  
At the request of Mr. Corzine, the name of the Senator from New York (Mrs. Clinton) was added as a cosponsor of S. 1344, a bill to amend the Electronic Fund Transfer Act to require additional disclosures relating to exchange rates in transfers involving international transactions, and for other purposes.

S. 1549  
At the request of Mrs. Dole, the name of the Senator from Illinois (Mr. Durbin) was added as a cosponsor of S. 1549, a bill to amend the Richard B. Russell National School Lunch Act to phase out reduced price lunches and breakfasts by phasing in an increase in the income eligibility guidelines for free lunches and breakfasts.

S. 1797  
At the request of Ms. Landrieu, the name of the Senator from South Dakota (Mr. Johnson) was added as a cosponsor of S. 1694, a bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer.

S. 1795  
At the request of Mr. Leahy, the name of the Senator from New York (Mr. Schumer) was added as a cosponsor of S. 1755, a bill to amend the Richard B. Russell National School Lunch Act to provide grants to support farm-to-cafeteria projects.

S. 1792  
At the request of Mr. Domenci, the name of the Senator from Mississippi (Mr. Lott) was added as a cosponsor of S. 1792, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to the asking value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 1934  
At the request of Mr. Nickles, the name of the Senator from Illinois (Mr. Durbin) was added as a cosponsor of S. 1934, a bill to establish an Office of Intercountry Adoptions within the Department of State, and to reform United States laws governing intercountry adoptions.

S. 1946  
At the request of Mr. Graham of Florida, the name of the Senator from New Jersey (Mr. Lautenberg) was added as a cosponsor of S. 1946, a bill to establish an independent national commission to examine and evaluate the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq and Operation Iraqi Freedom.

S. 1990  
At the request of Mr. Kennedy, the name of the Senator from New Mexico (Mr. Bingaman) was added as a cosponsor of S. 1990, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 2002  
At the request of Mr. Baucus, the names of the Senator from Wyoming (Mr. Enzi), the Senator from New Mexico (Mr. Bingaman) and the Senator from Connecticut (Mr. Dodd) were added as cosponsors of S. 2002, a bill to improve and promote compliance with international intellectual property obligations relating to the Republic of Cuba, and for other purposes.

S. 2054  
At the request of Mr. Johnson, the name of the Senator from South Dakota (Mr. Daschle) was added as a cosponsor of S. 2054, a bill to require the Federal forfeiture funds be used, in part, to clean up methamphetamine laboratories.

S. 2059  
At the request of Mr. Fitzgerald, the name of the Senator from Ohio (Mr. Voinovich) was added as a cosponsor of S. 2059, a bill to improve the governance and regulation of mutual funds.
under the securities laws, and for other purposes.

S. 205

At the request of Mr. JOHNSON, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 205, a bill to restore health care coverage to retired members of the uniformed services, and for other purposes.

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 205, supra.

S. 206

At the request of Mr. BAUCUS, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 206, a bill to amend title XI of the Social Security Act to provide direct congressional access to the office of the Chief Actuary in the Centers for Medicare & Medicaid Services.

S. 207

At the request of Mr. CHAMBLISS, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 207, a bill to allow aliens who are eligible for diversity visas to be eligible beyond the fiscal year in which they applied.

S. 208

At the request of Mr. MILLER, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 208, a bill to amend title 38, United States Code, to provide entitlement to educational assistance under the Montgomery GI Bill to members of the Selected Reserve who aggregate more than 2 years of active duty service in any five year period, and for other purposes.

S. 209

At the request of Mr. MILLER, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 209, a bill to amend title 10, United States Code, to provide entitlement to educational assistance under the Montgomery GI Bill for members of the Selected Reserve who aggregate more than 2 years of active duty service; and for other purposes.

S. 210

At the request of Ms. COLLINS, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 210, a bill to amend title 10, United States Code, to increase the amounts of educational assistance for members of the Selected Reserve, and for other purposes.

S. 2158

At the request of Mr. BINGHAMAN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2158, a bill to amend the Public Health Service Act to increase the supply of pancreas islet cells for research, and to provide for better coordination of Federal efforts and information on islet cell transplantation.

S. 2183

At the request of Mr. BINGHAMAN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2183, a bill to amend the Child Nutrition Act of 1966 to create team nutrition networks to promote the nutritional health of school children.

S. 2186

At the request of Mr. HARKIN, his name was added as a cosponsor of S. 2186, a bill to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958, through May 15, 2004, and for other purposes.

At the request of Mr. EDWARDS, his name was added as a cosponsor of S. 2186, supra.

At the request of Mr. KERRY, the name of the Senator from Illinois (Mr. BAYH) was added as a cosponsor of S. 2186, supra.

S. 2189

At the request of Mr. EDWARDS, his name was added as a cosponsor of S. 2193, a bill to improve small business loans programs, and for other purposes.

At the request of Ms. SNOWE, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 2193, supra.

At the request of Mr. BAYH, his name was added as a cosponsor of S. 2193, supra.

S. J. RES. 28

At the request of Mr. CAMPBELL, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. J. Res. 28, a joint resolution recognizing the 60th anniversary of the Allied landing at Normandy during World War II.

S. CON. RES. 90

At the request of Mr. LEVIN, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. RES. 313

At the request of Mr. FEINGOLD, the names of the Senator from Minnesota (Mr. DAYTON), the Senator from Connecticut (Mr. DODD) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. Res. 313, a resolution expressing the sense of the Senate encouraging the active engagement of Americans in world affairs and urging the Secretary of State to coordinate with implementing partners in creating an online database of international exchange programs and related opportunities.

AMENDMENT NO. 2690

At the request of Mrs. FEINSTEIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of amendment No. 2690 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 2696

At the request of Mrs. FEINSTEIN, the names of the Senator from Maine (Ms. COLLINS), the Senator from Maine (Ms. SNOWE) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of amendment No. 2696 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 2688

At the request of Mrs. FEINSTEIN, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from New Mexico (Mr. BINGAMAN), the Senator from California (Ms. Boxer), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of amendment No. 2688 proposed to H.R. 1997, a bill to amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes.

AMENDMENT NO. 2689

At the request of Mrs. MURRAY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of amendment No. 2689 proposed to H.R. 1997, a bill to amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CAMPBELL (by request): S. 2222. A bill to amend the Indian Gaming Regulatory Act of 1988 to revise the fee cap on National Indian Gaming Commission funding and make certain technical amendments; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, at the request of the administration, today I am introducing the Indian Gaming Regulatory Act Amendments of 2004 to amend and update the act. This amendment is proposed by the administration to update the Indian Gaming Regulatory Act by: clarifying how vacancies in the National Indian Gaming Commission (NIGC) are filled; expanding the NIGC's regulatory responsibilities; revising the NIGC's statutory rates of pay to correspond with other current Federal rates of pay; and expanding the NIGC's reporting requirements to Congress.

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. 2222

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 'Indian Gaming Regulatory Act Amendments of 2004'.

SEC. 2. DEFINITIONS.

Section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703) is amended—

[(1) by redesignating paragraphs (3), (4), (5), (6), (7), (8), and (10), as paragraphs (6), (7), (8), (3), (4), (5), and (11), respectively; and]
Section 7 of the Indian Gaming Regulatory Act (25 U.S.C. 2706) is amended—

(1) in subsection (a)(5), by striking “permanent” and inserting “permanent final”; and

(2) in subsection (b)—

(A) in paragraphs (1), (2), and (4), by inserting “and class III gaming” after “class II gaming”;

(B) in paragraph (9), by striking “and” at the end;

(C) in paragraph (10), by striking the period at the end and inserting a semicolon;

(D) by adding at the end the following:

“(11) may, in case of contumacy by, or refusal to obey any subpoena issued to, any person, request the Attorney General to invoke the jurisdiction of any court of the United States, within the geographical jurisdiction of which a person to whom the subpoena was directed is an inhabitant, is domiciled, is organized, has appointed an agent for service of process, transacts business, or is found, to compel compliance with the subpoena to require the attendance and testimony of witnesses and the production of records; and

(12) subject to subsection (c), may accept gifts on behalf of the Commission;”;

and

(3) by striking subsection (c) and inserting the following:

“(c) Gifts.—

(1) IN GENERAL.—The Commission shall not accept a gift:

(A) that attaches a condition that is inconsistent with any applicable law (including a regulation or an order);

(B) that is conditioned on, or will require, the expenditure of appropriated funds that are not available to the Commission.

(2) REGULATIONS.—The Commission shall promulgate regulations specifying the criteria to be used to determine whether the acceptance of a gift would—

(A) advance the ability of the Commission or any employee of the Commission to carry out the duties of the Commission in a fair and objective manner; or

(B) compromise the integrity or the appearance of the integrity of any official involved in a program of the Commission.

(3) CONTENTS.—The regulatory plan shall include—

(A) a comprehensive mission statement describing the major functions and operations of the Commission;

(B) a description of the goals and objectives of the Commission;

(C) a description of the general means by which those goals and objectives are to be achieved, including a description of the operational processes, skills, and technology and the human resources, capital, information, and other resources required to achieve those goals and objectives;

(D) a performance plan for achievement of those goals and objectives, including provision for a report on the actual performance of the Commission as measured against the goals and objectives;

(E) an identification of the key factors that are external to, or beyond the control of, the Commission that could significantly affect the achievement of those goals and objectives; and

(F) a description of the program evaluations used to monitor or revise those goals and objectives, including a schedule for future program evaluations.

“(4) DURATION.—The regulatory plan shall cover a period of not less than 5 fiscal years, beginning with the fiscal year in which the plan is developed.

(5) REVIEW.—The regulatory plan shall be revised biennially.”.

Section 8 of the Indian Gaming Regulatory Act (25 U.S.C. 2707) is amended—

(1) in subsection (a), by striking “basic pay payable for GS–18 of the General Schedule under section 5312 of title 5, United States Code, as adjusted under section 5318 of that title”; and

(2) in the second sentence of subsection (b), by striking “basic pay payable for GS–17 of the General Schedule under section 5312 of that title” and inserting “pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, as adjusted under section 5318 of that title”.

Section 5 of the Indian Gaming Regulatory Act (25 U.S.C. 2704) is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A), by striking “(A)”;

and

(B) by striking subparagraph (B); and

(2) by striking subsection (c) and inserting the following:

“c) DELEGATION.—The Chairman may delegate to any member of the Commission, on such terms and conditions as the Chairman may determine, any power of the Chairman under subsection (a).

(d) MANNER OF EXERCISE.—Authority under subsection (a) shall be exercised in a manner that is consistent with—

(1) the due process of law;

(2) this Act; and

(3) the regulations, findings, and determinations made by the Commission in accordance with applicable law.”.

Section 12(a)(1) of the Indian Gaming Regulatory Act (25 U.S.C. 2711(a)(1)) is amended by inserting “or a class III gaming activity that the Indian tribe may engage in under section 11(d)” after “section 11(b)(1)”.

Section 14 of the Indian Gaming Regulatory Act (25 U.S.C. 2713) is amended—

(1) by striking the heading and all that follows through “primary operator or management contractor” in subsection (a)(3) and inserting the following:

“CIVIL PENALTIES.

(1) LEVY AND COLLECTION.—Subject to such regulations as the Commission may promulgate, the Chairman shall have authority to—

(A) levy and collect appropriate civil fines, not to exceed $25,000 per violation, per day;

(B) issue orders requiring accounting and disgorgement, including interest; and

(C) issue orders of reimbursement, censure, or suspension, or the placement of limitations on gaming activities and functions of any regulated person or entity for any violation of any provision of this Act, Commission regulations, or tribal regulations, ordinances, or resolutions approved under section 11 or 13.

(2) APPEAL.—The Commission shall by regulation provide for an appeal and hearing before the Commission of an action taken under paragraph (1).

(3) COMPLAINT.—If the Commission has reason to believe that a regulated person or entity is engaged in activities regulated by this Act (including regulations promulgated...
under this Act), or by tribal regulations, ordinances, or resolutions approved under section 11 or 13, that may result in the imposition of a fine under subsection (a)(1), the permanent closing of a gaming facility, or the modification or termination of a management contract, the Commission shall provide the regulated person or entity:

(2) in subsection (b), by striking "game" and inserting "gaming, operation, or any part of a gaming operation," and

(3) in subsection (c), by striking "permanent" and inserting "final." 

(ii) in the second sentence, by striking "order of closure" and inserting "order commanding any person to comply with the subpoena; or"

(3) in subsection (c), by striking "permanent closure" and inserting "closure, accounting, disgorgement, reprimand, or censure or placement of a limitation on a gaming activity or function.

SEC. 10. SUBPOENA AND DEPOSITION AUTHORITY.
Section 16 of the Indian Gaming Regulatory Act (25 U.S.C. 2715) is amended by striking subparagraph (B) and inserting the following:

"(B) in the first sentence, by striking "permanent" and inserting "final;" and

(ii) in the second sentence, by striking "order of closure" and inserting "order commanding any person to comply with the subpoena; or"

(3) in subsection (c), by striking "permanent closure" and inserting "closure, accounting, disgorgement, reprimand, or censure or placement of a limitation on a gaming activity or function.

In case of a failure to obey a subpoena, or deposition, the court shall have jurisdiction to issue a writ of mandamus, injunction, or contempt of the United States or as otherwise authorized by law.

(2) REMEDIES.
(A) In general.—In case of a failure to obey a subpoena issued by the Commission or the Secretary during an investigation by request of the Commission or Chairman, the Attorney General may apply to the United States District Court for the District of Columbia or any United States district court within the geographical jurisdiction of which a person to whom the subpoena was directed is an inhabitant, or domiciled, or organized, has appointed an agent for service of process, transacts business or is found, to compel compliance with the subpoena.

(B) Failure to Obey Subpoena.—
"(1) In general.—In case of a failure to obey a subpoena issued by the Commission or the Secretary during an investigation by request of the Commission or Chairman, the Attorney General may apply to the United States District Court for the District of Columbia or any United States district court within the geographical jurisdiction of which a person to whom the subpoena was directed is an inhabitant, is domiciled, is organized, has appointed an agent for service of process, transacts business or is found, to compel compliance with the subpoena.

(2) Remedies.—On application under paragraph (1), the court shall have jurisdiction to—

"(A) issue a writ commanding the person to obey the subpoena; or

"(B) in contempt of court.

(3) Process.—Process to a person in any proceeding under this subsection may be served wherever the person may be found in the United States or as otherwise authorized by law or by rule or order of the court.

SEC. 11. COMMISSION FUNDING.
Section 18(a)(2) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(a)(2)) is amended by striking subparagraph (B) and inserting the following:

"(B) Limitation.—The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed 0.080 percent of the gaming revenues of all gaming operations subject to regulation by the Commission.

SEC. 12. PRESERVATION OF EXISTING STATUS.
Nothing in this Act or any amendment made by this Act, shall alter, amend, limit, or otherwise affect any immunity that an Indian tribe may have under applicable law.

By Mr. VOINOVICH (for himself and Mr. CARPER):

S. 2233. A bill to amend the Environmental Research, Development, and Demonstration Authorization Act of 1979 to establish in the Environmental Protection Agency the position of Deputy Administrator for Science and Technology; and to the Committee on Environmental and Public Works.

Mr. President, I rise today to introduce legislation with my friend and colleague, Senator CARPER, which will strengthen the use of science at the Environmental Protection Agency. By improving science at the Agency, we will be improving the framework of our regulatory decisions. It is important that these regulations be effective, not onerous and inefficient. To make government regulations efficient, they must be based on a solid foundation of scientific understanding and data.

In 2000, the Nation Research Council released a report, "Strengthening Science at the U.S. Environmental Protection Agency: Research Management and Peer Review Practices", which examined the current status of science at the EPA and made recommendations for improving science within the agency. The bill we are introducing today, the "Environmental Research Enhancement Act," builds on the NRC report.

The legislation we are introducing today, which was created in 1970 by President Nixon, its mission was set to protect human health and safeguard the environment. In the 1960s, it had become increasingly clear that "we needed to know more about the total environment—land, water, and air." The EPA was part of President Nixon's re-organizational efforts to effectively ensure the protection, development and enhancement of the total environment.

For the EPA to reach this mission, establishing rules and priorities for clean land, air and water require a fundamental understanding of the science behind the real and potential threats to public health and the environment. Unfortunately, many institutions, citizens and groups believe that science has not always played a significant role in the decision-making process at the EPA.

In NRC's 2002 report, it was concluded that, while the use of sound science is one of the Environmental Protection Agency's goals, the EPA needs to change its current structure to allow science to play a more significant role in decisions made by the Administrator.

The legislation we are introducing today looks to address those shortcomings at the EPA by implementing portions of the report that require congressional authorization.

Under our bill, a new position, Deputy Administrator for Science and Technology will be established at the EPA. This individual will oversee the Office of Research and Development; the Environmental Information Agency; the Science Advisory Board; the Science Policy Council; and the scientific and technical activities in the regulatory program at the EPA. This new position is equal in rank to the current Deputy Administrator and would report directly to the Administrator. The new Deputy would be responsible for coordinating scientific research and application between the scientific and regulatory arms of the Agency. This will ensure that sound science is the basis for regulatory decisions. The new Deputy's focus on science could also change how environmental decisions are made.

Assistant Administrator for Research and Development, currently the top science job at the EPA, will be appointed for 6 years versus the current 4 years political appointment. Historically, this position is recognized to be one of the EPA's weakest and most transient administrator positions according to NRC's report, even though in my view, the position addresses some of the Agency's more important topics. By lengthening the term of this position, we can ensure that the science job at the EPA is protected from non-science driven personnel being appointed, who may not have the background or experience to fully understand the science job.

Failing the Agency's ozone and particulate matter regulations there was great uncertainty on the scientific side. When initially releasing the Ozone/Particulate Act, the EPA greatly over estimated the health impacts of both ozone and PM, and they had to publically change their figures later on. Additionally, they selectively applied some study results while ignoring others in their calculations. For example, the majority of the health benefits for ozone are based on one PM study by a Dr. Moorakker, even though the Agency ignored the impacts of that study because it contradicted their position on PM.

The legislation that Senator CARPER and I are introducing will ensure that science no longer takes a "back seat" at the Environmental Protection Agency in terms of policy making. I call on my colleagues to join us in cosponsoring this bill.

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. 2233
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 "Environmental Research Enhancement Act." 

SEC. 2. ENVIRONMENTAL PROTECTION AGENCY RESEARCH ACTIVITIES.
(a) In general.—Section 309 of the Environmental Research, Development, and Demonstration Authorization Act of 1979 (42 U.S.C. 4835) and the following:

"(e) Deputy Administrator for Science and Technology.—"
Congressional Record — Senate

March 25, 2004

Outside.

The Deputy Administrator for Policy and Management of the Environmental Protection Agency is redesignated as the position of “Deputy Administrator for Policy and Management of the Environmental Protection Agency”.

Paragraph (1) applies to the Office of Research and Development, and the private sector in the United States and in foreign countries; (iii) ensure that the complex scientific questions and communication needs of the Agency are met, including the needs—(I) to reach throughout the Agency for credible science and support of regulatory office, regional office, and Agency-wide policy deliberations; and (II) to reach out to the broader United States and international scientific community for scientific knowledge that is relevant to Agency policy or regulatory issues; (iv) coordinate and oversee scientific quality-assurance and peer-review activities throughout the Agency, including activities in support of the regulatory and regional offices; (v) develop processes to ensure that appropriate scientific information is used in decisionmaking at all levels in the Agency; and (vi) ensure, and certify to the Administrator of the Agency, that the scientific and technical information used in each Agency regulatory decision and policy is—(I) valid; (II) appropriately characterized in terms of scientific uncertainty and cross-media issues; and (III) appropriately applied.

The Deputy Administrator for Science and Technology to expand the scientific inventory of the Agency by conducting, documenting, and publishing a more comprehensive and detailed inventory of all scientific activities conducted by Agency units outside the Office, which inventory should include information such as—(I) project goals, milestones, and schedules; (II) principal investigators and project managers; and (iii) sources of staff and financial resources; and

(i) the Office of Research and Development of the Agency; and

(iii) the National Academy of Sciences; (ii) the National Academy of Engineering; and


(A) In General.—The Deputy Administrator for Science and Technology shall coordinate and oversee—(i) the Office of Research and Development of the Agency (referred to in this section as the ‘Office’); (ii) the Research, Development, and Demonstration programs of the Office, including programs sponsored by other Federal and State agencies, universities, and industry, both in the United States and in foreign countries; (iii) the Office of Research and Development of the Agency; and

The Deputy Administrator for Research and Development of the Agency shall—(I) to disseminate actively the research products and projects; and (ii) develop and oversee an Agency-wide strategy for encouraging, and acquiring and applying the results of, research conducted by the Office for the Agency.

The Deputy Administrator for Science and Technology shall—(I) to reach out to the broader United States and international scientific community for scientific knowledge that is relevant to Agency policy or regulatory issues; (ii) develop and oversee a strategy for encouraging, and acquiring and applying the results of, research conducted by the Office for the Agency.

The Deputy Administrator for Policy and Management of the Environmental Protection Agency.

The Deputy Administrator for Science and Technology of the Environmental Protection Agency, and the strategic goals and budget priorities of the Agency; and

(ii) the National Academy of Engineering; and


(A) In General.—The Deputy Administrator for Science and Technology shall coordinate and oversee—(i) the Office of Research and Development of the Agency; and

(iii) the Science Advisory Board Advisory Board.

(A) In General.—The Deputy Administrator for Science and Technology shall coordinate and oversee—(i) the Office of Research and Development of the Agency; and


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big pharmaceutical companies, phar-
maceutical benefit managers, and
HMOS. And the list of approved compa-
nies is a who's who of the insurance in-
dustry.

One of the most glaring problems with
the program is that the Medicare legis-
lation fails to ensure that these private
companies pass along the dis-
counts they negotiate to beneficiaries.
Today, I am introducing legislation to
remedy that failure. My bill would re-
quire, true to form, the Republican Medi-
care bill allows the private companies to
keep the discounts as profits. And
the administration's regulations only
require that they pass along a "share" of
the discounts they negotiate. Well, I
think that's giving them too much lee-
way.

The administration is promising sen-
iors discounts in order to convince them
that the companies a $30 fee. My bill would ensure that these private companies pass the discounts along to those seniors. It's only fair.

The sponsors will have plenty of
room for benefitting from participating in the program. If they get the $30 fee and they will be able to
retain up to 10 percent of the negoti-
tated price concessions.

Despite all the hoopla, the cards themselves are nothing new. Some low-
income beneficiaries will see $600 in as-
sistance on their cards, and that is real
help. Unfortunately, the process for
gaining access to that money is so cumbersome, I worry that many will
not get it. And I have serious doubts about whether the cards will add any other meaningful assistance. The Gen-
eral Accounting Office has found that
similar cards now available on the
market offer discounts on average of
less than 10 percent—that's about what
seniors could save by comparison shop-
ping at local pharmacies.

Worse, under the Medicare drug pro-
gram, seniors will only be able to use
one Medicare-endorsed card. Before
the program, people could use as many
cards as they wanted and compare dis-
counts. And the real kicker is that
once seniors pay a fee to participate, they're locked into that card for a
year. But the card sponsor isn't locked
into anything. It can change every-
thing whenever it wants—even the
amount of the discount or whether a
discount is offered on a particular
drug.

And here's the worst part, this drug
card program may already be harming
every American drug consumers. As the
Wall Street Journal noted just yester-
day, recent drug price increases are er-
ing even the meager savings the administra tion predicts. What's more, all Americans are already paying higher
drug prices due to a failed law in the
Wall Street Journal, since the Bush admin-
istration proposed a Medicare drug
plan in 2001, the prices of many drugs
the elderly use have "surged." For ex-
ample, the article notes that since that
time, the price of Lescol, a cholesterol
drug, has increased by more than a
third. Similarly, the price for Celebrex, a popular drug for arthritis pain, has risen 23 percent since the administra-
tion proposed the card.

The administration is claiming the
discount cards will result in bene-
ficiary savings of between 10 and 25
percent. But the pharmaceutical indus-
try's price hikes negate what little sav-
ings the administration optimistically
expected. Unfortunately, the discount
cards are just one example of the new
law's failure to address drug prices. The Boston University School of Public Health recently found that the new
Medicare law could lead to an addi-
tional $139 billion in profits for the
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tion provisions are meaningless.

The Administration, and Moderniza-
tion Act of 2003 (Public Law 108-
173; 117 Stat. 2066). The amendment
was ordered to be printed in the
Record, as follows:

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

SECTION 1. SHORT TITLE.
This Act may be cited as the “Domestic Workforce Protection Act”.

SEC. 2. COMMERCE DEPARTMENT RENAMED AS
DEPARTMENT OF TRADE AND COM-
MERCE.

(a) IN GENERAL.—The Department of Com-
merce is hereby redesignated the Depart-
ment of Trade and Commerce, and the Sec-
dretary of Commerce or any other official of
the Department of Commerce hereby re-
designated the Secretary or official, as ap-
propriate, of Trade and Commerce.

(b) REFERENCE TO DEPARTMENT, SEC-
RETARY, ETC. OF COMMERCE DEEMED REF-
ERENCE TO DEPARTMENT, SECRETARY, ETC.
OF TRADE AND COMMERCE.—Any reference
in the codified laws relating to the Secretary
of Commerce, or any other official of the
Department of Commerce in any law, rule, reg-
ulation, certificate, directive, instruction, or
other official paper in force on the effective
date of this Act shall be deemed to refer and
apply to the Department of Trade and Com-
merce or the Secretary of Trade and Com-
merce, respectively.

SEC. 3. TRANSFER OF THE OFFICE OF THE
UNITED STATES TRADE REPRESENT-
ATIVE TO WITHIN THE DEPARTMENT
OF COMMERCE.

Section 141(a) of the Trade Act of 1974 (19
U.S.C. 2171(a)) is amended by striking “Exec-
utive Office of the President” and inserting “Department of Trade and Commerce’.

SEC. 4. TERMINATION OF DEFERRAL TO ELIM-
INATE TAX BENEFITS FOR OFFSHORE
PRODUCTION.

(a) GENERAL RULE.—Paragraph (1) of sec-
tion 953(a) of the Internal Revenue Code of
1986 (relating to amounts included in gross
income of United States shareholders) is
amended—

(1) by striking “and” after the semifinal in
paragraph (A)(i); and

(2) by striking “959(a)(2);” in subpara-
graph (B) and inserting “959(a)(2);” and

(3) by adding at the end thereof the fol-
lowing paragraph;

“(C) the amount determined under section
956a with respect to such shareholder for
such year (but only to the extent not ex-
cused from gross income under section
956a(3)).”

(b) AMOUNT OF INCLUSION.—Subpart F of
part III of chapter N of chapter 1 of the
title of the Internal Revenue Code is amended
by inserting after section 956a the follow-
ing section:

“SEC. 956A. EARNINGS OF CONTROLLED
FOREIGN CORPORATION.

(a) GENERAL RULE.—In the case of any
controlled foreign corporation, the amount

By Mr. HOLLINGS:
S. 2235. A bill to rename the Depart-
ment of Commerce as the Department of Trade and Commerce and transfer the Office of the United States Trade Representative into the Department, to consolidate and enforce statutory
authorities to protect American jobs from unfair international competition, and for other purposes; to the
Committee on Finance.

Mr. HOLLINGS. Mr. President, I ask
unanimous consent that a copy of an
article I wrote for the Washington Post
Outlook section be printed and that
the text of the bill be printed in the
Record.

There being no objection, the mate-
rial was ordered to be printed in the
Record, as follows:

S. 2235

Be it enacted by the Senate and House of Repre-
sentatives of the United States of America in
Congress assembled,
determined under this section with respect to any United States shareholder for any taxable year the lesser of—

(1) the excess (if any) of—

(A) the shareholder's pro rata share of the amount of the controlled foreign corporation's assets for such taxable year, over

(B) the amount of earnings and profits described in paragraph (3) of section 951(a)(1), with respect to such shareholder;

(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation determined after the application of section 951(a)(1),

(b) APPLICABLE EARNINGS.—For purposes of this section, the term ‘applicable earnings' means earnings described in paragraph (3) of section 951(a)(1), determined without regard to this section; and

(2) the amount of earnings and profits described in paragraph (3) of section 951(a)(1), determined without regard to this section;

(3) such amounts would, but for this subsection, be included in applicable gross income of the United States companies for such taxable years.

(c) SPECIAL RULE WHERE CORPORATION CEASES TO BE CONTROLLED FOREIGN CORPORATION.—If the foreign corporation ceases to be a controlled foreign corporation during any taxable year—

(1) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)), by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

(2) the amount of such corporation's assets at the end of such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

(3) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 318(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to each such taxable year during which the corporation is a controlled foreign corporation.

(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisions of this section through transactions or otherwise.

(1) PREVIOUSLY TAXED INCOME RULES.—

(i) In General.—Subsection (a) of section 959 of the Internal Revenue Code of 1986 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by striking "or" at the end of paragraph (1), by adding "or" at the end of paragraph (2), and by inserting after paragraph (2) the following:

"(3) such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of the United States for such taxable years.

(ii) Allocation Rules.—

(A) Subsection (a) of section 959 of the Internal Revenue Code of 1986 is amended by striking "or" at the end of paragraph (1), by adding "or" at the end of paragraph (2), and by inserting after paragraph (2) the following:

"1. In General.—Subsection (a) of section 959 of the Internal Revenue Code of 1986 is amended by inserting "or" at the end of paragraph (1), by adding "or" at the end of paragraph (2), and by inserting after paragraph (2) the following:

"1. In General.—For purposes of this section—

(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

(B) amounts that would be included under subparagraph (b) of section 959(f)(2) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent that such earnings were not accumulated in taxable years beginning after February 29, 2004, and then to earnings described in subsection (c)(3), and

(ii) by striking "section 951(a)(1)(B)" in paragraph (2) and inserting "subparagraph (B) or (C) of section 951(a)(1)".

(2) Conforming Amendment.—Subsection (b) of section 951(a)(1) of the Internal Revenue Code of 1986 is amended by striking "section 951(a)(1)(B)" and inserting "subparagraph (B) or (C) of section 951(a)(1)". Amendments made by this section shall apply to taxable years of foreign corporations beginning after February 29, 2004, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

(e) TECHNICAL AND CONFORMING CHANGES.—The Secretary of the Treasury shall, within 90 days after the date of enactment of this Act, submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate, a draft of any technical and conforming changes in the Internal Revenue Code of 1986 that are necessary to reflect throughout such Code the changes in the substantive provisions of law made by this section.

SEC. 5. DISALLOWANCE OF DEDUCTIONS FOR CERTAIN OFFSHORE ROYALTY PAYMENTS.

(a) In General.—Part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"SEC. 2801. CERTAIN OFFSHORE ROYALTY PAYMENTS. (a) In General.—In the case of a corporation, no deduction shall be allowed for the payment of a royalty to an affiliated entity organized and operated outside the United States in exchange for the use of rights to a copyrighted or trademarked product if those rights were transferred by the corporation or a related party to the entity.

(b) Exception.—Subsection (a) does not apply to the payment of a royalty if the taxpayer establishes, to the satisfaction of the Secretary, that—

(i) the transfer of the rights to the entity was for a sound business reason (other than the reduction of liability for tax under this chapter); and

(ii) the amounts paid or incurred for such royalty payments are reasonable under the circumstances.

(c) CLERICAL AMENDMENT.—The part analysis for such part is amended by adding at the end the following:

"2801. Certain offshore royalty payments."

(d) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 2003.

SEC. 6. INCREASE IN AUTHORITY OF THE INTERNAL REVENUE SERVICE TO TRITURF USE OF TAX HAVENS BY CORPORATIONS.

(a) In General.—Subchapter B of chapter 78 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"SEC. 7625. AUTHORITY TO FURTHER USE OF FOREIGN CORPORATE TAX HAVENS. (a) In General.—The Secretary is authorized—

(1) to deny any otherwise allowable deduction or credit under this chapter;

(2) to recharacterize, reallocate, and re-source income,
Free trade is like world peace—you can’t get there by whining about it. You must be willing to fight for it. And the entity to fight for free trade is the U.S. Congress. Indeed, Congress—whose members are shouting “fair trade” and “level the playing field”—is the one group sitting in the playing field when it comes to trade.

By piling items onto the cost of doing business here, Congress has helped end the positive trade balance that the United States ran right up until the early 1980s. Over the past 40 years, the minimum wage went up, the Environmental Protection Agency was established, and the Occupational Safety and Health Administration was set up. Lawmakers added the Equal Pay Act, the Age Discrimination in Employment Act, and the Employment Retirement Income Security Act. Then came the sharp increase in payroll taxes for Social Security in 1983, measures requiring parental leave, and the Americans With Disabilities Act. Health costs increased, too, making it $500 a car cheaper in health costs alone for General Motors to make Pontiacs in Canada. All this helped give us a trade deficit that hit a record $431 billion in January alone. Even if wages were equalized, it would still pay manufacturers in other nations to operate in places such as China, which requires none of these aspects of America’s high standard of living. Recently, columnist George Will wrote: “The American worker is not superhuman. He is not hired for tasks where America has a comparative advantage.” But in global competition, what matters is not the comparative advantage of our ability so much as the comparative disadvantage of our living standard.

To really level the playing field in trade would require lowering our living standard, which is not going to happen. We value our clean air and water, our safe factories and machinery, and our rights and benefits. Both the government and workers have to support this living standard and many are prepared to raise it. The only course possible, then, is to protect the standard. To talk in these terms raises cries of “protectionism.” But the business of government is protection. The oath of the public servant is “to preserve, protect and defend.” We have the Army to protect us from enemies without and the FBI to protect us from enemies within. We have Medicare and Medicaid to protect us from ill health, and Social Security to protect us from poverty in old age. We have the Securities and Exchange Commission to protect us from stock fraud; banking laws to protect us from usurers; truth in lending laws to protect us from charlatans.

When it comes to trade, however, multinational corporations contend that we do not need to protect, but to educate and to improve skills; productivity is the problem, they say. But the United States is the most productive nation in the world, with skills galore. BMW is producing better-quality cars in South Carolina than in Munich. There are other obstacles that need addressing. We tried to penetrate the Japanese market, but have barely done so. To sell textiles in Korea, U.S. firms must first obtain permission from the private Korean textile industry. If you want to sell in China, it’s a lot easier if you produce in China.

“But we will start a trade war,” is the cry. Wake up! We have been in a trade war for more than 200 years. And it’s the United States that started it! Just after the colonies won their freedom, the mother country suggested that the new nations, we produced best and, in exchange, Britain would trade back with what it produced best—as economist David Ricardo later described in this theory of trade.”

Al exander Hamilton, in his famous “Report on Manufactures,” told the Brits, in so many words, to bug off. He said, we are not going to remain your colony shipping you our natural resources—rice, cotton, indigo, timber, iron or—and importing your manufactured goods. We are going to build our own manufacturing capacity.

The second bill ever adopted by Congress, on July 4, 1789, was a 50 percent tariff on numerous articles. This policy of protecting the American industry was endorsed by Madison and Thomas Jefferson, continued under President Lincoln when he launched America’s steel industry by refusing to import from England the steel for the American Central Railroad. President Franklin Roosevelt protected agriculture, President Eisenhower protected oil and President Kennedy protected textiles. This industrial giant, the United States, was built on protectionism and, for more than a century, financed it with tariffs. And it worked.

The Washington mantra of “retrain, retrain, retrain” comes up short. Far Telecommunications Industries closed its T-shirt plant in Andrews, SC, back in 1999. The plant had 487 employees averaging 47 years of age. Let’s pretend we were “retrained.” We were 487 skilled computer operators. Who is going to hire a 47-year-old operator over a 21-year-old operator? No one is going to hire the computer operator of the 47-year-old. Moreover, that computer job probably just left for Bangalore, India.

In global competition there is a clash between standards of living. I supported free trade with Canada because we have relatively the same standard of living. But I opposed free trade with Mexico, and therefore opposed the North American Free Trade Agreement (NAFTA), preferring to raise the standards in Mexico, as Europe did with Portugal, Spain and Greece before admitting them to Europe’s common market. To be eligible for a free trade agreement you should first have a free market, labor rights, ownership of property, contract rights of appeal and a respected judiciary. Mexico lacks these, and after NAFTA there was an immediate flow of jobs out of the United States because of Mexico’s lower standards. Australia, on the other hand, has labor laws that are similar to ours, and has an open market, so the trade agreement reached with Australia this month should be approved.

We must engage in competitive trade. To eliminate a barrier, raise a barrier. Then eliminate this.

Our trouble is that we have treated trade as aid. After World War II, we were the only country with industry, and in order to prosper we needed to spread prosperity. Through the Marshall Plan, we sent money, equipment and expertise to Europe and the Pacific Rim. And it worked. Capitalism defeated communism in the Cold War. Our hope in creating a “free trade” world was that markets would remain open for our exports. But our cries went unheeded, and now our Nation’s security is in jeopardy.

National security is like a three-legged stool. The first leg—values—is solid. Our stand for freedom and democracy is respected around the world. The second leg of military strength is unquestioned. But the third leg—economic stability—needs repair. We are losing jobs faster than we can create them. Some time ago the late Akio Morita, founder of Sony Corp., was lecturing to a group of students from developing nations, admonishing them to develop their manufacturing capacity to become nation states. Then, pointing at me in the audience, he said, “And if you do not have a manufacturing capacity it will cease to be a world power.”

SEC. 10. SENSE OF THE SENATE CONCERNING APROPRIATIONS FOR CERTAIN PROGRAMS.

It is the sense of the Senate that the Congress should appropriate the full amount authorized by law to carry out the Regional Centers for the Transfer of Manufacturing Technology program under section 25 of the National Center for Manufacturing Sciences Act (15 U.S. C. 278k) and the Advanced Technology Program authorized by section 28 of that Act (15 U.S. C. 278n).

SEC. 11. TRANSFER OF INTERNATIONAL TRADE REGULATIONS AND OTHER FUNCTIONS.

(a) ABOLISHMENT OF ITC.—Effective on the first day of the seventh month beginning after the date of enactment of this Act, the United States International Trade Commission established by section 330 of the Tariff Act of 1930 (19 U.S.C. 1330) as in effect on the last day of the sixth month beginning after the date of enactment of this Act is abolished.

(b) TRANSFER OF FUNCTIONS.—Except as otherwise provided in this Act, all functions that are transferred by this Act are transferred to the Department of Commerce effective on the first day of the seventh month beginning after the date of enactment of this Act and shall be performed by the Director of the International Trade Administration within the Department of Commerce.

(c) DETERMINATION OF CERTAIN FUNCTIONS.—If necessary, the Office of Management and Budget may make any determination of the functions that are transferred under this section.

SEC. 12. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary of Commerce, shall make such determinations as may be necessary with regard to the functions, offices, or portions thereof transferred by this Act, and make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, programs, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, offices, or portions thereof, as may be necessary to carry out this Act. The Director shall provide for the termination of the affairs of all entities terminated by this Act and, in consultation with the Administrator, for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

[From the Washington Post, March 21, 2004]
What should we do? First, we need to stop financing the elimination of jobs. Tax benefits for offshore production must end. Royalty deductions allowed for offshore activities must be eliminated, and tax havens for corporations must be closed down.

Next, we need an assistant attorney general to enforce our trade laws and agreements. Negotiations for WTO agreements have left us an injured party. It can take years to jump over legal hurdles. Then at the end, based on national security, the president can refuse to join. We need immediate action. Rather than waste time and money, corporate America has moved offshore.

We need an aggressive government to produce and protect jobs, rather than export them. The Commerce Department recently co-sponsored a New York seminar, part of which advised companies on how to move jobs offshore. This aid for exporting jobs must stop. The Department of Commerce should be reconstituted as a Department of Trade and Commerce, with the secretary as czar over the U.S. trade representative. The department’s International Trade Administration should determine not only whether goods were made on the U.S. market, but how big the “injury” is to U.S. industry. The International Trade Commission should be eliminated.

We need an illegal to sell foreign-made goods below cost in the U.S. market (a practice called dumping), we refuse to enforce such violations. The Treasury Department reports: 30% of illegal transshipments of textiles into the United States each year. Customs agents charged with drug enforcement and homeland security are hard-pressed to stop these transshipments. We need at least 1,000 additional Customs agents.

It won’t be easy. A culture of free trade has developed. The big banks that make most of their money outside the country, as well as the Business Roundtable, the Conference Board, the National Association of Manufacturers, the U.S. Chamber of Commerce, the National Retail Federation (whose members make bigger profits on imported articles) and the editorial writers of newspapers that an Internet connection are all the tools of these transshipments. All these descend on Washington promoting “free trade” to members of Congress. Members looking for contributions shout the loudest.

Not just jobs, but also the middle class and the strength of our democracy are in jeopardy. Mr. President, tell the people of this country that the quiet past, are inadequate to the stormy present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . As our case is new, so we must present. . . . 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(ii) by striking "him or her" and inserting "the copyright owner"; and
(B) in the second sentence by inserting ", or the Attorney General in a civil action," after "the copyright owner"; and
(2) in subsection (c)—
(A) in paragraph (1), by inserting ", or the Attorney General in a civil action," after "the enforcement of the copyright laws by—"
(B) in paragraph (2), by inserting ", or the Attorney General in a civil action," after "the enforcement of the copyright laws by—"
(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by inserting after the item relating to section 506 the following:

"506a. Civil penalties for violation of section 506.

SEC. 3. AUTHORIZATION OF FUNDING FOR TRAINING AND PILOT PROGRAM.

(a) TRAINING AND PILOT PROGRAM.—Not later than 180 days after enactment of this Act, the Attorney General shall develop a program to ensure effective implementation and use of the authority for civil enforcement of the copyright laws by—

(1) establishing training programs, including practical training and written materials, for qualified personnel from the Department of Justice and United States Attorneys' Offices to educate and inform such personnel about—

(A) resource information on intellectual property, enabling framework established both to protect and encourage creative works as well as legitimate uses of information and rights under the first amendment of the United States Constitution;

(B) the technological challenges to protecting digital copyrighted works from on-line piracy;

(C) the role of the victim copyright owner in providing relevant information for enforcement actions and in the computation of damages; and

(H) the appropriate use of injunctions, impoundment, forfeiture, and related authorities in copyright law;

(2) designating personnel from at least 4 United States Attorneys' Offices to participate in a pilot program designed to implement the authority under section 506a of this Act and shall include—

(A) the use of the civil enforcement authority of the Attorney General under section 506a of title 17, United States Code, as added by this Act; and

(E) how to employ and leverage the expertise of technical experts in computer forensics;

(F) the collection and preservation of electronic data in a forensically sound manner for use in court proceedings;

(G) the role of the victim copyright owner in providing relevant information for enforcement actions and in the computation of damages; and

(H) the appropriate use of injunctions, impoundment, forfeiture, and related authorities in copyright law;

(2) designating personnel from at least 4 United States Attorneys' Offices to participate in a pilot program designed to implement the authority under section 506a of this Act and shall include—

(A) the use of the civil enforcement authority of the Attorney General under section 506a of title 17, United States Code, as added by this Act; and

(B) the progress made in implementing the training and pilot programs described under subsections (1) and (3) of this subsection.

(b) ANNUAL REPORT.—The report under subsection (a)(3) may be included in the annual performance report of the Department of Justice and shall include—

(1) with respect to civil actions filed under section 506a of title 17, United States Code, as added by this Act—

(A) the number of investigative matters received by the Department of Justice and United States Attorneys' Offices;
are driving the increasing ease of piracy on peer-to-peer filesharing networks. Such business models exploit children, cheat artists, and threaten the future development of commerce on the Internet.

Indeed, our government recognizes that its enforcement powers are inappropriate when protecting intellectual property and public safety. Recently, in a speech to the United States Chamber of Commerce, Deputy Attorney General James B. Comey, Jr. asserted that the Department of Justice should assist private enforcement of intellectual property rights if any of three criteria are met: (1) the level of piracy becomes particularly egregious; (2) public health and safety are put at risk; or (3) private civil remedies fail to adequately deter illegal conduct.

In the case of peer-to-peer filesharing, all three criteria may be met. The level of piracy on these networks is not merely egregious, it is unprecedented. Public health and safety are also directly threatened by business models that tempt children toward piracy and pornography and then use them as “human shields” against law enforcement.

Finally, the recording industry and other affected rights holders have tried—so far largely unsuccessfully—to use civil remedies to halt the operations of those who would profit by turning teenagers and college students into giant pirates or pornography distributors.

As a result, our creative industries’ only remaining option to deter piracy is to bring enough civil enforcement actions against users of filesharing software. Tens of thousands of continuing civil enforcement actions might be needed to generate the necessary deterrence. I doubt that any nongovernmental organization has the resources or moral authority to pursue such a campaign.

If enforcement actions against end-users were really the best or only way to enforce copyrights on the Internet, then civil enforcement authority would be necessary. But there may be other ways to combat this piracy at the root, not at the branch. I thus invite the Department of Justice and other federal law enforcement agencies to work with me, Senator Leahy and other members of the Judiciary Committee to determine whether the appropriation of the federal government can best be deployed to solve the problems arising from piracy and pornography on peer-to-peer filesharing networks.

I also understand that others may be developing proposals to increase criminal enforcement authority against piracy, and I hope to work with them on such proposals. Today, I stand with Senator Leahy to buttress the enforcement of copyrights by enabling the Department of Justice to proceed with a robust civil enforcement program.

For the reasons I have just delineated, I urge my colleagues to join us in supporting the Protecting Intellectual Rights Against Theft and Expropriation Act.

By Mrs. BOXER:
S. 2240. A bill to improve seaport security; to the Committee on Commerce, Science, and Transportation.

Mrs. BOXER. Mr. President, at the end of 2002, the Maritime Transportation Security Act became law.

I was a member of the conference committee on that bill, and I think it was a good first step in improving security at our nation’s ports.

It had many good provisions, such as the creation of national and regional maritime transportation/port security plans to be approved by the Coast Guard; better coordination of federal, state, local, and private enforcement agencies; and the establishment of a grant program for port authorities, waterfront facilities operators, and state and local agencies to provide security infrastructure improvements.

The problem was that the bill had no guaranteed funding mechanism. As a result, we are underfunding port security. Since the passage of the Maritime Transportation Security Act, the Department of Homeland Security has released $517 million in port security grants. This is not enough. According to the Coast Guard, it is estimated that the ports directly need $1.4 billion this year and $6 billion over the next ten years. Yet, the Administration only requested $46 million in its fiscal year 2005 budget.

Last year, I visited many of California’s ports including Crescent City in the north down through Stockton to Los Angeles/Long Beach in the south. I have seen what the ports are confronting. They need more funding for homeland security and they need it now.

And, with over 40 percent of the nation’s goods imported through California’s ports, freight rail is extremely important to the nation’s commerce. A terrorist attack at a California port would not only be tragic but would be devastating for our nation’s economy.

So, today, I am introducing the Senate version of a bill introduced by Representative MILLENDER-McDONALD. This legislation will provide more funding for ports. Specifically, it will: create a Port Security Grant Program in the Department of Homeland Security; provide $800 million per year for five years in grant funding; and—this is very important to California’s ports—allow the federal government to make multiyear grants to help finance larger projects similar to what is done with many of our airports for aviation security.

I hope that the Senate will act on this bill. Now is not the time to slow down or delay our efforts to increase and improve transportation security. The job is not done, and it must be done.
and Space Administration to examine all possible options for safely carrying out the planned servicing mission to the Hubble Space Telescope and assess alternative servicing methods.

(3) expresses its strong sentiment that the National Aeronautics and Space Administration should continue all planning, preparation, and operations for the SM-4 servicing mission without interruption until the expert panel issues its report and until the National Aeronautics and Space Administration provides a period of compliance with recommendation R6.4 and until the National Aeronautics and Space Administration compliance with the recommendation will allow both a Hubble servicing mission and a fully autonomous servicing mission to the Space Station to be carried out safely.

Ms. MIKULSKI. Mr. President, I rise to submit a Senate Resolution with my distinguished colleague from Kansas, Senator BROWNBACK. This Resolution expresses the confidence of the Senate for NASA to undertake a comprehensive independent review of the decision to terminate the final servicing mission for the Hubble Space Telescope and that all planning and preparation activities continue during this period.

On January 14, 2004, the NASA Administrator announced that he was terminating the final servicing mission for the Hubble Telescope that was scheduled for launch in 2007. When the NASA Administrator announced his decision, I was shocked. Hubble has been the most successful NASA program since Apollo. In fact, it is arguably the greatest scientific instrument since Galileo’s telescope.

Pictures from Hubble have helped scientists prove that the universe is expanding, that black holes exist, and how stars are born and how stars die.

Earlier this month, the Space Telescope Science Institute released a picture that may be considered the greatest photograph ever taken of the universe. It is a picture showing what the universe was like almost 12 billion years ago. Galaxies and stars never seen before are shown in extraordinary detail that will usher in a new era of discovery for years to come.

With the scientific value of Hubble undisputed, I was shocked that there was no report, analysis or study that supported the Administrator’s decision.

It is imperative that we have a full understanding of all the issues including the potential risks, scientific benefits and alternative servicing methods for a Hubble servicing mission. This decision is too important to be left to just one person. We need the best advice from the best minds to determine Hubble’s future.

Let me be clear. I want to stand up for Hubble. I will always stand up for the safety of our astronauts. We must do everything possible to ensure the safety of our astronauts, whether they are traveling to the Space Station or fixing Hubble. Putting safety first means that NASA must fully implement all of the recommendations of the Columbia Accident Investigation Board as soon as possible. As the Ranking Member of the Subcommittee that funds NASA, working on a bipartisan basis with my distinguished colleague from Missouri, Senator BOND, we are committed to providing whatever resources are needed to ensure that safety of our astronauts and the safety of the Space Shuttle.

Before an irrevocable decision is made about Hubble’s future, I want the best minds in science and engineering to tell us what are the risks and how we can reduce them.

I know many of my colleagues share these concerns. That’s why Senator BROWNBACK and I are submitting this resolution today. The decision to terminate the Hubble servicing mission represents a major change in our science, exploration and discovery. A definition of the American people and the world deserves nothing less than a rigorous and independent review so we can fully understand all of the issues surrounding a servicing mission.

Finally, I want to thank the outstanding employees of the Goddard Space Flight Center and Space Telescope Science Institute. Without their hard work and dedication to the cause of science, exploration and discovery, Hubble would not be what it is today, the greatest scientific instrument mankind has ever created.

Mr. BROWNBACK. Mr. President, I recognize the significant scientific accomplishments of the Hubble Space Telescope. Space telescopes such as Hubble are an important part of our future space program and the President’s vision for revitalized human exploration of space.

Several months ago NASA made a decision to forego planned Space Shuttle servicing missions for the Hubble Space Telescope. This is a difficult and complicated issue and technical experts reasonably differ on the best approach. I believe that NASA might benefit from the counsel of the best experts the nation can muster inside and outside of the Government. Correspondingly, I’ve joined my colleague Senator MIKULSKI in urging NASA to sponsor a comprehensive study on the risks and risks associated with various approaches for maintaining the Hubble Space Telescope and its capabilities. I would also hope that this study would include imaginative new concepts for robotic servicing.

As we fulfill the promise of space exploration the President has outlined, the enormous success of the Hubble Space Telescope and other NASA successes such as the recent Mars Rover Program provide us with a sound basis upon which we can count on my continued support of their endeavors to provide unlimited opportunity to future generations of Americans.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2936. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization ruling on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes, which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2936. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes, which was ordered to lie on the table; as follows:

At the end of title IV add the following:

Subtitle G—Provisions Designed To Restrict Use of Abusive Tax Shelters and Offshore Tax Havens

SEC. 498. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively, by striking ‘‘(4)’’ and inserting in lieu thereof ‘‘(6)’’;

(2) by striking ‘‘(2)’’ and inserting in lieu thereof ‘‘(3)’’;

(3) by striking ‘‘(3)’’ and inserting in lieu thereof ‘‘(4)’’;

(b) EFFECTIVE DATE.

(1) Section 6709 shall apply to activities occurring after the date of the enactment of this Act.

(c) PRIOR SECTION TO HAVE NO EFFECT.

(d) AMENDMENTS SUBMITTED AND PROPOSED.
SEC. 498A. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) In General.—Section 6707(a) (relating to imposition of penalty) is amended—

(1) by inserting “the tax liability or” after “respect to,” in paragraph (1);

(2) by deleting the last sentence of paragraph (1) and inserting in lieu thereof the following sentence: “If a person who is required to file a return under section 6011 to be included with the return or statement, because the Secretary or the Commissioner of Internal Revenue to rescind a penalty under certain circumstances shall apply to any penalty imposed under this section.

(b) AMOUNT OF PENALTY; CALCULATION OF LIABILITY; PENALTY FOR.—

(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 150 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice with respect to such before “portion” both places it appears in paragraphs (2) and (3), and

(3) by inserting “instane of aid, assistance, procurement, or advice or each such” before “document” in the matter following paragraph (3).

(c) EFFECTIVE DATE.

(1) IN GENERAL.—This section shall apply to returns filed after the date of the enactment of this Act.

(2) DEFERRED PENALTY.—The payment of any penalty imposed under this section until the date on which such return or statement is filed is not considered a payment for purposes of this section.

(d) AMOUNT OF PENALTY.—The amount of the penalty imposed by this section shall be $50,000.

(e) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section shall not be considered an ordinary and necessary expense in carrying on a trade or business, or otherwise deductible by the person who is subject to such penalty or who makes such payment.

(f) CLASSIFICATION OF LISTED TRANSACTIONS.—The term “potentially abusive tax shelter” and “listed transaction” shall be deemed to be applied by the Commissioner of Internal Revenue to tax shelters for the purposes of this section if it has been determined that such a tax shelter or transaction is not a tax shelter or transaction for purposes of section 6707 in the table of sections for part I of subchapter B of chapter 68 is not a tax shelter or transaction for purposes of section 6707(c).

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to returns filed after the date of the enactment of this Act.

SEC. 499C. PENALTY FOR FAILING TO MAINTAIN INCOME OR PURCHASE RECORDS REGARDING TAX SHELTER.

(a) IN GENERAL.—Subsection (a) of section 6062 (relating to penalty for failure to maintain income or purchase records regarding tax shelters) is amended by adding at the end the following new subsection:

(1) IMPROBABILITY OF PENALTY.—

(1) In General.—If any person who is required to maintain a list under section 6062(b)(1) (1), without written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary’s request for such list, such person shall pay a penalty of $10,000 for each day of such default after such 20th day.

(2) GOOD CAUSE EXCAUSE.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if, in the judgment of the Secretary, such failure is due to good cause.

(b) PENALTY NOT DEDUCTIBLE.—Section 6062(b)(1) is amended by adding at the end the following new subsection:

(1) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business, or otherwise deductible by the person who is subject to such penalty or who makes such payment.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns filed after the date of the enactment of this Act.

SEC. 499D. PENALTY FOR FAILING TO DISCLOSE POTENTIALLY ABUSIVE TAX SHELTER INFORMATION WITH RETURN OR STATEMENT.

(a) IMPOSITION OF PENALTY.—Any person who fails to include or attach any information with respect to a potentially abusive tax shelter which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

(b) AMOUNT OF PENALTY.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

(2) LISTED TRANSACTION.—Except as provided in paragraph 3, the amount of the penalty under subsection (a) shall be $200,000.

(3) INCREASE IN PENALTY FOR INTENTIONAL NONDISCLOSURE.—The penalty under subsection (a) shall be $100,000.

(c) DEFINITIONS.—For purposes of this section—

(1) POTENTIALLY ABUSIVE TAX SHELTER.—The term ‘potentially abusive tax shelter’ means any tax shelter which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

(2) AUTHORITY TO RESCIND PENALTY.—The Commissioner of Internal Revenue may rescind any or all portion of a penalty imposed under this section if it has been determined by the Secretary or the Commissioner of Internal Revenue that the imposition of such penalty is inappropriate or that the person on whom the penalty is imposed has a history of complying with the requirements of this title.

(3) NONAPPEAL.—Any determination of the Commissioner of Internal Revenue under subsection (1) shall not be appealable.

(4) RECORDS.—If a penalty is rescinded under paragraph (3), the Commissioner of Internal Revenue shall place in the file in the Office of the Commissioner the opinion of the Commissioner or
the head of the Office of Tax Shelter Analysis with respect to the determination, including:

(a) the facts and circumstances of the transaction,

(b) the reasons for the rescission, and

(c) the amount of the penalty rescinded.

A copy of such opinion shall be provided upon request to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Joint Committee on Taxation, or the General Accounting Office.

(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

(B) a description of each penalty rescinded under this subsection and the reasons therefor.

(e) PENALTY REPORTED TO SEC.—In the case of a person—

(U) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

(2) which is a broker or dealer in securities, shall prepare and file, in addition to any periodic reports required to be filed by such person under the securities laws, a return under section 6111 with respect to any potentially abusive tax shelter.

(3) In preparing such return under section 6111 with respect to any potentially abusive tax shelter, such person shall—

(A) describe the details of the potentially abusive tax shelter and the reasons therefor.

(B) the facts and circumstances of the transaction.

(C) whether a material advisor is required to file a report under section 6112 with respect to such shelter.

(D) the amount of any income and deductions claimed with respect to such shelter.

(E) a statement of the amount of any losses deemed by such person to be attributable to such shelter.

(F) a description of any other information which the Secretary may require.

(S) the amount of any tax attributable to such shelter.

(2) The Secretary shall prescribe regulations which provide for purposes of this section—

(A) MATERIAL ADVISOR.—(i) The term ‘material advisor’ means any person—

(1) who provides any material aid, assistance, or advice with respect to designing, organizing, managing, promoting, implementing, or carrying out any potentially abusive tax shelter, and

(2) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice, at a rate prescribed by regulations.

(B) The item relating to such section as defined in section 6707A(c) shall take effect as if included in the Act of March 12, 1924, as amended by the Revenue Act of 1928.

(3) The term ‘potentially abusive tax shelter’ means any person—

(A) who provides any material aid, assistance, or advice with respect to designing, organizing, managing, promoting, implementing, or carrying out any potentially abusive tax shelter, and

(B) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice, at a rate prescribed by regulations.

(4) The Secretary may prescribe regulations which provide—

(A) that only 1 person shall be required to meet the requirements of section 6112 with respect to any potentially abusive tax shelter unless the Secretary determines that such shelter substantially all the tax benefits from which are provided to natural persons, and

(B) in the case of a person which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, the Secretary may impose a civil money penalty on such person for purposes of this title and shall not be deductible under section 61.

For purposes of this section, the identity of any person on such list shall not be privileged.

(5) The Secretary shall prescribe regulations which provide—

(A) that only 1 person shall be required to meet the requirements of section 6112 with respect to any potentially abusive tax shelter.

(B) to which the term ‘potentially abusive tax shelter’ means any person—

(1) who provides any material aid, assistance, or advice with respect to designing, organizing, managing, promoting, implementing, or carrying out any potentially abusive tax shelter, and

(2) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice, at a rate prescribed by regulations.

(C) the term ‘potentially abusive tax shelter’ has the meaning given to such term by section 6707A(c).

(D) The item relating to such section as defined in section 6707A(c) shall take effect as if included in the Act of March 12, 1924, as amended by the Revenue Act of 1928.

(2) The term ‘potentially abusive tax shelter’ means any person—

(A) who provides any material aid, assistance, or advice with respect to designing, organizing, managing, promoting, implementing, or carrying out any potentially abusive tax shelter, and

(B) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice, at a rate prescribed by regulations.

(3) The Secretary may prescribe regulations which provide—

(A) that only 1 person shall be required to meet the requirements of section 6112 with respect to any potentially abusive tax shelter unless the Secretary determines that such shelter substantially all the tax benefits from which are provided to natural persons, and

(B) in the case of a person which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, the Secretary may impose a civil money penalty on such person for purposes of this title and shall not be deductible under section 61.

For purposes of this section, the identity of any person on such list shall not be privileged.

(5) The Secretary shall prescribe regulations which provide—

(A) that only 1 person shall be required to meet the requirements of section 6112 with respect to any potentially abusive tax shelter.

(B) to which the term ‘potentially abusive tax shelter’ means any person—

(1) who provides any material aid, assistance, or advice with respect to designing, organizing, managing, promoting, implementing, or carrying out any potentially abusive tax shelter, and

(2) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice, at a rate prescribed by regulations.

(C) the term ‘potentially abusive tax shelter’ has the meaning given to such term by section 6707A(c).

(D) The item relating to such section as defined in section 6707A(c) shall take effect as if included in the Act of March 12, 1924, as amended by the Revenue Act of 1928.

(2) The term ‘potentially abusive tax shelter’ means any person—

(A) who provides any material aid, assistance, or advice with respect to designing, organizing, managing, promoting, implementing, or carrying out any potentially abusive tax shelter, and

(B) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice, at a rate prescribed by regulations.

(3) The Secretary may prescribe regulations which provide—

(A) that only 1 person shall be required to meet the requirements of section 6112 with respect to any potentially abusive tax shelter unless the Secretary determines that such shelter substantially all the tax benefits from which are provided to natural persons, and

(B) in the case of a person which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, the Secretary may impose a civil money penalty on such person for purposes of this title and shall not be deductible under section 61.

For purposes of this section, the identity of any person on such list shall not be privileged.

(5) The Secretary shall prescribe regulations which provide—

(A) that only 1 person shall be required to meet the requirements of section 6112 with respect to any potentially abusive tax shelter.

(B) to which the term ‘potentially abusive tax shelter’ means any person—

(1) who provides any material aid, assistance, or advice with respect to designing, organizing, managing, promoting, implementing, or carrying out any potentially abusive tax shelter, and

(2) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice, at a rate prescribed by regulations.

(C) the term ‘potentially abusive tax shelter’ has the meaning given to such term by section 6707A(c).

(D) The item relating to such section as defined in section 6707A(c) shall take effect as if included in the Act of March 12, 1924, as amended by the Revenue Act of 1928.

(2) The term ‘potentially abusive tax shelter’ means any person—

(A) who provides any material aid, assistance, or advice with respect to designing, organizing, managing, promoting, implementing, or carrying out any potentially abusive tax shelter, and

(B) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice, at a rate prescribed by regulations.

(3) The Secretary may prescribe regulations which provide—

(A) that only 1 person shall be required to meet the requirements of section 6112 with respect to any potentially abusive tax shelter unless the Secretary determines that such shelter substantially all the tax benefits from which are provided to natural persons, and

(B) in the case of a person which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, the Secretary may impose a civil money penalty on such person for purposes of this title and shall not be deductible under section 61.

For purposes of this section, the identity of any person on such list shall not be privileged.
“(B) AMOUNT OF PENALTY.—

(1) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall be determined by the Secretary.

(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

(i) the violation was due to reasonable cause, and

(ii) the amount of the transaction or the balance in the account at the time of the transaction (if a transaction occurred) or at the time of the event giving rise to such penalty, the Secretary may impose a monetary penalty on a practitioner for the written advice.

(c) PRIOR SECTION TO HAVE NO EFFECT.—Notwithstanding section 412(a)(2) of this Act, such section, and the amendments made by such section, shall not take effect.

SEC. 499L. INFORMATION SHARING FOR ENFORCEMENT PURPOSES.

(a) PROMOTION OF PROHIBITED TAX SHELTERS OR TAX AVOIDANCE SCHEMES.—Section 6103(h) (relating to disclosure to certain Federal criminal employees and officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new paragraph:

“(7) DISCLOSURE OF RETURNS AND RETURN INFORMATION RELATED TO PROMOTION OF PROHIBITED TAX SHELTERS OR TAX AVOIDANCE SCHEMES.—

(A) WRITTEN REQUEST.—Upon receipt by the Secretary of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board, for administration of Federal laws not related to tax administration) is amended by

(B) REQUIREMENTS.—A request meets the requirements of this subparagraph if it sets forth—

(i) the nature of the investigation, examination, or proceeding;

(ii) the statutory authority under which such investigation, examination, or proceeding is being conducted;

(iii) the name or names of the issuer, investment company, or public accounting firm from which such return information relates;

(iv) the taxable period or periods to which such return information relates, and

(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination, or proceeding.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures and to information and document requests made after the date of the enactment of this Act.

SEC. 499J. CERTAIN DISCLOSURES BY SUBPOENA NOT SUBJECT TO PENALTY.

(a) IN GENERAL.—Section 7212(b)(1) (relating to disclosure) is amended by striking “such return information shall be disclosed” and inserting “Such disclosure shall be for administration of Federal laws not related to tax administration) is amended by

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures made after the date of the enactment of this Act.

SEC. 499K. CONTINGENT FEE PROHIBITION.

(a) IN GENERAL.—Section 6701, as amended by this Act, is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively;

(2) by striking “subsection (a)” in paragraphs (2) and (3) of subsection (g) (as redesignated by paragraph (1)) and inserting “subsection (a) or (f),”;

(3) by inserting after subsection (a) the following new subsection:

“(f) CONTINGENT FEE PROHIBITION.—

“(1) IN GENERAL.—Any person who makes an agreement for, charges, or collects a fee (including a reasonable fee for services provided in connection with the internal revenue laws, and which is contingent upon the actual or projected achievement of—

(A) Federal tax savings or benefits, or

(B) losses which can be used to offset other taxable income,
shall pay a penalty with respect to each such fee activity in the amount determined under subsection (b).

(2) REGULATIONS. The Secretary may issue such regulations as may be necessary to carry out the purposes of this subsection and may provide for exceptions for fee arrangements that are in the public interest.

(b) EFFECTIVE DATE. The amendments made by this section shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 6038D. DETERRING UNCOOPERATIVE TAX HAVENS THROUGH LISTING AND REPORTING REQUIREMENTS.

(a) IN GENERAL.—Subpart A of part III of subchapter E, which is headed ‘‘Subpart E—Tax havens’’ inserted after section 6038C the following new section:

(1) SEC. 6038D. Deterring uncooperative tax havens through listing and reporting requirements.

(a) IN GENERAL.—Each United States person who transfers money or other property directly or indirectly to any uncooperative tax haven, to any financial institution located in an uncooperative tax haven, to any person who is a resident of an uncooperative tax haven, or to any person who is a citizen of an uncooperative tax haven shall furnish to the Secretary, at such time and in such manner as the Secretary shall by regulation prescribe, such information with respect to such transfer as the Secretary may require.

(b) EXCEPTIONS.—Subsection (a) shall not apply to a transfer by a United States person if the amount of money (or other property in the fair market value of property) transferred is less than $10,000. Related transfers shall be treated as a transfer for purposes of this subsection.

(c) UNCOOPERATIVE TAX HAVEN.—For purposes of this section—

(1) IN GENERAL.—The term ‘‘uncooperative tax haven’’ means any foreign jurisdiction which—

(A) is identified on a list maintained by the Secretary under paragraph (2) as being a jurisdiction—

(i) which imposes no or nominal taxation either generally or on specified classes of income, and

(ii) has corporate, business, bank, or tax secrecy or confidentiality rules and practices, or has ineffective information exchange practices which, in the judgment of the Secretary, effectively limit or restrict the ability of the United States to obtain information relevant to the enforcement of this title.

(2) MAINTENANCE OF LIST.—Not later than November 1 of each calendar year the Secretary shall issue a list of foreign jurisdictions which the Secretary determines qualify as uncooperative tax havens under paragraph (1).

(3) INEFFECTIVE INFORMATION EXCHANGE PRACTICES.—For purposes of paragraph (1) a jurisdiction shall be deemed to have ineffective information exchange practices if the Secretary determines that during any taxable year ending in the 12-month period preceding the issuance of the list under paragraph (2)—

(A) the exchange of information between the United States and such jurisdiction was inadequate to prevent evasion or avoidance of United States taxes by United States persons or to enable the United States effectively to enforce this title, or

(B) such jurisdiction was identified by an intergovernmental group or any transfer agreements of which the United States is a member as uncooperative with international tax enforcement or information exchange and the United States in the determination—

(d) PENALTY FOR FAILURE TO FILE INFORMATION.—If a United States person fails to furnish the information required by subsection (a) or if any transfer agreement in the time prescribed therefor (including extensions), such United States person shall pay (upon notice and demand by the Secretary and in the same manner as tax) an amount equal to 20 percent of the amount of such transfer.

(e) SIMPLIFIED REPORTING.—The Secretary may by regulation provide for simplified reporting under this section for United States persons making large volumes of similar payments.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(b) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by inserting after the item relating to section 6038C the following new item:

Sec. 6038D. Deterring uncooperative tax havens through listing and reporting requirements.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date which is 180 days after the date of the enactment of this Act.

SEC. 6039M. DETERRING UNCOOPERATIVE TAX HAVENS BY REQUIRING ALLOWABLE TAX BENEFITS.

(a) LIMITATION ON DEFERRAL.—(1) IN GENERAL.—Subsection (a) of section 952 (relating to deferred income) is amended by striking ‘‘and’’ at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ‘‘; and’’; and by inserting ‘‘; and (5)’’ after paragraph (5) the following new paragraph:

(5) an amount equal to the applicable fraction (as defined in subsection (3)) of the income of such corporation other than income which—

(A) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph or paragraph (3)(A)(ii)), or

(B) is described in subsection (b).

(2) APPLICABLE FRACTION.—Section 952 is amended by adding at the end the following new subsection:

(e) IDENTIFIED TAX HAVEN INCOME WHICH IS SUBPART F INCOME.—

(1) IN GENERAL.—For purposes of subsection (a)(6), the term ‘‘applicable fraction’’ means the fraction—

(A) the numerator of which is the aggregate identified tax haven income for the taxable year, and

(B) the denominator of which is the aggregate income for the taxable year which is from sources outside the United States.

(2) IDENTIFIED TAX HAVEN INCOME.—For purposes of paragraph (1), the term ‘‘identified tax haven income’’ means income for taxable years which is attributable to a foreign jurisdiction for any period during which such jurisdiction is an uncooperative tax haven under section 6038D(c).

(b) D ENIAL OF FOREIGN TAX CREDIT.—(1) IN GENERAL.—Subsection (c) of section 931 (relating to denial of foreign tax credit) is amended by striking ‘‘and’’ at the end of paragraph (1) and inserting ‘‘; and (2)’’; and by inserting ‘‘; and (2)’’ after paragraph (2) the following new paragraph:

(2) TAXES ALLOWED AS A DEDUCTION, ETC.—Subsection (c) of section 931 is amended by striking paragraph (2) and inserting ‘‘(2) for identified tax haven income which is subpart F income. ’’

(c) IDENTIFIED TAX HAVEN INCOME WHICH IS SUBPART F INCOME.—

(1) IN GENERAL.—For purposes of subsection (a)(6), the term ‘‘identified tax haven income’’ means income for taxable years which is from sources outside the United States.

(2) IDENTIFIED TAX HAVEN INCOME.—For purposes of paragraph (1), identified tax haven income means income for taxable years which is attributable to a foreign jurisdiction for any period during which such jurisdiction is an uncooperative tax haven under section 6038D(c).

(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(b) DENIAL OF FOREIGN TAX CREDIT.—Section 931 is amended by redesignating subsection (c) as subsection (d) and by inserting after such subsection—

(1) REDUCTION OF FOREIGN TAX CREDIT, ETC., FOR IDENTIFIED TAX HAVEN INCOME.—

(1) IN GENERAL.—Notwithstanding any other provision of this part—

(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 702(a)) to any foreign jurisdiction if such taxes are with respect to income attributable to a period during which such jurisdiction has been identified as an uncooperative tax haven under section 6038D(c), and

(b) subparts (a), (b), (c), and (d) of section 931 and sections 922 and 926 shall be applied separately with respect to all income of a taxpayer attributable to periods described in subparagraph (A) with respect to all such jurisdictions.

(4) TAXES ALLOWED AS A DEDUCTION, ETC.—Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under sub- section (a) by reason of this subsection.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing (1), the seventh hearing scheduled before the Committee on Energy and Natural Resources: The hearing will be held on Tuesday, April 27, at 10 a.m. in Room SD–366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of the hearing is to receive testimony regarding sustainable, low emission, electricity generation.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–366 Dirksen Senate Office Building, Washington, D.C. 20510–6150.

For further information, please contact Dr. Pete Lyons at 202–224–5861 or Shane Perkins at 202–224–7555.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. DeWINE. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 25, 2004, at 9:30 a.m., in open and closed session to receive testimony on the role of U.S. Northern Command and U.S. Special Operations Command in defending the homeland and in the global war on terrorism, in review of the defense authorization request for fiscal year 2005.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DeWINE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on March 25, 2004, at 9:30 a.m., in open and closed session to receive testimony on the role of U.S. Northern Command and U.S. Special Operations Command in defending the homeland and in the global war on terrorism, in review of the defense authorization request for fiscal year 2005.

The PRESIDING OFFICER. Without objection, it is so ordered.
Urban Affairs be authorized to meet during the session of the Senate on March 25, 2004, at 2:30 p.m., to conduct a hearing on “The Administration’s Proposed Fiscal Year 2005 Budget for the Federal Transit Administration.” The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, March 25, 2004, at 9:30 a.m., on Cable Rates.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Employment, Safety, and Training be authorized to meet for a hearing on Hazardous Materials in the Workplace during the session of the Senate on Thursday, March 25, 2004 at 10 a.m. in SD-430.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 25, 2004 at 9:30 a.m. to hold a hearing on AGOA III: the United States Africa Partnership Act of 2003.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 25 at 2:30 p.m. to receive testimony regarding the following bills: S. 1085, a bill to provide for a bureau of reclamation program to assist states and local communities in developing rural and small community water supply systems, and for other purposes; S. 1732, a bill to direct the Secretary of the Interior to establish a rural water supply program in the reclamation states to provide a clean, safe, and reliable water supply to rural residents; S. 2218, a bill to direct the Secretary of the Interior to establish a rural water supply program in the reclamation states to provide a clean, safe, and reliable water supply to rural residents; and S. 2236, EN BLOC.

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

COMMITTEE ON VETERANS’ AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Veterans’ Affairs be authorized to meet during the session of the Senate on Thursday, March 25, 2004, for a joint hearing of the House of Representatives’ Committee on Veterans’ Affairs, to hear the legislative presentations of the National Association of State Directors of Veterans Affairs, AMVETS, American Ex-Prisoners of War, the Vietnam Veterans of America, and the Military Officers Association of America.

The hearing will take place in room 345 of the Cannon House Office Building at 10 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DEWINE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 25, 2004 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

COMMITTEE ON ECONOMIC POLICY

Mr. DEWINE. Mr. President, I ask unanimous consent that the Subcommittee on Economic Policy of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, March 25 at 10 a.m. to conduct a hearing on “National Flood Insurance Repetitive Losses.”

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

COMMITTEE ON STRATEGIC FORCES

Mr. DEWINE. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces of the Committee on Armed Services be authorized to meet during the session of the Senate on March 25, 2004, at 2:30 p.m. for an open session to receive testimony on National security space programs, and management, in review of the defense authorization request for fiscal year 2005.

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

SUBCOMMITTEE ON WATER AND POWER

Mr. DEWINE. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, March 25 at 2:30 p.m. to receive testimony on H.R. 387, to provide for a bureau of reclamation program to assist states and local communities in developing rural and small community water supply systems, and for other purposes; S. 1732, a bill to direct the Secretary of the Interior to establish a rural water supply program in the reclamation states to provide a clean, safe, and reliable water supply to rural residents; S. 2218, a bill to direct the Secretary of the Interior to establish a rural water supply program in the reclamation states to provide a clean, safe, and reliable water supply to rural residents; S. 2236, EN BLOC.

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

COMMITTEE ON THE MILITARY ECONOMY

Mr. FRIST. Mr. President, I now ask for their second reading, and in order to place the bills on the calendar under rule XIV, I object to further proceedings on these matters en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will be read a second time on the next legislative day.

EXECUTIVE SESSION

PROTOCOL AMENDING TAX CONVENTION WITH SRI LANKA—TREATY DOCUMENT NO. 108-9

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following treaties on today’s Executive Calendar: Nos. 14 and 15. I further ask unanimous consent that the treaties be considered as having passed through their various parliamentary stages, up to and including the presentation of the resolutions of ratification; that any statements relating to the treaties be printed in the CONGRESSIONAL RECORD as if read; and that the Senate take one vote on the resolutions of ratification, to be considered as separate votes; further, that when the resolutions of ratification are voted on, the motion to reconsider be laid upon the table, the President be notified of the Senate’s action, and that following the disposition of the treaties, the Senate return to legislative session.

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

ORDER FOR STAR PRINT—S. 2201

Mr. FRIST. Mr. President, I ask unanimous consent that S. 2201 be star printed with the change which is at the desk.

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

MEASURES READ THE FIRST TIME—H.R. 339, H.R. 3717, and S. 2236, EN BLOC

Mr. FRIST. Mr. President, I understand there are three bills at the desk, and I ask that they be read for the first time en bloc.

The PRESIDING OFFICER. Without objection, the clerk will read the titles of the bills for the first time.

A bill (H.R. 339) to prevent legislative and regulatory functions from being usurped by civil liability actions brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for claims of injury relating to a person’s weight gain, obesity, or any health condition associated with weight gain or obesity.

A bill (S. 2236) to enhance the reliability of the electric system.

Mr. FRIST. Mr. President, I now ask for their second reading, and in order to place the bills on the calendar under rule XIV, I object to further proceedings on these matters en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will be read a second time on the next legislative day.
The resolutions of ratification are as follows:


Resolved (two-thirds of the Senators present concurring therein) That the Senate advise and consent to the ratification of the Convention between the Government of the United States of America, and the Government of the Democratic Socialist Republic of Sri Lanka for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Colombo on March 14, 1985 (Treaty Doc. 99-10), and the Protocol amending the Convention, together with an Exchange of Notes, signed at Washington on September 20, 2002 (Treaty Doc. 180-9), subject to the understanding that the authorities to which information may be disclosed under Article 27 include appropriate congressional committees and the General Accounting Office.

Mr. FRIST. Mr. President, I ask for a division vote on the resolutions of ratification.

The PRESIDING OFFICER. A division vote is requested. Senators in favor of the resolutions of ratification will rise and stand until counted.

Those opposed will rise and stand until counted.

On a division vote, two-thirds of the Senators present and voting having voted in the affirmative, the resolutions of ratification are agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDERS FOR FRIDAY, MARCH 26, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Friday, March 26. 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 that there then be a period for morning business with Senators to speak for up to 10 minutes each.

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

PROGRAM

Mr. FRIST. The Senate will be in session tomorrow. However, no rollcall votes will occur. On Monday, the Senate will begin consideration of the welfare authorization bill. The chairman and ranking member of the Finance Committee will be here on Monday to begin the amendment process on the bill. I do encourage all Senators who have amendments to contact the bill managers as soon as possible.

As announced earlier, there will be no rollcall votes on Monday, but Senators are encouraged to come to the floor on Monday in order to make progress on the bill.

I again want to congratulate Senators DeWine and Graham of South Carolina and all of the Members who participated in today's debate on the Unborn Victims of Violence bill. I congratulate all of them on the passage of the bill which will go to the President's desk for his signature.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:31 p.m., adjourned until Friday, March 26, 2004, at 9:30 a.m.